

(1980) 03 KAR CK 0024
In the Karnataka High Court
Case No : WP 1086/80

A. Jalajakshi D. Alwa

APPELLANT

Vs

Meenaxi Naik and Another

RESPONDENT

Date of Decision : 11-03-1980

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2a (11)

Citation : (1980) 2 KarLJ 60

Hon'ble Judges : Kudoor, J

Judgement

1. The order of the 2nd respondent-Additional Land Tribunal, Buntwal, dated 17-10-1978, a copy of which is at Ex-A, passed in TNC 1127/76-77 rejecting the claim of the petitioner A. Jalajakshi for being registered as an occupant in respect of the lands described in Sch-A to the writ petition is challenged by the petitioner in this writ petition which is one under Art. 226 & 227 of the Constitution of India.

2. The short question of law involved in this writ petition is whether a member of the "family" as defined under the provisions of the Karnataka Land Reforms Act, 1961 (for short the "Act") could claim tenancy under another member of the same family and seek for registration of occupancy.

3. The "A" Sen. land (which shall be hereinafter referred to as the "land") belonged to the husband of the petitioner A. Deva Alwa. It is the case of the petitioner that she obtained the land on lease from her husband about 28 years ago and is enjoying the same as a tenant under him.

4. The petitioner made an application in Form-7 under S. 48A of the Act claiming occupancy in respect of the land. The 2nd respondent Land Tribunal, rejected her claim as per its order dated 17-10-1978 (Ex-A) on the ground that she could not seek for registration of occupancy in respect of the land, of which her husband was the owner as she could not be a tenant under him. The petitioner, being aggrieved, has filed this writ petition challenging the validity of the said order.

5. The scope and object of the Act is enshrined in the preamble. It states that the object of the Act was to enact a uniform law in the State of Karnataka, relating to agrarian, relations, conferment of ownership on tenants, ceiling on land holding and certain other matters appearing therein. S. 44 of the Act provides for vesting of all the lands held by or in the possession of tenants immediately prior to the date of the commencement of the Amendment Act No. 1 of 1974 (which came into force on and with effect from 1-3-1974) other than the lands held by them under leases permitted under S. 5, in the State Government. S. 45 lays down the conditions on which the tenants could be registered as occupants of the lands held by them or in their possession which are vested in the State Government under S. 44. S. 48A provides for making applications by persons entitled to be registered as occupants under S. 45 of the Act to the Land Tribunal constituted under S. 48 within the time allowed therein and the enquiry by the tribunal on such applications. Rules have been framed under the Act for the guidance of the Land Tribunal for conducting the enquiry.

6. It is clear from the above provisions that it is the prerogative of a tenant who is entitled to be registered as an occupant under S. 45 to approach the Land Tribunal by making an application as provided under the Act and the Rules framed thereunder for being registered as an occupant and no other. In this background, we shall have to consider some of the relevant provisions of the Act.

7. The definition of the "tenant", as given in S. 2 (A) (34) of the Act is an inclusive definition, and reads, thus:

"tenant" means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes:

- (i) a person who is deemed to be a tenant under Section 4;
- (ii) a person who was protected from eviction from any land by the Mysore Tenants (Temporary Protection from Eviction) Act, 1961;
- (iia) a person who cultivates personally any land on lease under a lease created contrary to the provisions of sec. 5 and before the date of commencement of the Amendment Act;
- (iii) a person who is a permanent tenant; and (iv) a person who is a protected tenant;

Explanation: A person who takes up a contract to cut grass or to gather the fruits or other produce of any land, shall not on that account only be deemed to be a tenant."

"Landlord" is defined under clause (20) of sub-section (A) of S. 2 thus:

"Landlord" means a person who has leased land to a tenant and includes a person entitled to receive rent from a tenant."

Explanation: An intermediary such as a permanent tenant or mulgenidar, mirasi

tenant or khata kul who having taken land on lease from the land-owner has leased it to another person shall be deemed to be the landlord with reference to the person to whom the land is leased."

The expression "to cultivate personally" is defined under Section 2 (A) (11) as follows:

"to cultivate personally" means to cultivate land on one's own account:

- (i) by one's own labour, or
- (ii) by the labour of any member of one's family, or
- (iii) by hired labour or by servants on wages payable in cash or kind but not in crop share, under the personal supervision of oneself or any member of one's family.

Note: Explanations I and II omitted.

"Family is defined under Section 2(A) (12) thus:

"Family" means:

- (a) in the case of an individual, who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and unmarried daughters if any;
- (b) in, the case of an individual who has no spouse, such individual and his or her minor sons and unmarried daughters;
- (c) in the case of an individual who is a divorced person and who has not remarried, such individual and his minor sons and unmarried daughters, whether in his custody or not; and
- (d) where an individual and his or her spouse are both dead, their minor sons and unmarried daughters."

7. From a combined reading of the provisions hereinabove referred to, it is obvious that a tenant who is entitled to be registered as an occupant under S. 45 must be a "tenant" within the meaning of clause (34) of S. 2(A) of the Act. The basic and essential ingredient of the expression "tenant" is that he or she must be an agriculturist and cultivates personally the land he or she holds on lease from a landlord. The person who does not cultivate personally the land he or she holds on lease from a landlord would not become a "tenant" within the meaning of the Act so as to entitle him or her to be registered as an occupant under S. 45 of the Act. If the land he or she holds on lease from a landlord is cultivated on his or her own account either by his or her own labour or by the labour of any member of his or her family or by hired labour or by servants on wages payable in cash or kind but not in crop share under his or her personal supervision or any member of his or her family would constitute personal cultivation. Thus it is clear that the land held by a member of the family on lease from a landlord is cultivated by the labour of any member of the family or by hired labour or by

servants under the personal supervision of any member of the family, it would become the personal cultivation of the member holding the lease-hold.

8. "Tenancy", a relationship between the landlord and tenant, is essentially a contractual relationship between the landlord and the tenant holding different interests in the demised land. The landlord and tenant are two different legal entities having different jural relationship. Their interest in the demised land is different and distinct, one is based on the ownership or the right to lease out the land and receive rent and the other to hold the demised land during the continuance of the lease subject to the conditions stipulated thereunder. The provisions of the Act are essentially aimed at to put an end to the relationship of landlord and tenant and confer ownership on tenants in respect of the lease-hold lands in their possession by determining the interest of the owner or the landlord as the case may be in the said land. In that view of the matter, it is difficult to accept the contention that a wife could claim tenancy right under her husband or vice-versa when both of them are members of the "family" within the meaning of the Act and the cultivation of the land by his or her own labour or by the hired-labour or by servants on wages payable in cash or kind but not in crop-share, under his or her personal supervision would result in the deprivation of the ownership of the land by one or the other.

9. The view that I take on this question can be reached by another route. It is provided that a person who is deemed to be a tenant under S. 4, is a "tenant" within the meaning of clause (34) of sub-sec. (A) of S. 2 of the Act. A "deemed tenant" under S. 4 is a person, lawfully cultivating the land belonging to another person if that person is not a member of the owner's family. Thus S. 4 stipulates in clear terms that one member of the "family" cannot claim to be a "deemed tenant" even if he is lawfully cultivating the land belonging to another member of the family. In such a case, even though a member of the family lawfully cultivates the land belonging to another member of the family, he is prevented from claiming occupancy right as he would not become a "tenant" within the meaning of the Act. This is on the principle that the cultivation of one member of the family would be the cultivation of every other member of the family in law. This provision in the Act, in my opinion, supports the view that a husband or a wife, as the case may be, cannot claim tenancy right as against the other in respect of his or her land.

10. On a careful consideration of the question of law raised in this writ petition in the light of the provisions of the Act, I am inclined to hold that the Land Tribunal was right in rejecting the claim of the petitioner on the ground that she could not claim occupancy right in respect of the land of which her husband was the owner.

11. In the result, for the reasons stated above, I see no good grounds to issue rule. Accordingly the writ petition is dismissed.