
(2009) 09 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 22686 of 2002

A.L. Yellappa

APPELLANT

Vs

Smt. Huchamma alias Padmavathamma and Others

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Citation : (2009) 6 KarLJ 707 : (2010) 1 KCCR 127

Hon'ble Judges : H.N. Nagamohandas, J

Bench : Single Bench

Advocate : K.S. Nagaraja Rao, for the Appellant; R.B. Satyanarayan Singh, High Court Government Pleader for Respondents-2 and 3 and V. Srinivasa Raghavan, for Indus Law for Respondents-5 and 6, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohandas, J.—In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash the order dated 21-5-2002 in Case Nos. 746 to 748 of 1974-75 and Case No. 2277 of 1975-76 passed by the Land Tribunal, Bangalore North Taluk.

2. The subject-matter of this writ petition is 2 acres 20 guntas of land in Sy. No. 29 of Amruthahalli Village, Bangalore North Taluk. Respondent 1 was the owner of the lands in question and she sold the same in favour of respondent 4. In turn respondent 4 sold the land in question in favour of respondents 5 and 6.

3. It is the case of the petitioner that his father Kullappa was in possession of the land in question as tenant. The RTC extracts from the years 1966-67 to 1971-72 in respect of the land in question were in the name of Kullappa. Kullappa died in the year 1972. After the demise of Kullappa, petitioner being the son continued in possession and enjoyment of lands in question. Though the petitioner continued in possession of the lands in question as a tenant, his name was not entered in the RTC. Aggrieved by this Act of the respondents in not entering the petitioner's name in the RTC extracts he approached the jurisdictional Tahsildar

in RRC No. 1962 of 1982-83 requesting to enter his name. The Tahsildar vide order dated 4-3-1983 directed to enter the name of the petitioner in the RTC. This order of the Tahsildar dated 4-3-1983 came to be questioned before the Assistant Commissioner in Appeal No. 20 of 1983-84 and the same came to be dismissed vide order dated 19-3-1984 confirming the order of Tahsildar. Further the second appeal filed by the first respondent in R.A.A. No. 7 of 1984-85 before the Special Deputy Commissioner also came to be dismissed. Further it is brought to my notice that even the writ petition filed by the first respondent against these orders of Tahsildar, Assistant Commissioner and Deputy Commissioner also came to be dismissed. Thus the name of the petitioner came to be entered in the revenue records. Petitioner filed Form 7 before the Land Tribunal for grant of occupancy rights in respect of the lands in question. Under the impugned order dated 21-5-2002 the Tribunal rejected the claim of the petitioner on the ground that there is no evidence on record to prove and establish that the petitioner was tenant of the lands in question as on 1-3-1974. Hence, this writ petition.

4. Heard arguments on both the side and perused the entire writ papers.

5. The RTC extracts from the years 1966 to 1972 specifies the name of the petitioner's father Kullappa as tenant cultivating the lands in question. It is not in dispute that in the year 1972 petitioner's father Kullappa died. From 1972 to 1977, the RTC extracts reflect as blank. The order of Tahsildar at Annexure-B, the order of Assistant Commissioner as per Annexure-C and the order of Deputy Commissioner as per Annexure-D makes it clear that petitioner's name came to be entered in the RTC extracts for the period subsequent to 1977. The Tribunal committed an illegality in not taking into consideration this available documentary evidence on record. Merely because the name of the petitioner was not mentioned in the RTC for the relevant year 1973-74 it cannot be said that the petitioner was not in possession of the lands in question as tenant. The subsequent orders passed by the Revenue Authorities as per Annexures-B, C and D specifies the entry of petitioner's name in the RTC extracts. The Tribunal committed mistake in not considering the fact that under what circumstances the name of the petitioner was not entered in the RTC extracts during the relevant period from 1973-74. Till the year 1972 petitioner's father name finds a place in the RTC extract. In the year 1972 petitioner's father Kullappa died. Under those circumstances, the name of the petitioner was not entered in the RTC extracts and the same remained blank. These mistakes were corrected by the revenue authorities under the orders as per Annexures-B, C and D. Though this material was available on record, the Tribunal committed error in not taking into consideration this evidence. On this ground the impugned order is liable to be quashed.

6. In addition to the documentary evidence, there is oral evidence of the petitioner as P.W. 1 and there is evidence of respondents as R.W. 1. Again the Tribunal committed illegality in not considering this oral evidence available on

record. Non-consideration of the evidence available on record is an illegality committed by the Tribunal. On this ground also the impugned order is liable to be quashed. For the reasons stated above, the following:

ORDER

(i) Writ petition is hereby allowed.

(ii) The impugned order dated 21-5-2002 passed by the Land Tribunal, Bangalore North Taluk, is hereby quashed.

(iii) The matter is remanded to the Land Tribunal for fresh disposal in accordance with law, after providing an opportunity to both the parties. Ordered accordingly.