

(1980) 02 KAR CK 0009
In the Karnataka High Court
Case No : WP 135/79

A. Laxminarayana Acharya

APPELLANT

Vs

Land Tribunal Udupi and Others

RESPONDENT

Date of Decision : 08-02-1980

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 44

Citation : (1980) 2 KarLJ 12

Hon'ble Judges : Kudoor, J

Judgement

Kudoor, J.-A portion of the order dated 4-12-78, a true copy of which is at Ext-F, rejecting the claim of the petitioner Laxminarayana Acharya for being registered as an occupant in respect of two items of lands comprised in Sy. Nos. 177/2 measuring 4 acres 7 cents and 141/2 measuring 3 acres 93 cents situate in Anjar Village of Udupi Taluk in Dakshina Kannada Dt. is under challenge in this writ petition which is one filed under Art. 226 of the Constitution of India.

2. The matter arises in this way:

The petitioner had applied to the 1st respondent Land Tribunal, Udupi, in Form-7 claiming occupancy in respect of four items of lands comprised in Sy. Nos. 811 measuring 1 acre 21 cents, 8/4 measuring 33 cents, 177/2 measuring 4 acres 7 cents 141/2 measuring 3 acres 93 cents, all situate in Anjar Village of Udupi Taluk in Dakshina Kannada Dt. as required under Sec. 48A(1) of the Karnataka Land Reforms Act, 1961 (for short "the Act"). His case was that formerly his father was the tenant in respect of the lands in question and after him he became the tenant thereof under the 3rd respondent Sri Laxminarayana Devaru Anjar Mutt. Respondents 4 to 6 contested the claim of the petitioner in respect of the two items of land comprised in S. Nos. 177/2 and 141/2. It is their case that respondents 4 and 6 are the owners of S. No. 177/2 and respondents is the owner of S. No. 141/2. Their further case is that those lands did not belong to the 3rd respondent and they were not leased out at any time either to the petitioner or his predecessors.

3. The tribunal after holding an enquiry allowed the claim of the petitioner in respect of two items of land comprised in S. Nos. 8/1 and 8/4 and rejected his claim in respect of the two items of land comprised in S. Nos. 177/2 and 141/2 as per its order Ex-F. The petitioner, being aggrieved by the said order, has filed this writ petition.

4. Shri M. Kama Bhat, the learned Advocate appearing for petitioner, contended that the land tribunal was not right in rejecting the claim of the petitioner in respect of S. Nos. 177/2 and 141/2 as it was reasonable to hold that these two survey numbers were included in the lease-hold of the father of the petitioner and after him of the petitioner as they were the kumki lands to S. Nos. 8/1 and 8/4 which were admittedly in their possession and enjoyment as lease-hold lands over which occupancy right has been conferred on the petitioner. He has further contended that even otherwise, the petitionee is entitled for registration of occupancy in respect of those two items, as they are absolutely necessary to the petitioner for the proper enjoyment of S. Nos 8/1 and 8/4 in respect of which he has been ordered to be registered as an occupant as they were the kumkilands to S. Nos. 8/1 and 8/4. He has also urged that the enquiry held by the tribunal was not in accordance with law and that the tribunal did not consider the documents produced by him properly. On these grounds, he urged to allow the Writ petition and quash the impugned order Ext-F so far as it relates to the rejection of the claim of the petitioner for registration of occupancy right in respect of S. Nos. 177/2 and 141/2.

5. Regarding the contention that S. Nos. 177/2 and 141/2 were included in the lease hold of the petitioner, the petitioner did not produce any satisfactory evidence either oral or documentary before the tribunal. All that was urged before the tribunal regarding these two items, was that they were the kumki lands to S. Nos. 8/1 and 8/4 and hence it was reasonable to hold that they were included in the lease-hold of the petitioner, as the petitioner was holding S. Nos. 8/1 and 8/4 as tenant under the third respondent. It seems to me that this contention is wholly untenable. It is no doubt true that the owners of the Kadeem Varg lands in Dakshina Kannada Dt. enjoy certain privileges over the kumki lands. The fact that such owners enjoy certain privileges does not confer upon them any title over the kumki lands. If the kumki land is assigned on Darkhast, then only the grantee will acquire ownership over the kumki lands because on assignment of the kumki land on darkhast, such land would cease to be the kumki land. The kadeem vargdar will have a preferential claim over others in seeking for assignment of the kumki lands. In that view of the matter, it is reasonable to hold that the owners of the Kadeem Varg lands have no right to lease out the kumki lands which are still Government lands subject to certain privileges being enjoyed by the Kadeem holders.

The petitioner has stated in his petition in unequivocal terms that S. Nos. 177/2 and 141/2 which are the kumki lands to S. Nos. 8/1 and 8/4 were assigned on darkhast in favour of one Vittal Hegde in the year 1938 and it was assigned to

him as he was the owner of the Kadeem lands bearing S. Nos. 8/1 and 8/4. Thus it is clear from the case set up by the petitioner that S. Nos. 177/2 and 141/2 which were once Kumki to S. Nos. 8/1 and 8/4 had lost their character as Kumki lands since the year 1038 when they were assigned on larkhast in favour of Vittal Hegde who was then the owner of those lands. In that view of the matter, it seems to me that the petitioner cannot set up any claim for conferment of occupancy in respect of S. Nos. 177/2 and 141/2 as Kumki to survey Nos. 8/1 and 8/4 of which he was the tenant and in respect of which the tribunal had conferred occupancy in his favour unless he pleads and establishes a case of tenancy in respect of those two items of lands after they were assigned on Darkhast in favour of Vittal Hegde. It is not the case of the petitioner either in this court or before the tribunal that those two items of lands were taken on lease either by him or by his father after they were assigned on darkhast in the year 1938. On the other hand, the case set up by the petitioner before the tribunal appears to be that he was entitled to those two survey numbers even though they were assigned on Darkhast in favour of the owner of S. No. 8/1 and 8/4 by virtue of his lease-hold in respect of those two survey numbers. This plea of the petitioner as advanced by his learned Advocate in the course of his arguments is based on the proposition that the assignment of the kumki land on darkhast in favour of the Kadeem vargdar enures to the benefit of or accretion to the kadeem Varg lands to which they were kumki. No provision of law or any precedent is brought to my notice in support of this contention by Shri Rama Bhat. Therefore, I am inclined to hold that the tribunal has reached the correct conclusion on the assessment of the evidence that the petitioner has failed to prove that S. Nos. 177/2 and 141/2 were included in his leasehold.

6. Now coming to the contention that even otherwise the petitioner is entitled for registration of occupancy in respect of S. Nos. 177/2 and 141/2 as they are absolutely necessary to the petitioner for proper enjoyment of S. Nos. 8/1 and 8/4 over which occupancy right has been conferred on him, I see no force in this submission also. It is provided under Section 44 of the Act that all lands held by or in the possession of tenants immediately prior to the date of commencement of the Amendment Act (which came into force on 1-3-1974) other than lands held by them under leases permitted under S. 5 shall stand transferred to and vest in the State Government. S. 45 of the Act lays down the conditions under which the tenants could be registered as occupants in respect of the lands in their possession and which were vested in the State Government under S. 44 of the Act. S. 48A of the Act provides for making an application by the person entitled to be registered as an occupant under S. 45 of the Act to the tribunal and for making an enquiry by the tribunal on such application and conferment of occupancy on the claimant. A bare reading of these provisions would make it clear that a claimant could make an application under S. 48A for conferment of occupancy only in respect of lands held by him or in his possession as tenant immediately prior to the date of coming into force of the Amendment Act. There is no provision in the Act to enable a claimant to make an application under S.

48A for conferment of occupancy right in respect of lands on the ground that they are necessary for the proper enjoyment of the lease held property in respect of which he claimed occupancy right. In that view of the matter I reject this contention also.

7. It is next contended that the enquiry held by the tribunal was not in accordance with law. This contention is based on the allegation that the tribunal did not hold local inspection and give proper opportunity to the petitioner to examine his witnesses.

8. Regarding the first leg of this contention that the enquiry was bad in law since the tribunal did not hold local inspection, it is the contention of Shri Rama Bhat, learned counsel for the petitioner, that without holding a local inspection, the enquiry held by the tribunal is incomplete and not in accordance with law. In support of this contend in, he placed reliance on S. 112(B)(a) which stipulates that one of the duties of the tribunal is to make necessary verification or hold an enquiry including local inspection and pass orders in cases relating to registration of a tenant as occupant under Section 48A.

9. Section 48A deals with the enquiry by the tribunal in respect of applications filed by the claimants for registration of occupancy right. Sub-section (5) of S. 48A stipulates that where a claim is contested or a rival claim is set up, the tribunal shall, after enquiry, determine the person entitled to be registered as occupant and pass orders accordingly. Rule 17 of the Karnataka Land Reforms Rules, 1974 (for short the "Rules") provides for the procedure to be followed by the tribunal in respect of applications made to it. It stipulates that the tribunal shall, in respect of application made to it, follow the some procedure as specified for a summary enquiry under S. 34 of the Karnataka Land Revenue Act, 1964 subject to the condition that the records of the proceeding shall be maintained in a language understood by all its members. S. 34 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as the "Land Revenue Act") lays down the procedure to be followed in a summary enquiry. It provides for recording the summary of the evidence and minute of the proceedings containing the material averments made by the parties interested, the decision and the reasons for the same, by the officer conducting the enquire in his own hand. It does not provide for holding any local inspection. Rule 17 of the Rules and with S. 34 of the Land Revenue Act would make it imperative for the tribunal to follow the summary procedure prescribed under Sec. 34 of the Land Revenue Act in conducting the enquiry in respect of applications made to it including an application under Section 48A of the Act. However, holding local inspection is not one of the requirements of a summary enquiry as contemplated under S. 34 of the Land Revenue Act. From a reading of these provisions, it is clear that holding an enquiry as provided under S. 34 of the Land Revenue Act is a must on an application made to the tribunal under S. 48A of the Act when the claim is contested as provided under sub-section (5) of S. 48A of the Act which may include holding of a local inspection also. However, I am unable to persuade

myself to accept the position that holding the local inspection is mandatory and without it the enquiry held by the tribunal is not complete and is not in accordance with law. If the legislature really intended that holding of the local inspection is mandatory, a provision would have been made in the procedure to be followed by the tribunal in conducting the enquiry in respect of applications made to it in the manner provided under Rule 17. S. 112(B)(a) in my opinion, would not lend support to the contention canvassed by Shri Rama Bhat in this respect. S. 112 (B) enumerates the duties of the tribunal. All that the legislature has stated in enacting the provision of clause (a) of sub-section (B) of S. 12 is that among the various duties of the tribunal specified therein, one of the duties is to make necessary verification or hold an enquiry including local inspection and pass orders in cases relating to registration of a tenant as occupant under Section 48A. This provision would not lend assurance to or support the view that without holding a local inspection, the enquiry held by the tribunal in respect of an application made to it would be incomplete and bad in law. Whether to hold, a local inspection or not, even if a request is made by any party, is certainly left to the discretion of the tribunal to be decided on the facts of each case. However, I do not find any provisions in the Act to reach the conclusion that an enquiry held by the tribunal without holding the local inspection is vitiated in law. Therefore, the first leg of the contention is rejected.

10. As regards the second leg of the contention that the petitioner was not given opportunity to adduce evidence I do not feel inclined to accept this contention also on the perusal of the records of the tribunal. The parties have tendered their oral evidence before the tribunal. I do not find anything in the record to show that the petitioner had made any request before the tribunal to examine any witnesses on his side and that it was rejected. It is no doubt true that the petitioner had stated in his statement filed before the tribunal that he would give evidence of the local people to substantiate his contention. This material, in my opinion, would not be sufficient to sustain the contention now urged before me that the petitioner was not given opportunity to examine his witnesses merely because no witnesses were examined on his side except the petitioner himself. Thus, the second leg of the contention also fails.

11. The last contention urged by the learned counsel for the petitioner is that the document produced by the petitioner had not been properly considered. I see absolutely no force in this contention too. The tribunal has considered each and every document produced by the petitioner in detail and reached its own conclusions thereon. The order in question, in my opinion, is a well considered and well-reasoned order passed by the tribunal touching all the contentions raised by the parties before it. In that view of the matter, this contention also fails.

12. Having considered all the points canvassed before me, and also the evidence adduced in the case, I do not find any infirmity or illegality in the order passed by the tribunal. Consequently it follows that the writ petition should fail. Accordingly

it is dismissed. Rule is discharged. There is no order as to costs.