

Munivenkataswamy Vs. Muniyappa @ Muniga and Others

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Court : Karnataka

Decided On : Dec-18-2012

Judge : Anand Byrareddy

Appeal No. : Writ Petition No. 27226 of 2005 (KVOA)

Appellant : Munivenkataswamy

Respondent : Muniyappa @ Muniga and Others

Advocate for Def. : Shri. Madhusudan Rao

Advocate for Pet/Ap. : Shri. M.S. Varadarajan

Judgement :

(This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the Annexure-E, the order of the sixth respondent, Tahasildar, Devanahalli Taluk, Bangalore District in H and A No.40/78-79 dated 25.1.1982 purporting to regrant 1 acre, 06 guntas of land in Sy.No.58/1 of Channahalli, Jala Hobli, Devanahalli Taluk, to the respondents 1 to 5 and quash the order of the first Additional District and Sessions Judge, Bangalore Rural District, Bangalore as per Annexure-‘F’ in M.A. 62/2001 on his file dated 14.12.2005 dismissing the appeal preferred against the order of the Tahasildar.)

It is the claim of the petitioner that Channahalli in Jala Hobli, Devanahalli Taluk, Bangalore District was an inam village under the provisions of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (Hereinafter referred to as

the 'Inams Abolition Act', for brevity).

2. It transpires that one Muniveerappa had sought for grant of occupancy rights of land in Sy.No.58 to the extent of 20 guntas claiming that he was a permanent tenant under the inamdar. An order was passed in his favour granting such right on the footing that he was a permanent tenant in terms of Section 5 of the Inams Abolition Act. Similarly, one Thoti Muniga also had made an application for grant of land in Sy.No.58 measuring 20 guntas, as a permanent tenant and an order was granted in his favour in terms of Annexure-"B" to the writ petition and thereafter, endorsements were issued in this regard in favour of the said grantees dated 3.2.1964. Occupancy rights in their favour was duly conferred and entered in the appropriate register. It is claimed that they had remained in possession as owners thereof. Under a registered sale deed dated 22.09.1966, the said occupants had sold 1 acre and 6 guntas of land in Sy.No.58/1 including kharab land of 6 guntas to one B.H. Narayan Swamy, S/o. Hanumanthappa. Later, the widow of Narayan Swamy is said to have sold the land to the petitioner under a sale deed dated 27.06.1996, and the petitioner claims to be in possession of the same.

3. It is the case of the petitioner that apart from several other proceedings in relation to the land in question, there were proceedings initiated by the Tahsildar, the sixth respondent under the provisions of the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as the 'KVOA Act' for brevity). He is said to have passed an order of re-grant in favour of Respondents 1 to 5, jointly, in respect of an extent of 1 acre 6 guntas of land bearing Sy.No.58, placing reliance mainly on the entry in the Index of Lands and Record of Rights, which indicated the land to be "sthala inamti". Aggrieved by the same, the petitioner is said to have preferred an appeal before the Court of the I Additional District and Sessions Judge, Bangalore Rural District. The said appeal having been dismissed holding that the order of grant of occupancy in favour of the appellant's predecessors in title, were without jurisdiction, and that the re-grant made in favour of Respondents 1 to 5 was valid, the present writ petition is filed.

4. The learned counsel Shri M.S. Varadarajan appearing for the petitioner would contend that the grant made under the Inams Abolition Act has proceeded on the

basis that the applicants Muniveerappa and Thoti Muniga were permanent tenants. The lands in question were not treated as service inams. There was no material available before the said authority to treat the said lands as service inam lands and there was no error committed in this regard. The orders in favour of the said applicants had attained finality. However, the subsequent proceedings under the provisions of the KVOA Act, proceed on the assumption by the competent authority, which has been affirmed in appeal by the Appellate Authority that the lands were service inam lands. This is without any basis and on the face of it, the said findings are illegal. It is pointed out that the village vested in the State with effect from 1.2.1959 and the nature of the lands, namely, whether they were service inam lands, was at best verified on the basis of material evidence of the assignment of the land for such village service before the vesting as on 1.2.1959. Further, as an inam village, it was entirely under the management and control of the inamdar. Any document evidencing the nature of the land would have been in the custody of the inamdar and is presumed to have been secured. The entries in the Index of Lands and Record of Rights would not constitute evidence of the nature of the land as a result of assignment of the land for any service by the inamdar. It is also contended that the Index of Lands and Record of Rights would not be in existence before the vesting of the village in the State. Therefore, proceeding on such entries to address a circumstance as to the nature of the land much prior to the said entries being made, would not offer any authenticity.

On the other hand, the entry made in Form No.8 is the official valid record prepared by the Tahsildar, on the basis of the material evidence of the nature of the land with reference to the relevant document in the custody of the then inamdar. Section 11 of the Inams Abolition Act, required maintenance of a register with effect from the date of vesting, containing the details of the nature of the land. Form No.8 prepared under Section 11 of the Inams Abolition Act clearly records that it was tenanted inam land and was not service inam land. Therefore, in the absence of any material either in Form No.8 or in any record, anterior to the vesting of the land, reliance being placed on the entries in the Index of lands or the Record of Rights, would not be reliable and there is no presumption of correctness, as they do not relate to any event prior to the vesting. It is hence contended that both the Tahsildar and the Appellate Authority have committed an

error in accepting the validity of the said Annexures, without examining the nature of the land. It is emphasized that the predecessors in interest of the appellant had been granted occupancy as permanent tenants and not as holding any service inams, or performing services during the tenure of the village by the inamdar. The circumstance that there was no entry in the Barabaruthi Register, would also fortify the fact that this was not service inam land on the date of vesting. The learned counsel would place reliance on the following authorities, in support of his case:

1. P. Sitaramayya vs. State of Mysore and Others ((1969) 2 Mysore Law Journal 237))
2. Stumpp Shule and Somappa Pvt. Ltd. Vs. S.M. Chandrappa and others ((1985 (2) KLJ 483))
3. Sri. Kempaiah vs. Smt. Chikkaboramma and others (AIR 1998 SC 3335)
4. M. Meenakshi and Others vs. Metadin Agarwal (Dead) by LRs. And others ((2006) 7 SCC 470)
5. 1981 (1) KLJ 17 Short notes of cases

5. While the learned counsel Shri Madhusudan Rao appearing for the learned counsel for the respondent would contend that the land in Sy.No.58/1 measuring 1 acre 6 guntas is not jodi inam land but thoti inam land, which is a service inam. With the abolition of inams, the entire land vested, in the Government in the year 1952. On the abolition of the inam, Muniga @ Thoti Muniga and Muniveerappa sought for registration of occupancy rights under the provisions of the Inams Abolition Act. It is contended that the service inams held by Shanbhogs, Patels, Thotis, Talaris and Nirgantis, had been excluded from the purview of the said Act and as such, there was no provision by which occupancy rights could have been granted under the said Act. However, under Section 8 of the Inams Abolition Act, they were registered as “holders” of the said inam lands and there was no confirmation of grant of occupancy rights. They were only treated as “holders” of the service inams and the allegation that the Special Deputy Commissioner had granted occupancy rights in their favour, is incorrect, as service inams are

excluded from the Inams Abolition Act. Therefore, the question of the Special Deputy Commissioner granting occupancy rights, did not arise at all. They were never treated as khatedars, but only as “holders”. It is admitted that Thoti Muniga and Muniveerappa had sold the land in favour of Narayan Swamy. It is however contended that they had no right to alienate the land as they did not have any absolute right the coming into force of the KVOA Act, the respondents having made an application for re-grant, a detailed enquiry was conducted by the competent authority and the order of re-grant has been passed dated 25.01.1982 in favour of the respondents who claim under Thoti Muniga and Muniveerappa. Therefore, the re-grant order was in continuation of the original proceedings and not a duplication.

The further contention of the petitioners that after the death of Narayan Swamy, his widow had alienated the property in favour of the petitioners, cannot be accepted, for Narayan Swamy himself had no title to the property and could confer none on his widow nor in turn, on the petitioners.

The learned counsel for the respondent places reliance on the following authorities:

1. Muniyappa vs. State and Others ((1991) 3 KLJ 466))
2. S.N. Sampathkumar vs. Tahsildar, Nelamangala Taluk and Others ((1991)3 KLJ 604))
3. Manch alias Chikkahyda vs. District Judge, Mandya and Others ((1976) 2 KLJ 338))
4. K.S. Ranganna and another vs. The State of Karnataka and others (W.P.Nos.4719 and 4720 of 1979)
5. Chowdappa vs. State of Karnataka and Others ((1993)1 KLJ 271))
6. Narayanaswamy and Others vs. The Tahasildar Devanahalli and Others ((2010) 3 KCCR 1883))

It is contended that Venkatamma, the widow of Narayan Swamy, had filed a suit for injunction at the instance of the petitioner and that was dismissed as not pressed. Thereafter, the petitioners had filed a suit in O.S.No.532/1999 against the respondents for declaration of title and permanent injunction. The respondents had entered appearance and filed detailed written statements and therefore, the said suit having been filed, the petitioner is precluded from challenging the impugned order in the present writ petition. The claim that the petitioner was not aware of the re-grant order passed in favour of the respondent, is false and therefore, the challenge to the re-grant order itself was hit by delay and laches. It is reiterated that under the Inams Abolition Act, thoti inams are specifically excluded from the purview of the said Act and holders of such service lands were only entitled to be registered as “holders”. There was no conferment or grant of occupancy rights.

The learned counsel for the respondent would also draw attention to Section 1 Sub-section (3)(d), which reads as follows:

“(3) It applies to -

(a)

(b)

(c)

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

The learned counsel would therefore insist that the re-grant made in favour of the respondents, is on a finding that the lands in question were Thoti inam lands and therefore, excluded from the purview of the Inams Abolition Act and hence, the impugned orders cannot be faulted.

6. The impugned order at Annexure-“E” is passed by the Tahsildar in favour of respondents, and as rightly pointed out by the learned counsel for the petitioners, the basis of the order is that the authority has proceeded with reference to entries in the Index of lands and the Record of Rights, to conclude that the lands are thoti

inam lands and hence, the respondents should be treated as the descendents of the persons holding the lands in its capacity as thoti inam land and as the said land could not have been alienated within fifteen years under the provisions of the KVOA Act, the respondents are held entitled to the order of re-grant. The Appellate Court has re-affirmed the finding, proceeding on the basis that the Inams Abolition Act did not apply to the service inam lands. Therefore, any order passed under the said order was a nullity and the fresh proceedings started by the Tahsildar under the provisions of the KVOA Act, could not be faulted. It is also found that notice had been issued to Narayan Swamy, the purchaser of the lands in question and since he had remained absent and had not offered any explanation as to how he acquired title under the sale deed, whereas a report was obtained through the Revenue Inspector as to the status of the land having been handed over by Narayan Swamy to respondents, during his lifetime. In that, they were actually cultivating the lands in question and on a further report that other villagers had no objection for re-grant of the service inam lands, the Tahsildar having made the order of re-grant, it was affirmed.

7. The point that would arise for consideration on the above rival contentions, is whether the lands in question were excluded from the purview of the Inams Abolition Act, as contended and whether the order passed in favour of the holders of the lands in the first instance was a nullity and hence, could be ignored in the Tahsildar having initiated proceedings under the provisions of the Village Offices Abolition Act. It is no doubt true that there is an exclusion of the village service inams held by Thotis, apart from others, as indicated in Section 1(3)(d) aforesaid, of the Inams Abolition Act. That ought not to be read in isolation and would have to be read in conjunction with the other provisions and the scheme of the Act. A “permanent tenant” is defined under Section 2(12) of the Inams Abolition Act as follows:

“Parmanent tenant” means a person who either under Section 79 of the Land Revenue Code or otherwise is entitled to a tenancy in respect of any land used for agricultural purposes, the duration of which is co-extensive with the duration of the tenure of the inamdar.”

Annexures "A" and "B" are orders passed under Section 10 of the Inams Abolition Act conferring occupancy rights on Muniveerappa and Thoti Muniga, respectively. The above definition is applied to them in express terms and it is also recorded that they are registered as permanent tenants under Section 5 of the Inams Abolition Act. This is significant in addressing the effect of the said "holders" being registered as permanent tenants. Section 5 requires that every permanent tenant of the inamdar shall be entitled to be registered as an occupant in respect of lands of which he is a permanent tenant, immediately before the date of vesting and the proviso to sub-section (2) provides for a waiver of the premium payable under sub-section (2). This in fact has been applied, on the said Muniveerappa and Thoti Muniga having satisfied the condition that they were shown as registered occupants in the settlement register and other records, to the satisfaction of the Special Deputy Commissioner in the body of the order itself. Section 10 provides for the determination of the claims by a khadim tenant, a permanent tenant, a quasi-permanent tenant, a holder of a minor inam to which the Act is applicable or the holder of a minor inam to which the Act is not applicable in respect of the inamdar. The contention of the respondents that Muniveerappa and Thoti Muniga were mere "holders" of the inam land and could be claimants falling under Section 8, is an incorrect proposition. As recorded in Annexures "A" and "B", they were claiming as permanent tenants and the authority on being satisfied of their claim, had conferred occupancy rights. Therefore, they were not holding the lands in question by virtue of their service, but as permanent tenants under the inamdar. Hence, to exclude the lands with reference to Section 1(3)(d) would be misleading and as rightly pointed out, the proceedings under the KVOA Act placing reliance on the entries in the Index of Lands and the Record of Rights which would not pertain to the period prior to the vesting of the land in question would be unreliable to defeat the case of the petitioner.

8. In *Sitaramaiah vs. State of Mysore*, a Division Bench of this Court has held, that on the question as to who could be registered as an occupant of a minor inam, whether it is only the person who was the holder of that inam or it could include a person with the possession and enjoyment of the land in question, Section 8 of the Inams Abolition Act does authorize registration in the name of the person who was the holder of that inam or it could include a person with the possession and

enjoyment of the land in question, Section 8 of the Inams Abolition Act does authorize registration in the name of the person who was holding the lands and therefore, the learned counsel for the petitioner seeking to contend that Muniveerappa and Thoti Muniga having been registered as permanent tenants, holding the lands as on the relevant date, would be material.

In another decision of a Division Bench of this Court in W.P.Nos.4719 and 4720/1979, K.S. Ranganna and another vs. State of Karnataka dated 10.09.1980, also reported as a short notes case in 1981 (1) KLJ Short Notes 43, it is held that when land vests in the State Government by virtue of the notification issued under the Inams Abolition, the question of its resumption under the provisions of the KVOA Act, did not arise. Therefore, the land in question would not have been treated as a service inam land resumable by the State Government under the KVOA Act, when that Act was inapplicable to the land in question. (The full text of the order was produced before this Court)

In Stump Shule and Somappa Private Limited vs. S.M. Chandrapp (1985 (2) KLJ 483), another Division Bench of this Court has laid down that, after the inams were abolished and lands vested in the State Government, the only right reserved to the parties is to apply for registration of occupancy rights either as a khadim tenant or permanent tenant or other tenants recognized under the law and when such applications are made to the statutory authority constituted under the Inams Abolition Act, he is required to make an enquiry and grant the relief. The order is appealable under Section 28 and the decision of the Appellate Authority is final. The order passed by the competent authority or the Appellate Authority is not liable to cancellation or modification except by the High Court under Section 31. Even that power is limited and confined to orders determining compensation except those referred to in Section 28. The Division Bench has held that the Act attaches finality to the orders granting registration of occupancy rights and that a Civil Court would not have jurisdiction to reopen that matter.

This decision would also indicate that there was little scope for initiation of proceedings under the KVOA Act, after the orders in favour of Muniveerappa and Thoti Muniga had attained finality.

In *Kempiah vs. Chikkaboramma*, the Apex Court while dealing with a matter that arose between the two rival claimants under the provisions of the KVOA Act, it was held, in the face of a finding by the High Court, that the respondents had proved that they were the descendants of the original barawardar and without examining the correctness of that finding and proceeding on the finding that it was correct, the Apex Court observed that there was no finding to the effect that the respondents did perform the service of Neergantis or that they held a village office before the appointed date, or were in possession of the inam lands. The mere fact that the unauthorized holder of lands resumed under Section 4 of the Act is liable to be evicted, would not confer any right on the respondents under Section 6 of the said Act, unless it is established that a claimant was holder of a village office and immediately prior to the appointed date, held the resumed lands, the question of re-grant of lands would not arise. When that requirement was not available, as no material had been put forth before the Court, much less any finding recorded, it was held that the High Court could not have given a direction for re-grant of the lands.

In the present case on hand, it cannot also be said that the respondents had established their claim in terms of the law as laid down by the Apex Court. The determination of the claim of Muniveerappa and Thoti Muniga in terms of Section 10 of the Act was an appealable order. No such appeal was filed and the same attained finality. Whether the same could be held to be nonest or bad in law and without the same being set-aside in appropriate proceedings, could not be held to be void in independent proceedings at a much later point of time, as in the present case on hand. In this regard, the case of *Meenakshi and others vs. Agarwal* is cited by the petitioner in support of the same. This is yet another ground which would militate against the impugned orders.

On the other hand, the reliance placed by the learned counsel for the respondents in the case of *Muniyappa vs. State and Others* to the effect that the Inams Abolition Act definition of 'Miscellaneous Inam' did not include talari service inams and therefore, the order granting of such land being void and the sale of such land by the grantee also not conferring any right, would not advance the case of the respondents.

In S.N. Sampath Kumar vs. Tahsildar wherein this Court was concerned with the effect of the amendment by Act No.13/1978 in relation to the KVOA Act, would not have any bearing in considering the question involved in this petition.

In the light of the authoritative decisions relied upon by the learned counsel for the petitioner which would clearly support the case of the petitioner, the other decisions which are relied upon by the learned counsel for the respondents, do not bear any relevance and need not be discussed or reproduced. In the light of the above, it is evident that the invocation of the provisions of the KVOA Act at the instance of the respondents, seeking to question the alienation by Muniveerappa and Thoti Muniga, could not have prompted the competent authority to proceed de hors the earlier proceedings which had attained finality. The Appellate Authority has also failed to address the matter in its correct perspective. Accordingly, the case of the petitioner is accepted and the petition is allowed. The impugned orders at Annexures "E" and "F" are quashed.

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