

(2002) 02 KAR CK 0031
In the Karnataka High Court
Case No : Writ Appeal No. 1410 of 1998

Basavanneppa Shivappa Haveri

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 108, 4, 44

Citation : (2002) ILR (Kar) 1497 : (2002) 3 KarLJ 463 : (2002) 2 KCCR 137 SN

Hon'ble Judges : Kumar Rajaratnam, J; D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : M.R.V. Achar, for Mohan Shanthanagoudar, for the Appellant; M.N. Ramajaneya Gowda, Government Advocate, Jayakumar S. Patil, for Suresh P. Hudedagaddi, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant being aggrieved by the judgment of the learned Single Judge in W.P. No. 24330 of 1992 has preferred this writ appeal.
2. The facts, very briefly, are the tenant was in possession of agricultural land as a cultivating tenant with respect to 18 acres 16 guntas in Sy. No. 816 and 12 acres 18 guntas in Sy. No. 827/1. The appellant filed Form 7 for conferment of occupancy rights. The Land Tribunal by an order dated 19-2-1998 rejected the claim of the appellant. The appellant preferred an appeal to the Land Reforms Appellate Authority. During the pendency of the appeal, the Appellate Authority was abolished and the appeal was subsequently registered as C.P. No. 31 of 1990 and renumbered as W.P. No. 24330 of 1992.
3. The learned Single Judge held that the appellant himself has mentioned in Form 7 that the owner of the land is not the landlord but is the receiver appointed by the Munsiff Court.
4. The learned Single Judge after referring to this aspect of the case held that there was prohibition u/s 108 of the Karnataka Land Reforms Act, 1961

(hereinafter referred to as "the Act") and affirmed the findings of the authorities below in holding that the tenant cannot acquire any right under the provisions of the Act as long as the said lands have been taken over under the management temporarily by the Civil Court.

5. Section 108 of the Act is an exception to the general rule of granting occupancy rights. Section 108 reads as follows:-

"108. Lands taken under management of Court of Wards, etc.---Subject to the provisions of Section 110, nothing in the provisions of this Act except Section 8 shall apply to lands taken under the management of the Court of Wards or of a Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890, or to the lands taken under management temporarily by the civil, revenue or criminal Courts by themselves or through the receivers appointed by them during the period of such management:

Provided that-

(a) in the case of a tenancy subsisting on the date of taking over the management, the provisions of Section 44 shall apply and the land shall vest in the Government;

(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;

(c) with effect from the date on which such land is released from such management, all the provisions of this act shall apply to such land".

6. A perusal of Section 108 indicates that if the lands are under the management temporarily by a Civil Court, the provisions of the Act shall not apply. The proviso (a) also indicates that the bar u/s 108 will have no application if the tenancy was subsisting at the time when the lands were taken under the management temporarily by the Civil Court. In other words if the land was tenanted by the landowner prior to the taking over by the receiver in a Civil Court proceedings, then that tenant would be entitled to occupancy rights if he was a tenant under the provisions of the Act on the appointed date. If, however, the tenancy was created by the receiver himself, then the tenant would not be entitled to occupancy rights. Therefore, even while reading Section 108 it would be necessary for the Courts to relate to the factual position as to whether it was the receiver who was temporarily in management when the tenancy was created or whether the tenancy was created prior to the appointment of the receiver. Once we hold that the tenancy was created by the receiver in his capacity as a receiver appointed by the Court, then there is a bar for the tenant to claim occupancy rights as a cultivating tenant.

7. Mr. Achar, the learned Senior Counsel for the appellant in a fair and objective manner presented the case before us. The learned Counsel for the appellant

relied on Sections 4 and 44 of the Act and submitted that all lands in the possession of the tenants immediately prior to the date of the commencement of the Act shall vest in the State Government. Section 44(1) reads as follows.-

"44. Vesting of lands in the State Government.--(1) All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted u/s G, shall, with effect on and from the said date, stand transferred to and vest in the State Government".

8. It was strenuously submitted by the learned Senior Counsel that the land on the appointed date vested with the State Government since the appellant was a tenant. It is further submitted that since the land vested with the State Government there was no bar for the tenant claiming occupancy rights. No doubt this submission is attractive but how does one get over Section 108 read with the first proviso. The Legislature in its wisdom has stated that Section 108 will not apply to a tenancy if the tenancy subsisted on the date when the management was taken over by the Court receiver. It was the intention of the Legislature that if the tenancy was created by the receiver, then there will be a bar u/s 108 for the tenant to claim occupancy rights.

9. Realising this difficulty Mr. Achar, the learned Senior Counsel for the appellant submitted that the receiver was appointed in the year 1933 and continued for number of years till his demise. Therefore, it cannot be said that the appointment of the receiver is temporary and that the appointment of the receiver not being temporary, there will be no bar u/s 108 of the Act.

10. The father of the respondent filed Insolvency Case 1/33 before the First Class Sub-Judge, Kundagol on 2-1-1933. The father of the respondent-Basavannappa was adjudged insolvent on 20-4-1934 and one Sri G.D. Apte, Pleader was appointed as receiver to take possession of the estate. The said Sri G.D. Apte continued as a receiver even on the appointed date.

11. The learned Counsel for the appellant Mr. Achar relied on the judgment of this Court in M.N.R. Mallya and Company and Ors. v. Syndicate Bank and Ors., 1987(1) Kar. L.J. 106 This Court dealing with the Provincial Insolvency Act, 1920 held that once the adjudication is made and the person is declared as insolvent the properties of the adjudged insolvent vest with the official receiver who alone is entitled to prosecute the pending proceedings and initiate fresh proceedings relating to such property or properties.

12. Reliance was also made to Commissioner of Income Tax Vs. J. Narayana Murthy, . Relying on these two judgments it was submitted that the appointment of a receiver by the Civil Court was not a temporary appointment but was of the permanent nature.

13. We are not able to accept the contentions of Mr. Achar because even if the

period of receivership is long, it cannot be said that it is permanent. It can only be of a temporary nature.

14. The Supreme Court in *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust*, while dealing with vesting of the property under the provisional Insolvency Act held that the property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property.

15. In these circumstances, it is not the period that matters but the office of the receiver and in our view the office of the receiver is temporary and therefore there is a bar u/s 108 of the Act because it is the admitted case that the tenancy was in fact created by the receiver is stated in Form 7 by the tenant.

16. Accordingly the writ appeal stands dismissed .