

(2004) 03 KAR CK 0066

In the Karnataka High Court

Case No : Writ Petition No. 35788 of 1993

Kalli Hutcha Nayaka (Dead) By L.Rs

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-03-2004

Acts Referred:

Karnataka Land Reforms Rules, 1974 — Rule 17
Karnataka Land Revenue Act, 1964 — Section 34, 45

Citation : (2004) 3 KarLJ 266 : (2004) 3 KCCR 1599

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

Bench : Single Bench

Advocate : Kaleemulla Shariff, for the Appellant; Kempanna, High Court Government Pleader for Respondents-1 and 2 and K. Chandra Shekar, for Caveator-Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.

1.The petitioners, questioning the legality and the validity of the order dated 24th September, 1993 in case No. LRF:1835/75-76 on the file of the Land Tribunal, Nanjangud Taluk, in respect of land bearing Sy. No. 260/2 measuring 02 acres 19 guntas situate at Karya Village, Nanjangud Taluk, Mysore District, have filed the instant writ petition.

2. The deceased petitioner-Sri Kalli Hutcha Nayaka, claiming to as a tenant in respect of land bearing No. 260/2 measuring 02 acres 19 guntas situate at Karya Village, Nanjangud Taluk, Mysore District had filed Form 7 for grant of occupancy rights. The said application of the deceased petitioner had come up for consideration before the Tribunal and the Tribunal, after hearing had granted occupancy rights in favour of the deceased petitioner. However, being aggrieved by the said order passed by the Land Tribunal, the third respondent herein filed a Writ Petition No. 25484 of 1981. This Court by its order dated 15th June, 1981 had set aside the order passed by the Land Tribunal and remitted the matter

back to the Land Tribunal for reconsideration afresh. After remand, the Land Tribunal conducted the enquiry in strict compliance of Rule 17 of the Karnataka Land Reforms Rules ("Rules" for short), after recording the evidence of the parties and after considering the oral and documentary evidence, after going through the recital in the Usufructuary Mortgage vide Annexure-A, has rejected the claim of the petitioner on the basis of the opinion of the majority members (Chairman and two members) of the Tribunal. The Chairman and two members have held that, the petitioner has failed to establish that as on 1st March, 1974 and prior to that, he was cultivating the said land as tenant, The earlier specific finding is that, the mortgage executed between the deceased petitioner and the third respondent is in the nature of a Usufructuary Mortgage and there is no relationship of tenant and owner. But, however, the other two members have said that, the petitioner is entitled for registration of occupancy rights. Feeling aggrieved by the said order passed by the Land Tribunal, the petitioner had presented the instant writ petition. During the pendency of this petition, the petitioner died on 19th July, 1995 and his present L.Rs are brought on record.

3. The principal ground urged by the learned Counsel for the petitioners in the instant writ petition is that, the Tribunal has failed to conduct the enquiry as envisaged under Rule 17, Rules read with Section 34 of the Karnataka Land Revenue Act. Therefore, the impugned order passed by the Tribunal is vitiated and submitted that, majority members of the Tribunal have committed an error in not relying upon the Usufructuary Mortgage vide Annexure-A, on the ground that, it is not a registered document. Further, he submitted that, the Tribunal has failed to note that, the third respondent has admitted the Ili bhogya deed but the fact remains that, the petitioner continues to be in possession of the land in question even as on today and hence, the land in question as on 1st March, 1974 vested with the State Government as per Section 44 of the Act and therefore, the petitioners are entitled for registration of occupancy rights as envisaged u/s 45 of the Act. The Tribunal has committed an error in not considering this aspect of the matter and has held that, the deceased petitioner is not entitled for registration of occupancy rights in respect of the land in question, contrary to the material on record. Further, it is specifically contended that, the Ili bhogya is advance lease and the person in possession of the land in question under the Ili bhogya deed is entitled for registration of occupancy rights under the Karnataka Land Reforms Act. On this ground also, the impugned order passed by the Land Tribunal is liable to be set aside.

4. Per contra, the learned Counsel appearing for the third respondent, inter alia, contended and substantiated the impugned order passed by the Land Tribunal. He has taken me through the Ili bhogya deed (Usufructuary Mortgage vide Annexure-A). After careful reading of the above recital, it is abundantly clear that, the cultivation has been given for a period of eight years for the agricultural years 1970-71 to 1977-78 and immediately thereafter, the petitioner is supposed to surrender the said land. But, in the instant case, the petitioner has failed to produce any authenticated document to establish that he was cultivating the said

land as tenant as on 1st March, 1974 and prior to that date. Further, he vehemently submitted and has taken me through Annexure-B, the Record of Rights and Pahani papers which are produced by the petitioner himself along with the writ petition. In column No. 12(2) of the said RTC, the name of the petitioner has been shown for the agricultural years 1973-74 to 1975-76 and in cultivator's column also, his name has been notified and in the mode of cultivation column, it has been shown as "1" which indicates that the cultivation of the said land is as owner. Further, the Tribunal has rightly evaluated the oral evidence adduced by the petitioner and the defence witnesses. The adjacent land-owners are not in a position to say whether, the petitioner is cultivating the land on the basis of the lease or not. But, have stated that, they know that the petitioner is cultivating the said land. The Tribunal has lightly taken into consideration both the oral and documentary evidence and has rejected the claim of the petitioner and hence the impugned order has been passed in strict compliance of Rule 17 of the Rules and no error or illegality as such has been committed in passing the impugned order. Further, the petitioner has also not made out any good grounds to interfere in the impugned order passed by the Land Tribunal. Hence, interference in the impugned order is uncalled for.

5. I have heard the learned Counsel appearing for the petitioners and the learned Counsels appearing for respondents for considerable length of time. After careful evaluation of the entire material available on file and the contentions urged by the learned Counsels appearing for the parties, the questions that arise for consideration is as to:

(i) Whether the impugned order passed by the Land Tribunal is in accordance with law?

(ii) Whether the tenancy claimed by the petitioners on the basis of the Usufructuary Mortgage (Ili bhogya deed) is maintainable under the mandatory provisions of the Act and Rules?

Re: Point Nos. (i) and (ii).--After careful perusal of the impugned order passed by the Land Tribunal, I do not find any error of law, as such committed by the Land Tribunal in rejecting the claim of the petitioner as tenant. As a matter of fact, the Tribunal has conducted the enquiry in strict compliance of Rule 17 of the Rules and also taken into consideration the direction issued by this Court in the earlier round of litigation on 15th July, 1981 in W.P. No. 25484 of 1981. The Tribunal, after critical evaluation of the oral and documentary evidence, after discussing the matter in detail and giving specific finding for rejecting the claim of the petitioner as tenant, has specifically held that, the cultivation of the land by the petitioner is on the basis of Ili bhogya deed and the recital of the said deed is more than clear that, lease has been given for a period of eight years from the agricultural years 1970-71 to 1977-78 and after expiry of the said period, the petitioner was supposed to have handed over possession to the third respondent. It is worthwhile to extract the relevant portion of the said Usufructuary Mortgage (Ili bhogya deed) which reads thus:

XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX" After careful reading of the recital of the Ili bhogya deed, it is abundantly clear that the petitioner was supposed to hand over the land back to the landowner - the third respondent, after the expiry of the period referred above and this fact has been rightly taken into consideration by the Land Tribunal and rejected the claim of the petitioner. Therefore, I do not find any error or illegality in the order passed by the Land Tribunal. It is a just and reasonable order, which has been passed strictly in accordance with law. Further, as rightly pointed out by the learned Counsel appearing for the third respondent placing reliance on the judgment of this Court in the case of Veerappa Rudrappa Magawadi v. The Land Tribunal and Anr., this Court after considering the well-settled principles of law laid down by the Privy Council in the case of Bengal Indico Company Limited v. Mohunt Roghubur Das, has held thus;

"Their Lordships see no reason to differ from the views expressed by the learned Judges of the High Court to the effect that the leases in question were not mere contracts for the cultivation of the land let, but that they were also intended to constitute, and did constitute, a real and valid security to the tenant for the principal sums which he had advanced, and interest thereon. The tenants' possession under them was, in part at least, not that of cultivators only, but that of creditors operating repayment of the debt due to them by means of their security"

Further, it has been held that:

"Even if the petitioner has continued in possession of the property after 1969-70, his possession cannot be that of a tenant particularly in the absence of any plea much less proof of the fact that an agreement of tenancy was entered into after the expiry of 1969-70. Whatever, else it may be, one thing is clear that his possession is not that of a tenant. When that conclusion is reached, the question of applying the provisions of the Karnataka Land Reforms Act and declaring him as a tenant would not arise".

Hence, the Court did not find any ground to interfere with the order passed by the Land Tribunal and accordingly, it was dismissed.

6. Further, it is significant to note that, the reliance placed by the learned Counsel appearing for the petitioners on the entry found in the RTC for the agricultural years 1973-74 to 1975-76 is of no use to him. It is not in dispute that the name of the petitioner is found in column 12(2) in the cultivator's column for the aforesaid agricultural year, but it is pertinent to note that, the mode of cultivation in column No. 3 is shown as "1" which indicates "self-cultivation". This itself is sufficient to prove beyond all reasonable doubt that, the petitioner was not cultivating the land as tenant. The petitioner has not produced any authenticated document at least before this Court to show that, prior to Ili bhogya deed, he was cultivating the land in question as tenant. Except making oral statement, the petitioner has not produced any authenticated document to

prove his case. Therefore, I do not find any error or illegality much less irregularity in the order passed by the Land Tribunal, in rejecting the claim of the petitioner. The order passed by the Land Tribunal is a well-considered order that is made after taking into consideration the totality of the case on hand.

7. Having regard to the facts and circumstances of the case as stated above, I do not find any good grounds to interfere in the well-considered order passed by the Land Tribunal. Hence, the writ petition filed by the petitioners is liable to be dismissed. Accordingly, it is dismissed.