

(2006) 04 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 21054 of 2005

Sri Anjaneyaswamy Temple

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 B (2), 9 (c)
Karnataka Land Revenue Act, 1964 — Section 136 (3)

Citation : (2006) 04 KAR CK 0028

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Shantesh Gureddi, for the Appellant; Ramesh Aneppanavar, learned High Court Government Advocate for Respondents-1 and 2 and D.L.N. Rao, for P.N. Narayanaswamy, for Respondent-3, for the Respondent

Judgement

R. Gururajan, J.—Anjaneyaswamy Temple represented by its Archak Sri Srinivasamurthy is before me seeking a writ of certiorari to quash the order dated 27-7-2005 (Annexure-L) passed by the Special Deputy Commissioner, Bangalore.

2. Respondent 3-Krishnappa, claiming to be a tenant filed Form 7 before the Land Tribunal. Same was rejected by an order dated 21-6-1977. Third respondent thereafter filed Form I under Rule 7(4) of the Mysore (Religious and Charitable) Inams Abolition Rules, 1956 on 2-7-1983. Land Tribunal by its order dated 25-3-1988 rejected the claim of respondent 3 in respect of Survey No. 77 of Thindlu Village of Yelahanka Hobli to an extent of 1.20 cents. A writ petition was filed in W.P. No. 28171(A) of 1991 by the third respondent challenging the said order of the Tribunal. This Court remanded the matter back to the Tribunal in terms of its order dated 14-8-1996. Tribunal thereafter granted occupancy rights in favour of Krishnappa by its order dated 30-7-1997. That order was challenged by the present petitioner in W.P. No. 22251 of 1997. Petition was dismissed in terms of the order dated 28-10-1998, A writ appeal was filed by the petitioner in W.A. No. 2901 of 1999. Matter was remanded by the Appellate Court

to the Tribunal. The Special Deputy Commissioner u/s 136(3) of the Karnataka Land Revenue Act, 1964 passed an order setting aside the entries made in favour of respondent 3 in terms of his order dated 27-4-2001. It was observed therein that the name of respondent 3 was inserted in a different handwriting and ink without mutation entry. The said order of Special Deputy Commissioner was challenged by Krishnappa, respondent 3 herein, in Writ Petition No. 21743 of 2001. This Court accepted the said order in terms of its order dated 10-7-2002. A writ appeal was filed in W.P. No. 4014 of 2002 and it was disposed of on 26-3-2004 confirming the order of the Special Deputy Commissioner. The Special Deputy Commissioner passed an order in the light of the earlier proceedings granting occupancy rights in favour of Krishnappa, respondent 3, by way of an order dated 27-7-2005. That order of the Special Deputy Commissioner dated 27-7-2005 is challenged in this writ petition.

3. Notice was issued. Contesting respondent has entered appearance through a Counsel, Statement of objections is filed. In the statement of objections it is stated that the land in question is an Inam land. The Mysore (Religious and Charitable) Inams Abolition Act, 1955 ("the Act" for short) thus applies to the proceedings. An application was filed under Rule 7(4) of said Rules. An application filed earlier stood rejected on the ground of jurisdiction. Contesting respondent would refer to the earlier proceedings in the matter. Contesting respondent would say that the petitioner had made a statement before the Tribunal that he has not made any application for grant of occupancy rights in his favour and that he was interested in the said land for the temple. Petitioner-Archak ought to have made an application u/s 6-A of the Act and that he has not made any such application. The present petitioner is an employee in postal department. The land, in the light of Inams Abolition Act, vested with the Government and the same is available for grant, according to the respondent, He would also refer to the revenue entries in the matter. Ultimately, respondent would say that the petitioner-Temple represented by Sri Srinivasamurthy, in collusion with the persons who are inimical towards him, has created and concocted revenue documents in collusion with the revenue officials.

4. Heard Sri Shantesh Gureddi, learned Counsel appearing for the petitioner. He would refer to various facts as referred to above to say that the impugned order requires interference on the facts of this case. Learned Counsel would say that the Special Deputy Commissioner has placed reliance on the order of the Land Tribunal which has been set aside by this Court. He invites my attention to the Pahani entries to say that those entries cannot be believed in the light of the order of this Court. He would also say that there is no acceptable evidence forthcoming with regard to tenancy in the case on hand. He would further say that the spot inspection cannot be made use of in the case on hand. He wants an interference on the facts of this case. Learned Counsel, however, finally argues that the order of the Special Deputy Commissioner has to go in the light of the latest order of the Supreme Court in M.B. Ramachandran Vs. Gowramma and Others, .

5. Per contra, Sri D.L.N. Rao, learned Senior Counsel for the contesting respondent would say that the impugned order is legally sustainable. He would say that despite orders of the Apex Court in the case of M.B. Ramachandran, the order of the Special Deputy Commissioner is a valid order and that cannot be disturbed. Learned Counsel would further say that the petitioner has no locus standi to maintain this petition. According to him, Archak has not filed any application and that being so he cannot challenge the order made in favour of the present respondent. Insofar as merits of the matter is concerned, he would invite nay attention to the statement of objections and findings of the Special Deputy Commissioner, to say that the order requires confirmation by this Court. He has also filed five additional documents. They were taken on record for the purpose of consideration of this case. Parties rely on a couple of judgments.

6. After hearing, I have carefully perused the material on record.

7. The first question that requires to be considered is as to whether the impugned order of the Special Deputy Commissioner is a valid order in terms of the law governing such matters?

8. Impugned order is passed by the Special Deputy Commissioner, Bangalore District, Bangalore.

9. An application in Form 7 was initially filed. Same was rejected on the ground of jurisdiction. Thereafter another application was filed in terms of the Mysore (Religious and Charitable) Inams Abolition Act. An order was passed by the Tribunal. That order was challenged by way of a writ petition. Learned Single Judge set aside the order and remitted the matter to the Tribunal. Land Tribunal confirmed the occupancy rights in terms of its order dated 30-7-1997. That was challenged by the present petitioner in W.P. No. 22251 of 1997. It was dismissed. Appeal was filed. Appellate Court remanded the matter to the Special Deputy Commissioner for a decision. The argument of the petitioner is that in the light of the judgment of the Apex Court in M.B. Ramachandran's case, the Special Deputy Commissioner has no jurisdiction to pass the impugned order.

10. The Supreme Court in M.B. Ramachandran's case, has considered the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954, the Mysore (Religious and Charitable) Inams Abolition Act, 1955 and the Karnataka Inams Abolition Laws (Amendment) Act, 1979. In paragraph 3 of its order, the Supreme Court notices that there were two Acts in the State of Karnataka, namely, the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (Act No. 1 of 1955), which related to abolition of personal inams and the Mysore (Religious and Charitable) Inams Abolition Act, 1955 (Act No. 18 of 1955), which related to the abolition of religious and charitable inams. The Karnataka Inams Abolition Laws (Amendment) Act, 1979 (Act No. 26 of 1979) was enacted by the Karnataka Legislature. Section 2 thereof amended some provisions of the Mysore Act 1 of 1955 relating to personal inams, and Section 3 whereof amended some of the provisions of the Mysore (Religious and Charitable) Inams Abolition Act,

1955 (Mysore Act 18 of 1955), which related to abolition of religious and charitable inams. The Supreme Court notices that in view of the amendments brought about, inter alia, the jurisdiction to determine occupancy rights was conferred on the "Tribunal" which was earlier conferred on the "Deputy Commissioner" under the unamended Acts. The Supreme Court notices of a writ petition having been filed by Shri Kudli Sringeri Maha Samsthanam Vs. State of Karnataka, , challenging the validity of the Amending Act. The High Court declared the entire Amendment Act of 1979 ultra vires in terms of its judgment. State preferred appeals. Appeals were dismissed by the Supreme Court in terms of the order dated 8-8-1996 without expressing any opinion on the validity of the Amendment Act, 1979. After noticing all these aspects, the Supreme Court would notice the arguments put forth before the High Court. Before the High Court, it was not disputed that the issues involved in the writ petition filed by Kudli Shringeri Maha Samsthanam were related to religious and charitable inams and not the abolition of personal inams, and that therefore, in that context, the provisions of the Amendment Act of 1979 relating to the amendment of Act 18 of 1955 relating to abolition of religious and charitable inams were challenged. It was further noticed that in the said writ petition filed by Kudli Shringeri Maha Samsthanam, validity of Mysore Act 1 of 1955 was not in question. However, the High Court declared the entire amendment Act ultra vires. The Supreme Court, in the light of this argument and in the light of the above referred facts, ultimately would say that the writ petition filed by Kudli Shringeri Maha Samsthanam did not concern with personal inams and related to only to the religious and charitable inams. In this view of the matter, the Supreme Court held that the High Court was in error in granting relief in such wide terms declaring the entire Karnataka Inams Abolition Laws (Amendment) Act, 1979 to be invalid, and consequently it set aside that part of the judgment and confined the declaration to the provisions of the Amendment Act of 1979 only to the extent it amended Mysore Act 18 of 1955. The Supreme Court also ruled that notwithstanding the fact that the said judgment was modified, it directed that if after 24-4-1992, the Deputy Commissioner had disposed of the matter under the Mysore Act 1 of 1955 which fell within his jurisdiction, the said orders would not be affected by that judgment and were saved, but that from then onwards, the jurisdiction shall be exercised by the Land Tribunal, including the matters pending before the Deputy Commissioner. A careful reading of the judgment of the Supreme Court it is clear to me that the Supreme Court confirms that the jurisdiction is still available to the Deputy Commissioner insofar as it exercises power under Act 1 of 1955. In the light of arguments in para 7 of the said judgment and in the light of the findings in paragraphs 9 to 11, what is clear to me is that the Supreme Court has confirmed the availability of the jurisdiction to the Special Deputy Commissioner insofar as the petition under Mysore (Religious and Charitable) Inams Abolition Act, 1955. The Supreme Court has ruled in unmistakable terms that Kudli Sringeri Maha Samsthanam's case would attract only the personal Inams Abolition Act, but it still has jurisdiction in the light of the Supreme Court holding that the Amendment Act 1 of 1955 was not in issue. Hence, as rightly

pointed out by Sri D.L.N. Rao, the Special Deputy Commissioner still has jurisdiction in terms of the judgment of the Supreme Court. The argument of Sri Gureddi is rejected.

11. The second question that is seriously argued before me is with regard to the right of Srinivasamurthy in his capacity as Archak to challenge the impugned order.

12. Sri D.L.N. Rao, learned Senior Counsel, as I mentioned earlier, would refer to the statements made in para 8 of objection statement to say that the petitioner has no locus to question the impugned order in respect of the land in question since he has neither claimed nor is in possession of the property at any point of time. In fact, Sri Shantesh Gureddi, learned Counsel repeatedly clarified to me that his client was never a claimant and that he has questioned the order only to save the temple property.

13. Let me see from the material on record as to whether this petitioner can maintain this writ petition. This case has a checkered history as I see from the facts narrated in the writ petition. Initially, an application was filed in Form 7 and the same was rejected. Thereafter, Form I was filed under Mysore (Religious and Charitable) Inams Rules, 1956 and that was rejected in terms of the order dated 25-3-1988. That order was challenged by way of a writ petition in this Court. It is seen that the W.P. No. 22251 of 1997 was filed by Anjaneyaswamy Temple represented by its Archak Srinivasamurthy. Before the learned Single Judge no specific objections were raised by the third respondent. An appeal was filed in W.A. No. 2901 of 1997 by the Temple represented by its Archak. The Division Bench in para 3 of its order has no doubt ruled that all contentions including those of respondent 3-Krishnappa that the appellant has no locus standi to contest the proceedings, shall be available to the parties; and that they would be at liberty to raise any contention available to them. This Court did not give any finding with regard to locus in the said appeal. It only left open all contentions for the purpose of raising before the authorities. After remand, matter was considered by the Deputy Commissioner. Before the Deputy Commissioner it is nowhere whispered that the present petitioner has no locus at all. In fact, matter was argued only on merits. As mentioned earlier, an application has to be filed under Rule 7(4) of the Religious Inams Abolition Rules. There has to be somebody to represent the temple in terms of the material facts. Petitioner himself showed Srinivasamurthy as representing the temple. In fact, the earlier writ petition was filed only by the temple represented by its Archak Srinivasamurthy. Respondent would say in the statement of objections that the order was challenged by Archak representing the temple. Therefore, what is clear to me is that the Archak is not claiming for himself and is only representing the temple. The Scheme of Mysore (Religious and Charitable) Inams Abolition Act would provide representation insofar as religious institutions are concerned. Therefore, on facts I am satisfied that the temple is represented by its Archak and he has every right to maintain this writ petition. Conduct of the respondent

and the given circumstances would compel me to reject the argument advanced by the contesting respondent. In fact, Archak has led the evidence and the same was not objected to by the respondent. A reading of Section 9(c) in the light of Section 48-B(2) of the Karnataka Land Reforms Act, 1961 would show that the temple has some interest and the temple is represented by the Archak. It is not the case of the third respondent that Srinivasamurthy is not representing the temple. On the other hand, he asserts that he is representing the temple in the objection statement. In fact, notices were sent only to Srinivasamurthy in his capacity as a representative of the temple. Even before the Special Deputy Commissioner in the written arguments, respondent 3 admitted that the temple was represented by Archak Srinivasamurthy. Therefore, in the given circumstances and on the facts of this case, I am not inclined to accept the argument of no locus as sought to be argued by the contesting respondent.

14. Third respondent's Counsel places before me a judgment of the Division Bench of this Court in Ramanna Vs. State of Karnataka, , for the purpose of locus. A careful reading of the said judgment would show that the said judgment is not available to third respondent. In the said judgment, the Archak of the deity also made an application for registering him as an occupant. Facts have been narrated in para 3 of the judgment. It is stated therein that one Ramanna made an application for registering him as a tenant and the Tahsildar who was the Muzrai Officer-in-charge of the temple also filed an application for registering the land in the name of deity. Tribunal granted occupancy rights in favour of Ramanna and rejected the application of the Tahsildar. While the matter stood thus, the devotees of the deity Anjaneyaswamy, Tyloor, Maddur Taluk filed a writ petition. It was in that context that the Court ruled that the devotees cannot maintain a writ petition. That was also held not to be a public interest litigation. Temple in that case was represented by Tahsildar, a Muzrai Officer-in-charge of the temple; whereas, in the case on hand, the temple is represented by Archak.

15. Taking into consideration the facts of this case and the distinguishing factors in the case of Ramanna, I am of the view that the said judgment does not in any way alter the position with regard to locus being available to the petitioner. This argument is rejected.

16. Coming to the merits of the case, let me see as to whether the petitioner has made out a case for interference on the facts of this case.

17. This Court has to notice one essential feature that arises in such matters. It is no doubt true that the agrarian reform is a welcome measure. But, in the said process, the religious institutions, to which lands have been otherwise provided by devotees, are not to be deprived of their lands unless a very strong case is made out by an applicant seeking occupancy rights thereof. Lands are provided to the temples or Mutts by the devotees for the temple/mutt activities. If there is a real tenancy, such tenancy has to be respected given to a rightful tenant in the light of agrarian laws. But, a doubtful tenant cannot get temple lands on the ground of agrarian reforms. Authorities and Courts are to be careful in evaluating

the merits for the purpose of granting temple lands. Bearing this in mind, let me see as to whether petitioner has made out a case for my interference.

18. Admitted facts would reveal of an application made under the Mysore (Religious and Charitable) Inams Abolition Act seeking occupancy rights. The Act provides for an application and its consideration by the Special Deputy Commissioner. Let me see the order challenged to satisfy myself as to whether the petitioner has made out a case as I mentioned earlier. The Deputy Commissioner refers to the history of the case and the evidence on record. He notices in his order that Srinivasamurthy cannot claim any occupancy rights and his claim was rejected. In fact, it is not the case of Srinivasamurthy that he has claimed any occupancy rights and he has also not led any evidence. In fact, even before me, Sri Shantesh Gureddy, learned Counsel made a submission in unmistakable terms that his client is not claiming any occupancy rights as an Archak. Hence, the finding to that extent with regard to occupancy rights in favour of Srinivasamurthy has to be accepted in the given circumstances and in the light of the submission made before me by the learned Counsel.

19. What is required to be noticed is as to whether the contesting respondent-Krishnappa has made out a case for tenancy. For the said purpose, it is to be noticed that initially an application in Form 7 filed by the third respondent-Krishnappa came to be rejected on the ground of jurisdiction. Thereafter, he made an application for occupancy rights in respect of the land in question. That was also rejected. Writ petition was filed. Writ appeal was also filed. Matter was remanded. Authorities noticed that the application in Form I was filed on 2-7-1983 i.e., before the last date of filing such application. The Special Deputy Commissioner for the purpose of cultivation of land as on 1-7-1990 refers to spot inspection by the Land Tribunal. In fact, the spot inspection order has been set aside by this Court. Even otherwise, let me see as to whether any documentary evidence with regard to cultivation is made available to the Deputy Commissioner. Krishnappa, even according to the Special Deputy Commissioner, has produced records, namely tax paid receipts, NOC obtained by the KEB, loan obtained by Byatarayanapura Agricultural Service Co-operative Society to the Tribunal. The said documents are looked into for the purpose of cultivation by the petitioner. In fact, the respondent 3 has filed before this Court tax paid receipts. They are for the years 1960-61, 1962-63, 1963-64 and 1969-70. These receipts would show that the tax has been paid by the Anjaneya temple. The election identity card filed at Annexure-R8 would show the name of Hanumanna and his father's name as Venkatappa. RTC extract for the years 1981-82 to 1985-86 would show that the name of V. Krishnappa. In fact, insofar as RTC are concerned, this Court has to notice certain proceedings against the petitioner. Residents of Thindlu Village filed a petition u/s 136(3) of the Karnataka Land Revenue Act, 1964 with regard to entries in the RTC. In this order the Special Deputy Commissioner observes as follows.--

In the first instance it would be relevant to mention that the land in question is

an inam land endowed to Sri Anjaneyaswamy temple. The villagers and the petitioner who are Dharmadarshis of the temple and agitating that the land in question is under the cultivation of the Archak of the temple-Sri Srinivasamurthy from the time of his ancestors and that he was in possession, cultivation and enjoyment of the land and utilising the yield and proceeds for the performing pooja in the temple and the 2nd respondent has no any manner of right and title over the land in question. As could be seen from the entries in the RTCs, it could be seen that the name of Sri V. Krishnappa is a later insertion in the RTCs for the years 1971-72 to 1975-76 and as it appears the insertion of the name of Sri V. Krishnappa is in a different handwriting; whereas originally the name of Shri Srinivasamurthy as continuing. And as it appears from the year 1975-76 the name of Srinivasamurthy is deleted and RTC. The vehement allegation is that the 1st respondent has in collusion with the 2nd respondent, has got his name entered in the RTCs along with the name of Srinivasamurthy and subsequently the name of Srinivasamurthy is deleted. As could be asserted from the contention of the 1st respondent no gutta or lease deed was entered in favour of the 1st respondent to cultivate the land in question either before vesting with lands with Government or later after the Act came into force. Any prudent man could say that in the RTC particularly for the year 1974-75 and before made in the name of Srinivasamurthy along with the name of Archak Srinivasamurthy is a later entry and in particular with a different ink and writing. When such is the case, the entry of the name of Sri Srinivasamurthy in column No. 12(2) could be said that it is illegal, unauthorised and that therefore it is liable to be cancelled, The 1st respondent has failed to show any document in support of his contention that he was under the cultivation of the land in question and except his statement. However, the matter is now remanded to the Deputy Commissioner quash the order of Land Tribunal with a direction to dispose of the matter in accordance with the rules. Thus, the question of entering the name of Srinivasamurthy and its validity has to be decided by the Deputy Commissioner under the provisions of the Inams Abolition Act.

20. In fact, the Special Deputy Commissioner has come to a categorical conclusion that there is no evidence to show that Sri Krishnappa, the third respondent herein, was cultivating the land as on the date of coming into force of the Inams Abolition Act and later. It is to be noticed that there is an order to delete the name of Krishnappa. This order was challenged by way of Writ Petition No. 21743 of 2001, In the said writ petition, learned Single Judge of this Court has rejected a similar argument of locus in para 10 of its order dated 10-7-2002. Thereafter learned Single Judge accepted the order of the Special Deputy Commissioner. In fact, learned Single Judge held in para 12 of his order reading as under:

... If entry is made for the first time in the year 1971-72 after the land was vested with the Government, those entries would be of no relevance in deciding the claim of the petitioner under the provisions of the said Act as he must demonstrate that prior to the date of vesting on 1-3-1970 he was in occupation

of the land and therefore he is entitled for occupancy rights.

This Court further notices that.--

Merely because the archak of the temple who was cultivating the land has not made any application for grant of occupancy rights that is no reason to uphold the entries made in the name of the petitioner without any valid and legal order mutation order being passed in his favour.

This order was challenged by Krishnappa by way of an appeal in W.A. No. 4014 of 2002. The Division Bench notices that the apprehension of the petitioner that the finding of the Deputy Commissioner would prejudice his case, is baseless. The Division Bench also observes that the order passed in that proceedings would be subject to a decision before the Special Deputy Commissioner and the Competent Authority. The Division Bench ultimately refuses to interfere with order of the learned Single Judge.

21. Material on record, even as on today would not support the contention that the third respondent was cultivating the land on the crucial date. There is absolutely no material placed before the Special Deputy Commissioner with regard to cultivation as on the date of the Act coming into force. Tax paid receipts, etc., would not in any way support the claim of the third respondent. In fact, the Special Deputy Commissioner has chosen to accept the cultivation on the ground of tax paid receipt, NOG from the KEB, loan documents, etc., without there being any primary documents of cultivation in the case on hand.

22. I am satisfied that the claim made by the third respondent is not based on facts and the Special Deputy Commissioner has passed a perverse order. In fact, the Special Deputy Commissioner has accepted the case of cultivation by referring to the irrelevant material in the case on hand. Any order passed on irrelevant material is nothing but a perverse order as understood in law. Neither there is any acceptable evidence nor is there any document for the purpose of grant in favour of third respondent. In the circumstances, I am satisfied that the order of the Special Deputy Commissioner requires my interference. Petitioner has made out a case that in the absence of any acceptable material evidence placed, the Special Deputy Commissioner could not have accepted the case of the contesting respondent,

23. In the circumstances, I deem it proper to accept the writ petition. Accordingly, the writ petition is accepted. Order of the Special Deputy Commissioner is set aside. Form I filed by Krishnappa stands rejected. At the same time, this Court deems it proper to say that the temple land has to be made use of for the purpose of temple activities.

On the facts of this case, I deem it proper to direct the contesting respondent to pay a cost of Rs. 5,000/- towards legal expenses.

24. Ordered accordingly.