

(2000) 01 KAR CK 0061

In the Karnataka High Court

Case No : Writ Petition No's. 33583 and 33584 of 1996 (KVOA) .

S.K. Ravi Shankar

APPELLANT

Vs

State of Karnataka And Others

RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Village Offices Abolition Act, 1961 — Section 12, 12 (1), 6

Citation : (2000) ILR (Kar) 1786 : (2001) 1 KarLJ 162 : (2000) 4 KCCR 399 SN

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Yoganarasimha, for the Appellant; Sri M. Ramesh, Government Advocate, Sri H.S. Shankaranarayan and Sri. R. Vijayakumar, for the Respondent

Judgement

1. By these petitions under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs viz.,

(a) For issue of a writ of certiorari and for quashing the order dated 5-7-1993 passed by the Tahsildar, Bangalore North Taluk, Bangalore, in Case No. HOA 46/87-88, insofar as it regnant half lands to respondents 4 to 6 and also for quashing the judgment dated 5-7-1996 passed by the II Additional District and Sessions Judge, Bangalore Rural District. Bangalore, in M.A. No. 69 of 1993 (Annexure-C).

(b) Direction to regrant of all the lands claimed by the petitioner by himself exclusively.

(c) Grant any other orders deemed fit in the interest of justice.

2. The facts of the case in nutshell are:

That after the coming into force of the Karnataka Village Offices Abolition Act, 1961, an application u/s 6 of the said Act, was moved by respondents 4 to 6 claiming for the regrant of the resumed land alleging that the present

respondents 4 to 6 i.e., the applicants, in the application, who are authorized holders of the land and they are prepared to deposit the occupancy price and it was originally numbered as Case No. VOA(s) 100/68-69. Objections were filed on behalf of the petitioner challenging the right of respondents 4 to 6 in the matter of regrant of the land. The petitioner denied the right of the present respondents 4 to 6 to the grant of land and asserted that respondents 4 to 6 i.e., the applicants were not the authorized holders within the purview of Section 6 read with Section 2(b) of the Karnataka Village Offices Abolition Act, 1961. There is no dispute that, so far as the present petitioner is concerned, the land was originally granted to his great-grandfather by the Chief Court of Mysore. As regards the village office of Barawardar even in the records at the time of the proceedings, the name of the petitioner was recorded as holder of the office i.e., as Barawardar. On that basis, the petitioner claimed to be entitled to the regrant and not the respondents 4 to 6. There were many pleas taken, but there is no need to go in detail.

3. By order dated 26-6-1972, the land was regranted in favour of the present respondents 4 to 6. The matter had gone up in appeal. The order of the Tahsildar was set aside by the Appellate Authority in M.A. No. 26 of 1974 and the matter was remanded by the District Judge to the Assistant Commissioner for fresh disposal according to law. After the remand, the Tahsildar passed the order on 20th May, 1983 again making regrant in favour of respondents 4 to 6 and rejected the case of the present petitioner. Being aggrieved by that order, the petitioner preferred an appeal before the District Judge, in M.A. No. 25 of 1983 which was dismissed by the District Judge, Bangalore Rural by his order dated 15-9-1987. Feeling aggrieved by the order passed by the District Judge on 15-9-1987, the present petitioner preferred the revision before the Hon"ble High Court in C.R.P. No. 4876 of 1987 which was allowed by this Court vide the order dated 24-6-1991 and remanded the matter to the Tahsildar again for fresh enquiry. After the remand, the Tahsildar passed the order on 5-7-1993. The Tahsildar held that the present petitioner to be Barawardar and thereafter he passed the order dividing the land in question into two shares. Half share was given to the petitioner being Barawardar and the other half share was given to the present respondents 4 to 6 as authorized holders. The petitioner felt aggrieved by this order as well as the present respondents 4 to 6 felt aggrieved by the decision of the Tahsildar to divide the property among the warring groups in this litigation. The petitioner's appeal was numbered as M.A. No. 69 of 1993, while the appeal filed by the present respondents 4 to 6, who claim to be authorized holders was numbered as M.A. No. 46 of 1993. The District Judge heard the matter and allowed the appeal filed by the present respondents 4 to 6 and dismissed the appeal filed by the present petitioner. It is ordered that the respondents in M.A. No. 69 of 1993 namely the appellants in M.A. No. 46 of 1993 are entitled to re-grant of the entire land in question. The order of the Appellate Court is dated 5-7-1996. Feeling aggrieved by the said order of the II Additional District and Sessions Judge, Bangalore Rural District, Bangalore, the holder of

the village office viz., Sri S.K. Ravi Shankar has filed the two writ petitions challenging that order. No doubt, the proceedings being one, two sides of the parties filed the two appeals, but the appellate order being one, one writ petition would have been enough. Anyway, to avoid the complication, the petitioner has filed the two writ petitions challenging the order of the Tahsildar, Bangalore North Taluk, Bangalore, as well as the judgment passed by the II Additional District and Sessions Judge, Bangalore Rural District, Bangalore.

4. It has been contended on behalf of the petitioner that the application u/s 6 of the Karnataka Village Offices Abolition Act, 1961, moved on behalf of the present respondents 4 to 6 was not maintainable as they were not authorized holders. It was further contended that in view of Section 5 of the Mysore Village Offices Act, 1908 (Mysore Act No. IV of 1908), respondents 4 to 6 could be said to have been in possession of the land which form part of the emoluments under the definition of "Emoluments" in the Act. The same was not liable to be transferred, partitioned, or encumbered in any manner whatsoever, and its transfer etc., shall not be lawful, as there was bar against transfer and partition of the emoluments of the village office which include landed property. That emoluments as per the definition of the Act could not be transferred, partitioned or encumbered. The transfer thereof whatsoever was illegal, null and void and respondents 4 to 6 could not be said to be authorized holders of the land within the framework of the expression "authorized holder" as defined in Section 2(b) read with Section 6 of the Karnataka Village Offices Abolition Act, 1961 (Karnataka Act No. 14 of 1961). The learned Counsel for the petitioner contended that this material aspect of the matter has not been considered by either of the two authorities and without applying their mind to this aspect of the matter the order of regrant has been passed. So, it is illegal, null and void and it should be quashed.

5. The above contentions of the learned Counsel for the petitioner has hotly been contested by Sri H.S. Shankaranarayan, learned Counsel appearing for the respondents 4 to 6.

6. It has been contended by the learned Counsel for respondents 4 to 6 that the transfer deed has never been challenged earlier before the Civil Court. He further contended that the case of respondents 4 to 6 is covered by Section 5 of the Mysore Act No. IV of 1908 viz., the Mysore Village Offices Act, 1908 and it makes distinction between land assigned as the emoluments of the holder of the village office and the land not assigned as emoluments. He contended that under proviso to Section 5 of the Mysore Act No. IV of 1908 the lands which are not assigned as emoluments to the holder of a village office under rules framed u/s 22, nothing contained in this section shall be deemed to affect transfers, partitions or encumbrances, as between different members of a holder's family. The main provision of Section 5 will not apply. The learned Counsel contended that there was an important question to be considered whether the land in question had been granted as part of emoluments to the holder of village office. He further contended that this issue was not framed and decided by any of the

authorities. It has not been shown by the petitioner that the land was assigned to the petitioner as part of emoluments as holder of the village office. When this plea was not pressed and it should not be allowed to be raised. The learned Counsel for the respondents 4 to 6 contended that in view of Section 12 of the Karnataka Village Offices Abolition Act, 1961 the old Act viz., the Mysore Village Offices Act, 1908 has been repealed in whole. So that point was not required to be considered as the Mysore Act No. IV of 1908 will not govern the present position. In view of sub-section (3Xa) of Section 12 of the Karnataka Village Offices Abolition Act, 1961 those transactions cannot now be challenged in proceedings under this Act.

7. I have applied my mind to the contentions raised by the learned Counsels appearing for the parties.

8. As regards the repeal of the Mysore Village Offices Act, 1908, the repeal is prospective as per the language of Section 12(1) of the Karnataka Village Offices Abolition Act, 1961. Sub-section (1) of Section 12 of the Act reads as under:

"12. Repeal and savings.-(1) The enactments specified in Schedule I and any existing law relating to village offices in force in any area of the State of Karnataka so far as they apply to village offices or to emoluments attached to such offices are hereby repealed".

Sub-section (2) of Section 12 of the Act is not relevant.

Sub-section (3) of Section 12 of the Act reads as under:

"(3) Nothing in sub-sections (1) and (2) shall be deemed to effect.-

(a) any obligation or liability already incurred by the holder of a village office or other person before the appointed date;

(b) any proceeding or remedy in respect of such obligation or liability and any such proceeding may be continued or any such remedy may be enforced as if this Act had not been passed".

9. A reading of sub-section (3) of Section 12 of the Act, on which reliance has been placed only, deals with the obligation or liability already incurred by the holder of a village office or other person before the appointed date shall not be deemed to be affected. The transaction of sale or transfer cannot be said to come within the purview of the obligation or liability already incurred by the holder of a village office. In this view of the matter, in my opinion, the contention raised on the basis of Section 12 of the Karnataka Village Offices Abolition Act, 1961 that his rights under the sale deed are saved because of sub-section (3)(a) of Section 12 of the Act, is without substance. Repeal being prospective and not retrospective, the provisions of law operating on the date of the partition, transfer or encumbrance will always play an effective role in the determination of the question whether the alleged transfer or partition were validly made in order to determine the question whether a person is authorized holder or not within

the purview of Section 6 read" with Section 2(1)(b) of the Karnataka Village Offices Abolition Act, 1961 (Karnataka Act No. 14 of 1961). No doubt, this section provides for regrant of land in favour of the authorized holder, and it is to be seen who is an authorized holder u/s 2(1)(b) of the Karnataka Act No. 14 of 1961. The said section reads as under:

" "authorized holder" means a person in whose favour a land granted or continued in respect of, or annexed to a village office by the State or a part thereof has been validly alienated permanently, whether by sale, gift, partition or otherwise, under the existing law relating to such village officer".

10. Therefore, in order to determine whether respondents 4 to 6 are authorized holders or unauthorized holders, the question whether there has been a valid transfer made in favour of respondents 4 to 6 as claimed or the sale deeds are previous transaction of partition were null and void. Such question has to be determined taking into consideration the law existing at the time the transaction was made with reference to the village office. To that extent, the provisions of the Mysore Act No. IV of 1908 (The Mysore Village Offices Act, 1908), cannot be said to have been repealed or stood repealed. Those provisions are very material. Section 5 of the Mysore Act No. IV of 1908 reads as under:

"5. The emoluments of village offices, whether such offices be or be not hereditary, shall not be liable to be transferred, partitioned, or encumbered in any manner whatsoever, and it shall not be lawful for any Court to attach or sell such emoluments or any portion thereof:

Provided that in the case of lands which are not assigned as emoluments to the holder of a village office under rules framed u/s 22, nothing contained in this section shall be deemed to affect transfers, partitions or encumbrances, as between different members of a hakdar"s family".

11. Before I proceed to discuss Section 5 of Mysore Act No. IV of 1908, it appears proper to refer to the definition clause which defines emoluments u/s 2(e) of the Karnataka Village Offices Abolition Act, 1961 as under:

"2(e) "Emoluments" means.-

(i) land;

(ii) assignment of revenue payable in respect of lands;

(iii) fees in money or agricultural produce;

(iv) money, salaries and all other kinds of remuneration granted or continued in respect of or annexed to, any village office, by the State".

12. This definition is illustrative. Emoluments of village office may include all those which are annexed to the village office, by the State. A reading of Section 5 of the Mysore Act No. IV of 1908, no doubt, creates bar against alienation of items which can be included and which are included within the definition of the

emoluments which may include the land also. So, the emoluments of the village office are attached to the village office irrespective of such office be heritable or not. Section 5 of the Mysore Act No. IV of 1908 provides that the items covered by the expression emoluments of the village office shall not be transferable, nor can they be subjected to encumbrance, nor they be transferred, partitioned in any manner, nor the Civil Court is entitled to attach such emoluments, in whatever form they may be, or any portion thereof in execution of any decree. This section bars all sort of alienation of items which are covered by the expression emoluments of the village office. Neither they can be transferred by sale etc., nor can those items which come within the purview of the emoluments be partitioned, nor encumbered in any manner. To this principal section a proviso has been added. Here, the proviso appears to have carved out something which could be covered by the main section and it may instead operate as exception. Exception has been made with respect to all lands which are alleged and shown as not to have been assigned to the holder of the village office as emoluments or part of the emoluments. The expression emoluments of the village office appears to include in itself the emoluments which are given or assigned to the holder of a village office, but the land which is not assigned as part of emoluments of a holder of the village office u/s 22 and the rules made thereunder. The proviso provides that the main clause will not apply to transfer, partition or encumbrance made on such lands inter se members of the holder's family. The same view appears to have been expressed in an earlier decision of this Court by the Hon'ble Justice Mallappa in the case of Sakamma v Ckikkannagowda.

13. In the present case, both the learned Counsels have been very fair and stated on this aspect of the matter that there is no finding on the question whether the lands which are claimed to have been transferred and partitioned, were not assigned as emoluments to a holder of village office.

14. The learned Counsel for the respondents 4 to 6, no doubt, contended that it was for the petitioner to allege and assert and produce evidence or to press it. I am unable to accept this contention. A person who claims benefit of exception clause to the main principal section, the burden lies on him to establish that his case is covered by exception clause and he has to establish the necessary ingredients after having pleaded that case and then evidence has to be led by the parties, but the burden lies on the person claiming benefit of exception to the main principal clause or section. It is also well-settled that after both the parties have led their evidence on that point, the burden of proof loses its importance to a greater extent and then the Court has to determine the question of fact after appreciating the evidence. Therefore, in my opinion when respondents 4 to 6 claim the benefit of the alleged transfer and partition in their favour, the burden did lie on respondents 4 to 6 to allege and establish that those transactions were not affected by Section 5 of, the Mysore Act No. IV of 1908 and were covered by the proviso. In such a case the parties need to be given opportunity for adducing the evidence and to establish the facts. Considering this aspect of the matter, in my opinion the orders impugned suffer from error of law apparent on the fact of

the record and of jurisdiction.

15. For passing the regrant order in favour of respondents 4 to 6 the authorities were required by law to consider the question whether respondents 4 to 6 were authorized holders within the framework of Section 2(1)(b) of the Karnataka Village Offices Abolition Act, 1961 and were entitled to get benefit of Section 6 read with Section 2(1)(b) of the Act. Then in that case no application would be necessary on behalf of the petitioner for regrant u/s 5 of the Mysore Act No. IV of 1908, because of the language of Section 5 itself, and the land which was resumed u/s 3, in a case not falling under Sections 6 and 7 was to be granted to the person who has been a holder of the village office, if he had established all the necessary conditions. So till the application u/s 6 of the Karnataka Village Offices Abolition Act, is disposed of or till it is found that respondents 4 to 6 are not authorities/holders, no application could be made by the present petitioner u/s 4. It is after that decision, it would be open to the petitioner to apply for the regrant or his application for regrant may be considered after the decision on the question whether respondents 4 to 6 are authorized holders or unauthorized holders. Earlier to that such a land which is covered by Section 6 or 7, the application for regrant in favour of a holder of the village office cannot be considered.

16. The writ petitions, as such, are hereby allowed.

17. The order passed by the Tahsildar, Bangalore North Taluk, Bangalore, on 5-7-1993 (Annexure-B) and judgment passed by the II Additional District and Sessions Judge, Bangalore Rural District, Bangalore, on 5-7-1996 (Annexure-D) are quashed.

18. The Tahsildar, Bangalore North Taluk, Bangalore, is hereby directed to proceed afresh taking into consideration the pleas that have been raised or may be raised before it keeping in view the following questions:

(1) Whether the present respondents 4 to 6 are authorized holders of the lands within the purview of Section 6 read with Section 2(1)(b) of the Karnataka Village Offices Abolition Act, 1961?

(2) Whether the transfer and partition alleged by respondents 4 to 6 have been validly made or hit by Section 5 of the Mysore Village Offices Act, 1908 (Mysore Act No. IV of 1908)?

(3) Whether the lands in question were not assigned as part of emoluments to the holder of a village office?

(4) Whether the lands in question which vested in the Government and for regrant of which the application had been made by respondents 4 to 6 have been the lands which can be said to be the lands not assigned as emoluments to the holder of the village office under the rules framed thereunder?

19. The Tahsildar to decide the matter afresh after giving opportunity to both the

parties to lead evidence on the above questions only and pass the order on the basis of the material placed on record as well as the additional evidence or material produced by both the parties.

20. As the matter is very old having commenced in 1968-69, the Tahsildar is directed to decide the matter expeditiously and in every case within a period of twelve months from the date of the communication of this order or direction.

21. The date for appearance of the parties before the Tahsildar will be fixed later on when the copy of this order becomes available to the parties and they move application for this purpose.