

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2953-2954 OF 2005

| K. GOPALACHAR (D) BY L.R. | ... | APPELLANT(S) |

| Versus |

| STATE OF KARNATAKA AND OTHERS | ... | RESPONDENT(S) |

O R D E R

We have heard Mr. G.V. Chandrashekhar, learned counsel for the appellant and Ms. Kiran Suri, learned counsel for the respondent Nos. 3, 4(a), 4(c) to 4(e), 5 to 8, 9(b), 10 and 11.

2. The controversy in this appeal centres around grant of occupancy rights in respect of the lands, details of which have been set out by the High Court in its order at pages 6 & 7.

3. In the course of arguments before us, on perusal of the original record, learned counsel for

the appellant conceded that the application made by the appellant (since deceased and now represented by his legal representative) was under Section 4 of the Mysore (Religious & Charitable) Inams Abolition Act, 1955 (for short "the Act") read with Rule 7(4) of the Karnataka Religious and Charitable Inams Abolition Rules, 1956. He also admitted that the application under Section 4 of the Act is for registration of the "Kadim tenants" as occupants of their holdings. He, however, argued that in true sense, the appellant's case was for grant of occupancy rights as a permanent tenant under Section 5 of the Act and on the basis of the findings recorded by the appellate authority, the appellant is entitled to the grant of occupancy rights as permanent tenant.

4. Although, the appellant applied for occupancy rights in respect of the subject holdings under Section 4 of the Act, it appears that the Special Deputy Commissioner and the High Court proceeded on

the assumption that the application has been made under Section 5A of the Act for grant of occupancy rights as protected tenant.

5. Despite the mess created by the authorities and the erroneous assumption of the matter by the High Court that the appellant had claimed occupancy rights in respect of the subject holdings as protected tenant and there being no application by the appellant under Section 5, we permitted the learned counsel for the appellant to raise the argument about the appellant's claim for grant of occupancy rights as a permanent tenant.

6. Section 2(12) of the Act defines "permanent tenant". It reads as follows:

" "Permanent 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; but, where the inamdar is an institution of religious worship shall not include a person rendering religious service in or maintaining the institution as a pujari, archak or the holder of a similar office, and enjoying the benefits of any land comprised in

the inam of such institution, without paying rent as such in money or in kind to that institution in respect of such land."

7. The appellant is admittedly not a permanent tenant under Section 79 of the Land Revenue Code. For a person to be a permanent tenant under the second part of Section 2(12) of the Act, he must be rendering religious service in or maintaining the institution as a Pujari, archak or the holder of a similar office and paying the rent in money or in kind in respect of land used for agricultural purposes and enjoying the benefits of such land. Although, learned counsel for the appellant submitted that the appellant had been paying rent since 1938 but from the available material, we find that except two receipts of the year 1938 and 1973, there is nothing to suggest that the appellant has paid any rent in money or kind throughout, more so on the date the Act came into force i.e. July 1, 1970.

8. Since, there is no evidence to firmly establish that the appellant was paying the rent in

respect of the subject land, we are afraid, the appellant cannot be held to be covered by the definition of Section 2(12) of the Act. Accordingly, he is not entitled to be granted occupancy rights as a permanent tenant.

9. In view of the above, Civil Appeals are liable to be dismissed and are dismissed with no order as to costs.

.....J.  
(R.M. LODHA)

.....J.  
(ANIL R. DAVE)

ITEM NO.101

COURT NO. 6

SECTION IVA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2953-2954 OF 2005

K. GOPALACHAR (D) BY LR.

Appellant (s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent(s)

(With appln(s) for production of additional documents and with  
office report)

Date: 26/07/2012 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA

HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s) Mr. G.V. Chandrashekar, Adv.

Mr. N.K. Verma, Adv. for

Ms. Anjana Chandrashekar, Adv.

For Respondent(s)

Ms. Kiran Suri, Adv.

Mr. S.J. Amith, Adv.

State

Mr. B. Subrahmanya Prasad, Adv. for

Mr. V.N. Raghupathy ,Adv

UPON hearing counsel the Court made the following

O R D E R

Appeals are dismissed in terms of signed order. No order as  
to costs.

| (Pardeep Kumar)  
| Court Master

| | (Renu Diwan)  
| | Court Master

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[SIGNED ORDER IS PLACED ON THE FILE ]