

Hanumappa Sawkar Vs. Assistant Commissioner

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Court : Karnataka

Decided On : Feb-02-1995

Reported in : ILR1995KAR1014; 1995(2)KarLJ6

Judge : Hari Nath Tilhari, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 128 and 129

Appeal No. : W.P. No. 2881 of 1995

Appellant : Hanumappa Sawkar

Respondent : Assistant Commissioner

Advocate for Def. : H.H. Kaladgi, H.C.G.P.

Advocate for Pet/Ap. : F.V. Patil, Adv.

Judgement :

ORDER

Hari Nath Tilhari, J

1. Heard the learned Counsel for the petitioner and the learned Government Advocate; The petitioner's grievance is that, on the death of his wife namely, Smt. Shantawa moved an application for mutation under Section 128 of the Karnataka Land Revenue Act (hereinafter referred to as 'the Act') as he has been one of the legal heirs of Smt. Shantawa. The petitioner's case is that, the Village Accountant

is the prescribed authority for the purpose of receiving the information in oral or in writing in the matters of succession and like. The petitioner's case is that, such application was moved by the petitioner in writing but the respondent No. 3 has passed an order dated 7.11.94 in Annexure-E to the Writ Petition and by that order it was observed that, in view of the Circular issued by respondent Nos. 1 and 2 the prescribed authority cannot receive the applications and the application should be moved through Tahsildar and thereby he has refused to accept the application. The petitioner has filed this Petition with the prayer that the order dated 7.11.94 be quashed and a direction in the nature of Mandamus be issued to the third respondent to accept the intimation of acquisition of rights by succession, survivorship, inheritance or by transfer etc., keeping in view the provisions of Section 128 of the Karnataka Land Revenue Act. The petitioner's contention is that, the order impugned is contrary to the mandate of law as contained in Sections 128 and 129 of the Act and that the respondent No. 3 has acted illegally by refusing to accept that application. The learned Counsel for the petitioner further submitted that, there is no provision under which such direction can be issued as has been mentioned in Annexure-E which is contrary to provisions, of Section 128 of the Act. The learned Government Advocate submitted that, as a matter for administrative convenience the Circular has been issued and there is no provision under which such Circular has been issued by the prescribed authority and that no application has been moved to the Tahsildar.

2. I have applied my mind to the contention of the learned Counsel for the parties. The petitioner has annexed a copy of the Circular issued by the Tahsildar dated 26.12.1991. Section 128 of the Karnataka Land Revenue Act reads as under:-

'128. ACQUISITION OF RIGHTS TO BE REPORTED:

1) Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such to the prescribed officer of the village within three months from the date of such acquisition, and the said officer shall at once give a written acknowledgement of the receipt of the

report to the person making it;

Provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the prescribed officer;

Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the prescribed officer.

Explanation I:- The rights mentioned above include a mortgage without possession but do not include an easement or a charge not amounting to mortgage of the kind specified in Section 100 of the Transfer of Property Act, 1882 (Central Act No. 4 of 1882).

2) Notwithstanding anything contained in Sub-section (1), the State Government may, by notification, appoint any Revenue Officer to whom a report under Sub-section (1) may be made, in which case such officer shall give a written acknowledgment of the receipt of such report to the person making it, and forward the report to the prescribed officer of the village concerned.

3) If any person makes a report under Sub-section (1) or Sub-section (2) --

a) after the period of three months but within the period of one year from the date of acquisition of the right, the report shall be received on payment of a penalty of two rupees;

b) after a period of one year from the date of such acquisition, the report shall be received on payment of a penalty of not less than two rupees but not exceeding ten rupees, as may be ordered-

i) by the Tahsildar, in case the report is made under Sub-section (1) to the prescribed officer, or

ii) by the Revenue Officer, in case the report is made to such Officer under Sub-section (2).

4) No document by virtue of which any person acquires a right in any land as holder, occupant, owner, mortgagee, landlord or tenant or assignee of the rent or revenue thereunder, shall be registered under the Indian Registration Act, 1908 (Central Act 12 of 1908), unless the person liable to pay the registration fee also pays to the registering authority such fees as may be prescribed for making the necessary entries in the record of rights and registers referred to in Section 129; and on the registration of such a document, the registering authority shall make a report of the acquisition of the right to the prescribed Officer.

3. A reading of Section 128(1) per se reveals that, the report of acquisition of rights by a person either by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise shall be reported by that person within three months from the date of such acquisition and the prescribed authority is also required to give a written acknowledgment of the receipt of the report made by such person. That Sub-section

(2) of Section 128 provides that, the State Government can by notification appoint any Revenue Officer to whom a report under Sub-section

(1) may be made and in that case again Sub-section

(2) directs that such Officer who has been nominated by the State Government shall give acknowledgement of the receipt of that report to the person making the report and forward the report to the prescribed authority for orders. Sub-section

(3) further provides that, if the report is not made under Sub-section

(1) or

(2) within the period of three months from the date of death, but if it is made after the expiry of the period of three months but within a period of one year from the date of acquisition of such right, the report shall be received on payment of penalty of Rs. 2/- and in case the report is made beyond a period of one year from the date of acquisition then the report shall be received only on payment of penalty of not less than Rs. 2/- but not exceeding Rs. 10/- as may be ordered by the Tahsildar, in case the report is made under Sub-section

(1) to the prescribed authority and by the Revenue Officer in case the report is made to such Officer under Sub-section (2), A reading of this provision per se shows that, if the report is made after the expiry of the period of three months this report no doubt has got to be made to the Tahsildar and Tahsildar can accept the report if it is made within one year from the date of acquisition but after the expiry of three months, it is after imposing penalty of Rs. 2/-. If the same is made after one year, he may impose penalty of either Rs. 2/- or more which it thinks fit but not exceeding Rs. 10/-. If some other revenue authorities have been nominated to receive the report and forward it, then in that case no doubt the report can be received by the other authority nominated. But, where there is a prescribed authority for the application and report has not been made within time to the prescribed authority then, it automatically flows from Sub-section (3), that report has got to be made to the Tahsildar and it has to be received. In the present case, Smt. Shantawa had died on 26.8.1992. The petitioner in the present case admittedly did not make any report within a period of three months from 26.8.1992 as appears from Annexure-E itself. The application under Section 128 was moved on 5.11.1994 that is almost 2 1/2 years period from the date of death of Smt. Shantawa, on which date the petitioner said to have acquired rights by succession or inheritance. That being the position, this application could not directly be made to the prescribed authority, it had to be moved before the Tahsildar and Tahsildar has been authorised to receive that application on payment of penalty referred to in Sub-section

(3) and thereafter to report that case to the prescribed authority under Sub-section (1). Whether there was any circular of the Tahsildar or not is important in the present case. Rule of law is the soul of democracy; that the discipline of law has got to be followed. When the mandate of law has been to that effect, that it is directed and required to determine the fine according to law and impose and realise the same if it thereafter the application i.e. the report can be received as it cannot be received till fine is determined and imposed by Tahsildar. That as such, after it is being present to the Tahsildar, Tahsildar will impose or levy fine then will forward those reports to the prescribed authority. In my opinion, the prescribed authority-the Village Accountant did not commit any error of law jurisdiction in passing the order Annexure-E to the Writ Petition. The order is perfectly justified

and it does not suffer from any error of law as the law directs the person acquiring rights if he makes a belated application it is to be presented before the Tahsildar and is not to be presented before the Village Accountant. As such, the petitioner has got no right to enforce and is not entitled to claim Writ of Mandamus. In order to claim Mandamus, a person must show a legal right vested in him and a corresponding duty on the part of the opposite party against whom the Mandamus is claimed and then if that authority is shown to have failed to perform that duty inspite of being asked, no doubt that person is entitled to approach this Court under Article 226 of the Constitution of India claiming Writ of Mandamus. Here, in the present Petition there is no case with the necessary ingredient for issuance of Writ of Mandamus. That no case having been made out for grant of Writ of Mandamus, this Writ Petition is not maintainable,

4. In my opinion, the petition is completely devoid of force and is hereby rejected. The report if made again before the Tahsildar, the report may be received. Question of imposing fine is concerned, order may be passed and thereafter the report may be forwarded to the prescribed authority according to law.

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