

(2016) 03 KAR CK 0062
In the Karnataka High Court
Case No : Writ Petition No. 16434/2006 (LR)

Hanumanth Yellappa Topkar

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Citation : (2016) 03 KAR CK 0062

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : B.M. Patil for S.R. Shinde, Advocate, for the Appellant; Ravi V. Hosamani, AGA, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—1. The petitioner in this writ petition has sought for quashing the order dated 28.07.2006 in No. Nandihalli/SR/134+137 passed by the Land Tribunal, Belgaum, rejecting the application filed in Form No. 7 for grant of occupancy rights in respect of the land bearing Sy. No. 75/3 measuring 1 acre 21 guntas situated at Nandihalli village, Belgaum taluk and district.

2. The grievance of the petitioner in this writ petition is that since 100 years, the petitioner and his ancestors are in possession of 1 acre 21 guntas of land in Sy. No. 75/3 of Nandihalli village. The land in question was taken on lease from Prahlad Kulkarni and the petitioner is paying 5 bags of rice to the landlord. In view of coming into force of the Karnataka Land Reforms Act, the petitioner filed Form No. 7 for grant of occupancy rights. The Land Tribunal by its order dated 14.09.1981 granted occupancy rights in favour of the petitioner. Being aggrieved by the said order, the landlord filed W.P. No. 31403/1991 before this Court. This Court remanded the matter to the Land Tribunal for fresh enquiry. Once again on 31.12.1992, the Land Tribunal granted occupancy rights in favour of the petitioner. The said order was challenged before this Court once again in W.P. No. 6892/1993 by the respondents 3 to 5 herein. On 15.03.2002, this Court allowed the writ petition, set aside the order passed by the Land Tribunal and remanded

the matter with specific direction to verify the mutation entries and other relevant records and pass orders after hearing both the parties. After remand, notice was issued to both the parties and both the parties were represented. An opportunity of hearing was given to the petitioner to lead evidence. The petitioner has filed the affidavit evidence on 03.06.2005. The landlord also produced necessary materials to dispel the contention of the tenant. The Land Tribunal after giving sufficient opportunity to both the parties by its order dated 28.07.2006 rejected the application filed by the petitioner holding that the petitioner-tenant has not produced any document to show that as on 01.03.1974, he was in possession and cultivating the land in question, except his oral assertion that he was a tenant for more than 100 years and cultivating the land. On the other hand, the landlord has produced sufficient documents to establish the same. In view of the same, the Land Tribunal after giving sufficient opportunity to both the parties rejected Form No. 7 filed by the petitioner. Being aggrieved by the same, the present writ petition has been filed.

3. Sri B.M. Patil, learned counsel appearing for Sri S.R. Shindhe, for petitioner contended that the order passed by the Land Tribunal is contrary to law and that no opportunity has been given to the petitioner to lead his evidence. Further, though the request made to the Land Tribunal to provide an opportunity to lead evidence of the neighbours of the land, no opportunity has been given. Further, the order passed by the Land Tribunal is not a speaking order and no cogent reason has been assigned to reject Form No. 7 filed by the petitioner. Further, the order passed by the Land Tribunal is nullity in the eye of law, all the members have not signed the order passed by the Land Tribunal and it signed by only two members and the Chairman has passed the order. Order impugned is in violation of Rule 17 (8) of the Karnataka Land Reforms Rules and sought for setting aside the same. In support of his contention, he has relied upon the judgment reported in ILR 2008 KAR 1481 in the case of VIJAYA BANK, BY ITS CHIEF MANAGER v. THE SECRETARY TO THE GOVERNMENT OF KARNATAKA, REVENUE DEPARTMENT AND OTHERS.

4. Sri Ravi V. Hosamani, learned Additional Government Advocate appearing for the respondents-State Government has produced the original records and contended that for grant of occupancy rights, basically the land has to be vested with the State Government and the land must be a tenanted land as on 01.03.1974. The Land Tribunal after verifying the records has found that the tenant has not produced any documents to show that the petitioner was a tenant as on 01.03.1974 and cultivating the land. On the other hand, the landlord has produced mutation entries, which clearly disclose that the mode of cultivation has been shown as "one" in column No. 12 (2). That means, the landlord was personally cultivating the land. The revenue records produced by the landlord clearly discloses that he has paid the revenue for all these years. Further, he has raised sugar cane crop and supplied sugar cane to the sugar factories. A receipt for having supplied sugar cane to the sugar factories has also been produced. The landlord has also taken crop loan from the State Bank of India for the

purpose of growing sugar cane. Taking all these aspects into consideration, the Land Tribunal has passed the impugned order. In terms of the direction issued by this Court in W.P. No. 6892/1993, the order has been passed. The order passed by the Land Tribunal is a speaking order. On the date of hearing, three members of Land Tribunal were present and they have signed the order. The due procedure has been followed as per Rule 17 (8) of the Rules. The petitioner has not made out a case and sought for dismissal of the writ petition.

5. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the impugned order passed by the Land Tribunal and other relevant records.

6. The records clearly disclose that the petitioner had filed form No. 7 for grant of occupancy rights in respect of the land bearing No. 75/3, measuring 1 acre 21 guntas situated at Nandihalli village, Belgaum Taluk. On an earlier occasion, the Land Tribunal has granted occupancy rights in favour of the tenant. The said order has been set aside by this Court. In the writ petition filed by the landlord in W.P. No. 6892/1993, this Court while quashing the order passed by the Land Tribunal dated 31-12-1992 and while remanding the matter to the Land Tribunal, observed that "the Land Tribunal in the present case except stating the evidence of both sides and even after noting that the revenue records shows that mode of cultivation as (1) in column No. 12 which prima facie indicates as "self-cultivation" ". The Tribunal has lost sight of the revenue records and necessary documents produced. This Court directed the Land Tribunal to look into the revenue records and other relevant records and pass orders. This Court further directed the Land Tribunal to find out whether the applicants are tenants in possession and enjoyment of the land as on 1-3-1974. After remand, the Land Tribunal has given opportunity to both the parties to lead evidence. The petitioner has filed affidavit evidence on 3-6-2005. No request has been made to examine the neighbours to establish his case. The landlord has produced the necessary documents to show that he was cultivating the land as on 1-3-1974 and he was raising sugar cane crop and supplying the same to the sugar factories. Receipts for having supplied the sugar cane to the sugarcane factory and the receipts for having paid the land revenue are also produced. Further he has produced the documents to show that he was paying levy to the State Government. Further he has taken crop loan for the purpose of raising sugarcane from the State Bank of India. The mutation entries also clearly establishes the mode of cultivation as (1) i.e. self-cultivation in column No. 12. Taking into consideration all these aspects of the matter, the Land Tribunal has found that the land bearing Sy. No. 75/3 measuring 1 acre 21 guntas situated at Nandihalli village is not vested with the State Government as on 1-3-1974 and it is not a tenanted land. The landlord himself was cultivating the said land. Though the petitioners claimed that they were cultivating the land for more than 100 years, no document has been produced to substantiate the same. One of the tenants himself has admitted in his evidence that he has no document to prove that he was giving 5 bags of rice to the landlord every year. It is the 3rd round of

litigation. Hence, the Land Tribunal has to find out whether the petitioner was a tenant as on 1-3-1974, on the basis of necessary documents. However, the tenant has not produced any documents to show that he was a tenant as on 1-3-1974, on the other hand, the landlord has produced necessary documents to prove that as on 1-3-1974 he was cultivating the land and raising sugarcane, paying revenue and levy to the State Government. All these documents clearly establish that the land in dispute is not a tenanted land.

7. It is the contention of the petitioner that the order passed by the Land Tribunal is nullity in the eye of law since all the members who were present on that day have not signed the order passed by the Land Tribunal cannot be accepted. As on the date of passing the order, three members along with the Chairman were present and they have signed the order. Hence, the order passed by the Tribunal is in conformity with Rule 17(8) of the Karnataka Land Revenue Rules. The judgment relied upon by the petitioner is not applicable to the facts of the present case. In the said case, five members heard the case and only three members have signed the order, other two have not signed the order. There is no dispute that three members were present on the date of passing of the order and they have signed the order.

8. I find that there is no infirmity or irregularity in the order passed by the Land Tribunal. The petitioner has not made out a case for interference with the order passed by the Land Tribunal and hence the appeal is dismissed.