

(2003) 03 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 45024 of 2002

Ganapathi Parameshwara Bhat (Deceased) by L.Rs

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Citation : (2004) 3 KarLJ 425 : (2003) 3 KCCR 1642

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.R. Hegde Hudlamane, for the Appellant; M.E. Prabhu, A.G.A. for Respondents 1, 2 and 4 and M. Ram Bhat, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—The petitioners, assailing the legality and validity of the order passed by the 2nd respondent-Land Tribunal, dated 22-11-2002 in No. LRM.SR.48C/10/765 appointing Tahsildar, Honavar, as the receiver of the lands bearing Survey Nos. 4/4, 3/1 and 299/1 measuring 0.16 guntas 4 annas, 11 guntas and 1 acre 1 gunta respectively, situated at Karki Village, Honavar Taluk, U.K. District, have filed this writ petition.

2. The petitioners claim to be absolute owners of the lands in question and they are in peaceful possession and enjoyment of the same. The lands in question fell to their share in the partition entered into between the family members and in pursuance of the partition, the petitioners submitted a wardy to the revenue authorities on 21-3-1983 along with other family members. Thereafter, mutation has been certified in respect of these lands in question and the petitioners' name have been entered in the Record of Rights and the same is continued till date. To substantiate the same, the petitioners have produced Annexure-D, E, F and G and submitted that for the agricultural year 2001-02, in the Kabsedar's column and cultivator's column i.e., column Nos. 9 and 12(2), the name of the father of the petitioners is shown. He further submitted that when the matter was pending consideration, respondent 3 herein filed an application for appointment of a

receiver. The petitioners filed objections to the said application. Without considering the said objections and without taking into consideration the material on record, the Land Tribunal passed the impugned order appointing a receiver on the ground that when the matter was pending adjudication, the petitioners ought not to have taken police protection and removed the standing crop and that in spite of giving sufficient opportunity, the petitioners nor their Counsel made out any case for non-appointing the receiver, Feeling aggrieved by the said order, the petitioners have preferred this writ petition.

3. The principal submission canvassed by the learned Counsel for the petitioners is that, in pursuance of the judgment and decree passed by the Civil Court in Execution Petition No. 30 of 1957, possession has been handed over to the family members of the petitioners on 24-1-1970. Thereafter, there was partition between the family members and they submitted a joint wardy to the Revenue Authority for certifying mutation, on 21-3-1983. The same has been certified and the lands in question along with other lands, came to the share of late Ganapathi Bhat vide Annexure-B. Thereafter, his name has been entered in the Record of Rights till date. These material documents were very much available before the Competent Authority. But, the Land Tribunal, neither made any sincere efforts to find out as to whose name is found in the relevant records nor verified the latest Record of Rights maintained by the Tahsildar who is the custodian of the same being the Secretary of the Land Tribunal. He further submitted that the Land Tribunal has also not considered the objections filed by the petitioners and therefore, the impugned order is liable to be set aside.

4. Per contra, the learned Counsel for the 3rd respondent, inter alia, contended and justified the impugned order. He vehemently submitted that in regard to the reliance placed by the petitioners on the execution order, mutation sanction and also the name found in the RTC, the 3rd respondent is not a party to the same. He further submitted that respondent 3 being a tenant filed Form 7 for grant of occupancy rights and when the matter was pending adjudication before the Land Tribunal, the petitioners could have filed necessary application before the Tribunal for direction, Instead of that, they filed a complaint and with the help of the police authorities, removed the standing crop. In view of the same, there was no other option for respondent 3 except to file an application for appointment of receiver and the Land Tribunal, after considering the case made out by 3rd respondent, passed the impugned order appointing a receiver and therefore, no error as such is committed by the Land Tribunal.

5. The learned Government Advocate appearing for respondents 1, 2 and 4, fairly submitted that the ingredients for appointment of receiver are not forthcoming from the impugned order and therefore, this is a matter to be reconsidered by the Land Tribunal after affording opportunity to the petitioners and the contesting respondent 3.

6. I have heard the learned Counsel for the petitioners and the learned Counsels for the respondents at considerable length of time. I have perused the impugned

order carefully and reassessed the entire matter with the assistance of the learned Counsels appearing for the parties.

7. On the face of record, the impugned order is liable to be set aside. The Land Tribunal has not made any sincere efforts to find out the ground reality of the case though documentary evidence were very much available in the custody of the Tahsildar being the Secretary of the Land Tribunal. The reasons assigned by the Land Tribunal for appointment of receiver in respect of the lands in question are that the petitioners have taken police protection and removed the standing crop and in spite of giving sufficient opportunity, they have not made out any case for non-appointing the receiver in respect of the lands in question. These two reasons assigned by the Land Tribunal for appointment of receiver is contrary to the material available on the file. As rightly pointed out by the learned Counsel for the petitioners, in pursuance of the execution of the judgment and decree, these lands in question came to the share of the petitioners and they have been put in possession on 24-1-1970. Further, it reveals from the records that there was a partition and the lands in question fell to the share of late Ganapathy Bhat and the same was certified by the revenue authority on 21-3-1983. Thereafter, the name of late Ganapathi Bhat is entered in the relevant records till the agricultural year 2001-02 as found at Annexure-D to G. When these documents were available, the Land Tribunal ought not to have appointed receiver without considering the material on record. Further, the learned Counsel for the petitioners taken me through the statement made by the 3rd respondent on 12-5-1981 that about 4 years back, he left cultivation of the lands in question. He also given a statement on 13-3-1976 that about 30 years back, himself and another by name Bolagowda were cultivating the lands in question and he left cultivation 3 years back. These two material documents were very much available before the Land Tribunal. The Land Tribunal has not made any efforts to find out the facts of the case on hand and without application of mind, passed the impugned order appointing the receiver. The learned Counsel for the petitioners, to substantiate his case, placed reliance on the judgment of this Court in the case of A.S. Venkatanarasimhachar v. State of Karnataka and Ors. 1979(2) Kar. L.J. 70 wherein it is held that without there being any evidence adduced to displace the presumption arising from the entries in the RTC, the Tribunal cannot pass an interim order appointing a receiver. The order of the Tribunal must contain reasons to justify the appoint of the receiver, If the tenor of the law laid down by this Court is taken into consideration, these ingredients have not at all been evaluated by the Land Tribunal nor it ascertained the facts with documentary evidence which were very much available on the file. Therefore, I do not find any justification to sustain the order passed by the Land Tribunal.

8. Having regard to the facts and circumstances of the case and taking into consideration the factual and legal aspect of the matter as enumerated above, the impugned order is liable to be set aside.

9. Accordingly, the writ petition stands disposed of with the following directions:

(1) Writ petition is allowed. The impugned order dated 22-11-2002 in Case No. LRM.SR. 48C/10/765 is hereby set aside. The matter stands remitted back to the Land Tribunal for fresh consideration.

(2) The Land Tribunal is directed to afford opportunity to the petitioners and the 3rd respondent and decide the matter strictly in accordance with the relevant provisions of the Land Reforms Act and Rules.

(3) All contentions are left open.

10. The learned Government Advocate is permitted to file his memo of appearance within four weeks from today.