

**Muniyappa Vs. State**

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**Court :** Karnataka

**Decided On :** Aug-23-1991

**Reported in :** ILR1991KAR3504; 1991(3)KarLJ466

**Judge :** M. Ramakrishna, J.

**Acts :** Karnataka (Personal and Miscellaneous) Inams Abolition Act, 1954 - Sections 1(3), 1(4), 8 and 10; Karnataka Village Offices Abolition Act, 1961 - Sections 4 and 7; Karnataka Village Offices Abolition (Amendment) Act, 1978; Karnataka Land Revenue Act - Sections 33

**Appeal No. :** W.P. No. 21384 of 1990

**Appellant :** Muniyappa

**Respondent :** State

**Advocate for Def. :** M. Siddagangaiah, HCGP for R-1 to R-3 and ;Gopala Gowda, Adv. for R-4

**Advocate for Pet/Ap. :** S.S. Koti, Adv.

**Disposition :** Writ petition dismissed

**Judgement :**

ORDER

## **M. Ramakrishna, J.**

1. Muniyappa, the petitioner herein, is a purchaser of 4 acres 9 guntas of land in Sy.No. 266 situated in Bellur Village, Kolar Taluk and District, by a registered Sale Deed dated 20-1-1966 from respondent-4 and three others for a sum of Rs. 700/- and ever since the date of sale, he has been in possession and enjoyment of it. It is stated that subsequently he invested certain sum of money for the improvement of the land by digging a well and instating a pump set.

2. The petitioner was not aware of any dispute in respect of this land until he received a notice from the Tahsildar, respondent-2 herein some time in the year 1980.

3. The matter arises this way:

The petitioner purchased the land on the belief that it was granted in favour of Ekasi Nanjappa, father of respondent-4, by the Deputy Commissioner, Kolar, by his order dated 4-11-1962. According to the petitioner, this land along with other lands came to be regranted by the Deputy Commissioner by his order, Annexure-E1 and Ekasi Nanjappa became the full owner thereof in the light of the order, Annexure-E1 and therefore there was no hindrance to purchase the land.

4. However, the fact remains that by the order, impugned here at Annexure-L, dated 28-11-1980, the Tahsildar directed eviction of the petitioner on the ground that the land that came to be granted in favour of Ekasi Nanjappa was a service inam land and that therefore under Section 7 of the Village Offices Abolition Act, 1961 (the Act for short), the petitioner being in unauthorised occupation of it was liable to be evicted. This has given rise to the grievance of the petitioner.

5. The Tahsildar issued a notice as per Annexure-G calling upon the petitioner to show cause as to why action should not be taken to evict him from the land. This notice was said to have been issued on 25-7-1980. Challenging this notice followed by the endorsement, Annexure-H, dispossessing him from the land, the petitioner filed W.P.No. 1688 of 1982 before this Court. This Court by an order dated 23-10-1986 allowed the Writ Petition and quashed the notice and the order

impugned therein on the ground that the land being a service inam land coming under the Karnataka (Personal and Miscellaneous) Inams Abolition Act, 1954 (the Act of 1954), the provisions of the Act were not attracted and hence the sale in favour of the petitioner could not be nullified. However, on an application subsequently filed by the learned Counsel for the fourth respondent herein, who was also respondent-4 in the said Writ Petition, for recalling the said order, the Court allowed the application and recalled the earlier order disposing of the Writ Petition. The petition was again posted for hearing. In the course of time, the petitioner filed a Memo to permit him to withdraw the Writ Petition. This Court dismissed the Writ Petition as withdrawn with liberty to the petitioner to file a fresh Petition. This was on 13-7-1990.

6. Accordingly, the petitioner filed this Writ Petition on 7-8-1990 after getting the copy of the impugned order produced at Annexure-L, seeking the following reliefs:-

'a) A Writ of Certiorari or direction or an order quashing the impugned notice at Annexure-H vide No. 59 dated 11-1-1982, and any order passed in No. INA.EV.PR.5/80-81 and also the Annexure-L vide No. INA.E.VP.5/80-81 dated 28-11-1980.

b) A Writ of Prohibition, prohibiting the second respondent from passing any order because lack of jurisdiction and authority of law.

c) grant such other reliefs as deemed fit in the nature of case including an award of costs of this petition.'

5. Sri S.S. Koti, learned Counsel for the petitioner, mainly contended that in view of the order, Annexure-E1, dated 4-11-1962 made by the Deputy Commissioner, Competent Authority under the Act of 1954, registering Ekasi Nanjappa and others as holders of land in Sy.No. 266, respondent-4 Narayanappa, son of the said Ekasi Nanjappa and other registered holders were entitled to alienate the land and accordingly they alienated it to him, which could not be questioned.

6. The following are the legal contentions urged by Sri S.S. Koti:-

1) The order, Annexure-E1, clearly disclosed that Sy.No. 266 of Bellur village was Jodi Inam land. There was no material to show that that land was endowed upon the Village Office viz., Talari of the said village.

2) Presuming for the purpose of argument that it was so, the sale having taken place prior to the amendment by Act No. 13 of 1978 amending among others Section 7, introducing Section 7A and inserting a proviso to Section 5(3) the Tahsildar has no jurisdiction to take action to evict the petitioner from the land.

3) Having regard to the Ruling of this Court in LAXMANA GOWDA v. STATE OF KARNATAKA, ILR (Karnataka) 1980(1) 892, the alienation having taken place earlier to the regrant and the commencement of the Act No. 13 of 1978, the regrant in favour of the alienor would enure to the benefit of the alienee. The alternative argument is that the petitioner being in long and continuous possession of the land for over 12 years, has perfected his title by adverse possession and that therefore he cannot be evicted.

7. Per contra, Sri Gopala Gowda, learned Counsel for respondent-4, argued that, at the outset, the Special Deputy Commissioner, Kolar, had no jurisdiction to pass an order as per Annexure-E1 as, in view of Clause (d) of Sub-section (3) of Section 1, service inams held by Talaris etc., were excluded from the purview of Sections 8 and 10 relating to grant of occupancy right. To demonstrate this aspect, he placed reliance upon the original records produced by Sri Siddagangaiah, learned High Court Government Pleader and pointed out from a certified copy of the order of the Deputy Commissioner available in the original records that Sy.No. 266 measuring 4 acres 9 guntas situated in Bellur village was Talari service inam land and that therefore the order made by the Deputy Commissioner as per Annexure-E1 was a nullity and unenforceable. Sri Gopala Gowda lastly submitted that though Sub-section (3) of Section 5 as amended by Act No. 13 of 1978 had come into force prospectively with effect from 7-8-1978, in view of the pronouncement of this Court in HANUMAIAH v. STATE OF KARNATAKA, : ILR 1987 KAR550 and CHIKKANARASIAH v. TIRUPATAIAH, : ILR 1989 KAR1520 the action taken by the Tahsildar seeking to evict the petitioner from the land in question by virtue of the order, Annexure-L, was perfectly justified.

8. Sri Siddagangaiah, learned High Court Government Pleader, supported the arguments of Sri Gopala Gowda. Referring to the certified copy of the order of the Special Deputy Commissioner found in the original records, he submitted that the Deputy Commissioner himself has stated therein that Sy.No. 266 was a service inam land as recognised in the Quit Rent Register and that therefore as on the date when the Deputy Commissioner passed the said order, he had no jurisdiction. Thus, the learned Government Pleader opposed the submissions made by the learned Counsel for the petitioner. He placed reliance upon the two Decisions of the Supreme Court in KIRAN SINGH v. CHAMAN PASWAN, : [1955]1SCR117 and SMT. NAI BAHU v. LAL RAMNARAYAN, : [1978]1SCR723 .

9. In view of the rival contentions referred to above, the following questions arise for my consideration in this Petition:-

(1) Whether the order made by the Special Deputy Commissioner as per Annexure-E1 on 4-11-1962 can be sustained.

(2) Whether the order made by the Tahsildar as per Annexure-L on 28-11-1980 seeking to evict the petitioner from the land is correct in law.

10. I will consider the first question to begin with. A copy of the order sheet maintained in case No. 5629 of 1962-63 by the Special Deputy Commissioner is found in the original records. It contains the order dated 4-11-1962 (Annexure-E1). The Deputy Commissioner has conferred occupancy in favour of Ekasi Nanjappa and others jointly under Section 10 of the Act. It is very relevant to notice that the Deputy Commissioner has observed in the order that Sy.No. 266 along with other survey numbers is a Talari service inam land as described in the Quit Rent Register. Unfortunately, in the certified copy of the order, Annexure-E1, annexed to the Writ Petition, there is some variation wherein it is stated that Sy.No. 266 and other survey numbers are stated to be Talsen Surchee inams recognised in the Quit Rent Register, whereas the order of that date made by the Deputy Commissioner found in the original records clearly states that Sy.No. 266 is a Talari service inam land. Therefore, Annexure-E1 cannot be said to be the replica of the said order. Even in the endorsement, Annexure-F, there is a reference at the end that these lands including Sy.No. 266 are Talari service inam lands.

Therefore, there is enough material to come to the conclusion that 4 acres 9 guntas of land in Sy.No. 266 of Bellur village is a service inam land viz., Talari.

11. Now the question is whether the Deputy Commissioner is competent to grant occupancy of Talari service inam land under Section 8 or 10 of the Act. The Preamble of the Act discloses that the Act is to provide for the abolition of personal inams and certain miscellaneous inams in the Mysore Area except Bellary District, Clause (d) of Sub-section (3) of Section 1 of the Act reads:

'(d) Miscellaneous service inams including artizan inams, and excluding village service inams held by Shanbhogs and Patels, Thotis, Talaris and Nirgantis.'

From what is extracted above, it is abundantly made clear that service inams held by Talaris are excluded from the purview of the Act. Therefore, the Granting Authority viz., Deputy Commissioner acting under the Act is not competent to grant those lands. As I have already held, Sy.No. 266 of Bellur village, subject matter of this Writ Petition, is a Talari Service Inam land which is excluded from the purview of the Act. Therefore, the Deputy Commissioner cannot have power to grant such a land. However, he granted it under Annexure-E1 which cannot be sustained as it is one without jurisdiction and it does not confer any right, title or interest on the grantee viz., respondent-4 herein. Consequently, the petitioner, who is none other than the vendee of respondent-4 gets no title over the property as his vendor himself has no title to be conveyed.

12. Sri Koti, learned Counsel for the petitioner, has contended that once the Competent Authority under the Act treated the land in question as a minor inam land under the Act of 1954 and made orders granting occupancy right in respect of it under Section 8 thereof, such orders become final and the authorities under the Karnataka Village Offices Abolition Act cannot have any power to direct resumption of the lands vested by virtue of a notification issued under the Inams Abolition Act. He has placed reliance upon the Decision of this Court in RANGANNA v. STATE OF KARNATAKA, 1981(1) KLJ Short Notes Item No. 43. It seems to me that it is not possible to accede to the contention of Sri Koti. The Division Bench in that case held that when the land in question vested in the State Government by virtue of a Notification issued under the Inams Abolition Act, the

question of its resumption under the Karnataka Village Offices Abolition Act does not arise. When the Principal Act was inapplicable to the land, the Amendment Act was also inapplicable. Hence an order of the Assistant Commissioner purporting to be under Section 7(1) of the Village Offices Abolition Act 1961 as amended by Karnataka Act 13 of 1978 holding that the persons in possession were unauthorised holders and directing them to surrender the land is without jurisdiction.

13. It is nobody's case here that the State Government has issued a Notification under the Act of 1954 by which Sy.No. 266 of Bellur village vested in the State. Even the Deputy Commissioner has nowhere mentioned in his order, Annexure-E1, that the land vested in the Government by virtue of the Notification issued by the State Government under the Inams Abolition Act. As I have already held, the land in question being a Talari service inam land is exempted from the applicability the Inams Act. Therefore, even though there is a provision for vesting under it, unless there is a Notification issued under Sub-section (4) of Section 1 of the Act of 1954 and published in the Karnataka Gazette, a land coming under the Act of 1954 cannot be said to have vested. Moreover, when the land in question itself does not come within the ambit of the Act of 1954, question of vesting of it in the State does not arise. In Ranganna's case cited above, the land came to vest in the State by virtue of the Notification under the Act of 1954 and therefore this Court held that question of attracting Section 7(1) of the Village Offices Abolition Act did not arise. Therefore, that Decision has no relevant to the present case.

14. Sri Koti submitted that in the face of the order made by the Deputy Commissioner as per Annexure-E1 under the Act, the Tahsildar cannot issue notice under the Village Offices Abolition Act seeking to evict the petitioner from the land. It is already made clear that the Deputy Commissioner acting under the Act of 1954 has no power to grant the land. As regards the eviction notice issued by the Tahsildar under Section 7(1) of the Village Offices Abolition Act, this Court in Hanumaiah v. State of Karnataka has held as follows:-

'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.'

Similar was the view taken by another Division Bench of this Court in Chikkanarasaiah v. Tirupataiah wherein referring to the provisions of Section 7, this Court has held as follows:-

'The application of principle of 'feeding the estoppel' and that of 43 of the Transfer of Property Act, would be inconsistent with the provisions of Section 7 of the Act; a new mode of conferring title to the land on an unauthorised holder not provided by the Act will be contrary to the scheme of the Act.'

15. Thus, when the Tahsildar came to know that the petitioner was squatting on the land unauthorisedly, he took action under Section 7 seeking to evict him therefrom. Considering this aspect of the matter, this Court in Chikkanarasaiah's case has held as follows:-

'(i) In the year 1978, Principal Act was amended. Section 5(3) as amended came into force with effect from 7-8-1978. Section 5(4) as introduced by the Amendment Act was read down in Lakshmana Gowda's case as having only prospective operation from 7-8-1978. Section 7 was substituted with effect from 24-12-1975 and a new Section 7A was introduced with effect from 7-8-1978 with effect from 7-8-1978. There is a total bar to alienate the granted lands for a period of 15 years from 7-8-1978 if the land is granted under Section 5 or 6. If the land is granted under Section 7, it shall not be transferred similarly, as per Section 7A. Therefore, if a land is granted after the amendment Act became effective, the reading down of Section 5(3) or Section 5(4) in Lakshmana Gowda's case, would in no way benefit the transferees from the grantees. The grant is subject to the restrictions and these specific statutory restrictions cannot be overridden by an equitable doctrine of estoppel, or by applying Section 43 of the Transfer of Property Act.'

16. Therefore, action was taken by the Tahsildar after 7-8-1978 seeking to enforce the law on the person who was found to be in unauthorised possession of the land with a view to evict him therefrom.

17. Sri Koti has brought to my notice referring to the original records that the Tahsildar has not held a proper enquiry before passing the impugned order, inasmuch as though the date below his signature on the notice mentions 25/7, the impugned order is dated 28-11-1990. I may mention here that having regard to the language employed in Section 7, it is seen that before evicting an unauthorised holder from any land resumed under Clause (3) of Section 4, a reasonable opportunity of making representation should be given to such person. That being so, a notice was given calling upon the petitioner in the instant case to make a representation. That does not mean that the Tahsildar is expected to hold a detailed enquiry, as required under Section 33 of the Karnataka Land Revenue Act. Even if there is any variation in the mention of dates by the Tahsildar as alleged by Sri Koti, it serves no purpose, because after the notice was served on the petitioner, he appeared before the Tahsildar who recorded his statement. Therefore, he cannot take a grievance of no opportunity of making representation.

18. Sri Koti lastly submitted that the petitioner is in continuous possession and enjoyment of the land on the strength of the interim order; that he has raised certain crops which will be ready for harvest by the end of this year and that therefore he may be permitted to harvest it before he is evicted from the land. I find some force in this submission.

19. Sri Gopala Gowda, learned Counsel for respondent-4, submitted that a small piece of land out of Sy.No. 266, subject matter of this petition, was acquired under the Land Acquisition Act; that though an award was passed by the Land Acquisition Officer, the amount was not disbursed, but was lying with the Land Acquisition Officer and that therefore, in view of the Decision of this Court, the Land Acquisition Officer might be directed not to disburse the award amount until the matter in this behalf was finally settled.

20. In view of the above discussion, I make the following:

