

Ramanna Vs. State of Karnataka

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Court : Karnataka

Decided On : Apr-09-1991

Reported in : ILR1991KAR1771; 1991(2)KarLJ169

Judge : Mohan, C.J. and ;N.D.V. Bhat, J.

Acts : Karnataka (Religious and Charitable) Inams Abolition Act, 1955 - Sections 3(1), 4(1), 7 and 9; ;Hindu Religious and Charitable Endowments Act

Appeal No. : W.A. No. 785 of 1989

Appellant : Ramanna

Respondent : State of Karnataka

Advocate for Def. : S. Shivaram, Govt. Adv. for R-1 and ;B.H. Mahesh Babu, Adv. for ;C.R.V. Swamy, Adv. for R-4 and R-5

Advocate for Pet/Ap. : Nirmala D. Shah, Adv. for ;M.N. Hegde, Adv.

Judgement :

Mohan, C.J.

1. This Writ Appeal is directed against the Judgment of our Learned Brother Judge Justice Swami, rendered in Writ Petition No. 15249 of 1987, dated 2nd of November, 1988.

2. The facts leading to the Writ Appeal are as follows:

The lands forming the subject matter of this Writ Appeal are bearing Survey Nos. 174 and 320 of Tyloor village. They measure 1 acre 10 guntas and 2 acres 08 guntas respectively. These are Inam lands covered by the Karnataka (Religious and Charitable) Inams Abolition Act of 1955. Originally it was known as Mysore (Religious and Charitable) Inams Abolition Act of 1955. This will be referred to as the 'Act'.

3. Consequent to a Notification issued under Section 3 of the said Act, the Inam came to be abolished. The appellant herein made an application for registering him as a tenant under the provisions of the Act. Similarly, the Tahsildar who is the Muzrai Officer in charge of the Temple also filed an application for registering the lands in the name of the Deity. The Archak of the Deity also made an application for registering him as an occupant. The Tribunal by its order dated 25th June, 1982 granted the occupancy rights in favour of the appellant, in respect of the lands in question. Accordingly, it rejected the applications filed by the Archak and the Tahsildar. While the matter stood thus, the devotees of the Deity Sri Anjaneyaswamy, Tyloor, Maddur Taluk, preferred the Writ Petition after 5 1/2 years, stating that no notice had been issued to the Tahsildar, nor again was there any public notice issued. Where therefore such a curious procedure was adopted, the order was bad in law and is consequently liable to be set aside. The delay of 5 1/2 years in approaching this Court should not be weighed against the Writ Petitioners. Though the appellant opposed this stand stating, if notice 'has not been issued to the Tahsildar, it was for the Tahsildar to make out a grievance and not for the so called devotees to take up cudgels on behalf of the Tahsildar, the Learned Judge ultimately held the order was bad in law as having been passed without notice to the Tahsildar and accordingly he remitted the matter to the Tribunal. Thus, the Writ Appeal.

4. It is urged on behalf of the appellant that the learned Judge has erred gravely in coming to this conclusion. In the scheme of the Act, the devotees have no place. If really an order was passed without notice to the Tahsildar, he having filed an application for registering the lands in the name of the Deity, he should have been

the first person to come to this Court and then object to the order. He had not chosen to do so, nor again the Archak who made an application had challenged the order. The so called devotees, who have no sublime of right have come up here and then contended that notice has not been issued to the Tahsildar. Therefore, the order of the Learned Judge is liable to be set aside.

5. In opposition to this, the Learned Counsel appearing for Respondents 4 and 5, who were the petitioners in the Writ Petition, urged that the scope of Public Cause Litigation is such that where an order has been passed without notice to the person who is ultimately entitled to that notice, that order cannot remain. It has to be set aside in the manner known to law. Merely because the Tahsildar had not chosen to challenge the order, it does not mean it becomes conclusive, more so when there was no notice. No doubt the Tahsildar could have challenged the order. However, it does not preclude these respondents to challenge the order as the Public Cause Litigation. As a matter of fact, the question of delay was also considered by the Learned Judge and he has come to the right conclusion that the delay should not matter, since they were espousing a public cause. Looked at from this point of view, no case is made out for interference.

6. We will now proceed to consider these submissions in seriatim. Before we do so, it is necessary to have a legal background. The Act in question was originally called Mysore (Religious and Charitable) Inams Abolition Act of 1955. Presently after 1956, it is Karnataka (Religious and Charitable) Inams Abolition Act. The object of the Act as seen from the long title is to provide for abolition of religious and charitable Inams.

7. Therefore, after the abolition of Inams, it purports to introduce ryotwari settlement Under Section 1, Sub-section (4), it is stated as follows:-

'(4) This Section and Sections 2, 34 and 36 shall come into force at once and the rest of this Act shall come into force in minor Inams other than such Devadaya Inams in unalienated villages in such area and on such date, as the Government may by notification specify, and in any Inam village, on such date as the Government may, by notification specify in respect of such inam village.'

8. Therefore, the Notification is made under Sub-section (4) of Section 1. As to what are the consequences that will follow is made clear under Section 3. We may at once hasten to add, on or from the date of the Notification issued under Section 1(4), the entire estate shall vest in the Government. As a matter of fact that is made clear in no uncertain terms under Section 3(1)(b), which reads:-

'3(1) When the notification under Sub-section (4) of Section 1 in respect of any inam has been published in the Mysore Gazette, then, notwithstanding anything contained in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting, and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely:-

(a).....

(b) all rights, title and interest vesting in the inamdar including those in all communal lands, cultivated lands, uncultivated lands, whether assessed or not, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries, shall cease and be vested absolutely in the State of Mysore, free from all encumbrances.'

9. Therefore, when it says, save as otherwise provided, it means such of those provisions like Sections 4, 5, 6. Any other right gets extinguished by reason of the statutory operation. As a consequence of vesting, the inamdars were paid the compensation.

10. Therefore, a careful analysis of the provisions of the Act will put the matter beyond doubt that the lis is between the Government on the one hand and the various persons, like kadim tenants, permanent tenants, other tenants like claimants under Sections 7 or 9 on the other hand. Nowhere in the scheme of the Act, as rightly contended by learned Counsel for the appellant, the devotees come in at all. It is not the case of the devotees that they made an application under any one of the Sections 4, 5, 6 and 9 and their application had come to be rejected without proper consideration. They are utter strangers to the proceedings; to use the words of Lord Denning 'Interlopers'. If this is the scheme of the Act, it is very difficult to appreciate as to how they could come by way of Writ Petition under

Article 226 of the Constitution. The only label affixed for approaching this Court is Public Cause Litigation. What is the public cause that is to be served here when the scheme of the Act precludes a person of the character of Writ Petitioners namely, respondents 4 and 5 in this appeal, from approaching the Tribunal, there can be no public cause at all. Therefore mere label as Public Cause Litigation cannot carry them far. They may be the ardent devotees, but that does not give them a right, when consequences of vesting is saved by certain provisions and these respondents 4 and 5 could not invoke the benefit of any such provision. The observations of the learned Judge in Paragraph-5, is as follows:-

'No doubt it was open to the Tahsildar to challenge the order of the Tribunal in question. But that does not in any way take away the right of the devotees to challenge the order in the interest of the Deity. The Tribunal ought to have issued notice to the Tahsildar.'

This does not seem to reflect the correct position of law. As we have pointed just now, the devotees have no place in the scheme of the Act.

11. It may be true that the Tahsildar did not have notice, before the order of the Tribunal was passed on 25th June, 1982. Even then how could these respondents 4 and 5 champion the cause of the Tahsildar or again take up cudgels on behalf of the Tahsildar? We are afraid that is not possible.

12. Once we have arrived at the above conclusion, that they cannot invoke Article 226, even in the guise of Public Cause Litigation, the question of delay pales into insignificance. However, for the sake of completion we shall deal with that aspect as well. What is the justification for approaching this Court after 5 1/2 years? None whatever. Notwithstanding this, the Learned Judge concludes:-

'But this delay has to be viewed in the context that the petitioners are espousing the public cause and that they are not advancing their personal interest; that they being the devotees of the temple, want to ensure that the property of the temple is retained for the purpose of maintenance of the temple. The provisions of the Act do not exclude the lands to be registered in the name of the Deity. In these circumstances, it appears to me that the delay deserves to be condoned. In fact, in

a similar matter in W. P. No. 5581 of 1988 (T.M. MALLANNA v. STATE OF KARNATAKA AND ORS.) decided on 19th July, 1988, delay of 5 1/2 years was condoned. That was also a petition filed by one of the devotees of the temple concerned therein. In the case of temples, the devotees are entitled to initiate legal actions to safeguard the interest of the temple. Therefore, I do not consider it just and proper to deny the relief to the petitioners on the ground of delay.'

13. On a careful consideration of the above, we find great difficulty in supporting the line of reasoning adopted by the Learned Judge. No doubt in cases where temple is involved, the devotees could maintain the action for e.g., Hindu Religious and Charitable Endowments Act; but I am mindful of the above statutory provision, no devotee can ever come up. As we pointed out, in the scheme of the Act, respondents 4 and 5 have no place. Therefore, the discussion of the Learned Judge does not lead us to the correct conclusion.

Accordingly, we set aside the Judgment of the Learned Single Judge and uphold the order of the Land Tribunal, Maddur, dated 25th of June, 1982 made in No. INA. 1497/80-81, 1490, 1499/80-81, marked as Annexure-C in the Writ Petition. No costs.

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