

(1998) 02 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 36066 of 1992

Savithramma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 116 A, 116 B, 17
Karnataka Land Revenue Code, 1988 — Section 79

Citation : (1998) ILR (Kar) 2064 : (1998) 3 KarLJ 154

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri C. Gowri Shanker, for the Appellant; Smt. Vidya, High Court Government Pleader and Sri Ashok Harnahally, for the Respondent

Judgement

1. The present writ petition has been filed for quashing of the order dated 23-7-1988 (Annexure-A) passed by the respondent Land Tribunal, Arasikere Taluk, rejecting the application filed by the predecessor-in-title of the petitioners for grant of occupancy rights in respect of vacant site measuring East to West $(134.5+131.5)/2$ feet and North to South $(193+210)/2$ feet, situate at Arasikere Town limits under the provisions of the Karnataka (Religious and Charitable) Inams Abolition Act, 1955 (in short the "Act") as also the order dated 23-3-1991 (Annexure-C) passed by the Civil Judge dismissing the petition filed by the predecessor-in-title of the petitioners.

2. The foundational facts are not in dispute. The petitioners claims to be in occupation of the site in question, which originally belonged to Malikali Tirupathi Sri Venkataramanaswamy Temple. Admittedly, the said site was given to one late Sri M.R. Puttaswamaiah, whose legal heirs are petitioners herein, on 30 years" lease by the Deputy Commissioner, Hassan, under the lease agreement dated 1-4-1958 for commercial purposes. During the currency of the said lease period, it was again extended for a further period of 10 years pursuant to the order dated 20-1-1965. Accordingly, the lessee constructed a cinema theatre, hotel

and shops thereon.

3. After coming into force of the Act, sons of late Mr. M.R. Puttaswamaiah, namely Sri M.P. Jayaram and Sri M.P. Basavaraju filed application on 29-6-1987 before the Land Tribunal, Arasikere, claiming occupancy rights in respect of the commercial site in question. The said application came to be rejected by the Tribunal on 23-7-1988 primarily on the grounds that (i) the site in question was not a inam property since it was not mentioned so either in the quit rent register or register for inams, and (ii) it was not an agricultural land and as such the provisions of the Act had no application. The said order was challenged by the claimants by filing an appeal before the Appellate Authority as constituted u/s 116A of the Karnataka Land Reforms Act, 1961 which was made applicable to the proceedings under the Act as well.

The said appeal was No. LRAA(RA).71/88 but since there was difference of opinion between the members of the Land Tribunal as is evident from the order dated 5-4-1990 (Annexure-B), therefore as required u/s 116B of the Land Reforms Act, the members formulated the points on which there was a difference and referred the same to the jurisdictional Civil Judge under their order dated 29-5-1990 (Annexure-C). But before the learned Civil Judge could hear the contesting parties on the points and record his opinion, by the Karnataka Land Reforms (Amendment) Act, 1990, Sections 116A and 116B referred to above, were deleted making the following provisions with regard to the pending proceedings:

"17. Pending proceedings.--The High Court on the application filed by the appellant (which expression shall also include the petitioners of the writ petitions and appellants of the writ appeals transferred to the Appellate Authority), on or before Thirty-first day of March, 1991 whose appeal was pending immediately before the commencement of the Karnataka Land Reforms (Amendment) Act, 1990 before such authority, may if it deems fit, and after condoning the laches, if any, treat such appeal as a writ petition or as the case may be, a writ appeal preferred to the High Court against the order passed by the Tribunal under the Principal Act".

4. As is evident from Section 116B, notwithstanding the making of reference of Civil Judge on certain issues, the appeal was to remain pending with the Appellate Authority only. Therefore, keeping in view the provisions of Section 17, the rendering of opinion by the learned Civil Judge would have been futile since no order could have been passed by the Appellate Authority on the basis of the said opinion. As such the learned Civil Judge under his order dated 21-3-1991 rightly treated the proceedings before him as closed.

5. Keeping in view the closure of the proceedings before the learned Civil Judge and the provisions contained in Section 17 of the Karnataka Act 18 of 1990 extracted above. The remedy of the petitioner was to file an application before this Court within the prescribed period for treating the said appeal as a writ

petition for dismissal thereof in accordance with law. But the petitioner instead of adopting the said course was advised to file the present writ petition, challenging the order of the Civil Judge on the ground that once a reference was made, he was under statutory duty to answer the same. The plea so raised is ex facie untenable because the said opinion, if any, would have bound only the Appellate Authority which has ceased to exist. In the said view of the matter no fault can be found with the impugned order of the learned Civil Judge treating the proceedings before him as closed.

6. No doubt under the one or the other misconception of law, the petitioner failed to file an application in terms of Section 17 of the Karnataka Act 18 of 1990 but since he was bona fide pursuing a remedy before this Court by presenting a writ petition, therefore without taking any legalistic statutory attitude I permitted the Counsel for the petitioner to appropriately amend the relief portion of the present writ petition so as to challenge the order of the Tribunal itself, which he has done.

7. Now coming to the merits of the petitioner's case, it is not in dispute that the building site in question is not an agricultural land and the petitioner is conducting commercial activities thereon. In view of these foundational facts the question to be examined is as to whether he can claim any occupancy right in respect of the said site under the provisions of the Inams Abolition Act.

8. As is evident from sub-section (3) of Section 1 of the Inams Abolition Act, it applies to:

"(a) religious inams including the Sringeri Jahgir; and

(b) charitable inams".

Explanation appended to the said sub-section provides an exhaustive definition to "religious inams" or "charitable inams" to mean a grant of a village, portion of a village or land entered in the register of inams, quit-rent register, alienation register, or any revenue account maintained by or under the authority of Government as Devadaya inam or Dharmadaya inam, as the case may be.

9. In the present case, the Tribunal with by relying on the materials placed before it, has come to a definite conclusion that the site in question has not been entered either in the quit-rent register or any of the other revenue records maintained by or under the authority of the Government as Devadaya inam or Dharmadaya inam. Even in the writ petition the petitioner has not averred a word to controvert the said fact. Therefore the site is not a religious or charitable inam within the meaning of Section 1(3) of the Act. In the said view of the matter the provisions of the Act cannot be said to have any application to the same.

10. Apart from the above aspect, even if for the sake of argument, it be accepted, the provisions of the Act applies to site, still, as is evident from Sections 4, 5 and 5(a) of the Inams Abolition Act, apart from Poojari, Archak, etc., occupancy right can be claimed only by the tenants who may be Kadim

tenants, Permanent tenants or Protected tenants as defined under clauses (8), (12) and (12-a) of Section 2 of the Inams Abolition Act.

11 . The terms Kadim tenants, Permanent tenants and Protected tenants have been defined u/s 2 of sub-section (1), clauses (8), (12) and (12-a) of the Inams Abolition Act, which reads thus:

"2. Definitions.--(1) In this Act, unless there is anything repugnant to the subject or context.-

xxx xxx xxx (8) "Kadim tenant" means a tenant as defined in Section 4 of the Land Revenue Code:

xxx xxx xxx (12) "Permanent tenant" means person who either u/s 79 of the Land Revenue Code or otherwise is entitled to a tenancy in respect of any land used for agricultural purposes, the duration of which is co-extensive with the duration of the tenure of the inamdar:

xxx xxx xxx (12-a) "Protected tenant" means a tenant of any land comprised in a minor inam, if he has held it continuously and cultivated it personally for a period of not less than twelve years prior to the 1st day of July, 1970.

"Land Revenue Code" has been defined to mean Karnataka Land Revenue Code, 1988."

12. From the above provisions it is more than clear that occupancy right can be claimed by a person as a tenant only if the lands are agricultural in nature and the person claiming right is personally cultivating the same. In the present case, admittedly the lands are not agricultural in nature and the petitioners are admittedly carrying on commercial activities over the same. In the said view of the matter there was no occasion on their part to claim occupancy right in respect of the lands in question.

13. Keeping in view the aforesaid discussions in my opinion the Tribunal was right in rejecting the claim of the petitioners.

14. Writ petition is accordingly dismissed. No costs.