
(1983) 08 KAR CK 0003
In the Karnataka High Court
Case No : W.P. No. 2192 of 1976

Hafijabi

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 23-08-1983

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 5

Citation : (1984) 1 KarLJ 268

Hon'ble Judges : S. B. Rajasekhara Murthy, J;K. Jagannatha Shetty, J

Judgement

Jagnnatha Shetty, J.-This petition under Art. 226 is directed against the order of the Tahsildar of Yellapur dt. February 9, 1976 made under S. 58 of the Karnataka Land Reforms Act, 1961 ("Act").

2. The facts leading to the petition may, briefly, be stated:

Survey Nos. 76, 78 and 87 of Yellapur Village undisputedly belonged to the petitioner. A.K. Shanbhag, claiming to be the tenant cultivating those lands, made an application before the Land Tribunal, Yellapur, claiming occupancy rights in respect of those lands. The petitioner contested the said claim on the ground that there was no relationship el landlord and tenant as between the parties. The case of the petitioner was that the lands were given to A.K. Shanbhag by her husband only on "phalaguttige" and no lease was executed by A.K. Shanbhag. The Tribunal did not accept that contention. By order dt. November 26, 1975 the Tribunal held that A.K. Shanbhag was in possession of the lands under a lease, but that lease was contrary to the provisions of the Act. Since it was an illegal lease, A.K. Shanbhag could not claim occupancy right. With this conclusion, the Tribunal dismissed the application of A.K. Shanbhag.

3. Thereupon the Tahsildar, Yellapur, initiated proceedings against the petitioner under S. 58 of the Act. He issued notice calling upon the petitioner to show cause why the said lands should not be forfeited to the State Government. It was stated in the show cause notice that the Land Tribunal has recorded a finding in the proceedings under S. 45 of the Act that the lease executed by A.K. Shanbhag

on July 16, 1967 was in contravention of the provisions of S. 5 of the Act and therefore it was illegal and void and the lands shall be forfeited to the State as penalty for contravention of the Act. The petitioner resisted the action taken by the Tahsildar inter alia contending that A.K. Shanbhag was not a tenant and even otherwise S. 58 could not be invoked to forfeit the rights of the landlord since the lease in question was executed prior to March 1, 1974.

4. The Tahsildar, however, held that since the lease dt. July 16, 1967 executed by A.K. Shanbhag was contrary to the provisions of S. 5 of the Act, the right, title and interest of the petitioner in respect of those lands should be forfeited to the State Government by way of penalty. He also made an order that the said lands shall vest in the State Government free from all encumbrances.

Challenging the validity of the said order, the petitioner has approached this Court for relief under Art, 226.

5. Upon the contentions raised by the Counsel on both sides, the primary question that arises for consideration is whether S. 58 could be invoked to forfeit the right of the landlord who has leased the land prior to March 1, 1974, in contravention of the provisions of the Act. It seems to us that the answer to the question should be in the negative.

S. 5 of the Act reads:

"Prohibition of Leases, etc.-(1)Save as provided in this Act, after the date of commencement of the Amendment Act, no tenancy shall be created or continued in respect of any land nor shall any land be leased for any period whatsoever.

(2) Nothing in sub-sec (1) shall apply to a tenancy created or continued by a soldier or a seaman if such tenancy is created or continued while he is serving as soldier or a seaman or within three months before he became a soldier or a seaman.

(3) Every lease granted under sub-sec. (2) shall be in writing."

S. 58 of the Act provides:

"Vesting in the State Government of land leased contrary to the Act: (1) Where it appears to the Tahsildar that any person has leased land contrary to the provisions of this Act, he shall issue a notice to such person to show cause within fifteen days from the date of service of the notice why the land leased should not be forfeited to the State Government as penalty for contravention of the Act.

(2) If the Tahsildar on considering the reply or other cause shown is satisfied that there has been such a lease he may, by order, declare that the right, title and interest of such person in the land shall be forfeited to the State Government as penalty. Thereupon the land shall vest in the State Government and the Tahsildar may take possession thereof summarily evicting any person occupying it. No amount shall be payable in respect of such land.

(3) Such land shall be disposed of in accordance with the provisions of S. 77."

S. 5 and 58 have been substituted by Act 1 of 1974 with effect from March 1, 1974. Apparently S. 5 prohibits creation of tenancy after March 1, 1974 in respect of any Agricultural Land. The exception provided, however, is only in favour of a soldier or a seaman. He could create the tenancy or continue the tenancy. S. 58, therefore, must be read with reference to S. 5. If any person creates a tenancy in disregard to the prohibition contained under S. 5, then the Tahsildar under S. 58 shall issue notice to such person calling upon him to show cause why the land leased should not be forfeited to the State Government by way of penalty for contravention of the provisions of the Act. If the

Tahsildar is not satisfied with the reply given to such show cause notice or other cause shown, and if he comes to the conclusion that there has been a lease in contravention of the provisions of the Act, he may by order declare that the right, title and interest of such person in the land shall be forfeited and the land shall vest in the State Government.

6. It may be necessary to recall, in this context, that under S. 44, all lands held on lease prior to March 1, 1974 shall vest in the State Government. Whether there has been a lease, and if so, who is entitled to occupancy right, are required to be determined by the Tribunal under S. 48-A of the Act. S. 58, therefore, obviously can have no application to the lease executed prior to March 1, 1974.

7. The lease in question was said to have been executed on July 16, 1967. The order of the Tahsildar made under S. 58 of the Act, cannot therefore, be sustained.

8. In the result, the rule is made absolute and the impugned order of the Tahsildar is quashed.

The parties must pay and bear of their own costs.