

(2007) 03 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No's. 6553, 6559 and 46604 of 2004

N.V. Venkateshachar

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Mysore (Religious and Charitable) Inams Abolition Act, 1955 — Section 14, 15, 16, 17

Citation : (2007) 4 KarLJ 559

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : Vivek S. Reddy, for K.N. Subbareddy, for the Appellant; Honnappa, High Court Government Pleader, for the Respondent

Judgement

Jawad Rahim, J.—Petitioners in these writ petitions have called in question the orders passed by the respondents determining Tasdik allowance under the provisions of the Mysore (Religious and Charitable) Inams Abolition Act, 1955 ("Act" for short). They are dissatisfied with the determination as according to them, it is too inadequate and not proportionate to the loss occasioned to them due to abolition of the inams. As common questions of fact and law have arisen for consideration in all these three petitions, they are taken up for disposal by this common order.

2. The Archak of Sri Anjaneyaswamy Temple, D"Palya Hobli, Gowribidanur Taluk is also Archak of Sri Venkataramana Swamy Temple of D"Palya Hobli, Gowribidanur Taluk and has thus preferred W.P. Nos. 6553 and 6559 of 2004 respectively. W.P. No. 46604 of 2004 is by Sri K.S. Devaraj Dixit, the Archak of Sri Vinayakaswamy Temple, Koira Post, Kundana Hobli, Devanahalli Taluk. The facts relevant for consideration as is manifesting from the pleadings of the parties are:

In W.P. No. 6553 of 2004:

Sri N.V. Venkateshachar is the Archak of Anjaneyaswamy Temple of D"Palya

Hobli, Gowribidanur Taluk. Lands in Sy. No. 42 measuring 2 acres 34 guntas, Sy. No. 52 measuring 1 acre 17 guntas, Sy. No. 23 measuring 2 acres 31 guntas, Sy. No. 135 measuring 1 acre 20 guntas situate in D''Palya Hobli were inam lands in favour of the deity. Revenue records were mutated accordingly and there is no dispute in this regard. They are at Annexures-A1 to A4. The Inams Abolition Act, when implemented resulted in abolition of inams and resumption of the lands was done by the Government from the date of vesting of the lands in the Government. The rights of the inamdars were dealt with u/s 3(1), Clause (h). They were held to be entitled to compensation payable by the State. The amount had to be determined as per Chapter III of the said Act.

3. After the lands referred to above were resumed by the Government an interim order was passed by the Deputy Commissioner, Kolar District (Competent Authority under the Act to determine Tasdik Allowance) sanctioning payment of Tasdik allowance in a sum of Rs. 1,046/- per annum subject to finalisation. The petitioner was not satisfied as the lands referred to above were well-cultivated and had the yield in money value of Rs. 10,000/- per acre. Therefore, being-dissatisfied, the interim award was also assailed.

4. During this period, the second respondent passed final order fixing Rs. 1,046/- per annum as the Tasdik allowance vide order dated 27-7-1990, thereby confirming the initial determination as correct vide Annexure-B. Being aggrieved by that order, the petitioner availed to him the benefit of revision u/s 21-A of the Act before the Divisional Commissioner. The revision petition was numbered as DVS.RP 8/98-99. The Divisional Commissioner, with reference to report of the Tahsildar concluded that the determination done by the Deputy Commissioner vide Annexure-B was inadequate and not realistic and allowed the revision petition partly. He increased the Tasdik allowance from Rs. 1,046/- to Rs. 4,507/- per annum and fixed that as the allowance to be paid under the provisions of the Act. Petitioner has called in question even that order dated 14-9-1998 of the third respondent Annexure-C.

5. In W.P. No. 6559 of 2004, the archak of Sri Venkataramana Swamy Temple has averred that his ancestors were worshipping the deity for several decades and were in physical possession and cultivation of the lands in Sy. No. 140 measuring 34 guntas, Sy. No. 126 measuring 2 acres 2 guntas, Sy. No. 236 measuring 3 acres 36 guntas, Sy. No. 3 measuring 3 acres 32 guntas, Sy. No. 303 measuring 3 acres 38 guntas in Namagondlu Village, D''Palya Hobli, Gowribidanur Taluk, Kolar District. All these lands were inam lands vested in the deity of Sri Venkataramana Swamy Temple. RTC extracts and other documents evidencing such grant are also produced vide Annexures-A1 to A5. Pursuant to the Mysore (Religious and Charitable) Inams Abolition Act, 1955 coming into force, these lands were resumed to the Government. From the date of vesting, u/s 3(1), Clause (h), the inamdars are entitled for grant of compensation. The lands were cultivated with crops such as ragi, avare, hurali, bajra and haraka and had yielded regular income for the relevant period between 1965-70. The yield of

various crops from these lands had a minimum value of Rs. 20,000/- per acre per annum. In the first instance, determined interim compensation of Rs. 1,522/- per annum vide Annexure-B which was later confirmed. While doing so, he had ignored the actual income from the lands and had also failed to determine the net average income for a period of five years preceding the year 1970. The petitioner challenged it before the third respondent in Revision Petition No. DVS RP 15/98-99. On reconsideration, the third respondent by its order dated 28-9-1998 vide Annexure-C held that the Tasdik amount so determined by the second respondent was inadequate but while enhancing the compensation of Tasdik amount from Rs. 1,522/- to Rs. 5,187/- per annum, the Divisional Commissioner also failed to determine the net average income for a period of five years preceding the year 1970. The petitioner is aggrieved by that order of the Divisional Commissioner passed while exercising the power of revision u/s 21-A of the Act. The said order is at Annexure-C.

6. The petitioner in W.P. No. 46604 of 2004 has also pleaded similar facts in the writ petition. According to the archak who is the petitioner, the lands in Sy. Nos. 147 and 193 totalling to an extent of 1.10 and 0.06 acres at Koira, Kundana Hobli, Devanahalli Taluk were inam lands in favour of Sri Vinayakaswamy Temple. The lands were cultivated with avare, jola, mulberry etc. The harvested products from these products had yielded enormous annual income. Ignoring the actual yield during the years 1965-70, the Deputy Commissioner determined compensation arbitrarily. In the first instance, he passed interim award on 24-3-1987 and later confirmed it, sanctioning Rs. 323/- as the annual Tasdik Allowance. That was inadequate and petitioner preferred revision before the third respondent as provided u/s 21-A of the Act. The Divisional Commissioner though agreed with the petitioner's contention that the net aggregate sum of the income derived from the lands at least for a period of five years from the date of coming into force of the Act, was necessarily to be taken into consideration, fixed the Tasdik allowance at Rs. 4,650/- per annum which was also inadequate. The said order passed in the Revision Petition No. DVS. RP 181/97-98, dated 28-9-1998 by the third respondent vide Annexure-A is impugned in this writ petition.

7. Learned Counsel for the petitioner Sri Vivek S. Reddy, referred to the provisions of Sections 14, 15 and 16 to bring home the point that the determination of Tasdik allowance must be in terms of provisions of Section 17. The statute requires the officer concerned shall consider the whole of the average net annual income derived by the inamdar during the period of five years immediately preceding the date of vesting of the lands in the Government and that the whole of the average net annual income derived by the inamdar is subject only to such deductions as are permissible u/s 18. Referring to the impugned orders Annexure-B and C (in W.P. Nos. 6553 and 6559 of 2004) and Annexure-A (in W.P. No. 46604 of 2004), the learned Counsel would contend that neither second respondent nor third respondent has recorded any reason to arrive at the amount indicated in the order determined as Tasdik allowance. It is

not possible to ascertain the basis on which they have quantified the allowance and thus, the orders impugned are not in conformity with the provisions of Section 17 and thus, there is no proper determination of compensation as required u/s 15. In this regard, he draws citation support from the decisions of this Court in similar cases. Particular reference is made to the order in W.P. No. 271.22 of 2002, dated 22-7-2002, W.P. No. 27121 of 2002, dated 22-7-2002, W.P. No. 32599 of 2000, dated 1-2-2001 and several other similar writ petitions. Attention was particularly drawn to the observations made in the orders passed in those writ petitions. Learned Counsel would then contend that the case at hand is not different from the cases dealt with in those writ petitions and hence, the petitioners should be held to have made out a case for remand of the matter to the respective Deputy Commissioners for redetermination of the Tasdik allowance.

8. Learned Government Pleader Sri Honnappa though supports the impugned orders Annexure-B and C (in W.P. Nos. 6553 and 6559 of 2004) and Annexure-A (in W.P. No. 46604 of 2004) could not convince the Court that the Deputy Commissioner who is bestowed with statutory powers to determine the Tasdik Allowance grantable to the inamdars has examined all factual aspects relating to the usufructuous or the benefit derived by the inamdars from the inam lands for the period of at least five years immediately preceding the date of vesting of the land in the Government.

9. Having heard both sides, I have also examined the impugned orders passed. The provision of Section 17 is clear in its expression that the basic annual income of the inamdar shall be the aggregate of the sums as specified in Clauses (i) and (ii) less the deductions specified in Section 18 and to determine the actual, the whole of the average net annual income derived by the inamdar during the period of five years immediately preceding the date of vesting of the lands in the Government is relevant and shall form the basis to determine the Tasdik allowance.

10. Section 21 requires the Deputy Commissioner to determine the basic annual sum in accordance with provisions of Sections 16 and 17 and thus it is the duty of the Deputy Commissioner who shall ascertain the whole of the income derived by the inamdar annually in accordance with the provisions of Clauses (i) and (ii) of Section 17(1) subject to deductions if any u/s 18. In the instant case, deduction u/s 18 is not applicable. No other officer has been indicated in the said provision who could perform this statutory function. In W.P. No. 6553 of 2004, Annexure-B is the order passed by the Deputy Commissioner which reads thus:

ORDER

In the circumstances reported by the Tahsildar, Gowribidanur Taluk, sanction is accorded for payment of Final Tasdik Allowance of Rs. 1.046/- (Rupees One Thousand and Forty-six only) per annum payable to the Inamdar Hanumantha Swamy Temple, D"Palya Hobli, Gowribidanur Taluk as laid down u/s 17 of the

Mysore (Religious and Charitable) Inams Abolition Act, 1955 subject to adjustment letter.

11. From the order extracted above, it is clear that the Deputy Commissioner has merely acted on the report submitted by the Tahsildar and has failed to determine the component parts of basic annual sum of an inam as required u/s 17(1), Clauses (i) and (ii). Section 21 undoubtedly requires him to determine the Tasdik allowance in accordance with the provisions of Section 17 and to do so, it was incumbent upon the Deputy Commissioner to have collected the data i.e., the statistics of the income derived from the lands by the petitioner Inamdar for a period of five years immediately preceding the vesting of the land in the Government. In the impugned order Annexure-B, there is no reference to any material which he has examined to fix Rs. 1,016/- as the Tasdik allowance. On the basis of the report of the Tahsildar, such order has been passed. The details of the report is undisclosed. Therefore, the order passed Annexure-B is not in conformity with provisions of Sections 17 and 21 of the Act and therefore, cannot be sustained.

12. Secondly, as noticed from the order passed by the third respondent in the Revision Petition No. DVS.RP 8/98-99. dated 14-9-1998, the Divisional Commissioner also records thus:

ORDER

I have carefully examined the records and considered the contentions put forth by the petitioner.

The Deputy Commissioner, Kolar District has fixed the Tasdik allowance to the institution based on the report of the Tahsildar, Gowribidanur Taluk with regard to the extent and kind of lands held by the institution, the average yield and rate during the years 1965-66 to 1969-70.

When compared to the average yield in the District as per the statistics of the Department of Statistics and the rates prevailing for different crops during the years 1965-66 to 1969-70 as per the statistics of the Agriculture Department, the Tasdik allowance fixed by the Deputy Commissioner appears to be less. Considering the best of the two, based on the said statistics, the Tasdik allowance is arrived at Rs. 4,507/-. Accordingly, the Tasdik allowance of this institution is fixed at Rs. 4,507/- per annum.

13. From the extracted portion, it is clear that the Divisional Commissioner has referred to the statistics and the report of the Tahsildar and then arrived at a conclusion that the allowance fixed by the Deputy Commissioner was meagre and required enhancement. But basis on which the Divisional Commissioner has quantified Rs. 4,507/- as the annual Tasdik allowance, is not forthcoming. Thus, the respondent 3 has also not exercised the power of revision as required u/s 21-A of the Act.

14. The scheme of the Act is very clear. When a Notification under Sub-section

(4) of Section 14 in respect of any inam has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or other instrument or any law for the time being in force and from the date of vesting except as expressly provided in the Act following consequences shall ensure.--

(i) Provision Section 3(1)(b) mandates that all rights, title and interest vesting in the inamdar in respect of inam lands shall cease and be vested absolutely in the State of Mysore free from all encumbrances. Therefore, all rights, title and interest vesting in the inamdar gets divested. The loss of right, title and interest resulting from such vesting is commensurable by the State;

(ii) The provision of Section 3(1)(h), provides that the inamdar whose rights have been vested in the State of Mysore under Clause (b) shall be entitled only to compensation from the Government as provided under the Act;

(iii) Section 14 provides that compensation payable in respect of inam shall be determined in accordance with provisions of Chapter III;

(iv) The compensation so payable is termed u/s 19 as "Tasdik Allowance". It is payable by the Government to inamdar every year so long as the institution exists as a compensation for all the rights of inamdar vesting in the State;

(v) Section 20 provides for payment of interim compensation soon after vesting of the land and Section 21 requires the Deputy Commissioner to determine the basic annual sum payable as Tasdik Allowance.

15. We have seen from the discussion in the foregoing paras that Section 17 enumerates that the basic annual sum of an inam shall be the aggregate of the sum specified in Clauses (i) and (ii) less the deduction specified u/s 18. Therefore, the whole of the average net annual income derived by the inamdar during the period of five years preceding the date of vesting of the lands in the State has to be ascertained. Sections 17 and 21 provide the process by which the measure of Tasdik Allowance has to be determined or may be determined. It is clear that, that determination is imperative. The Competent Authority viz., the Deputy Commissioner or the other officer named by the State cannot dispense with that statutory requirement by resorting to arbitrary fixation of allowance. Since the inamdar is divested of all right, title and interest by mischief of Section 3(1)(b), the financial loss occasioned to the inamdar - institution has to be compensated. This being the statutory right conferred upon the inamdar under the Act, the inamdar - institution becomes entitled to statutory compensation as a matter of right. The quantum of Tasdik Allowance to be sanctioned should therefore be realistic and based on the annual income derived by the inamdar and shall be proportionate to the loss occasioned by virtue of divesting of right, title and interest in the inam. Therefore, the authorities concerned are required to scrupulously follow the procedure prescribed under the Act and to take into consideration factors which are enumerated in Clauses (i) and (ii) of Section 17(1). This is to avoid arbitrariness in the determination of Tasdik Allowance, lest, the very object of grant of compensation under the Act will be defeated.

Hence, authorities are required to hold detailed enquiry for ascertainment of the factors relating to the nature of the land, the crops grown, the quantity of the agricultural produce, its money value, the aggregate of which should be the basis for determining the allowance payable. If the Deputy Commissioner, the Competent Authority fails to determine the Tasdik Allowance in the manner aforesaid, then, it needs to be remedied by the Divisional Commissioner, the authority conferred with powers to revise the said order u/s 21-A of the Act.

16. At this stage, it is necessary to emphasise that judicial and quasi-judicial authorities while passing orders are required to assign reasons therefore justifying the conclusions reached by them. In the instant case, the Deputy Commissioner has not assigned reasons for fixing Rs. 1,046/- as the Tasdik allowance and likewise even the Divisional Commissioner has not assigned any reasons as to how he arrived at and quantified amount of Rs. 4,507/- as the just Tasdik allowance.

17. There has been reiteration by the Apex Court that whenever authorities like Tribunal and quasi-judicial authorities are required to perform quasi judicial functions statutorily, their orders must be supported by reasons. The case of M/s. Woolcombers would be appropriate reference to this point. In the case of Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another, , the Apex Court while considering the order passed by the Tribunal for fixing the minimum wages of the workmen, at para 4 observed thus:

4. The Tribunal has not stated the reasons in support of its conclusions. The criticism of Sri Chaudhary, Counsel for the Woolcombers, appears to us to be right. As regards basic wages, the Tribunal says only this.--

I am inclined to lay down the basic wages of the workmen...those who are highly skilled workmen...will get Rs. 32/- per week as their basic wages. Those who are skilled workmen...will get Rs. 28/- per week as their basic wages. Those who are semi-skilled workmen...will get Rs. 25/- per week as their basic wages.... Those who are unskilled workmen will get Rs. 22.50 P. per week as their basic wages".

The Apex Court then observed at para 5 thus:

It may be observed that the first passage quoted by us states only the conclusions. It does not give the supporting reasons. The second passage quoted by us states merely one of the reasons. The other relevant reasons are not disclosed. The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done.

Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of judicial and quasi-judicial authorities to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the Court. The Court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. In many cases this investment of time and industry will be saved if reasons are given in support of the conclusions. So it is necessary to emphasise that judicial and quasi-judicial authorities should always give the reasons in support of their conclusions.

18. In the instant case, the second respondent has not determined the allowance as required u/s 17 of the Act to determine the annual income that the inamdars had for the lands for the period of five years soon before the Act came in force. Obviously these are questions of fact that are required to be enquired into before coming to the conclusion. In other words, finding on fact about the annual income derived shall be the datum which shall be the basis for the authority to determine the Tasdik Allowance has not been ascertained and no reasons are assigned. The second respondent has merely referred to the report of the Tahsildar which is also not made available by the State in these writ petitions. Be as it may, the Tahsildar was not the Competent Authority to examine these facts which was the responsibility of the Deputy Commissioner. The Deputy Commissioner has failed to discharge the functions and determine the allowance as required u/s 17. Thus, Annexure-B suffers from all these infirmities and thus, is unsustainable.

19. The Divisional Commissioner who has no doubt enhanced the Tasdik allowance has also done it without assigning any reasons for fixing Rs. 4,507/- as the annual Tasdik allowance. Therefore, both the orders are required to be set aside. Hence, petitioners are to be given an opportunity by the respective Deputy Commissioners before fixing the Tasdik Allowance. For this purpose, the matter requires to be remanded for de novo consideration by the Deputy Commissioners.

20. I have discussed the facts relating to W.P. No. 6553 of 2004. The facts as pleaded in other connected writ petitions are similar except for the institution and the extent of land. In W.P. No. 6559 of 2004, the impugned orders relate to inam lands of Sri Venkataramana Temple which comprise Sy. No. 140 measuring 34 guntas, Sy. No. 126 measuring 2 acres 2 guntas, Sy. No. 236 measuring 3 acres 36 guntas, Sy. No. 3 measuring 3 acres 32 guntas, Sy. No. 303 measuring 3 acres 38 guntas, in all, approximately measuring 14 acres. The order impugned in this writ petition is dated 24-7-1986 passed by respondent 2 vide Annexure-B whereby the Tasdik allowance is fixed at Rs. 1,522/- per annum. Annexure-C is the order passed in the revision petition preferred by the petitioner whereby the Divisional Commissioner has fixed Tasdik allowance at Rs. 5,187/- per annum.

21. W.P. No. 46604 of 2004 is by the Archak of Vinayakaswamy Temple situate at Koirra Post, Kundana Hobli, Devanahalli Taluk and the impugned orders relate to Tasdik allowance in respect of lands comprising of Sy. Nos. 147 and 193 totalling an extent of 1.10 acres and 0.06 acre, whereby the Deputy Commissioner has fixed the Tasdik allowance at Rs. 323/- per annum which has been enhanced by the Divisional Commissioner to Rs. 4,650/- which is at Annexure-A. The orders impugned in these writ petitions have also been passed by respondents 2 and 3 in the manner referred to in the preceding paragraphs and thus, are unsustainable.

22. In the result, the Writ Petition Nos. 6553, 6559 and 46604 of 2004 are allowed.

Rule made absolute.

Impugned orders Annexure-B and C (in W.P. Nos. 6553 and 6559 of 2004) and Annexure-A (in W.P. No. 46604 of 2004) are quashed. Matter is remitted back to the respective Deputy Commissioners to redetermine the Tasdik allowance after taking into consideration the factual aspects relating to the income derived by the inamdars for a period of five years immediately preceding the date of vesting of the lands in the Government as required u/s 17 of the Act and pass orders in accordance with law after giving opportunity to the petitioners, if they so desire. To expedite the proceedings before the Deputy Commissioner, the petitioners are directed to appear before the respective Deputy Commissioners on 18-4-2007.

Concerned Deputy Commissioners who are respondent 2 in these writ petitions are directed to dispose of the matter within the outer limit of four months from the date of receipt of a copy of this order.