

**Hanumaiah Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** Jan-07-1987

**Reported in :** ILR1987KAR550

**Judge :** Prem Chand Jain, C.J. and ;Hakeem, J.

**Acts :** Karnataka Village Offices Abolition Act, 1961 - Sections 5, 6, 7 and 7(3);  
Karnataka Village Offices Abolition (Amendment) Act, 1978

**Appeal No. :** W.P. Nos. 34413 of 1982

**Appellant :** Hanumaiah

**Respondent :** State of Karnataka

**Advocate for Def. :** R.H. Chandanagoudar, High Court Government Adv. for R-1  
and R-2

**Advocate for Pet/Ap. :** W.K. Joshi and ;S.K. Joshi, Advs.

**Disposition :** Petition dismissed

**Judgement :**

**Hakeem, J.**

1. These petitions have come up before us on a reference made by Murlidher Rao, J, by his order dated July 30, 1985.

2. In order to appreciate the question raised in these petitions, it is necessary to state the material facts giving rise to these Writ Petitions. The petitioners are purchasers of certain extent of land in S Nos. 2 and 76 of Sulakunta village, Chikkaballapur Taluk, Kolar District. It is not disputed that these lands were attached as emoluments to the inferior village offices under the Mysore Village Offices Act, 1900, which stood abolished on and with effect from February 1, 1963, and consequently the said lands vested in the State Government. The sales in favour of the petitioners are dated 12-3-1968, 20-9-1967 and 23-6-1969, which are undoubtedly made after the coming into force of the Karnataka Village Offices Abolition Act, 1961 (the Act) and before the amending Act came into force i.e. 7-8-1978.

3. The Tahsildar initiated proceedings under Section 7 of the Act for summary eviction of the petitioners. By his order dated 14-6-1982 the Tahsildar regranted the lands in favour of the alienors i.e., the vendors of the petitioners, and directed eviction of the petitioners under Section 7 of the Act. It is the validity of this order that is challenged by the petitioners. Various contentions were raised before the learned Single Judge. Upon hearing the parties, the learned Single Judge has referred the matter to the Division Bench for consideration of the following question :

'Whether the regrant order made under Section 7 of the Act stands on the same footing as that of a regrant order under Section 5 or 6 of the Act ?'

4. It is pertinent to mention that the challenge of the petitioners is against that part of the impugned order which directs their eviction from the lands and consequential regrant thereof made in favour of their vendors, who are holders of inferior village offices. The main contention of Mr. S.K. Joshi, learned Counsel for the petitioners is that the competent authority (Respondent-2) having passed an order of regrant in favour of the vendors of the petitioners, ought not to have directed their eviction under Section 7 of the Act in view of the decision of this Court in *Lakshmana Gowda v. State of Karnataka and Ors.*, ILR (Karnataka) 1980(2) 892 = 1981 (I) KLJ 1. On the contrary Sri R.H. Chandangoudar, Learned High Court Government Advocate, contended that *Lakshman Gowda's* case related

to regrant orders made under Sections 5 and 6 of the Act and did not deal with the cases coming under Section 7 of the Act. It is urged that while in the case of regrant order under Sections 5 and 6, which provides for regrant of the resumed land to holders and authorised holders of the abolished village offices, the question of dispossession follows only if there is no regrant and if the authorities come to the conclusion that they are unauthorised holders ; and in case of holders of inferior village office coming under Section 7(3) of the Act, eviction of unauthorised holders is done first before regranting it to the holders of the inferior village office as provided under Sub-sections 3(a) and (b) of Section 7 of the Act. Since both the parties have placed reliance upon the decision of this Court in Lakshmana Gowda's case to support their respective contention, it is necessary to briefly state the law laid down in the said case, which is summed up as follows :

'108. To sum up, our conclusions on the aforesaid questions, are these :

(i) The alienee of a Service Inam Land from its holder or the authorised holder, did not acquire any title to such land if the alienation had taken place prior to the coming into force of the Principal Act and he did not also acquire any title to such land subsequently by his alien or obtaining its regrant under Section 5 or 6, as the case may be of the Principal Act ;

(ii) The holder or the authorised holder of a Service Inam Land did not get any title to it when that land stood resumed to the Government under Sub-section (3) of Section 4 of the Principal Act, but he got title to it only when it was regrant to him under Section 3 or 6, as the case may be, of the Principal Act ;

(iii) If the holder or the authorised holder of a Service Inam Land had alienated it after the Principal Act came into force and before it was regrant to him under Section 5 or 6, as the case may be, of the Principal Act, the alienee acquired a title to that land after such regrant to his alienor ;

(iv) The alienee, who had entered into an agreement for purchasing a Service Inam Land and was put in possession thereof in pursuance of such agreement prior to the coming into force of the Principal Act did not, under such agreement, get any right to continue in possession of such land by reason of the Principal Act,

coming into force. Even by his alienor subsequently obtaining regrant of such land under Section 5 or 6 as the case may be, of the Principal Act, the alienee got neither any title to such land nor the right to protect his possession of such land under Section 53A of the Transfer of Property Act. However, the State cannot evict such alienee or intending alienee, in possession of a Service Inam Land, if such land had been subsequently regranted to the holder or the authorised holder under Section 5 or 6 of the Principal Act ;

(v) Unless new Section 7 of the Principal Act and Section 5 of the Amendment Act are held to be unconstitutional an alienee or an intending alienee of a Service Inam Land, who was put in possession of such land pursuant to an agreement to purchase, prior to the coming into force of the Principal Act, did not get any title to such land nor was he entitled to regrant of such land subsequent to 7-8-1978 even though he had made an application for such regrant under the proviso to Sub-section (1) of Section 7 of the Principal Act and he is liable to be evicted from such land ;

(vi) The omission to obtain the previous sanction of the Deputy Commissioner under original Sub-section (3) of Section 5 of the Principal Act, did not render void a transfer of a land regranted under Section 5 or 6 or 7 of the Principal Act prior to 7-8-1978, but such transfer can be regularised by paying to the Government an amount equal to 15 times the full assessment of that land ;

(vii) Sub-section (4) of Section 5 of the Principal Act should be construed as being applicable only to transfers made subsequent to 7-8-1978 and not to transfers which had taken place prior to that date and that Sub-section (3) occurring in that section has reference to amended Sub-section (3) and not to original Sub-section (3) of that section ;

(viii) Substitution of new Section 7 for original Section 7 of the Principal Act by Section 4 of the Amending Act, could not be regarded as being void on the ground of violation of Article 19 or 31 of the Constitution.

(ix) Section 5 of the Amendment Act cannot be held to be violative of Article 14 of the Constitution ; and

(x) The proviso to Sub-section (1) of substituted Section 7 of the Principal Act, is not void as being violative of principles of natural justice.'

From the facts of the case it is not disputed, and indeed it cannot be disputed, that the petitioners are 'unauthorised holders' of the lands and that no regrant order had been made in favour of their Aligners vendors before their dispossession.

5. Before referring to the relevant discussion regarding the position of the unauthorised holder of a land, which was regranted after the coming into force of the Amendment Act (Karnataka Act No. 13 of 1978), it is appropriate to extract Section 7 of the Principal Act as it stood before the Amendment and as it now stands after the amendment. Section 7 before Amendment :

'Eviction of unauthorized-holder and regrant to him in certain circumstances of laid resumed under Section 4 :

(1) Where any land resumed under Clause (3) of Section 4 is in the possession of an unauthorised holder, such unauthorised holder shall be summarily evicted therefrom by the Deputy Commissioner, in accordance with the provisions of the Code:

Provided that where the case of any unauthorised holder, the Deputy Commissioner after enquiry is of opinion that in view of the investment made by such holder in the development of the land or in the non-agricultural use of the land or for any other reason, the eviction of such holder from the land will involve undue hardship on him, he shall regrant the land to such holder on payment of such amount and, subject to Sub-section (3) of Section 5 on such terms and conditions as the State Government may determine.

(2) A land which is not regranted under Sub-section (1) shall be disposed of in accordance with the provisions of the Code and the rules and orders made thereunder applicable to the disposal of unoccupied unalienated land.'

Section 7 after Amendment:

"Eviction of unauthorised holders etc.

(1) where any land resumed under Clause (3) of Section 4 is in the possession of an unauthorised holder, such unauthorised holder shall be summarily evicted therefrom and the land shall be taken possession of by the Deputy Commissioner in accordance with law ;

Provided that no such summary eviction shall be made except after giving the person affected a reasonable opportunity of making representation.

(2) Any order of eviction passed under Sub-section (1) shall be final and shall not be questioned in any Court of law and no injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by the Deputy Commissioner in pursuance of the power conferred by Sub-section (1).

(3) The land from which an unauthorised holder is evicted under Sub-section (1) shall.-

(a) if it was granted or continued in respect of or annexed to an inferior village office be regranted to the holder of such village office ;

(b) in other cases be disposed of in accordance with the law applicable to the disposal of unoccupied unalienated lands.'

The words 'unauthorised holder' is defined as follows in Section 2(m) of the Act.

'2(m) 'Unauthorised holder' means a person in possession of a land granted or continued in respect of or annexed to a village office by the State without any right, or under any lease, mortgage, sale, gift or any other kind of alienation thereof, which is null and void under the existing law, relating to such village office.'

The Petitioners are treated as unauthorised holders as the sale on which they base their right are null and void. Analysis of Section 7 as it stood before amendment, makes it clear that an unauthorised holder could be regranted the lands, if he had made investment and if the eviction involved undue hardship. This provision enabled the Deputy Commissioner to pass an order of regrant in favour of unauthorised holder on being satisfied about the investment and undue hardship. Under the amended provision, there cannot be a regrant in favour of

unauthorised holder. He is liable to be summarily evicted after the issue of notice, the clear intention of the Legislature being the non-recognition of any right in the unauthorised holder. In other words, on and after 7-8-1978 he is liable to be evicted ; he cannot assert any rights, howsoever long his possession may be or whatever investment he might have made in improving the land. Since this is the intention of the legislature, he cannot plead equity or claim any right on equitable grounds. His position is no better than a rank trespasser. This position is made clear in the following observation in Lakshmana Gowda's case :

'Hence, unless new Section 7 of the Principal Act and Section 5 of the Amendment Act are held to be unconstitutional, an alienee or an intending alienee of a Service Inam Land who, was, prior to the coming into force of the Principal Act, put in possession of a Service Inam Land under a deed of alienation or pursuant to an agreement to purchase, became disentitled to re-grant of such land subsequent to 7-8-1978 even though he had made an application for regrant under the proviso to original Section 7 of the Principal Act and as he did not get any title thereto, he is liable to be evicted from such land.'

6. With reference to the law laid down in Lakshmana Gowda's case (Supra) it is contended that subsequent regrant in favour of the vendor, who is the holder of the inferior village office would enure to his benefit and entitle the vendee i.e., unauthorised holder who is evicted, to claim title. Two factors mitigate against this submission Firstly, on the day the land was sold it had vested in the State Government and the Vendor had no title, and secondly, the amended Section 7 has taken away the right of unauthorized holder to claim regrant in any circumstances. In this situation it is not possible to confer title on the unauthorised holder by invoking equity or the principle of 'Feeding the grant by estoppel'. What is taken away by the legislature cannot be conferred by the Court. To accede to the petitioners contention would be to extend the benefit under the old provision notwithstanding its deletion from the statute. Such a thing is impermissible as is made clear by the following enunciation in Lakshmana Gowda's case :

"55. From the ratios of the said decisions of the Madras High Court with which we are in respectful agreement, it would follow that a prohibited alienation of a Service

Inam Land would be null and wholly void and not merely voidable at the option of the Government and the alienee of such land would not get any title to, or interest in it and further such alienee could not claim the benefit of the doctrine of feeding the estoppel, which was given statutory recognition in Section 43 of the Transfer of Property Act because that Section would not apply to transfers forbidden by law on the ground of public policy.'

7. Sub-section (4) of Section 5 as inserted by Karnataka Act No. 13 of 1978 in the Act, shall be deemed always to have been inserted in the Principal Act. The said sub-section reads thus :

'(4) Any transfer of land in contravention of Sub-section (3) shall be null and void and the land so transferred shall, as penalty, be forfeited to and vest in the State Government free from all encumbrances and any person in possession thereof shall be summarily evicted therefrom by the Deputy Commissioner and the land shall be disposed of in accordance with the law applicable to the disposal of unoccupied unalienated lands :

Provided that if the person who has transferred the land in contravention of Sub-section (3) is not alive, while disposing of such land preference shall be given to the heirs of such person.'

Sub-section (6) of Section 5 as inserted by Karnataka Act No. 13. of 1978 reads thus :

'(6) Notwithstanding anything contained in any law for the time being in force, any agreement for transfer of land resumed under Clause (3) of Section 4, entered into prior to re grant thereof under Sub-section (1), shall be null and void and any person in possession thereof in furtherance of such agreement shall be summarily evicted there-from by the Deputy Commissioner.'

These provisions make it clear that after summary eviction of the unauthorised holder, the land shall be disposed of in accordance with the law applicable to the disposal of unoccupied and unalienated lands. Sub-section (3) of Section 7 of the Act provides the categories of persons who are eligible if or grant of such lands.

The vital difference between a grantee under Section 7(3) and Sections 5 and 6 is that while 'holder' and 'authorised holder' have a right to make application for regrant under Sections 5 and 6 of the Act respectively, no such right is provided for an unauthorised holder. The prospective grantee is preferred for the disposal of land after summary eviction of the unauthorised holder. The holders of the inferior offices under Section 7(3) are these who have (sic) the regrant under Section 5 of the Act. Preference under Section 7(3) of the Act is restricted to 'holders of inferior village office' and not to 'authorised holders' of inferior village office. The alienations in favour of the petitioners being null and void and having lost possession, they cannot plead equity or estoppel. In *Excise Commissioner v. Ramkumar*, : AIR 1976 SC2237 it was held thus:

'It is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers'.

Similarly in *Sri Manche Gowda v. State of Karnataka*, : [1984]3SCR502 it was observed thus :

'If the Legislature under such circumstances seek to intervene in the interests of these weaker sections of the community and choose to substitute a speedier and cheaper method of recovery of these granted lands, which were otherwise liable to be resumed through legal process, it cannot, in our opinion, be said that any vested rights of the transferees are affected. Transferees of granted lands with full knowledge of the legal position that the transfers made in their favour in contravention of the terms of grant or any law, rule or regulation governing such grant are liable to be defeated in law, cannot and do not have in law or equity, a genuine or real grievance that their defeasible title in such granted lands so transferred is, in fact, being defeated and they are being dispossessed of such lands from which they were in law liable to be dispossessed by process of law.'

8. In this view of the matter, it seems to us that the impugned order, which is made under the amended Section 7 of the Act long after its coming into force, does not enure to the benefit of the petitioners and they do not get any title to the lands. The regrant order made under amended Section 7 of the Act does not stand on the

same footing as that of a regrant made under Section 5 or 6 of the Act.

9. In the view we have taken as above, these Writ Petitions have to fail and they are accordingly dismissed. Rule is discharged. But in the circumstances of the case the parties shall bear their own costs.

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