

(2000) 10 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 36916 of 1997

Sri. Thipparaiah Since dead by L.Rs.

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Mysore Religious and Charitable Inams Abolition Act, 1955 — Section 6, 6 A

Citation : (2001) 2 KCCR 767

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : T.N. Vishwanath, for the Appellant; Bharamagouda, High Court Government Pleader for Respondents 1 and 2 and N.S. Krishnan, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Vallinayagam, J.—This writ petition is to assail the order of the Tribunal passed on 15.4.1977 in L.R.A. Nos. 3667, 2556 and 2557 of 1977-78 on the file of the Land Tribunal, Bangalore.

2. The case of the original Petitioner who is now dead and represented by the L Rs is that he is a tenant of the land bearing Sy. No. 32 measuring 3 acres 33 guntas situated at Nettigere Village, Uttarahalli Hobli, Bangalore South Taluk. The Petitioner is in continuous possession and enjoyment of the said land bearing Sy. No. 32 to an extent of 3 acres 33 guntas of Nettigere Village. Uttarahalli Hobli, Bangalore South Taluk, (hereinafter called as scheduled property). The schedule property is in possession and enjoyment of the Petitioner uninterruptedly. The Petitioner who is the tenant in respect of the schedule property, made an application before the 2nd Respondent for registration of occupancy right in his name. The 2nd Respondent registered the said application in LRF No. 3667 of 1977-78. The 2nd Respondent was pleased to confirm occupancy right in favour of the Petitioner with respect to the schedule property vide order dated 26.8.1982 on the file of the 2nd Respondent. The 3rd Respondent preferred Writ

Petition No. 40083 of 1982 on the file of this Hon'ble Court questioning the grant of occupancy right in favour of the Petitioner which was transferred to Land Reforms Appellate Authority, Bangalore and the same was numbered as L.R.A. 376 of 1986. The Land Reforms Appellate Authority allowed the 3rd Respondent's appeal on 14.6.1990 against which the Petitioner preferred Civil Revision Petition No. 4523 of 1990 before this Hon'ble Court. The said Civil Revision Petition was allowed on 3.8.1992 by quashing the impugned order and remitting the matter to the 2nd Respondent for disposal on merits in accordance with law by providing opportunity to the contesting parties to adduced evidence. After remand, the 2nd Respondent took up the matter for disposal on merits. The 2nd Respondent rejected the claim application on 16.4.1997 granting occupancy right in favour of 3rd Respondent with respect to schedule property without any basis. The R.T.C. extracts relating to the schedule property stands in the name of Petitioner. The R.T.C. extract relating to schedule property for the year 1984-85 clearly establishes that the Petitioner is in possession and enjoyment of the schedule property. The Petitioner is aggrieved by the order of the second Respondent, rejecting his claim with respect to the schedule property.

3. Mr. T.N. Vishwanath, learned Counsel appearing for the Petitioner submitted that the rejection is not proper, the occupancy right ought not to have been granted to the 3rd Respondent who is not in possession of the schedule property; the actual cultivation of the land on the relevant dates has been totally ignored. Thus he questioned the order.

4. Mr. N.S. Krishnan, learned Counsel appearing for 3rd Respondent submitted that after an elaborate consideration, the Tribunal has come to the conclusion that the Petitioner is not entitled to any right. The RTC produced does not show the name of the Petitioner. It shows only the name of third Respondent as Archak. The finding that he was not in possession and that the 3rd Respondent never cultivated, is a finding based on records and not liable to be interfered with. The learned Counsel also submitted that the land belong to a religious institution and the institution itself is not made a party. Thus the petition is resisted.

5. I have heard the arguments of the learned Government Advocate appearing for Respondents-1 and 2. On consideration of the arguments made by the respective learned Counsel, I am of the view that the Petitioner has not made out a case.

6. Section 6 of the Mysore Religious and Charitable Inams Abolition Act reads as follows:

6. Every tenant or the inamdar other than a kadim tenant or a permanent tenant shall, with effect on and from the date of vesting and subject to the provisions of Chapter IV, be entitled to be continued as a tenant under the Government in respect of land of which he was a tenant under the Inamdar immediately before the date of vesting.

7. The Petitioner is not claiming to be a poojary or Archak but claims to be a tenant. The RTC record shows that in column No. 12(3) index "1" is used to show that cultivation is made by the institution itself. It is claimed that the Archak-3rd Respondent has been cultivating the same in such capacity.

8. u/s 6A the occupancy right has been granted by the Tribunal.

9. In fact, in *Ejman Eregowda and Ors. v. State of Karnataka and Ors.* reported in 1991 (1) Kar LJ 509, this Court has held that:

The Tahsildar is not a representative of the temples but is only a representative of the Government which does not have any power over these temples for the reason that they are not Muzrai Institutions. The necessary parties are atleast the senior members of the village community to whom these temples belong. Valuable rights of occupancy cannot be bartered away in this fashion by the Tribunal.

6A reads:

(1) Where the inamdar is an institution of religious worship, a person: (i) rendering religious service, in or maintaining the institution as a pujari, archak or the holder of a similar office by whatever name called, or

(ii) rendering any service in such institution, and personally cultivating for a continuous period of not less than three years prior to the date of vesting by contributing his own physical labour or that of the members of his family and enjoying the benefits of any land comprised in the inam of such institution without paying rent as such in money or kind to that institution in respect of such land, shall, with effect from and on the date of vesting and subject to the provisions of Section 27-A be entitled to be registered as an occupant of such land.

10. Considering whether the Tahsildar has power to lease the property, this Court again in *S. Sumitra Vs. State*, has held as follows:

Having regard to the provisions (Section 9) which are clear and consistent even the Tahsildar was not competent to lease the land to any person beyond the period of five years. Having regard to the provisions of the Act of 1927, a notice should have been given to Muzrai Officer including Dharmadarshis of the Temple...indeed the Act of 1927 came to be amended by the Mysore Religious and Charitable Institutions (Karnataka Amendment) Act, 1979 (Karnataka Act 18 of 1980) with effect from 27.5.1980 by which Section 21 came to be amended. By virtue of the said amendment, the Commissioner for Endowments and Muzrai Officer shall be made Defendants in a suit in place of Muzrai Officer. The object of the amendment was that a proper notice is given to the Head of the Department viz., Commissioner for Endowments and not the Tahsildar of the Taluk where the property is situated. Further, keeping the object of the lands being endowed upon the Temple, the Government of Karnataka issued Circular instructions in No. RD 127 MLD 78, dated 7.11.1978. In the said Circular, the Government has seriously

viewed that certain institutions have brought to their notice that disregarding mandatory provisions of the Act, tenancy rights of such lands are being granted in favour of private persons, on the basis of the cultivation. Therefore, the Government in the said Circular has issued a mandate to the authorities concerned not to grant occupancy of such lands.

The Tahsildar was not competent to lease the land to any person beyond the period of five years. It is not the case of Respondent 3 that he continued to enjoy the rightful or lawful possession of the land in question with the permission of the Government or the competent authority even after the expiry of the lease, as nothing is produced to show that any such order was passed by the competent authority permitting him to enjoy the land beyond the period of lease granted in the instant case. Therefore, the irresistible conclusion is that possession of Respondent 3 cannot be continued beyond the lease period of five years as enjoined by Section 9, though he was enjoying the leasehold rights by virtue of the order made by the Tahsildar. In that view of the matter, it is not impermissible for Respondent 3 to have continued in possession of the land in question beyond five years. At the out-set, it is not made clear whether the land in question was available for the Deputy Commissioner to grant occupancy right under the Act in favour of Respondent 3. It was the bounden duty of the Deputy Commissioner to apply his mind and see whether the land was available for being granted under the Act. Having regard to the provisions of the Act of 1927, a notice should have been given to the Muzrai Officer including Dharmadarshis of the temple. The Deputy Commissioner failed to issue such notice to either the Muzrai officer or the Endowment Commissioner. Be that as it may, as on the date when the impugned order, Annexure-G, came to be passed by the Deputy Commissioner, he should have seen that there was a prohibition incorporated in Section 9 of the Act of 1927 to grant a land like the one involved here under the Act. He should have also seen that Respondent 3, having no right to claim occupancy over the land in question, would not be entitled for the reliefs sought for under the Act, which cannot be pressed into service in a case like this. Therefore, the order made by the Deputy Commissioner as per Annexure-G being one without the authority of law is vitiated.

11. It is clear that there cannot be tenancy right conferred upon any tenant under the provisions of the Land Reforms Act or under the Inams Abolition Act.

12. On the other hand, the learned Counsel for the Respondent fairly submits that archak is entitled to be an occupant of the land so long as he performs the pooja and carry out the duty as an archak and such occupancy is relatable to his Office of archak in which he works.

13. The Office of the institution is entitled to appoint a new archak and permit the new archak to be an occupant of the land so that the income from the land be used for the purpose of temple and performance for poojas of the idol itself be held continuously and the corpus held in that dissipation or distribution. It is also made clear that the said pujary namely the 3rd Respondent is not entitled to

alienate the land as this property is deemed to be res nullius belonging to God.

14. There is absolutely no evidence available on record to substantiate the claim made by the Petitioner herein and consequently, confirming the grant in favour of the 3rd Respondent-Archak subject to the conditions mentioned above as is imposed u/s 6-A of the Act, the Writ Petition is dismissed.