

# SUPREME COURT OF INDIA

Muddanna

Vs.

The Panthanagere Group Panchayat, Kengeri Hobli

(K.G. Balakrishnan and P.V. Reddi JJ.)

09.05.2003

## JUDGMENT

### **P. Venkatarama Reddi, J.**

1. The appellants herein filed two suits praying for a decree of permanent injunction against the respondent-village Panchayat so as to restrain the members and officials of Panchayat and its assignees from interfering with plaintiff's possession and enjoyment of the land. The extent of land covered by the two suits is 1 acre 38 guntas. The main issue framed and contested in the suit was whether the plaintiffs proved that they were in lawful possession of the suit land. The learned III Additional City Civil Judge, Bangalore granted injunction against the defendant while making it clear that injunction does not operate against the persons in occupation of the houses and huts. The respondent-Panchayat filed appeals against the said judgment and decree. By the impugned judgment dated 24.8.1989, the learned Single Judge of the High Court allowed the appeals holding that the suit schedule land forming part of Gramathana area (village site) vested with the Government under the provisions of Mysore Inams Abolition Act of 1954 in the year 1959 and thereafter vested in the village Panchayat by virtue of a Notification issued by the then Government of Mysore on 27.12.1961 under Sections 46 & 49 of the Mysore Village Panchayats & Local Bodies Act, 1959. It was, therefore, held that the plaintiffs failed to prove that their possession was lawful. However, the High Court declared that the plaintiffs shall be entitled to own and retain the buildings that were put by them prior to the vesting of the Inam village in the State. The Panchayat was called upon to make an inquiry as to the date of construction of the buildings before dispossessing the plaintiffs. Aggrieved by this judgment of the High Court, the present appeals by special leave are filed.

2. The plaintiffs traced their title to the registered sale deeds executed in the years 1927 and 1928 in favour of their ancestors, and the subsequent partition among the heirs. Two of the plaintiffs in O.S. No. 538 of 1980 built up houses on a part of the land. The remaining land was being used by the plaintiffs in both the suits for purposes connected with agriculture. Some after Inam was abolished, the village was surveyed and the land in question which falls on the other side of the high-way was identified as Gramathana land for the first time. At the instance of the respondent-Panchayat, the Government sought to acquire an extent of 2 acres 28 guntas in the Gramathana land for providing house sites to the villagers. However, the

acquisition proceedings were dropped. According to the Panchayat, the letter seeking acquisition was addressed to the Government under a mistaken impression that the land did not vest in the Panchayat. Later on, i.e., on 9.3.1973, pursuant to the order passed by the Deputy Commissioner, the Tahsildar was directed to deliver possession of 2 acres 18 guntas including the land in question for the purpose of allotment to landless poor persons. Attempts were made to dispossess the plaintiffs on 11.8.1973 by the members and workmen of the Panchayat as well as the Revenue Inspector and local people. The suit was filed at that stage.

3. The fact that the plaintiffs have been in possession of the suit schedule land since long time has been found in favour of the plaintiffs by the Trial Court as well as the High Court and that fact is not in dispute. Moreover, the fact that the land was originally proposed for acquisition on the footing that it was a private land and that the plaintiff's did not apply for nor were granted occupancy rights under the provisions of Inams Abolition Act is also not in dispute.

4. The High Court, while expressing doubt as regards the exact location of the land covered by the sale deeds of 1927 and 1928 observed that no proprietary rights can be claimed in respect of the land kept apart for the use of the villagers unless the grant is made by the Government. The High Court further held that the requisition sent by the Panchayat to acquire the land in question cannot legally operate as estoppel or legal bar against the Panchayat and it was entitled to rectify its mistake. The High Court referred to the Government Notification dated 27.12.1961 (Ext. D7) in which open sites in Gauthana area vested in the Village Panchayats. The High Court then observed that what vested in the Government under the Inam Abolition Act, cannot be divested unless occupancy rights were granted under that Act and that the Trial Court virtually ignored the provisions of the Inams Abolition Act. It was also held that the burden which lies on the plaintiffs to show what they had become owners of the alleged portions in the Gramathana area even after vesting has not been discharged. The High Court ultimately held that "the possession of the plaintiffs of some portions of the Gramathana area cannot be considered as lawful and therefore they were not entitled to an injunction."

5. The High Court, in our view, by an erroneous legal approach, disturbed the order of injunction granted by the Trial Court. This is a case in which plaintiffs have been in long standing possession and there is at least a serious dispute as to title. Inter alia, it is being contended by the appellants that neither the Mysore Inams Abolition Act nor the Notification issued under the Mysore Village Panchayats Act have the effect of vesting the lands in question in the Government or the Panchayat. At one stage, the Panchayat itself was not sure of the right, title and interest over the land in question. It is nobody's case that the appellants-plaintiffs are rank trespassers. In these circumstances, irrespective of whether the plaintiffs proved their title to the hilt, they cannot be dispossessed by force on the basis of unilateral decision taken by the respondent-Panchayat or other authorities. That there was a move to dispossess the plaintiffs forcibly is an admitted fact (vide finding on issue No.2). Such a step ought not to have been taken without observing due process of law. The minimum that is expected of the Panchayat was to put the plaintiffs on notice and hear their version. Whatever procedure is prescribed under the provisions of the Village Panchayats Act or other statutory

enactments for evicting unauthorized occupants of land should have been followed. The very fact that such procedure has not been followed or even the principles of natural justice were not observed before taking steps to oust the plaintiffs from the possession is itself a ground to grant an injunction. On the facts of the case, there is no real need to enter into an elaborate discussion on the question of title. The expression of views on the aspect of title either by the High Court or by the Trial Court was unnecessary. That question should be kept open. However, it must be made clear that the injunction granted by the Trial Court would enure to the benefit of the plaintiffs till appropriate order is passed and action is taken pursuant thereto by the Panchayat in accordance with law.

6. The judgment of the High Court is set aside and the appeal is allowed subject to above observations and clarification. No costs.