

(1998) 08 KAR CK 0072
In the Karnataka High Court
Case No : Writ Petition No. 203 of 1994

Alban D'Souza

APPELLANT

Vs

The Land Tribunal, Udupi and Others

RESPONDENT

Date of Decision : 05-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) ILR (Kar) 243 : (1999) 1 KarLJ 209

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri. K.S. Vyasaraao, for the Appellant; Sri Huleppa Herur, High Court Government Pleader, Sri G.S. Visveswara and M/s. K.V. Kini and Company, for the Respondent

Judgement

1. In this writ petition the petitioner, claiming to be a Mulgeni tenant of the land bearing Sy. No. 66/1A and 66/1B of Mudanidambur Village, has challenged the impugned order of the Land Tribunal dated 9-6-1991 vide Annexure-A by which the mother of respondents 2 to 5 has been registered as occupant of 76 cents in Sy. No. 66/1A. The impugned order has been questioned on various grounds.

2. Respondents 2 to 5 have strongly opposed the petition. Having heard the learned Counsel for the parties, I am of the opinion that the facts and the contentions urged need not be traversed since the petition can be decided with reference to the admitted facts just by meeting the contentions raised on behalf of the petitioner.

3. The 7th respondent is the owner of the lands in question. She has not challenged the impugned order granting occupancy rights. Even though the petitioner claims to be a Mulgeni tenant, he has not filed application seeking conferment of occupancy rights. Hence, the petitioner has no right to challenge the impugned order. He has no locus standi to question the occupancy rights granted in favour of respondents 2 to 5. On this ground alone the writ petition is liable to be dismissed.

4. The contention urged by Mr. Vyasa Rao, learned Counsel for the petitioner is that the land in question is not an agricultural land and therefore the Land Tribunal has no jurisdiction to entertain the application of the mother of respondents 2 to 5 claiming occupancy rights. Consequently, the impugned order passed by the Tribunal is without jurisdiction. This contention is wholly untenable and misconceived. The stand taken by the petitioner is that the mother of respondents 2 to 5 was a tenant only in respect of the premises situated in Sy. No. 66/1A and 1B and she was not the tenant of the lands in question. According to him, proceedings have been initiated for recovery of possession of the premises and even though there was a decree in his favour, the same could not be executed and possession has not been secured from respondents 2 to 5 since tenancy rights have been claimed in respect of the land in Sy. No. 166/1A and 1B in which the premises is situated. Section 2-A(18) of the Karnataka Land Reforms Act defines "land" to mean the land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes garden land. In paragraph 5 of the impugned order the Tribunal has observed that it had conducted spot inspection of the lands on 24-10-1980 and found that there was a tiled roofed house, well, fruit bearing coconut trees 3, about 5 months old 26 coconut saplings, a mango tree, 5 jack-fruit trees and plantain trees in Sy. No. 66/1A. Even in the other land also there were some trees. In view of the definition of "land" in the Act and the trees and other malkies found by the Land Tribunal at the time of spot inspection, it cannot be said that the lands were non-agricultural lands and the contention that the Land Tribunal had no jurisdiction to entertain the application of mother of respondents 2 to 5 cannot be accepted. The Tribunal has rightly held that respondents 2 to 5 were living in the house by looking after the lands. Hence the contention raised in this regard is rejected.

5. The next contention urged on behalf of the petitioner is that the impugned order is vitiated for not framing and deciding the preliminary issue with regard to jurisdiction of the Land Tribunal. This contention does not hold water in view of the judgment of the Supreme Court in the case of D.P. Maheswari v Delhi Administration and Others, wherein it is held that all the issues must be decided simultaneously without trying the preliminary issues. Therefore, non-recording of a finding on jurisdictional point does not vitiate the impugned order.

6. The next contention urged is that the Tribunal has not recorded a finding that respondents 2 to 5 were cultivating the lands as tenants and they have not produced the lease deed or rent receipts. This contention also must fail. The Tribunal has recorded a finding that the mother of respondents 2 to 5 was residing in the house and was cultivating the lands since 1933 and after her death respondents 2 to 5 are continuing. It has also recorded a finding that the mother of respondents 2 to 5 cultivated as paddy land and even as on the date of passing the impugned order they were doing garden in certain portions and there are coconut, mango and other trees. This is not disputed by the petitioner.

7. As regards non-production of lease deed and rent paid receipts are concerned, in the impugned order itself the Tribunal has discussed the evidence adduced by respondents 2 to 5. They have stated that there was now written lease deed and the lands were given on chalgani orally. It is also recorded that instead of paying geni to the landlord, they have paid the municipal tax and other taxes. These findings are recorded on the basis of the evidence available on record. The Tribunal is a fact finding authority. Since it has recorded the findings on appreciation of the evidence available on record, this Court in exercise of the power under Articles 226 and 227 of the Constitution cannot re-appreciate the evidence and arrive at different findings.

8. It is not the case of the petitioner that he has been cultivating the lands personally. On the other hand, the description in the cause title of the petitioner shows that the petitioner is a resident of Bombay. He being a resident of Bombay cannot be a Mulgeni tenant of the lands as claimed by him as the lands are situated in Udupi in Karnataka State. In paragraph 2 of the writ petition the petitioner himself has admitted that he has been managing the lands on behalf of his brothers and sisters and the petitioner has filed the writ petition in his own right and on behalf of his brothers and sisters. Firstly, the petitioner has no right at all to file the writ petition as he has not filed application seeking mulgeni rights claimed by him. Secondly, he cannot maintain the writ petition on behalf of his brothers and sisters unless they are arrayed as co-petitioners represented by him on the basis of power of attorney executed by them. The petition is also liable to be dismissed for non-joinder of necessary parties. The petitioner's assertion that he has been managing the lands on behalf of his brothers and sisters cannot be believed since he is staying in Bombay and it is highly impossible to manage the lands situated in Udupi Taluk by staying in Bombay. The petition is misconceived.

9. The impugned order is a well-considered order. There are no grounds to interfere with the same. The petition is liable to be dismissed for several reasons which are stated hereinabove.

10. Accordingly, the writ petition fails and the same stands dismissed. No costs.