

(2016) 11 KAR CK 0037

In the Karnataka High Court

Case No : Writ Petition No. 37903 of 2011 (KVOA)

S.R. Mavarappa Gowda

APPELLANT

Vs

M.G. Parameshwarappa

RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 6

Citation : (2017) 1 AirKarR 724

Hon'ble Judges : A.N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : S.V. Prakash, Advocate, for the Petitioners; Sri P.A. Kulkarni, Advocate, for the Respondent Nos. 1, 3, 4(b) & 4(c); Sri. K.N. Balraj, Advocate, for the Respondent No. 4(a); Sri. K. Manjunatha Rao Bhonsle, Advocate, for the Respondent No. 5(a); Served but

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.— Heard the learned Counsel for the parties and perused the record. The matter lies within a short compass.

2. The Tahsildar, Bhadravathi Taluk having received applications for re-grant of several lands under the Karnataka Village Offices Abolition Act, 1961 ("the Act" for short), conducted common enquiry and passed an order of re-grant dated 30.06.1984. The said order was assailed by filing an appeal, under Section 3(2) of the Act, before the District Judge, Shivamogga in M.A. Nos. 96/1984 and 97/1984. By a Judgment dated 11.09.1990, appeals were allowed in part and impugned order set aside and the case was remanded. The Tahsildar after holding enquiry passed an order dated 10.08.1982. The order was challenged before the District Judge, Shivamogga in M.A.N o. 21/1992 and by a Judgment dated 11.06.1996, the appeal was allowed and impugned order set aside and the case was remanded. The Tahsildar having passed a re-grant order on 25.05.2006, M.A. No. 9/2006 was filed before the District Judge, Shimoga. By a Judgment dated 24.01.2011, appeal having been allowed and the case again

remanded to the Tahsildar to hold fresh enquiry by affording sufficient opportunity to both parties and decide the entitlement of the parties to the re-grant under Section 6 of the Act, this writ petition was filed to quash the judgment as at Annexure-N.

3. The Village Offices Abolition Act was enacted by the Karnataka Legislature by finding the expediency in public interest to abolish the Village Offices which were held hereditarily before the commencement of the Constitution and the emoluments pertaining thereto and to provide for matters consequential and incidental thereto.

4. Sub-section (1) of Section 3 of the Act empowers the Designated Authority to decide certain questions as to;

(a) whether any land was granted or continued in respect of or annexed to the village office by the State; or

(b) whether any person is holder of a village office; or

(c) whether any person is an authorised holder; or

(d) whether any person is an unauthorized holder.

5. Sub-section (2) of Section 3 provides to the aggrieved person by such decision, to file an appeal to the District Judge of the District within ninety days of such decision and the decision of the District Judge on such appeal shall be final. Provisions of Sections 4, 5, 12 and 14 of the Limitation Act, 1963 have been made applicable to such appeal by way of insertion made to the Act by Act No. 13 of 1978 with effect from 07.08.1978.

6. Section 4 of the Act provides for abolition of the Village Offices together with incidents thereof. Section 5 provides for re-grant of land resumed under Section 4 to the holder of the Village Office. Section 6 provides for re-grant of land resumed under Section 4 to authorised holders. Section 7, substituted by Act 13 of 1978, provides for eviction of unauthorised holders etc. Section 7-A places Restriction on transfer etc. Section 10 makes the Inquiry and proceeding before the Designated Authority to be Judicial proceedings within the meaning of Sections 193, 219 and 229 of Indian Penal Code.

7. Learned District Judge even after noticing the fact that the parties to the dispute are agitating their rights as regards to an order of re-grant since from 1981-82, despite the specific direction issued in the earlier proceedings has again remanded the case.

8. The Appellate Authority, if finds the order under appeal has not disposed of the case satisfactorily i.e., in the manner required by law and hence, it is no order in the eye of law, it can remand the case for consideration afresh. However, Appellate Authority should be circumspect in ordering the remand, that too when the case had been remanded earlier with specific direction for consideration and decision. An unwarranted order of remand gives litigation an undeserved lease of

life and must be avoided.

9. A case cannot be remanded to the Original Authority unless the inquiry conducted is found to be vitiated. Onus to lead sufficient evidence to establish the case is on the applicant. The Appellate Authority, if finds, that the applicant has failed to establish his case, cannot remand the case for consideration, which would virtually give the applicant a second opportunity to establish the case.

10. In the present case, Tahsildar did not decide the case on any preliminary point. The case having been remanded, after holding inquiry, the Tahsildar passed re-grant order dated 25.05.2006. The learned District Judge has not found that the evidence brought on record by the parties is insufficient to finally decide the appeal. It is not a case where a finding has been entered, that a fresh inquiry is necessary on the ground that the inquiry conducted by the Tahsildar is illegal and/or vitiated. Though, both parties have placed evidence on record of the case before the Tahsildar, impugned judgment has been passed, which suffers from the same legal infirmity as was pointed out in the case of M.H. Mahabaleshwar v. Joint Registrar of Co-Operative Societies, reported in ILR 2014 KAR 1937. Learned District Judge while passing the impugned judgment has not kept in view the ratio of law laid down in the case of Raja Veerappa v. District Judge, ILR 1985 KAR 2923, wherein, it was held that the District Judge should scrutinize the evidence and deal with the facts of the case, as is done in an appeal, under Section 96 of CPC, as the provisions of Order 41, CPC govern the appeals arising under the Act.

11. Having regard to the fact that there was remand of the case not once, but twice, the judgment of remand passed again, vide Annexure-N is wholly unwarranted. There is abdication of duty in the matter of deciding the appeal. The litigation having commenced in 1981 and reached the District Judge thrice, is still alive.

12. Regard being had to the object behind the statute and the category to which the applicant(s) belong, such person(s) can ill-afford to the endless litigation. Judgment of remand passed vide Annexure-N being mechanical and opposed to the position of law stated supra, cannot be sustained.

13. In the result, the petition is allowed and impugned judgment, as at Annexure-N, is quashed. Consequently, M.A. No. 9/2006 stands restored for consideration by the Additional District Judge, Shivamogga. The Registry shall return LCR to the District Court, Shivamogga, without any delay. Additional District Judge, Shivamogga shall issue notice to the parties and decide the case within a period of three months, from the date the parties are served. Learned advocates appearing for the parties in this petition shall notify their respective clients to appear in the Court of Additional District Judge, Shivamogga on 17.12.2016 and receive orders.

14. Contentions of both sides are left open. No costs.