
(1978) 11 KAR CK 0009
In the Karnataka High Court
Case No : WP 10537 of 1978

Dhareppa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-11-1978

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a

Citation : (1979) 1 KarLJ 18

Hon'ble Judges : Venkatesh, J

Judgement

Dhareppa Gurappa Thakkanavar of Savadi, Taluka Athani, Belgaum District, has filed this petition under Art.226 of the Constitution of India questioning the validity of the order d/ 4-11-1976 of the Land Tribunal, Athani, passed in its proceedings Nos.TNC.SR.3462, 2826, and 3732.

The proceeding in No. TNC. SR. 2826 was started before the Tribunal on an application made to it in Form No.7 of the Karnataka Land Reforms Act, 1961 (the Act) by one Gurappa Satyappa Thakkanavar claiming occupancy rights over Sy.No.549/3 of village Savadi measuring 4 acres 30 guntas. During the pendency of that application he died. Claiming to have acquired this lease right of Gunappa Satyappa Thakkanavar as a legatee under a Will said to have been executed by the said Gurappa Satyappa Thakkanavar, respondent-5, Ramappa, filed an application, also in Form No.7 of the Act, requesting the Tribunal to register him as the occupant. This application was registered in case No.TNC.SR.3462, Respondent-4 (herein), Parappa claiming himself to be the lessee of the land in question in his own right filed an application claiming occupancy right and this was registered in case No.TNC.SR.3732.

Sabu Ambi is the owner of the land. After holding an enquiry, by the impugned order, the Tribunal has allowed the claim of respondent-5.

The petitioner, Dharappa Gurappa Thakkanavar, claims to be the son of Gurappa, the deceased tenant. His case is that soon after his father's death he had approached the Tribunal with a request to implead him as the legal

representative of the deceased and to confer occupancy rights on him. The secretary of the Tribunal is said to have told him that the legal representatives of deceased Gurappa would be notified in due course and then he may approach the Tribunal. He states that contrary to this assurance and without notice to him the Tribunal had decided in favour of respondent-5 holding that he had succeeded to the lease right under a Will executed by deceased Gurappa. The contention of the petitioner is that his father had not executed any Will and, even if respondent-5 had any such document with him, it is as bogus one and should not have been acted upon by the Tribunal. If an opportunity had been given to him to have his say in the matter, he avers, he would have shown to the Tribunal that the alleged Will was not a genuine one, and also would have established his own claim for occupancy right. In support of his contention that he is the son of deceased Gurappa he has placed before this Court a Certificate of Birth issued under the Registration of Births and Deaths Act, 1969.

While assailing the validity of the order in question the learned Counsel for the petitioner made the following submissions: Firstly, he contended that the order of the Tribunal, having been passed without notice to his client, the legal heir of the deceased-tenant, Gurappa, is opposed to one of the basic principles of natural justice, and therefore is vitiated. Secondly, he contended that even if the Tribunal had found the Will set up by respondent-5 as genuine, it could not have conferred occupancy rights in his favour on the basis of that Will since bequeathing of a lease right under a Will amounts to an assignment of the lease right by (deceased) Gurappa, and is therefore, invalid under Sec.21 of the Act. Thirdly, he contended that the application filed by respondent-5 in Form No.7 after the death of the petitioner's father was itself barred by time, the same having been filed after 31-2-1974, and the entire proceeding before the Tribunal is vitiated in view of the fact that it had proceeded with the enquiry on such an application without admitting the same after condoning the delay.

Since the landlord, Dharappa Sabu Ambi, is dead, his legal representative, Subhas, Mahaveer and Ravasaheb (respondents 3a, to 3c herein) are made parties to this petition. The learned Counsel appearing for them supported the petitioner and submitted that the impugned order be struck down, and the matter be remitted to the Tribunal for fresh enquiry and disposal.

Certain allegations have been made against one of the Members of the Tribunal, S.M. Ugare, respondent-6 (herein), stating that in collusion with him respondent-5 had succeeded in his claim.

The learned Counsel appearing for respondent-5, while supporting the order of the Tribunal, submitted that the claim of the petitioner that he was the son of Gurappa was absolutely false; that Gurappa had remained unmarried; that he Gurappa was living with his client, a close relation; that it was his client who was looking after Gurappa in his old age; and that, therefore, out of love and affection Gurappa had bequeathed through a registered Will, the lease right in question, in his client's favour. He also submitted that the Tribunal after holding

an enquiry, finding the Will to be genuine, had conferred occupancy right in his client's favour, and this being a finding on fact should not be disturbed under Art.226.

In reply to the contention of the learned Counsel for the petitioner that the application filed by respondent-5 was a belated one, it was submitted by the learned Counsel for respondent-5 that his client had approached the Tribunal as the legal representative of deceased Gurappa to implead him as a party and to continue the proceeding and not making any fresh claim, though he, out of ignorance, had stated these facts not by a separate application but in Form-7 provided under the Act. He also submitted that the Tribunal had treated his client only as the legal representative Gurappa, and therefore, the fact that his client had approached the Tribunal by filing an application in Form No.7 should not be made much of. He further submitted that the claim of the petitioner that he (respondent-5) had approached the Tribunal after the death of Gurappa with a request to implead him as a party etc., was absolutely false, and that he has no locus standi to question the correctness of the order in question at this stage, and also as the writ petition was highly belated it should be dismissed in limine. It is his case that bequeathing of a lease right under a Will does not amount to assignment as contended by the petitioner and in support of this he places reliance on an unreported decision of this Court, to which reference will be made later.

On behalf of respondent-6, the learned Counsel appearing for him vehemently denied the allegations made against his client that his client was related to respondent-5 etc. A counter has also been filed on behalf of respondent-6 denying these averments. In my opinion, the allegations made against respondent-6 are vague and not substantiated in any manner. I am not inclined to attach much importance to the same. There is not much force in the submission made by the learned Counsel for the petitioner that the claim of respondent-5 before the Tribunal was barred by time. Respondent-5 had claimed occupancy rights over the land in question not as tenant as defined in the Act but as having acquired the lease right from the original tenant who had during during the pendency of his application filed in Form No.7. The Tribunal, as can be seen from the order in question, had treated respondent-5 as an heir of Gurappa. Therefore, even if he had filed a separate application in Form No.7, the averments he had made therein were only to the effect that he was the legal representative of deceased, Gurappa, and therefore he may be conferred with the occupancy right. In the circumstances, it cannot be said that the claim of respondent-5 was barred by time.

In answer to the argument of the learned Counsel for the petitioner that bequeathing of a lease right under a Will amounts to an assignment under Sec.21 of the Act, and therefore, was void, the learned Counsel for respondent-5 places reliance on an unreported Division Bench decision of this Court in Subhash Hirasingh Rajaput vs. Sundarabai Gangappa Rajaput, WP. 971/69 d/ 25-10-1971.

The facts in that case were: A certain Gangappa of Village Saundatti, Belgaum District, had died on 13-7-1964; the first respondent in that case, Sundarabai, was his wife; Subhash Rajaput, the petitioner in that case, claiming himself to be an heir of deceased Gangappa under a registered Will, said to have been executed by Gangappa, claimed mutation entries re: certain lease hold right held by deceased Gangappa. His claim was rejected by the revenue authorities on the ground that acquisition of such rights under a Will was prohibited under Sec. 27 of the Bombay Tenancy and Agricultural Lands Act, 1948. Repelling that view, Govinda Bhat, J., (as he then was) observed as follows:

"The ground on which the Assistant Commissioner and the Deputy Commissioner held against the petitioner was that Sec.27 of the Bombay Tenancy and Agricultural Lands Act, 1948 prohibited testamentary succession. The Deputy Commissioner states that it is well established in law that the tenancy rights cannot be willed. This view is patently erroneous. Sec.27 of the B.T. and A.L. Act nowhere prohibits testamentary succession. What is prohibited is subletting of the land held by a tenant or assignment of any interest therein. In other words, alienation of any land by a tenant is prohibited by sub-section(1) of Sec.27 of the Act. Succession may be testamentary or intestate. Testamentary succession is secured by execution of a Will and it does not amount to an assignment of interest by a tenant."

Sub-section (1) of Sec.27 of the B.T. and A.L. Act, 1948 is in pari materia with sub-sec. (1) of Sec.21 of the Act, and hence the ratio of the above decision fully governs the point at issue here. There is therefore, no substance in the contention of the learned Counsel for the petitioner that the claim of respondent-5 based on testamentary succession, could not have been entertained by the Tribunal as the alleged acquisition of the lease right was in violation of Sec.21 of the Act. While explaining the delay in filing the writ petition, it is stated in the petition that soon, after the death of Gurappa, he (petitioner) had approached the Tribunal with a request to implead him in the proceeding, and on being told, notice would be sent to all the heirs of the deceased, he had gone away expecting a notice to him also, and he came to know of the order in question only when respondent-5 came near the land and told him that he had an order of the Tribunal in his favour. He further says that thereafter he obtained a copy of the impugned order and approached this Court. In the circumstances I am of the view that the petition is not liable to be rejected on grounds of laches.

The next question that arises is that even if the impugned order is quashed on the ground that the petitioner too should have been heard in the matter and the matter is remitted for fresh enquiry, how should the Tribunal proceed with the matter? In holding enquiries the Tribunal has to follow the procedure specified for a summary enquiry under Sec.34 of the Karnataka Land Revenue Act. 1964 (vide Rule 17 of the Karnataka Land Reforms Rules, 1974). There is no provision similar to Order 22 of the C.P.C. enabling the Tribunal to continue the proceeding

in a case like this, after the death of one of the parties, by bringing on record the legal representatives of the deceased. But, in this connection the learned Counsel at the Bar placed before me a decision of this court in *Virupax Krishnaji v. Land Tribunal, Ron*, (1978) 2 Kar LJ. 41, wherein it is observed as follows:

"A Land Tribunal in the absence of a specific provision to continue the proceedings before it and bring on record the legal representatives, should give effect to the legislative intent by moulding an apt and convenient form of procedure for the purpose of enabling the legal representatives to continue the proceedings in the place of a deceased applicant."

I am in agreement with the above view. The Tribunal should not stop the proceedings on the death of a necessary party in, a proceeding pending before it, but should proceed with the enquiry after bringing on record the legal representatives of the deceased.

But, then, there is a further difficulty in the instant case. If there is no dispute on the question who represents the estate of the deceased, the procedure suggested above by this Court could be followed by the Tribunal and enquiry may be proceeded with. But, if more than one claims to be the legal representative of the deceased and if there is no agreement amongst them how should the Tribunal resolve such a dispute?

The only two issues that arise for consideration by the Tribunal in a proceeding commenced before it under Sec. 48A of the Act, are:

(i) Whether the land in dispute is a tenanted land, and (ii) if so, whether the person who has applied for registration of occupancy rights, and if more than one have applied, who amongst them, is entitled to conferment of occupancy rights? In a proceeding like this, if a landlord does not appear in answer to an individual notice, if any, issued to him, or on public notice, or if the landlord dies during the pendency of the proceeding and his legal representatives do not appear or even if more than one appears, each claiming himself, to the exclusion of others, to be the rightful heir Of the landlord, the Tribunal's enquiry started on an application made to it in Form No.7 will not be very much affected for the reason that it (the Tribunal) is not called upon to resolve the rights inter se of the persons claiming to be landlords or as persons interested in the land. It may hear all of them who claim to be interested in the land or who come forward to be impleaded as heirs of the deceased landlord and decide the two issues referred to above. On Such hearing, if it holds that the land is a tenanted land and the person who claims to be the tenant is entitled to occupancy rights, it will pass orders accordingly and send a copy of the order to the Tahsildar and also to the parties concerned as provided under Sec.48A(6) of the Act. Thereafter, it is for the Tahsildar to determine the amount payable to the land owner, landlord and all other persons interested m the land as provided under Sec.48B of the Act. If there is any dispute amongst the rival claimants (landholders) in the matter of apportionment of compensation he may refer that question to the Court as provided is sub-

section (2) of Sec.48B and then decide the same on the basis of the findings given by that Court.

But, there is no provision similar to sub-section(2) of Sec.48B conferring power on the Tribunal to refer any dispute that may arise amongst the rival claimants (tenants and their successors-in-interest) claiming occupancy rights. Such disputes amongst rival claimants claiming occupancy rights may arise in various ways. Broadly speaking such rival claims may fall into two categories. In the first category may be included cases where each claims himself to be the tenant as defined in the Act; in the second category may be included rival claims wherein each claims occupancy rights not on the basis that he was a tenant as defined in the Act, but as a successor-in-interest of the original tenant or as a member of a, joint family, the lease right being the property of such a family.

Cases falling in the first category will pose no problem to the Tribunal because the Act has sufficiently defined the characteristics of such leases. It is only in cases falling in the second category difficulties arise. But, consideration of rival claims arises only after the Tribunal answers in the affirmative on the first issue- the issue being whether the land in dispute was a tenanted land. Rival claims for registration of occupancy rights, falling in the first category can be decided by the Tribunal by finding out who amongst them has been successful in establishing that he was a tenant as defined in the Act.

But, in cases falling in the second category disputes amongst rival claimants may involve questions such as heirship, the existence of a joint family, and the like. It was argued that questions like the above are incidental and ancillary to the main question, and therefore- the Tribunal has powers to decide such questions also. In this connection a Division Bench decision of this Court in *Mudakappa vs. Rudrappa*, (1978) 1 KarLJ. 459, was cited at the Bar. The observations of this Court in the said case at para-12 may be noted: "When, in this case, one person applies for registration of the lands as an occupant in his individual name and three others apply for registration of the said lands in their names along with the other applicants as joint occupants, it becomes the duty of the Tribunal to decide whether only one of them was the sole tenant of the lands in question before the appointed day or whether all of them were jointly in possession of the lands as tenants. Without deciding the said question, it would not be possible for the Tribunal to make an effective order under Sec.48A of the Act. In order to decide the said question, it becomes necessary for the Tribunal to decide whether the tenancy in question was held by one of them exclusively or by all the applicants jointly. We have to hold that under S.48A, the Tribunal has that power having regard to the scope of that section. Whenever a statute confers a duty on an authority to decide a question and a corresponding right on an individual or individuals it has to be assumed that the statute, has by necessary implication conferred on that authority the power to decide all issues which are incidental or ancillary to the main question to be decided. Otherwise the Tribunal will have to keep all the applications pending until such issues are decided by the Civil Court.

In fact there is no procedure prescribed by the Act to refer such issues for the decision of the Civil Court. We do not think that it would be reasonable to hold that the Tribunal should await the decision of the Civil Court on such issues, in view of sub-sec. (5) of Sec.48A, which requires the Tribunal to hold an enquiry into all the rival claims made in respect of the registration of the occupancy rights in respect of the agricultural lands before disposing of the applications made to it." (underlining (italics) is mine)

The facts Of that case are clearly distinguishable from the case on hand. In that case one of them had claimed that he alone was the tenant of the lands in dispute to the exclusion of others. On the other hand, according to the rival claimants that they too along with the other persons were jointly cultivating the lands as lessees and that the lease right originally belonging to the joint family had not been divided at the partition that had taken place some time ago and the land continues to be under the joint cultivation of all. Since these rival claims were mainly based on possession and cultivation, this Court has rightly held that it was well within the powers of the Tribunal to decide whether the former alone was cultivating or all of them were jointly cultivating as tenants. To decide that question (who was the tenant as defined in the Act) it was not necessary for the Tribunal to decide whether the rival claimants belonged to a joint family and if so, was the lease right the property of that family.

But the rival claims may arise under circumstances different from those indicated in the above decision. A person may make his claim to a portion of the tenanted land, on the ground that as one of the heirs of the deceased-tenant he is entitled to the same. The death of the original tenant might have Occurred either during the pendency of the enquiry as in the instant case or prior to that. Likewise, a person may also claim that on the death of one of the members of the joint family, he had acquired tenancy rights by survivorship. When rights put forward like these are denied the issues that arise would be entirely different involving not issues of tenancy but complicated questions of personal and proprietary rights, and any decision on such questions may have far reaching consequences involving properties other than the tenanted lands also.

Is it the intention of the legislature that all such issues like the existence of a joint family or coparcenary, whether a person is a member of a joint family; if he is, had he succeeded by survivorship to the property Of such family; to what extent; and whether a person who claims to be an heir of the deceased tenant was in fact the heir; to what quantum of a share in the property of the deceased is he entitled to; and whether the Will or the gift set up by a party is genuine or not etc., should also be decided by the Tribunal? If we look at the broad scheme of the Act that does not appear to be the intention at all. On the other hand, the intention of the legislature was to allow such complicated questions to be fought out by the contesting parties in Civil Courts. There is sufficient indication in the Act for this view. We may read Sec.21 of the Act;

"21. Sub-division, sub-letting and assignment prohibited-(1) No sub-division or

sub-letting of the land held by a tenant or assignment of any interest therein shall be valid:

Provided that nothing in this sub-section shall affect the rights, if any, of a permanent tenant:

Provided further that if the tenant dies, (i) if he is a member of a joint family, the surviving members of the said family, and (ii) If he is not a member of a joint family, his heirs shall be entitled to partition and sub-divide the land leased, subject to the following conditions:

- (a) each sharer shall hold his share as a separate tenant;
- (b) the rent payable in respect of the land leased shall be apportioned among the sharers, as the case may be, according to the share allotted to them;
- (c) the area allotted to each sharer shall not be less than a fragment;
- (d) if such area is less than a fragment the sharers shall be entitled to enjoy the income jointly, but the land shall not be divided by metes and bounds;
- (e) if any question arises regarding the apportionment of the rent payable by the sharer, it shall be decided by the Tahsildar:

Provided that if any question of law is involved the Tahsildar shall refer it to the Court. On receipt of such reference the Court shall after giving notice to the parties concerned, try the question as expeditiously as possible and record findings thereon and send, the same to the Tahsildar. The Tahsildar shall then give the decision in accordance with the said finding." It is provided that on the death of a tenant his right in the lease hold property may be inherited by the surviving members of the joint family if he was a member of such joint family, or by his heirs. It is further provided in Sec. 21(1)(e) that if any question arises re: the apportionment of the rent payable by a sharer, it should be decided by the Tahsildar. The proviso to S. 21(1)(e) of the Act also provides that if any question of law is involved in the matter the Tahsildar shall refer the same to the Court, await its findings, and then decide the question in accordance with the findings given by the Court. Incidentally it may be noted that this proviso was added by Amendment Act No.1 of 1974. Prior to Act No. 1 of 1974, all disputes arising under the Act were dealt with by the Courts constituted under the Act and presided over by Judicial Officers. The amendments brought about by Act No.1 of 1974 to the Act provide for the establishment of Tribunals, each consisting of an executive official and a few non-officials, to decide certain matters arising under the Act, and constitution of various other authorities consisting of officials of the Revenue Dept to deal with certain other matters. It is a fact that there is no provision in the Act conferring powers on the Tribunals to refer any question, that may arise in the course of an enquiry before it, to the Civil Court. Perhaps, the legislature felt that making such a provision would protract the proceedings before the Tribunals resulting in a great deal of delay. Such delay would not merely keep the question of conferment of occupancy rights hanging in the

balance, but would also result in postponement of payment of the amount to landholders who would have no other right in the land except the right to receive the amount from the State Government. (vide Sec. 44(2)(f) of the Act).

Sub-sec. (1) of Sec. 132 of the Act states that "no civil court shall have jurisdiction to settle, decide, or deal with any question which is by or under this Act required to be settled, decided or dealt with by... the Tribunal...." Sec. 133(1) provides that "notwithstanding anything in any law for the time being in force, no civil or criminal court or officer or Authority shall, in any suit, case or proceedings concerning a land, decide the question whether such land is Or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land from prior to 1st March, 1974." Now, of the duties of the Tribunals as enumerated in Sec.112-B of the Act, two, which are relevant here, may be noted; one is "to make necessary verification or hold an enquiry and pass orders in cases relating to the registration of a tenant as occupant under Sec. 48A" (vide Sec. 122(B) (a); and the other is "to decide whether a person is a tenant or not" (vide Sec. 112(B)(b). Sec.48-A(6) provides that the order of the Tribunal passed under Sec.48 is final. Sec. 132(2) further provides that "no order of the Tribunal.....made under this Act shall be questioned in any civil or criminal court." It is thus clear that the orders made by the Tribunals on matters over which it has exclusive jurisdiction are final and cannot be questioned at all. The two important questions that arise before, the Tribunal in enquiries of this nature, as stated above, are, whether the land is a tenanted land, and, if so, who is entitled to occupancy rights? Its finding whether the land involved is or is not a tenanted land cannot be called in question in any civil Court. Likewise, its decision whether the person, from whom rival claimants, if any, claim to inherit the lease rights, was a tenant or not cannot also be called in question. Now, while deciding the rights of rival claimants if it becomes necessary to decide questions such as heirship, succession and existence of a joint family, and the like how should the Tribunal proceed with the matter? It cannot refer such issues to the civil Courts. Even if the parties are already litigating in the civil court re: their respective rights the Tribunal cannot await the decision from that court keeping the applications pending before it. The only course that it can adopt is to choose one of the rival claimants for conferment of occupancy rights reserving liberty to other claimants claiming occupancy rights before it to establish their rights, if any in the land in question in a civil court of competent jurisdiction.

In the instant case the petitioner who claims to be the son of the deceased tenant has not been heard in the matter. In the circumstance of the case, it would be in the ends of justice to provide him with an opportunity to have his say in the matter before the Tribunal. The finding of the Tribunal that the land in question is a tenanted land is not challenged by the land owners. Its finding that respondent-4, Parappa, is not a tenant as claimed by him is also not challenged by Parappa. The only question for decision before the Tribunal, when the matter goes back before it, would be, who, of these two, writ petitioners Dharappa Gurappa Thakkanavar and respondent-5, Ramappa, is entitled for occupancy

rights over the land in question. Using its discretion (Judicially and not arbitrarily) and having regard to the circumstances of the case, the Tribunal may choose one of them for conferring occupancy rights and direct the other to approach a proper forum to establish his right to the land in question. The Occupancy right granted by the Tribunal in so far as it relates to the inter se dispute amongst the rival claimants are concerned will be subject to the decision, if any, obtained by the aggrieved in a competent court.

Therefore, the writ petition is allowed, the rule issued is made absolute and the impugned order of the Tribunal is hereby quashed. The matter is remitted to the Tribunal for fresh enquiry and disposal according to law and in the light of the observations made above with notice to all concerned including the petitioner herein.

Parties are directed to bear their own costs.