

**Rajaveerappa Vs. District Judge**

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**SooperKanoon Citation :** [sooperkanoon.com/383620](http://sooperkanoon.com/383620)

**Court :** Karnataka

**Decided On :** Apr-10-1985

**Reported in :** ILR1985KAR2923

**Judge :** Murlidher Rao, J.

**Acts :** Karnataka Village Offices Abolition Act, 1961 - Sections 3(2); Civil Procedure Court - Sections 96 - Order 41

**Appeal No. :** C.R.P. No. 1936 of 1985

**Appellant :** Rajaveerappa

**Respondent :** District Judge

**Advocate for Def. :** R.H. Chandanagowder, HCGA for R-2 and 4 and ;K. Channabasappa, Adv. for R-3

**Advocate for Pet/Ap. :** A.V. Albal, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Murlidher Rao, J.**

1. At the out-set Mr. Albal, Learned Counsel, appearing for the petitioners submitted that he may be permitted to convert this as Civil Revision Petition. Permission is granted. The office is directed to register this as Civil Revision Petition. Excess Court fee paid may be refunded.

2. This Petition is directed against the order of the District Judge, Chicknagalur, dated 21-11-1980 under KVO. C.A. 1/80. The said appeal was filed by the petitioner' as Legal Representative of his father Kariappa, who had expired during the pendency of the proceedings against the order passed by the Tahsildar, Tarikere. The petitioner's contention was that his father Kariappa was functioning as Talwar and therefore, he was one of the persons interested in the Village Office and as such entitled for regrant. The Tahsildar has referred to certain documents in coming to the conclusion that the claim of the petitioner is not substantiated by those documents. This finding of the Tahsildar was challenged by the petitioner, in appeal, before the District Judge, Chickmagalur under sub section (2) of Section 3 of the Karnataka Village Offices Abolition Act. The Learned District Judge has not referred to the material on record. The entire reasons are as found in para-7 which unfortunately does not reflect the application of mind by the Learned Judge to the material placed on record. It is to be mentioned that under sub-section (2) of Section 3 of the Village Offices Abolition Act only one appeal is provided to the District Judge and the order of the appellate authority is made final. In this view of the matter, it was necessary on the part of the Learned District Judge to have referred to the material placed by the respective parties and demonstrate that he has applied his mind, to come to the conclusion. The order does not satisfy this requirement and therefore, it cannot be sustained.

3. Sri Albal, appearing for the petitioner maintained that the order of the Tahsildar is also liable to be set-aside, as the Tahsildar has not held any enquiry and no statements of the parties were recorded and the petitioner was not given an opportunity to produce his material. He relied on Rule-7 of the Rules framed under the Karnataka Village Offices Abolition Act. So far as this aspect is concerned, it is open for the petitioner to urge the same, before the District Judge and the same will be considered by the Learned District Judge on merits.

4. Mr. Channabasappa, however, maintained that the order of that District Judge was a concurring Judgment and therefore, it was not necessary for him to write detailed reasons and even otherwise, there is sufficient evidence to show that the Learned District Judge has applied his mind. He invited my attention to paragraph-7 of the Judgment. Paragraph-7 of the Judgment of the District Judge reads thus :

'A reading of the several documents produced in the case, it is disclosed that the appellant has no manner of relation to the salary of Barwardars. The appellant was asked to function as Barwardar only by the villagers. There is no document to show that the original petitioner Kariyappa was appointed as such by the authority to the office of Talwar, Koranahalli. Kariyappa's sob Rajaveerappa admits that there is no such order and it is only at the instance of the villagers that Kariyappa was discharging the duties. In the absence of the legal order Kariyappa does not get any right in the office whatever may be the period during which he has functioned as Talwar or enjoyed the properties. He is not legally entitled to the regrant of the land attached to the office of the Talwar. The lower Court perfectly justified in holding that the lands have to be regranted only to the members of the family or Barwardars. The Genealogical tree produced by the respondent shows that the respondent is a member of the family of the Barwardars. The entries in the Revenue Records which are at pages 9,7,6,5 positively indicate the right of the respondent for the regrant of such lands and negatives the contention of the appellant.'

5. After going through the above paragraph-7, I do not think that the impugned order can be maintained. Since the details of the documents are not mentioned, the impression one gets is that, the appellate authority has drawn its inference, by going through the order of the Tahsildar and not with reference to documents or evidence in the case. The jurisdiction to be exercised is an appellate jurisdiction ; wherein questions of facts and law are to be gone into ; particularly under the Karnataka Village Offices Abolition Act, the Appellate Jurisdiction over the revenue authorities is given to Court. It becomes all the more necessary for the District Judge to scrutinise the evidence and deal with facts of the case, as is done in an appeal under Section 96 C.P.C. When the appellate jurisdiction is entrusted to a pre-existing Judicial Authority-highest in the District as against the orders of the

Deputy Commissioner the highest Revenue authority in the district, the intention is that the order should pass through the test of 'judgment' and judicial adjudication. The appeal is provided on four important aspects of the matter as seen in clause (a) to (d) of sub-section of Section 3 of the Act. Dealing the appeal in a casual and cursory way defeats the provision for which appeal is provided to a highest Judicial Authority in the district; further the order passed in appeal is final. It would be useful to bear in mind the following observations in De Smith's Judicial Review of Administrative Action at page 128.

'It would seem reasonable working hypothesis to assume that when a Court has jurisdiction to review the decisions of administrative tribunal, on questions of law, its intervention should extend to these matters upon which its decisions are likely to be better than those of the Tribunal under review. The principal fortification for any review at all is that the second opinion is likely to be better than the first.'

6. The provisions of Order 41 C.P.C. govern the appeals under the Karnataka Village Offices Abolition Act. There is nothing in the said Act and Rules which provides for any other procedure to deal with the appeal, before the District Judge. I am clearly of the opinion that the impugned judgment does not answer the requirements in Order 41 C.P.C.

7. In the result, I pass the following order :

(i) This Petition is allowed.

(ii) Rule made absolute.

(iii) The impugned orders at Annexures C and D are set-aside and the matter is remitted to the District Judge with a direction to dispose of the same on merits in the light of the observations made above.