

(1991) 07 KAR CK 0035
In the Karnataka High Court
Case No : W.P. No. 14509/1991

Smt. Siddamma

APPELLANT

Vs

Tahsildar, Tumkur and Others

RESPONDENT

Date of Decision : 03-07-1991

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 3(2), 7(1)(3)(A)

Citation : (1991) 2 KarLJ 492

Hon'ble Judges : M. Ramakrishna, J

Judgement

1. In this writ petition, the only question raised for consideration is whether the action taken by the Tahsildar, Tumkur-1st respondent, herein, by issuing notice dated 15-3-1990 (Annexure-A), seeking to evict the petitioner from Sy. Nos. 48/3 and 35 measuring 3 acres 18 guntas and 1 acre 13 guntas respectively, acting under Section 7(1) of the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as the "Act") is just and proper? and whether the view taken by the District Judge in appeal holding that no appeal lies against the action taken by the Tahsildar under Section 7(1) of the Act, be justified?

2. The notice Annexure-A was challenged before the learned District Judge, Tumkur, in Misc. Appeal No. 10/1990 seeking to set aside that notice on more than one ground. The learned District Judge, who heard the learned counsel on both sides and disposed of the appeal, as per Annexure-B, held during the course of his order that:

"Admittedly the proceedings before the Tahsildar were initiated by Narasaiah (respondent No. 2 herein) seeking the relief under Section 7 for grant or regrant. It is seen from the amended Section 7 of the Act that where an "unauthorised holder" is evicted the holder (inamdar) can be granted that land by the Tahsildar acting under Section 7(3)(a) of the Act. Such a prayer was thus sought by Narasaiah. In that behalf before making that grant or regrant in favour of Narasaiah, however, the Tahsildar has taken action as contemplated under Section 7(1) of the Act and he has come, to the conclusion that the appellants

are "unauthorised holders" and while so doing, he was called upon in law by Section 7(1) to give an opportunity to such affected persons an opportunity of making representations and such a representation has been given by these respondents which is not disputed. Where the law provides as meeting the principles of natural justice only to the extent of making representation it need not include personal hearing or recording of the evidence. Making representation is only to receive the representation any and to consider its effect in the order to be passed. As the scope of making representation under Section 7 of the Act is explained by their Lordships of our own Hon'ble High Court in Lakshmanagowda's case Kar. L.J. 1981(1) page 1 at para 106 wherein their Lordships have opined that in Section 7(1) of the said amended provision of the Act there is no prohibition again granting personal hearing or an opportunity to adduce evidence."

3. Meeting the argument advanced on behalf of the appellant, petitioner herein, the learned Judge referring to the scope of Section 7(1)(d) of the Karnataka Village Offices Abolition Act, 1961, has held as follows:

"...Whereas the regrant application herein was one filed by the Inamdar under Section 7 of the Act. To revert back to the said Hanumaiah's case ILR 1987 Kar. page 550 Their Lordships have clearly opined that in the amended provision of Section 7 there cannot be regrant in favour of unauthorised holders. He is liable to be summarily evicted after issuance of notice. The clear intention of the legislation being the non-recognition of rights. In other words, Their Lordships opined that on or after 7-8-1978 he is liable to be evicted. He cannot assert any rights, however long his possession may be or whatever investment he might have made in improving the land. Since this is the intention of the Legislature, he cannot plead equity or claim any right on equitable grounds. His position is no better than a rank trespasser, and their Lordships further opined that it is not possible to confer title on the unauthorised holder by invoking equity or the principle of Feeding the grant by estoppel" (paras 5 and 6 of the above decision). In view of this position of law, in my opinion the Tahsildar could not come to any other conclusion than the one he has arrived at in making the order of eviction by impugned notice. Therefore, that cannot be questioned before this Court as the appeal cannot lie to question the same and even if the appeal would lie under Section 3(2) of the Act on merits, I am of the opinion that the order of the Tahsildar cannot be said to be incorrect, illegal or as an infraction of any provisions of the Act and therefore, the appeal has no merits and is liable to be dismissed."

4. It is this order that is called in question under Article 226 of the Constitution. Smt. Bhusani Kumar, learned counsel for the petitioner, vehemently argued that as long as the application presented by the holder of Village Offices Abolition seeking regrant in their favour either under Section 5 or Section 6 or under the amended provision of Section 7, is pending before the competent authority, no action could be taken to evict the purchasers. To sustain this argument, reliance

is placed upon the ruling of this Court in *Adivappa Shivappa Mattur v Tahsildar*, ILR 1990 Karnataka 879. I had the occasion to consider this very question in an earlier case reported in *Muniswamappa v State*, ILR 1990 Kar. 3923. Dealing with this question and referring to the ruling in *Adivappa's* case in paragraph 19 of my Judgment, I have stated as follows:

"By a perusal of the observations made above in *Adivappa's* case, it is clear that Their Lordships had no notice of the view taken in *Chikkanarasaiah's* case. To reiterate, I have already referred to paras 14,15 and 16 of the Judgment in *Chikkanarasaiah's* case wherein question of eviction of unauthorised holders under Sections 5,6 and 7 with reference to the law laid down in *Lakshmana Gowda's* case as regards "feeding the grant of estoppel" was considered and rejected against the alienees. This aspect of the matter has not been considered in *Adivappa's* case. Therefore, the ruling in *Adivappa's* case is of no assistance to *Shri Reddappa*."

In that view of the matter, it is not possible to place reliance upon the observations made by this Court in *Adivappa's* case. To that extent, the first contention urged by the learned counsel for the petitioner fails.

5. Another contention is that instead of challenging the notice under Annexure-A in this writ petition, it is true an appeal was presented before the District Judge. It is again submitted that merely because an appeal was presented before the District Judge under Section 3(2) of the Act, which came to be dismissed on the ground of maintainability, that does not mean that the petitioner could not take the very contention before this Court under Article 226 of the Constitution of India. No doubt, it is true that the action taken by the Tahsildar under Section 7 of the Act cannot be questioned in an appeal under Section 3(2) of the Act before the learned District Judge. The learned counsel for the petitioner does not dispute about that. However, the matter was taken before the District Judge with a view to seek relief at his hands. Having failed to obtain relief at the ends of the District Judge, the petitioner has approached this Court. In view of the latest Judgment of the Division Bench in *Chikkanarasaiah's* case, it is not possible to accede to the contention advanced by the learned counsel for the petitioner in this case, because in *Chikkanarasaiah's* case, ILR 1989(2) Karnataka 1520 in paragraph 16, their Lordships have observed thus:

"In the case before us, also sale in favour of the unauthorised holder was after the Act came into force, i.e., in March 1971, and the grant in favour of the office holder was in the year 1983 under the amended Section 7. Consequently, it has to be held that the writ petition was not entitled to invoke the decision in *Lakshmana Gowda's* case and his writ petition was liable to be dismissed."

6. Besides, during the course of the Judgment, their Lordships having referred to the principle laid down in *Hanumaiah's* case earlier have clearly held that the application of principle of "feeding the estoppel" and that of Section 43 of the Transfer of Property Act, would be inconsistent with the provisions of Section 7 of

the Act; a new mode of conferring title to the land on an unauthorised holder to provide by the Act will be contrary to the scheme of the Act. Therefore, when a person found to be squatting on the land unauthorisedly is liable to be summarily evicted under Section 7 of the Act, such a person cannot get any protection under the guise that an application for regrant by the holder of the village offices was pending consideration, when the scope of Section 7 is to see that the unauthorised person found in possession of the land is to be evicted summarily, I do not see any reason why the action should not be taken by the competent authority under Section 7 of the Act eventhough such an application for regrant is pending consideration. In that view of the matter, the writ petition has no merit. No other contention is urged in this petition.

7. In the result, the writ petition fails and is dismissed.