

(2001) 09 KAR CK 0030

In the Karnataka High Court

Case No : Land Reforms Revision Petition No's. 7090 of 1989 and 13 of 1990

Bistappa Rama Naik

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-09-2001

Acts Referred:

Citation : (2002) ILR (Kar) 191 : (2002) 1 KarLJ 105 : (2001) 4 KCCR 235 SN

Hon'ble Judges : K.R. Prasad Rao, J

Bench : Single Bench

Advocate : S.R. Hegde Hudlemani and L.N. Hegde, for the Appellant; M.V. Shamanna, A.G.A. and Mahantesh C.K., for Jayakumar S. Patil, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioners in both these revision petitions have challenged the order passed by the II Additional Land Reforms Appellate Authority, Sirsi, in Appeal No. DAAA.AP. 329/86, dated 15-9-1989, dismissing the said appeal and confirming the order passed by the Land Tribunal, Sirsi, in case Nos. LRM.SR. 6620 and 6621, dated 31-12-1981.

2. Petitioners applied for grant of occupancy rights in respect of the land bearing Sy. No. 2 measuring 5 guntas and 2 acres, 3 guntas in Sy. No. 16 of Hadalagi Village in Sirsi Taluk, belonging to the 3rd respondent. The Land Tribunal after holding an enquiry came to the conclusion that the original tenant/Bhimappa, father of the petitioner in LRRP No. 13 of 1990 had surrendered his tenancy rights in favour of the father of the 3rd respondent herein, who was the landlord and delivered back possession of the said land in accordance with the provisions of Section 15 read with Section 29 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, the "Act") and thereafter, the name of respondent 3 was entered in the revenue records and the land is shown to be "under personal cultivation of him" till the notified date in all the relevant RTC extracts. The Land Tribunal therefore, rejected the claim of the petitioner for grant of occupancy

rights in respect of the land in dispute. At this stage, it is relevant to note that it is the case of the petitioners in both these revision petitions that in a family partition, the land measuring 1 acre 1 guntas was allotted to the share of the petitioners in LRRP No. 7090 of 1989 and 1 acre 2 guntas of land was allotted to the petitioners in LRRP No. 13 of 1990 and both of them were continuing in possession and cultivation of their respective shares of the land in dispute till the notified date. Petitioners challenged the said order of the Land Tribunal dated 31-12-1981 before this Court by filing W.P. Nos. 1590 and 1591 of 1982. Subsequently, the said writ petitions came to be transferred to the Appellate Authority after constitution of the appellate forum under the amended provisions of the Karnataka Land Reforms Act and the said appeals are numbered as DAAA/WP/AP. 329/86 and DAAA/WP/AP. 36/86. The Appellate Authority after giving opportunity to both parties to adduce their further evidence and on reappraisal of the entire material evidence placed on record, came to the conclusion that the land in dispute was not a tenanted land on the notified date and the said entire land was under personal cultivation of the owner namely, the 3rd respondent in both these revision petitions and that there was valid surrender of tenancy rights under the provisions of Sections 15 and 29 of the Act by an order dated 29-11-1954 passed by the Mamlatdar and that thereafter, possession of the land was delivered back to the father of respondent 3, who was the original owner and landlord in respect of the said land. The Appellate Authority therefore, concurred with the findings recorded by the Land Tribunal and dismissed the said appeal confirming the order passed by the Land Tribunal. Petitioners therefore, filed these revision petitions challenging the said order of the Appellate Authority.

3. I have heard the arguments advanced by the learned Counsel appearing on both sides and the learned Additional Government Advocate.

4. Learned Counsel for the petitioner has vehemently contended that both the authorities below have overlooked the fact that there is no valid order of surrender of tenancy rights in respect of the land in dispute by the father of the petitioner, Bhimappa, who was the original tenant in favour of father of the 3rd respondent. It was pointed out by him that the order dated 29-11-1954 pertaining to the surrender of the land in dispute by the father of the petitioner has been passed by one A.D. Gouda, Treasury, H.K. Sirsi, who is not the Competent Authority to accept the surrender and it has not been duly verified as required under the mandatory provisions of Section 29 of the Act. It is also pointed out by him that as per the records, possession is said to have been handed over to the father of respondent 3 on 15-11-1954 long prior to the date on which the order of accepting the surrender has been passed by the above said authority dated 29-11-1954. It is also pointed out by him that though the land in dispute was a tenanted land belonging to one Rama Naik, grandfather of petitioners, in both these cases, possession of the land in dispute is alleged to have taken only from Bhimappa, one of the sons of Rama Naik and the alleged surrender of tenancy rights was taken only from Bhimappa. Since Bistappa, the

other son of Rama Naik was not a party to the said proceedings, he contended that there was no valid surrender of the tenancy rights in respect of the land in dispute. It is also his contention that the names of the father of 3rd respondent and 3rd respondent have been entered in the revenue records only on the basis of the order dated 29-11-1954 passed by the above said authority accepting the surrender and the authorities below have not considered all these material aspects and have erroneously relied upon the entries in the RTC extracts in coming to the conclusion that the land in dispute was under personal cultivation of respondent 3 by the notified date and that it was not a tenanted land. In support of his contention that failure to comply with the mandatory provisions as to verification of the surrender vitiates the surrender and renders it non est for the purpose of Section 5(3)(b) of the Act, he relied upon a decision of the Supreme Court in the case of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others,

In the above decision it was held as under:-

"A combined reading of Section 5(3)(b) with Rule 2-A which prescribes the manner of verification of a surrender shows that a surrender of tenancy by a tenant in order to be valid and effective must fulfil the following requirements: (1) It must be in writing; (2) It must be verified before the Mamlatdar; (3) While making such verification the Mamlatdar must satisfy himself in regard to two things, namely, (a) that the tenant understands the nature and consequences of the surrender and (b) that it is voluntary and (4) The Mamlatdar must endorse his finding as to such satisfaction upon the document of surrender.

The imperative language, the beneficent purpose and importance of Section 5(3)(b) and Rule 2-A for efficacious implementation of the general scheme of the Act all unerringly lead to the conclusion that those provisions were intended to be mandatory and not directory.

The requirement as to the recording of its satisfaction by the authority in the manner prescribed by the Rule is the substance of the matter and not an empty formality. In the absence of the requisite endorsement, therefore it cannot be said that there has been even a substantial compliance with the statutory requirements.

Failure to comply with the mandatory provisions as to verification of the surrender vitiates the surrender and renders it non est for the purpose of Section 5(3)(b)".

5. Placing reliance on the above decision, learned Counsel for the petitioners contended that in the instant case there is non-compliance with the above said provisions of the Act and therefore, the surrender must be deemed to be non est. It is his further contention that where the surrender is found to be not valid, it must be presumed that the tenant is continuing in possession of the land in dispute. In support of his contention, he relied upon an earlier decision of this Court in the case of Thunga Bai and Others Vs. Vishalakshi Heggadthi and

Another, , wherein it was held that.-

"Where the tenant was found in possession of the land by the date of which the Karnataka Land Reforms Act came into force and where the surrender by a tenant was not in accordance with Section 25 of the Act, tenant's- possession must be presumed to have continued and tenant is entitled to temporary injunction in his suit for permanent injunction restraining landlord from interfering with his possession".

He also relied upon another earlier decision of this Court in the case of Puttegowda Vs. State of Karnataka and Others, , wherein it was held that.-

"Mere permission to surrender without delivery of possession by the tenant does not put an end to the relationship of landlord and tenant. Delivery of possession by the tenant to the landlord and his acceptance of possession are essential to effect the surrender. Where it was not proved that the tenant had delivered possession of the land notwithstanding grant of permission to surrender, but was found to be in possession even after the grant of permission to surrender, held that he continued to be a tenant and was entitled to grant of occupancy right".

On the basis of the above decision, he contended that in these cases, petitioners must be deemed to be continuing in possession and cultivation of the land in dispute till the notified date as there is no valid surrender of tenancy rights before the Competent Authority and as there is no proof of delivery of possession of the land in dispute after the date of surrender i.e., after 29-11-1954, to father of respondent 3.

6. In reply to the above submissions, learned Counsel for respondent 3 in both these cases submitted that in the instant case, the order of surrender has been passed by the Competent Authority, who is "Aval Karkun" of Sirsi, who was vested with the powers under the Act. It is further submitted by him that the said order of surrender has been passed in respect of two items of lands, one item bearing Sy. No. 2 measuring 5 guntas of Hadalagi Village and another item in Sy. No. 16 measuring 2 acres 3 guntas of the same village and the validity of the surrender in respect of the first item of Sy. No. 2 has not been questioned by the petitioners. It is also pointed out by him that though the order of acceptance of surrender has been passed on 29-11-1954, the validity of the same has never been questioned by the father of the petitioners during his lifetime at any time though, he was alive for nearly 20 years after-the date on which order of surrender has been passed. It is further submitted by him that there is no bar for the tenant to deliver vacant possession of the land before the order of acceptance of surrender is passed by the Competent Authority or the Mamlatdar. As it is clearly endorsed in the order passed by the Competent Authority that the father of the petitioners has admitted that he surrendered the tenancy rights and that he has delivered possession of the land in dispute earlier to the father of the 3rd respondent, and that the Competent Authority was satisfied that the surrender was voluntary, he submitted that there is a valid surrender of tenancy

rights by the father of the petitioners and the validity of which has not been questioned by the original tenant, who was the father of the petitioner during his lifetime, it is not open to the petitioners to challenge the validity of the same in the present proceedings, It is further submitted by him that the Appellate Authority has carefully analysed the evidence placed on record and came to the conclusion that only Bhimappa was continuing as tenant in respect of the land in dispute by the date on which he surrendered the tenancy rights and Bistappa the other son of Rama Naik was not a tenant in respect of the said land. He therefore, submitted that the Appellate Authority was justified in holding that there was valid surrender of tenancy by the original tenant Bhimappa and in concluding on the basis of the entries in the revenue records that respondent 3 was personally cultivating the land in dispute as owner till the notified date. He therefore contended that the impugned order passed by the Appellate Authority does not suffer from any illegality calling for any interference by this Court in the present revisional proceedings.

7. The certified copy of the order of surrender has been produced before the Land Tribunal and it is available at page No. 259 of the records of the Land Tribunal produced in this case. On a perusal of the said order, it is found that the said order has been passed by one A.D. Gouda, Treasury, H.K. Sirsi, in case Ten.Pro.No.S.145/211 of 54-55 on 29-11-1954. The said order has been passed in respect of two items of land, the first item being 5 guntas in Sy. No. 2 and the second item being 2 acres 3 guntas in Sy. No. 16 of Hadalagi Village. Admittedly, the land in dispute in the present proceedings is only the second item of 2 acres 3 guntas in Sy. No. 16 of Hadalagi Village, and petitioners have not challenged the validity of the surrender insofar as first item of the above lands is concerned. It is also an undisputed fact that the validity of the said order of surrender and the factum "of delivery of possession of both the above said items of land to the father of the 3rd respondent, by Bhimappa, the father of the petitioners has not been challenged during his lifetime at any time though, he was alive for a period of 20 years after the date of passing the order of surrender. At page No. 14 of the Act, of 1961 Edition in the commentary by the author K.S. Gupte, it is mentioned as under:-

"Aval Karkun can exercise the powers of Mamlatdar under the Bombay Tenancy and Agricultural Lands Act, 1948 corresponding to powers vested in them under the Tenancy Act, 1939 by virtue of G.N.R.D. No. 1118/24-C, dated 31-3-1941 issued under Act 1939, which is saved by Section 89(4) of the Tenancy and Agricultural Lands Act, 1948 and no re-delegation of powers is necessary (R.D. No. 782/49/29476-F, dated 16-5-1949)".

8. Thus, it is clear from the above commentary of the learned author that Aval Karkun can exercise the powers of Mamlatdar under the Act by virtue of the powers vested in them. So, in the instant case, the order of surrender passed by H.K. Sirsi, i.e., Aval Karkun, Sirsi must be considered as the order passed by the Competent Authority under the Act. In fact, before the Appellate Authority or

before the Land Tribunal, it was never contended by the petitioners that the said authority was not the Competent Authority to accept the surrender of tenancy rights and to record the verification as required under the provisions of Section 29 of the Act and the Rules framed thereunder. I therefore, find no merit in the contention of the learned Counsel for the petitioner that the order of surrender dated 29-11-1954 has not been passed by a Competent Authority. Further, on a perusal of the said order, it is found that the Competent Authority recorded its finding that the applicant who submitted the application is a landlord and the appellant is the tenant in respect of the above two items of land that the appellant has surrendered his tenancy and that he was satisfied that it is a voluntary surrender of tenancy rights. It is also mentioned in the said order that the tenant admits the surrender though he was apprised of the fact that he would be losing his tenancy right after he admits the surrender and would not get the lands back, if he persists on the surrender. Therefore, the authority recorded its satisfaction that the surrender of tenancy by opponent/Bhimappa is voluntary. The prayer made in the said application submitted by the landlord for restoration of possession of Sy. No. 16 and an area of 5 guntas of land in Sy. No. 2 of Hadalagi Village, was granted in the said order dated 29-11-1954.1, therefore, find that there is valid surrender of tenancy rights and there is compliance with requirements of law under the provisions of Section 15 of the Act and the Rules framed thereunder. It is no doubt true that the records disclosed that the landlord has taken possession of the above two items of land on 15-11-1954 i.e., 14 days earlier to the date on which the order of surrender is passed. But, it must be seen whether the surrender becomes invalid on the said ground. This aspect of the matter has been considered in the case of Janardhan Genu Miragane v. Tagappa Eknath Latake, by the Bombay High Court cited at page 148 in the above referred book of Bombay Tenancy and Agricultural Lands Act, 1948 with commentary by K.S. Gupte of 1961 Edition, which is extracted as under:-

"The landlord was already put in possession of land surrendered by the tenant, The surrender was accepted as voluntary by the T.A.K. but rejected the application of the landlord and ordered action to be taken u/s 32-F for further disposal of the land on the ground that the land would not be his principal source of income. The Tribunal set aside the order of disposal and confirmed the rest of the order. The High Court confirmed the order of surrender and also confirmed the landlord's possession".

9. It is therefore, clear from the above ruling that the surrender of tenancy rights does not become invalid merely because, the landlord was put back in possession of the tenanted land by the tenant prior to the date on which the order of surrender is passed by accepting the surrender and after due verification.

10. Having regard to the above facts, I am unable to accept the contention of the learned Counsel for the petitioner that there is no valid surrender of tenancy rights by Bhimappa in the instant case. His further contention that Bistappa,

another son of original tenant, Rama Naik was not a party to the above proceedings and therefore, there is no valid order of surrender, so far as he is concerned, has been considered by the Appellate Authority with reference to the evidence placed on record and the Appellate Authority came to the conclusion that only Bhimappa was in possession and cultivation of the land in dispute as a tenant by the date of surrender of tenancy rights and that it was not a joint family tenancy of both the brothers, Bhimappa and Bistappa. The said finding has been recorded by the Appellate Authority on the basis of both the oral and documentary evidence placed on record. This Court is not entitled to interfere with the said finding recorded by the authorities below on the said concurrent finding recorded by the authorities below on the question of fact, particularly when it is based on proper appreciation of the evidence placed on record. Thus, it is found that there is valid surrender of tenancy rights by the father of the petitioners who was the tenant by the date on which the order of surrender was passed by the Competent Authority. The authorities below further found that after the date of surrender, the name of the landlord namely, father of the 3rd respondent has been entered in the revenue records in respect of the land in dispute and all the pahani entries of the relevant years disclose that the land in dispute was under personal cultivation of respondent 3 as the owner till the notified date. The Appellate Authority referred to the entries in the RTC extracts from 1964-65 till 1973-74 and found that the land in dispute was under personal cultivation of the 3rd respondent as the owner. The presumptive value attached to the said entries stands unrebutted since, no appeal has been filed by the petitioners before the Competent Authority challenging the correctness of the said entries. I am therefore, unable to accept the contention of the learned Counsel for the petitioners that the entries in the revenue records are erroneously made in the name of respondent 3. All the above referred decisions in paras 4 and 5 relied upon by the learned Counsel for the petitioners are not applicable to the facts of the instant case for the various reasons given in the above discussion. Since, there is valid surrender of tenancy rights, there is no question of drawing any presumption that the petitioners must be deemed to be continuing in possession of the land in dispute till the notified date and that the land in dispute continued to be a tenanted land till the notified date. In fact, the revenue records disclosed that the petitioners were not in possession and cultivation of the land in dispute by the notified date. I, therefore, find that the authorities below were justified in rejecting the claim of the petitioners for grant of occupancy rights and I am unable to hold that the impugned order passed by the Appellate Authority is vitiated by any illegality.

11. In the result, both these revision petitions are dismissed.