
(2000) 03 KAR CK 0001

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 5058 of 1990

K. Jathappa Rai

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-03-2000

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 121 A, 45, 95 (2)
Karnataka Rent Control Act, 1961 — Section 21 (1) (h)

Citation : (2000) ILR (Kar) 1205 : (2000) 4 KarLJ 503

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri S. Shekar Shetty, for the Appellant; Sri B. Krishnappa, High Court Government Pleader and Sri A. Keshava Bhat, for Caveator, for the Respondent

Judgement

1. The deceased K. Jathappa Rai, father of Pramod Kumar Rai filed Form 7 u/s 45 of the Act to declare him as a tenant and to grant occupancy rights before the Land Tribunal, Puttur, in No. LRY.T. 6173 of 1974-75. The Land Tribunal rejected the application by its order dated 16-3-1989. As against that order, the petitioner preferred an appeal in No. LRA. A-290 of 1989 before the Land Reforms Appellate Authority, Puttur. The Appellate Authority also rejected the claim of the petitioner. Hence, the petitioner has approached this Court against the concurrent findings u/s 121-A of the Land Reforms Act.

2. Heard Sri S. Shekar Shetty, learned Counsel for the petitioner, Sri A. Keshava Bhat, learned Counsel for Caveator respondent 3 and Sri B. Krishnappa, High Court Government Pleader for respondents 1 and 2.

3. The learned Counsel for the petitioner has vehemently argued that the Tribunal has committed an error in holding that question is a non-agricultural land. He contended that the land in question is agricultural land as no conversion had taken place in the eye of law and that therefore the Tribunal ought to have granted occupancy rights in favour of the petitioner.

4. It is no doubt true that the respondent's father had taken the property under Mulageni, as per Mulgeni chit 31-12-1932 executed by Ganapathi Rao in favour of Rama Bhat. In view of this character of the land, the learned Counsel for the petitioner submitted that to treat this as a non-agricultural land, conversion order as provided u/s 95(2) of the KLR Act is a mandatory requirement as held by the Hon'ble Supreme Court in a decision in State of Karnataka and others Vs. Shankara Textiles Mills Ltd., , is mandatory. It is a settled law that in view of the decision of the Supreme Court referred to above, the conversion of agricultural land into non-agricultural land, requirement of prior permission u/s 95(2) of the KLR Act is mandatory. The question is whether such permission is granted.

5. Subsequently, by virtue of the document, the building and also the adjacent area was given to the deceased K. Jathappa Rai for a period of two months and he continued to be in occupation of the same till he was evicted through HRC proceedings. In view of the fact that the land was originally covered under the Mulageni the petitioner claimed that the property is the agricultural land and that therefore the Tribunal ought to have granted occupancy rights in his favour.

6. Controverting this argument, the learned Counsel for the 3rd respondent contended that the 3rd respondent had made an application before the Assistant Commissioner for conversion of the land and the same was granted in his favour vide order dated 5-5-1972. Under that circumstance, he argued that as on 1-3-1974 the property was non-agricultural land and the Land Tribunal has rightly held that it had no jurisdiction to entertain the same. The respondent has produced the certificate.

7. The learned Counsel for the petitioner however submitted that the Tahsildar had no jurisdiction to grant conversion certificate and on that ground it has to be ignored as the same was issued by an officer who is incompetent to issue the same.

8. From the perusal of the conversion certificate it is abundantly clear that the Tahsildar who was in charge Assistant Commissioner has issued the certificate converting the same as a non-agricultural property. This was questioned by the petitioner before the Karnataka Appellate Tribunal, Bangalore, and the same came to be dismissed in Appeal No. 272 of 1990 on 14-1-1991. Even the writ petition in W.P. No. 3020 of 1991 preferred against the said order was also dismissed on 19-10-1995. That being the position, it is not now open to the petitioner to contend that it was not issued by a competent officer. In that connection, it is necessary to refer to the decision of the Division Bench of this Court in Gopalappa v Guruskankariah and Others , wherein it is held as follows.-

"Where the land has been converted prior to March 1, 1974 as non-agricultural land, the Land Tribunal has no power to go behind the statutory order according permission to convert the land for non-agricultural purpose and has no jurisdiction to go into any claim for occupancy -- Narasimha Setty K.G. and Others v State of Karnataka and Others and D.S. Lakshminarayana Rao v Land

Tribunal, Doddaballapur and Others, relied on, W.P. No. 11326 of 1979 affirmed".

It is also further held as follows.-

"The two enactments, namely, the Land Reforms Act and the Land Revenue Act are distinct and different. Permission to convert an agricultural land for non-agricultural purpose has to be obtained from the prescribed authority under the Land Revenue Act. A person aggrieved by grant of such permission has to challenge the same before the appropriate authorities prescribed thereunder. He cannot bypass that remedy and get that order invalidated before the Land Tribunal constituted under the Land Reforms Act. The Land Tribunal has no power to go behind the statutory order according permission to convert the land for non-agricultural purpose under the Land Revenue Act. Therefore, the finding of the learned Judge that the Tribunal had no jurisdiction to deal with the claim of the appellant and the provisions of the Act were not attracted to the land in question is correct and calls for no interference.

Therefore, the appeal is rejected".

9. From this it is clear that notwithstanding the fact that the petitioner has challenged the order passed by the competent authority according sanction to convert the same as non-agricultural land, it is now not open to him to say that the Land Tribunal should have ignored the order on the ground that it was not passed by a competent authority. As far as conversion order to non-agricultural land is concerned it has become final, conclusive and binding on this petitioner. The petitioner has made a faint attempt to urge before me that the conversion is in respect of Sy. No. 253/3 and not for Sy. No. 253/1. Therefore, there is no conversion order in regard to the schedule property. This contention was raised in the writ petition and the same came to be rejected. In addition to that, it is nobody's case that the dispute is in regard to a different property. The parties have understood that the property in question is one and the same. Even K. Jathappa Rai was examined by the Revenue Inspector, Puttur, in connection with the application filed for conversion of land. Therefore, it is not open to the petitioner to urge that the order is not for the property in dispute. Therefore, this argument is liable to be rejected.

10. This is further questioned before the HRC Court also. The respondent-Uday Shankar filed HRC Appeal No. 10 of 1969 on the file of the Munsiff, Puttur, claiming possession of the property u/s 21(1)(h) of the Karnataka Rent Control Act and the said petition came to be allowed vide order dated 11-12-1970.

11. As against that order, the petitioner preferred HRC Appeal No. 19 of 1971 on the file of the learned District Judge, Dakshina Kannada, wherein the main question raised was whether it was a building lease or agricultural lease. On 27-7-1988, the said HRC appeal came to be dismissed holding that it is a building lease and not an agricultural land. As against that order, the petitioner preferred CRP No. 4229 of 1988 which also came to be dismissed. Being aggrieved by that order, SLP No. 13378 of 1988 was preferred before the

Hon"ble Supreme Court and the same was dismissed. Thereafter, the respondent took out Ex. Case No. 89 of 1971. On 25-6-1991, the possession was delivered and the respondent is in possession of the property. In view of these decisions, the learned Counsel for respondent submitted that it is not now open to the petitioner yet again to contend that it is an agricultural land and he is the tenant of the land under the Land Reforms Act.

11-A. In support of this he placed reliance on a decision in case of Noorjahan v Radhakrishna Shenoy and Others, wherein it is held.-

"Though the Land Reforms Act is a later Act in relation to the Rent Control Act, the principle that the latter enactment must prevail over the earlier one is not applicable to the facts of this case inasmuch as the non obstante clauses in the respective Acts operate in different fields and each of these clauses could be given effect to without doing violence to the language of the respective provisions or the preambles and objects of the respective enactments, viz., the Rent Control Act and the Land Reforms Act".

12. However, the learned Counsel for the petitioner while emphasising his argument to the effect that it is only the Land Tribunal which has jurisdiction to decide the particular question as to whether it is agricultural property and the person in possession is or is not a tenant under and neither the Civil Court nor the Rent Control Act has jurisdiction to decide the same. In support of this argument, relied on a decision of the Division Bench of this Court in Hombalamma and Others Vs. Smt. Ningamma, , wherein it is held that the Land Tribunal has jurisdiction to determine whether a person is a tenant or not, and that jurisdiction is exclusive. So the question of finding out the existence of prima facie case for reference does not arise.

13. In this case, from the perusal of the order it is abundantly clear that the HRC Court has come to the conclusion that the dominant purpose of taking the property on lease was for residential purpose and not for agricultural purpose. The property also was converted to non-agricultural purpose. The learned District Judge in HRC Appeal No. 19 of 1971 has elaborately discussed the character of the property. It has also discussed that the dominant purpose of the lease was for residential purpose. The rent also was fixed on monthly basis and it was taken only for two months. The crop grown in the remaining area is only a few fruit bearing trees in the compound, viz., coconut and other plants, a tamarind tree, 16 "seetapala" plants, one chikkoo tree. 5-6 papaya trees, two lemon plants, one nelli, one "sakkarekanchu" tree, two drumstick trees, two soapnut trees and one orange plant. Though the petitioner claimed that he grew ragi, paddy and sugarcane in the land by using the water from the drinking well, the District Judge has held that it is difficult having regard to the extent of the land and the buildings thereon and the trees mentioned above, whether it was at all possible for the appellant to grow crops like paddy, ragi and sugarcane and even if it was grown, whether it would be economical, etc. On that basis, he has also come to the conclusion that the land was never used for agricultural purpose.

The District Judge has also placed reliance on a number of decisions to hold that it is not possible to come to the conclusion that it is an agricultural land- Considering the cumulative effect of all this, the Appellate Authority also held that the land in question was no more an agricultural land. For the foregoing reasons, the argument of the learned Counsel for the petitioner that still it is an agricultural land and not a non-agricultural land, is liable to be rejected.

14. The learned Counsel for the respondent however argued that notwithstanding the fact that K. Jathappa Rai died, all the L.Rs are not brought on record except only one son who is the petitioner in this case. Therefore, this petition itself is not maintainable. In view of my findings on the aforesaid questions, holding that the petition is liable to be rejected, this question need not be gone into.

15. In this case as stated above, the Tahsildar who was then in charge of the Assistant Commissioner has passed an order for converting the property to non-agricultural land and that order was questioned and it is ultimately decided that it is a non-agricultural land. The Rent Control Court has passed a decree in favour of the respondent holding that it has jurisdiction which was not only confirmed by the District Judge but also ultimately confirmed by the Hon''ble Supreme Court as referred to above. Both the Tribunal as well as the Appellate Authority also concurrently held that the property in question is non-agricultural property and the petitioner is not the tenant coming under the definition of the Karnataka Land Reforms Act. Therefore, this petition is liable to be dismissed as there is no merit for the reasons stated above.

16. Before parting with this judgment, it is necessary to mention that notwithstanding the fact that the petitioner has lost the case before all the Courts, yet has been fighting the case though unsuccessfully, thereby putting the respondent to hardship and inconvenience. Hence, I am of the considered view that the respondent is entitled for exemplary costs. Taking into consideration all the facts and circumstances and for the foregoing reasons, I hold that the respondent is entitled for exemplary costs of Rs. 1,000/-.

17. Accordingly, I proceed to pass the following:

ORDER

The petition stands dismissed directing the petitioner to pay a sum of Rs. 1,000/- to the respondent.