

(1999) 08 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 18802 of 1996

Yamunaiyya

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) ILR (Kar) 3650 : (1999) 6 KarLJ 497

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri V.R. Datar, for the Appellant; Sri A.K. Patil, High Court Government Pleader, Sri Basavaraj Kareddy, Sri S.K. Babashetty and Sri K. Appa Rao, for the Respondent

Judgement

1. Petitioner is an agriculturist residing at Adaki Village, Sedam Taluk. In this petition filed under Articles 226 and 227 of the Constitution, petitioner calls in question the correctness or otherwise of the orders passed by Karnataka Appellate Tribunal in Appeal No. 318 of 1994, dated 29-3-1996, the order passed by Deputy Commissioner, Gulbarga, in case No. SD/INM/REG/146/74-75, dated 30-9-1961, and the orders passed by Land Tribunal in case No. LRY/AP/TNC/3373/75-76, dated 29-11-1978. Petitioner further seeks for a declaration that the sale deeds executed by 4th respondent in favour of 6th respondent alienating the lands in question registered as document Nos. 191/97-98 and 192/97-98, dated 5-5-1997 as null and void.

2. Facts in support of the reliefs is as under:

Petitioner claims that he was cultivating lands measuring 19 acres and 12 guntas in Sy. No. 672, situate at Adaki Village, Sedam Taluk. He has produced record of rights for the years 1955 till 1958 to suggest that he was cultivating the aforesaid lands as a non-protected tenant under one inamdar by name Naga alias Nagai Reddy Deshmukh. But till the year 1984, he had not filed any application before the competent authorities to register his name as "non-

protected tenant" of the aforesaid lands as required under Hyderabad Abolition of Inams Act, 1955 (the "Act", for short).

3. One Sri Chandrashekhara Reddy, son of Naga Reddy Deshmukh, resident of Madana Taluk, Gulbarga District had filed an application before the Special Tahsildar, Inam Abolition, Gulbarga, for registration as occupant u/s 8(1) of the Act, 1955, claiming occupancy rights of Inam lands in several survey numbers of Adaki Village including lands in Sy. No. 672 measuring 19.03 guntas. On the recommendation made by Special Tahsildar, Inam Abolition, Bidar, after holding an appropriate enquiry, the Special Deputy Commissioner for Inam Abolition, Gulbarga Division, by his order dated 30-9-1961, has registered the name of Sri Chandrashekar Reddy-5th respondent herein as a "non-protected tenant" u/s 8(1) of the Act, 1955 subject to the payment of premium fixed by him.

4. Sometime in the year 1978, after introduction of Karnataka Land Reforms Act, one Sri Shivalinga Reddy, son of Bicha Reddy had filed an application u/s 48-A of the Land Reforms Act, claiming occupancy rights in the aforesaid lands. After recording the statements of the tenant and the landlord, the Land Tribunal, Sedam by its order in proceedings No. LRY/AP/TMC/3373/75-76, dated 29-11-1978, has registered the 4th respondent herein as occupant of the land under Land Reforms Act.

5. Sometime in the year 1984, petitioner had filed an application before Special Deputy Commissioner for Inam Abolition, Gulbarga Division, to register his name as "non-protected tenant" under the provisions of Hyderabad Abolition of Inams Act. The competent authority had passed an order registering petitioner's name as a "non-protected tenant" under the Act, 1955, subject to other conditions. The fourth respondent herein who had been already registered as a tenant by the Land Tribunal, Sedam, being aggrieved by the aforesaid order, had preferred an appeal in No. 146/1984 before the Karnataka Appellate Tribunal. The Tribunal by its order dated 19-9-1991, was pleased to allow the appeal and was further pleased to remand the matter to Special Deputy Commissioner, Gulbarga, to reconsider the matter in accordance with law and in accordance with the provisions of Hyderabad Abolition of Inams Act. Once again the Special Deputy Commissioner passed an order dated 22-10-1994, conferring the status of "non-protected tenant" to the petitioner. On an appeal preferred by 4th respondent, being aggrieved by the said order, in Appeal No. 318 of 1994, the Karnataka Appellate Tribunal by its order dated 29-3-1996 has allowed the appeal by setting aside the orders made by Special Deputy Commissioner, Gulbarga District, dated 22-10-1994. Aggrieved by all these orders, petitioner is before this Court for the reliefs indicated by me earlier.

6. During the pendency of this petition before this Court, the fourth respondent has alienated the lands in question to the 6th respondent under a deed of conveyance, registered as document Nos. 191/97-98 and 192/97-98, dated 5-5-1997. By an appropriate amendment to the pleadings, petitioner is also seeking a declaration to declare that the sale deeds are null and void and is not

binding on the petitioner.

7. Sri V.R. Datar, learned Counsel for the petitioner submits, the orders framed by the Special Deputy Commissioner for Inam Abolition dated 30-9-1961 deserves to be annulled by this Court on the sole ground that it is in violation of principles of natural justice for the reason, petitioner, who had interest in the lands in question as a "non protected tenant" was not afforded an opportunity of hearing. Secondly, since 5th respondent had not complied with the directions contained in the order, the lands in question were never divested and continue to vest in the State Government u/s 3 of Hyderabad Abolition of Inams Act.

8. Insofar as the orders made by the Land Tribunal, Sedam, dated 29-11-1978, the learned Counsel submits that the order is unfair, unjust and wholly arbitrary since petitioner was not heard in the matter.

9. Nextly, it is urged that the orders passed by Karnataka Appellate Tribunal in Appeal No. 318 of 1994, dated 29-3-1996 is in violation of provisions of Act 1955, contrary to the factual situation and since the findings are on mere assumptions and presumptions, the order is wholly perverse and nullity in the eye of law.

10. Per contra, Sri K. Appa Rao, learned Counsel for the purchaser of the lands in question submits, firstly that the order made by Special Deputy Commissioner for Inam Abolition dated 30-9-1961 is an appealable order as provided u/s 24 of the Act. Without exhausting the statutory appeal remedy, petitioner cannot challenge the said order and this Court while exercising its discretionary power should not permit the petitioner to bypass the machinery created by statute by entertaining a petition under Article 226 of the Constitution. In support of this contention, the learned Counsel relies upon the observations made by this Court in the case of Grama Seva Pratishtana, Manipal and Another v State of Karnataka and Others .

11. Secondly contends that this Court should refuse to invoke its extraordinary jurisdiction, in view of the enormous delay and laches on the part of the petitioner in approaching this Court to assert his rights against the orders made by Special Deputy Commissioner for Inams Abolition dated 30-9-1961 and the orders of the Land Tribunal dated 29-11-1978. The learned Counsel further points out that when writ jurisdiction is invoked by a party, unexplained delay coupled with the creation of third party rights is an important factor which should weigh with the Court in deciding whether or not to exercise writ jurisdiction.

12. Thirdly, he submits that this Court should decline to intervene with the orders made by Appellate Tribunal, since the Tribunal which is the final fact finding authority, basing on the records and document available has come to the conclusion that the petitioner has no right, title and interest in the lands in question.

13. Sri Basavaraj Kareddy, learned Counsel for respondent 4 adopts the

submissions made by learned Counsel for the 6th respondent and further submits that this Court in exercise of discretionary jurisdiction should not assist the tardy and the indolent or the acquiescent and lethargic person, when there is inordinate delay and when such delay is not satisfactorily explained by the petitioner. In support of this contention, he also relies upon the observations made by Apex Court and this Court.

14. Having carefully considered the rival contentions canvassed by learned Counsels for the parties, the issues that require to be considered and decided are:

(I) Whether this Court should refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground that the petitioner has alternative remedy against the orders made by Special Deputy Commissioner dated 30-9-1961?

(II) Whether this Court should decline to grant relief to the petitioner on the ground of inordinate and unexplained delay in approaching this Court against the orders made by competent authorities and the Tribunal nearly after two to three decades?

(III) If the orders made by Special Deputy Commissioner of Inams and the Land Tribunal, Sedam, cannot be interfered, whether any purpose would be served in deciding the correctness or otherwise of the orders made by Karnataka Appellate Tribunal dated 29-3-1996?

(IV) What order?

15. Reg. Contentions I and II: Both these contentions can be taken together. Petitioner nearly after three decades from the date of the order questions the correctness or otherwise of the orders made by Special Deputy Commissioner, Gulbarga Division, Gulbarga, exercising his powers u/s 10(1) of the Act, registering the name of the 4th respondent as "non-protected tenant" in the lands in Sy. No. 672 of Adaki Village. Section 24 of the Hyderabad Abolition of Inams Act, provides for an appeal remedy to any person aggrieved by a decision of the Deputy Commissioner u/s 10 of the Act. That remedy is not only effective but efficacious remedy. Normally, this Court exercising its writ jurisdiction will not permit the aggrieved person to bypass the machinery created by the statute and entertain the petition under Article 226 of the Constitution except in those cases where proceedings are taken under a provision of law, which is ultra vires, or where the impugned order is made in gross violation of principles of natural justice.

16. In the instant case, petitioner points out that Act was published in the Official Gazette on 20-7-1955 and the inam lands vest in the State Government u/s 3 of the Act and on the date of vesting of the lands, it is the petitioner's claim that he was a "non-protected tenant" land in question. This factual position is demonstrated by the petitioner by producing record of rights for the year 1955 upto 1958. On an application filed by fourth respondent claiming occupancy

rights of inam lands in Sy. No. 672 over an extent of 19-12 acres, the Special Deputy Commissioner for Inams Registers the name of the 4th respondent u/s 8(1) of the Act without examining the nature, history of the lands and without even issuing a show-cause notice to the petitioner, whose name did find a place in the relevant records on the date of vesting of Inam lands. It has long been settled law that a decision affecting the legal right of an individual which is arrived at a procedure which offends against principles of natural justice is outside the jurisdiction of the decision making authority. Therefore, merely because the petitioner has not exhausted the statutory remedies, it cannot be said that this Court should decline to entertain a petition. The Apex Court in the case of *A.V. Venkateswaran, Collector of Customs, Bombay v Ramchand Sobhraj Wadhwani and Another*, was pleased to observe that the complete lack of jurisdiction in any officer or authority to take the impugned action would be a good ground not to insist on the exhaustion of statutory remedies and in the said decision, it was pointed out further that this exception along with one where an order is passed in violation of principles of natural justice cannot be regarded as exhaustive of the exceptions, and even beyond them a discretion vests with the High Court to entertain a petition notwithstanding the existence of alternative remedy. Therefore, though the petitioner has an alternate remedy by way of appeal, it is not absolute bar to the maintainability of the writ petition. Therefore, I reject the stand of Sri K. Appa Rao, learned Counsel for 6th respondent, who argued that I should refuse to exercise my jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy.

17. Then we come to the second issue whether the delay and laches on the part of the petitioner would disentitle him to invoke the extraordinary jurisdiction of this Court. To answer this precise issue, a second look at the facts may be necessary.

Petitioner, who claims that he is "non-protected tenant" of the inam land and who, also claims that he was cultivating the lands in question from the date of vesting of the lands till the year 1958, did not care to approach the authorities to register his name as occupant of the land as envisaged u/s 8(1) of the Act. From the year 1958 till 1961, his name does not find a place in the record of rights maintained by revenue authorities and it is also not his case that though necessary entries in the record of rights are not available, he is still in occupation and enjoyment of lands in question. On the other hand, it is the specific case of the respondent 5 that from the year 1958 onwards, it was he, who was in occupation and enjoyment of the lands in question, This assertion, as a matter of fact is accepted by Special Tahsildar, Inams Abolition, Gulbarga. This assertion of this respondent is also not resisted nor disputed by the owner of the land Smt. Nagai Reddy, D/o. Sri Naga Reddy Deshmukh, who was the inamdar of the lands in question. Taking into consideration the existing factual position, the Special Tahsildar for Inams Abolition had recommended the case of the 5th respondent for Registration u/s 8(1) of the Act as an occupant of the land. The Special Deputy Commissioner being satisfied with the enquiry held, had passed an order

exercising his powers u/s 10(1) of the Act by directing his office to register the name of the 5th respondent as occupant of the land with a condition that he shall pay premium fixed by his office in installments. After such registration, the revenue records had been mutated in the name of the 5th respondent and he continued to occupy and enjoy lands in question. Petitioner did not choose to question the said order before any competent forum at any point of time. It is for the first time, he questions the said order nearly after 35 years before this Court in a petition filed under Article 226 of the Constitution. There is no explanation much less satisfactory explanation for not approaching this Court within a reasonable time, The only explanation offered is, he was not made a party to the proceedings before the Special Deputy Commissioner for Inams by 5th respondent, when he claimed the registration of his name as a "non-protected tenant". In my opinion, the explanation offered by the petitioner is wholly unsatisfactory. After all, petitioner is also resident of the same village. It can be safely presumed that he was fully aware that 5th respondent is enjoying the immovable property in question. Nothing prevented him from making enquiries either from the Village Accountant of the village or from any competent person to find out in what capacity 5th respondent is in occupation and continuing to enjoy the property.

18. Secondly, petitioner claims he was dispossessed from the lands in question in the year 1958. He did nothing in the matter till the year 1984, when he approached the authorities under the Hyderabad Abolition of Inams Act to register him as a "non-protected tenant" making only 4th respondent as a party to the proceedings, who had already been registered as a tenant of the land by the Land Tribunal, Sedam, by its order dated 29-11-1978. Even at that stage, he does not question neither the orders passed by Special Deputy Commissioner dated 30-6-1961 nor the orders made by the Land Tribunal, Sedam dated 29-11-1978 before any forum. As I have already pointed out, these are the orders now questioned by the petitioner before this Court in a petition filed in the year 1996. Between the period 1961 till 1978, 5th respondent was registered as occupant of the land under Hyderabad Inams Abolition Act. In the year 1978, the 4th respondent was granted occupancy rights by the Land Tribunal. Entertaining this petition at this belated stage would definitely affect the interest of these parties, who are in occupation of the lands on their own right by virtue of the orders made by the competent authorities.

19. Delay and laches is one of the factors which is required to be borne in mind by the writ Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution. There may not be any prescribed time for approaching this Court under this Article, but it is expected of the aggrieved person to move the Court at the earliest possible time and explain satisfactorily all semblance of delay if there is inordinate delay on the part of the aggrieved person and if such delay is not properly explained, this Court can decline to intervene and grant relief in exercise of its writ jurisdiction. The Supreme Court in the case of Maharashtra State Road Transport Corporation v Balwant Regular Motor Service

Amravati and Others , was pleased to observe:

"Now the doctrine of laches in Court of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct done that which might fairly be regarded as equivalent to waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute by limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of delay and nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy". (See *Lindsay Petroleum Company v Prosper Armstrong Hurd, Abram Farewell and John Kemp* (1874) 5 PC 221 : 22 WR 492)

20. In my opinion, petitioner was negligent throughout. In the first instance, though he claims the status of a "non-protected tenant" under the provisions of Hyderabad Abolition of Inams Act, and though he claims, he was cultivating the lands on the date of vesting, he conveniently ignored to file appropriate application to register his name as a "non-protected tenant". Sometime after 1958, he claims he was dispossessed from the lands in question. Even then, he did not take any steps to protect his interest in the land. In the year 1961, 5th respondent gets himself registered as occupant of the land by approaching competent authorities under the Act. Petitioner did not choose to question the said order, though he resides in the same village as 5th respondent. Again in the year 1978, 4th respondent gets himself registered as occupant of the land by approaching the Land Tribunal, Sedam. Petitioner allows even this order to reach finality. In the year 1984, he approaches the Special Deputy Commissioner requesting him to register his name as a "non-protected tenant" and impleads 4th respondent as a party to the proceedings. Then also he does not question the orders made in favour of 5th respondent by the Special Deputy Commissioner for Inams and the orders made in favour of the 4th respondent by the Land Tribunal. For the first time, he thinks of questioning the orders made adverse to his interest by the authorities in the year 1996 nearly after two to three decades. In my opinion, petitioner is not entitled to any relief. This Court in exercise of its discretionary jurisdiction does not ordinarily assist the tardy, the indolent and the lethargic person and further this Court normally will not entertain belated and stale claim. Therefore, second and the third prayer sought for by the petitioner cannot be granted.

21. Reg. Contention III.--Petitioner's application filed in the year 1984 to register his name as "non-protected tenant" was entertained and prayer was granted by

the Special Deputy Commissioner for Inams, Gulbarga in the lands in question, Aggrieved by that order, 4th respondent, who was granted with occupancy rights by the Land Tribunal had filed an appeal in No. 318 of 1994 before the Karnataka Appellate Tribunal, which had allowed the appeal and set aside the orders made by the Special Deputy Commissioner for Inams exercising his powers u/s 10(1) of the Act. Petitioner questions the correctness or otherwise of this order. In my opinion, I need not have to examine this issue for the reason that since I have rejected the prayer of the petitioner to set aside the orders made by competent authority dated 30-9-1961 and the orders made by Land Tribunal dated 29-11-1978 and even if I have to take exception to the orders made by Karnataka Appellate Tribunal on the grounds canvassed by learned Counsel for petitioner, no useful purpose would be served because there is no land available for registering the name of the petitioner u/s 8(1) of the Act by the Special Deputy Commissioner.

22. In the result, petition fails and accordingly, it is dismissed. Rule discharged. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.