

(1980) 02 KAR CK 0008
In the Karnataka High Court
Case No : WP 235/77

Dhareppa Shiddappa and Others

APPELLANT

Vs

Land Tribunal, Bijapur and Others

RESPONDENT

Date of Decision : 18-02-1980

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a

Citation : (1980) 2 KarLJ 205

Hon'ble Judges : Kudoor, J

Judgement

1. This writ petition under Arts. 226 and 227 of the Constitution is directed against the order Ext. Z.6 dated 16-12-1976 of the 1st respondent-Land Tribunal, Bijapur, conferring occupancy in favour of the 2nd respondent-Tangewwa and the 3rd respondent Dhareppa in respect of two items of land comprised in S. No. 122 measuring 15 acres 19 guntas and S. No. 123 measuring 16 acres 5 guntas of Honawad village of Bijapur Taluk in Bijapur District, of which the petitioners are the owners.

2. It is necessary to set out the relevant facts for a just and proper appreciation of the rival contentions of the parties.

S. Nos. 122 and 123 both situate on Honawad village of Bijapur Taluk, which will be hereinafter referred to as the "suit lands", originally belonged to two persons of Athani by name Kasinath Wodeyar and Narayan Wodeyar. They had leased out the suit lands to one Ballappa Pujari (for short "Ballappa") and Ramanna Gurappa Janagond (Sindhur) (for short "Ramanna"). Both Ballappa and Ramanna surrendered their lease-hold right in the year 1957 in favour of the original owners, under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the "B.T. & A.L. Act"). The entries in the record of rights were also changed in pursuance of the surrender. However, the name of Ramanna alone was deleted whereas the name of Ballappa continued in "other rights" column. To set the matter right, Ballappa and Ramanna once again approached the Tahsildar, Bijapur in the year 1960 and gave a joint application

surrendering their lease-hold right in favour of the original owners. The Tahsildar, Bijapur, accorded permission to surrender their leasehold right and directed them to put the owners in possession thereof in the year 1961. Thereafter, the original owners sold the suit lands and these petitioners ultimately became the exclusive owners.

3. The 2nd respondent is the wife and the 3rd respondent is the son of Ballappa. They made an application to the 1st respondent-Land Tribunal in Form-7 under S. 48A(1) of the Kar. Land Reforms Act, 1961 (for short the "Act") for conferment of occupancy in their favour in respect of the suit lands on the ground that late Ballappa was the tenant in respect of the suit lands since the year 1945 and after his death in the year 1963, they (respondents 2 and 3) became the tenants of the suit lands cultivating them personally.

4. The petitioners resisted the claim of respondents 2 and 3 inter alia contending that Ballappa and Ramanna, the original tenants surrendered their tenancy right over the suit lands before the Tahsildar, Bijapur in the year 1961 under the provisions of the B.T. and A.L. Act and put the original owners in possession of them who, in their turn, sold them and the petitioners ultimately became the exclusive owners and had been cultivating them personally and hence respondents 2 and 3 were not entitled for registration of occupancy.

5. The 1st respondent-Land Tribunal, after holding an enquiry, came to the conclusion that the enquiry made by the Tahsildar was perfunctory, that the original owners had never sought for the possession of the suit lands on the strength of the surrender as required under S. 29(2) of the B.T. & A.L. Act and that was why the name of Ballappa, as protected tenant, had not been deleted, that after the death of Ballappa in the year 1963, respondents 2 and 3 started cultivating the suit lands and continued to be holding them and as such they were the tenants in respect of the suit lands on the relevant date entitled to be registered as occupants and accordingly ordered them to be registered as per its order Ext.-Z6, the validity of which is under challenge in this writ petition under Arts. 226 and 227 of the Constitution.

6. Shri Jayakumar S. Patil, learned counsel appearing for the petitioners has advanced three contentions. They are:

(1) It was beyond the competence of the 1st respondent-Land Tribunal to go into the validity and legality of the surrender of tenancy rights by the original tenants under the provisions of the B.T. & A.L. Act;

(2) The finding of the tribunal that the enquiry made by the Tahsildar in the surrender proceedings was perfunctory is wholly erroneous and once the surrender of tenancy right by the original tenants was accepted by the Tahsildar under the provisions of the B.T. & A.L. Act, the tenancy came to an end and assuming that the possession of the land continued with the tenants even after such acceptance, their possession of the suit lands cannot be that of a tenant but that of a trespasser; and (3) The finding of the tribunal that respondents 2 and 3

had been in. possession of the suit lands cultivating them as tenants after the death of Ballappa in the year 1963 and up to the relevant date under the Act was a finding recorded by the tribunal without the consideration of the oral and documentary evidence produced by the petitioners and hence it is vitiated.

7. Shri K.S. Savanur, learned Advocate appearing for respondents 2 and 3, per contra, argued that it is the exclusive jurisdiction of the Tribunal under the Act to decide the question whether a person claiming to be in possession of a land is a tenant or not of such land from prior to 1st. March 1974 and in so deciding that question, the tribunal ought to go into the validity of the surrender of the leasehold right under the B.T. & A.L. Act pleaded by the owner in resisting the claim of a claimant for being registered as an occupant in a proceeding initiated under Section 48A of the Act. He further contended that the Land Tribunal was justified in holding that the enquiry held by the tribunal was perfunctory. He has also contended that the tribunal has considered all the documents and its finding that respondents 2 and 3 were in possession of the suit lands as tenants on the relevant date under the Act is supported by reasons on a proper and detailed consideration of all the materials including the documents produced in the case.

8. I shall proceed to consider the contentions urged by the learned counsel for the petitioner in the order in which they were formulated in the course of his arguments.

9. As regards the first contention the question for consideration will be whether the tribunal could go into the validity and legality of the termination of tenancy by surrender thereof in respect of any land under the provisions of the B.T. & A.L. Act while deciding a claim for being registered as an occupant of the said land under S. 48A of the Act.

10. I shall now refer to the relevant provisions of the Act which would have a bearing on the point:

11. S. 44 of the Act deals with vesting of the land in the State Government. It provides that all lands held by or in the possession of the tenants immediately prior to the date of commencement of the Amendment Act other than lands held by them under leases permitted under S. 5 shall stand transferred to and vest in the State Government with effect on and from the date on which the Amendment Act came into force. S. 45 of the Act lays down the conditions under which the tenants could be registered as occupants of the lands vested in the State Government under S. 44. S. 43A of the Act provides for making an application to the Land Tribunal for registration of occupancy by a person entitled to be registered as an occupant under Sec 45 and the enquiry by the tribunals on such applications.

12. The duties of the Tribunal are enumerated under S. 112-B. One of the duties conferred upon the tribunal as per sub-section (b) of S. 112-B is to decide whether a person is a "tenant" or not S. 133 of the Act confers exclusive jurisdiction upon the tribunals to decide the question whether a person claiming

to be in possession of a land within the meaning of the Act is or is not a tenant of the said land from prior to 1st March 1974.

13. Undoubtedly, one of the questions required to be considered by the Land Tribunal while dealing with a claim application under S. 48A(1) of the Act is whether the person claiming to be in possession of the land is a tenant or not for the purpose of registering him as an occupant. Since it is the prerogative of the tribunal to decide the question whether a person claiming to be in possession of the land is a tenant or not within the meaning of the Act on the relevant date, the tribunal has to consider that question taking into consideration all the materials produced by the contesting parties and in doing so. the tribunal has to consider the validity or otherwise of the surrender of tenancy right by a tenant or his predecessor under the provisions of the B.T. & A.L. Act or any otherpayif the owner of the land would put-forward such a plea to resist the claim of the claimant for being registered as an occupant on the ground that he is not a tenant of the land in question in view of the surrender of the tenancy right. The opening words of sub-section (1) of S. 133

"Notwithstanding anything in any law for the time being in force" would clearly justify this position.

14. The same conclusion can be reached by another route. Under S. 15(1) of the B. T. & A. L. Act, a tenant as defined under Section 2(18) of that Act, can terminate the tenancy in respect of the land held by him as a tenant by surrendering his interest in favour of his landlord and as provided by sub-section (2) of S. 15, on such surrender of the tenancy, the landlord becomes entitled to retain the land so surrendered by the tenant in the same manner as when the tenancy is terminated under Sections 31 and 31A of the B.T. & A.L. Act. The tenancy on such surrender comes to an end and thereafter the relationship between them of landlord and tenant and the rights arising out of that relationship are terminated. S. 29(2) of the same Act provides for the procedure for a landlord, to obtain possession of any land for the possession of which he is entitled to under the provisions of that Act. In order to become, the termination of tenancy by surrender, legal and effective under Section 15, two conditions are laid down through the proviso to sub-sec. (1) of Section 15 that a surrender of a tenant could only be valid and binding on him if it was in writing and was verified by the Mamlatdar in the prescribed manner. before, the Mamlatdar could verify such surrender, it would be his duty to ascertain whether the surrender was Voluntary and was not under pressure or under influence of the landlord. But once the surrender satisfies the two conditions provided under the proviso, it has the same effect as the termination of tenancy, that the tenancy would come to an end and the landlord would become entitled to retain the land of which possession is delivered to him by the tenant surrendering his interest as a tenant therein. In such a case, there would exist no more relationship of landlord and tenant between the owner on the one hand and the tenant on the other. But on the other hand, where the surrender has not satisfied the two conditions

stipulated, in the proviso, then even in the surrender is voluntary, it is no surrender in law and therefore there is no termination of relationship of landlord and tenant. To put it in another way, in such a case, the landlord-tenant relationship would continue notwithstanding the fact that there was a surrender of tenancy (See: Vallab Bhai v. Bai Jivi 1. This position in law in my judgment would justify the Land Tribunal to go into the question of validity or otherwise of termination of tenancy by surrendering the tenancy right under S. 15 of the B.T. & A.L. Act when it was required to determine whether a person claiming to be in possession of the land is a "tenant" or not within the meaning of the Act and on the relevant date so as to entitle him to be registered as an occupant under the Act.

15. It seems to me that the jurisdiction vested in the tribunal under S. 133 read with S. 112-B(b) of the Act to decide the question whether a person claiming to be in possession of the land is a tenant or not is absolute and unfettered. If any material is produced by a party including a surrender of tenancy right under S. 15 of the B.T. & A.L. Act, either by the claimant himself or his predecessor-in-interest in resisting the claim of a claimant of being registered as an occupant, it is for the tribunal to consider that material and decide whether in spite of surrender of tenancy, the landlord tenant relationship would continue and in doing so. the tribunal has got to go into the question of validity or otherwise of the surrender. In that view of the matter it appears to me reasonable to hold that the tribunal is empowered to consider the validity or otherwise of a surrender of tenancy under the provisions of B.T. & A.L. Act or any other law pleaded by a party in a proceeding under S. 48A of the Act, while deciding the question whether the claimant is entitled for the registration of occupancy. This would be the reasonable conclusion one could reach on a proper consideration of the relevant provisions of the Act in the light of the scope and object of the Act adumbrated in the preamble, one of which is conferment of ownership on tenants.

16. Shri Jayakumar S. Patil, in support of his first contention, sought to place reliance on S. 7 of the Act and argued that since there is no other provision in the Act except S. 7, under which the tribunal could go into the validity or otherwise of the surrender of tenancy, it must be held that the tribunal has no power or jurisdiction to consider the validity or otherwise of a surrender of tenancy pleaded by a party in the proceedings under S. 48A of the Act. I am not satisfied with the force of this contention and so I decline to accept the same for the reasons I presently show.

17. S. 7 has no relevancy in respect of a proceeding under S. 48A of the Act, as it relates to a proceeding initiated by a tenant for restoration of possession of the land from which he was dispossessed. It is equally true that there is no other specific provision in the Act prescribing the authority of the tribunal to go into the validity or otherwise of the termination of, tenancy by surrender either under the B.T. & A.L. Act or any other law. However, in my judgment, the land tribunal has

got such a power and that power is implicit in the very power granted to the tribunal to decide

1. AIR 1969 SC. 1190. The question whether a claimant is a "tenant" or not in respect of a land claiming to be in possession of it within the meaning of the Act and on the relevant date in a claim application under S. 48A(1) of the Act.

18. Shri Jayakumar Patil next sought to place reliance on a ruling of this Court in *Somaju Raghoba Jamdar v. The Land Tribunal, Ramdurg*, WP 2117/76. dt. 25-11-77. The petitioner in that case was the unsuccessful claimant before the Land Tribunal whose application was rejected by the tribunal for grant of occupancy in respect of certain lands. The petitioner's name had been deleted and the 2nd respondent's name (owner of the land) had been entered as the person actually cultivating the land in the record of rights in pursuance of an order made by the Tahsildar accepting the surrender of tenancy right by the petitioner. The petitioner had the notice of the fact that his name had been deleted in the record of rights and a record had been made to the effect that he had surrendered the land before he made the application before the Land Tribunal. The petitioner had appended a note in his application in Form-7 that the landlord's name had been illegally entered as cultivator and the petitioner's name had been deleted. Dealing with this question raised by the petitioner, this Court observed as follows:

"The Land Tribunal is not the forum in which the petitioner can obtain in adjudication that the order of the Tahsildar dated 26-7-1965 made in TNC SR 58/65-66 was "obtained by fraud. Under the Karnataka Land" Revenue Act, the petitioner had a remedy of a civil suit for declaration of his right that he was a protected tenant and the deletion of his name and the Tahsildar's order regarding surrender was liable to be set aside. No such suit has been filed as provided under the proviso to Section 136 of the Karnataka Land Revenue Act, 1964. The statutory presumption under Sec. 133 of the said Act is against the petitioner. He has not taken steps to get the order of the Tahsildar set aside or to obtain a declaration as provided under the proviso to Sec. 135 of the Karnataka Land Revenue Act"

19. From the observation made by this court excerpted above, it is clear that this court did not consider the question whether the tribunal is competent to go into the validity or otherwise of a surrender of tenancy pleaded by the owner to resist the claim of a claimant for being registered as an occupant while considering the question whether the claimant is a tenant entitled to be registered as an occupant under the Act. At any rate, such a question was not directly involved for decision in the above case. The question involved in that decision was one essentially relating to the entries in the record of rights. Dealing with the contention of the petitioner that the landlord's name had been illegally entered as cultivator by deleting his name, this court held that the tribunal was not the forum in which the petitioner could obtain an adjudication that the order of the Tahsildar accepting the surrender and effecting a change in the entry in the

record of rights in pursuance of such surrender was obtained by fraud. The decision in Somaji's case referred above, in my judgment cannot help the petitioner to sustain the contention urged on his behalf by Shri Jayakumar S. Patil.

20. Thus, in my judgment, the tribunal is competent to consider the validity or otherwise of the surrender of the tenancy right pleaded in resisting the claim of a claimant in a case arising under S. 48A of the Act while deciding the question whether the person claiming to be in possession of such land is a "tenant" or not

21. Now coming to the second contention urged on behalf of the petitioner, it consists of two parts. The first part deals with the question whether the conclusion reached by the tribunal that the enquiry made by the Tahsildar in the surrender proceedings was perfunctory, is erroneous. It seems to me that there is considerable force in the first part of this contention.

22. It is an undisputed fact that Ballappa and Ramanna were the original tenants of the disputed lands. However, it is the case of the petitioners that both Ballappa and Ramanna had surrendered their tenancy right in favour of the original owners from whom the petitioners purchased the suit lands. It is their further case that when they purchased the suit lands from its original owners, there was no tenant on the suit lands and that the suit lands were in actual possession of the owners from whom the petitioners not only derived the title but the possession of the suit lands. In support of this contention, the petitioners relied upon certain documents. Ex-E dated 2-6-1960 is a joint application by Ballappa and Ramanna made to the Tahsildar as required under the provisions of the B.T. & A.L. Act surrendering their tenancy right in favour of the original owners Kasinath Wodeyar and Narayan Wodeyar. In that application, both of them have clearly stated that they had already surrendered possession of the suit lands for the agricultural year 1960-61. Ex-C is the statement of Ramanna and Ex-D is the statement of Ballappa of even date 23-7-1960 recorded by the Tahsildar in the proceedings arising out of their application Ex-E. The Tahsildar appended his certificate on 25-2-1961 on the application. Ex-E runs thus:

"Certified that I am satisfied from the enquiries made before me that the tenant knows the order and conveyance of surrender and that the surrender has been made by the tenant of his free will."

On the same day, the Tahsildar made the order Exhibit-F which reads as follows:

"Heard parties who admit mutual relationship and the fact that the applicants have voluntarily surrendered their interest in the suit lands to the opponents for reasons of inability to continue to take up the cultivation. As I did not doubt the applicant's bonafide, I have endorsed the necessary certificate on the document of surrender. According to the certificate of the Talathi at Ex. H. 6 the opponents have no other lands of their own in possession and as their total area is 31.24.9 their total area does not allow (sic) the surrender and direct that the opponents should be put in possession of the suit lands. The names of the opponents (sic)

should also be, deleted from the record of rights. Parties to be informed through Talathi."

The tribunal after referring to these documents and in particular the certificate appended by the Tahsildar on the application Ext-E observed in its order thus:

"From this it is crystal clear that he has made this endorsement by enquiring only one of the tenants. Under Rule 9 of the Bombay Tenancy and Agricultural Lands Rules, 1956 which were in force then that the Tahsildar had a responsibility to make proper enquiries and only after satisfying himself that the tenant understood the nature and consequences of the surrender and also that it was voluntary, the Tahsildar should have endorsed his finding on the instrument of surrender so as the instrument of surrender indicated that there were two tenants who had come forward to surrender their rights it was obligatory on the part of the Tahsildar to make full enquiry with both the tenants to understand the nature of surrender made. But in this case, a reference has been made by only one of these tenants and that too without mentioning his name. This is an imperative provision of law and any deviation made will have to be construed in favour of the illiterate tenant. Tribunal therefore holds that the enquires made by the Tahsildar were perfunctory."

23. The tribunal appears to have reached the conclusion that the enquiries made by the Tahsildar regarding the surrender proceedings were perfunctory on the ground that the Tahsildar in his endorsement made a reference to the "tenant" and not "tenants", thereby drawing an inference that the enquiry held by the Tahsildar was only in respect of one of the tenants "and not both the tenants". This conclusion, in my opinion, is highly erroneous inasmuch as the same was reached by overlooking the relevant documents produced in the case. Ext-E is the joint application filed by both the tenants in which they had clearly stated that they had surrendered the suit lands for the agricultural year 1960-61. They had made all the required averments for the voluntary surrender of the suit lands in their joint application. They had also referred in the application that they had made separate applications seeking permission to surrender the suit lands, the possession of which they had already given to the owners. In support of their joint application both of them gave their sworn testimony as per Ext-C & D in which they had reiterated and reaffirmed the averments made by them in. Ext-E. Ext-F is the order made by the Tahsildar dated 25-2-1961 which was necessarily after the appended his certificate on Ex-E in which he referred to the surrender of lands by both the applicants i.e, the tenants. He had further directed to delete the names of the applicants-tenants from the record of rights and also to put the owners in possession of the suit lands. In view of these materials, it looks to me that the reference in the certificate "the tenant" instead of "tenants" was a clerical error. That it is so is obvious from the other records of the proceedings relating to the surrender application Ext-E filed by both the tenants to which a reference has already been made. Thus, I am of the opinion that the finding recorded by the tribunal that the enquiries made by the Tahsildar in the

surrender proceedings were perfunctory is clearly erroneous and vitiated.

24. As regards the second part of the contention that acceptance of the surrender under Sec. 15 of the B. T. & A.L. Act would put an end to the tenancy and the possession of the land by the tenant after such surrender would not be that of a tenant but that of a trespasser, Sri Jayakumar Patil placed reliance on a decision of this court in *Siddamma v. State of Karnataka*, (1979) 1 Kar.L.J. 233. Dealing with the effect of surrender under S. 25 of the Act as it stood prior to the Amendment Act 1/1974, it was held by this court in the said decision that an order of the Tribunal accepting the surrender of tenancy by the tenant and permitting the landlord to enter upon the land surrendered had the effect of putting the tenancy to an end, and thereby the relationship of landlord and tenant also came to an end and if in spite of the order under Sec. 25, the tenant remained in possession, his possession will not be that of a tenant. This decision was taken up in appeal by one of the respondents in W.A. No. 772 of 1979 *Putte Gowda v. State of Karnataka*, WA 772/79 dt. 10-1-80 in which a Division Bench of this Court has ruled, overruling the decision of the learned Single Judge, that mere permission to surrender without delivery of possession of the land by the tenant does not put an end to the relationship of landlord and tenant. In view of the Division Bench ruling referred above, the second leg of the contention of Shri Jayakumar Patil cannot be sustained.

25. Now coming to the third and the last contention, it seems to me that there is much force in this contention. At the cost of repetition, I may refer to the joint application Ext-E filed by the original tenants Ballappa and Ramanna as early as 2-6-1970 in which they had clearly stated that they had surrendered possession of the suit lands and put the original owners in possession thereof for the cultivation year 1960-61. Both of them reiterated and reaffirmed in their sworn testimony before the tahsildar in the surrender proceedings at Exhibits-C and D that they had surrendered possession of the suit lands in favour of the original owners as stated in their joint application Ext-E. The Tahsildar in his order Ex-F directed the deletion of the names of the original tenants from the Record of Rights. Further, there is indication in the proceedings of the Tahsildar that the Tahsildar had approved the action of the original tenants in surrendering the possession of the suit lands and putting the original owners in possession thereof. The entries in the record of rights would go to show that necessary action had been taken in pursuance of the surrender proceedings in correcting the entries in the record of rights. The tribunal did not consider any of these documents and even if it had considered a few of them, it did not consider them in their proper perspective while recording a finding in favour of respondents 2 and 3 regarding the possession of the suit lands. Thus, I hold that the finding of the tribunal that respondents 2 and 3 were in possession of the suit lands on the relevant date cannot be sustained for non-consideration of the material evidence.

26. For the aforementioned reasons, I must hold that the order impugned is not a valid order liable to be set aside.

27. In the result, for the reasons stated above, the rule is made absolute. The impugned order Ext-Z. 6 is quashed. The matter is remitted to the tribunal for fresh disposal in accordance with law after giving opportunity to both parties to adduce further evidence, if any, and also to raise all the pleas that are open to them. There is no order as to costs.