

(1994) 04 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 7561 of 1994

Cashmir Fernandes

APPELLANT

Vs

Sri B.A. Rahiman and others

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Land Reforms Act, 1961 — Section 48, 48 (1), 48 A

Citation : AIR 1995 Kar 375 : (1994) ILR (Kar) 1963 : (1994) 2 KarLJ 622

Hon'ble Judges : R. Ramakrishna, J

Bench : Single Bench

Advocate : Sri B.L. Acharya, for the Appellant; Sri Udaya Holla and Sri Shimoga Subbanna, HCGP, for the Respondent

Judgement

1. Rule.

2. The petitioner is an agricultural tenant in respect of land bearing T.S. No. 254 measuring 69 cents and T.S. No. 277 measuring 06 cents situated at Kodialbail in Mangalore Town, Dakshina Kannada District. The application filed by him in Form No. 7 seeking for grant of occupancy rights in respect of the above lands was partly allowed in the earlier round of litigation. Against the said order the petitioner approached this court. The writ petition was allowed and the matter was remanded to the Land Tribunal for fresh consideration. After the remand, the Land Tribunal granted occupancy rights in respect of both the items of lands in favour of the petitioner. This order of the Land Tribunal was again impugned by the first respondent and one Judith Mascarenhas. This is again allowed by this court and remanded the matter once again to the Land Tribunal, for fresh enquiry.

3. In the third round of litigation, the Land Tribunal rejected the claim of the petitioner. This order was impugned before the Land Reforms Appellate Authority, Mangalore and the same was also dismissed. Against those concurrent orders, the petitioner preferred a Civil Revision Petition No. 3944 of 1989 before this court. The said revision petition was allowed on 23-7-1993 by setting aside the

order of the Appellate Authority and remanding the matter to the Land Tribunal for fresh disposal. Taking into consideration the long drawn history of this litigation, a direction was given to the Land Tribunal to dispose of the matter on or before 31-12-1993.

4. The petitioner is now aggrieved by the order, Annexure-A, dt. nil, February 1994, wherein the second respondent-Deputy Commissioner transferred the case pending before the Land Tribunal to the Land Tribunal, Bantwal of Dakshina Kannada District. According to the petitioner, this act of the second respondent appears to be due to the petition being filed by the first respondent making certain allegations against one of the members of the third respondent-Land Tribunal. The petitioner contended that though there was no prayer in the petition for transfer of the matter from the third respondent Land Tribunal to any other Land Tribunal, the second respondent without any jurisdiction passed the impugned order which is liable to be quashed. It is also contended by the petitioner that the impugned order was passed in utter violation of the principles of natural justice as no notice was issued to the petitioner. The other averments are not necessary to traverse in this petition.

5. The question of law that arises for consideration in this petition is:--

Whether the Deputy Commissioner of a District has got jurisdiction to transfer a proceeding commenced pursuant to Form No.7 read with S.48-A of the Karnataka Land Reforms Act before the Land Tribunal constituted for a Taluk to any Land Tribunal constituted for another Taluk?

6. Sri B. L. Acharya, the learned Advocate for the petitioner, submitted that there is total lack of jurisdiction for the second respondent to transfer a proceeding commenced pursuant to Form No. 7 from one Taluk to another Taluk and secondly, the order impugned was made without affording an opportunity to the petitioner.

7. Against this submission, Sri Udaya Holla, the learned Advocate for the first respondent, submits that the impugned order is administrative in character and since the first respondent attributed bias towards one of the member constituted for this Tribunal, there is no error under law to take such an action by the second respondent.

8. On a perusal of Annexure-A it is seen that the Assistant Commissioner and Chair-man of the Tribunal appears to have persuaded of a representation made by the first respondent to the effect that the Land Tribunal shall decide the matter without being influenced by any recommendation and to decide within the framework of the law. The Assistant Commissioner has moved the second respondent for transfer of the matter to any other Land Tribunal and therefore, the second respondent by exercising the powers under S. 48(1) of the Karnataka Land Reforms Act has passed the impugned order. In order to appreciate the stand taken by the second respondent, it is necessary in the first instance to set out the relevant provisions of S. 48 of the Act, which according to the second

respondent has conferred jurisdiction to transfer the dispute. Section 48 of the Act reads thus:--

"48. Constitution of Tribunals:

(I) The State Government shall, by notification, constitute for each Taluk a Tribunal for purposes of this Act consisting of the following members, namely :

(i) the Assistant Commissioner of the Revenue Sub-Division having jurisdiction over the Taluk or an Assistant Commissioner specially appointed for the purpose by the State Government;

(ii) four others nominated by the State Government of whom at least one shall be a person belonging to the Scheduled Castes or Scheduled Tribes.

Provided that if in its opinion it is necessary so to do, the State Government may constitute additional Tribunals for any Taluk and the Deputy Commissioner may, subject to any general or special orders of the State Government, distribute the work among the Tribunals in any Taluk.

(2) The Assistant Commissioner shall be the Chairman of the Tribunal."

9. Sub-section (1) of S.48 of the Act provides for constitution of the Tribunal for each Taluk. It also specifies that the Assistant Commissioner of the Revenue Sub-Division having jurisdiction over the Taluk concerned and four others nominated by the State Government shall constitute the Tribunal for the Taluk concerned. Sub-section (2) provides that the Assistant Commissioner shall be the Chairman of the Tribunal. The language of the provision is clear and unambiguous. The Tribunal constituted under S.-48(I) of the Act is for a Taluk. The word "Taluk" is not defined in the Act. Section 2(B) of the Act provides that words and expressions used in the Act but not defined shall have the meaning assigned to them in the Karnataka Land Revenue Act, 1964. Section 4 of the Act, inter alia, provides for the division of the area of the State into Divisions, Districts and Taluks. The expression "Taluk" used in S. 48 of the Act has reference to the area of the Taluk demarcated as such under S. 4 of that Act.

10. Sub-section (1) of S. 48 of the Act provides for the constitution of a Land Tribunal for each Taluk. All that the proviso does is to empower the State Government to constitute additional Tribunals for any Taluk if the Government is of the opinion that having regard to the volume of the claim applications filed before the Land Tribunal constituted for such Taluk, constitution of additional Tribunals is necessary. When one or more additional Tribunals are constituted for a Revenue Taluk, each Tribunal having jurisdiction over the entire Taluk, it is necessary that there should be some authority to distribute the work between such Tribunals. Therefore, the proviso authorises the Deputy Commissioner of the concerned District to distribute the work among the Tribunals in any Taluk. The proviso does not confer power on the Deputy Commissioner to transfer proceedings before a Land Tribunal constituted for a Taluk to a Land Tribunal constituted for another Taluk. There is no other provision in the Act which

provides for transfer of proceedings before a Land Tribunal constituted for a Taluk to any other Taluk. Therefore, the Deputy Commissioner has no jurisdiction under the Act to transfer a case from one Taluk to another Taluk in view of the express provision made in the proviso clause to S. 48 of the Act.

11. In *P. Seetharam Bhatt Vs. Deputy Commissioner*, an identical question though in a different set up came up for consideration before Mr. Justice Rama Jois, J., as he then was. The question requires determination in the said writ petition was whether a direction can be given to transfer a proceeding exercising jurisdiction under Arts. 226 and 227 of the Constitutions of , India. This question obviously arose as the learned Deputy Commissioner has refused to entertain an application to transfer a proceeding on the premise that there are no provisions in the Act providing for transfer of proceedings pending before a Land Tribunal constituted for a Taluk to a Land Tribunal constituted for another Taluk. Repelling the contention of the writ petitioner his Lordship held that neither the Deputy Commissioner nor this Court acting under Arts. 226 and 227 of the Constitution of the Act does not get any jurisdiction to pass such order as these Articles meant to ensure that no Tribunal exceeded jurisdiction and does not exercise power not vested in it. With regard to the transfer of a proceeding on the ground of bias, it is pointed out that whenever any allegation is made by any party with reasonable basis against any member it would be prudent for such member not to participate in the proceedings for the reason that in the event of the Tribunal rendering any decision adverse to the parties concerned, such a decision would be liable to be set aside in an appeal or in a writ proceedings. The learned Judge held at para 12 thus:--

"However, even if there were to be any allegation against the Chairman, he cannot decline to participate in the meeting of the Tribunal as without him there would be no quorum at all. Whatever that may be, neither the Tribunal could be prevented from exercising the jurisdiction vested in it nor a Member could be prevented from participating in the proceedings of a Tribunal of which he had been nominated as a member, invoking the principles of natural justice, for such a case would be governed by the doctrine of statutory exception to the applicability of the rules of natural justice (see : *The Indian Bank, Bangalore Vs. Blaze and Central (P) Ltd. and Others*, Therefore, if any party considers that the decision of the Tribunal is vitiated by bias, he can seek for the setting aside of the decision on that ground in addition to the other grounds available in law."

I am in respectful agreement with the opinion expressed in the aforesaid decision.

12. I may point out here that there is no material as to the locus standi of the first respondent to file a petition for transfer. Annexure-A does not disclose any material averments of bias against any individual member or against the Chairman. If representation of the nature is to be considered, then there will be number of applications in every Land Tribunal requesting for transfer of the proceedings. The question of bias should be specific and the materials should prima facie show that even an ordinary prudent man should be in a position to

appreciate that the material averments constitute bias.

13. Added to this, it is the specific case of the petitioner who is fighting this litigation continuously, that without giving an opportunity the Deputy Commissioner, suo motu proceeded to transfer the proceedings. Annexure-A does not bear the date of the order which obviously leads to a conclusion that the learned Deputy Commissioner has not applied his mind to the question involved.

14. For the reasons stated above, the question formulated above is answered in the negative.

15. In the result, the following order is made :--

This writ petition is allowed. The order passed by the Deputy Commissioner, Mangalore, Dakshina Kannada District at Annexure-A is hereby quashed. The third respondent-Land Tribunal is directed to expedite the disposal of the proceeding within two months from the date of receipt of this order. The parties are directed to appear before the Land Tribunal, Mangalore on 5th May 1994 at 11 a.m. without waiting for any notice or summons. Rule made absolute.

16. Sri Shimoga Subbanna, the learned High Court Government Pleader is permitted to file his memo of appearance within four weeks from today.

17. Petition allowed.