

(2019) 04 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No. 37447, 37448 Of 2012 C/W WRIT, 4131 Of 32 Of 2013 (LR)

B. Indira

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 09-04-2019

Acts Referred:

Citation : (2019) 04 KAR CK 0035

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : N. Sukumar Jain

Judgement

1. These two batch of writ petitions are filed impugning common order dated 3.4.2012 in LRY 3/78-79 and LRY 4/78-79 on the file of the Land Tribunal, Belthangady Taluk.

2. The brief facts leading to these writ petitions are as under:

The proceedings in LRY 3/78-79 is pursuant to an application dated:14.2.1979 in Form No.7, seeking occupancy rights in respect of about 7 items of land, situated in Karaya village, Belthangadi Taluk, which was filed by B.Niranjana, S/o Thimmaiah Ballal. Whereas the proceedings in LRY No.4/78-79 is pursuant to an application dated 14.2.1979 in Form No.7 filed seeking occupancy right in respect of 9 items of land situated in very same Karaya Village of Belthangadi taluk by Smt.Rukmini. Admittedly, applicants in the aforesaid proceedings are mother and son and in both applications the landlord is `Bavanthu Bettu Basti Adishwara Swamy`, Bavanth Bettu P.O.Karaya, by its Administrator Smt.Chandravathi Amma.

3. Admittedly the properties in respect of which aforesaid two applications in form No.7 are filed originally belonged to one Adiraja Pandya. The said Adiraja Pandya had three daughters by name (1) Chandravathi, (2) Rathnavathi and (3) Rukmini. During his lifetime, he executed a registered Gift Deed on 13.9.1913

gifting several properties owned by him to Adeeshwaraswami Basthi situated in Bhavanthabettu, Uppinangady village, Belthangady Taluk. The said temple is third respondent in W.P.No.37447-48/2012. In terms of the gift deed, all the properties which were gifted to the temple were required to be looked after by the eldest daughter of Adiraja Pandya namely, Chandravathi. She was required to utilize the income derived from the said properties for maintaining the aforesaid temple to which all the lands were gifted, thereafter she should utilize the remaining income from the said properties for the benefit of the members of the Adiraja Pandya's family, i.e., his three daughters and their respective children.

4. Pursuant to the recitals in the Gift Deed, the first daughter of donor Adiraja Pandya namely, Chandravathi, is in possession and enjoyment of all the properties for and on behalf of the temple. In the meanwhile, pursuant to amendment to the Karnataka Land Reforms Act, which came into force with effect from 1.3.1974, the lands which were in possession and cultivation of the tenants got vested with the State. Thereafter, the cultivators were given opportunity to seek occupancy rights in respect of the lands, which were in their cultivation in the capacity of tenant. It is in this background that applications in LRY 3/1978-79 and LRY 4/1978-79 came to be filed, one by B.Niranjan seeking occupancy rights in respect of nearly 42 to 43 acres of land and another by his mother Smt.Rukmini seeking occupancy rights to an extent of about 18 acres.

5. Admittedly, the lands which were referred to as land under cultivation of applicants, in aforesaid proceedings are the lands which were gifted by Adiraja Pandya in favour of Adeeshwaraswamy Basthi, under registered Gift Deed dated: 13.9.1913, which were in the custody of the Donor Adiraja Pandya's eldest daughter viz., smt.Chandravathi. In the applications which were filed by B. Niranjan and his mother Rukmini, they contended that they were cultivating the lands as tenants under the geni cheeti issued in their favour by Chandravathi Amma, as administrator of the Basthi, to which aforesaid lands were gifted.

6. The application of B.Niranjan was partially allowed by order dated:25.9.1981, granting occupancy rights in respect of 4 items of lands. Whereas the application of Smt.Rukmini was also partially allowed by order dated:1.10.1981, granting occupancy right in respect of 7 items of lands.

7. The aforesaid orders of the Land Tribunal, Belthangadi were subject matter of appeal in LRAA 777/1986 on the file of Land Reforms Appellate Authority. In view of amendment to Sec.17 of Land Reforms Act, the said appeal was sent to this court as CP and subsequently converted in to W.P.20366/1992. The said appeal was filed by Smt.Saraswathi D/o Rathnavathi (second daughter of Donor Adiraj Pandya). Wherein, she would contend that, the applicants B.Niranjan and his mother Smt.Rukmini are none other than the appellant Saraswathi's cousin brother and maternal aunt; that they were not tenants of the lands in question; that, they are members of the family of Adiraj Pandya; there was no tenancy right given to said persons in respect of lands in question; accordingly the said applications were opposed by her as member of same family, which was not

considered by the tribunal.

8. The said appeal which was subsequently registered as writ petition in W.P.20366/1992 on the file of this court, came to be allowed by order dated:18.7.1998 in setting aside the order of Land Tribunal in LRY 3 & 4 /1978-79 dated:25.9.1981 and 1.10.1981 respectively. Thereafter both the applications were remanded back to the Tribunal for fresh consideration, with a condition that, the same shall be heard and disposed off in accordance with law after giving sufficient opportunity to the petitioner Smt.Saraswathi.

9. In the aforesaid circumstance, the applications in form No.7 by B.Niranjana and his mother Smt.Rukmini in proceedings No.LRY 3 & 4 of 1978-79 were reopened and reconsidered by the Land Tribunal, Belthangady, by its common order dated: 3.4.2012. The said order is impugned in these two writ petitions, one filed by Saraswathi D/o Rathnavathi in W.P.No.4131-32/2013. In this writ petition, the petitioner Saraswathi is challenging the common order passed in both LRY 3 & 4 /1978-79.

Whereas another writ petition in W.P.No.37447-48/2012 is filed by Smt.Indira D/o Rukmini (Original Applicant in LRY 4/78-79), in challenging the order passed in LRY 4/78-79 so far as it pertains to rejecting the prayer of original applicant seeking occupancy right in respect of land bearing Sy.No.18/10 measuring 31 cents and Sy.No.18/9 P-1 measuring 1 Acre 80 cents on the ground that, the same was already considered in favour of Sundara Poojary (husband of 5th Respondent in this writ petitions), in LRY 18/74-75 on the file of Land Tribunal, Belthangady. Admittedly, Indira is none other than the sister of Niranjana, both are grand children of late.Adiraj Pandya.

10. Therefore, in these two writ petitions, the persons who were challenging the common order passed in LRY 3/1978-79 and LRY 4/1978-79 are the grand daughters of Adiraja Pandya (Saraswathi is daughter of Adiraj Pandya's second daughter Rathnavathi). Whereas Indira is daughter of Rukmini, who is third daughter of Adiraja Pandya. Though these two writ petitions are filed by two grand daughters of Adiraja Pandya, the grounds urged in these two writ petitions are different. Therefore, this court will take up the writ petitions which are filed by Indira at the first instance.

11. In Writ Petition No.37447-48/2012, the petitioner - Indira is challenging the order of rejection of occupancy rights in favour of her mother Rukmini, who is applicant in LRY No.4/78-79, with reference to Survey No.18/10, measuring 31 cents and Survey No.18/9P1 measuring 1 Acre 80 cents, on the ground that the same was already considered in favour of one Sundara Poojari in LRY No.18/74-75 on the file of the Land Tribunal, Belthangady.

12. Whereas in W.P.No.4131-32/2013 the challenge is to the common order passed by the land tribunal in favour of both, B.Niranjana and his mother Rukmini to certain extent of lands, for which they had sought occupancy rights in the applications filed by them before the Land Tribunal, Belthangady. Where the

Petitioner Smt.Saraswarthi would contend that, the lands which are subject matter of proceedings in Form No.7 were never cultivated either by Niranjana or his mother Smt.Rukmini as tenants. They were living along with Chandravathi, the eldest daughter of Adiraja Pandya and since the land was being managed by them, the question of their claiming tenancy of some portion of the land cannot be accepted. That is the ground on which the said writ petitions are filed.

13. These two writ petitions are taken up for consideration in the presence of learned counsel Sri Sukumar Jain appearing for the petitioners in the first batch of writ petitions in W.P. No. 37447-448/2012 filed by Smt. Indira as legal heir of the applicant Rukmini in LRY NO.4/78-79 and learned counsel Sri P.P.Hegde appearing for the petitioner, Smt. Saraswathi in Writ Petition No.4131-32/2013, who is challenging the grant of some portion of land in LRY Nos.3 and 4 of 1978-79, both in favour of Niranjana as well as in favour of his mother Rukmini.

14. Heard the learned counsel for both the petitioners and the learned Government Pleader Sri Budihal. One of the grounds on which Rukmini is opposing the order impugned is that the Tribunal has rejected the prayer of the petitioner - Indira's mother Rukmini for two items of land on the ground that they were already granted in favour of one Sundara Poojary, since deceased represented by his widow Smt.Leela, 5th respondent in one of the petitions. It is contended that the application which was filed by Sundara Poojary in LRY 18/78-79 is considered in his favour in respect of two lands, namely Survey Nos.18/10 measuring 31 cents and 18/9P1 measuring 1 acre 80 cents, without reference to application filed by Rukmini for occupancy right in respect of very same lands. It is contended that, said procedure is erroneous, in the light of finding rendered by Division Bench of this court in Basappa Gurusingappa vs. Land Tribunal, reported in 1979(2) KLJ 370; where at Paragraph -11 the Division Bench has held as under:

"When rival applications are made before the Tribunal for grant of occupancy right in respect of the same land; it is, in our opinion, the duty of the Tribunal to consider together those rival applications and decide them by a common order. Otherwise, there cannot be a proper adjudication of the rival claims. Even if one of the rival applicants had filed his application earlier and the Tribunal had granted him occupancy right in respect of that land and to the earlier applicant. The Tribunal is bound to consider every application filed within the time limit provided by the Act and it is no answer to such application to say that that land is not available for grant of occupancy right therein. The only way in which the Tribunal can be enabled to consider the later application, is to set aside its earlier order and to direct it (the Tribunal) to consider together both the rival applications and to decide thereon. It may look startling that an order of the Tribunal which was valid when it was made and did not suffer from any infirmity, should be set aside, merely because another person makes a rival application in respect of the same land after the Tribunal has granted occupancy right in respect of that land to the earlier applicant. But there is no other way in which

the Tribunal can discharge its obligation to consider all applications filed in time."

15. When the aforesaid judgment is looked into, it is clearly seen that in the given set of facts, where there is more than one application seeking occupancy rights in respect of same land, the Land Tribunal has not considered all the applications together. Even assuming if one of the applications is already decided granting occupancy rights in favour of one of the applicants, the same should have been recalled, thereafter the Land Tribunal should have considered all the applications together. Therefore, there is serious error committed by the Tribunal. The aforesaid judgment, squarely supports the Technical objection raised.

16. Therefore, the writ petitions which are filed by Smt. Indira requires to be allowed and while doing so, the order passed in LRY 18/1974-75 dated 22.9.1977 as well as the order dated 3.4.2012 in LRY No.4/78-79 requires to be set aside and the matter requires to be remanded back to the Land Tribunal for reconsidering the prayer of Rukmini seeking occupancy right in respect of land bearing Survey No.18/10 measuring 31 cents and Survey No.18/9P1 measuring 1 acre 80 cents.

17. Insofar as the connected writ petitions filed by Smt.Saraswathi, are concerned, the challenge is with reference to the common order passed by the Land Tribunal in LRY 3/1978-79 and LRY 4/1978-79 which were filed by her first cousin B.Niranjana and his mother Smt.Rukmini, seeking occupancy rights in respect of some lands and her maternal aunt Smt. Rukmini seeking occupancy rights in respect of some other lands, on the ground that, there is no relationship of tenant and landlord between the Applicants in aforesaid application and the temple; that the said applications are filed with ulterior motive, to knock off the property available for the benefit of the family to their exclusive use.

18. When these writ petitions are heard, the records in the proceedings before the Tribunal are looked into, which would reveal that the applicant B.Niranjana in LRY No.3/1978-79 is the person who was assisting his maternal aunt Chandravathi in running the temple Adheeshwaraswami Basthi as de facto manager, as seen in the evidence adduced by him before the Tribunal at the earliest point of time, where he would also go to the extent of placing on record that the land was under the supervision of his maternal aunt Chandravathi for the benefit of the family and that he was assisting her in managing the said lands. In the evidence, he also admits in two different places that his mother Rukmini and his maternal aunt Chandravathi are all residing in the same house and that they are members of the same family. Hence, it is contended by the petitioner, when that being the case, how the Tribunal could accept him as tenant to the property belonging to family, where he was given the responsibility of managing it for and on behalf of the temple which is Adeeshwaraswamy Basthi as one of the grounds. It is also her grievance that the claim of Rukmini and her son Niranjana as tenants in respect of the properties which are gifted to the Basthi cannot be accepted, where certain benefit is provided for members of the family by the Donor Adiraja Pandya, under the Gift Deed executed by him on

13.9.1913, which is at Annexure-H to the writ petitions filed by her. Where the recital would indicate that the property though gifted to the deity, the same should be managed by his first daughter, she shall meet the expenses to run the temple from out of the income received from said property, that the remaining amount should be utilized for the benefit of the members of the family i.e., his three daughters and their respective children.

19. It is in this background that the petitioner Saraswathi would contend that if these two persons are accepted as tenants, they would be accepted as tenants to their own property. Hence, they cannot be accepted as tenants of the land, in which they have beneficial interest. Her grievance is that, the same is not considered by the Tribunal when the application pending before it in LRY 3/1978-79 and LRY 4/1978-79 was taken up for consideration of tenancy right of Niranjana as well as his mother Smt. Rukmini. Therefore, in the facts and circumstance, this court is of the considered opinion that, the grounds urged in the writ petitions filed by Smt.Saraswathi challenging the order impugned appears to be correct. In addition to that, the contention that, there is error in not appreciating the discrepancy in the evidence of Niranjana, while considering the application of Niranjana and his mother for tenancy right also appears to be correct.

20. Infact, in the earlier round of litigation, that is before the first order of grant was considered in the year 1981, in the proceedings before the Tribunal there is clear admission on the part of Niranjana that there was no tenancy document between himself and his maternal aunt Chandravathi and that he was orally permitted to cultivate the lands in question. Later in the remanded matter, in his evidence, he would contend that, geni chit was given to him by his aunt Chandravathi. The said inconsistency in admitting at the first place that there was no geni chit and subsequently producing the document claiming that his tenancy claim is supported by geni chit issued in favour of himself and his mother, creates doubt as to its genuineness, which is not considered by the Tribunal. In this background, this court is of the opinion that a serious error is committed by the Tribunal in accepting the applications filed by the first cousin and the maternal aunt of the petitioner Saraswathi, namely, Niranjana and Rukmini claiming themselves to be tenants of the lands which belonged to the family of the Adiraja Pandya, which were available for the benefit of all his daughters and their successors for their life. If their claim is accepted without proper verification, the same would enure to exclusive benefit of the applicants.

21. In this background, when the first writ petitions filed by Indira is seen, it is clear that the writ petitions filed by Indira appears to be set up by Niranjana himself inasmuch as while challenging the common order dated 3.4.2012 in LRY 3 and 4 of 1978-79 the petitioner Indira is harping on non-consideration of two items of the land in favour of her mother, but she does not speak anything about the tenancy which is considered in favour of her brother. Therefore, it is clear that there is concerted effort on the part of the branch of Rukmini, the third

daughter of Adiraja Pandya in trying to garner all the properties available for the family for their exclusive benefit.

22. Therefore, in this background, when the order passed by the Land Tribunal is seen, it is clear that there is serious error committed by the Tribunal, in its common order passed in LRY 3/1978-79 and LRY 4/1978-79 on 3.4.2012, hence the same is required to be reconsidered by the Tribunal in the light of aforesaid grounds urged by the contesting respondents in the said proceedings.

23. Hence, the common order impugned dated 3.4.2012 passed by the Land Tribunal, Belthangady, in LRY 3 and 4/1978-79 is hereby set aside and the said proceedings are remanded back to the Tribunal for reconsideration of the objection raised by the contesting respondent Smt.Saraswathi who is another grand daughter of Adiraja Pandya through his second daughter Ratnavati. However, it is noticed that said Saraswati is no more and that, the proceedings initiated by her is pursued by her legal heirs. Therefore, in the remanded proceedings before the Land Tribunal, notice should also be given to the legal representatives of deceased Smt.Saraswathi to come on record and to substantiate that the said properties in respect of which tenancy right is claimed, is the property of the family of the applicants themselves.

24. With such observation, these two writ petitions are allowed by setting aside the common order dated 3.4.2012 passed by the Land Tribunal, Belthangady in LRY 3/1978-79 and LRY 4/1978-79 and also the order in LRY 18/74-75 which was filed by Sundara Poojary seeking occupancy rights in respect of two items of land which are lands, in respect of which, two applications were filed for occupancy right one by Sundara Poojary and another by Rukmini. The aforesaid three LRY proceedings are remanded to the Land Tribunal, Belthangady, for fresh consideration. It is needless to say that the Land Tribunal, Belthangady shall reopen these three applications filed in Form No,7 and shall dispose of the same on priority basis within six months from the date of receipt of a copy of this order. The same will have to be reconsidered in the light of the judgment rendered by the Division Bench of this court cited supra.