

(2011) 01 KAR CK 0198

In the Karnataka High Court

Case No : Writ Petition No"s. 11773-74 of 2009

Shri C.S. Parthasarathy Iyengar and Others

APPELLANT

Vs

The Special Deputy Commissioner and Others

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Karnataka Land Revenue Act, 1964 — Section 136 (3)

Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 — Section 4, 5, 6, 7, 8

Citation : (2011) 4 KarLJ 565 : (2011) 4 KCCR 3003

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : R.S. Ravi, for R. Tharesha and Venkatesh C, for the Appellant; R. Omkumar, AGA for R1-R3, Somasundar Dikshit, for R4, R6 and R8, A.S. Ponnanna, for A.K. Subbaiah, for R10 and P.K. Narayana Swamy, for R 11, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petitions have come up for orders regarding not taking steps in respect of 7th Respondent, as notice once issued by this Court to this Respondent is said to have been returned unserved etc.

2. I have heard Sri R S Ravi, learned Counsel for the Petitioners, Sri Ponnanna, learned Counsel for tenth Respondent and Sri R Omkumar, learned AGA, appearing for the statutory Respondents 1 to 3.

3. The subject matter of these writ petitions is about the legality or otherwise of the orders passed, initially by the tahsildar in MR No 23/1979-80 and following that a later mutation in MR No 1/1996-97, whereunder the revenue records under the 1979-80 proceedings in respect of an extent of 3 acres 35 guntas of land in Sy No 6/2 of Katigenahalli, Jala hobli, Bangalore north additional taluk, had been mutated in the name of one Poojappa. based on an order passed by the special Deputy Commissioner, exercising powers under the provisions of

Mysore (Personal and Miscellaneous) Inams Abolition Act. 1954 [for short, the Act], recognizing the said Poojappa as the occupant in possession and cultivation of the subject land mentioned in the order dated 21-2-1960 [copy at Annexure-F to the writ petition] conferring such occupancy rights in favour of the said Poojappa in respect of land in the following four numbers:

Sy .No.

Extent

96

4.00

166

0.26

136

0.23

129

0.12

153

0.02

It appears, these lands had been subject matter of a revised survey and had been given different RS Nos. etc.,.

4. Likewise, Petitioners, who claim right, title and interest in respect of the very extent of 3 acres 35 guntas in old Sy No 91, RS No 6/2, on the basis of an order passed by the very special Deputy Commissioner under the very enactment, recognizing one C S Thirumala Iyengar, under whom the Petitioners claim to be purchasers of inam lands in Sy No 91 to an extent of 3 acres 35 guntas and 5 acres 5 guntas in Sy No 97 of the very village and while consequences are not known.

5. Submission of learned Counsel for the Petitioners is that such a right had been conferred on the said Thirumala Iyengar in terms of the sale deed dated 28-8-1869 [copy at Annexure-A to the writ petition] from one Tola Bangaru Swamy Nayaka, who in turn, claims to have purchased the entire inam village of Katigenahalli from one Vishwanath s/o Subbanna as per sale deed dated 1-1-1855 etc.

6. The revenue entries though had been mutated in the year 1979-80, it appears the writ Petitioners and their predecessors were quite oblivious of these developments and at any rate it is so claimed and had made an attempt only in the year 2002 to get the revenue entries corrected by filing an appeal before the

Assistant Commissioner, Bangalore north sub-division in appeal No RA 167/2002-03, on the premise that neither the present Respondents 4 to 8 or any persons claiming under them namely Respondents 9 to 11 thereafter, nor the late Poojappa in whose favour the special Deputy Commissioner had granted occupancy rights in respect of certain lands as per the order at Annexure-F, could lay claim to the subject land in present Sy No 6/2 measuring 3 acres 35 guntas, as this land was never subject matter of the order made in favour of said Poojappa by the special Deputy Commissioner, but projecting as though that the said land had been partitioned and revenue records in the name Poojappa in proceedings MR No 23/1979-80 relating to some rights in the name of one Nithyananda Bandopadyaya and in respect of Sy No 178/3 of the very village, had, by manipulating records or by misrepresentation got the name of said Poojappa mutated in revenue records in respect of Sy No 6/2 measuring 3 acres 35 guntas, though the said Poojappa had no manner of right, title or interest on the subject land and therefore the entries under MR 23/1979-80 to the extent that it recognized any right in favour of Poojappa in Sy No 6/2 should be corrected as the right on the basis of the original orders passed by special Deputy Commissioner, cannot be sustained.

7. However, the appeal was not with much success, as the Assistant Commissioner noticing various discrepancies, thought it fit proper to relegate the parties to the civil court, to get their respective rights determined and whereafter the revenue records can be altered following the determination by the civil court and therefore dismissed the appeal as per the order dated 27-10-2004 [copy at Annexure-K to the writ petition].

8. A further revision u/s 136(3) of the Karnataka Land Revenue Act, 1964 [for short, the Act] to the Deputy Commissioner not being very productive, the Petitioners are before this Court in the present writ petitions.

9. Sri R S Ravi, learned Counsel for the Petitioners, submits that the revenue authorities particularly the Assistant Commissioner and the Deputy Commissioner have failed to see that the entry in the revenue records in favour of Poojappa or subsequently in favour of his legal heirs and thereafter persons claiming as purchasers from the legal heirs of said Poojappa, are all entries which have no legal basis; that there is no supporting order which had recognized the rights of the said Poojappa in the subject land; that the first entry in the revenue records in the name of said Poojappa in the year 1979-80 itself was by an act of fraud and deceit; that in such circumstances, it was the bounden duty of the revenue authorities to set right the records, but declining to do so amounts to not only dereliction of duty but also encouraging such fraudulent acts etc.

10. Submission of Sri A S Ponnappa, learned Counsel for tenth Respondent, who is a person who claims right, title and interest in the very land under a sale deed dated 11-12-1997, said to have been executed in her favour by ninth Respondent, who in turn claims to have purchased the same extent of land from Respondents 4 to 8 as per another sale deed dated 15-11-1996, is that it is only

the tenth Respondent who has the right, title and interest in the land and therefore at any rate the revenue entries effected on the basis of the orders passed by the special Deputy Commissioner in the year 1979-80 cannot be altered through an appeal filed in the year 2002, but as rightly observed by the Assistant Commissioner and the Deputy Commissioner, if at all the writ Petitioners are asserting such position, they can go before civil court and workout their rights and there is no need to interfere and writ petition should be dismissed.

11. Rights in immovable properties are one to be asserted by enjoying the property and not by showing a sale deed of the last century or the last before century" Immovable properties will be useful and productive for such persons who possess and enjoy, and not to those who are gazing at the sale deeds, sitting at far off places and enjoying the title deeds! Even a bank balance is of no use unless one utilizes the balance in the bank.

12. If the writ Petitioners are claiming right, title and interest under certain sale deeds and even assuming under an order passed by the special Deputy Commissioner in the year 1960, what really matters is in what manner which Petitioners or their predecessors-in-title have enjoyed the subject land and not merely having an order in their favour. Moreover, Petitioners are persons who are claiming right, title and interest under a person who was the holder of an inam village and not necessarily as persons in occupation and possession. In fact, the rights in favour of an inamdar u/s 9 is always subject to the rights which other the persons claim by filing an application u/s 4, 5, 6, 7 or 8 of the Act. If anything is left, the residuary can be claimed by the inamdar and not all other rights. In fact, under the Act, inamdars are all compensated for abolition of inams and the question of persons claiming interest in the land depends on the factual position and not merely by claiming right as an inamdar.

13. When such is the legal position and if the Petitioners aver that some fraud or deceit had been played by Respondents 4 to 8 or their successors or predecessors in title, that cannot be subject matter for examination by the revenue authorities for effecting entries or altering entries in the revenue records. Such matters are fit subject matters for the civil courts to decide and in a case of fraud being alleged, full particulars should be pleaded and that should be proved to the hilt. That is the principle of an act of fraud vitiating any proceedings. Instead of doing so, if the Petitioners thought it wise by trying an easy way out, to approach the revenue authorities, they cannot expect anything better than the orders passed now by the Assistant Commissioner and the Deputy Commissioner and when once earlier, for changing entries, if the revenue authorities have acted in a proper manner then for later changes parties have to be relegated to the civil courts.

14. In such matters, there is absolutely no scope for interference for the high court exercising writ jurisdiction under Article 227 of the Constitution of India. Therefore these writ petitions have to be inevitably dismissed which are more

frivolous than of any merit and for bringing each and every such matters to the high court, though the position was quite well known even before the Assistant Commissioner and for making such belated efforts with or without merit, in the year 2002 in respect of an entry of the year 1979, the attempt is highly belated and hit by law of limitation.

15. In the result, the present writ petitions being without either bona fides or merit, are dismissed, levying cost of Rs. 10,000/- (Rupees ten thousand only) on each of the Petitioners, which is to be paid to the tenth Respondent or to be deposited before this Court by the Petitioners and on such deposit, the tenth Respondent is permitted to withdraw the amount through her counsel. The cost to be paid or deposited within four weeks from today, failing which, the registry is directed to issue a certificate in favour of the tenth Respondent, for recovery of the cost, as though it is a decree passed by a civil court.