

(1998) 03 KAR CK 0070
In the Karnataka High Court
Case No : Writ Petition No. 28785 of 1997

Beera Aayu Agera

APPELLANT

Vs

Land Tribunal, Ankola, Uttara Kannada District and Others

RESPONDENT

Date of Decision : 02-03-1998

Acts Referred:

Contract Act, 1872 — Section 23

Karnataka Land Reforms Act, 1961 — Section 21 (1), 45, 45 (1)

Citation : (1998) ILR (Kar) 2381 : (1998) 3 KarLJ 14

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri S.R. Hegde Hudlamane, for the Appellant; Smt. Vidya, High Court Government Pleader and Sri Ravi G. Sabhahit, for the Respondent

Judgement

1. Rule.

Heard the learned Counsel for the petitioner and contesting respondent 3 and Smt. Vidya, learned High Court Government Pleader, for respondents 1 and 2.

2. The records of the Land Tribunal have been produced.

3. The Land Tribunal under its order dated 24-9-1997 (Annexure-C) passed in Case No. KLR:SR:4250+731 has registered occupancy in favour of the third respondent by holding that on 1-3-1974 he was personally cultivating the land in question as a permanent tenant. The said order is being impugned herein by the petitioner on the ground that as of fact he was in personal cultivation of the said land as a sub-tenant under third respondent and therefore as provided u/s 45 of the Karnataka Land Reforms Act, 1961 (in short "the Act") occupancy ought to have been registered in his favour.

4. The petitioner has based his claim of sub-tenancy on the basis of an agreement dated 7-7-1972 (Annexure-G) entered into between him and the third respondent. According to the petitioner, pursuant to the stipulations contained in the agreement, he was put in possession over the land and thereafter he has

faithfully discharged his part of the contract by paying rent to the land owner and also by discharging the loan obtained by the third respondent from Ramanaguli Sahakari Sangha. In support of his claim he had adduced both oral and documentary evidence like the rent receipts, levy paid certificate and some of the witnesses.

5. On the other hand the third respondent had adduced evidence to show that the agreement at Annexure-G was forged document and it did not bear his signature. He also adduced oral evidence to show that on 1-3-1974 it was he, who was personally cultivating the land and in support thereof he placed reliance on the entries in the record of rights.

6. The land in question is survey No. 51/1+2 measuring 6 acres 28 guntas 8 an as of Sankasaal Village, Ankola Taluk, Uttara Kannada District, which was owned by the fourth respondent. Admittedly for a long time the third respondent was there on the land as a protected tenant. It is also not in dispute that both the petitioner as well as third respondent had tiled applications in Form No. 7 as prescribed under Rule 19(1) of the Karnataka Land Reforms Rules, 1974 (in short "the Rules") claiming occupancy in respect of the land in question. It is also a matter of record that earlier the Tribunal had twice passed orders on the said applications but at the instance of the contesting parties, this Court intervened in the writ jurisdiction and remanded the case for fresh adjudication to the Land Tribunal. This is how ultimately the impugned order came to be passed.

7. The Tribunal, on appreciation of the oral and documentary evidence, has held that the agreement at Annexure-G is not a genuine document and therefore refused to place any reliance thereon. It has also come to a finding that on 1-3-1974 the third respondent was personally cultivating the land and accordingly accorded occupancy to him.

8. Admittedly the petitioner has based his right to get occupancy by claiming himself to be sub-tenant under respondent 3 which according to him was acquired under Annexure-G, which is dated 7-7-1972. In my opinion even without entering to the factual aspects, which will be even otherwise difficult for this Court to re-evaluate and examine, keeping in view the limitations of the writ jurisdiction, on a conjoint reading of Sections 21(1) and 45(1) of the Act, the claim of the petitioner has to be rejected on a pure question of law.

8(a). The said Sections 21 and 45 of the Act reads as hereunder:

"21. Sub-division, sub-letting and assignment prohibited.--(1) No sub-division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid:

Provided that nothing in this sub-section shall affect the rights, if any, of a permanent tenant:

Provided xxx xxx xxx. "45. Tenants to be registered as occupants of land on certain conditions.--(1) Subject to the provisions of the succeeding sections of

this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sublet, such sub-tenant shall with effect on and from the date of vesting be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally.

(2) xxx xxx xxx".

9. u/s 45(1) of the Act a person claiming occupancy on the ground of being a sub-tenant can succeed only if he is able to show that the sub-letting in his favour was lawful. In the present case as per the self-showing of the petitioner, he had acquired sub-tenancy rights on 7-7-1972 i.e., after the coming into force of the provisions of the Act, therefore the said sub-tenancy was hit by provisions of Section 21 which absolutely prohibits the sub-letting of the lands held by a tenant. Therefore, even if the agreement at Annexure-G is held to be genuine for the sake of argument still it was void in view of Section 23 of the Contract Act, 1872, conferring no right on the petitioner. In view of this legal aspect, even if it be accepted that the petitioner had discharged certain obligations undertaken by him under the said agreement and he was in fact personally cultivating the land, but still since in the eye of law, he cannot be treated as a subtenant, therefore no benefit of occupancy can be accorded to him in view of the mandatory provisions contained in Section 45 of the Act. Therefore I do not find any error in Tribunal's order so far it relates to the rejection of the application filed by the petitioner is concerned.

10. So far as the grant of occupancy to the third respondent is concerned, it is not at all in dispute that he was a protected tenant in respect of the land in question. So far as the second requirement for according occupancy envisaged u/s 45 of the Act is concerned, the Tribunal, on the basis of the entries in the record of rights pertaining to the period 1973-74 and the oral evidence adduced before it, has come to a finding of fact that he was cultivating the land as an ordinary farmer. This being a finding of fact and based on relevant materials, it cannot be interfered with by this Court by sitting in appeal.

11. For the aforesaid reasons, I do not find any merit in the present writ petition which is accordingly dismissed without costs.