

(1987) 10 KAR CK 0016
In the Karnataka High Court
Case No : W.P. No. 11392/1987

Smt. Maribasamma

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-10-1987

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 4(3)

Citation : (1987) 3 KarLJ 312

Hon'ble Judges : S. R. Rajasekhara Murthy, J

Judgement

Rajashekara Murthy, J.-Emergent notice re-rule was ordered on the respondents. Respondent-4 is served and has remained unrepresented. Respondents 1 to 3 are represented by Sri S.V. Jagannath, the learned Government Advocate, The writ petition, which is posted for preliminary hearing, is disposed of on merits after hearing the learned Counsel for the petitioner and the Government Advocate.

The petitioner purchased 9 guntas each in Sy.No. 34 and Sy.No.48 in Machenahalli village, Turuvekere Taluk, Tumkur District by a registered Sale Deed dated 22-7-1975 from respondent-4. The lands purchased by the petitioner are Kulavadi service inam lands. The members of the family of the original barawardar made application before the Assistant Commissioner Tiptur for regrant of the service inam lands under the Karnataka Village Offices' Aboilition Act, (the Act) in their favour. They asked for the grant of both Sy.Nos. 34 and 48 of Machenahalli Village.

The Assistant Commissioner, Tiptur by his order dated 28-11-1977 regranted the two Serial Numbers to the applicants indicating their respective shares. But, so far as 9 guntas each in Sy.Nos. 34 and 48 purchased by the petitioner, were concerned, the Assistant Commissioner ordered their resumption to Government since they had been sold by one of the applicants and that the said said was null and void under the Act. As a result the Assistant Commissioner directed eviction of the petitioner from those lands.

The petitioner is, aggrieved by the eviction notice issued by the Tahsildar on 17-7-1987 as per Annexure-C and the order of resumption in respect of the two 9 guntas each in Sy.Nos. 34 and 48 as per the order dated 28-11-77, Annexure-B.

The petitioner has prayed for issue of a writ of mandamus to respondent-3 to make an order of regrant in respect of the extents purchased by him and has also prayed for a writ quashing the resumption order.

Heard Sri Chandrachud, the learned Counsel for the petitioner and Sri S.V. Jagannath learned High Court Government Advocate for respondents 1 to 3.

It cannot be disputed that the application for regrant of both the Serial Nos. 34 and 48 filed on 12-11-1970 by respondent-4 and others was pending on 22-7-1985, the date of sale. The said application is found in the record of the Tahsildar produced by Sri S.V. Jagannath. The regrant order was made on the said application on 28-11-1977, except as regards 9 guntas each in Serial Nos. 34 and 48 and the Assistant Commissioner ordered their resumption to Government.

By virtue of the abolition of all village offices under the Village Offices Abolition Act, all incidents appertaining to the said village offices also got extinguished. As a result the lands annexed to the village offices are liable to be resumed to Government subject to regrant of those lands under Sections 5, 6 and 7 of the Act. The resumption as contemplated in Section 4(3) of the Act is therefore subject to any order of regrant being made under Sections 5, 6 and 7 as the case may be. If there is a regrant of the Inam lands sold, between the date of the coming into force of the Principal Act and 7-8-1978 the date of amendment the purchaser of such lands would be entitled to regularisation of his title by virtue of the decision of this Court in the case of LAKSHMAN GOWDA v STATE OF KARNATAKA AND OTHERS (1980(1) Karnataka Law Journal). Resumption to Government would follow if there is not order of regrant as provided under the Act.

If an application for regrant is pending before the Tahsildar, he has to first consider that application before ordering resumption under Section 4(3) of the Act. Therefore, the order to resume 18 guntas of land purchased by the petitioners in this case even while the application for regrant was pending is, therefore, contrary to the provisions of Section 4(3) and the ruling of this Court in Amrith v Assistant Commissioner Yadgir (W.P.No.4791/79).

The order directing resumption of 9 guntas each in Sy.Nos. 34 and 48 contained in the order of the Assistant Commissioner dated 21-11-1977 (Annexure-B) is therefore quashed.

(i) The Tahsildar, Turuvekere Taluk is hereby directed to reconsider the application of the 4th respondent-Narasirahaiah for regrant of 9 guntas each in Serial Nos. 34 and 48 in accordance with law:

(ii) He is further directed to regularise the title of the petitioner in the event of an order of regrant is made, to the extent of that regrant in accordance with the ruling of this Court in Lakshmangowda's case.

The writ petition is accordingly allowed and the Tahsildar is directed to comply with the directions within two months from the date of receipt of this order, after notice to all the parties concerned.

Writ Petition disposed of.