

(2003) 02 KAR CK 0056
In the Karnataka High Court
Case No : Writ Appeal No. 2657 of 1999

Hanumanthaiah and Others

APPELLANT

Vs

The Land Tribunal and Others

RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 4
Karnataka Tenancy Act, 1952 — Section 4
Karnataka Village Offices Abolition Act, 1961 — Section 5, 8
Mysore Tenants (Temporary Protection from Eviction) Act, 1961 — Section 7

Citation : (2003) ILR (Kar) 1410 : (2003) 3 KarLJ 482 : (2003) 2 KCCR 121 SN

Hon'ble Judges : N.K. Jain, C.J.; V.G. Sabhahit, J

Bench : Division Bench

Advocate : B.T. Parthasarathy and Sannegowda, for the Appellant; Sateesh M. Doddamani, AGA for R1 and R4, Subramanya and Thipparaju for R3 and C. Shankara Reddy and S. Channarayana Reddy for R2, for the Respondent

Final Decision : Dismissed

Judgement

Jain, C.J.—This appeal is directed against the order dated 16.9.1998 passed in W.P.No. 14513/1992, wherein the learned Single Judge has allowed the Writ Petition and set aside the order dated 5.4.1988 passed by the Land Tribunal, Bangalore North Taluk, Bangalore, in LRF. No. 1027/74-75, granting occupancy rights in respect of 23 guntas of land in favour of Hanumanthaiah, whose L.Rs. were impleaded as Respondents 2(a) to 2(c) in the Writ Petition.

2. The brief necessary facts as stated are, that certain service inam lands in Sy.No. 19/1, measuring 3 acres 01 guntas, Sy.No. 34, measuring 29 guntas and Sy.No. 19/4, measuring 1 acre 5 guntas and Sy.No. 19/3, measuring 1 acre 26 guntas of T. Dasarahalli Village, Yeshwanthapura hobli, Bangalore North Taluk, were attached to the Shanbhogi Office of T. Dasarahalli Village. The said lands were auctioned by the Tahsildar under Panchasal gutta and the rents were collected, which were deposited in the treasury for the benefit of the holder of the office. The term of the lease period of the lands expired on 19.6.1962, and

thereafter also the appellant continued to be in possession of the said lands. After coming into force of the Land Reforms Act, 1961 (for short, "the Act"), as amended in 1974, w.e.f. 1.3.1974, Hanumanthaiah, appellants' father, and two other tenants Rangathimmaiah and Rangaiah filed declarations in Form No. 7 seeking grant of occupancy rights. The occupancy rights were granted to all the 3 applicants on 15.3.1979. Aggrieved by that order respondent Nos. 2 and 3 filed petitions in W.P.Nos. 1915 to 1918/1980, which were allowed on 22.2.1984 remanding the matter for disposal according to law. Thereafter, the Land Tribunal on 5.4.1988 conferred occupancy rights in favour of all the 3 applicants; and the occupancy rights granted in favour of Hanumantaiah was to the extent of 23 guntas of land in Sy.No. 19/4. Appeals were filed by respondents 2 and 3 before the Land Reforms Appellate Authority. On abolition of the said Authority respondents 2 and 3 filed Civil Petition before the High Court and they were converted into Writ Petition No. 14513/ 1992. The claims of other two respondents were settled out of Court.

3. On consideration, the learned Single Judge allowed the Writ Petition quashing the order dated 5.4.1988. A review petition in C.P.No.162/1999, wherein the learned Single Judge by his order dated 10.3.1999 directed that the impugned order shall not be given effect for a period of four weeks in order to enable the petitioners to prosecute the correct remedy. Hence the present Writ Appeal.

4. Learned Counsel for the appellants submits that the learned Single Judge erred in not appreciating the facts in right perspective that the disputed land is a service inam land attached to the office of the Shanbhog of the Village. Once the said land was auctioned by the Tahsildar to Hanumantaiah, he can be held to be a "deemed tenant", who even after expiry of lease period on 19.6.1962 was in possession of the land, and the learned Single Judge erred in not considering Section 4 of the Tenancy Act, 1952, as well as Section 7 of the Mysore Tenants (Temporary Protection from Eviction) Act, 1961 and observing that the protection given to the tenants under the said provisions was not available to the appellants. He submits that as a matter of fact, the exemption is available only to the lands belonging to Government, and therefore the learned Single Judge erred in not declaring the applicants as deemed tenants and that they are lawful tenants. He also submits that the State through its revenue authorities is bound to protect the interests of those who are entitled to hold the office, and the learned Single Judge erred in observing that the panchasalagutta was granted by the revenue officers whose source of authority is not known, and erred in not granting the deemed tenancy.

5. Learned Counsel for the 2nd respondent submits that the learned Single Judge has appreciated the facts and law in the right perspective and there is no error or illegality in the order. Learned Counsel submits that the land in Sy.No. 19/4 was attached to the office of the Shanbhog, a Village Officer, and the Tahsildar had no jurisdiction to grant Panchasalagutta lease in favour of the applicant in 1957-58 for a period of 5 years. Thereafter, no lease was granted in favour of the

applicant and the land vested with the Government, and as a matter of fact the applicant had no right to cultivate the land when the land vested with the Government and the learned Single Judge has rightly come to the conclusion that in the absence of any lawful grant of lease after the expiry of the period of earlier lease, is unlawful. He submits that the learned Single Judge has observed that no material was produced either before the Land Tribunal or before him to show that there was lease. He submits that the appellant cannot take advantage of Section 8 of the Act and Karnataka Village Offices Abolition Act, (for short, "KVOA Act") which came into force from 1.2.1963 and under this provision an applicant cannot be held to be a deemed tenant unless he holds the land lawfully. He also relied on the decision of the Apex Court in Bhudan Singh and Another Vs. Nabi Bux and Another, , wherein it has been held that it is necessary that the deemed tenant should be cultivating the land lawfully.

6. We have considered the contentions of the parties, perused the decisions relied upon and the material on record.

7. The material on record clearly shows that the applicant cannot be treated to be a deemed tenant within the meaning of Section 4 of the Karnataka Land Reforms Act, 1961. Though it is the contention of the learned Counsel appearing for appellants that the applicant was in possession and cultivation of the land in question even prior to the grant of Panchasalagutta in the year 1957-58, which expired in 1962-63 and thereafter, he has continued to be in lawful possession of the same, the material on record does not substantiate the said contention. There is no material whatsoever to show that the applicant was the tenant even prior to the grant of Panchasalagutta by the Tahsildar. There is also no material on record to show as to under what circumstances the Panchasalagutta was granted by the Tahsildar even though the land was attached to the office of the Shanbhog and that too without the consent of the holder of the office. At any rate, the lease was not granted by the holder of the office. Panchasalagutta was for a period of five years and the same came to an end in the year 1962.

8. So far as the argument about taking advantage of Section 8 of the Karnataka Village Offices Abolition Act is concerned, it suffices to say that the applicant is not in possession of the land and Section 8 requires that to claim as a tenant under Tenancy law, the applicant should be a tenant on the date on which the Act came in force i.e., 1,2.1963 and there is no dispute that panchasala gutta was not renewed by the Tahsildar and therefore, after 1962 there was no lease in favour of the applicant. The applicant has not produced any material to show that after the expiry of the lease, he has continued to cultivate the land as a tenant either by paying gutta or the lease amount either to the holder of office or the Government. Further, the evidence of the applicant and his witness before the tribunal would show that they have pleaded ignorance as to who is the landlord of the land and as to who was the holder of the office and in what capacity the applicant was cultivating the land after the expiry of the lease. Under the circumstances, the argument is not sustainable.

9. The learned Single Judge has held that the provisions of the Mysore Tenants (Protection from Eviction) Act, 1961 and Land Revenue Code are not helpful to the applicant in the present case and Section 8 of the Karnataka Village Offices Abolition Act, would also not come to the rescue of the applicant and in absence of any material on record to show that he was cultivating the land as a tenant as on 1.3.1974, the question of conferring occupancy rights by the Land Tribunal under the Karnataka Land Reforms Act, would not arise. Learned Single Judge has relied upon the decision of this Court in the case of Shree Hanumantha Devaru Vs. Munihanumantharayappa and Others, and has considered in detail the evidence of the applicant and the witness examined on his behalf, who have clearly stated that they were not paying either gutta or land revenue to the Government and they did not know as to who were the landlord and holder of the office. Under these facts and circumstances of the case, no useful purpose will be served by remitting the matter to the Tribunal as contended. Further, the material on record shows that after vesting of the land, the same was regranted u/s 5 of the Karnataka Village Offices Abolition Act on 30.5.1970 in favour of the holder of the office with permission to alienate the property and the same has been purchased by the writ petitioners, who have got themselves impleaded in the proceedings before the Land Tribunal.

10. In the light of the above said material on record, the decisions relied upon by the learned Counsel appearing for the appellants are not helpful to them in the present case.

11. Accordingly, we hold that there is no error or illegality in the impugned order passed by the learned single Judge so as to call for interference in this appeal. This appeal is dismissed.