

(2005) 12 KAR CK 0028

In the Karnataka High Court

Case No : Land Reforms Revision Petition No's. 3033 and 6069 of 1989

Hariba (Deceased) by L.Rs.

APPELLANT

Vs

Land Tribunal and Others

RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Karnataka Land Reforms Rules, 1974 — Rule 17

Citation : (2006) 1 KarLJ 511

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

Bench : Single Bench

Advocate : B. Rudragowda, for L.R.R.P. No. 3033 of 1989 and for Respondent Nos. 2B, 2C and 2E in L.R.R.P. No. 6069 of 1989 and Padmvathi Savanur, for L.R.R.P. No. 6069 of 1989 and Respondent Nos. 2A to 2E in L.R.R.P. No. 3033 of 1989, for the appearing parties; A.R. Sharadamba, High Court Government Pleader for Respondent No. 1 in L.R.R.P. No. 3033 of 1989 and 1 and 4 in L.R.R.P. No. 6069 of 1989, for the Respondent

Judgement

N.K. Patil, J.—Petitioner in first revision petition, Sri Hariba, since deceased, is represented by his legal representatives. The said deceased Hariba, questioning the legality and validity of the order passed by the District Land Reforms Appellate Authority, Bidar, dated 29th March, 1989 in Proceedings No. DALT BDR 35/86-87, reversing the order of the Land Tribunal, Basavakalyan in proceedings No. TBK LRM.CR. 1975-76/9/475, dated 1st June, 1987, has presented the instant L.R.R.P. No. 3033 of 1989.

2. Petitioner in second revision petition Sri Dhulappa, since deceased is also represented by his legal representatives. The said Dhulappa, questioning the legality and validity of the order dated 29th March, 1989 is proceedings No. DALT BDR 35/86-87 on the file of the District Land Reforms Appellate Authority, Bidar, confirming the order dated 1st June, 1987 in proceedings No. TBK/LRM/CR/1975-76/9/475 on the file of the Land Tribunal, Basavakalyan, but so far as it relates to rejecting Sri Dhulappa's claim in respect of an extent of 05 acres 21 guntass in Sy. No. 31 situate at Parthapur Village, Basavakalyan Taluk, Bidar

District, has presented the instant L.R.R.P. No. 6069 of 1989.

3. These two petitions arise out of the common order passed by Land Tribunal, Basavakalyan and also the common order passed by the District Land Reforms Appellate Authority, Bidar.

4. The deceased petitioner in first revision petition-Sri Hariba and deceased petitioner in second revision petition-Sri Dhulappa, now both represented by their legal representatives, claiming to be joint tenants, have filed the application in Form 7 for registration of occupancy rights before the Land Tribunal, Basavakalyan. The deceased Hariba had filed the application in Form 7, dated 31st December, 1974 in respect of Sy. No. 30 measuring 4 acres 1 guntas and Sy. No. 31 measuring 14 acres 37 guntas situate at Parthapur Village, the original of which is available in the original records at red ink page 198 and from the same, it is clearly evident that, he has not claimed any right so far as Sy. No. 53 is concerned. Whereas in Form 7, dated 19th August, 1974 filed by-deceased Dhulappa seeking registration of occupancy rights, it can be seen that, he has filed in respect of all the three survey numbers, viz., Sy. No. 53 measuring 8 acres 26 guntas, Sy. No. 30 measuring 11 acres 22 guntas and Sy. No. 31 measuring 15 acres 37 guntas, situate at Parthapur Village, the original of which is also available in the original records at red ink page 113. Both the applications filed by deceased Hariba and deceased Dhulappa, petitioners in both the revision petitions, had come up for consideration before the Land Tribunal, Basavakalyan on 31st July, 1981. The Land Tribunal, by the said order granted occupancy rights in favour of deceased Hariba-petitioner in first revision petition in respect of Sy. No. 30 measuring 2 acres 1 gunta and Sy. No. 31 measuring 7 acres 19 guntas and in favour of deceased Dhulappa-petitioner in second revision petition, the Land Tribunal ordered for registration of occupancy rights in respect of Sy. No. 53 measuring 8 acres 36 guntas, Sy. No. 30 measuring 2 acres and Sy. No. 31 measuring 7 acres 18 guntas, respectively. Being aggrieved by the said order passed by the Land Tribunal, Basavakalyan, deceased Dhulappa, filed a writ petition before this Court in Writ Petition No. 20162 of 1981. The said writ petition filed by deceased Dhulappa was allowed by this Court by its order dated 31st July, 1984 and the order passed by Land Tribunal, Basavakalyan, dated 31st July, 1981 was set aside and the matter was remitted back to Land Tribunal, Basavakalyan, for reconsideration fresh and in strict compliance of requirement of Rule 17 of the Karnataka Land Reforms Rules, 1974. After remand, the Land Tribunal, Basavakalyan, took up the matter for reconsideration on 1st June, 1987 and registered the occupancy rights in favour of deceased Hariba the petitioner in first revision petition in respect of Sy. No. 53, measuring 8 acres 36 guntas (which Sy. No. was not claimed at all by him) and Sy. No. 30 measuring 4 acres 1 gunta, totally measuring 12 acres 37 guntas situate at Parthapur Village; and in favour of deceased Dhulappa-petitioner in second revision petition, it granted occupancy rights in respect of Sy. No. 31 measuring 14 acres 37 guntas situate at Parthapur Village. Being aggrieved by the order passed by the Land Tribunal, Basavakalyan, dated 1st June, 1987, the deceased petitioner in second revision

petition i.e., Sri Dhulappa, filed an appeal on the file of the District Land Reforms Appellate Authority, Bidar (hereinafter called the "Appellate Authority") and the same was numbered as DALT.BDR.35/86-87. The said appeal had come up for consideration before the Appellate Authority on 29th March, 1989. The Appellate Authority, after appreciation of oral and documentary evidence, in strict compliance of the mandatory provisions of the Act and the Appellate Authority, has passed the order dated 29th March, 1989, allowing the appeal in part and modifying the order passed by Land Tribunal, Basavakalyan. The Appellate Authority granted occupancy right to appellant-Dhulappa in Sy. No. 30 measuring 4 acres 1 gunta and in Sy. No. 53 measuring 8 acres 36 guntas of Parthapur Village and confirmed the order passed by the Land Tribunal, Basavakalyan in favour of deceased Dhulappa, in respect of an extent of 14 acres 37 guntas in Sy. No. 31 and set aside the order of the Land Tribunal insofar as granting occupancy rights to deceased Hariba in respect of Sy. Nos. 30 and 53 was concerned. Being aggrieved by the order passed by Land Tribunal as well as the Appellate Authority, as stated above, deceased petitioner Sri Hariba and deceased petitioner Sri Dhulappa, both have presented the instant revision petitions.

5. I have heard learned Counsels appearing for both the parties and the learned Government Pleader appearing for respondents. After careful evaluation of the orders passed by the Land Tribunal, Basavakalyan as well as the Appellate Authority and after evaluation of the original records available on file, it emerges on the face of the records and the orders passed by both authorities that, both the authorities have committed an error of law much less material irregularity and proceeded to pass the orders contrary to the oral and documentary evidence and other material available on file. It is significant to note here itself that, in Form 7 filed by deceased Hariba, which is available at red ink page 198 in the original records, it can be seen that, he had claimed occupancy rights only in respect of Sy. Nos. 30 and 31 of Parthapur Village and there was no claim as such made by deceased Hariba the petitioner in first revision petition in respect of Sy. No. 53. The Land Tribunal, Basavakalyan, in the year 1981, had rightly registered occupancy rights in favour of deceased Dhulappa in respect of Sy. No. 53. Subsequently, the Appellate Authority also has granted the occupancy rights in respect of Sy. No 53 in favour of deceased Dhulappa, setting aside the order passed by Land Tribunal after remand. Therefore, the question of considering and reopening the case once again by the Land Tribunal, Basavakalyan and registering occupancy rights in favour of deceased Hariba in respect of Sy. No. 53 measuring 8 acres 36 guntas does not arise especially when deceased Hariba has made no such claim in respect of Sy. No. 53 in Form 7 filed by him. Therefore, the Appellate Authority has rightly conferred occupancy rights in respect of Sy. No. 53 measuring 8 acres 36 guntas in favour of deceased Dhulappa-petitioner in second revision petition. Hence, interference by this Court is uncalled for nor do I find any good grounds or justification to interfere in the order passed by the Appellate Authority, so far as Sy. No. 53 is concerned.

6. However, so far as Sy. No. 30 measuring 4 acres 1 gunta and Sy. No. 31,

measuring 14 acres 37 guntas are concerned, the Land Tribunal has registered occupancy rights in favour of deceased Hariba in respect of Sy. No. 30 measuring 4 acres 1 gunta and rejected the claim of deceased Dhulappa in respect of the said survey number; and in respect of Sy. No. 31, it rejected the claim of Hariba and granted occupancy rights in favour of deceased Dhulappa to an extent of 14 acres 37 guntas out of large extent. The petitioner in second revision petition, Sri Dhulappa being aggrieved by the said order passed by Land Tribunal, Basavakalyan, has filed an appeal before the District Land Reforms Appellate Authority, Bidar. The Appellate Authority, by its order dated 29th March, 1989 has registered occupancy rights in Sy. No. 30, measuring 4 acres 1 gunta and confirmed the occupancy rights granted by Land Tribunal in favour deceased Dhulappa in Sy. No. 31 measuring 14 acres 37 guntas and rejected the claim of deceased Dhulappa in respect of an extent of 5 acres 21 guntas in Sy. No. 31. Both the authorities have committed an error much less material irregularity in passing the impugned orders. It is manifest on the face of the original records available on file that, on the basis of the declaration filed by deceased Hariba and deceased Dhulappa, the Tahsildar, Secretary of the Land Tribunal, Basavakalyan, after scrutinization, has submitted the report in case No. KLR.S.R.TBK.LRF.9/475/75-76 which is available in the original records. In the said report, he has given the particulars stating that, in the RTC extract, from the agricultural years 1957 to 1961, in respect of Sy. No. 30 measuring 1 acre 1 gunta, the names of deceased Hariba and deceased Dhulappa are found; and in respect of Sy. No. 31, measuring 14 acres 37 guntas, for the agricultural year 1962, the name of deceased Dhulappa is found; for the agricultural year 1963, the name of deceased Hariba is found; for the agricultural year 1964, the names of deceased Dhulappa and deceased Hariba are found; for the agricultural years 1965 to 1973, the names of deceased Dhulappa and deceased Hariba are found; and from the agricultural years 1973-74 to 1977-78, the names of deceased Dhulappa, Govinda Rao and deceased Hariba are found. In the next page at red ink page 30, the scrutiny sheet shows that, as per RR entries, in respect of Sy. Nos. 30 and 31 situate at Parthapur Village, for the agricultural years 1965 to 1973, the names of deceased Hariba and deceased Dhulappa are mentioned. Further, the Appellate Authority has committed an error in not appreciating the oral evidence adduced by deceased Hariba himself. To substantiate his claim before the Appellate Authority, the deceased Hariba has also examined several independent witnesses namely, Shivappa, Syed Babu, Shabbir Miya and Ranga Rao including himself, i.e., R.W. 1 to R.W. 6 excluding R.W. 2. All of them have stated that, deceased Hariba and deceased Dhulappa, both the revisional petitioners herein were cultivating the land in Sy. Nos. 30 and 31 jointly since 30 to 35 years. In spite of the said evidence given by the adjacent landowner and the independent witnesses in favour of deceased Hariba, the claim of deceased Hariba has been rejected on the sole ground that, he has filed O.S. No. 209 of 1970 for perpetual injunction, restraining the deceased Dhulappa-petitioner in second revision petition and the said original suit has been dismissed. Hence, it shows that, as on 1st March, 1974, he was not cultivating the land in question as

tenant and there is no whisper regarding the entry found prior to 1963-64 and both the authorities have given much importance to agricultural years 1970-71 to 1973-74 which stands in favour of deceased Dhulappa. The said entry found in favour of deceased Dhulappa is on the basis of the order passed by Special Deputy Commissioner, wherein the deceased Dhulappa has purchased the right of cultivation in auction and thus his name has been entered in pursuance of the order passed by the Special Deputy Commissioner. It is duty cast on the Appellate Authority to look into all the entries found in the relevant records as on 1st March, 1974 and three years prior to that date i.e., 1970-71 to 1973-74 before granting occupancy rights. This aspect of the matter has not been looked into nor considered nor the material available on record referred above has been evaluated in detail. R.Ws. 1, 3, 4, 5 and 6 have consistently given the evidence stating that, Sy. Nos. 30 and 31 were being cultivated by deceased Hariba and deceased Dhulappa jointly. The Land Tribunal has also committed an error in not conducting proper enquiry in strict compliance of Rule 17 of the Rules and straightaway has granted occupancy rights to an extent of 4 acres 1 gunta in Sy. No. 30 in favour of deceased Hariba and to an extent of 14 acres 37 guntas in favour of deceased Dhulappa without any substance and in total disregard to the directions issued by this Court in the earlier round of litigation, referred above.

7. Having regard to the facts and circumstances of the case, as stated above it emerges from the original records and the orders passed by Land Tribunal as well as the Appellate Authority that, both the authorities have committed an error of law much less material irregularity and proceeded to pass the orders, without conducting proper enquiry in strict compliance of the mandatory provisions of the Act and rules and without critical evaluation of the oral and documentary evidence available on file. Therefore, I am of the considered view that, this matter requires reconsideration by the Competent Authority-the Land Tribunal, Basavakalyan, to take appropriate decision, after affording an opportunity to the legal representatives of petitioners in both the revision petitions.

8. Having regard to the facts and circumstances of the case, as stated above, the instant revision petitions filed by deceased revision petitioners are partly allowed and the order passed by District Land Reforms Appellate Authority, Bidar dated 29th March, 1989 in DALT.BDR.35/86-87 and the order passed by the Land Tribunal, Basavakalyan, dated 1st June, 1987 in No. TBK.LRM.CR. 1975-76/9/475 are hereby set aside only insofar as it relates to ordering for registration of occupancy rights in respect of Sy. Nos. 30 measuring 4 acres 1 gunta. and Sy. No. 31 measuring 14 acres 37 guntas situate at Parthapur Village and the matter stands remitted back to the Land Tribunal, Basavakalyan, for reconsideration afresh, in that respect, in accordance with law and in strict compliance of Rule 17 of the Karnataka Land Reforms rules and to take appropriate decision, after affording an opportunity to the legal representatives of the deceased petitioners.

Further, it is needless to clarify that, so far as the order passed by Appellate

Authority in No. DALT.BDR.35/86-87, dated 29th March, 1989, insofar as it relates to granting occupancy rights in favour of deceased Dhulappa in respect of Sy. No. 53 measuring 8 acres 36 guntas situate in Parthapur Village is concerned, the same is confirmed and remains undisturbed.

9. With these observations, the instant revision petitions filed by petitioners stand disposed of.

10. Office is directed to return the entire original records to Land Tribunal, Basavakalyan, immediately.