

(2006) 04 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 19711 of 2000

Baburao and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144
Constitution of India, 1950 — Article 226, 227
Karnataka Land Reforms Act, 1961 — Section 113, 25, 41, 48 A
Karnataka Land Revenue Act, 1964 — Section 128

Citation : (2006) 4 KCCR 2713

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : S.M. Chandrashekar, for the Appellant; G. Rama Devi, Government Pleader for Respondents 1 and 2 and Jayakumar S. Patil, for Veeresh B. Patil, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramanna, J.—This writ petition is filed by the petitioners under Articles 226 and 227 of the Constitution of India with a prayer to issue writ of certiorari to quash the order dated 17-11-1982 passed by respondent 2 in case No. LRF/233, 234 and 235 of 1976-77 vide Annexure-A.

2. Brief facts leading to this case are that the petitioners herein have filed application Form 7 u/s 48-A of the Karnataka Land Reforms Act for grant of occupancy rights in respect of land survey No. 15 measuring 20 acres 38 guntas situated at Janapur village, Basavakalyan Taluk, Bidar District. Their application came to be rejected by an order dated 21-10-1976. Aggrieved by the said order the petitioners preferred Writ Petition Nos. 22406 to 22408 of 1980 before this Court. This Court, by its order dated 25-6-1981 quashed the said order and remanded the matter to the Land Tribunal for fresh disposal in accordance with law. After the remand the Land Tribunal issued notices to the parties and conducted fresh enquiry and on 17-11-1982 the Tribunal again rejected the claim

of the petitioners in Case No. TBK/LRF/233, 235 and 234 and 1976-77. Against this order the petitioners have filed Writ Petition No. 10057 of 1986 challenging the order dated 17-11-1982 passed by the respondent 2-Land Tribunal, Basavakalyan, in case No. TBK/LRF/233, 235 and 234 of 1976-77 whereby the Land Tribunal rejected the claim of the petitioners for grant of occupancy right and further it has held that the land does not vest with the Government. During the pendency of the said writ petition the Karnataka Land Reforms Act was amended constituting the District Land Reforms Appellate Authorities in the State. Therefore, the said writ petition was transferred to the District Land Reforms Appellate Authority, Bidar, and renumbered as BDAT.KLRA(W).2/89. Thereafter, due to non-functioning of the Appellate Authority at Bidar the said case came to be transferred to the Appellate Authority at Gulbarga. Again, during the year 1990 the Karnataka Land Reforms Act was amended by abolishing the District Land Reforms Appellate Authorities in the State. Therefore, the petitioners have filed Civil Petition No. 299 of 1992 praying this Court to convert the appeal pending before the Appellate Authority into writ petition. The Civil petition came to be allowed and accordingly the appeal came to be converted into this writ petition.

3. Heard the learned Counsel for the petitioners, the learned Counsel for the respondent 3 and the learned High Court Government Pleader for respondents 1 and 2.

4. It is contended by the learned Counsel for the petitioners have been cultivating the lands in question as tenants by a registered lease deed executed by the original owner of the land Sri Amruth on 2-6-1952, Without notice to the petitioners the original owner had sold the lands in question to the respondent 3 but the petitioners, even after the sale, continued to be in possession and enjoyment of the land. The Tribunal without considering the statement of the witnesses and the documents placed on behalf of the petitioners had passed the impugned order, which is highly illegal and incorrect, therefore not sustainable in law. It is contended that the petitioners were forcibly evicted from the lands in question during year 1970. It is further contended that the chairman of the Land Tribunal gave opinion to grant occupancy right in favour of the petitioners that they are tenants of the lands in question on the relevant date of vesting. But the other four members of the Land Tribunal gave their opinion stating that the petitioners are not tenants of the land in question solely on the basis of the entry in the record of rights. The other documents produced by the petitioners in support of their claim have not considered and discussed in their opinion, hence the opinion given by the majority members cannot be accepted. It is contended that it is admitted by the parties that upto 1962 petitioners were the tenants of the lands in question thereafter there was no eviction order from the Competent Court or any surrender proceedings were executed. Therefore, without surrender of the lands in question by the petitioners they cannot be evicted from the lands without due process of law. Therefore, it is contended that the tenancy presumably continued to be in force after 1962 also.

5. In support of his contention the learned Counsel for the petitioner has relied on a decision in the case of Thunga Bai and Others Vs. Vishalakshi Heggadthi and Another, , wherein this Court held that:

When plaintiffs predecessors were admittedly tenants in possession of the lands upto 1971 when the Act was in force and there has been no surrender with permission of Court as required by Section 25 of the Act (which alone can be taken cognizance of by Courts) there is a presumption that the possession continued with the tenant.

Further, he has relied on another decision of this Court in the case of Nagappa Devanna Naik Vs. Venkatramana Thimmanna Naik and Another, , wherein this Court held that:

What is relevant for the purpose of the Act and the determination by the Tribunal is whether the lands in respect of which proceedings are taken under Chapter III were tenanted lands being cultivated personally by the alleged tenants immediately prior to 1-3-1974. If there was any dispossession after 1-3-1974 by the landlord or by the main tenant or a sub-tenant, it is wholly immaterial and will not affect the right of the tenant personally cultivating the land immediately prior to 1-3-1974.

In view of the above, the learned Counsel for the petitioner prayed for quashing of the impugned order passed by the Land Tribunal.

6. On the other hand, the learned Counsel for the respondent 3 contended that the land in question was purchased by the father of respondent 3 on 27-12-1960. After issue of notice in Form III to the general public and to all persons interested in the land the Assistant Commissioner issued permission to the landholder to sell it to the respondent on 19-11-1960. Thereafter, the mutation entries were duly sanctioned in the name of the respondent 3 and the entries in columns (9) and (12) were lawfully altered to show the valid possession of the respondent over the land Survey No. 15 and his name has been appearing in the R.T.C. from 1961 as khatedar and cultivator. It is contended that the petitioners were never tenants of the lands in question, since the lease deed dated 2-6-1952 executed between Amruthrao and the petitioners is a bogus document as the petitioners have failed to produce the original of the said document. It is contended that the respondent 3 has been in lawful possession ever since the purchase of the lands in question.

7. It is further contended that the petitioners should have challenged the order of Assistant Commissioner permitting the respondent 3 to purchase the lands in question, which they have not done so. Further, they have not even questioned the entries made in the record of rights before the Competent Authorities. And the petitioners have not even produced a scrap of paper to show that they were in possession of the land in question except producing a copy of the lease deed dated 5-6-1952. Further the lease period was admitted not extended after 1962.

8. In support of his contentions the learned Counsel for respondent 3 relied a decision in the case of Lakshminarayana Hariyachar Vs. Divisional Commissioner, wherein this Court held that:

Tenant who is dispossessed, without obtaining restitution in accordance with law by an application made under Sections 41 and 113 of the Karnataka Land Reforms Act read with Section 144 of the CPC for restitution or restoration of possession of lands, cannot interfere with the possession of the landlord who has obtained their possession from the Tahsildar.

Further, the learned Counsel relied on a decision in the case of M.K. Ramanna v. State of Karnataka and Ors. 1988(3) Kar. L.J. 450, wherein this Court held:

Burden of proving that as on 1-3-1974 a person was lawfully cultivating the land as a tenant is on tenant and he alone must discharge that burden - Mere presumption arising out of entries in pahani or RTC extracts cannot be held to be conclusive evidence of the tenancy.

Therefore, the learned Counsel for the respondent 3 submitted that the Tribunal has rightly rejected the claim of the petitioners and prayed for dismissal of the present writ petition.

9. I have examined the records. It is seen that the petitioners have filed Form 7 claiming occupancy right in respect of lands in question on the ground that they are the tenants. In support of their claim they have produced a copy of the lease deed dated 5-6-1952 executed by the owner Amruthrao for a period of ten years. But they have failed to produce the original lease deed entered into between them and the earlier owner of the land. Later, the lease deed was not extended after completion of the lease period of ten years. It is contended by the petitioners that the land in question was forcibly taken by the respondent 3 during the year 1970. But, the petitioners have not lodged any complaint before the concerned authorities or the jurisdictional police in this regard. The petitioners further contention is that the surrender of the land must be in accordance with law as provided u/s 128 of the Karnataka Land Revenue Act, 1964. In fact the respondent 3 after obtaining the permission of the Assistant Commissioner, Bidar, purchased the land in question. This is evidenced by the permission dated 19-11-1960 issued by the Assistant Commissioner, Basavakalyana, u/s 47 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. As per Section 47 of the said Act Assistant Commissioner is duty-bound to ascertain whether the land was a tenanted one and also to ascertain about other encumbrances on the land. Accordingly, the Assistant Commissioner, who issued notice to all the concerned including the general public of the alienation of the lands in question and thereafter granted permission to the owner of the land to alienate the same in favour of respondent 3. Since the order of the Assistant Commissioner has not been challenged by the petitioner before the Competent Authority the same has become final. Therefore, the contention of the petitioners that the lands in question has not been taken possession in accordance with law

cannot be accepted and the decisions relied upon in this regard by the learned Counsel for the petitioners cannot be made applicable to this case.

10. It was contended by the petitioners that even after the purchase of the land by the respondent 3, the petitioners were in occupation and cultivating of the land. But no document like rent receipts or levy receipts were produced by the petitioners to show that they were cultivating the land as tenants. Even in the record of rights and pahani their names does not exist after 1962 onwards. On the contrary the name of the respondent 3 is found in the record of rights and pahani extracts since the year 1962 i.e., after the purchase of the land from its original owner Amruthrao. Therefore, in view of the aforesaid facts and circumstances of the case, it can be said that the land in question was not a tenanted land as on 1-3-1974 or immediately prior to it and as no grounds are made out by the petitioners to interfere with the impugned order, the present writ petition is liable to dismissed.

11. Accordingly, the writ petition is dismissed as devoid of any merits.