

**(2009) 11 KAR CK 0091**  
**In the Karnataka High Court**  
**Case No : W.A. No. 7002 of 2008**

Smt. Syeda Khatoon

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

**Date of Decision :** 17-11-2009

**Acts Referred:**

Karnataka Certain Inam Abolition Act, 1977 — Section 11  
Karnataka Land Reforms Act, 1961 — Section 48, 77 A

**Citation :** (2009) ILR (Kar) 4460

**Hon'ble Judges :** N. Ananda, J;D.V. Shylendra Kumar, J

**Bench :** Division Bench

**Advocate :** Naresh Kulkarni, for A. Vijay Kumar, for the Appellant; Ameet Kumar Deshpande, for R-4, R-5, R-6, R-7 and R-9 and Sharanabasappa K. Babashetty, HCGP for R-1 to R-3, R-10 and R-11, for the Respondent

## **Judgement**

Shylendra Kumar, J.—This is an appeal u/s 4 of the Karnataka High Court Act by the fourth respondent in Writ Petition No. 16502/2005, which was disposed of by the Learned Single Judge on 05.06.2008 by allowing the writ petition and therefore the fourth respondent in writ petition aggrieved by that order has questioned the same before us.

2. The writ petition was filed by as many as 10 persons who had claimed interest in agricultural land in Sy. No. 67/1 measuring 5 acres 8 guntas located in Aliabad village, Bidar Taluka and who were aggrieved by an order dated 09.05.2005 passed by the Land Tribunal, Bidar Taluka, Bidar granting occupancy rights in favour of the present appellant who figured as fourth respondent in the writ petition. The fourth respondent claiming as an inamdar had made an application in Form No. 1 seeking for grant of occupancy rights in respect of 5 acres 8 guntas in Sy. No. 67/1, and impleaded the State as sole respondent. The application was allowed in terms of the order of the Tribunal dated 09.05.2005. The writ petitioners had questioned that order of the Land Tribunal contending that they are the owners in possession of the land, having purchased the same from its previous owners, some of whom had derived title under the very

appellant. The appellant is blowing hot and cold. The appellant had not only sold the very land joining hand with others but had also thereafter trying to defraud the writ petitioners by seeking conferment of occupancy rights in respect of the very lands both under the provisions of Section 11 of the Certain Inams Abolition Act, 1977 as also u/s 77A of the Karnataka Land Reforms Act, 1961.

3. The Learned Single Judge on perusal of records and all other materials placed before the Court found that, the writ petition eventually deserves to be allowed and the order passed by the Land Tribunal in favour of the present appellant was not at all sustainable in law and it is nothing short of playing fraud on the writ petitioners. The present appellant had also taken the Tribunal for a ride by not only suppressing material facts but also by suppressing the earlier round of proceedings that had taken place between the very parties which had gone against the present appellant and by suppressing all such relevant material facts had managed to obtain the order from the Land Tribunal which was neither supportalbe on facts nor sustainable in law and actually in the nature of abuse of the process of the Tribunal and the provisions to defeat the rights of the writ petitioners even when certain civil litigation between the parties initiated in O.S. No. 164/2000 was pending before the Civil Court.

4. The Learned Single Judge has also noticed that the impugned order passed by the Tribunal was in grave violation of the principles of natural justice and therefore the writ petition was allowed and the order of the Tribunal was quashed.

5. The Learned Single Judge further examined the need or otherwise of remanding the matter to the Tribunal as is the norm in all such situations where orders passed by the Tribunal are set aside either on the ground of want of appropriate order or any other technical reasons and for reconsideration of the entire matter by applying the correct provisions of law and alter giving an opportunity to all concerned interested persons. The Learned Single Judge found that this is not a situation where the remand is necessary as the orders made against the present appellant in earlier rounds of litigation had attained finally. The Learned Single Judge on examination of merits of the claim made by the appellant before the Land Tribunal where an application in Form No. 1 in terms of Section 11 of the Certain Inams Abolition Act and an application in terms of Section 77A in Form No. 7A under the Karnataka Land Reforms Act, 1961 were pressed into service, held that both applications were not sustainable in law. There was no way of the present appellant getting any relief by Land Tribunal in her favour under either of these two statutory provisions and therefore, while quashing the order of the Tribunal, did not choose to remand the matter and left the matter as at that.

6. Sri. Naresh Kulkarni, Learned Counsel appearing on behalf of the appellant has vehemently urged that the matter warrants interference in writ appeal jurisdiction, as the Learned Single Judge has failed to notice the real nature of the right of appellant and the appellant had produced voluminous records and documents to indicate that the ancestors of the appellant were Inamdars who

had been granted the subject land by way of Inam, after the Inams were abolished, persons like the appellant who were cultivating the lands become entitled for grant of occupancy rights of the land. The Learned Single Judge has not examined such aspects in their proper perspective, therefore the matter warrants interference.

7. It is also submitted that, the Learned Single Judge assuming that he had found some wrong with the impugned order of the Tribunal and it was in violation of principles of natural justice, for not impleading the writ petitioners to the proceedings before the Tribunal, should have only remanded the matter to the Tribunal but had put an end to the matter after quashing the order of the Land Tribunal.

8. The Learned Counsel for appellant Sri. Naresh Kulkarni has also sought for adjournment for tomorrow to avail the services of Senior Counsel.

9. Sri. Ameet Kumar Deshpande, Learned Counsel appearing for Respondent Nos. 4,5,6,7 and 9 has supported the order of the Learned Single Judge and submits that the order has been correctly passed after examining all aspects of the matter and does not warrant any interference in this appeal.

10. Sri. Sharanabasappa K. Babashetty, Learned High Court Government Pleader appearing for the State also supports the order of the Learned Single Judge and submits that for a change he cannot support the order of the Land Tribunal and that he has gracefully accepted the order of the Learned Single Judge.

11. We have perused the order passed by the Learned Single Judge and the appeal papers and give our anxious consideration to the submissions made by the Learned Counsel for appellant.

12. The appellant had claimed grant of occupancy rights of the land as a cultivator of land and also on the premise that her ancestors had been granted the land as an Inam land and therefore is entitled for grant of occupancy rights in terms of Section 11 of the Certain Inams Abolition Act, 1977.

13. As submitted by Sri. Naresh Kulkarni, Learned Counsel appearing for the appellant, the appellant had also filed an application in Form No. 7A seeking for grant of occupancy rights under the provisions of Karnataka Land Reforms Act, 1961 and Section 77A of the Act.

14. The Learned Single Judge has dealt with the applications and relevant provisions of Certain Inams Abolition Act, 1977 and the Karnataka Land Reforms Act, 1961 in the following parts of the order:

8. I have perused the papers and given anxious consideration to the submissions made by the Learned Counsel appearing for the petitioners as well as respondents. Indeed the impugned order at Annexure "T" is passed without notice to the petitioners who are interested persons as contemplated under the Act. A perusal of the order would disclose that the petitioners were not made

parties to the proceedings. The application is for grant of occupancy rights in respect of an extent of 5 acres 8 guntas, which is purchased by the petitioners. It is also not in dispute that the names of the petitioners appear in the Record of Rights. Having regard to the fact that the petitioners are interested persons, they ought to have been notified of the proceedings. In fact the only contesting party before the Land Tribunal was State. Indeed the petitioners ought to have been made parties to the proceedings and they should have been notified before the impugned order was passed. Thus, the impugned order is in violation of the Principles of Natural Justice.

9. In normal course this Court would have set-aside the order of the Land Tribunal and remitted the matter to the Land Tribunal for fresh disposal, but however no useful purpose would be served by remitting the matter to the Land Tribunal for the following reasons:

It is not in dispute that the Land in question is an Inam land. It is to be noticed that at one point of time, Smt. Waheedunnisa Begum claimed that she is a tenant of the entire extent. Initially her claim was granted by the Special Deputy Commissioner, (Inams) pursuant to two orders. But however, the said order was questioned by the 4th respondent and the Revenue Appellate Tribunal set-aside the order and remitting the matter. After remand, the claim of the 4th respondent was rejected, which has attained finality, which would necessarily mean that her claim for grant of occupancy rights is rejected pursuant to an order passed at Annexure "C". What is significant is that the entire extent of land has changed hands, may not be in its entirety, but in small portions pursuant to various sale deeds, which are referred to earlier. Indeed, it is to be noticed that the 4th respondent has joined Waheedunnisa Begum as well as Sagirunnisa Begum in executing the sale deeds on various occasions. In so far as the present enquiry is concerned, the petitioner has purchased an extent of 5 acres 8 guntas from Smt. Uma Bai, pursuant to a registered sale deed dated 09.09.1988.

10. In the first instance, Waheedunnisa Begum, respondent No. 4 and Sagirunnisa Begum sold an extent of 8 acres 15 guntas on 23.03.1978 and the petitioners have purchased a portion of it in the year 1988. It is to be noticed that the 4th respondent is a signatory and has joined the remaining two in executing the sale deed. Whatever title she had in the property has been transferred in favour of the petitioners. Even assuming that the 4th respondent can claim occupancy rights after executing the sale deed in favour of Smt. Uma Bai, no records are forthcoming to show that indeed she continued to cultivate the land as a tenant, which would entitle her to claim occupancy rights under Certain Inams Abolition Act. In fact respondent No. 4 has lost all her rights pursuant to the sale deed in favour of Smt. Uma Bai.

11. The next question would be whether the application, which is filed u/s 11 of Karnataka Certain Inams Abolition Act, 1977 is within time. To appreciate this contention Section 11 of the Act is required to be looked into. Section 11 of the Act of 1977 would read as under:

Procedure for registration as an occupant - (1) Every person entitled to be registered as an occupant under this Act shall make an application to the Tribunal constituted under the Karnataka Land Reform Act, 1961 on or before (31st March 1984). Such application shall be disposed of by the Tribunal as if it is an application made under the said Act.

(Provided that where the inam is an enfranchised inam, such application by the inamdar including holder of a minor inam shall be made to the Tahsildar on or before the 31st March 1991. The application shall be decided by the Tahsildar after issuing individual notices to the concerned inamdars and after such verification and enquiry held in such manner as may be prescribed).

A perusal of Section 11 would indicate that initially, the last date for filing of the application in Form No. 1 to claim occupancy right under the said Act was 31st March 1984. Thereafter, the time was being extended and finally, the last date to file the application was on or before 31st March 1991. Incidentally, it is to be noticed that if an application is filed within the stipulated time, the same is required to be considered by the Land Tribunal having regard to the provisions contained under the Land Reforms Act. But however, the question is whether the application filed by the 4th respondent is within time. Indeed the application for grant of occupancy right under the Act is filed on 26.06.1998. A perusal of the application would clearly indicate that it is filed under the Karnataka Certain Inams Abolition Act and under Rule 5 of the Rules, which would necessarily attract Section 11 of the Act. A perusal of the application, which is dated 26.06.1998 would indicate that the said application is filed beyond the last date as contemplated u/s 11 of the Act. Consequently, the said application is beyond time and could be termed as barred by statute.

12. In so far as Form No. 7A is concerned, which is filed under Sub-rule (1) of Rule 26(c) and u/s 77A of the Act, it is to be noticed that the Land Tribunal does not have jurisdiction to entertain the said application. Incidentally, it is to be noticed that the application, which is sought to be entertained by the Land Tribunal is the one which is found under Form No. 1. Be that as it may, since second application is filed u/s 77A of the Karnataka Land Reforms Act, I am of the view that the Tribunal has no jurisdiction to entertain the said application.

13. Having regard to the fact that both the contentions urged by the Learned Counsel for the petitioners are to be accepted inasmuch as the application is beyond the statutory period and the 4th respondent having lost all her rights pursuant to the order passed by the Special Deputy Commissioner under the Inams Abolition Act and that having attained finality and she having joined Waheedunnisa Begum and Sagirunnisa Begum in executing the sale deed in favour of the petitioner's vendor, I am of the view that the impugned order passed by the Land Tribunal at Annexure "T" cannot be sustained. Consequently, the following order is passed:

Petition stands allowed.

Annexure "T" stands quashed.

14. Rule is issued and made absolute.

The aforesaid discussion and findings of the Learned Single Judge would clearly indicate that there was no way of the appellant succeeding before the Land Tribunal in terms of her application made in the year 1998 when the statutes itself had foreclosed such a possibility by 31st March 1991. There is no further possibility of a person like the appellant to make use of Section 11 thereafter.

15. Even otherwise also, the Learned Single Judge has taken the trouble to examine the matter on merits as to whether the application was tenable in law and has found that there was no way of the appellant making any headway before the Tribunal under the provisions of Section 77A of the Karnataka Land Reforms Act. The Learned Single Judge has further reasoned that the appellant was never in possession and cultivation of the land for getting occupancy rights in her favour either as a Inamadar or as a cultivator.

16. In so far as the application u/s 77A in Form No. 7A is concerned, as noticed by the Learned Single Judge, the provisions would not attract the case of the appellant as an application of this nature u/s 77A of the Karnataka Land Reforms Act can be filed only by a person who is claiming tenancy in a landlord and who had failed to put forth an application in Form No. 7 within the stipulated time for conferment of occupancy rights u/s 48 of the Karnataka Land Reforms Act, 1961. It is not the case of the appellant that she was cultivating the land as a tenant, in fact her case is that she is the Inamdard and that she was cultivating the land as such.

17. Though Sri. Naresh Kulkarni, Learned Counsel appearing for the appellant vehemently urges that the appellant in fact had not sold any land in favour of respondents and their claim is based on bogus documents and it is a fictitious claim, we find that the submission of the Learned Counsel for the appellant is more abraded of this order based on facts on record.

18. We see further reason that revenue records would clearly disclose that the respondent's name had not figured in the columns meant to show the names of cultivators. If such is the statutes of the records, it cannot be held that the appellant can wake up at any point of time and to question the entries, that too in the present writ appeal, as an argument in favour of the appellant against the impugned order passed by the Learned Single Judge in the writ petition. It was for the appellant to have got the records corrected as and when or to have taken proceedings before the Civil Court for a declaration that the sale deeds based on which the respondent put forth their claims of ownership and possession was based are concocted documents and the appellant should have sought for remedial action. Admittedly such is not the action taken by the appellant. An argument before this Court in the present writ appeal, at this stage cannot make any difference to the factual and legal position as indicated by the Learned Single Judge.

19. In any view of the matter while we find there are more reasons to support the order of the Learned Single Judge sustaining the same, we are unable to come across a single tenable ground to say that the impugned order is bad either in law or on facts. We find absolutely no scope to interfere with the order passed by the Learned Single Judge. The appeal is totally meritless and is accordingly dismissed imposing cost of Rs. 10,000/- on the appellant.

The cost shall be paid to Respondent Nos. 4, 5, 6, 7 and 9 to be shared in equal proportion and the cost shall be deposited within four weeks from today, on deposit, respondents be permitted to withdraw the same. If the appellant fails to deposit the costs the Registry shall issue a certificate in favour of these respondents to recover the amount as if it is a decree passed by the Civil Court. Consequently, Misc. W. 81101/09 also stands dismissed.