

(1988) 07 KAR CK 0053
In the Karnataka High Court
Case No : W.P. No. 922/1988

Hanumantha Durga Naik

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-07-1988

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a

Citation : (1988) 3 KarLJ 294

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the order dated 16th May, 1976 passed by the Land Tribunal, Honnavar in No. TNC.SR. 61/230-Annexure-E rejecting the application filed by the petitioner for grant of occupancy right in the land bearing Survey No. 400/2 measuring 3 acres 17 guntas and 2 guntas phot kharab of Salkod village. The Tribunal has rejected the application of the petitioner on the ground that inspite of the service of notice, the petitioner remained absent and also on the basis of the revenue records pertaining to the land in question. The revenue records revealed that the land was in the possession of, and vested in the State Government.

2. Learned Government Pleader has secured the records and made them available. Respondents 3 to 5 are represented through a Counsel. They have filed statement of objections. Along with the statement of objections, which is served on the petitioner's Counsel on 23-6-88, a copy of the order dated 10-8-83 passed by the Assistant Commissioner, Kumta Sub Division, Kumta in No.LRM. OR. 493/82-83 and also a copy of the mutation entry No. 5357 made on 27-8-1983 and the delivery receipt dated 27-8-1983 are produced as annexures R.1 to R.3 respectively. The case of respondents 3 to 5 is that the possession of the land in question was taken over by the State Government in exercise of its power under Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Bombay Act) in the year 1953 itself, and a mutation entry No. 3410 dated 20th September, 1953 was also made in this

regard. That on taking possession of the land in question, it was leased by the Tahsildar for a period of 10 years to the petitioner and thereafter the land was released in favour of respondents 3 to 5 only in the year 1983. It is submitted on behalf of respondents 3 to 5 that the land did not vest in the State Government under Section 44 of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as the Act) inasmuch as it was under the management of the State Government since the year 1953 and the management of the land assumed under Section 65 of the Bombay Act resulted in vesting the land in the State Government. Therefore, the question of creating any tenancy in respect of the land belonging to the Government did not arise. Hence, the petitioner was not entitled to the benefit of the provisions contained in Section 48A of the Act.

3. On the contrary, Sri. Nayak, learned Counsel appearing for the petitioner submits that the statement of objections is filed only on 23-6-1988, along with certain annexures -R.1 to R.3. Therefore, further time may be granted to him to meet the averments contained in the statement of objections and the documents produced along with it. If the documents produced were to be the private documents, there was no difficulty whatsoever in granting time to the petitioner. The documents produced are the order passed under the Bombay Act and the mutation entry and delivery receipt which had come into existence pursuant to delivery of possession to respondents 3 to 5 by the State Government. In fact, the petitioner ought to have mentioned in the petition about the taking over of the land under Section 65 of the Bombay Act in the year 1953. The petitioner was fully aware of this, because he came on the land only after the management of the land was taken over by the State Government and the land vested in it. Therefore, it is a case, in which the petitioner has suppressed the facts which were fully known to him. Even the order of the Tribunal also made a reference to this. In form No.7 filed by the petitioner, on 9-8-1974, he has stated that for the last 16 years, he had been cultivating the land as a tenant. That period clearly falls during the period when the land was under the Management of the State Government. Hence, the time sought for by the petitioner is refused.

4. Now the question that arises for consideration is as to in a case where the management of the land was taken over by the State Government under Section 65 of the Bombay Act in the Year 1953 and the possession of the State Government continued till the year 1983, whether any tenancy could be considered to have been created during this period so as to attract the provisions of Sections 44 and 48A of the Act. Having regard to the provisions contained in Section 65 of the Bombay Act, there is no difficulty in determining this point. Section 65 of the Bombay Act read thus:

"65(1) If it appears to the State Government that for any two consecutive years, any land has remained uncultivated or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control the State Government may, after making such inquiry as it thinks fit, declare that the management of

such land shall be assumed. The declaration so made shall be conclusive.

(2) On the assumption of the management, such land shall vest in the State Government during the continuance of the management and the provisions of Chapter IV shall mutatis mutandis apply to the said land:

Provided that the manager may in suitable cases give such land on lease at rent even equal to the amount of its assessment:

Provided further that, if the management of the land has been assumed under sub-section (1) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chapter 11 or III, as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed." (emphasis supplied)

From sub-section (2) thereof, it is clear, that on the assumption of the management the land in question stood vested in the State Government. It is also further clear that during the continuation of such management, only the provisions of Chapter IV of the Bombay Act which dealt with "Management of estates held by land-holders" alone were applicable. The other provisions of the Bombay Act were not applicable. Therefore, the lease created during the period when the land in question was under the management of the State Government did not attract the other provisions of the Bombay Act except those contained in Chapter IV. The possession of the land in question was assumed under Section 65 of the Bombay Act, as it is clear from Annexure-R-1, because the owner did not cultivate it and allowed it to remain as pada. Thus, on the date of the possession of the land was taken over and management of the land in question was assumed under Section 65 of the Bombay Act, it was not in the possession of a tenant.

5. On 2-10-1965, when the Act came into force, the land continued to vest in the State Government and continued under the management of the State Government. As far as the land belonging to the State Government was concerned, there was no question of creating any tenancy or claiming benefits of the provisions contained in Section 44 and 48A of the Act. Section 107 of the Act clearly provides that:

"Subject to the provisions of Section 110 of the Act, nothing in this Act, except Section 8, shall apply to lands belonging to Government or belonging to or held on lease by or from a local authority."

In the instant case, the petitioner came to be inducted on the land during the period when the land had vested in the State Government under Section 65 of the Bombay Act. It was during this period, only the land in question was held on lease by the petitioner. For such a lease, the provisions of the Act did not apply except Sections 8 and 110. Section 8 of the Act relates to the rate of rent. Section 110 relates to the power of the State Government to exempt certain lands from the purview of the Act. Therefore, a reading of Section 65 of the

Bombay Act and 107 of the Karnataka Land Reforms Act makes it clear that the provisions of the Karnataka Land Reforms Act except Sections 8, 110 and 107 as on 1-3-1974, were not applicable to the land in question, consequently, it did not vest in the State Government under the Act. Therefore, there was no question of granting any occupancy right to the petitioner. Hence, the conclusion reached by the tribunal that the land was in the possession and management of the State Government and as such there was no question of creating any tenancy, is correct and it does not call for interference.

For the reasons stated above, the writ petition fails and the same is dismissed.

Sri. Udayashankar, learned Government Pleader is permitted to file his memo of appearance in two weeks.