

(1998) 08 KAR CK 0066

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 5383 of 1988

Kittanna Rai (deceased) By L.Rs.

APPELLANT

Vs

Sheena Poojary and others

RESPONDENT

Date of Decision : 06-08-1998

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2 (18), 48 A

Citation : (1999) ILR (Kar) 1249 : (2000) 1 KarLJ 341

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Sri S.B. Pavin, for the Appellant; Sri Ganapathy Bhat and Sri Siddagangaiah, High Court Government Pleader, for the Respondent

Judgement

1. This revision by the owner of the lands in question is directed against the order dated 28-10-1987 of the Land Tribunal, Bantwal made in case No. TNC:6137:74-75 and the order dated 7-10-1988 of the Land Reforms Appellate Authority passed in appeal No. LRA:T:332 of 1987 BTL granting occupancy rights with respect to the said lands in favour of the respondent 1-Sheena Poojary.

2. Certain undisputed facts are that, respondent 1 filed his application in Form No. 7 u/s 48A of the Karnataka Land Reforms Act, 1961 (the "Act", for short) for grant of occupancy right in respect of 1 acre 30 cents in S. No. 130/3; 24 cents in Sy. No. 130/2; 70 cents in Sy. No. 130/3; and 15 cents in Sy. No. 130/4, all situated in Poonacha village of Bantwal Taluk, Dakshina Kannada District claiming to be the tenant thereof under petitioner and one Narayana Adyanthar. His case in his application was that he was tenant of 1 acre 30 cents in Sy. No. 130/3 under its owner Narayana Adyanthar, and that he was a tenant under the petitioner in respect of three other said items of the said lands which belonged to him (petitioner). His further case in respect of 24 cents in Sy. No. 130/2 was that he has constructed a dwelling house with a compound on this plot of land and had been living therein with his family and that it was a farm house.

3. On service of notice from the Land Tribunal, petitioner appeared before it and

contested respondent 1's claim to tenancy with respect to all items of the lands, except 1 acre 30 cents in Sy. No. 130/3. The case of the petitioner before the Land Tribunal was that the said 1 acre 30 cents in Sy. No. 130/3 belonged to his elder brother said Narayana Adyanthar, in which he had no interest. As regard the three other items of land mentioned in the application belong to the petitioner and that they have been in his exclusive possession and enjoyment all along in his own rights as owner thereof. Respondent's claim to tenancy with respect thereto was stoutly denied and contested by the petitioner.

4. The statement of respondent-tenant and his witnesses were recorded by the Tribunal. Petitioner remained contended with the production of the material revenue record in support of his case. During enquiry the Land Tribunal got the lands in question surveyed by its land surveyor and the survey sketch prepared by the latter was also secured. Then, it proceeded to pass an order dated 28-7-1981 granting occupancy rights with respect to all said four items of land to respondent 1. Its said order dated 28-7-1981 was challenged by the petitioner before this Court in W.P. No. 18818 of 1981 and the challenge was confined to only 3 said items of the land belonging to him viz., 24 cents in S. No. 130/2; 70 cents in Sy. No. 130/3; and 15 cents in Sy. No. 130/4. The said writ petition came to be allowed and the matter was remitted to the Land Tribunal for fresh enquiry and disposal, by setting aside the Tribunal's order dated 28-7-1981 so far as it related to said 3 items of land belonging to the petitioner. As a result the grant of occupancy rights to respondent-tenant with respect to 1 acre 30 cents in Sy. No. 130/3 of Narayana Adyanthar remained confirmed since the same was not challenged by the latter.

5. On a fresh enquiry, the Land Tribunal passed its order dated 28-10-1987 granting occupancy rights to respondent-tenant with respect to 24 cents in Sy. No. 130/2 while rejecting his application in respect of two other items of land viz., 70 cents in S, No. 130/3; and 15 cents in Sy. No. 130/4. Aggrieved by the Land Tribunal's order rejecting his application with respect to said two items of land, respondent-tenant challenged the same before the Land Reforms Appellate Authority in LRA:T:332 of 1987 BTL. On appearance in the said appeal as respondent, petitioner also filed his cross-objections assailing the validity of the Tribunal's order dated 28-10-1987, granting occupancy right to the appellant therein with respect to 24 cents in Sy. No. 130/2.

6. During pendency of the appeal before the Land Reforms Appellate Authority, both parties petitioner and respondent-tenant who was appellant, have examined themselves in support of their respective case before the Appellate Authority and have given their oral evidence.

7. On re-appreciation of the evidence that was available on record, the Land Reforms Appellate Authority passed its impugned judgment and order dated 7-10-1988 allowing the appeal and granting occupancy right to the appellant, who is respondent 1 herein, in respect of total extent of 1 acre 66 cents in Sy. No. 130/3 (including the extent of 1 acre 30 cents which occupancy rights were

already granted by the Land Tribunal by its Order dated 28-10-1987), and in respect of 15 cents in Sy. No. 130/4, and also confirming the Tribunal's order granting occupancy right to the appellant-tenant in respect of the said 24 cents in Sy. No. 130/2. The cross-objections of the petitioner stood dismissed by the Appellate Authority.

8. First, advertent to the validity or otherwise of the impugned grant of occupancy right with respect to 24 cents in Sy. No. 130/2 by the authorities below in favour of respondent 1, his evidence is to the effect that his dwelling house surrounded by a compound was constructed on whole area of this land. This case of respondent 1 is accepted by the Tribunal and Land Reforms Appellate Authority as well. It was found corroborated by the said survey report of the surveyor. As indicated above respondent-tenant has put forth his claim to tenancy with respect to the particular area of 24 cents as an independent land under his cultivation. But on his own showing this plot of 24 cents was not at all a cultivable land in that it was his dwelling premises exclusively in his possession and enjoyment as on the material date 1-3-1974. It is not his further case that this 24 cents of land was part and parcel of a single land under his cultivation as a tenant so as to characterise his said house as a farm house. There is no dispute about the legal position that the land in respect of which the person in occupation thereof is entitled to claim tenancy under the Act must be the "Land" within the meaning of the definition contained in sub-section (18) of Section 2-A of the Act which defines the land as under:

"2. Definitions.--(A) In this Act, unless the context otherwise requires,--

(18) The land means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non-agricultural purposes".

A plain reading of the definition of the land contained in Section 2(18) of the Act makes it clear that "the land used exclusively for non-agricultural purpose" does not fall within the purview of the Act and therefore the respondents' claim of tenancy with respect to the said 24 cents of the land is legally untenable. Both the authorities below have erred in law in considering his claim of tenancy with respect to the said 24 cents of the land whole of which is used by him as a dwelling house.

9. Therefore, the impugned orders of both the authorities below granting the occupancy right to respondent-tenant with respect to the said 24 cents of plot in Sy. No. 130/2 does not sustain and the same will have to be quashed.

10. As regards grant of occupancy right in respect of the said 18 cents of the land in Sy. No. 130/4 by the Lower Appellate Authority, it has to be stated at once that the respondent-tenant's claim itself was limited to 15 cents of this land in his said application made in Form No. 7. It was not at all his case either before

the Tribunal or the Land Reforms Appellate Authority that the extent of the land cultivated by him in this Sy. No. 130/4 was 18 cents. Before the Appellate Authority he has stated that he was cultivating 16 cents of the land in this survey number. But this statement varies with his case pleaded and put forth before the Tribunal in his application. The reason for grant of 18 cents of the land to him given by the Appellate Authority in its impugned judgment is that in the relevant RTC extract he is shown to have been cultivating 18 cents of the land when the remaining 12 cents was in cultivation of the petitioner himself. But, the entries in the RTC extract to this effect could no doubt be availed of in favour of respondent for the purpose of corroboration to his case pleaded in the application, but, not to make it the sole basis to grant the land in excess of his claim. Mr. S.B. Pavin was fair enough in his submission that he does not seriously dispute the grant of occupancy right with respect to 15 cents of the land in the said survey number to respondent 1. Therefore, the impugned judgment of the Lower Appellate Authority as regards grant of occupancy right with respect to the land in the said Sy. No. 130/4 requires modification restricting the grant to the extent of 15 cents to respondent subject, of course, to the clear demarcation thereof made through a competent surveyor.

11. Now advertng to the conferment of occupancy right by the Appellate Authority to respondent 1 in respect of 1 acre 66 cents of the land in the said Sy. No. 130/3, as indicated hereinabove, 1 acre 30 cents of this area belongs to the petitioner's brother Narayana Adyanthar in respect of which the occupancy right was granted to respondent 1 by the Land Tribunal and that the same has become final between the parties. Therefore, the dispute between the parties herein relates to the grant of additional 36 cents of the land in this Sy. No. to respondent-tenant by the Appellate Authority. Mr. S.B. Pavin, learned Counsel for petitioner, seriously challenged the legality and correctness of the grant of this 36 cents of land.

12. Mr. P. Ganapathy Bhat, representing respondent 1, on the other hand, vehemently argued in support of the impugned judgment of the Land Reforms Appellate Authority granting this additional portion of the land also to the respondent-tenant.

13. It is an undisputed fact that the entire extent of the land in Sy. No. 130/3 measures 8 acres 33 cents. The RTC extracts pertaining to this Sy. No. for the years 1968-69 and 1969-70 produced before the Tribunal are available on the file of its record transmitted in this Revision. The entries made therein disclose that 8 acre 33 cents of the land in the Sy. No. i.e., 130/3 had been in cultivation of as many as 11 persons. Each of them is shown to be cultivating different extents of the land in the said Sy. No. Respondent 1's name is shown therein at Sl. Nos. 10 and 11. At Sl. No. 10, an area of 1 acre 32 cents of the said land has been shown under his cultivation and at Sl. No. 11 another separate portion of 64 cents was shown as under the cultivation of this respondent. Thus, the total extent of the land under his cultivation as shown in the RTC extract conies to 1 acre 96 cents.

In the said surveyor sketch prepared by the surveyor of the Land Tribunal which is available at page 23 of the Tribunal's case file the area in cultivation of respondent in the said Sy. No. is shown as 1 acre 66 cents. But in his application in Form No. 7, as has been pointed out elsewhere above, respondent 1 has staked his claim to the tenancy with respect to 1 acre 30 cents of petitioner's brother's land and to 70 cents of the land of petitioner in the said Sy. No. 130/3. These two portions are differently shown in the application describing them at Sl. Nos. 1 and 3. Thus, the total extent of the land in this Sy. No. in respect of which the tenancy right was claimed by him was 2 acres. Thus, the areas of the land in Sy. No. 130/3 shown in the said RTC extracts, survey sketch and application Form No. 7, as under his cultivation differ and vary with each other. Admittedly, petitioner is the owner of the 70 cents of land in the said Sy. No. If whole of this extent of land in the Sy. No. belonging to the petitioner had been in actual cultivation and possession of respondent 1 as a tenant, then, this fact would have found its mention in the said RTC extract. It does not contain entries to this effect. For that matter this material document does not even show that "64 cents" of the land stated therein belonged to the petitioner and that the same was cultivated by respondent 1 as a tenant under him. This apart, there is also no believable material evidence oral or documentary available on record satisfactorily establishing whether 70 cents of the land belonging to the petitioner and the said 1 acre 30 cents belonging to said Narayan Adyanthar are situate adjacent to each other forming a compact block, or they are situate separated from one another at a different location in the said Sy. No. 130. Therefore, mere mention in the said survey sketch of the area measuring 1 acre 66 guntas at one side of whole of the plot of 8 acres 88 cents in Sy. No. 130/3 does not ipso facto provide satisfactory and sufficient proof of the fact that the said 1 acre 66 cents consisted of two shares-one belonging to the petitioner and another of Narayana Adyanthar lying adjoining each other.

14. It was necessary for respondent 1 to describe clearly with boundaries in his application Form No. 7 the portion of the land in Sy. No. 130/3 belonging to the petitioner of which he was allegedly the tenant. He has not so described it. Nor has he stated the boundaries of this piece of land in his evidence before the Land Tribunal or before the Land Reforms Appellate Authority. The description of the boundaries of the said land was necessary for its identification. In *Narayanagouda M.S. v Girijamma and Another*, the Division Bench of this Court has emphasised on the importance and significance of the description of the boundaries of a portion of the land in a Sy. No. to be furnished by the tenant who claims occupancy right with respect thereto. The Court has held:--

"There is one more reason to hold that the entire proceedings of the Tribunal commencing with the issue of notice u/s 48(2) are vitiated as it has resulted in the failure of justice. The landowner can meet the case of the claimant for registration of occupancy if the notice issued u/s 48-A(2) contains the boundaries of the portion of the survey number which has been alleged to have vested in the Government. The order of the Land Tribunal clearly comes within the categories

of orders which can justifiably be called as a perverse order".

The same ruling is followed in a Single Bench latter decision in Bakilana Chinnappa v Land Tribunal, Mercara Taluq and Others.

15. In view of all the afore-stated vital material discrepancies occurring in respondent 1's claim to the tenancy right for 70 cents of the petitioner's land in Sy. No. 130/3, the Land Tribunal was legally justified in not accepting this part of his claim and rejecting the same. The Lower Appellate Authority has failed to consider the said vital discrepancies and has thereby erred in granting occupancy right to respondent in respect of the said additional 36 cents of the land in Sy. No. 130/3. Therefore, its impugned judgment as regards granting occupancy right to respondent 1 in respect of said 36 cents is liable to be set aside.

16. For the reasons aforesaid, the petition is allowed in part. The impugned order of respondent 3-Land Tribunal dated 28-10-1987 made in Case No. TNC 6137 of 1974-75 and that portion of the impugned judgment dated 7-10-1988 of the Land Reforms Appellate Authority passed in Appeal No. LRA:T:332 of 1987 BTL whereby respondent 1 is granted occupancy right with respect to 24 cents of the land in Sy. No. 130/2 of Kunacha Village, Buntwal Taluk, Mangalore District are set aside; and the impugned judgment of the Land Reforms Appellate Authority so far as it relates to grant of occupancy right to respondent 1 with respect to additional 36 cents of the land in Sy. No. 130/3, is also set aside: and further the judgment of the said Appellate Authority granting 18 cents of land to respondent 1 in Sy. No. 130/4 is modified limiting this grant to him to the extent of 15 cents only, and Occupancy Certificate with respect thereto shall be granted to him after the said 15 cents of the land is got demarcated and identified through a competent surveyor and his survey sketch of this portion be appended to the said grant certificate. The judgment of the Lower Appellate Authority shall stand modified in terms of this order.

Parties to bear their own costs in the circumstances.