

(2002) 02 KAR CK 0025
In the Karnataka High Court
Case No : Writ Appeal No. 273 of 1998

Bharamappa Puttappa Uppar and Others	APPELLANT
Vs	
Smt. Sushilabai and Others	RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 14 (1), 4

Citation : (2002) 3 KarLJ 577 : (2002) 2 KCCR 1289

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

Bench : Division Bench

Advocate : L.M. Panduranga Swamy and Kesvy and Company, for the Appellant; Prabhuling K. Navadgi and M.N. Ramanjaneyagowda, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This writ appeal is by a tenant who has sought for conferment of occupancy rights under the provisions of the Karnataka Land Reforms Act and who is aggrieved by the order passed by the learned Single Judge remanding the matter to the Land -Tribunal though the Land Tribunal had granted occupancy rights in his favour.

2. The tenant being aggrieved by the order of the learned Single Judge has come up in this appeal. This Court normally would not interfere with an order of remand. It only enables the parties to have an opportunity and an authority to look into the matter once more in the light of the various materials that may be placed and the contentions urged by the parties. A remand order is justified only when there is some purpose to be served and when parties are in a position to place before the authority any material, for the production of which they have been deprived of an opportunity and if it can have a bearing on the outcome of the decision of the Land Tribunal. In the present situation, as we are of the view that no useful purpose will be served by the remand of this matter, we are inclined to interfere with the order of the learned Single Judge in the following

narration of the facts and circumstances and for the reasons mentioned hereunder.

3. The appellants had filed application in Form 7 before the Land Tribunal, Haveri, claiming occupancy rights with respect to Sy. No. 56 of Ijarilakamapur, Haveri Taluk measuring an extent of 17 acres and 21 guntas. In the first instance, the application was dismissed by the Land Tribunal by an order dated 19-2-1977. The applicants being aggrieved, preferred Writ Petition No. 2248 of 1977 to this Court and this Court set aside the order of the Land Tribunal and remanded the matter for fresh disposal after holding proper enquiry. Pursuant to the remand, the Land Tribunal has passed the order dated 29-10-1988 granting occupancy rights to the appellants, Aggrieved by this order, the owner preferred an appeal before the Land Reforms Appellate Authority, Haveri. One of the contentions raised on behalf of the owner was that the lands in question were not tenanted lands and the use of the words "Agavu Lavani" indicates that it is not really an agricultural tenancy in respect of the lands which qualifies for conferment of occupancy rights under the provisions of the Karnataka Land Reforms Act and as such, the applicants could not have been granted occupancy rights. The further grievance was that the owner was not given full opportunity to adduce additional evidence in support of her case. The appeal which had been numbered as L.R.A. No. 208 of 1988 was dismissed by the Appellate Authority.

4. Respondent-owner obviously being aggrieved, filed miscellaneous application for restoring the appeal to the file and during the pendency of the miscellaneous application, the Appellate Authority having been abolished, the miscellaneous application had come to be registered as C.P. No. 9512 of 1991 before this Court and later renumbered as W.P. No. 22748 of 1992. In this writ petition, the learned Single Judge being of the view that full opportunity was not given to the respondent-owner before the Tribunal, to adduce all the evidence in the proceedings before the Tribunal in support of her case that proper presumptions and inferences have not been drawn by the Tribunal while passing the impugned order, allowed the writ petition, quashed the order and remanded the matter to the Tribunal with a direction to provide opportunity to the petitioner to adduce additional evidence in support of her claim and to dispose off the matter afresh in accordance with law. The tenant being aggrieved has come up in writ appeal.

5. The owner, being aggrieved by the order of dismissal dated 4-5-1990, passed in L.R.A. No. 208 of 1988 dismissing her appeal has also filed L.R.R.P. No. 3065 of 1990 challenging the order dated 4-5-1990 passed in L.R.A. No. 208 of 1988 affirming the order of the Land Tribunal conferring occupancy rights in favour of the tenant.

6. We have heard learned Counsel for the appellant and learned Counsel for the respondent-owner as also learned Government Advocate appearing for respondents 2 and 3.

7. A few more facts that emerged on the perusal of the material before us and

the records are that the lands in question had been indicated to have been tenanted lands in favour of the appellants as per the entries in the revenue records since 1960. The Tribunal had occasion to refer to these records and recorded a finding of fact that the applicant appellants were tenants in respect of lands in question since a long time, long prior to the appointed day. One another aspect that has been brought to our notice is that there was an effort on the part of the owner to resume the lands from the possession and cultivation by the appellant-tenants by making an application u/s 14(1) of the Karnataka Land Reforms Act. Such an application had been made before the competent authority and the owner failed in her efforts and in respect of which, learned Counsel for the appellants as well as the contesting respondent submit that the owner had preferred an appeal against the order dated 16-9-1970 passed u/s 14(4) of the Karnataka Land Reforms Act passed by the n Additional Munsiff and Judicial Magistrate First Class, Haven in L.R.C. No. 411 of 1970 but, the said appeal did not culminate in any order disturbing the order dated 16-9-1970. This position is not disputed by either of the parties to the present proceedings. In this view of the matter, the records indicate that the present appellants were in actual possession and cultivation of the lands and they continued to be in possession as on the appointed date and added to that, the effort on the part of the landlady to resume the lands had failed. The order passed by the II Additional Munsiff and Judicial Magistrate First Class, Haveri u/s 14(4) declining resumption of the lands in favour of the owner also has attained finality. These were the materials before the Land Tribunal based on which, the Land Tribunal granted occupancy rights in favour of the tenant applicants.

8. Learned Counsel appearing for the respondent-owner has strongly urged that the nature of tenancy was "Agavu Lavani Patra or Undu Biduva Kararu Patra" and that the currency of such lease or agreement ended during the year 1973-74 i.e., before the appointed day and as such, the applicants were not tenants on the appointed day and it is on such legal premise that the owner urged that the application of the tenants is required to be re-adjudicated before the Tribunal. The same submissions are reiterated before us also.

9. The question of "Agavu Lavani Patra or Undu Biduva Kararu Patra" whether constituted the creation of tenancy or otherwise does not arise in the context and scheme of the Karnataka Land Reforms Act as amended by the Act of 1974. The applicants are tenants within the meaning of the provisions of the Karnataka Land Reforms Act as on the appointed date they were in possession and cultivation of the lands in question and were admittedly tenants prior to 1973, as even according to the owner, as per the Agavu Patra the tenancy ended on and after the year 1973. The fact that the so-called "Agavu Lavani Patra or Undu Biduva Kararu Patra" was valid only upto 1973 and had not been renewed or continued by the owner thereafter is of no consequence in law in the matter of conferment of occupancy rights in favour of the tenant applicants for the reason that the applicants became deemed tenants u/s 4 of the Act as on the appointed day. The fact that owner had not continued the tenancy under the "Agavu Lavani

Patra" beyond the year 1973 will not make any difference to the status of the applicants as deemed tenants on the appointed day.

10. In this view of the matter, we do not find any error or irregularity in the order passed by the Land Tribunal. We do not find any scope for the owner to adduce any additional evidence which can have any material bearing on the outcome of the decision of the Tribunal. Learned Counsel appearing for the respondent-owner submitted that there was no further material available with the owner which she desires to produce before the Tribunal and which can have a bearing on the claim for tenancy. In such circumstances, no useful purpose will be served in remanding the case for passing orders afresh after considering the evidence to be adduced by the owner landlady.

11. We may also add that the learned Single Judge could not have passed an order setting aside the order dated 4-5-1990 passed by the Appellate Authority in L.R.A. No. 208 of 1988, in W.P. No. 22748 of 1992 as this writ petition was only by renumbering C.P. No. 9512 of 1991 in place of miscellaneous application for recalling the order passed by the Appellate Authority and during the pendency of which miscellaneous application, the Appellate Authority had come to be abolished. In fact, it was only in L.R.R.P. No. 3065 of 1990, the owner had challenged the order dated 4-5-1990 passed by the Appellate Authority dismissing L.R.A. No. 208 of 1988 and confirming the order dated 29-10-1988 passed by the Land Tribunal, Haveri conferring occupancy rights in favour of the tenants. Therefore, the learned Single Judge could not have passed an order for setting aside this order of the Land Tribunal even when L.R.R.P. No. 3065 of 1990 continued to remain before this Court. As we have discussed above, there are no grounds to allow L.R.R.P.No. 3065 of 1990.

Accordingly, we set aside the order passed by the learned Single Judge in W.P. No. 22748 of 1992; dismiss the writ petition as well as the L.R.R.P. No. 3065 of 1990. The writ appeal is allowed.

Parties to bear their own costs.