

(1979) 05 KAR CK 0002
In the Karnataka High Court
Case No : W.P. 6491 to 6501/1976

C.V. Gouramma

APPELLANT

Vs

The Land Tribunal Bantwal and Others

RESPONDENT

Date of Decision : 23-05-1979

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a

Citation : (1980) 1 KarLJ 54

Hon'ble Judges : Kudoor, J

Judgement

1. The order passed by the 1st respondent Land Tribunal, Bantwal, a true copy of which is produced at Exhibit-B dated 25-6-1976, granting occupancy right in favour of the 2nd respondent in each of the writ petitions is under challenge in these eleven common writ petitions filed by the petitioner C.V. Gowramma.

2. For the sake of convenience, in the course of this order, I shall refer to the petitioner in all the writ petition as petitioner, the 1st respondent as Land Tribunal and the 2nd respondent respondents.

3. The matter involved in these writ petitions arises in this way: The petitioner Gowramma is the owner of the lands comprised in Sy. No. 177/2, 175/4, 175/6, 180/1, 180/2 and 180/3 of Golthmajalu village of Bantwal taluk in Dakshina Kannada District. These lands originally belonged to the family of her husband called Kelinja family of which her husband was the Yejaman. The lands involved in these writ petitions being punja lands and lying on the sides of two main roads and being fit only for house sites, the husband of the petitioner, during his life time, gave bits of land on lease to various persons including the respondents for house sites. The portions of the survey number not let out continued to be in the actual possession of the petitioner's family. The petitioner got the lands in question to her share as per the compromise decree entered into between the members of the family in R.F.A. No. 17/1972 on the file of this Court and the petitioner got possession of them in Exe. Case No. 113/1973 and the delivery was recorded on 16-6-1973. The respondents continued to be the tenants under

her in respect of the lands in question.

4. The respondents applied to the Land Tribunal in Form No. 7 under S. 48A(1) of the Karnataka Land Reforms Act, 1961 (shortly called "the Act") for being registered as occupants in respect of the lands mentioned in their respective claim applications. The land Tribunal passed the order Ext. B granting occupancy right in favour of the respondents in respect of the portions of the lands referred to therein. The petitioner being aggrieved by this order has challenged its validity in these common writ petitions.

5. All the respondents were duly served with notice of these writ petitions. However, they remained unrepresented.

6. The main contention canvassed by Sri P. Ganapathy Bhat, learned Counsel for the petitioner, in the course of his arguments are two fold. They are: (1) The land involved in these writ petitions do not fall within the purview of the provisions of the Act and as such the Land Tribunal has no competence and jurisdiction to deal with them in the matter of granting occupancy right. (2) The grant of occupancy right by the Land Tribunal in respect of 4 cents of land comprised in Sy. No. 175/6 in favour of Ibrayi Beary, the respondent in W.P. No. 6494/1976 and the grant in favour of the respondent Mohammed Beary in W.P. No. 6497/1976, B. Ahamed in W.P. No. 6498/1976, Fakruddin in W.P. No. 6500/1976 and Hamida Beary in W.P. No. 6501/1976 is totally illegal and without jurisdiction, since there was no application filed by the respective respondents claiming occupancy right in respect of the land for which occupancy right was granted to them.

7. Besides these two main contentions Sri Ganapathy Bhat also attacked the validity of the impugned order on the ground that the petitioner had no notice of the cases involved in W.P. No. 6497 to 6501 of 1976 and further that the grant of occupancy right in favour of K. Sundara Balyaya in W.P. No. 6499 of 1976 was without any enquiry on a belated application filed on 11-5-1976, a few days earlier to the passing of the impugned order.

8. I shall take up for consideration first, the second contention canvassed as the same could be disposed of without much discussion. To better appreciate the argument put forward by the learned counsel for the petitioner on this point, it will be relevant to refer to some of the provisions of the Act.

Chapter III of the Act deals with the conferment of ownership on tenants.

S. 44 provides for the vesting of the land in the State Government. It stipulates that all lands held by or in the possession of the tenants immediately prior to the date of commencement of the Amendment Act, Act 1 of 1974 which came into force with effect from 1-3-1974, other than lands held by them under leases permitted under S. 5, shall with effect on and from the said date stand transferred to and vest in the State Government.

S. 45 provides for the entitlement of certain persons to be registered as

occupants of land on certain conditions. It stipulates that subject to the provisions of the succeeding sections of Chapter III, 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.

S. 48A provides for making application to the Land Tribunal for grant of occupancy right by the person entitled to be registered as an occupant under S. 45 of the Act within the time stipulated under sub-section (1) and the enquiry by the Land Tribunal on those applications.

Sub-section (8) of S. 48A, which is very material for our purpose reads thus:

"Where no application is made within the time allowed under sub-section (1), the right of any person to be registered as an occupant shall have no effect."

9. A bare reading of the provisions referred above, would clearly go to show that the Land Tribunal is empowered to consider and grant occupancy right to any person on an application filed by him as required under Sub-section (1) of Section 48A within the time stipulated therein. In other words, it follows that, if no application is filed claiming occupancy right in respect of any land by a person, then the Land Tribunal has no jurisdiction to consider his claim made otherwise than an application, even if he is entitled to be registered as an occupant under S. 45. That it is so, is clear from the plain reading of sub-section (8) of S. 48A. It clearly lays down that where no application is made within the time allowed under sub-section (1), the right of a person to be registered as an occupant shall have no effect. In this background, I shall now proceed to consider the second point canvassed on behalf of the petitioner.

10. Ibrayi Beary, the respondent in W.P. No. 6494 of 1976 filed an application as required under S. 48A(1) of the Act claiming occupancy right in respect of 20 cents in Sy. No. 175/4A, whereas he was granted occupancy right in respect of 16 cents of land in the said survey number and also in respect of 4 cents of land in another Sy. No. 175/6 for which he laid no claim. Mohammed Beary, the respondent in W.P. No. 6497 of 1976, laid claim in respect of 80 cents of Punja land without mentioning any survey number in his claim application, whereas he was granted occupancy right over 37 cents of land in Sy. No. 177/2. B. Ahamad the respondent in W.P. No. 6498 of 1976, laid claim for grant of occupancy right in respect of 75 cents of land in Sy. No. 175/3, whereas he was granted occupancy right over 23 cents of land in Sy. No. 175/4A. Similarly Fakruddin, respondent in W.P. No. 6500/1976, laid claim for grant of occupancy right in respect of 25 cents of Nanja 3rd class land in Sy. No. 180/6, whereas he was granted occupancy right in two bits of land measuring 12 cents in Sy. No. 180/1 and 7 cents in Sy. No. 180/2. Likewise, Hamida Beary respondent in W.P. No. 6501/1976, laid claim for occupancy right over 30 cents of Nanja 3rd class land

in S. No. 180/6 whereas he was granted occupancy right over 7 cents of land in Survey No. 180/2, 8 cents of land in Sy. No. 180/3. We do not find any reason assigned by the Land Tribunal in its impugned order for grant of occupancy right in favour of these respondents in respect of the lands for which they did not make any claim in their respective claim applications. The records of the proceedings of the Land Tribunal do not disclose that these respondents at least in the course of the enquiry amended their claim. In that view of the matter it must be legitimated held that these respondents did not make any claim for registration of the occupancy right in respect of the lands referred above. In the absence of any application for registration of the occupancy right by these respondents in respect of the aforementioned lands the Land Tribunal, as rightly contended by Sri. Ganapathy Bhat, on behalf of the petitioner, has no jurisdiction to grant occupancy right in favour of the respondent over the said lands. Consequently it follows that the grant of occupancy right in respect of 4 cents of land in Sy. No. 175/6 in favour of Ibrayi Beary, respondent in W.P. No. 6494/1976 and the grant of occupancy right in favour of Mohamed Beary, respondent in W.P. No. 6497/1976, B. Ahamed respondent in W.P. No. 6498/1976, Fakruddin respondent in W.P. No. 6500 of 1976 and Hamida Beary, respondent in W.P. 6501/1976 is clearly without jurisdiction and as such it is illegal and invalid.

11. This takes me to the first contention urged by Sri Ganapathy Bhat on behalf of the petitioner that the Land Tribunal has no competence and jurisdiction to deal with the matter of granting occupancy right in favour of the remaining respondents, as the land in question does not fall within the purview of the Act. The object of the enactment of the Act is, to provide an uniform law in the state of Karnataka, relating to agrarian relations, conferment of ownership on tenants, ceiling on land holding and for certain other matters appearing therein, as it is obvious from the preamble of the Act. The Act is not intended to apply to all lands in the State of Karnataka. It is specifically intended to apply to such kinds of lands which would fall within the purview of the provisions of the Act. In that view of the matter, the "Land" as denned under the Act would become very material for considering any question arising in the matter of granting occupancy right. Land is defined under S. 2(A)(18) thus:

"Land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes of purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non-agricultural purposes;

12. Thus the main question for consideration in the case on hand will be whether the lands in question are lands within the meaning of the definition of the land provided under S. 2(A)(18) of the Act. It is for the respondents to prove to the satisfaction of the Land Tribunal that the lands over which they claim occupancy right are lands within the meaning of the "land" provided under the Act before successfully maintaining their claim.

13. The case of the petitioner as regards these lands in question as could be seen from the written statement filed by Gopalakrishna Bhat son of the petitioner is, that all these bits of tends granted to each of the respondents are only house sites let out on "stala badige" and not agricultural holdings. The intention of the parties at the time of letting out these lands was, to grant these plots only as house sites for erecting building and not for agricultural purpose. The fact that small bits of land were given to each of the respondents would further indicate the intention of the parties that it was let out for erecting buildings and not for raising any agricultural crop. The lands let out to the respondents are Punja lands, unfit forcultivation without any water facility. In some of the plots there is no facility for drinking water and the residents have to go to a panchayat well situated at a distance for fetching water even for domestic purposes. The plots are situated on the side of two roads and they are hilly and barren places, fit only for house sites and not for agricultural purposes. On these grounds the petitioner contended before the Land Tribunal that the Land Tribunal had no jurisdiction to deal with these lands in the matter of granting occupancy right as they do not fall within the purview of the Act.

14. The Tribunal, rejecting the contention advanced on behalf of the petitioner, granted occupancy right in favour of the respondents. The reason assigned by the Land Tribunal for holding the land in question as agricultural land falling within the purview of the Act was, that it found during local inspection, that the respondents not only constructed buildings in their respective plots but raised certain fruit bearing trees. In this connection this is what the Land Tribunal has observed in its order.

* * *

It is obvious from the observation of the Land Tribunal excerpted above that the only ground on which it held that the lands in question were agricultural lands was, that it found during its local inspection a few fruit bearing trees such as coconut, mango, areca, jackfruit and some other types of agriculture without indicating what they were. There is no other document found in the records of the proceedings of the Land Tribunal to support this observation of the Land Tribunal except what the Land Tribunal has stated in its impugned order. Sri Ganapathy Bhat, learned Counsel for the petitioner, during the course of arguments referred to the copy of the mahazer prepared by the Tribunal on 9-6-1976 during the local inspection held by it. Some of the respondents herein are the signatories to the said mahazer. There is no whisper in the whole of the mahazer regarding the existence of any fruit bearing trees in the plot of land in the possession of these respondents. Even the Land Tribunal did not mention, in its impugned order the number of trees existing in each plot. We do not find any evidence adduced by the respondents either documentary or oral in support of their case that the plots which are in their possession are agricultural lands and that they have reared or planted any fruit bearing trees as referred to by the Land Tribunal, especially when it is admitted by the respondents that the lands

for which they laid claim for registration of occupancy right are punja lands. It is common knowledge that in Dakshina Kannada District there was no classification of the lands as agricultural and non-agricultural. It is also common knowledge that as per the revenue records, the lands in Dakshina Kannada District are classified as Nanja, Punja and Bagayat. Even the dry lands that are cultivable, are classified as third class Nanja. The Punja lands classified in that district are primarily hillocks or hilly-track of lands unfit for cultivation in its normal condition. Such kinds of land are generally granted on lease as house sites for construction of buildings. It is also common knowledge that in most of the plots in the District, where houses are erected, a few coconut trees or other fruit bearing trees such as mango or jackfruit, are generally planted in the compound. The mere existence of one or few fruit bearing trees in the compound of a house would not make the land as agricultural land if the intention of granting the land was for constructing a house or that it was granted as a house site. One has to take into consideration all the circumstances such as nature of the land, the extent of the land granted, the purpose for which it was used, the water facilities etc., for determining whether a particular plot of land is agricultural land or not. The mere existence of a few fruit bearing trees in a compound of a house would not make the plot in question agricultural, land on that ground alone.

In this context, it is apt to refer to the observations of his lordship Govinda Bhat, C.J., in *Venkatesha Shet v. Narayan Achari*, (1975) 2 Kar. L.J. 173, that:

"It is common knowledge that the Dist of S. Kanara from which this case comes, formed part of the State of Madras where there was no classification of lands as agricultural and non-agricultural. There was no provision in that State requiring the owners of land to obtain conversion for non-agricultural purposes, after payment of what is called "Conversion fine". In the erstwhile State of Mysore and in the Bombay and Hyderabad areas which came to this State, there were Revenue Laws which classified lands as Agricultural and non-agricultural, and before agricultural lands could be put to non-agricultural purposes, the owner was required to obtain conversion after payment of conversion fine. In the Dist. of S. Kanara and also in in the former State of Coorg, there was no such classification of lands as agricultural and non-agricultural. It is common knowledge that throughout the West-Coast, when a house is let there will be some land which forms a compound for the house and within such a compound a few coconut trees or mango trees or such other fruit trees are grown. Within the area of Mangalore Municipality it is very rare to find a house with a compound where there is no coconut or mango trees. Similar is the case in other towns in the Dist. In the instant case, there is no dispute about the extent of the land on which there is a tiled house. The total extent of the land with the house is 27 cents, which is approximately one-fourth of an acre. The defendant contends that there are a few coconut and other fruit trees. In such a case, there is no presumption that the lease is for agricultural purposes. It is also common knowledge that farm-workers are provided with houses by agriculturists. In the Kerala Agrarian Relations Act, there is a special provision made for protection of

tenants on such house sites, and such tenants are called "Kudikidappukarans". There is no corresponding provision under the Act. If the subject-matter of the suit is wet land, prima facie the lease will be one for agricultural purposes and the matter will be one relating to agrarian relations. The land in the instant case has been classified in the revenue records as "Punja". Under the Survey and Settlement Scheme in the Dist of S. Kanara, "Punja", lands are lands on which only thatching grass naturally grows. Such lands are not brought under cultivation either as wet. land or as garden."

15. In the instant case, as I said earlier, it is undisputed that all the lands in question are classified as Punja lands. It is also not in dispute that they are situate by the side of two main roads, one leading to Vittal and the other to Puttar at a place called Kalladka in Bantwal taluk. It is obvious from the impugned order that the lands over which the occupancy right has been granted in favour of the respondents are small bits of land. It is also undisputed that in each of these plots there is a building. No doubt the Land Tribunal has observed in its impugned order that there are fruit bearing trees such as coconut, mango, areca, jackfruit and some other types of agriculture without mentioning what they were. There is no other record in this case to support the observation of the Land Tribunal made in its impugned order. Even the mahazar prepared by the Land Tribunal is silent about it. The Land Tribunal has also not indicated in its order the number of trees in each plot. The respondents have not adduced any evidence to substantiate their case that the lands in question are agricultural lands or that the intention of the parties at the time of grant was agricultural purpose. Besides, it is also indicative of the fact as borne out from the claim applications, that none of the respondents has been following agriculture, as his profession. Some of them have given their profession as business. Some are doing cooly work. One is an Ayurvedic practitioner. One other is a contractor and so on and so forth. None of them have stated that they are agriculturists by profession. All these factors would clearly go to show that the lands in question are not agricultural lands and the conclusion reached by the Land Tribunal is arbitrary, based on surmises, rather than on any material evidence. Even the document prepared at the time of local inspection does not support the observation of the Land Tribunal made in its impugned order regarding the existence of fruit bearing trees. Further, the averments made by the petitioner in the writ petition giving reasons, that the lands in question are not agricultural lands have not been denied or controverted by any of the respondents by filing counter-statements. Considering all these aspects, I am inclined to hold that the lands in question do not fall within the category of "land" as defined under Section 2(A)(18) of the Act. When once it is held that the lands in question do not fall within the purview of the Act, necessarily it follows that the Land Tribunal has no jurisdiction to deal with them in the matter of granting occupancy right. In that view of the matter, the grant of occupancy right in respect of the lands in question in favour of the respondents is clearly invalid and illegal as it was without jurisdiction.

16. In the view that I take on these two contentions, it is unnecessary to go into the other subsidiary points canvassed during the course of the arguments on behalf of the petitioner.

17. In the result, for the reasons stated, the rule is made absolute. The impugned order Exhibit-B is quashed. In the circumstances of the case, I make no order as to costs.