

(1990) 01 KAR CK 0040
In the Karnataka High Court
Case No : W.P. No. 10938/1989

Syed Ghouse Pasha

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-01-1990

Acts Referred:

Karnataka Certain Inams Abolition Act, 1977 — Section 11
Karnataka Land Reforms Act, 1961 — Section 118(2)(B)

Citation : (1990) 1 KarLJ 268

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-This matter coming up for preliminary hearing after notice to the respondents and after hearing learned Government Pleader and learned Counsel for petitioner, the same is disposed of by the following order.

2. The short question which falls for determination in this writ petition is whether the order dated 7-5-1988 (at Annexure-A) by the Assistant Commissioner, Hospet, rejecting the appeals may be sustained in law or not?

3. The present writ petition is preferred by Syed Ghouse Pasha, appellant in case No. REV/APPL/LRM/ 163/86-87. That appeal was preferred against the order of the Special Tahsildar, land Reforms, Hospet, rejecting the claim of the petitioner for occupancy right in respect of Inam or Minor Inam held by him, which came to be abolished by the Karnataka Certain Inams Abolition Act, 1977 ("the Act" for short). All persons desiring to be registered as occupants under the aforementioned Act are required to make an application in terms of Section 11 to the Land Tribunal having jurisdiction, except those Inamdars or holders of minor inams which are enfranchised. Their claims are required to be examined by the Tahsildar having jurisdiction before whom the application by the said inamdars are to be made. It is on that account the petitioner made the application before the Special Tahsildar. Special Tahsildar rejected the claim of the inamdar and therefore the appeal before the Assistant Commissioner.

4. Assistant Commissioner after hearing the parties and their Counsel by the

impugned order denied himself the jurisdiction to interfere with the order on the ground that he had no jurisdiction.

5. It must be observed that the Assistant Commissioner is right in coming to the conclusion that the Karnataka Certain Inams Abolition Act does not prescribe any authority to hear and appeal against the orders passed by the Tahsildar in respect of the applications made in terms of the proviso to Section 11 of the said Act. The Karnataka Certain Inams Abolition Act is a land Reforms legislation is not to be doubted. Section 118(2)(b) of the Karnataka Land Reforms Act provides that any order passed by the Tahsildar is appealable to Assistant Commissioner meaning thereby the jurisdictional Assistant Commissioner. If the third respondent is the jurisdictional Assistant Commissioner then the order made by the second respondent-Special Tahsildar for Land Reforms, Hospet Taluk, Hospet, Bellary District, is clearly within the ambit of Section 118(2)(b) of the Act. Therefore, the Assistant Commissioner was not correct in coming to the conclusion that because Karnataka Certain Inams Abolition Act did not provide a forum or prescribe an appellate authority, he has no jurisdiction appears to be patently erroneous.

6. However, Mr. Sridhar, learned Govt. Pleader, appearing for respondents contended that what was argued before the Assistant Commissioner was that he was the Appellate Authority under the Land Revenue Act, and therefore he was right in rejecting that argument.

7. Question of jurisdiction does not depend on the lawyers' contention or the parties' contention before the authority concerned. Jurisdictional question is a pure question of law and that jurisdiction is conferred not by parties' argument or by pleadings, but are conferred by statutes. Section 118(2)(b) of the Karnataka Land Reforms Act provides for an appeal forum from an order passed by the Tahsildar. Therefore, irrespective of what was urged before the Assistant Commissioner-respondent-3, he was bound to examine the correct position in law with reference to the order and decide, and not go by what was pleaded by way of arguments before him.

8. Similarly, my attention has been drawn to Section 30 of the Karnataka Certain Inams Abolition Act, 1977, where there is an appeal provision in respect of orders passed under Sections 17, 19 and 24 of the Act. But they do not cover an order under Section 11 of the Act.

9. In that view of the matter the petition succeeds and the order at Annexure-A is quashed as patently erroneous and the matter is remitted back to the Assistant Commissioner-third respondent in so far as it relates to the petitioner, and he is directed to dispose of the appeal in the light of the observation made by this Court in the course of this order.

10. Rule will accordingly issue and be made absolute.

Writ Petition allowed.