
(2015) 03 KAR CK 0403
In the Karnataka High Court
Case No : Writ Petition No. 25635/2002 [LR]

Abdul Gafar and Others

APPELLANT

Vs

The Land Tribunal, Savanur and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Reforms Act, 1961 — Section 48-A, 77-A

Citation : (2015) 03 KAR CK 0403

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : P.G. Mogali, for the Appellant; Ravi V. Hosamani, A.G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—The petitioners are claiming to be the rival/joint tenants filed the above writ petition challenging the order passed by the Tribunal dated 22.04.2002 granting occupancy rights in favour of respondent No. 2(a) to 2(f) in respect of land bearing Sy. No. 441 measuring 4 acres 13 guntas out of 14 acres 24 guntas situated at Savanur village, Taluk and District Haven.

2. The brief facts of the case are:

According to the petitioners, all the petitioners and second respondent are brothers and sons of Late Abdul Khadar who was cultivating the said land and after his death, the second respondent filed Form No. 7 on 23.10.1974 for grant of occupancy rights to an extent of 4 acres 13 guntas on behalf of the joint family. The Land Tribunal after considering the entire material on record granted occupancy rights on 27.07.1976 in favour of the petitioners and second respondent jointly. Against the said order, the legal heirs of respondent No. 2 filed a writ petition before this Court in W.P. No. 16619/1988. This Court, after hearing both the parties, by its order dated 13.09.1989 allowed the writ petition and remanded the matter to the Land Tribunal to find out whether the Form No.

7 filed by second respondent was in his individual capacity or on behalf of members of the joint family. After remand from this Court, the Tribunal after holding a detailed enquiry and considering the material on record, by its order dated 22.04.2002 granted occupancy rights in favour of the respondents No. 2(a) to (f) in respect of Sy. No. 441 measuring 4 acres 13 guntas situated at Savanur village. Against the said order, the present writ petition is filed.

3. I have heard the learned counsel for the parties to the lis.

4. Sri P.G. Mogali learned counsel appearing for the petitioners has contended that the respondent No. 2 filed Form No. 7 being the head of the family, on behalf of the joint family and the Tribunal ought to have granted occupancy rights in favour of the members of the joint family including the petitioners. He further contended that this Court while passing the order in an earlier occasion on 13.09.1989 made in W.P. No. 16619/1988 was remanded the matter to the Land Tribunal to consider the claim of the petitioners also. The said aspect has not been considered by the Tribunal and no finding is recorded whether the Form No. 7 filed by the respondent No. 2 on behalf of joint family or in his individual capacity and Form No. 7 discloses that there are 3 owners, one owner supports the petitioners and others support the respondent/tenant. Therefore, it is to be held that the Form No. 7 is filed on behalf of joint family. He also contended that Annexure-R1 produced by the respondents cannot be considered, since the same was effected on the basis of the vardi given by the respondent No. 2 himself and as on the date of vardi, i.e., 1973, the petitioners were minors. Therefore, he sought to set aside the impugned order passed by the Tribunal.

5. On the other hand, learned counsel Sri Sunil S. Desai appearing for respondents No. 2(a) to 2(f) sought to justify the impugned order passed by the Tribunal. He has specifically contended that the second respondent filed Form No. 7 on 23.10.1974 in his individual capacity and not on behalf of members of the joint family. Annexure-R6 the statement of owner clearly depicts that the second respondent is the tenant and not the petitioners. Apart from that, he has also contended that during the pendency of the proceedings before the Land Tribunal after remand, these petitioners have filed Form No. 7A on 29.04.1999. In view of the their conduct, it clearly indicates that they cannot claim the application filed by the second respondent is on behalf of the joint family. The Record of Rights as on 01.03.1974 reflects the name of second respondent as a tenant and remaining extent of land in same number shown as different owners. Mutation entry at Annexure-R1 entered on the basis of the vardi has been considered by the Tribunal and the Tribunal accordingly recorded a finding that the respondent No. 2 has filed Form No. 7 in his individual capacity and the statement relied upon by the petitioners as per Annexure-C clearly depicts that the said owner has sold his share of the property to others and the sale deed reflects on the eastern side of the boundary, the name of the second respondent is mentioned. Therefore, he sought to justify the impugned order.

6. Learned Addl. Government Advocate Sri Ravi V. Hosamani sought to justify the

impugned order passed by the Land Tribunal and produced the entire original records for perusal of this Court.

7. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record including original records.

8. It is not in dispute that earlier the Land Tribunal granted occupancy rights on 27.07.1976 in favour of the petitioners and second respondent jointly. The legal heirs of the second respondent i.e., respondents No. 2(a) to 2(f) have filed W.P. No. 16619/1988 before this Court and this Court after considering the entire material, by its order dated 13.09.1989 was pleased to allow and remanded the matter to the Land Tribunal with observations which reads as under:

"In the result, I allow this writ petition, quash the impugned order and direct the Land Tribunal, Savanur to decide the application of Abdul Hukk who is now represented by petitioners 2 to 7 on merits considering the claim of respondents 1 to 3 as to whether they are entitled for grant of occupancy rights of the land concerned along with petitioners 2 to 7 who are the legal representatives of petitioner No. 1 deceased Abdul Hukk."

9. After remand by this Court, the Tribunal recorded the statements of both petitioners and the legal heirs of the second respondent i.e., respondents No. 2(a) to 2(f). After considering the entire material on record, passed the impugned order granting occupancy rights in favour of the respondents No. 2(a) to 2(f) holding that the second respondent has filed Form No. 7 in his individual capacity and not on behalf of joint family and held that the second respondent has proved his tenancy as on 01.03.1974. Accordingly, the Tribunal granted occupancy rights in favour of the respondents No. 2(a) to 2(f). It is an admitted fact that during the pendency of the proceedings before the Tribunal, the petitioners have filed Form No. 7A on 29.04.1999 in view of the amendment of Section 77-A of the Karnataka Land Reforms Act, which clearly depicts that the petitioners have filed Form No. 7A stating that they are cultivating the land in Sy. No. 441/2 measuring 4 acres 13 guntas under 5 persons from 1974 i.e., about for a period of 25 years and the said application is still pending adjudication before the Assistant Commissioner, Savanur and in the said application, the petitioners have not disclosed the pendency of the proceedings before the Tribunal or the remand order passed by this Court in earlier occasion and also not disclosed the name of the respondents who have also cultivating the land along with them.

10. Now Shri P.G. Mogali, learned counsel for the petitioners requests this Court to club the Form No. 7 along with Form No. 7A and remand the matter to the Tribunal for fresh consideration in view of the pendency of the application filed by the petitioners before the Assistant Commissioner, the same cannot be accepted for the simple reason that Form No. 7 was filed under Section 48-A of the Karnataka Land Reforms Act. The competent authority is the Tribunal and Form

No. 7A was filed in view of the amendment of the provisions of Section 77-A. Form No. 7A has to be decided by the prescribed authority i.e., the Assistant Commissioner. Therefore, the question of clubbing both the applications does not arise. The said contention made by the petitioner's counsel is without any basis and cannot be accepted.

11. It is also not in dispute that this Court in an earlier occasion by its order dated 13.09.1989 made in W.P. No. 165619/1988 has specifically stated that the Land Tribunal to decide the application of Abdul Hukk who is represented by petitioners No. 2 to 7 on merits considering the claim of respondents No. 1 to 3 as to whether they are entitled for grant of occupancy rights of the land concerned along with the petitioners No. 2 to 7 who are the legal representatives of petitioner No. 1 deceased Abdul Hukk. The said aspect has been considered by the Tribunal and passed a detailed order holding that the petitioners herein are not entitled for occupancy rights, since the Form No. 7 filed by the respondent No. 2 was in his individual capacity. Further, the Tribunal recorded a finding of fact based on the appreciation of oral and documentary evidence on record. Such finding of fact cannot be upset by this Court sitting under writ jurisdiction by re-appreciating the evidence in view of the dictum of the Hon'ble Supreme Court in the case of Ram and Another Vs. State of Karnataka and Others, (2004) 7 JT 454 : (2004) 8 SCALE 15 : (2004) 7 SCC 796 held as follows:

"The Division Bench of the High Court, in our view, was right in taking exception to the order of the learned Single Judge in upsetting the finding of fact recorded by the Tribunal while exercising writ jurisdiction. Thus, having regard to the facts found, looking to close relationship between the parties and also considering spot inspection and the local enquiries made with the adjacent land owners, in our view, the order of the Tribunal holding that all the four applicants were entitled for grant of occupancy rights ought not to have been reversed by the learned Single Judge. Finding of fact recorded by the Tribunal, in the light of what is stated above, could not be said to be either perverse or based on no evidence or was bad for non-consideration of material evidence brought on record. By the impugned judgment, Division Bench has rightly set aside the order of the learned Single Judge and dismissed the writ petition.

This being the position, we do not find any good ground or valid reason to interfere with the impugned order. Consequently, the appeal stands dismissed. Parties to bear their own costs."

12. If the petitioners are claiming joint possession, joint tenancy and Form No. 7 filed by the respondent No. 2 is on behalf of the joint family, then question of filing one more application under Form No. 7A on 29.04.1999 by the petitioners would not arise. That itself discloses that the petitioners are not in joint possession and Form No. 7 filed by the second respondent was not on behalf of joint family and it was in his individual capacity. The conduct of the petitioners while filing Form No. 7A on 29.04.1999 during the pendency of the proceedings before the Tribunal, that too after remand made by this Court on 13.09.2009

itself depicts that the claim made by the petitioners in earlier occasion is baseless and contrary to the present stand taken in the present writ petition. Now the petitioners say that they have filed Form No. 7A on 27.09.1999 in respect of the very property in question. It has to be adjudicated by the concerned authority and question of considering the Form No. 7A by this Court while disposing of this writ petition does not arise.

13. The records produced by the learned Addl. Government Advocate would disclose that as on 01.03.1974, the RTC-revenue entries in respect of Sy. No. 441 measuring 4 acres 13 guntas clearly depicts that the name of Abdul Hukk i.e., respondent No. 2 and the petitioners' name was not at all there and mode of cultivation shown at Sl. No. 3 indicates that he was the tenant and if the contention of the petitioners is taken as true that they are cultivating the land along with the respondents, their names would have been shown as on 01.03.1974 which is the relevant date to consider grant of occupancy rights under Section 48-A of the Karnataka Land Reforms Act. The other contentions of the petitioners that Form No. 7 shows 3 owners one owner supports the petitioners and another owner supports the tenant cannot be accepted for the simple reason that the very owner who appeared before the Tribunal after remand, made a statement as per Annexure-R6 dated: nil that second respondent is the tenant in respect of land in Sy. No. 441 measuring 4 acre 13 guntas and not the petitioners or their father. The respondents have also filed detailed statements of objections. It is specifically stated that their father Abdul Hukk, S/o. Abdul Khadar was the tenant in respect of Sy. No. 441 measuring 4 acres 13 guntas situated at Savnur village and he had filed the Form No. 7 in his individual capacity and also contended that the concept of the joint family is not applicable to the petitioners since the petitioners themselves filed Form No. 7A in the year 1999 claiming occupancy rights in respect of the same survey number before the Assistant Commissioner. Therefore, the concept of joint family alleged by the petitioners in earlier occasion cannot be considered. Taking into consideration the entire material, the Tribunal granted occupancy rights in favour of the respondents No. 2(a) to 2(f) holding that their father has filed Form No. 7 in his individual capacity and he has proved that he was the tenant as on 01.03.1974. The said order passed by the Tribunal is based on the legal evidence on record and same is in accordance with law. The petitioners have not made out any case to interfere with the impugned order passed by the Land Tribunal exercising the extraordinary jurisdiction under Article 226 and 227 of Constitution of India. Accordingly, the writ petition is dismissed.