

(2000) 12 KAR CK 0045
In the Karnataka High Court
Case No : Writ Petition No. 38489 of 1995

Vajrappa

APPELLANT

Vs

B.R. Nagabhushan and Others

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

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

Citation : (2001) 1 KCCR 645

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : G.D. Aswathanarayana, for the Appellant; Sreerangarajan, for Respondents 1 and 2, A. Shivaram, for Respondent 3, A. Padmanabhan, Government Pleader for Respondent 5 and 6 and B.K. Narendra Babu, for Respondent 7, for the Respondent

Judgement

V. Gopala Gowda, J. 1. The petitioner is questioning the legality and validity of the order at Annexure-D dated 5.4.1992 passed by the Karnataka Appellate Tribunal allowing the appeal filed by respondents 1 and 2. The Tribunal has ordered to register the lands in Sy. Nos. 38, 130 and 271 of Begur village, Sy. No. 47 of Bilekahalli and Sy. No. 101 of Bettadasanapura in the names of respondents 1 to 3 jointly u/s 6-A of Karnataka (Religious and Charitable) Inams Abolition Act. Petitioner is seeking to quash the said order.

2. A skeleton of facts that led to this writ petition are, petitioner's father Muninanjappa, 7th respondent and one Subbarama Shastry had applied for registration as occupants in respect of 5 acres 20 guntas of land of Begur Village before the Special Deputy Commissioner for Inams Abolition. Those applications had been transferred to the Land Tribunal for disposal. The Land Tribunal conducted enquiry and passed the order at Annexure-B dated 31.7.1981 rejecting the applications of 7th respondent and Subbarama Shastry and allowing the claim of petitioner's father. By that time since the father of the petitioner was dead, the Tribunal ordered registration of petitioner as occupant for the

entire extent in Sy. No. 38 of Begur Village. Respondents-1 and 2 appears to have filed applications for registering them as occupants of the aforesaid lands, including Sy. No. 38 of Begur Village and their applications came to be rejected by the Special Deputy Commissioner for Inams Abolition by an order dated 30.4.1976. They filed Appeal No. 246 of 1981 challenging the said order before the Karnataka Appellate Tribunal. The Tribunal allowed their appeal and directed to register the aforementioned lands in the names of respondents 1 to 3 jointly. In this writ petition the petitioner has questioned the correctness of the said order.

3. A detailed statement of objections is filed on behalf of respondents 1 and 2 justifying the impugned order and seeking dismissal of the writ petition.

4. I have perused the orders at Annexure-B and the impugned order at Annexure-D. Prima facie I am satisfied that the impugned order is bad in law and cannot be sustained for the simple reason that eventhough the petitioner has been registered as an occupant in respect of Sy. No. 38 of Begur village under Annexure-B dated 31.7.1981, in the appeal preferred by respondents 1 and 2 before the Tribunal the petitioner was not impleaded as a party. The order impugned is dated 5.4.1992 whereas the order of the Land Tribunal in favour of the petitioner is dated 31.7.1981, which is much before the impugned order was passed. As long as the order in favour of the petitioner in respect of Sy. No. 38 of Begur village is in force and not set-aside or quashed by any other competent Court, occupancy rights could not have been granted in favour of respondents 1 and 2 in respect of the same land by the Tribunal. Two orders cannot operate simultaneously in respect of same land in favour of different persons. Added to that, the right accrued in favour of the petitioner by virtue of the order of the Land Tribunal at Annexure-B would be affected on account of the impugned order being passed behind his back and without making him a party to the proceedings. Thus, the impugned order is bad in law for non-joinder of necessary party, namely the petitioner and it is also violative of principles of natural justice as there is no opportunity to the petitioner to establish his right.

5. The impugned order at Annexure-D is also bad in law for yet another reason. Eventhough the appeal was filed by respondents 1 and 2 only before the Tribunal, the Tribunal ordered registration of occupancy rights in favour of respondents 1 to 3 jointly. In fact, 3rd respondent was a party before the Tribunal. His claim was already rejected by the Land Tribunal under Annexure-B much prior to the impugned order. The 3rd respondent did not challenge the rejection of his claim. That being the position, the Tribunal grossly erred in ordering registration of 3rd respondent also in respect of the lands. It is thus clear that the Tribunal has exceeded its jurisdiction and conferred right upon the 3rd respondent who was not the appellant before it and whose claim was rejected by the Land Tribunal earlier.

6. Viewed from any angle, it is a fit case to remit the matter to the Appellate Tribunal for reconsideration after affording an opportunity to the petitioner to

establish his right.

7. Accordingly, this writ petition is allowed. The impugned order at Annexure-D is hereby quashed. Rule issued and made absolute. The matter is remitted back to the Appellate Tribunal for fresh consideration after affording opportunity to the petitioner. The Tribunal shall bear in mind the Division Bench decision of this Court reported in ILR 1998 Karnataka 141 before passing appropriate order in the matter. Respondents 1 and 2 are hereby directed to implead the petitioner as a party/respondent in the appeal filed by them before the Tribunal.