

(1991) 07 KAR CK 0018
In the Karnataka High Court
Case No : W.P. No. 16039 of 1991

Narayanappa

APPELLANT

Vs

S.N.M. Avadhoot and Others

RESPONDENT

Date of Decision : 22-07-1991

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 7

Citation : (1991) 3 KarLJ 672

Hon'ble Judges : M. Ramakrishna, J

Judgement

1. The petitioner in this writ petition has sought for quashing Annexure-D the order made by the Tahsildar on 5-6-1991 for the reasons stated in the writ petition.

2. The matter arises in this way:

It is undisputed that 19 acres 9 guntas in Sy. No. 67 situated in the village Kodiganahalli, Macnhenahalli Hobli, Gowribidnur Taluk, Kolar District being inam land was endowed upon the village office, Shanubogh. Therefore, the said land is governed under the provisions of The Karnataka Village Offices Abolition Act, 1961 (for short "the Act"). According to the observations made by the Tahsildar, Chickaballapur Taluk under Annexure-D and having referred to the barawarth register, the following 10 persons were enjoying portions of the lands referred to above, discharging the duties of the village office: Thus, the above 10 persons were enjoying their respective portions of the lands before the Act, 1961 came into force. Earlier there was an order made by the Tahsildar on 10-6-1986, regranteeing these lands. Aggrieved by this order of the Tahsildar, Miscellaneous Appeal No. 47/1987 was presented by Narayanappa-petitioner herein, and M.A. No. 61/1986 was presented by Smt. Puttamma-the 2nd respondent herein before the learned District Judge challenging the correctness of that order. The learned Additional District Judge, Kolar by his order dated 27th October, 1988 (Annexure-A), for the reasons set out in the order allowed the appeals and remitted the matter for reconsideration. The operative portion of this order reads:

"The appeals preferred by the appellants are hereby allowed setting aside the impugned order passed by the Tahsildar, Gowribidanur. Now the matter is remitted back to the Tahsildar, Gowribidnur to follow the procedure as referred above and to pass proper order according to the law, and dispose of the claims of the appellants. The Tahsildar, Gowribidnur is also directed to look into the decision reported in 1981(1) Karnataka Law Journal page 1 in the case of Lakshmana Gowda v State of Karnataka and dispose of the claim of the appellant Smt. Puttamma."

Thus the matter came up for reconsideration by the Tahsildar, Gowribidnur pursuant to the said order.

3. It appears that during the course of the enquiry by the Tahsildar, Gowribidnur, there was some complaint by certain persons that the Tahsildar, was not following the directions issued by the appellate authority. Therefore, the Deputy Commissioner of Kolar directed that the matter may be transferred to the Tahsildar, Chickaballapur. Accordingly the matter came to be transferred to the Tahsildar, Chickaballapur at the instance of the Deputy Commissioner, Kolar.

4. The Tahsildar, Chickballapur, took up the matter on his file and issued notices to all the persons concerned. It is seen by the observations made by him at page 2 of his order Annexure-D, that pursuant to the service of notice on all the persons interested, Lakshminarasappa son of Naryanappa-petitioner herein, appeared. The claimants put forward their respective cases before the Tahsildar seeking occupancy rights. It is stated that Lakshminarasappa produced a letter of authority when he appeared and put forward his case on behalf of his father Narayanappa.

5. Having considered the evidence both oral and documentary and having heard the learned counsel appearing for the parties, the Tahsildar passed the impugned order Annexure-D, dated 5-6-1991 by which he regranted the lands in question as follows:

5 acres 10 guntas in favour of S.N.M. Avadhoot-1st respondent herein who claimed as one of the heirs of the original holder and 30 guntas of land in favour of Puttamma as she had purchased this part of the land from the L.Rs. of the original holder by a registered sale deed dated 8-5-1988 subject to certain conditions.

6. The remaining 10 acres 9 guntas came to be forfeited in favour of the State Government as the remaining sharers did not put forward their claim in respect of this land. The order of regrant came to be passed under Section 7 of the Act. It is this order that is called in question in this writ petition.

7. Learned counsel for the petitioner who argued the case put forward two legal contentions: (i) 2 acres 10 guntas out of Sy. No. 67 came to be leased by the original holder Raghavendra Rao in favour of the petitioner long ago. Therefore, petitioner has been cultivating the land as a tenant. In view of Section 8 of the

Act, a tenant cultivating the land shall be entitled to continue to remain in possession even though he failed to obtain occupancy right at the hands of the Land Tribunal under the Karnataka Land Reforms Act. In other words, even in the absence of the occupancy right to be granted in terms of Section 8 of the Act, his possession has to be protected. He cannot be evicted from the land. (ii) Another contention is that even if action is to be taken against the petitioner, such action can be taken under the Karnataka Land Reforms Act. None of these contentions have any force for the simple reason that presuming for the purpose of argument that Narayanappa-petitioner herein was cultivating the land as a tenant under Raghavendra Rao, one of the holders of the village office, he could have sought occupancy right in terms of Section 8 of the Act. It is an admitted fact that petitioner-Narayanappa did not approach the Land Tribunal concerned seeking occupancy right. Therefore, there is no order made by the competent forum conferring occupancy right in favour of Narayanappa. To that extent there is no dispute. Therefore, the question is, would such a person be protected under the amended Section 7 of the Act? A Division Bench of this Court in the case of Hanumaiah v State of Karnataka, ILR 1987(1) Kar. 550 (DB) referring to this contention held as follows:

"Under the amended provision, there cannot be a regrant in favour of unauthorised holder. He is liable to be summarily evicted after the issue of notice, the clear intention of the Legislature being the non-recognition of any right in the unauthorised holder. In other words, on and after 7-8-1978 he is liable to be evicted; he cannot assert any rights, howsoever long his possession may be or whatever investment he might have made in improving the land. Since this is the intention of the Legislature, he cannot plead equity or claim any right on equitable grounds. His position is no better than a rank trespasser." (para 5)

8. Again in para 7 their Lordships observed referring to the scope of Section 7 as follows:

"The vital difference between a grantee under Section 7(3) and Sections 5 and 6 is that while "holder" "and authorised holder" have a right to make application for regrant under Sections 5 and 6 of the Act respectively, no such right is provided for an unauthorised holder. The prospective grantee is preferred for the disposal of land after summary eviction of the unauthorised holder. The holders of the inferior officers under Section 7(3) are those who have failed to secure the regrant Section 5 of the Act. Preference under Section 7(3) of the Act is restricted to "holders of inferior village office" and not to "authorised holders" of inferior village office.

9. Again in para 8 their Lordships have observed that:

"The regrant order made under amended Section 7 of the Act does not stand on the same footing as that of a regrant made under Section 5 or 6 of the Act."

10. The same view is taken by the subsequent, Division Bench of this Court in

the case of Chikkanarasaiah v Tirupataiah, 1990(1) Kar. L.J. Sh. N. 48 (DB): ILR 1989 Kar. 1520 (DB).

11. It is stated that, based upon a power of attorney executed by one of the sharers, a portion of the land came to be regranted in favour of 1st respondent. This need not have been done according to the learned counsel for the petitioner. In Annexure-D, there is no sufficient material produced so as to enable this Court to consider that aspect of the matter as to whether the Tahsildar was right in regranted a portion of the land in favour of the first respondent solely based upon the power of attorney. Unfortunately when the enquiry has taken place no case was sought to be made on behalf of the petitioner in this behalf. Therefore, Tahsildar was not called upon to consider this aspect in detail. In that view of the matter, there is no need for me to go into this question in detail.

12. In these circumstances, I do not see any merit in the writ petition and hence the writ petition fails and it is dismissed.