

(2006) 04 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No. 13063 of 1997

Ashokrao Janardhanarao Shirgurkar

APPELLANT

Vs

The Land Tribunal and Others

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Land Reforms Act, 1961 — Section 108 (b), 110, 8

Citation : (2006) 3 KCCR 1557

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : H.R. Vasudha, for G.S. Visweswara, for the Appellant; R. Kumar, High Court Government Pleader for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

K. Ramanna, J.—The Petitioner being the owner of the land Survey No. 17/4 measuring 3 acres 21 guntas of Sirgur village, Raibag, filed the petition under Articles 226 and 227 of the Constitution praying to quash the order dated 31.12.1981 passed by the Respondent-1 Land Tribunal, Raibag-II, granting occupancy right in respect of land Survey No. 17/4 apart from granting occupancy right in respect of other lands in favour of Respondents-3 and 4 as well as 5.

2. The brief facts leading to this case are that the Petitioner herein initially filed W.P. 15168 of 1982 challenging the said order. During the pendency of the said writ petition Respondent-3 died therefore his L.Rs, were brought on record. During the pendency of the said writ petition an amendment was brought to the Karnataka Land Reforms Act constituting the Land Reforms Appellate Authority. Therefore this Court transferred the said writ petition to the Land Reforms Appellate Authority, Belgaum. Accordingly a case came to be registered as R.A.L.R. No. 61 of 1986. Again the case was renumbered as R.A. No. 882 of 1987. When the said matter was pending Respondent No. 4 died and his L.Rs. ,

were brought on record. Again in 1990 the Karnataka Land Reforms Act was amended abolishing the Land Reforms Appellate Authorities. Therefore the Petitioner herein filed civil petition in C.P. 10230 of 1990 with a prayer to call for the records and permit the Petitioner to convert the appeal into writ petition. Accordingly the civil petition was allowed and hence this writ petition.

3. Heard the argument of the learned Counsel for the Petitioner and the Respondents-3 to 5 and the learned High Court Government Pleader for Respondents-1 and 2.

4. It is contended by the learned Counsel for the Petitioner that the Petitioner is the owner of the land, while passing the impugned order the Chairman of the Land Tribunal gave an opinion that the Respondents-3 to 5 have not produced any documents to show that they have cultivated the land Survey No. 17/4 much prior to the appointment of the Court receiver. Therefore the provisions of Section 108 of the Land Reforms Act is applicable in this case. Since the land Survey No. 17/4 was purchased by the family members of the Petitioner in an auction held by the Court receiver appointed by the Court and in turn the Petitioners' family members entrusted the land to the Respondents-3 to 5 to cultivate the land as coolies. Therefore the impugned order granting occupancy right in the joint names of deceased Respondent-3 and Respondent-5 is liable to be quashed. Since the right of cultivation being auctioned by the receiver appointed by the Court and such land cannot be granted in favour Respondents-3 to 5 who were trespassers and cultivating the land illegally. Merely because the record of right standing (sic in the) name of Respondents for the year 1974 does not mean that they were lawfully cultivating the land and the names of the Respondents were got entered in Column No. 12(2) of record of rights fraudulently with a sole intention to file Form No. 7. Even though the Chairman of the Land Tribunal was of the opinion that the Respondents never cultivated the land as lawful tenants in respect of land Survey No. 17/4 but the majority of the members of the Land Tribunal were of the opinion that the land shall be granted in favour of the Respondent.

5. It is further contended that the Respondents have not produced any documents to show that the names of the Respondents have been in Column No. 12(2) of the pahani and the Tribunal has not considered the objections filed by the Petitioner. It is further contended that when the delivery warrant has been issued by the Civil Court Respondents set up a false tenancy and therefore delivery warrant could not be executed in respect of land Survey No. 17/4. Therefore the impugned order under challenge is liable to be quashed.

6. On other hand the learned Counsel for the Respondents-3 to 5 contended that the impugned order under challenge is a well reasoned and speaking order and the Respondents-3 to 5 were cultivating the lands as tenants in respect of land Survey No. 17/4 also. When the majority of the numbers of the Land Tribunal were of the firm view that the Respondents-applicants proved that they were cultivating the said land as lawful tenants immediately prior to 1.3.1974 and

thereafter the contention of the Petitioner that Respondents were trespassers cannot be accepted. Hence, this writ petition is liable to be dismissed. Whereas, the learned High Court Government Pleader for Respondents-1 and 2 supported the contention of the Respondents-3 to 5.

7. I have carefully examined the materials placed on record. It is an undisputed fact that Respondents-3 to 5 had filed Form No. 7 against Petitioner and other applicants and the impugned order under challenge discloses that the Tribunal has recorded the statement of both parties. In the statement recorded by the Tribunal the Petitioner has stated that he has no objection for grant of other items of land in favour Respondents-3 to 5. In fact he has stated that Respondent-3 Siddappa Ramappa Dalwai had participated in the auction held by the receiver appointed by the Court in the year 1953 and tenancy was auctioned by him. Whereas the other items of lands were auctioned by the First Class Sub-Judge, Kolhapur, in the year 1945-46 through a receiver. So in the year 1966 an execution petition was filed by the Petitioner to take possession of the land Survey No. 17/4. When the said execution proceeding was pending, Respondent-applicant filed Form No. 7 and set up a false claim as a tenant. Therefore the Petitioners and their family members could not take possession of the said land Survey No. 17/4. In order to appreciate the contention of both parties, whether the Respondents-3 to 5 were cultivating the land as a lawful tenants when the lands were in possession of the management of the Court Receiver it is just and proper to cull out Section 108(b) of the Karnataka Land Reforms Act, which reads as follows:

108. Lands taken under management of the Court of Wards, etc.,-.....

(a)

....

(b)

in the case of a tenancy created during the period of management, when the land is released from such management, the tenant shall be dispossessed and the possession of the land shall be delivered to the person lawfully entitled to such possession.

8. It is not in dispute that the land Survey No. 17/4 and other lands were under the management of the Court Receiver and the right of cultivation being auctioned by the receiver. Therefore they will not get any right to claim occupancy right as per Section 108B of the Act. Moreover the Petitioners filed a suit against the Respondents which came to be decreed much prior to 1.3.1974 and execution petition was filed on the file of the Munsiff and JMFC., Chikkodi, seeking delivery of the land. When the delivery warrant was issued, Respondents-3 to 5 had set up a false tenancy, therefore, the delivery warrant could not be executed by the Court as the Land Reforms Act was already in force. Therefore the majority members of the Tribunal opined that the occupancy

right has to be granted in favour of the Respondents. The management of the land by the Court receiver was subsequently terminated and the suit was filed, which came to be decreed. This aspect has not been considered by the members of the Land Tribunal and the members have not given separate acceptable reasons as to why they were in favour of the Respondents Nos. 3 to 5 in granting occupancy right in respect of Survey No. 17/4. In this connection, a reference may be made to a decision of this Court in the case of Shivalingappa Parappa Shivalli v. K.V. Joshi 1986 (2) Kar LJ 455 wherein it has been that:

Section 108(b) of the Act says that except for Section 8 and subject to the provisions of Section 110 nothing in the provisions of the Act shall apply to the lands taken under the management of Court to Wards provided that tenant to whom the land was tenanted during the period of management shall be dispossessed and shall be delivered to the person lawfully entitled to such possession. It does not mean that if the land is leased by the Receiver to a person that person should be allowed to continue in possession by the Receiver till the termination of the proceedings. Proviso (b) of Section 108 would not permit his continuance till the termination of the proceedings in the suit.

This aspect has not been considered by the majority of the members while granting occupancy right. Therefore, considering the facts and circumstances of the case granting of occupancy right in favour of Respondents-3 to 5 in respect of Survey No. 17/4 measuring 3 acres 4 guntas of Sirgur Village is bad in law and opposed to settled principles of law.

9. Accordingly, writ petition is allowed in part. So far as the impugned order passed to the extent of granting of occupancy right in respect of Survey No. 17/4 measuring 3 acres 4 guntas is hereby quashed. Granting of occupancy right in respect of other lands is undisturbed. The matter is remitted back to the Land Tribunal for fresh disposal in accordance with in respect of land Survey No. 17/4 measuring 3 acres 4 guntas of Sirgur Village, Raibag Taluk, Belgum District.