
(2009) 03 KAR CK 0087

In the Karnataka High Court

Case No : Writ Petition No's. 27958 and 28149 of 2004

Smt. Muniamma

APPELLANT

Vs

The Tahsildar and Others

RESPONDENT

Date of Decision : 11-03-2009

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 5

Citation : (2009) 6 KarLJ 417

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

Bench : Single Bench

Advocate : Ravishankar, for Ashok Haranahalli Associates, for the Appellant; Asha M. Kumbaragerimath, High Court Government Pleader for Respondent-1, K.T. Anand, for Caveator-Respondent-2 in W.P. No. 27958 of 2004 and for Caveator-Respondent-5 in W.P. No. 28149 of 2004 and G. Papireddy, for Caveator-Respondents-2 to 4 in W.P. No. 28149 of 2004 and for Respondents-3 to 5 in W.P. No. 27958 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—These two writ petitions involve common questions and parties are also common; it is taken up for examination together.

2. Writ petitions by a person, who had filed an application u/s 5 of the Karnataka Village Offices Abolition Act, 1961 ("Act" for short). As per the application dated 9-8-1981, which has seen its ups and downs in being allowed at the first instance by the Tahsildar, being disturbed either in the writ petition or in an appeal. Such disturbance in the latest round having provided the impugned order dated 10-6-2004 - Copy produced at Annexure-A to the writ petition, the present writ petition to get over the order.

3. The impugned order under Annexure-A came to be passed in the appeal M.A. No. 26 of 2004 filed by the second respondent in W.P. No. 27958 of 2004 as per order dated 10-6-2004 in respect of an extent of 11 guntas of land in Sy. No. 217 of Banasawadi Village, Bangalore (earlier) North Taluk, now Bangalore East

Taluk and also in the appeal M.A. No. 15 of 2004 filed by persons figuring as respondents 2, 3 and 4 in W.P. No. 28149 of 2004 as per the order dated 10-6-2004 both appeals on the file of VI Additional City Civil Judge, Bangalore City. The subject-matter of the dispute in this appeal (M.A. No. 15 of 2004) and relating to the respondents was an extent of 10 guntas of land in Sy. No. 217 of Banasawadi Village, Bangalore (earlier) North Taluk, now Bangalore East Taluk.

4. These-two appeals had been preferred by the respondents to get over the order dated 6-1-2004 passed by the Tahsildar in case No. HOA (CR) 24/2004-03, whereunder, the Tahsildar had granted occupancy rights in favour of the writ petitioner on her application u/s 5 of the Act on the premise that she is a legal heir of the erstwhile village office holders, her father and uncle by name Jadalappa and Appajappa respectively.

5. It appears that the writ petitioner had been regranted much more land than the lands, which were subject-matter of the two appeals, referred to above. But the subject-matter of these two writ petitions is confined to the extent of lands in respect of which respondents 2 to 5 are claiming as purchasers of the extent of land mentioned above from the predecessors of the writ petitioner or as purchasers from those persons, who had in turn purchased the subject land from the predecessor of the petitioner.

6. The subject lands were once earlier subject-matter of a regrant order u/s 8of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 and had in fact been regranted in favour of the said Jadalappa and Appajappa as per regrant order dated 22-9-1958 - Copy produced at Annexure-E to the writ petition and had been passed by the Deputy Commissioner of the District.

7. It is thereafter, the two persons/the brothers-Jadalappa and Appajappa had effected a partition in the year 1964 and had dealt with the property allotted to their share and had in turn sold the properties, parts of which the present respondents 2 to 5 have purchased.

8. When such state of affairs prevailed, in the year 1989 the writ petitioners filed an application u/s 5 of the Act claiming as legal heir of the erstwhile village office holders and for regrant of the land, which could have been otherwise regranted in favour of persons, who were village office holders immediately prior to the appointed day i.e., persons who were holding such village office immediately prior to 1-2-1963.

9. It is as a consequence of such application, the present order of the Tahsildar u/s 5, which was subject-matter of the two appeals and which has been set aside and therefore the writ petitions to sustain the order passed by the Tahsildar.

10. Several contentions are urged on behalf of the petitioner and submission of Sri Ravishankar, learned Counsel appearing for the petitioner is that the regrant that had been made in favour of the predecessor of the writ petitioner way back in the year 1958 was no regrant in the eye of law, that the Inams Abolition Act

became effective in Bangalore District only with effect from 1-2-1959 and the vesting of lands under the Inams Act happened only on and after 1-2-1959 and an order passed by the Deputy Commissioner before this date is no order in the year of law. If there was no regrant under the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954, then the provisions of the Karnataka Village Offices Abolition Act, 1961 etc., necessarily operates and therefore application u/s 5 filed by the petitioner was open to be examined by the Tahsildar without being inhibited by the earlier order passed by the Deputy Commissioner on 22-9-1958 u/s 8 of the Inams Abolition Act and the Tribunal has committed a grave error in thinking that the Tahsildar did not have jurisdiction to entertain the application and in taking the view that he could not have sat in appeal over a decision of the Deputy Commissioner, who is his superior officer and on the premise that the earlier order under the Inams Abolition Act was a nullity in the eye of the laws.

11. In support of such submissions, the learned Counsel appearing for the petitioner placed reliance on the Division Bench decision of this Court in Rangappa v. Chinnappaiah 1965(1) Mys. L.J. 145 (DB). Submission is that the date of vesting in Bangalore District took place only on 1-2-1959, as per this decision and therefore the order passed by the Deputy Commissioner on 2-9-1958 should be necessarily treated as a nullity.

12. These writ petitions are in the 4th round of writ litigation combining together the writ petitions filed by the petitioner and the writ petitions filed by the respondents, by the petitioner as well as the respondents and has been brewing ever since the order 1982 in W.P. No. 29254 of 1982 had been filed.

13. I have also gone through the orders passed in several rounds of appeal u/s 3. In my view, the entire exercise is an exercise in futility with the authorities under the Act having not bestowed proper attention to the basic requirements.

14. Petitioner admittedly claims as a legal heir of Jadalappa and Appajappa, being the only daughter of Jadalappa and also succeeding to the interest of Appajappa as he did not leave any other legal heir.

15. While the petitioner can claim her rights under her predecessors as if such rights/properties had been sustained the petitioner has never claim any interest or a right in properties not left behind by her predecessors.

16. It is not in dispute whether right or wrong, petitioner's predecessors had been regranted the subject land u/s 8 of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 and the predecessors had dealt with the property and had sold the property. If that is so, they did not leave the sold portions to be succeeded by their legal heirs particularly portions claimed by the respondents. If that is not in dispute, then, it is not open to the writ petitioner to claim any interest in respect of the very property, which had already been sold and which was not left behind by her predecessors as an independent right to be claimed in the year 1981 and as though the writ petitioner gets a right for the first time in

the year 1981. A legal heir does not get a right over and above what the predecessor had. There is no question of legal heir improving the right, which the legal heir inherits.

17. That apart, in my view, an application u/s 5 filed by the petitioner was not at all tenable in law for the reason an application u/s 5 could have been filed only by such persons, who were the holders of the village office immediately prior to the appointed day or vesting day i.e., prior to 1-2-1963. Petitioner was not the holder of any village office and on the other hand it was her predecessors who had held the office and if they themselves had not claimed any such right and on the other hand dealt with the properties only on the strength of the order passed under the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954, it was never open to the petitioner to come up with an application u/s 5 of the Village Offices Abolition Act to claim for regrant as though she was a village office holder.

18. The fact is that the petitioner was never a village office holder to file an application u/s 5. If such was the state of affair the Tahsildar could not have passed any order in favour of the petitioner in respect of her application u/s 5 for regrant.

19. The impugned order passed by the Appellate Authority observing that the Tahsildar committed an error and illegality in passing the impugned order is very correct. In fact, there are more reasons as indicated in this order to sustain the orders passed by the Appellate Authority than to interfere with that orders.

20. Therefore, I do not find any reason or justification to interfere with the impugned orders at Annexure-A, dated 10-6-2004 passed in M.A. Nos. 26 of 2004 and 15 of 2004 respectively. Accordingly, these writ petitions are dismissed.