PETITIONER:
SRI KEMPAIAH

Vs.

RESPONDENT:
SMT. CHIKKABORAMMA AND OTHERS

DATE OF JUDGMENT: 16/09/1998

BENCH:
S. SAGHIR AHMAD, S.RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT

Rajendra Babu, J.

This appeal arises out of certain proceedings initiated by two rival claimants, namely, the appellant on the one hand and respondents 2 to 4 on the other before the Tehsildar under the Karnataka Village Offices Abolition Act, 1961 (hereinaften referred to as "the Act"). The Act was brought into effect from 1st February, 1963. The Tehsildan made an order on 22nd July, 1981 re-granting the 'Neeraganti' Inam Lands comprised in survey Nos. 33, 38, 41 and 130 of yeliyun village and Survey No. 49 of Yerehalli Village in favour of the appellant. Aggrieved by that order, the respondents 2 to 4 preferred an appeal to the District Judge in respect of Neeraganti Inam lands. On appeal the learned District Judge allowed the appeal and set aside the grant made in favour of the appellant. At the same time, the learned District Judge also held that respondents 2 to 4 are not descendants of the original barawardar and thus are not holders of village office. He also held that they did not perform the duties of village office of Neeraganti at any time much less did they held the lands attached by way of inam to that office. Once Rawala Ninga was the owner of original barawardar of the Neeraganti of the two villages yeliyur and yerehalli as per Ex.D1 and D2, the Barabaluthi registers of the respective villages. Respondents 2 to 4 claim that they are the descendants of original Barawardar. Various documents put forth in the proceedings were critically examined by the learned District Judge and he held that these documents would show that Jatta Boyi son of Rawala Ninga, Thammaiah son of Rawala Ningana Rawala and Linga son of Mudda Boyiwere were enjoying the Neeraganti Inam lands and rendering Neeraganti services. Thammaiah was shown as son of Rawala Ningana Rawala, i.e. grand son of Rawala Ninga. The documents disproved the case of respondents 2 to 4 that Thammaiah was great grand son of Rawala Ninga. The District Judge also held that there was no document to show tha relationship of respondents 2 to 4 or to show that they actually performed the 'Neeraganti' work or that they were in possession of Neeraganti Inam lands at any time. He also examined the oral evidence put

forth before the Court in the absence of any document in support of the claim. He held ultimately that respondents 2 to 4 having placed no reliable evidence to show that they are the descendants of the barawardar or that they were at any time performing Neeraganti services or that they were in possession of Inam lands. As such they cannot be held to be either authorised holders holding the lands orholders of village office on the appointed date. On that basis he held that the claim of respondents 2 to 4 was nightly rejected by the Tehsildar.

On the claim made by the appellant he concluded on a careful examination of the documents produced before him that the kirdi extracts which show that the appellant had been paying land revenue for the Neeraganti Inam lands from 1950-51 and therefore it would appear that he has been in possession of the Inam lands from about 10 to 12 years prior to the appointed date. However, he noticed that the appellant is not an authorized holder inasmuch as the appellant had not been appointed as Neeraganti by any order. Even if he had been performing the duties of Neeraganti on the appointed date, there was no evidence to show that he was holder of a village office and therefore, he had no right to the office in terms of Section 2 (g) of the Act. On that basis the District Judge rejected the claim made by the appellant.

The appellant as well as respondents 2 to 4 preferred Revision Petitions arising under Section 115 of the Code of Civil Procedure. The High Court upheld that part of the order by which the learned District Judge rejected the claim of the appellant. However, on the claim by respondents 2 to 4 the High Court allowed the Revision Petition and set aside the order made by the learned District Judge and allowed the claim of respondents 2 to 4 for re-grant of the lands in question. It is against this order, this appeal has been preferred by special leave.

So far as the claim of the appellant is concerned the finding of the learned District Judge as affirmed by the High Court is unexceptionable. The object of Karnataka Village offices Abolition Act, 1961 is to abolish village offices which were held hereditarily before the commencement of the Constitution and the emoluments appertaining thereto and to provide for incidental maters. 'Village office' has been defined under the Act as to mean a village office to which emoluments have been attached and which is held hereditarily before the commencement of the Constitution under an existing law relating to such office for the performance of duties mentioned therein; "holder of a village office" or "holder" would mean a person having an interest in a village office under an existing law relating to such office. By no stretch of imagination appellant can lay claim to any such office. No material was placed by him to show that he held the office hereditarily before the commencement of the Constitution much less did he trace his title to any such person to held that office in that capacity. Therefore, the appellant's claim was nightly rejected by the learned District Judge and the High Court.

So far as the direction to re grant to respondents 2 to 4 the lands in question is concerned, we are constrained to state that the High Court in its order virtually re-appreciated the evidence placed before the authorities as if it was a first appeal not noticing that it was only a proceeding arising under section 115 of the Code of Civil Procedure. The learned District Judge had referred to every piece of material placed before the Court in the shape of oral or documentary evidence and came to the conclusion as

we have noticed earlier in the course of this order. Therefore, it was not open to the High Court at all to re-appreciate the matter unless it could find that the District Judge had committed any error of jurisdiction or acted with material irregularity affecting his jurisdiction. No such contention has been recorded. On this ground alone the order made by the High Court on this aspect of the matter will have to be set aside.

We will examine the matter on merits as well. The High Court came to the conclusion that respondents 2 to 4 have proved that they are the descendants of original barawardar Rawala Ninga through Thammaich. Without examining the correctness of this finding even if we assume it to be correct, there is no finding to the effect that respondents 2 to 4 performed the Neeraganti services or that they held village offices before the appointed date or were in possession of the inam lands. The mere fact that an unauthorised holder of lands resumed under Section 4 of the Act is liable to be evicted will not confer any night on respondents 2 to 5 as provided under Section 6 of the Act. Unless it can be shown 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 under Section 5 of the Act would not arise. When this requirement under Section 6 of the Act was not available as no material had been put forth before the Court on this aspect much less any finding recorded, the High Court could not have given a direction for re-grant of the lands. In that view of the matter we cannot sustain the order made by the High Court. Therefore, we set aside the order made by the High Court directing re-grant of lands in favour of respondents 2 to 4.

In the result, the appeal is allowed, the order made by the High Court is set aside to the extent indicated above restoring that of the learned Distinct Judge. However, in the circumstances of the case, there will be no order as to costs.