



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 9TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO. 101438 OF 2013 (LR)

BETWEEN:

1. SYED AMINUDDIN @ SAYED CHAND PASHA
S/O SYED KHADAR ALI SAB,
SINCE DECEASED BY HIS LRS.,

1(a) MRS. IQBAL BEGUM
W/O SYED AMINUDDIN
AGED ABOUT 72 YEARS,
OCC: HOUSEHOLD
R/O H.NO.7-874/A, DARGA ROAD,
NAYA MOHALLA,
KALABURAGI-585104.

AMENDED AS PER ORDER OF HON'BLE
COURT DATED 22.05.2023.

2. SYED KHALEEL PASHA
S/O SYED AMINUDDIN @ SYED CHAND PASHA,
AGE: 45 YEARS,
OCC: AGRICULTURE,

3. SYED ANWAR PASHA
S/O SYED AMINUDDIN @ SYED CHAND PASHA,
AGE: 48 YEARS,
OCC: AGRICULTURE,

4. SYED MAZHAR PASHA
S/O SYED AMINUDDIN @ SYED CHAND PASHA,
AGE: 35 YEARS,
OCC: AGRICULTURE,
ALL ARE R/O NAYA MOHALLA,

Digitally signed
by
MARKONAHALLI
RAMU PRIYA
Location: HIGH
COURT OF
KARNATAKA



MOMINAPURA,
DIST: GULBARGA-585103.

...PETITIONERS

(BY SRI. VIKRAM VIJAY KUMAR, ADVOCATE FOR PETITIONER
NOS.1(a), 2 TO 4)

AND:

1. THE STATE OF KARNATAKA
BY ITS COMMISSIONER OF LAND REFORMS,
VIDHAN SOUDHA,
BANGALORE.
2. THE LAND TRIBUNAL, GULBARGA.
THROUGH ITS CHAIRMAN,
GULBARGA.
3. SHARANAYYA SWAMY (AMENDED VIDE COURT
S/O SADASHIVAYYA SWAMY, ORDER DATED 27.02.2018)
AGE: 70 YEARS,
OCC: AGRICULTURE AND INCHARGE
MATHADIPATI
OF JADI MATH AND RAMALINGA MATH,
R/O MALGATTI VILLAGE,
TQ. AND DIST.: GULBARGA-585105
SINCE DECEASED THROUGH HIS
LEGAL REPRESENTATIVE
- 3(a) GURUPAD SWAMY
S/O SHARANAYYA SWAMY,
AGED ABOUT 40 YEARS,
OCC: AGRICULTURE
R/O PLOT NO.150, SIDDAROOD COLONY,
KAPNOOR, KALABURAGI-585104.

(AMENDED VIDE COURT ORDER
DATED 10.06.2024)

...RESPONDENTS

(BY SRI.SHIVAKUMAR TENGLI, ADDITIONAL GOVERNMENT
ADVOCATE FOR RESPONDENT NOS.1 AND 2;
SRI. I.R.BIRADAR, ADVOCATE FOR RESPONDENT NO.3(a))



THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 03.01.2013 PASSED BY THE SECOND RESPONDENT IN FILE NO.ಸಂ/ಕಂ/ಇನಾಮ/488/81-82 AS PER ANNEXURE-J AND ETC.

THIS PETITION, COMING ON FOR FURTHER DICTATION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R.NATARAJ

ORAL ORDER

(PER: HON'BLE MR. JUSTICE R.NATARAJ)

The petitioners have challenged an order dated 03.01.2013 passed by the respondent No.2 in Case No. ಸಂ/ಕಂ/ಇನಾಮ/488/1981-82 in so far as it relates to ordering the vesting of the land measuring 10 acres 03 guntas in Sy. No.3 of Azadpur village, Kalaburagi Taluk in the Government.

2. The petitioners contend that the land measuring 10 acres 09 guntas in Sy. No.3 of Azadpur village, Gulbarga District, was endowed to a religious inam and a person named Sri Rachotayya was the inamdar who died in the year 1950 leaving behind his widow Smt. Gundamma. He also possessed the land measuring 09



acres 06 guntas in Sy. No.93 of Malgathi village and the land measuring 18 acres 15 guntas in Sy. No.99 of Uplaon village. Smt. Gundamma filed Form No.1 claiming re-grant of all the aforesaid three survey numbers. The deceased respondent No.3 herein also filed an application for grant of occupancy rights only in respect of the land in Sy. No.93 of Malgathi village and land in Sy. No.99 of Uplaon village and he did not claim Sy. No.3 of Azadpur village. Both these applications were taken up by the Land Tribunal, Gulbarga (for short, 'the Tribunal') and numbered as LRA/TNC/79-80/81, LRA/INM/403/80-81 and LRM/INM/448/81-82. The Land Tribunal in terms of an order dated 14.07.1982, registered Smt. Gundamma as an occupant of the land in Sy. No.93 of Malgathi village, Sy. No.99 of Uplaon village and Sy. No.3 of Azadpur village under Section 5(3) of the Karnataka Certain Inams Abolition Act, 1977 (for short, 'the Act, 1977'). Later, the Tahsildar, Gulbarga granted a certificate of registration of tenant to Smt. Gundamma in Form No.II on 02.01.1986



based on the order of the Tribunal dated 14.07.1982 in respect of the land bearing Sy. No.3 of Azadpur village.

3. Being aggrieved by the said order, the deceased respondent No.3 filed W.P. No.28129/1982 challenging the order of the Land Tribunal in so far as it related to the land in Sy. No.93 of Malgathi village and Sy. No. 99 of Uplaon village. In view of the constitution of the Land Reforms Appellate Authority, Gulbarga, the case stood transferred to it and was numbered as LRA/676/1986. During the pendency of the said appeal, in view of the coming into force of the Karnataka Land Reforms (Amendment) Act, 1990 (Act No.18 of 1990), the Appellate Authority was abolished. This Court entertained Civil Petition No.10600/1991 which was converted as writ petition No.40132/2001. This Court in terms of the order dated 27.03.2004, set aside the aforesaid order of the Tribunal dated 14.07.1982 and remitted the case to the Tribunal for fresh consideration. Sri Shantayya, son of Sri Rachotayya and Smt. Gundamma filed Writ Appeal



No.2460/2004 challenging the said order dated 27.03.2004 passed by this Court in W.P. No.40132/2001 remitting the matter to the Tribunal, which was dismissed by this Court on 19.06.2004.

4. The Tribunal after remand, held proceedings and recorded the evidence of the deceased respondent No.3 as well as Sri Shantayya who claimed to be the legal heir of Smt. Gundamma. The Tribunal noticed a decree passed in O.S. No.211/1955 dated 30.08.1957 where it was held that after the death of Sri Rachotayya, Smt. Gundamma did not remarry and therefore, she did not have any children of her own. It also noticed the suit in O.S. No.34/1972 filed by the deceased respondent No.3 against Smt.Gundamma and another suit in O.S. No.75/1977 filed by the deceased respondent No.3. It noticed the claim of Sri Shantayya who claimed that he was adopted by Smt. Gundamma in the year 1970. It also noticed that the question whether Sri Shantayya was the adopted son of Smt. Gundamma or not, was pending



consideration before this Court in R.S.A. No.7131/2012. The Tribunal therefore held that since there was a conflict as to who was the legal heir of Smt. Gundamma, the legal heir of Smt. Gundamma as may be declared in the said R.S.A No.7131/2012 would be entitled to claim the occupancy rights in so far as the land measuring 13 acres 15 guntas in Sy. No.99 of Uplaon village (stated as Malgathi village in the impugned order of the Tribunal) and land measuring 09 acres 07 guntas in Sy. No.93 of Malgathi village (stated as Uplaon village in the impugned order of the Land Tribunal).

5. In so far as the land measuring 10 acres 03 guntas in Sy. No.3 of Azadpur village is concerned, the Tribunal held that it was cultivated by a person named Sri Husaini, son of Sri Shivappa as on 01.03.1974 and therefore, it vested in the State Government. It also noticed that the revenue records for the year 1973-74 in respect of the land in Sy. No.3 of Azadpur village showed that it was a tenanted land and the same was alienated



after the appointed day and that it was in the possession of third parties. Therefore, the Tribunal by the impugned order dated 03.01.2013, ordered the vesting of the land in Sy. No.3 of Azadpur village in the State Government under Section 4 of the Act, 1977. It also held that the land in Sy. No.3 of Azadpur village was never cultivated by the tenant - Smt. Gundamma. The Tribunal therefore disposed off Form No.1 and directed the registration of occupancy rights in respect of the land in Sy. No.93 of Malghati village and Sy. No.99 of Uplaon village based on the outcome of the proceedings in R.S.A No.7131/2012 which was then pending consideration before this Court and ordered vesting of the land in Sy. No.3 of Azadpur village in the State Government under Section 4 of the Act, 1977.

6. The petitioners herein contend that the order dated 14.07.1982 passed by the respondent No.2 was challenged by the deceased respondent No.3 in W.P No.40132/2001 only in so far as it related to the land in Sy. No.93 of Malgathi village and Sy. No.99 of Uplaon



village and not in respect of Sy. No.3 of Azadpur village and therefore, the order passed in W.P. No.40132/2001 should be construed as affecting the land in Sy. No.93 of Malgathi village and Sy.No.99 of Uplaon village and not the land in Sy. No.3 of Azadpur village. In order to establish the same, a copy of the writ petition filed in W.P. No.40132/2001 is placed on record, which shows that the deceased respondent No.3 had challenged the order dated 14.07.1982 passed by the Tribunal in respect of the land in Sy. No.93 of Malgathi village and Sy. No.99 of Uplaon village. The petitioners contend that after Form No.II was issued to Smt. Gundamma on 02.01.1986, Smt. Gundamma and Sri Shantayya sought permission of the Assistant Commissioner to sell 03 acres of land in Sy. No.3 of Azadpur village which was granted on 15.06.1988 and she and Sri Shantayya sold it to the petitioner No.1 on 16.06.1988. Likewise, Sri Shantayya obtained permission to sell 03 acres of land in Sy. No.3 of Azadpur village which was granted on 26.10.1994 and he sold the said 03 acres to petitioner No.2 on 09.11.1994. Later, Sri



Shantayya obtained permission to sell 04 acres 07 guntas on 29.06.1996 and conveyed it to the petitioner No.2 on 27.07.1996. The petitioners further contend that during the year 2007, petitioner Nos.2 to 4 gifted 2178 Sq. feet of land in Sy. No.3 to the State Government for construction of Urdu lower Primary School.

7. The petitioners contend that the impugned order of the Land Tribunal vesting the land in Sy. No.3 of Azadpur in the State Government is illegal as Smt. Gundamma was the inamdar who was registered as an occupant and the order of the Land Tribunal dated 14.07.1982 registering her as an occupant in respect of the land bearing Sy. No.3 of Azadpur was not disturbed. He, therefore, contends that respondent No.2 must have restricted the examination of the case only in so far as the land bearing Sy. No.93 of Malghati village and Sy.No. 99 of Uplaon village. The petitioners have therefore challenged the order dated 03.01.2013 passed by the respondent No.2.



8. The learned counsel for the petitioners reiterated the above contentions and claimed that the order of remand passed by this Court in W.P. No.40132/2001 was only in respect of the land in Sy. No.93 of Malgathi village and Sy. No.99 of Uplaon village and therefore, the Tribunal could not have passed any order vesting the land in Sy. No.3 of Azadpur village in the State Government.

9. The deceased respondent No.3 also challenged the order of the Land Tribunal dated 03.01.2013 in W.P. No.207047/2014 and filed an application (I.A No.1/2014) for impleading in this writ petition which was allowed on 27.02.2018 and he was brought on record. W.P. No.207047/2014 was withdrawn on 31.10.2017. Therefore, it can safely be held that the deceased respondent No.3 supported the impugned order of the Tribunal.

10. The deceased respondent No.3 has not filed any objections to this writ petition. However, in the application



for impleadment, the deceased respondent No.3 claimed that the land measuring 10 acres 03 guntas in Sy. No.3 of Azadpur village, land measuring 09 acres 07 guntas in Sy. No.93 of Malgathi village and land measuring 13 acres 15 guntas in Sy. No.99 of Uplaon village were given by the Nizam of Hyderabad to Matadipati of Ramalinga Mata and Jadi Mata of which Sri Kidganayya Swamy was the Matadipati. After his death in the year 1930, the disciples of the said Mutt had appointed Sri Rachotayya Swamy as the Matadipati who had married Smt. Gundamma and he died in the year 1940 without leaving any issues. He claimed that according to the Veerashiva Jangama faith, a widow was not entitled to be a Matadipati and therefore, the disciples of the Mutt appointed Sri Sadashivayya Swamy, the father of the deceased respondent No.3 as the Matadipati who took charge of the Ramalinga Mata and Jadi Mata in the year 1940. The lands mentioned above were transferred to the name of Sri Sadashivayya Swamy and later to the name of deceased respondent No.3 in the year 1957. He claimed that in the year 1969, a person



named Sri Shantayya claimed that he was the owner of the inam lands on the basis of adoption deed entered into between his parents and Smt. Gundamma. He contended that in a suit filed by him in O.S. No.369/2003 on the file of the III Additional Civil Judge (Jr. Dn.), Gulbarga, the Trial Court had declared the adoption deed executed by Smt. Gundamma as null and void and not binding upon the deceased respondent No.3 which was upheld in R.A No.29/2010 on the file of the Principal Senior Civil Judge, Gulbarga. He contended that Sri Shantayya had filed R.S.A No.7131/2012. He therefore contended that the sale deeds executed in favour of the petitioners were without any title and hence, the Tribunal was right in ordering the land in Sy. No.3 to be vested in the Government of Karnataka. He claimed that he was in possession and cultivation of the inam lands of Ramalinga mutt and Jadi mutt and was interested in protecting the interest of the mutt.



11. The learned counsel for the legal representative of deceased respondent No.3 submitted that the order dated 14.07.1982 passed by the respondent No.2/Tribunal was in fact set aside in its entirety in W.P. No.40132/2001. He submitted that the Tribunal noticed that the land in Sy. No.3 was cultivated by a person named Sri Husaini, Son of Shivappa, who did not claim occupancy rights. Therefore, the land stood vested in the State Government. He also submitted that since proceedings were pending consideration before the Tribunal in respect of the land in Sy. No.3 of Azadpur village and as Smt. Gundamma did not challenge the proceedings held by the respondent No.2 in respect of Sy. No.3 of Azadpur village, the sale made in favour of the petitioners is in violation of Section 4 of the Act, 1977 and hence, the impugned order passed by the Tribunal is just and proper.

12. The learned Additional Government Advocate submitted that the land bearing Sy. No.3 of Azadpur village was not cultivated by Smt. Gundamma as on



01.03.1974 but was cultivated by a person named Sri Hussaini, Son of Shivappa and therefore, the Tribunal was right in vesting the land in the State Government. He also contended that the petitioners had purchased the land in Sy. No.3 of Azadpur village even during the pendency of the proceedings before the Tribunal and hence it did not confer any right, title or interest in favour of the petitioners and the order of the Tribunal directing the land to be vested in the State is just and proper and does not call for interference by this Court.

13. I have considered the submissions made by the learned counsel for the petitioners as well as the learned Additional Government Advocate and the learned counsel for the legal representative of the deceased respondent No.3.

14. It is evident from the order passed by the land tribunal dated 14.07.1982 that Smt.Gundamma had filed an application in respect of Sy.No.93 of Malgathi village and Sy.No.99 of Uplaon village and Sy.No.3 of Azadpur



village, while the deceased respondent No.3/Sri.Sharnayya had filed an application in respect of Sy.No.93 of Malgathi village and Sy.No.99 of Uplaon village. The tribunal in terms of the order dated 14.07.1982 registered Smt. Gundamma as an occupant of all the three survey numbers referred above. The deceased respondent No.3 challenged this order in W.P.No.28129/1982. A perusal of the writ petition does indicate that the challenge to the land tribunal order was restricted to Sy.No.93 of Malgathi village and Sy.No.99 of Uplaon village. Therefore, the order passed by this Court setting aside the order passed by the land tribunal had to be construed as affecting Sy.Nos.93 and 99 and not in respect of Sy.No.3 of Azadpur village. The right of Smt.Gundamma in respect of Sy.No.3 of Azadpur village was thus set in stone by virtue of the order dated 14.07.1982. The tribunal therefore, could not have ventured into finding out whether the deceased respondent No.3 had any claim in respect of Sy.No.3 of Azadpur village. Consequently, the impugned order passed by the tribunal, revisiting its earlier order



registering Smt. Gundamma as an occupant deserves to be interfered with in so far as Sy.No.3 of Azadpur village is concerned.

15. In so far as the finding of the tribunal that the land bearing Sy.No.3 of Azadpur village was cultivated by a person named Sri.Hussaini S/o. Shivappa as on 01.03.1974 and that Smt. Gundamma was not cultivating the said land and that the land had thereby vested in the State Government, is not based on any material document. As a matter of fact Smt. Gundamma had claimed re-grant of the land as the authorized holder of the inam and it was rightly granted to her. Under Section 5 of the Karnataka Certain Inam Abolition Act, 1977 the criteria for claiming occupancy rights or to register the name of the holder of the land as an occupant is that he/she must be personally cultivating the land for a period not less than three years prior to 1st March, 1974. Therefore, in the absence of any material to show that the land in question was cultivated by a person named



Sri. Hussaini S/o. Shivappa, the finding recorded by the tribunal deserves to be set aside on that score.

16. In so far as the finding recorded by the tribunal that the land bearing Sy.No.3 of Azadpur was alienated during the pendency of the proceedings before the tribunal, the same also deserves to be interfered with since the tribunal had already conferred the rights in Sy.No.3 of Azadpur in favour of Smt. Gundamma by virtue of the order dated 14.07.1982.

17. However, what needs to be considered is that the sale permission was granted on 26.10.1994 and 29.06.1996 to sell 03 acres and 04 acres 09 guntas respectively in favour of Sri. Shantaiah who claimed to be the adopted son of Smt. Gundamma. It is pertinent to note, the deceased respondent No.3 had filed a suit in O.S.No.289/2005 questioning the validity of the alleged adoption of Sri. Shantaiah by Smt. Gundamma and that the suit was initially dismissed and thereafter an appeal was filed by the deceased respondent No.3 in



R.A.No.29/2010 which was allowed and the suit filed in O.S.No.289/2005 was decreed, thereby declaring that Sri. Shantaiah was not the adopted son of Smt.Gundamma. The said judgment was assailed in RSA No.7132/2012 which was unconditionally withdrawn on 26.04.2017. Therefore, the sale permission obtained by him to sell 3-00 and 4-07 acres of land in Sy.No.3 of Azadpur and the consequent sale deeds executed in favour of petitioner No.2 does not confer any title on the petitioner No.2

18. In so far as the impugned order is concerned, as stated above, the land tribunal ought not to have considered the question whether Smt. Gundamma was entitled to re-grant in respect of Sy.No.3 of Azadpur village and therefore, the tribunal committed an error in directing the vesting of the said land in the State Government.

19. In view of the above, this writ petition is ***allowed in part*** and the impugned order dated



03.01.2013 passed by the land tribunal directing the land measuring 10 acres 09 guntas in Sy.No.3 of Azadpur village to be vested in State Government is set aside. However, the findings recorded by the tribunal in respect of Sy.No.93 of Malagati village and Sy.No.99 of Uplaon village is not disturbed.

20. In view of the decree passed in R.A.No.28/2010 and R.A.No.29/2010 and withdrawal of RSA No.7131/2012 and RSA No.7132/2012, Sri. Shantaiah cannot claim to be the adopted son of Smt.Gundamma and consequently, the permission to sell dated 26.10.1994 and 29.06.1996 obtained by him from the Assistant Commissioner, Gulbarga to sell 3-00 and 4-09 acres in Sy.No.3 of Azadpur and the consequent corresponding sale deeds dated 09.11.1994 and 27.07.1996 executed by him in favour of petitioner No.2 in respect of 07-07 acres would not confer any title on the petitioner No.2. However the title of deceased petitioner No.1 in respect of 3-00 acres in Sy.No.3 of Azadpur, Gulbarga is not disturbed.



21. It is open for the legal representatives of deceased respondent No.3 to work out their remedy in accordance with law.

Sd/-
(R.NATARAJ)
JUDGE

HJ
List No.: 19 Sl No.: 1