

(2007) 03 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition 21925/01 C/W 22437/01

C. Hanumanthappa

APPELLANT

Vs

State of Karnataka and The Land Tribunal
 G.V. Appaji
(since dead by L.Rs. Y.R. Jayashree, Tejaswini Appaji Ijure,
G.V. Lasya rep. by her Natural Guardian Smt. Y.R. Jayashree
and G.V. Ajeya rep. by her Natural Guardian Smt. Y.R.
Jayashree Vs State of Karnataka

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2 (18), 48 A

Citation : (2007) 4 KarLJ 394

Hon'ble Judges : Manjula Chellur, J

Bench : Single Bench

Advocate : T.S. Amar Kumar, in W.P. 21925/01 and G. Krishna Murthy, for the Appellant; agadeesh Mundargi, GA for R1-2 and G. Krishnamurthy For R-3 (A-D) in W.P. 21925/01 and Jagadeesh Mundargi, for R1 and R-2 and T.S. Amar Kumar, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, J.—These two Writ Petitions arise out of the orders passed by the Land Tribunal in LRF.ATC. 3373/75-76 dated 25.5.2001. The Writ Petition 21925/01 is filed by the applicant who sought for grant of occupancy rights in respect of ay No. 33/2 of Hosakerehalli village, Uttarahalli Hobli, Bangalore South, measuring 10 acres. The other Writ Petition 22437/01 is filed by the legal representatives of the landlord Mr. Appaji.

2. The Tribunal while disposing of the application, rejected grant of occupancy rights in respect of 7 acres of land in the above said sy. number which is the subject matter of challenge in the first Writ Petition. The grant of occupancy rights in favour of C. Hanumanthappa to an extent of 3 acres in the same sy. number is challenged in the 2nd Writ Petition.

3. There is no dispute so far as Mr. Marulaiah purchasing the above said land in all measuring 10 acres. The dispute seems to be with regard to the occupancy of the land by Mr. C. Hanumanthappa as a tenant as on 1.3.1974 for filing application for grant of occupancy rights. The so called tenant C. Hanumantappa contends that he is entitled for grant of occupancy rights in respect of entire extent of 10 acres notwithstanding the fact that said land was converted to non-agricultural purpose in 1968 itself.

4. It is relevant to mention certain facts which are necessary for the purpose of disposal of the above Writ Petitions:

The erstwhile owner Mr. Marulaiah purchased this sy. No. 33/2 (old No. 33) situated at Hosakerehalli village, Bangalore measuring 10 acres in a public auction held by the Court during the year 1958. Mr. Marulaiah died on 14.12.1974. During the life time of Marulaiah, he sought for conversion of 7 acres of land out of 10 acres from agriculture to non-agriculture purpose, i.e. locating dairy farm, poultry farm and agricultural industry. On 8.7.68, the Deputy Commissioner in accordance with Land Revenue Act of 1964, granted conversion of the 7 acres of land.

Mr. Marulaiah died without commencing any industry etc. due to his ill health. According to the L.Rs. of the erstwhile landlord, since 1968 the land has become non-agricultural one, at least to an extent of 7 acres. One Mr. G.V. Appaji is the son of late Marulaiah whose legal representatives are before the Court. He was the permanent resident of Shimoga and the petitioner C. Hanumanthappa is the owner of a land adjacent the disputed land. According to the landlord, taking undue advantage of his absence at the spot, said Hanumanthappa conveniently filed form 7 for grant of occupancy rights in respect of entire 10 acres. The Land Tribunal granted occupancy rights on 21.9.79 in favour of Hanumanthappa. W. P. 19783/80 came to be filed by the landlord questioning the order of the Tribunal. The matter was remanded back to Tribunal by the High Court setting aside grant of occupancy rights. Again on 20.7.82 Tribunal granted occupancy rights in favour of Mr. Hanumanthappa. It was challenged in LRA 38/89 before Land Reforms Appellate Authority. However, appeal was dismissed for non-prosecution. Meanwhile, appellate authority was abolished and the same came to be challenged in W.P. 14150/97. The same was allowed remitting the matter back to the Tribunal for fresh disposal in accordance with law on 15.3.1999. After recording further evidence, the Tribunal passed the impugned order on 25.5.2001 granting occupancy rights in favour of Mr. Hanumanthappa in respect of 3 acres rejecting the claim in respect of 7 acres.

According to the tenant Hanumanthappa the reasons assigned by the Land Tribunal for rejecting grant of occupancy rights in respect of entire 10 acres on the ground that 7 acres was not an agricultural land as on 1.3.1974 is erroneous in view of the definition u/s 2 (A) (1) of the Land Reforms Act as the said conversion would not change the nature of land because poultry farming and dairy farming also fall within the definition of agriculture under the land Reforms

Act as on 1.3.1974.

According to the Writ Petitioner/landlord the Petitioner/tenant was never a tenant under his father Mr. Marulaiah. The claim of the alleged tenant is to be rejected as the land was not an agricultural land as stated by him before the Tribunal in the first instance. Both the evidence and the mahazar brought on record subsequently are different from the first version. Even the RTC extract both at columns No. 9 & 12 right from the inception up to 1973-74 discloses the name of Mr. G.V.S. Marulaiah. The entries pertaining to 74-75 disclosing the name of 3rd respondent is an interpolation renewing the word "banjaru" and adding the name of 3rd respondent Hanumanthappa. He further contends the period of occupation of the land by the alleged tenant as declared by him differs from stage to stage and even 3 pallas of ragi being given to Mr. G.V. Marulaiah in 1979 is false. But the fact remains Mr. Marulaiah died 4 years prior to 1979. Even the evidence of witnesses relied upon by Hanumanthaiah differs. The contention of Hanumanthappa that he and his father were cultivating the lands for 18 years prior to the date of his evidence on 12.5.1982 and they were paying lease amount to the son-in-law of Marulaiah is without any documentary proof according to the landlord. It is further contended the evidence recorded on 22.3.2001 discloses the period of occupancy of the land according to the tenant was about 25 years which takes us to the year 1976. His contention that receipts for paying lease amount to Marulaiah were taken back by Marulaiah is also false. The entire evidence of the tenant at different times would only disclose the falsity in his contentions.

5. With these averments and arguments, both the parties have placed reliance on several citations which will be dealt with later on.

6. From the above averments and arguments the following points arise for consideration of the Court:

1. Whether Mr. C. Hanumanthappa the Writ Petitioner in W.P. 22437/01 was a tenant in respect of Sy.No. 33/2 of Hosakerehalli village of Bangalore, as contemplated under Karnataka Land Reforms Act of 1974? and

2. Whether Mr. Hanumanthappa is entitled for grant of occupancy rights in respect of entire 10 acres of land notwithstanding the fact that 7 acres of the said land was converted for dairy farm, poultry farm and agricultural industry, in view of the definition of agriculture subsequent to Amendment in 1974 in respect of Land Reforms Act?

7. Point No. 1: As already stated above the tenant/Writ Petitioner claims entire 10 acres of land as a tenanted land both on facts and law. This is apparently challenged by the landlord/ petitioner Mr. Appaji.

8. The records of the Land Tribunal including the orders of the Land Tribunal are produced before the Court. The order of the Land Tribunal discloses, on 27.2.2001 spot inspection was done along with the members of Land Tribunal,

Revenue Inspector and Village Accountant. The children of applicant Hanumanthappa were present and Mr. Prakash G.P.A. holder of landlord represented the landlord. The claim of the tenant is he was giving produces like ragi, hurali as the share of landlord to one Dr. Raju son-in-law of Marulaiah residing at Bangalore. Only after his application in form No. 7 before the Land Tribunal, differences of opinion cropped up between them. Therefore, he stopped giving a share in the produces to the landlord. He claims continuous cultivation of the lands since 1970 and he has installed the pump set also 15 years back to grow paddy, etc. He has also grown kanakambaram flowers and mango trees which are 5 years old.

9. One cannot dispute the fact that this Court while exercising its writ jurisdiction, cannot upset finding of fact recorded by the Tribunal by re-appreciating the evidence. On the other hand, it is noticed as per the directions given by this Court in W.P. 14150/97 spot inspection was conducted and thereafter, the Tribunal arrived at its fresh findings based on the evidence on record and also the spot inspection. As noticed by the Tribunal, mango trees & coconut trees were planted subsequent to the earlier order of the Land Tribunal.

9-A. Even otherwise the cut-off date being 1.3.1974, the question of tenancy has to be decided based on the material available as on 1.3.1974 or immediately prior to it and not subsequent to 1.3.1974. On oath, the applicant has stated before the Tribunal on 22.3.01 that the land was being cultivated only from 1970 onwards, whereas in the cross-examination he has stated that he was paying wara to Marulaiah personally by visiting Shimoga to wake payment of wara. However, no receipts in support of payment of wara are forthcoming. On the other hand, RTC extract produced by the erstwhile landlord Marulaiah shows till 1974 the RTC's stood in the name of Marulaiah. Marulaiah died on 14.12.74. The RTC for the year 1968-74 at Ex. R-2 to R-8 and from 1969-70 to 1973-74 is entered as "swantha". But subsequent to 1974-75 till 1987-88 the RTC's are changed to the name of applicant Hanumanthappa. The tenant examined 2 witnesses on his behalf and respondent did not examine anyone including Dr. Rajashekar - son-in-law of Mr. Marulaiah. The entries at Ex. P-4 ETC extract for the year 1969-70 to 1973-74 column No. 12 (2) is left blank and for the year 1972-73 and 73-74 it is shown as "banjaru". Subsequent to 1974-75 the name of the applicant Hanumanthappa is entered. The writ petitioner / landlord before the Tribunal has categorically stated they have not cultivated the land. The Tribunal on material facts and circumstances elicited through enquiry opined that the claimant was cultivating the land in question as on 1.3.1974, and also immediately prior to said date. When petitioner /landlord apparently did not cultivate the land as admitted by him, this Court cannot find fault with the Tribunal for holding that Mr. Hanumanthappa was a tenant cultivating the land though no specific lease agreement or any other document was placed on record. This Court cannot make a roving enquiry into the above said enquiry of the Tribunal in order to ascertain the fact situation by re-appreciating the evidence. But it can always verify whether the concerned authority has applied its mind to

facts available. Unless the finding of the Tribunal is bad for non-consideration of relevant material or perverse in its reasoning, this Court in its writ jurisdiction should not upset the fact finding exercise made by the Tribunal.

10. Reliance is placed on ILR 2004 KAR 5173 in the case of Ram and Anr. v. State of Karnataka and Ors. wherein it is held as follows:

One of the applicants, namely, Jayawantrao Desai filed writ appeal before the Division Bench of the High Court calling in question the validity of the order made by the learned Single Judge. The Division Bench of the High Court found fault with the order of the learned Single Judge and held that the learned Single Judge could not upset finding of fact recorded, sitting under writ jurisdiction by re-appreciating the evidence. The Division Bench of the High Court in the impugned order observed that all the four applicants were close relatives; three applicants from the beginning claimed occupancy rights in respect of their respective shares of land; the tenancy of the land stood in the name of their grandfather who was holding tenancy on behalf of the entire family; two times the matter was remanded and three times the Tribunal, appreciating the material on record, held that all the applicants were entitled to occupancy rights and that the original tenancy was a joint tenancy; the Division Bench also referred to a document of the year 1919 and observed that in the said document, name of the grandfather of the appellant Jayawantrao Desai, found place; spot inspection was made by the Tribunal and it was found that all the four applicants were in possession of the land. The Division Bench also found that the approach and appreciation of the material on record the learned Single Judge was wrong and he ignored the effect of the spot inspection made by the Tribunal. Although the Chairman of the Tribunal in the third order, after remand, found in favour of the applicant Dattoba on the basis of entries of RORs and land revenue receipts, other members did not agree. It is true that in the third order made by the Tribunal which was set aside by learned Single Judge in the Writ Petition, the Chairman has given detailed reasons in support of his opinion, the remaining four Members of the Tribunal held in favour of all the four applicants but have not given reasons to come to the conclusion that all of them were entitled to grant of occupancy rights in respect of their respective shares. It may be remembered that four Members of the Tribunal were non-official Members, they were not Members judicially trained. Although they have not given reasons in support of their opinion, their opinion could be supported on the basis of material on record particularly taking note of the fact that the Tribunal consecutively three times found as a fact that all the four applicants were cultivating the respective shares of their land. We are conscious that in the first two rounds, the orders of the tribunal were set aside by the High Court on finding some irregularities in the procedure followed; those orders did not exist for consideration of the Tribunal deciding the matter for the third time but the evidence and material that was available on record was not erased. No doubt, the RORs showed the name of Dattoba as the cultivator in respect of the entire land but the Tribunal having due regard to the spot inspection and local enquiry with the adjacent landowners,

compromise deed showing partition in 1962 and also taking note that Dattoba being the manager of the joint family earlier, his name alone was found in the record of rights, came to the conclusion on facts that all the four applicants were entitled to grant of occupancy rights over their respective shares of land. In somewhat similar circumstances, this Court in Mohan Balaku Patil and Others Vs. Krishnoji Bhaurao Hundre (dead) By Lrs., dealing with the presumption available as to the correctness of entries in the record of rights u/s 133 of the Karnataka Land Revenue Act, 1964 and displacement of such presumption by a finding of fact to the contrary in enquiry made by the tribunal u/s 48-A of Karnataka Land Revenue Act, 1961, in paragraph 4 has observed: (SCC pp.520-21)

When, in fact, the Tribunal made local enquiry by spot inspection and had come to the conclusion that the appellants were in possession, that factor should have weighed with the appellate authority.... The presumption arising u/s 133 of the Act in respect of the entries made in the record of rights stood displaced by the finding of fact recorded that the appellants were in actual possession of the land and were cultivating the same.

The Division Bench of the High Court, in our view, was right in taking exception to the order of the learned Single Judge in upsetting the finding of fact recorded by the Tribunal while exercising writ jurisdiction. Thus, having regard to the facts found, looking to the close relationship between the parties and also considering spot inspection and the local enquiries made with the adjacent landowners, in our view, the order of the Tribunal holding that all the four applicants were entitled to grant of occupancy rights ought not to have been reversed by the learned Single Judge. Finding of fact recorded by the Tribunal, in the light of what is stated above, could not be said to be either perverse or based on no evidence or was bad for non-consideration of material evidence brought on record. By the impugned judgment, Division Bench has rightly set aside the order of the learned Single Judge and dismissed the Writ Petition."

11. PONT NO. 2: Then coming to the 2nd point - whether the Tribunal was justified in rejecting the grant of occupancy rights in respect of 7 acres of land. According to the learned Counsel for the petitioner/tenant in view of the definition of agriculture u/s 2(A)(1) of the Land Reforms Act, 1974, the conversion order would not change the nature of the land to non-agriculture because of inclusion of poultry farming and dairy farming within the definition of agriculture. In the earlier Mysore Land Reforms Act of 1961 Section 2-A(1) defines "agriculture" as under:

"agriculture" includes-

- (a) horticulture;
- (b) the raising of crops, grass or garden produce
- (c) the use by an agriculturist of the land held by him or a part thereof for the grazing of his cattle,

but does not include allied pursuits, or the cutting of wood only;

12. By virtue of amendment of Section 2 the following clause was substituted with regard to definition of agriculture in the 1974 Act which reads as follows:

"agriculture" includes-

- (a) horticulture;
- (b) the raising of crops, grass or garden produce
- (c) dairy farming;
- (d) poultry farming;
- (e) breeding of livestock;
- (f) grazing;

but does not include the cutting of wood only;

13. It is contended, by virtue of amendment to the definition of "agriculture", the operations of dairy farming and poultry farming are classified as "agriculture". This was by way of substitution, therefore, poultry farming and dairy farming have to be considered as agricultural operations right from the inception of the Land Reforms Act is the contention. Hence, conversion order obtained by the landlord has no effect on the land in question.

14. As against this, the learned Counsel for the landlord petitioner submits agricultural industry has not been included in the definition of "agriculture" though dairy and poultry farming included as agricultural operations. As the order of conversion was for the purpose of agriculture industry as well, the land had lost its agriculture character as on 1.3.1974. He further relies upon Section 91 of the amendment Act and according to him only the matters set out pertaining to certain provisions has to be looked into. In the absence of specific provisions having retrospective effect, so far as definition of agriculture, the amendment substituted w.e.f. 1.3.1974 giving wider meaning to agriculture has only prospective effect. Therefore, principal Act has to be looked into to consider grant of occupancy rights in favour of the tenant. Both the counsels on this aspect relied upon several decisions which are referred to below.

15. One of the citations relied upon is 1969 (2) Mys.L.J. 184 - Smt. Puttamma and Ors. v. The Mysore Revenue Appellate Tribunal and Anr. wherein it was held as under:

To contend that the conversion of the land could be done only if the landlord was in possession of the same; the land in possession of a tenant could be converted from agriculture to non-agricultural purpose by the landlord if the tenant did not opposes such application. Their lordships held in under:

Section 95(2) does not authorise the Deputy Commissioner to accord permission

for conversion without reference to the inability on the part of the applicant for conversion, to make the conversion he proposes to make, by reason of his not being in possession of the land. If, a tenant or a sub-tenant is in possession and the landlord cannot secure possession except after the eviction of the tenant or the sub-tenant, the proper stage at which an application for conversion could be made is normally the stage when the landlord secures possession from the tenant or the sub-tenant as the case may be.

16. Reference is also made to the decision reported in 1978 (1) KarLJ 208 - Narasimha Setty K.G. and Ors. v. State of Karnataka and Ors. wherein it is observed as under:

Under Section 44 of the Act lands which fall within the definition in Section 2(18) alone stand transferred to and vest in the Government,

Lands which ceased to be agricultural lands by order of alienation passed by the Assistant Commissioner are not agricultural lands within Section 2(18) and the Land Tribunal has so jurisdiction to entertain an application u/s 48A and grant occupancy rights in respect of such lands.

Failure on the part of the Tribunal to raise the legal presumption u/s 133 Land Revenue Act from the entry in the record of rights vitiates its order.

17. So also 1983 (2) KarLJ 148 - Gopalappa v. Gurushankariah and Ors. was relied upon wherein it was observed as under in paragraphs 9 & 11:

9. As the law stands in the State, the holder of an agricultural land, if he intends using the same for any non-agricultural purpose, should get that land converted for a non-agricultural purpose u/s 95 of the Karnataka Land Revenue Act, 1964 (Land Revenue Act). The land in question has been converted long prior to March 1, 1974 as a non-agricultural land. The learned Judge has found, from the material available, that a few houses had also been built on the land after the land was converted. In this connection the observation made by him at paragraph 5 of the order is as follows:

In the instant case Exs.B and F are the endorsements given by the Tahsildar about the grant of alienation. According to the endorsement Ex. F the petitioner had paid the conversion fine before 21-11-72. He got the khatha changed into his name. He applied and got licence for construction of houses and that in fact he had constructed four houses. The material on record clearly establish that the land in question was a converted land.

...

11. The two enactments, namely, the Land Reforms Act and the Land Revenue Act are distinct and different. Permission to convert an agricultural land for non-agricultural purpose has to be obtained from the prescribed authority under the Land Revenue Act. A person aggrieved by grant of such permission has to challenge the same before the appropriate authorities prescribed thereunder. He

cannot bypass that remedy and get that order invalidated before the Land Tribunal constituted under the Land Reforms Act. The Land Tribunal has no power to go behind the statutory order according permission to convert the land for non-agricultural purpose under the Land Revenue Act. Therefore, the finding of the learned Judge that the Tribunal had no jurisdiction to deal with the claim of the appellant and the provisions of the Act were not attracted to the land in question is correct and calls for no interference. Therefore, the appeal is rejected.

18. In *Madhav Bandopant Kulkarni and Another Vs. The Land Tribunal and Others*, it is observed as under:

The document conclusively establishes that as for as this 15 guntas of land is concerned, that by order dated 31-10-1963, non-agricultural permission was granted; this was a good ten years prior to the amendment of the Land Reforms Act. It is a condition precedent under the Land Reforms Act that the land in question must be agricultural land and then alone that the Tribunal assumes jurisdiction to grant occupancy right.... Since the learned Single Judge was in error in having directed the remand, the order passed by the learned Single Judge is modified. The earlier part of the order setting aside the Tribunal's order granting occupancy rights is upheld. It necessarily follows by implication that the Form 7 stands rejected. (paras 3 and 7)

...

The revenue authorities are the deciding authorities in matters of granting non-agricultural permission and if the authorities were satisfied and they did accord conversion from agricultural to non-agricultural, then, on and from the date of the order, the lands change complexion. The existence of a few mango trees would not be sufficient to change the nature and character of the land." (para 6)

From the reading of the above decisions, it is clear when once the order of alienation passed by the competent authority under Land Revenue Act comes into existence, the land ceases to be agricultural one for the purpose of Section 2(18) of the Land Reforms Act. In such an event, the land Tribunal has no jurisdiction to entertain the application u/s 48-A to grant occupancy rights in respect of such land. No doubt the entries in the record of rights raises legal presumption u/s 133 of the Land Revenue Act but this is a rebuttal presumption and as already stated the tenant was successful in establishing that as on 1.3.1974 or immediately prior to the said date, he was cultivating the said lands as a tenant.

19. It also cannot be disputed that when once the land is in occupation of a tenant, if the landlord were to apply for conversion of the said land, such conversion cannot be granted if the application is opposed by tenant. If at all the order of conversion issued by a statutory authority under Karnataka Land Revenue Act is to be questioned, Land tribunal under Land Reforms Act, cannot go into the question of validity of such conversion. It has to be challenged only before the appropriate authority under the Land Revenue Act in normal course.

But we have a different situation here, by virtue of amendment to the Land Reforms Act in 1974, particularly definition of agriculture by way of substitution at Clause I (A) of Section 2. In the present case, it is nobody's case that in the year 1968 when the erstwhile owner Marulaiah sought for conversion of the land in 1968, Hanumanthappa opposed the same. He was not even in possession of the same in 1968. Even otherwise, as on 1.3.1974 and immediately prior to the said date, the tenant Hanumanthappa said to have cultivated the land in question. Soon before 1.3.1974 does not take us to 1968, the year in which the Deputy Commissioner accorded conversion of 7 acres of disputed land from agriculture to non-agriculture. Apparently according to the tenant he started cultivating the land only since 1970.

20. The next question is whether the expanded definition of "agriculture" by substitution would have any effect on land in question as the conversion order was also for dairy, poultry farming and agricultural industry.

21. The citation reported in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, inter alia states at paras 7 & 12 as under:

(7) The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. This is the rule in England: see *Craies on Statute Law*, 5th Edition, page 207; it is the law in America; see *Crawford on Statutory Construction*, page 110; and it is the law which the Privy Council applied to India in "*Keshoram Poddar v. Nundollal Mallick*" 54 Ind App 152 (PC). Bearing this in mind, it will be seen that the Act of 1950 remains the Act of 1950 all the way through even with its subsequent amendments. Therefore, the moment the Act of 1952 was passed and Section 2 came into operation, the Act of 1950 meant the Act of 1950 as amended by Section 2, that is to say, the Act of 1950 now due to expire on the 1st of October 1952.

(12) But we wish to found deeper than this. It is the duty of Courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity while another will give effect to what commonsense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided. See the speech of Lord Wensleydale in "*Grey v. Pearson*" (1875) 6 H L C 61 at p. 106 quoted with approval by the Privy Council in AIR 1939 47 (Privy Council)

also "Salmon v. Duncombe" (1886) 11 AC 627 at p. 634. The rule is also set out in the text books: See Maxwell on the Interpretation of Statutes, 9th Edition, page 236 and Craies on Statute Law 5th Edition, pages 89 to 93. The meaning of Section 3 is quite plain and only desperate hair-splitting can reduce it to an absurdity. Courts should not be astute to defeat the provisions of an Act whose meaning is, on the face of it, reasonably plain. Of course, this does not mean that an Act, or any part of it, can be recast. It must be possible to spell the meaning contended for out of the words actually used. We hold that there is no difficulty of construction.

22. Decisions relied upon by the petitioner/landlord on the question of amendment brought to the definition of agriculture w.e.f. 1.3.1974 are as mentioned below:

(a) In 1988 SCC 30 Bhagat Ram Sharma v. Union of India and Ors. it is held at paragraphs 18 & 19 as under:

18. Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and reenacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred.

19. For the sake of completeness, we wish to add that the mere use of the word "substitution" does not imply that Regulation 8(3) must relate back to November 1, 1956, the appointed day. The problem usually arises in case of repeal by substitution. In the case of executive instructions, the bare issue of a fresh instrument on the same subject would replace a previous instrument. But in the case of a legislative enactment, there would be no repeal of an existing law unless the substituting act or provision has been validly enacted with all the required formalities. In State of Maharashtra Vs. The Central Provinces Manganese Ore Co. Ltd., a three Judges Bench repelled the argument that since the word "substituted" was used in the amending Act of 1949, it necessarily followed that the process embraces two distinct steps, one of repeal and another of a fresh enactment. In that case, the whole legislative process termed "substitution" proved to be abortive inasmuch the amending Act did not receive the assent of the Governor General u/s 107 of the Government of India Act, 1935 and was thus void and inoperative. Distinguishing the two earlier decisions in Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, and Koteswar Vittal Kamath Vs. K. Rangappa Baliga and Co., , the court observed that the mere use of the word "substituted" does not ipso facto or automatically repeal a provision until the provision which is to take its place is constitutionally permissible and legally effective. It relied upon the following principle of construction stated in Halsbury's Laws of England, Third Edition, Vol. 36, p. 474:

Where an Act passed after 1850 repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment

remains in force until the substituted provisions come into operation.

And observed: (SCC p. 651, paragraph 18)

We do not think that the word substitution necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. Indeed, the natural meaning of the word "substitution" is to indicate that the process cannot be split up into two pieces like this. If the process described as substitution fails, it is totally ineffective so as to leave intact what was sought to be displaced. That seems to us to be the ordinary and natural meaning of the words "shall be substituted".

(b) Smt. M. Chandravathi and Another Vs. Union of India (UOI), where at paragraph 34 it is held as under:

It is well established principle of statutory interpretation that a statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. Every enactment and every provision in an enactment which takes away the vested rights under the existing law or creates a new obligation or imposes a new duty must be presumed to be intended not to have retrospective effect. However, there is an exception to this general principle, in that, as regards matters of procedure it would apply to all actions both pending and future. It is also further well established that in determining the liability of a person under a statute, one must have due regard to the state of the law obtaining at the time of the accident for determining the liability. The governing factor therefore is necessarily the law that exists on the date when the cause arises. In *Shyam Sunder and Ors. v. Ram Kumar and Anr.* (Supra.) a constitution bench of the Apex Court dealing with Punjab Pre-emption Act, (1 of 1913), while interpreting Section 15, as substituted by Haryana Amendment Act, 1995 which vests right of pre-emption in tenant has held that the rule, of benevolent construction cannot be applied to give retrospective operation to a provision. The Apex Court has clearly held as under:

Even assuming, for the sake of argument that right of preemption being a feudal or archaic law and therefore, the amending Act is a beneficial legislation meant for general benefit of citizens but there is no such rule of construction that a beneficial legislation is always retrospective in operation even though such legislation either expressly or by necessary intendment is not made retrospective. The right of pre-emption may be a weak right but nonetheless the right is recognised by law and can be allowed to be defeated within the parameters of law. A statute which affects the substantive right has to be held prospective unless made retrospective either expressly or by necessary intendment.

(c) 1984 (1) Kar.L.J. 268 - *Hafijabi v. State of Karnataka and Anr.* it is held as follows:

Quaere: Whether Section 58 could be invoked to forfeit the right of the landlord

who has leased the land prior to March 1, 1974 in contravention of the Act.

Held: Amendment Act 1/74 substituted Section 5 and 58. Section 5 prohibits creation of tenancy after March 1, 1974 in respect of any agricultural land. The exception provided, is only in favour of a soldier or a seaman, who could create the tenancy or continue the tenancy. Section 58 must be read with reference to Section 5. If any person creates a tenancy in disregard to the prohibition contained in Section 5, then the Tahsildar shall issue notice u/s 58 to such person, calling upon him to show-cause why the land leased should not be forfeited to the State Government by way of penalty for contravention of the provisions of the Act. If the Tahsildar is not satisfied with the reply given to such show-cause notice or other cause shown, and if he comes to the conclusion that there has been a lease in contravention of the provisions of the Act, he may, by order declare that the right, title and interest of such persons in the land shall be forfeited and the land shall vest in the State Government. (paragraph-5)

In respect of leases executed prior to March 1, 1974, Section 58 of the Act has no application. Such a situation is dealt with by Sections 44 & 48-A of the Act." (paragraph-6)

23. In the present case, the question is whether definition of "agriculture" which came to be amended by substitution of Clause (1), is with retrospective effect or prospective effect. Section 91 of the Land Reforms Act 1974 reads as under:

Disposal of pending proceedings.-

(1) Notwithstanding anything contained in the principal Act or in the Karnataka General Clauses Act, 1899, the provisions of the principal Act as amended by this Act shall be applicable to all proceedings commenced before the date of commencement of this Act and pending before any Court, Tribunal or other authority as if the principal Act as amended by this Act was in force when the right accrued or liability was incurred and every Court, Tribunal or other authority shall deal with the proceedings accordingly.

(2) All applications, statements and proceedings (including execution proceedings and proceedings in appeal) under the principal Act relating to resumption of land pending before any Court immediately before the date of commencement of this Act shall not have any effect and shall abate:

Provided that applications or proceedings in respect of leases permitted by Section 5 of the principal Act as amended by this Act shall not so abate but shall stand transferred to the Tahsildar or the concerned appellate authority, as the case may be, and shall be disposed of by the Tahsildar or the appellate authority as if they had been instituted or commenced before him or it.

(3) All applications or proceedings other than those referred to in Sub-section (2), pending before any Court or authority immediately before the date of commencement of this Act, which are required to be decided or disposed off by the officer or authority specified in the principal. Act as amended by this Act,

shall, with affect from that date, stand transferred to such officer or authority, as the case may be, and shall be disposed of as if they had been instituted or commenced before such officer or authority.

24. Reading of Sub-section (1) of 91 makes it clear that the provisions of the principal Act as amended by 1974 Act would be applicable to such proceedings which commenced before the commencement of the 1974 Act and were pending before any Court, Tribunal or other authority as if the principle Act as amended by 1974 Act was in force at the time of accruing a right to a party or incurring of liability by a party.

Sub-section (2) of Section 91 will make proceedings relating to resumption of land pending before any Court, prior to the date of commencement of 1974 Act, as abated. The proviso to this section contemplates transfer of the proceedings pertaining to permitted leases u/s 5 of the principle Act as amended by 1974 Act, to Tahsildar or concerned appellate authority.

Sub-section (3) of Section 91 also provides for transfer of applications or proceedings pending before any Court or authority immediately before the commencement of the 1974 Act pending consideration to such officer or authority as the case may be, and shall be disposed of as if they were instituted or commenced before such officer or authority.

25. The criteria for granting occupancy rights is occupation of the land by the tenant as on 1.3.1974. In the present case apparently even according to the so called tenant he came into possession of this land only from 1970 onwards. In the year 1968 itself Mr. Marulaiah the auction purchaser cum-owner of the land in question got 7 acres of land converted to non-agricultural purpose.

26. Apparently, the application for occupancy rights came to be filed somewhere in 1979 (extended period) much after coming into force the amended Land Reforms Act of 1974. The amendment to the definition of agriculture at Section 2-A (1) includes dairy farming and poultry farming as well. By virtue of Sub-section (1) of Section 91, though proceedings commenced under principal Act, if they were pending as on the date of coming into force of the amended Act, the provisions of principal Act as amended by 1974 Act shall be applicable to such proceedings.

27. Apparently, the land was converted much prior to the amendment of the Land Reforms Act in 1974. The criteria in the present case would be whether the land in question was an agricultural land or not as on the date of application for grant of occupancy rights. A plain reading of definition of agriculture under amended Act of 1974, both dairy farming and poultry farming are classified as agriculture. When the order of conversion is perused in detail, it is noticed the order of conversion obtained by erstwhile owner Marulaiah was also for the purpose of agriculture industries apart from dairy farming and poultry farming. Definitely, agriculture industries does not fall within the ambit of definition of agriculture under Karnataka Land Reforms Act of 1974. The order of conversion

does not indicate bifurcation of 7 acres of land for the said three uses, i.e. agriculture industry, poultry farming and dairy farming. This would only mean there was no specification or direction, what extent of land should be made use of by the owner for each of the above said three purposes. In other words, the erstwhile owner Marulaiah had the right or option to make use of the 7 acres of land for any one of the above purposes. He could have used the entire 7 acres of land either for agriculture industries or poultry farming or dairy farming or for all the three. Therefore, 7 acres of land out of 10 acres had lost its character of agriculture. In that view of the matter, the Tribunal could consider grant of occupancy rights only to an extent of 3 acres.

28. In view of the above discussion and the reasoning, this Court is of the opinion that the land Tribunal was justified in granting occupancy right a only to the extent of 3 acres of land in favour of the tenant Hanumanthappa while rejecting his claim to an extent of 7 acres of land.

Accordingly, the Writ Petitions stand dismissed. No order as to costs.