

(2014) 01 KAR CK 0138
In the Karnataka High Court
Case No : Writ Petition No. 11422 of 2006 (LR)

Sri Budhi Basweshwar Math

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Citation : (2014) 3 KarLJ 334

Hon'ble Judges : Mohan M. Shantana Goudar, J

Bench : Single Bench

Advocate : A.M. Nagaraj, Advocate for the Appellant; Sharanabasappa K. Babshetty, High Court Government Pleader and Sri Shivakumar Kalloor, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Mohan M. Shantanagoudar, J.—The petitioner is a Math and it is an Inamdar in possession of the lands bearing Sy. No. 860 measuring 8 acres 14 guntas, Sy. No. 113 measuring 81 acres 12 guntas of Gabbur Village, Sy. No. 195 measuring 5 acres 29 guntas and Sy. No. 348 measuring 7 acres 13 guntas of Maseerkal Village, Sy. No. 273/1 measuring 4 acres 12 guntas and Sy. No. 273/2 measuring 10 guntas of Devadurga Village. The Land Tribunal has granted occupancy rights in respect of four survey numbers out of the aforementioned six survey numbers. The remaining two survey numbers i.e. Sy. No. 273/1 and Sy. No. 273/2 measuring 4 acres 12 guntas and 10 guntas respectively of Devadurga Village are in dispute in this writ petition. It is needless to observe that the four other survey numbers mentioned supra are not the subject-matter of this writ petition inasmuch as occupancy rights are already granted in favour of Inamdar.

2. The Land Tribunal, Devadurga by the impugned order dated 9-6-2006 rejected the application filed by the petitioner in respect of Sy. No. 273/1 and Sy. No. 273/2 on the ground that the occupancy rights cannot be granted in favour of the petitioner since the said lands have lost characteristic of agricultural lands as defined under the provisions of Karnataka Land Reforms Act, 1961 (for short,

"the Act").

3. The respondents 3 to 5 herein are neither the owners nor the tenants/inamdars of the lands in question. However, they are representing public at large. According to respondents 3 to 5, the properties in question are belonging to public at large and that there is burial ground apart from shops and houses. The very contentions were put forth by the public before the Land Tribunal, the Land Tribunal based on the actual situation refused to grant occupancy rights in favour of the petitioner, since Sy. Nos. 273/1 and 273/2 are not used for agricultural purposes.

4. Before proceeding further, it is relevant to note the definition of "land" as defined u/s 2(A)(18) of the Act, which reads thus:

2. (A) (18) "Land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non-agricultural purposes.

5. Thus it is clear that "land" means agricultural land which is used or capable of being used for agricultural purpose or purposes subservient thereto. To find out as to whether the land in question is an agricultural land or not, this Court directed the State Government to produce the records maintained by the Office of the Revenue Department. The sketch of the Tahsildar dated 22-5-2006 is placed before the Court for perusal. The same reveals that out of the total extent of 4 acres 21 guntas, an area of 1 acre is utilised for the purpose of laying the road for public. In another area of 1 acre 1 gunta, Math, shops and houses are situated. The remaining extent of land i.e., 2 acres 20 guntas is utilised by the public as burial ground. Thus it is clear that the lands in question are not being used for agricultural purpose, so also they are not capable of being used as agricultural lands. Therefore, the Tribunal is justified in concluding that the occupancy rights cannot be granted in respect of the aforementioned lands.

6. In this context, learned Counsel for the petitioner submits that the premises of Math, shops and houses which are already in existence in an area of 1 acre 1 gunta should not be disturbed by public at large and that the petitioner has no objection for utilising the remaining portion of the land i.e., 2 acres 20 guntas as a burial ground. Sri Shivakumar Kalloor, learned Counsel for respondents 3 to 5 also submits that the portion which is being utilised as burial ground should not be disturbed by the petitioner and that the houses, shops and math if standing on the remaining portion of the land also would remain undisturbed.

7. The said submissions of the Counsel are recorded. In order to end the litigation once and for all, the aforementioned arrangement is just and proper. By the said process no prejudice or injustice would be caused to either of the parties. The road, which is already laid, is meant for public and therefore the road would continue within 1 acre of land. The Math, shops and the houses,

which are already standing in an area of 1 acre 1 gunta also shall continue to exist and they should not be disturbed by anybody. So far as the remaining portion of 2 acres 20 guntas is concerned, which is now used as a burial ground, that will continue as burial ground as claimed by the respondents 3 to 5.

With the aforementioned clarifications, the writ petition stands disposed of.