

Dattatreya and Others Vs. Mahaveer and Others

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Court : Karnataka

Decided On : Mar-31-1998

Reported in : 1998(6)KarLJ438

Judge : Y. Bhaskar Rao and ;S.R. Bannurmath, JJ.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 48-A; Karnataka Certain Inams Abolition Act, 1977 - Sections 5(2) and 11(1); Karnataka Certain Inams Abolition(Amended) Act, 1991; Karnataka Land Reforms Act, 1974; Bombay Service Inams (Useful of Community) Act, 1953

Appeal No. : Writ Appeal Nos. 9706 and 6915 of 1996

Appellant : Dattatreya and Others

Respondent : Mahaveer and Others

Advocate for Def. : Sri Chaitanya Hegde, ;Sri A. Ganesh, Advs. and ;Sri S.N. Aswathanarayan, High Court Govt. Pleader

Advocate for Pet/Ap. : Sri M.N. Gadag, Adv.

Judgement :

S.R. Bannurmath, J.

1. As these appeals are filed by rival contesting parties against the same judgment dated 18-4-1996 passed by the learned Single Judge in W.P. No. 35394 of 1993 and subject-matter being the same, are heard together.

2. The brief facts of the case are as follows:

The land in dispute bearing Sy. No. 1033/1+2 measuring 9 acres 11 guntas of Belgaum belongs to Chandramouleshwara Temple of Belgaum. The appellants in W.A. No. 9706 of 1996 (hereinafter referred to as 'wahivatdars') belong to the family of priests of temple and claim themselves the wahivatdars of the temple.

3. The appellants in W.A. No. 6915 of 1996 (hereinafter referred to as 'tenants') who are brothers, claiming to be tenants of the land filed an application in Form No. 7 for grant of occupancy rights under the Karnataka Land Reforms Act as amended by Act 10 of 1974. After duly notifying the wahivatdars, the Land Tribunal held an enquiry and by the order dated 3-7-1979 in Belgaum/Temple/SR 225 granted occupancy rights to the tenants. This order was challenged by the wahivatdars in W.P. No. 14033 of 1990 in this Court. This Court by order dated 3-6-1991 dismissed the writ petition thereby confirming the order of the Land Tribunal confirming occupancy rights to the tenants.

4. Suppressing this order, one of the wahivatdars Sri Dattatreya Adhyapak who was a party to the Writ Petition No. 14033 of 1990 approached this Court in W.P. No. 5495 of 1992 on the ground that he has filed an application in Form No. 1 under the provisions of Karnataka Certain Inams Abolition Act and that the Land Tribunal has not decided the same. As such, prayed for a direction to the Land Tribunal to consider his claim. Unaware of the previous writ petition, this Court by order dated 16-4-1993 allowed W.P. No. 5495 of 1992 and directed the Land Tribunal to consider the application of Dattatreya Adhyapak. It is to be noted that the tenants were not parties to this writ petition. In pursuance of the direction of the Court, the Land Tribunal without noticing its earlier decision of grant of occupancy to tenants again took up the case of the wahivatdar in Temple/SR 56 and issued notices to the tenants also and reviving the application of tenants in Belgaum/SR 225, clubbed both the cases and took up enquiry. As the facts of earlier decision in favour of tenants, subsequent order of confirmation of the same by this Court in

W.P. No. 14033 of 1990 was brought to the notice of the Tribunal, the Chairman declined to consider the case of the wahivatdar, but the Members of the Tribunal by majority insisted on granting occupancy rights to the wahivatdars and accordingly, by order dated 21-9-1993 did grant occupancy to the wahivatdars.

5. Aggrieved by the same, the tenants approached this Court in W.P. No. 35394 of 1993. The wahivatdars also entered into appearance and contested the case. The learned Single Judge after considering the rival contentions though allowed the writ petition by order dated 18-4-1996 set aside the order of the Land Tribunal dated 21-9-1993, however remanded the case to the Land Tribunal for fresh consideration of claims of both the tenants and wahivatdar for grant of occupancy rights. Aggrieved by the order of the learned Single Judge both the tenants and wahivatdars have filed these appeals in W.A. Nos. 6915 of 1996 and 9705 of 1996 respectively.

6. The learned Counsel appearing for the appellant/tenants vehemently contended that the learned Single Judge was in error in setting aside the order dated 3-7-1979 passed by the Land Tribunal conferring occupancy rights to the tenants which has been confirmed by this Court in previous W.P. No. 14033 of 1990. That the impugned order of the learned Single Judge is nothing but reopening of the previous writ petition and virtually amounts to review of the concluded decision. That even after noticing the fraud played by the wahivatdars in suppressing the material facts, the learned Single Judge instead of taking action against them, has erred in reopening the case and remanding the same for fresh enquiry etc.

7. On the other hand, the learned Counsel for the wahivatdar appellants in W.A. No. 9706 of 1996 argued that the learned Single Judge was in error in quashing the order dated 21-9-1993 passed by the Land Tribunal in their favour. That the land admittedly belonged to the temple and appellants being the wahivatdars were rightly held to be entitled for occupancy under the provisions of the Karnataka Certain Inams Abolition Act and as such previous order dated 3-7-1979 passed by the Land Tribunal in favour of tenants and confirmed by this Court in W.P. No. 14033 of 1990 vide order dated 3-6-1991 are nullity in the eye of law. The learned Counsel contended that the land in question was granted to the temple in 1856

and as such was governed by the provisions of Bombay Service Inams (Useful of Community) Act, 1953 and as such provisions of the Karnataka Land Reforms Act as amended were not applicable to the case and as such learned Single Judge had rightly set aside the previous order passed by the Land Tribunal in favour of tenants, but committed an error in setting aside the later order in their favour which was rightly passed under the provisions of the Karnataka Certain Inams Abolition Act and hence prayed for modification of the impugned order to that effect.

8. From the rival contentions as well as the arguments, certain facts are undisputed. They are :

(1) Tenants filed Form No. 7 claiming occupancy rights in respect of the land in question.

(2) The Land Tribunal after giving opportunity to wahivatdars by its order dated 3-7-1979 granted occupancy rights.

(3) Writ Petition No. 14033 of 1990 filed by wahivatdars was dismissed by this Court on 3-6-1991 on the ground of delay and laches of nearly 11 years and this order became final as no writ appeal was filed by wahivatdars.

(4) Thereafter taking advantage of the Karnataka Certain Inams Abolition Act, one of the wahivatdars approached this Court in W.P. No. 5495 of 1992 on the ground that he had filed Form No. 1 under that Act claiming occupancy right and that Land Tribunal had not considered the same.

(5) This Court allowed the writ petition and remanded the case to the Land Tribunal with a direction to consider the case of wahivatdars as per their application in Form No. 1.

(6) The Land Tribunal while deciding the application in Form No. 1 of wahivatdars suo motu reopened the concluded case of tenants.

(7) In spite of objections of tenants and the dissenting order of Chairman, the majority members by the order, dated 21-9-1993 granted occupancy to all the wahivatdars, even without setting aside its earlier order, dated 3-7-1979 granting

occupancy rights to the tenants.

9. The narration of these facts are made only to show how one of the parties is playing fraud by suppression of facts and decisions of the Courts, how Tribunal members openly and with eyes open become party to such fraud even after the same is brought to their notice.

10. As noticed by us, the order of grant of occupancy rights to the tenant was passed by the Land Tribunal on 3-7-1979 and thereafter occupancy certificate was also issued to the tenants on 28-2-1981. Thereafter after a lapse of 11 years the wahivatdars awake like Rip-Van-Winkle in 1990 and challenged the order of grant of occupancy in this Court. This Court had rightly dismissed the writ petition on 3-6-1991 and thereby the order of Tribunal became final. It is also to be noticed that no writ appeal was filed by the wahivatdars. Obviously only taking advantage of the newly amended provisions of Karnataka Certain Inams Abolition Act in 1991 with a view to defraud the concluded rights of tenants the wahivatdars approached this Court, suppressing true facts and obtained the orders. Though this Court had directed the Land Tribunal to consider the alleged claim of wahivatdars, the wahivatdars in apparent collusion with the members of the Land Tribunal got the case of tenants also reopened. Further, the members in spite of right decision of the Chairman by majority not only unsettled the concluded rights of the tenants but went ahead unashamedly to grant occupancy to the tenants.

11. Unfortunately, the learned Single Judge without noticing these realities and only on technical grounds has remanded both the cases to the Tribunal. The learned Single Judge, in our opinion, was in error in applying the principles of res judicata to the case. What he has failed to notice that the rights of tenants of occupancy was concluded by this Court and as such neither he much less the Tribunal could reopen the same at the instance of alleged wahivatdars who have suppressed true existing facts at every stage. The findings of the learned Single Judge relying upon the judgment in the case of Basappa Gurusangappa v Land Tribunal, Badami and Others, is also in our opinion, erroneous one. In that case there were two rival claims under Section 48A of the Land Reforms case made within the stipulated time and though one claim was adjudicated pending other

claim, this Court held that both the claims to be considered afresh. But in the present case the claim of tenants was under Section 48A of the Act and the same was decided in 1979 whereas the wahivatdars alleged claim was under the newly amended provisions of the Karnataka Certain Inams Abolition Act that too in 1992. Further, the learned Single Judge failed to see that even in their writ petitions the wahivatdars never asked to reopen to the case of the tenants and in fact there was suppression in this regard. As such neither the Tribunal could suo motu, without prayer and direction from this Court could reopen the same. As such the impugned order of the learned Single Judge is erroneous and liable to be set aside.

12. Before parting with the case we would like to observe that the wahivatdars (appellants in W.A. No. 9706 of 1996) have obtained orders from this Court by suppression of facts and as such abused the process of law and in fact should have been prosecuted for the same, but taking into consideration the length of time elapsed, we feel that instead of the prosecution, they must be made to pay exemplary costs to meet the ends of justice.

13. For the reasons stated above, Writ Appeal No. 7906 of 1996 is dismissed. Writ Appeal No. 6915 of 1996 is allowed and the order dated 21-9-1993 passed by the Land Tribunal, Belgaum in Belgaun/SR 225-DRVA/SR/56 is quashed. The appellants in W.A. No. 9706 of 1996 are directed to pay a cost of Rs. 10,000/- (Rupees Ten thousand only) to the appellants in W.A. No. 6915 of 1996 within a period of four weeks from today.