

(2014) 04 KAR CK 0144

In the Karnataka High Court

Case No : Writ Petition Nos. 6375 and 12780 to 12782 of 2014 (LR) and 5260 of 2014 (LR)

Jayalakshmi Shedthi

APPELLANT

Vs

Narasamma D. Shedthi

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48

Citation : (2014) 6 KarLJ 531

Hon'ble Judges : Dr. Jawad Rahim, J

Bench : Single Bench

Advocate : Ramesh Chandra and M.S. Bhagwat, Advocate for the Appellant; Venkatesh Dodderi, Additional Government Advocate and Chandranath Ariga, Advocate for the Respondent

Judgement

Dr. Jawad Rahim, J.—In these writ petitions, the issue raised are similar, they are clubbed and taken up together for final hearing by consent. In W.P. No. 5260 of 2014, the petitioner, a senior citizen who has crossed 90 years seeks a direction to the 4th respondent, the State of Karnataka to constitute the Land Tribunal for the jurisdiction of Arakalgudu Taluk to adjudicate on the claim for tenancy filed before it under the Karnataka Land Reforms Act, 1961 (for short, "the Act"). Similar is the relief in the connected writ petition i.e., W.P. Nos. 6375 and 12780 to 12782 of 2014 pertaining to Karkala Taluk.

2. In W.P. No. 5260 of 2014, the petitioner has brought in respondent 2, the surviving heir of the applicant, who sought for grant of tenancy right, the Land Tribunal as respondent 3 and the State of Karnataka as respondent 4 after deleting R.N. Pattabhi, who was arrayed as respondent 1.

3. Sri Venkatesh Dodderi, learned Government Advocate has taken notice for respondents 3 and 4 originally impleaded, while the petitioner has given up respondents 1 and 2 for the reasons that the direction sought for does not affect the rights of these persons.

4. Necessarily, the material propositions in the pleadings will have to be taken into consideration to decide whether such a direction is necessitated. The factual matrix is the father of first respondent-R.R. Nigamantha filed Form 7-A claiming occupancy right in respect of land in Sy. Nos. 12/2 and 6/2 situate at Raghupathy Koppala Village, Ramanathapura Hobli, Arakalgudu Taluk, Hassan District. The application so submitted vide Annexure-A was registered before the Land Tribunal, Arakalgudu in No. LRF (RA.PUR)1/1999-2000 to which the petitioner resisted.

5. The core contention of the petitioner against the claim of N.R. Nigamanth is the father of petitioner-Shathagopalacharya was the absolute owner of the land in question and he was cultivating it personally. There was no tenancy in respect of the land in possession. The petitioner claims to be in continuous possession and enjoyment, cultivating the lands personally. The objection so filed by the petitioner vide Annexure-B was on record but it is alleged, the Tribunal, without taking into consideration the grounds urged by the petitioner vide its order dated 10-1-2002 granted occupancy rights to the father of first respondent by the impugned order Annexure-C. The petitioner being aggrieved by it, preferred an appeal before the Karnataka Appellate Tribunal in Appeal No. 1008 of 2002. The Appellate Tribunal found favour with the grounds urged by the petitioner and set aside the order of the Land Tribunal vide Annexure-C but remanded the case back to the Land Tribunal for de novo consideration. The said order was passed by the Appellate Authority on 24-12-2007 vide Annexure-D.

6. The grievance of the petitioner is after remand, the Land Tribunal, Arakalgud, did not take the case on Board and did not proceed further to decide the issue. He waited in vain, but to his dismay, found that the Tribunal has become defunct. There was no reconstitution of the Tribunal consequent to which for a period of six years, Land Tribunal, Arakalgudu was not functional. He applied to the Secretary of the Tribunal which was a fruitless attempt. In the circumstances, he has approached this Court in a writ action to issue direction to the Government to constitute the Land Tribunal so as to adjudicate the dispute between the parties.

7. As prima facie, it was shown that the Tribunal is not functioning for a period of six years, the Government was directed to file a detailed counter to the petition averments and further 1 had directed the Government by an order dated 19-3-2014 to present the status regarding constitution of Land Tribunal and also to furnish relevant information about the constitution of Tribunal at Arakalgud. That order was not complied necessitating, passing of further orders on 27-3-2014 by which the Principal Secretary, Department of Revenue was directed to submit a report furnishing information as to the number of Tribunals that are required to be constituted in the State of Karnataka; the number of Tribunals constituted; the number of Tribunals functioning as of now and if other Tribunals are not functioning, the period from which those Tribunals are not functioning and as to whether the Government has examined conferring concurrent

jurisdiction on the Tribunals existing to deal with the cases nearby Districts.

8. A report has been submitted by and on behalf of respondent 4-the State of Karnataka under the signature of Principal Secretary which did not answer to the information sought for by the Court compelling me to take a serious view of inaction and thereafter, a second report is filed on 5-4-2014 under the signature of Additional Secretary. Needless to observe that the State of Karnataka seems to have not realised the intended purpose of securing such a report by this Court and the seriousness which it requires consideration.

9. Be that as it may. The second report, as furnished, reveals in the State of Karnataka total Tribunals to be constituted is 177. The information from the Government is that only 25 Tribunals have been constituted. As regards the number of Tribunals to be constituted, the answer is obvious. As regards Court's direction to furnish information as to how long the rest of the Tribunals other than 25 constituted, are not functional, a vague answer is given in the report that since the time of present Government, the Tribunals are not functioning. Such a statement is not an answer to the question. It is obvious that as of now, as against 177 Tribunals, the Government has constituted only 25 Tribunals which are not regularly functioning. With regard to Arakalgudu Taluk, a statement is made that because of the Elections Code of Conduct, the Government is not in a position to constitute the Tribunals.

10. Sri Venkatesh Dodderi, learned AGA referring to the first report submits that in view of the Court's order, the Revenue Department, after formation of new Government had sent a proposal to the Deputy Commissioner vide Circular dated 10-10-2013 to propose the names of non-official members for constitution of the Land Tribunals in the State of Karnataka. In response to the said Circular, out of 183 Land Tribunals, non-official members have been appointed to about 25 Land Tribunals as on 24-2-2014. To expedite the constitution of Land Tribunals, once again reminder was sent to all the Deputy Commissioners to propose the names of non-official members for constituting Land Tribunals in the State of Karnataka vide Communication dated 20-2-2014.

11. Sri Venkatesh Dodderi, learned AGA referring to the report submits, despite best efforts by the Revenue Department, only 25 Land Tribunals could be constituted. Due to non-availability of non-official members to be sponsored by the local elected representatives of the Legislative Assembly. He further submits that efforts are made on constitute the Tribunals in the entire State for the early disposal of cases before the Land Tribunals. He submits, under instructions from the Government that due to Code of Conduct enforced by the Election Commission due to ensuing Lok Sabha elections, no appointments could be made to the Land Tribunals. He submits immediately after the elections are over, steps would be taken to constitute the Tribunals.

12. The explanation offered is difficult to accept. It is necessary to draw attention of the Government to the provisions of Section 48 of the Act which imposes a

statutory duty on the State of Karnataka. It reads thus:

"48. (1) The State Government shall, by notification, constitute for each Taluk a Tribunal for the purposes of this Act constituting of the following members, namely.--

(i) the Assistant Commissioner of the Revenue Sub-Division having jurisdiction over the Taluk or an Assistant Commissioner specially appointed for the purpose by the State Government;

(ii) four others nominated by the State Government of whom at least one shall be a person belonging to the Scheduled Castes or Scheduled Tribes:

Provided that if in its opinion, it is necessary so to do, the State Government may constitute additional Tribunals for any Taluk and the Deputy Commissioner may, subject to any general or special orders of the State Government, distribute the work among the Tribunals in any Taluk".

13. Therefore, the constitution of Tribunal is statutorily required to be done by the Government, lest, the very purpose of enacting law would be nugatory. It is therefore, difficult to accept the State Government's contention that because of Code of Conduct enforced by the Election Commission, due to ensuing Lok Sabha Election, it is unable to constitute the Tribunals. Therefore, I reject this submission. Besides, the information furnished is also incorrect. While in the second report, a statement is made that 177 Tribunals are required to be constituted, in the first report, it is mentioned as 183 Tribunals. The State Government is not sure of the number of Tribunals to be constituted. With regard to the statement of the State that it has taken action in time, the statement so made is belied from the very fact that the first Circular has been issued to the Deputy Commissioner only on 10-10-2013 whereas Tribunal at Arakalgudu and other places are non-functional for over a period of six years.

14. However, Sri Venkatesh Dodderi, learned AGA submits as far as Arakalgudu Taluk is concerned, a proposal has been received and they will constitute the Tribunals soon after elections are over.

15. I do not wish to go into it further as in this regard statement is made that the Tribunal at Arakalgudu would be constituted soon after the process of Lok Sabha election is complete. I have already noticed that the petitioner is a senior citizen who has crossed 90 years and he is shown to be 92 years as on the date of filing of this petition. He is armed with the order of Appellate Tribunal dated 24-12-2007 and is in endless wait. Therefore, the petitioner in W.P. No. 5260 of 2014 has made out a case for issuance of direction to the State of Karnataka to constitute the Land Tribunal for Arakalgudu Taluk which the Government itself undertakes to constitute within a short period.

Similarly, the petitioners in W.P. Nos. 6375 and 12780 to 12782 of 2014 have made out a case for grant of relief sought, i.e., directions to constitution of Land Tribunal in Karkala Taluk.

In the circumstances, rule issued is made absolute. Writ petitions are allowed. The State of Karnataka-respondent 2 is directed to constitute the Land Tribunal for Arakalgudu Taluk and Karkala Taluk by first week of June 2014 and upon constitution of such a Tribunal, a further direction is issued that the Tribunal shall take the case in LRF (RA.PUR)1/1999-2000 on Board and conduct an enquiry as ordered by the Appellate Tribunal in Appeal No. 1008 of 2002, dated 24-12-2007 within the outer limit of four months from the date the Tribunal becomes functional.

Sri Venkatesh Dodderi, learned AGA is permitted to file memo of appearance within three weeks.