

(2003) 11 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 22961 of 2000

Sri. Govindaraju

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Karnataka (Religious and Charitable) Inams Abolition Act, 1955 — Section 29, 5, 5 A, 6 A, 7

Citation : (2004) 2 KCCR 1112

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : K. Suman, for the Appellant; M.N. Ramanjaneya Gowda, Government Advocate for Respondents 1 and 2 and M. Thimmarayaswamy, for Respondents 3 and 4 and L.Rs. of Respondents 4, 4(a) to (e), for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Petitioner in this writ petition claims that he is an Archak of Sri Venu Gopalaswamy Temple situated at Agrahara Village, Yelahanka Hobli, Bangalore North Taluk. It is also claimed that he is the hereditary Archak of the temple and his forefathers who were archaks of the temple earlier were cultivating the Devadaya Inam land belonging to the temple and that he is continuing the same by cultivating an extent of 5 acres 7 guntas of such land in Sy. No. 2 of Agrahara Village, Yelahanka Hobli, Bangalore North Taluk belonging to the temple.

2. Petitioner is aggrieved in this writ petition by order dated 28.4.2000 (copy at Annexure-F) passed by the Karnataka Appellate Tribunal in Appeal No. 463 of 1999 dismissing the said appeal as not one maintainable in law. Petitioner urges that the Tribunal is wrong in dismissing the appeal at the threshold as one not maintainable in law that the appeal was very much maintainable under the provisions of the Karnataka (Religious and Charitable) Inams Abolition Act, 1955 (for short "the Act") particularly u/s 29 and the Tribunal ought to have

considered the appeal on its merits and render a decision on the same.

3. The appeal itself had been preferred by the Petitioner as against the order dated 9th July, 1999 (copy at Annexure-E) whereby the Special Deputy Commissioner, Bangalore District had rejected Petitioner's application filed u/s 6A of the Act for conferring occupancy rights in his favour in respect of the agricultural land referred to above.

4. It is not necessary for this Court to go into the merits of the order passed by the Special Deputy Commissioner rejecting the claim of the Petitioner for conferring occupancy rights in his favour. The limited grievance of the Petitioner is about the correctness or otherwise of the order of the Tribunal in rejecting his appeal before it as one not maintainable in law.

5. However, to complete the narration it is to be mentioned that the Petitioner had originally filed an application u/s 6A on 30.3.1991 before the Land Tribunal, Bangalore North Taluk as at that time it was the Land Tribunal which was the competent Forum to consider such application having regard to the Amendment Act 26 of 1979 which had brought about certain changes to the Act. This application of the Petitioner had met the fate of rejection vide order dated 31.1.1992 passed by the Land Tribunal and the Petitioner had preferred Writ Petition No. 34322 of 1993 before this Court as against this order of rejection and this Court by order dated 23.3.1995 had allowed the writ petition by quashing the order of the Land Tribunal and remanded the matter for fresh consideration of the application of the Petitioner filed u/s 6A of the Act for conferment of occupancy rights.

6. It is at this stage that the matter went before the Special Deputy Commissioner for Inams Abolition having regard to the developments by then. The amending Act 26 of 1979 where under the provisions of the Act had been amended and the function of examining an application for conferment of occupancy rights u/s 6A of the Act had been assigned to the Land Tribunal under that amendment had come in for adverse notice of this Court and the Division Bench of this Court in the case of Shri Kudli Sringeri Maha Samsthanam Vs. State of Karnataka, had declared that the amending Act was ultra-vires, beyond the competence of the State Legislature and null and void. As a consequence of this declaration the position ante to the amending Act 26 of 1979 was reverted to and in so far as the Karnataka (Religious and Charitable) Inams Abolition Act, 1955 is concerned the word "Tribunal" which had been inserted by this amending Act become in operative and the Deputy Commissioner continued to be the authority for considering the application filed u/s 6A of the Act. It is under these circumstances when the matter was remanded by this Court allowing W.P. No. 34322 of 1993, it went to the Special Deputy Commissioner for Inams Abolition who was the designated authority for considering such application at that time.

7. Sri K. Suman, learned Counsel for the Petitioner has submitted that the Tribunal is not right in rejecting the appeal as not maintainable, that the Tribunal

has failed to see that in view of the declaration made by this Court in the case of Shri Kudli Sringeri Maha Samsthanam's case the provisions of the Act as it were prior to the Amending Act 26 of 1979 stood revived and that as against the order passed by the Deputy Commissioner u/s 6A of the Act an appeal does lie to the Karnataka Appellate Tribunal under the provisions of Section 29 of the Act and as such the order is liable to be set aside and the matter remanded to the Appellate Tribunal for consideration of the appeal on merits.

8. Sri Ramanjaneya Gowda, learned Government Advocate appearing for Respondents 1 and 2 has not seriously disputed this position. Learned Government Advocate submits this is the legal position, in view of the declaration made by this Court in Shri Kudli Sringeri Maha Samsthanam's case and in view of the revival of the provisions of the Act as it stood prior to the Amending Act 26 of 1979.

9. Statement of objections has been filed on behalf of Respondents 3 and 4 who had contested the application of the Petitioner before the Deputy Commissioner as well as before the Appellate Tribunal. It is asserted that the Petitioner is not entitled for conferment of occupancy rights, that the land in question in fact was not devadaya inam land, Petitioner was not an Archak of the temple and he was not cultivating the land etc., etc. It is asserted that the decision of the Deputy Commissioner as well as the Appellate Tribunal is justified in law, no interference is called for at the hands of this Court for setting aside the same and these Respondents pray for dismissal of the writ petition.

10. Sri P. Srinivasaiah, learned Counsel appearing for 3rd and 4th Respondents has vehemently submitted that the rejection of the appeal by the Tribunal as one not maintainable in law is fully supported by the legal provisions of the Act and in this regard he has drawn my attention to the Amending Act 18 of 1990 whereby the provisions of Clause C to Sub-section (2) of Section 9 were altered and pointed out that by this amendment which has come into effect from 8.10.1990 the words "and the decision of the Tribunal shall be final" was added to Clause C of Sub-section (2) of Section 9 and submits that this provision of the Amending Act 18 of 1990 was not the subject matter of the decision of this Court in Shri Kudli Sringeri Maha Samsthanam's case and this provision continue to remain in operation in the Statute book as of now and in view of this amendment brought about by Act 18 of 1990 the decision of the Tribunal shall be final, continues to operate and will have to be given effect to. In this regard the submission of learned Counsel is that the word "Tribunal" here is with reference to the Forum examining the application made under the provisions of Sections 5, 5-A, 6-A, 7 and 8 of the Act and as of now such applications are being considered by the Deputy Commissioner, with the reverting of the position of law to pre 1979 amendment and it is only the Deputy Commissioner who should be understood to have been referred to as the Tribunal under this provision and if it is so understood the decision of the Deputy Commissioner becomes final in view of the Amendment Act 18 of 1990. Learned Counsel submits that if the decision

becomes final there is no further appeal envisaged as against the decision which has attained finality and therefore the Tribunal is fully justified in rejecting the appeal as one not maintainable in law and that the order of rejection should not be interfered with.

11. Sri Srinivasaiah, pursuing this line of arguments also submits that if one looks at the Section which has brought about changes by such amendments even under other enactments including the Karnataka Land Reforms Act, 1961 the intention of the Legislature was to give finality to the decision rendered by the Land Tribunal which was considering the applications for conferment of occupancy rights under various enactments including the Karnataka (Religious and Charitable) Inams Abolition Act, 1955 and when that is the clear intention of the Legislature and as per the Amending Act 18 of 1990 such intention having been evinced in respect of Karnataka (Religious and Charitable) Inams Abolition Act, 1955 also, it should be given effect to and if so there is no appeal that can be preferred as against the order passed by the Deputy Commissioner u/s 6-A of the Act and therefore writ petition should only be dismissed.

12. I have given my anxious consideration to the submission of learned Counsel for the parties with necessary care and attention. I find it little difficult to accept the contention of Sri Srinivasaiah, learned Counsel for the 3rd and 4th Respondents particularly for the reason that the Amending Act 18 of 1990 was an amendment in line and in pursuance of the earlier Amending Act 26 of 1979 by which the word "Deputy Commissioner" was replaced as "the Tribunal" for consideration of application for conferment of occupancy rights. The Amending Act 18 of 1990 was one to fully effectuate the provisions of the Amending Act 26 of 1979. It is also to be noticed that when the Amending Act 18 of 1990 was brought on the Statute book by the Legislature the decision of this Court in Shri Kudli Sringeri Maha Samsthanam's case had not been rendered and the decision came to be rendered only in the year 1992 subsequent to this amendment in the year 1990. Even if the argument of Sri Srinivasaiah, learned Counsel, that the intention of the Legislature was to bring about finality to the decision of the Tribunal is to be accepted as correct it is only such decisions of the Land Tribunal itself which it had rendered that the Legislature evinced an intention to make it final. In the instant case the decision is not one by the Land Tribunal as argued by Sri Srinivasaiah as the decision rendered was only by the Deputy Commissioner. Therefore it is not possible to accept the submission that it was the intention of the Legislature to make this decision of the Deputy Commissioner also to be a final and conclusive decision and not one maintainable or available for being questioned in an appeal u/s 29 of the Act. Yet another reason for rejection of the submission of the learned Counsel is that the appeal provisions u/s 29 was all along available on the Statute Book and continues to be so even now. Even when the law had been changed shifting the Forum for consideration of an application for conferment of occupancy rights u/s 6-A of the Act from the Deputy Commissioner to the Land Tribunal, the provision of appeal u/s 29 of the Act to the Appellate Tribunal from the orders passed by the Deputy

Commissioner remained in operation and was available for challenging such other orders passed by the Deputy Commissioner. This position only goes to show that it is the clear intention of the Legislature to provide the appellate remedy to the Appellate Tribunal u/s 29, whenever the order sought to be appealed against is passed by the Deputy Commissioner. Therefore the argument that in view of the Amending Act 18 of 1990 providing for finality to the orders passed by the Tribunal should also be understood as one providing finality to an order passed by the Deputy Commissioner also, as advanced by Sri Srinivasaiah learned Counsel for Respondents 3 and 4 cannot be accepted.

13. Further reason for rejecting the submission of Sri Srinivasaiah, learned Counsel for 3rd and 4th Respondents is that under the Act even when the word "Tribunal" had been inserted by the Amendment Act 26 of 1979 the Deputy Commissioner had certain functions to be performed under the Act and distinction had been maintained between the functions of the Tribunal and the functioning of the Deputy Commissioner. In fact some of the functions of the Deputy Commissioner had been made over to the Tribunal by the Amending Act 26 of 1979 and that was declared to be null and void by this Court in Shri Kudli Sringeri Maha Samsthanam's case. Therefore it cannot be said that the Deputy Commissioner and Tribunal are to be understood as the same functionary under the Act as submitted by Sri Srinivasaiah. Looking from any view of the matter it cannot be accepted that an appeal u/s 29 of the Act is not tenable in law as against the order passed by the Deputy Commissioner on an application before him filed u/s 6-A of the Act. If this is the legal position the Tribunal ought to have considered the appeal on its merit.

14. Rejection of such appeal as not tenable in law is not supported by any line of argument or any acceptable interpretation that may be placed on the provisions of the Act as it stands now.

15. This Court has not gone into the merits of either the application for condonation of delay in filing the appeal before the Tribunal or the merits of the order passed by the Deputy Commissioner as the appeal had been rejected at the threshold only on the question of maintainability.

16. In the result, this writ petition is allowed. The order at Annexure-F dated 28.4.2000 passed by the Karnataka Appellate Tribunal in Appeal No. 463 of 1999 is hereby quashed by issue of a writ of certiorari. The matter is remitted to the Appellate Tribunal for restoring the appeal to its file and to consider the same in accordance with law and to render a decision on the same. All contentions are left open to be urged before the Tribunal.

17. Sri Srinivasaiah, learned Counsel for 3rd and 4th Respondents submits that the Tribunal may be directed to expedite the hearing of the appeal as the matter is very old. The Tribunal may take note of this fact and ensure that the appeal is disposed of expeditiously. Writ Petition allowed. Rule made absolute.

18. Sri Srinivasaiah, learned Counsel, brings to the notice of the Court that

certain mistakes have crept in the Gazette publication in not taking note of the decision rendered by this Court in Shri Kudli Sringeri Maha Samsthanam's case, that instead of mentioning the word "Deputy Commissioner" the word "Tribunal" is mentioned and it may be directed to be corrected.

19. It may be noted that a declaration given by the Court automatically does not change the Statute and it should be suitably corrected by the Legislature by an amendment to the law. A declaration only makes the legal position clear. It is always for the Legislature to take note of such declaration and to bring about suitable changes in the law in conformity with the declaration, so that in future it avoids confusion to such persons who are driven to the same fate as the Petitioner for approaching this Court time and again for relief to which they are otherwise entitled to and a proper correction to the Statutory provisions can avoid further litigation.