

(1982) 09 KAR CK 0018
In the Karnataka High Court
Case No : Writ Appeal No. 365 of 1980

Ninganna and Others

APPELLANT

Vs

Narayana Gowda and Others

RESPONDENT

Date of Decision : 08-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 — Section 9, 9 (1)

Citation : AIR 1983 Kar 116 : (1983) 1 KarLJ 241

Hon'ble Judges : M.N. Venkatachaliah, J;M. Rama Jois, J

Bench : Division Bench

Advocate : B.S. Puttasiddaiah, G.S. Vishweswara, for the Appellant;

Judgement

Rama Jois , J.—This writ appeal is presented against the order made by the learned single Judge in W.P. No. 6242 of 1976 setting aside the order of Karnataka Appellate Tribunal in which it had directed the grant of occupancy rights in respect of lands in Sy. Nos. 17 and 32 of Bedarahalli village, Magadi Taluk, Bangalore District, under S.9 of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 ("the Act" for short) in favour of the father of the appellants and remitting the matter to the Special Deputy Commissioner for fresh disposal of the matter in accordance with law.

2. The facts of the case, in brief, are as follows : (1) The appellant's father (hereinafter referred to as "the inamdar") was an inamdar. He applied under S.9 of the Act for grant of occupancy rights in respect of lands in Sy. Nos. 17 and 33 of Bedarahalli village, Magadi Taluk, Bangalore District. The Special Deputy Commissioner, appointed as the competent authority under the Act, by his order dated 26-3-1973 rejected the claim of the inamdar.

(ii) Against the order of the Special Deputy Commissioner, the inamdar preferred an appeal to the Karnataka Appellate Tribunal. The Tribunal by its order not only set aside the order of the Special Deputy Commissioner, but also directed the registration of the name of the inamdar as an occupant of the lands.

(Iii) Aggrieved by the order of the Tribunal, respondents 1 to 7 filed, the writ petition before this Court. They are all residents of the village. They are all residents of the village. They were not parties of the proceedings before the Special Deputy Commissioner or the Tribunal. They, however, felt aggrieved by the order of the Appellate. Tribunal for the reason, according to them, that the two survey numbers in respect of which the inamdar claimed, occupancy rights were lands which were being used by the entire village community and they fell within the expected categories in respect of which an inamdar had no right to claim occupancy rights u/s 9 of the Act.

(Iv) To the said writ petition, the inamdar was imp leaded as 1st respondent, the State Government as 2nd respondent and the Revenue Appellant Tribunal as 3rd respondent. The order of the Tribunal was made on 1-10-1975. The writ petition was filed on 4-7-1975. In between this period, the Inamdar died on 23-4-1976. The writ petitioners, instead of impleading the legal representatives of the inamdar as respondents to the petition, imp leaded the deceased inamdar. Later one of the sons of the inamdar, whose name was also Narasimhaiah, got himself imp leaded as the 4th respondent to the petition. In his application for impleading, he stated that his father namely, the inamdar died on 23-4-1976 and there were other sons, who were the legal representatives of the deceased inamdar. After this information was disclosed, the writ petitioners filed an application under O. 1, R. 10 of the Civil P.C. for impleading the appellants, who are three in number, who are the sons of the deceased inamdar, as additional respondents to the writ petition. No orders were passed on the said application.

(v) The learned single Judge proceeded to dispose of the writ petition finally by order dated 12-12-1979. He was of the view that the Special Deputy Commissioner as well as the Tribunal had failed to consider as to whether "kharab land" meant "waste land", which was one of the excepted categories of land in respect of which the inamdar had no right to claim occupancy rights. It was also urged before the learned single Judge on behalf of the writ petitioners that these two survey numbers formed part of tank bed, as shown in the index of lands, which was also one of the excepted categories of land specified in the proviso to S. 9 of the Act. In the result, the learned single Judge set aside the order of the Tribunal and remitted that matter to the Special Deputy Commissioner for fresh disposal in accordance with law. Aggrieved by the said order, the appellants have presented this writ appeal.

3. Sri B.S. Puttasiddaiah, learned counsel for the appellants, urged the following contentions:

(i) The writ petition having been instituted against a dead person, the entire proceedings are void ab initio.

(ii) In any event, as the legal representatives of the deceased inamdar were not imp leaded as respondents to the writ petition, the order of the learned single Judge is liable to be set aside and the matter should be remitted to the learned

single Judge for fresh disposal of the petition in accordance with law.

(iii) The writ petitioners had no locus standi to present the writ petition.

(iv) The order of the Tribunal suffered from no legal infirmity and was not liable to be set aside.

4. Sri G.S. Vishweswara, learned counsel appearing for the contesting respondents, per contra, made the following submissions :

(i) Though the deceased inamdar could not have been impleaded as respondent to the writ petition, still the proceedings could not be held to be void ab initio as having been instituted against a dead person for the reason, he was not the sole respondent to the petition as the Revenue Appellate Tribunal, whose order was sought to be quashed in the writ petition, as also the State Government were impleaded as respondents 2 and 3 to the petition.

(ii) Realising the mistake in impleading the deceased inamdar as a respondent and not his legal representatives, the writ petitioners had made an application for impleading. But unfortunately, no orders were passed on the said application. Even so, the appellants cannot make any grievance for the reason that the eldest son of the deceased inamdar who was also his power of attorney holder and who had actively prosecuted the case before the Special Deputy Commissioner and the Tribunal on behalf of the inamdar had himself come on record as the 4th respondent in the writ petition and thus the estate of the deceased had been effectively represented. That being the position, there is no substance in the contention of the appellants that the writ petition had been decided against the legal representatives of the deceased inamdar without hearing them and the order should be set aside on that ground.

(iii) The revenue records clearly indicate that Sy. Nos. 17 and 33 were tank beds as the relevant entries are and respectively. Neither the Special Deputy Commissioner nor the Tribunal have looked into the revenue records and gave a finding on this material issue. Without doing so while the Deputy Commissioner proceeded to reject the claim of the inamdar on the ground that these two survey numbers being "kharab lands" fell within the expected categories of land mentioned in Section 9 (1) of the Act, the Tribunal proceeded to hold that as kharab lands have not been expressly mentioned in S. 9(1)(i) the Act, the inamdar was entitled to the said grant. He relied on various documents produced as Annexures along with the writ petition and the writ appeal.

5. As far as the first contention urged for the appellate is concerned, we do not find any substance in it. It is true that the deceased inamdar was arrayed as first respondent in the writ petition. But the State Government and the Revenue Appellate Tribunal were impleaded as respondents 2 and 3. The prayer in the writ petition was for the issue of the writ of certiorari quashing the order of the Tribunal. To such a writ petition not only the Tribunal or the authority who made the order, but also the persons in whose favour the order is passed are necessary

parties and without they being parties, the petition would not be properly constituted. (See Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, . Therefore while it is correct to say that as necessary parties were not impleaded no writ could have been issued as prayed for in the petition, it cannot be said that the proceedings were void ab inito, as this was not a case in which the proceedings had been instituted against a sole defendant or respondent, who was not alive at the time of the institution of the proceedings. The defect of not impleading necessary parties could have been rectified by making an appropriate application for impleading the legal representatives of the deceased inamdar respondent, as respondents to the petition. Therefore, we are not unable to agree with the connotation of the learned counsel for the appellants that the proceedings instituted in W.P. No. 6242 of 1976 were still born or void ab inito.

6. The second contention urged for the appellants, however, in our opinion, is unexplainable, as in view of the ratio of the judgment of the Supreme Court in Udit Narain 's case, the Tribunal which made the order as also the person in whose favour the order was passed were necessary parties to the petition. Therefore, if the inamdar was alive he was a necessary party. Without he being a respondent, no effective writ could be issued in the writ petition. As the inamdar had died prior to the presentation of the writ petition, all his legal representatives who represented the deceased's estate became necessary parties to the writ petition. Though an application had been made for impleading the legal representatives, the fact remains, whatever be the reason, no order had been made on the application and they were not brought on record as respondent to the petition. Therefore the order made by the learned single Judge is liable to be set aside on the short ground that persons, who are necessary parties, had not been impleaded as respondents.

7. (i) Learned counsel for the contesting respondents, however, strenuously contended that as one of the legal representatives, namely, the eldest son of the inamdar, who was also the power of attorney holder of the inamdar, and who was all along representing the deceased inamdar in the proceedings before the Special Deputy Commissioner and the Tribunal came on record as respondent 4 in the writ petition, the estate of the inamdar was effectively represented and, therefore, the defect of not impleading the other legal representatives cannot be considered as a fatal one. He relied on the ratio of the judgment of the Supreme Court in Daya Ram and Others Vs. Shyam Sundari, in support of his submission. Relevant portion of the judgment on which he relies reads (at page 1054):-

" The almost universal consensus of opinion of all the High Courts is that where a plaintiff or an appellant after diligent and bona fide enquiry ascertains who the legal representatives of a deceased defendant or respondent are and brings them on record within the time limited by law, there is no abatement of the suit or appeal, that the impleaded legal representatives sufficiently represent the estate of the deceased and that a decision obtained with them on record will bind not

merely those impleaded but the entire estate including those not brought on record.

**** **** In a case where the person brought on record is a legal representative we consider that it would be consonant with justice and principle that in the absence of fraud or collusion the bringing on record of such a legal representative is sufficient to prevent the suit or the appeal from abating."

(ii) We are unable to agree . In the above decision what has been laid down is, that if a party , after diligent inquiry, had ascertained the names of legal representatives of a deceased party to a legal proceeding and had brought them on record and ultimately it transpired that there were one or more other legal representatives who should also have been brought on record, such a defect cannot be considered as fatal to the proceedings as in such a case it could be said that the estate of the deceased had been effectively represented in the legal proceedings, provided of course there was no fraud or collusion between the party who impleads and the parties impleaded. But the position where the existence of other legal representatives is duly brought to the notice of the opposite party is somewhat different. In such a case, it is the duty of the party prosecuting the litigation to bring them also on record. Indeed the Supreme Court in Dayaram's case observed (at p. 1054) :

"The decisions to which we have referred as well as certain others have laid down, and we consider this is also correct, that though the appeal has not abated, when once it is brought to the notice of the Court hearing the appeal that some of the legal representatives of the deceased respondent have not been brought on record, and the appellant is thus made aware of this default on his part, it would be his duty to bring these others on record, so that the appeal could be properly constituted."

(iii) As far as this case is concerned, admittedly the writ petitioners were aware of the names of the legal representatives and in fact had made the application for bringing them on record. Somehow, no orders came to be passed on the said application. The result was some of the legal representatives, who were necessary parties to the writ petition were not brought on record through their identity was known and an application had made for impleading them, the petition could not have been heard on merits. As they were not impleaded, the proceeding in the writ petition suffered from a serious infirmity. Therefore the appellants, who were necessary parties to the petition but were not made parties, are entitled to an order setting aside the order in the writ petition and for the hearing of the writ petition de novo, (See Shivdeo Singh and Others Vs. State of Punjab and Others, (iv) Learned counsel for the appellants submitted that in the circumstances, the order made in the writ petition be set aside and the petition be remitted to the learned single Judge for hearing the writ petition de novo. Learned Counsel for the contesting respondents submitted that in the event of our coming to the conclusion that the proceeding in the writ petition which culminated in the order of the learned single Judge allowing it, is

liable to be set aside on the ground that necessary parties had not been brought on record, since those very parties have come up in appeal and all the necessary parties are now on record, the writ petition may be disposed of by us afresh on merits.

(v) Learned counsel `for the appellants submitted that if we agree with him that the order made in the writ petition is liable to be set aside for the defect of non impleading of necessary parties, the only course open for us to set aside the order and remit the matter to the learned single Judge, so that the petition be decided by him in the first instance against which a right of appeal to the Division Bench would be available to the aggrieved party.

8. We are not impressed by the submission. Writ jurisdiction is conferred on the High Court by Art. 226 of the Constitution and not on one or more Judges of the High Court. The Karnataka High Court Act, 1961 regulates the exercise of jurisdiction vested in the High Court, section 9 thereof empowers a single Judge to exercise the writ jurisdiction of the High Court i.e., to hear a writ petition. But it also enables a single Judge to refer a writ petition to a Division Bench, whereupon a Division Bench is empowered to exercise the writ jurisdiction. When an appeal is preferred u/s 4 of that Act against an order of a single Judge to a Division Bench, the jurisdiction which the latter exercises is also very same jurisdiction under Art. 226 of the Constitution. On this aspect, a Full Bench of this Court in state of Karnataka v. H. Krishnappa ILR (1975) Kar 1015 stated as follows :

" * * * When Division Bench entertains an appeal from a decision of a single Judge in exercise of powers under Art. 226, the Division Bench, in deciding such appeal, exercises the same power under that Article, whether it (the Division Bench) affirms, reverses or modifies the decision of the single Judge."

* * ** ** "When the Division Benches which hear and decide appeals from the decisions of the single Judges, are also a part of the High Court and exercise the same powers under Art. 226, while deciding such appeals....."

The writ appeal jurisdiction, therefore, cannot be compared and is not akin to, an appellate jurisdiction as ordinarily understood, which presupposes the existence of a superior court and an inferior Court. (See : Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, and no such relationship exists between a single Judge and a Division as both exercise the jurisdiction vested in the High Court. There is no difference between a writ petition referred to a Division Bench or a writ petition which comes up before a Division Bench through a writ appeal, in the matter of exercise of the jurisdiction and powers of this Court under Art. 226 of the Constitution. Therefore, in our view in cases where a Division Bench hearing a writ appeal against an order of single Judge rejecting a writ petition at preliminary hearing without notice to the respondent or in a case of this type where the writ petition was heard and decided without impleading necessary parties as a result of which defect the order in the writ petition is liable to be set

aside, the writ matter having come up before the Division Bench, the most appropriate course for the Division Bench is to decide the writ petition itself. Therefore, we are unable to agree that we have no jurisdiction to hear the writ petition but must remit it to the learned single Judge. In this view of the matter, we have heard the writ petition on merits and are making this final order in it.

9. The third contention urged by the learned counsel for the appellants, was that the writ petitioners had no locus standi to present the writ petition. He said : An inamdar was entitled to claim occupancy rights in respect of all lands situated in the inam village u/s 9(1) of the Act except those categories expressly excluded by Cls. (i) ,(ii) and (iii) thereof. It was for the competent authority nominated under the Act to grant or reject the claim. The villagers had absolutely no locus standi to present an appeal or a writ petition challenging the validity of an order granting the occupancy rights.

(Ii) In support of this submission, he relied on the judgment of the Supreme Court in Thammanna Vs. K. Veera Reddy and Others, and of this Court in V. Chikkaveerayya v. Town Municipal Council, Tumkur 1973 (2) Mys LJ 236 : (AIR 1974 KANT 6).

10. (i) Question of locus standi, as it is well settled, has to be decided in the context of the statutory provision under which the cases arise, the object of the statute and nature of the violation of the law complained of.

(ii) The Act was enacted for the purpose of abolishing inams and as one of the steps towards agrarian reforms. By S. 3 all the rights of inamdars were extinguished and the inam lands came to be vested in the State sections 4,5,6,7 and 8 provided for conferring rights of occupancy in the lands in the possession and cultivation of, kadim tenant, permanent tenants, quasi permanent tenants, holders of minor inams to which the Act applied and the holders of minor inams to which the Act was not applicable, respectively. Section 9 of the Act provided for conferring occupancy rights on inamdars, whose rights in inams were extinguished by the Act. It reads ----

"9. Lands and buildings to vest in the inamdar ----

(1) Every inamdar shall, with effect on and from the date of vesting, be entitled to be registered as an occupant of all land other than ---

(i) communal lands, waste lands, gomal lands, forest lands, tank beds, mines, quarries rivers, streams, tanks and irrigation works;

(ii) lands in respect of which any person is entitled to be registered under Sections 4, 5, 6, 7 or 8; and

(iii) lands upon which have been erected buildings owned by any person other than the inamdar.

(2) Every building situated within the limits of the inam which was owned immediately before the date of vesting by the inamdar shall, with effect on and

from such date, vest in the inamdar."

Under this section, an inamdar could seek registration in his favour of all lands in the inam village or villages, as the case may be, except those lands, in respect of which various categories of tenants and minor inamdars are given the occupancy rights under Ss. 4, 5, 6, 7 and 8 as specified in Clause (ii) and the type of lands specified in Clause (ii) of subsection (1) of the section.

In this case we are concerned with S. 9 (1) (i) only. What are the types of lands specified therein in respect of which an inamdar has no rights to be registered as an occupant? They are -- communal lands, waste lands, gomal lands, forest lands, tank beds, mines, quarries, rivers, streams, tanks and irrigation works. A reading of the description of these lands at once indicates that these lands at once indicates that these are lands in which members of the public have a right of user, except perhaps mines and quarries, which could be exploited by any one only under a license issued by the Government. Take for instance, a gomal or tank bed. The former is meant for the grazing of village cattle and the tank bed is a place where the rain water gets collected, which is meant to be used by the members of the public for cultivation of lands in the vicinity or for other purposes. It is for this reason the Legislature has expressly excluded these categories from the purview of Section 9 (1) and retained them with the Government. A grant of land of such excepted categories which are expressly reserved for the benefit of the members of the public in favour of an inamdar, defeats the purpose of the provision and affects the interests of the persons for whose benefit it is sought to be retained as Government land. Therefore, members of the village community of the village, in which such illegal grant is made, are persons, who answer the description "persons aggrieved" because their interest in the land is direct and not remote. Therefore, they have the rights to question the legality of the grant, either in appeal to the Tribunal under the Act or before this Court in a petition under Art. 226 of the Constitution. They are not persons, who can be characterised as busy bodies or meddlesome interlopers at whose instance a petition under Article 226 cannot be entertained. If they have no locus standi, no one else can have it, and the grant made in violation of Section 9 (1) of the Act by the authorities under the Act would remain unaffected and as a result the Legislative intention would get frustrated. For these reasons we are of the view that the writ petitioners have the locus standi to challenge the legality of the grant made in violation of Section 9 (1) (i) of the Act. (See : Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, and Purandhar Lagma v. Land Tribunal, Raibag (1978) 2 Kar LJ 339 at pp. 350 to 354).

11. The decision of the Supreme Court in Thammana's case AIR 1961 SC 116 on which the learned counsel for the appellant relied is clearly distinguishable. After considering the conduct of the appellant therein, in not taking any active part in the election petition to which he was made a party and remaining completely indifferent to the cause, who woke up only to prefer an appeal after the election

petition was dismissed. The Supreme Court held that he was not a person aggrieved and hence no appeal was maintainable at his instance (see para 29 of the judgment). That is not the position here. The writ petitioners came to this Court immediately after the Tribunal reversed the order of the Special Deputy Commissioner who had rejected the claim of the inamdar.

12. The decision of this Court in the case of Chikka Veeraiah 1973 (2) Mys LJ 236 is also distinguishable. In that case, it was held that a rate payer of a municipal council had no right to challenge the disposal of a land belonging to a municipal council unless it was shown that he was in any way specially concerned with the land disposed of and was not merely trying to see that the property of the municipal council was not misapplied. In coming to the said conclusion, the learned single Judge followed the earlier division bench ruling in *S. Janab v. Corporation of the City of Bangalore* 1971 (2) Mys LJ 491 : (AIR 1972 Mys 109) in which reliance was placed in the judgment of the Supreme Court on *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, In this case it cannot be said that the writ petitioners are merely residents of the village who have absolutely no interest in the lands directed to be granted in favour of the inamdar and were only trying to ensure that S. 9 of the Act was not violated. The case of the writ petitioners is that they are owners of agricultural lands which they have been cultivating and they have a right to draw water from the tank situated in Sy. Nos. 17 and 33 of Bedarahalli village. The grant of lands in favour of the inamdar in contravention of S. 9 of the Act therefore directly affects their right to draw water collected in the two survey numbers, as , according to them, they are tank beds. The ratio of the decision of the Supreme Court in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, is clearly inapplicable to the present case. In that case a rice mill owner challenged the permission granted to another rice mill owner to shift from one location to another, which was necessitated on account of acquisition of the land which his rice-mill was located for the purpose of Sharavathy Hydro Electric Project . The Supreme Court held that a rice-mill owner had no right to question the legality of the license or permission granted to another person to establish or shift a rice-mill under S. 8(3)(c) of the Rice Milling Industry (Regulation) Act. 1958. If the decision in Chikkaveerayya's case (AIR 1974 Kant 6) is to be understood as laying down a broad proposition that a rate payer has no right to question the legality of disposal of a land by a municipal council for a paltry sum to favour a person or to question the legality of misapplication of the funds of a local authority or grant of licenses illegally to the detriment of the public interest, it should be observed that such a proposition is no longer good law in view of the ratio of the later judgments of the Supreme Court in the case of *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, in the case of *Ramdas Shenoy* and in *S.P. Gupta v. Union of India* AIR SC 149 para 22. In the result, we find no substance in the third contention urged for the appellants that the writ petitioners have no locus standi to present the writ petition.

12A. Now coming to the merits of the case, the inamdar made an application under S. 9 of the Act before the competent authority for grant of occupancy rights in respect of Sy. Nos. 17 and 33 of Bedarahalli village, Magadi Taluk, Bangalore District. The Special Deputy Commissioner made a cryptic order. Relevant portion of it reads --

".....S. Nos. 17 and 33 are classified as kharab which fall under prohibitory category and hence, the petitioner's claim for these numbers also fails and accordingly rejected."

He said the lands were classified as "Kharab" and, therefore, fell under the prohibited category, without assigning any reason as to why is it so. The order, therefore, was liable to be set aside on the short ground that it was not a speaking order. The Tribunal in appeal set aside the order of the Special Deputy Commissioner . Relevant portion of that order reads --

"..... In the instant case, survey numbers 17 and 33 are the Kharab lands. It is not a prohibitory category of lands. It does not come under S. 9 (1) (I) of the Inams Abolition Act. The learned Special Deputy Commissioner has completely ignored the above provisions; without proper discretion he has simply rejected the claim of the appellant on the ground that the lands claimed are the prohibited category. We have opined that the lands claimed are not prohibitory category of lands. The order is also not a speaking order. There is no proper discretion on the evidence let in by the party. In view of this the impugned order is not sustainable.

6. In the result therefore the appeal is allowed and the impugned order is set aside in respect of the lands bearing survey numbers 17 and 33. There are no other claimants in respect of those two lands. There is no legal impediment in registering the occupancy rights in respect of those two lands. Hence these two lands bearing survey numbers 17 and 33 of Bedarahalli village. Solur Hobli, Magadi Taluk. Bangalore District are hereby registered in the name of the appellant u/s 9 of the Act."

The Tribunal instead of setting aside the order of the Special Deputy Commissioner on the ground that it was not a speaking order and remitting the matter to the Special Deputy Commissioner for making a fresh order in accordance with law, proceeded to allow the application of the inamdar and granted the occupancy rights on the basis that as the Special Deputy Commissioner had stated that the two items of land, in question were "Kharab lands" and as no such item was found included in the Clause (I) of Section 9 (1) of the Act, the inamdar was entitled to the grant. It did not examine as to the nature of the land described as Kharab and whether it fell within any one of the excepted categories. Thus the order of the Tribunal was also as cryptic and as much a non-speaking order, as that of the Deputy Commissioner, which was set aside by it on the ground that it was not a speaking order. Hence, it is also liable to be set aside.

11. Learned counsel for the contesting respondents argued at some length to point out that though the expression "Kharab land" was not included in the proviso to S. 9 of the Act as one of the excepted categories, "waste land" being one of them and the expression "Kharab land" carried no other meaning than waste land, all kharab land stood vested in the Government and the inamdar had no right to claim occupancy right in respect of kharab land.

12. It is unnecessary for us to decide as to whether "kharab" means waste or not, for the reason that the learned counsel for the contesting respondents did not pursue this point. He, however, maintained that both the items of lands were tank beds and have been the source of water for irrigation of the lands belonging to the villagers including the writ petitioners and that they were described in the revenue records either as "(Vernacular omitted - Ed.)" or "Vernacular omitted - Ed.)" which indicated that the lands were tank beds and as tank bed was one of the excepted categories of land mentioned in the proviso to S. 9 of the Act, they could not be granted to the inamdar.

13. Learned counsel for the appellants maintained that even assuming that the two items of lands were tanks or tank beds, it might have been so decades before the date of vesting i.e., 1-2-1959 and as the inamdar had brought the lands under cultivation prior to the date of vesting, the lands did not retain the character of tank or tank bed, immediately prior to the date of vesting and therefore they would not fall within the excepted categories and therefore the inamdar was entitled to have the occupancy rights of these lands.

14. A perusal of the impugned orders, relevant portions of which have been extracted earlier show that the Special Deputy Commissioner proceeded on the basis that the lands was "Kharab" and concluded, they cannot be registered in favour of inamdar. The Special Deputy Commissioner has neither made any reference to nor has he considered, the entries in the revenue records and the revenue survey records. In the light of the stand taken by the parties, the question to be decided is whether the lands were tank beds or cultivated lands as on the date of vesting. This question being essentially a question of fact has to be decided after considering the documentary evidence in the form of revenue records and revenue survey records as also such oral evidence as might be adduced by the parties. It is for the fact finding authority, namely, the Special Deputy Commissioner in the first instance to consider all such evidence and to record his finding. The Special Deputy Commissioner, as pointed out earlier made a cryptic order, without examining the relevant records. The Tribunal's order is likewise defective.

15. For the aforesaid reasons, we are of the opinion that though the order made by the learned single Judge allowing the writ petition is liable to be set aside on the ground that necessary parties were not brought on record the writ petition has to be allowed and the matter should be remitted to the Special Deputy Commissioner for a de novo inquiry and disposal of the claim application of the inamdar in accordance with law.

16. Learned counsel for the appellants submitted that the post of the Special Deputy Commissioner has since been abolished and the jurisdiction to dispose of the claims under the Act has been now vested in the Land Tribunals constituted under the Karnataka Land Reforms Act. That being the position on remand the matters will have to be dealt with by the concerned Land Tribunal.

17. Accordingly, we make the following order:

(I) Writ Appeal is allowed

(ii) The order made by the learned single Judge is set aside.

(iii) The writ petition is allowed and the order of the Revenue Appellate Tribunal in Appeal No. 549 of 1975 (IAS) dated 1-10-1975 and, of the Special Deputy Commissioner in Case No. Al. M38 of 71-72 dated 23-6-1975, in respect of Sy. Nos. 17 and 33 of Bedarahalli village, Solur Hobli, Magadi Taluk, are set aside.

(iv) The matter is remitted to the Land Tribunal, Magadi Taluk, for fresh disposal of the claim application of the inamdar (late Narasimhaiah) made under S. 9 of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 claiming occupancy rights in respect of Sy. Nos. 17 and 33 of Bedarahalli village, Solur Hobli, Magadi Taluk, Bangalore District, in accordance with law and in the light of this judgment.

(v) No costs.

18. Appeal allowed.