

(2003) 12 KAR CK 0014
In the Karnataka High Court
Case No : L.R.R.P. No. 6103 of 1990

K.T. Venkatappa, since deceased by his LRs. and Others	APPELLANT
Vs	
The Land Tribunal and Another	RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:

Karnataka (Personal and Miscellaneous Inams Abolition) Act, 1954 — Section 4, 5, 6, 9
A
Karnataka Land Reforms Act, 1961 — Section 45

Citation : (2004) ILR (Kar) 1471 : (2004) 2 KCCR 128 SN

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : Nanda Kishore, for B.G. Sridharan, for the Appellant; A.S. Ponnanna, for A.K. Subbaiah, for R2 and V. Bychappa, HCGP for R-1, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Srinivasa Reddy, J.—This petitioner has preferred this petition against the order passed by the Land Reforms Appellate Authority, Bangalore in Appeal No. LRA 276/87 affirming the order dated 4.11.1986 passed by the Land Tribunal in LRF No. 342/74-75 and LRF No. 1253/75-76.

2. Respondent No.2 filed the Form No. 7 in respect of lands measuring 4 acres and 24 guntas in Sy.No.2 and lands measuring 2 acres 24 guntas in Sy.No. 55 claiming to be a tenant under the petitioner declaring him to be the owner of the land. The Land Tribunal granted occupancy rights in favour of second respondent. The same was challenged by the petitioner in W.P.No. 2959/78 and by order dated 24.10.1993 this Court remanded the matter to the tribunal for fresh adjudication. After a fresh enquiry the tribunal again granted occupancy rights in favour of the second respondent by its order dated 14.11.1986. The said order was taken in appeal by the petitioner before the appellate authority which rejected the same and confirmed the order of the Tribunal by its order dated 21.7.1990. The petitioner being aggrieved by the said order of the appellate

authority has come up in this revision petition.

3. I have heard the learned Counsel on both sides at length.

4. The learned Counsel for the petitioner made a three submission questioning the legality and correctness of the impugned order passed by the appellate authority. The points raised by him challenge to the order of the appellate authority on the ground of unsustainability in law are as follows:

i) The competent authority to decide Form No. 7 is the Spl.D.C. not the land tribunal because the land is an inam land.

ii) If the land is converted prior to March 1, 1974 then, the Tribunal gets no jurisdiction to decide the tenancy right occupancy rights.

iii) If the lands are inam lands, the respondent cannot claim lawful possession as required u/s 4 of the Land Reforms unless he claimed and proved that he was inducted as a tenant subsequent to grant of occupancy rights under the Inams Abolition Act.

5. Point Nos. 1 and 3:-

These two issues are inter connected and are, therefore, taken up together. On the coming into force of the Inams Abolition Act, 1954 ("Act of 1954" for short) the lands in question lost the character of inam lands and the persons in whose favour occupancy rights were granted became superior holders or owners thereof of the said lands. All rights that existed prior to the Act of 1954 extinguished on the lands being vested in the Government, barring the right of certain tenants under the inamdar who were entitled to the limited right of continuing as tenants of the lands of which they were tenants immediately before the date of vesting. As respondent No. 2 was a sub-tenant under the inamdar and he was not entitled to present an application under Act of 1954 for conferment of occupancy rights, he had the right to continue in possession and cultivation of the lands u/s 9A of the Act of 1954 which reads:

"9.A Other tenants of Inamdar - Every tenant of the inamdar other than the tenants entitled to be registered as occupants under Sections 4, 5 and 6, shall, with effect on and from the date of vesting and subject to the provisions of Chapter III A be entitled to continue as a tenant of the land in respect of which he was tenant immediately before the date of vesting."

The inam lands in possession and cultivation of the sub-tenant therefore, acquired the character of tenanted lands on the confirmed occupancy rights on the petitioner and the second respondent who were sub-tenant under the petitioner became the tenant of the land. As lands lost the character of inam lands and acquired the character of agricultural land which was under the personal cultivation of a tenant, it is the land tribunal alone which has the jurisdiction to go into question of occupancy rights. A Division Bench of this court in MUNIYALLAPPA v. KRISHNAMURTHY 1977 (1) KAR LJ 700 while pronouncing

on the scope and applicability of the Act in respect of agricultural lands in former inam villages, observed:

"Agricultural lands in former Inam villages are not excluded from the purview of the Land Reforms Act. The consequence vesting of inam lands in the State under the Inams Abolition Act is that the lands absolutely vested in the State and all rights of inamdar and tenants under him are extinguished and the only right of the inamdar and his tenants, whether Kadim tenant, permanent tenant or quasi - permanent tenant, is to make applications for grant of occupancy. The State thereafter when it grants occupancy under Sections 4, 5 and 6 or 9 of the Inams Abolitions Act, confers fresh title on the grantees of occupancy. All prior rights are extinguished, except as provided u/s 9A, where under in the case of other tenants they are entitled to continue as tenants of the lands of which they were tenants immediately before the date of vesting."

The extinguishing of the rights is subject to the sole exception of the entitlement of the sub-tenant to continue to be in possession and cultivation of the inam lands. The status of the respondent No. 2 herein would be, therefore, that of a tenants whose possession was protected u/s 9A of the Act of 1954 and who continued in possession and cultivation of the erstwhile inam lands with effect from the date of vesting subject, of course, to the provisions of Chapter III-A of the Act of 1954. It is not the case of the petitioner herein that the tenancy of the second respondent came to be terminated by him for any of the reasons contained in Section 26-D of Chapter III-A. The fact, therefore, remains that the status of the respondent No. 2 herein is that of a protected tenant and his possession at no point of time became unlawful. The submission made by the learned Counsel for the petitioner to the contrary is, therefore, without force.

6. Let me now advert to Section 45 of the Karnataka Land Reforms Act, 1961 ("the Act of "1961" for short) which spells out the persons who are entitled to make an application for being registered as occupants. Section 45 of Act of 1961 reads:

"45. Tenants to be registered as occupants of land on certain conditions - (1) Subject to the provisions of the succeeding sections of this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sub-let, such sub-tenant shall with effect on and from the date of vesting be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally."

(underlining is mine)

The status of the second respondent herein is clearly that of a protected tenant because his possession was protected u/s 9-A of Act of 1954. The provision also speaks in terms of not only a "protected tenants" but also "other tenant" which term has not been defined under the Act. The provision probably covers every person who is cultivating the land of another personally learned Counsel for the

petitioner relied on Section 4 of the Act and submitted that it is only a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant. There could not be any doubt that the possession of the second respondent is lawful because he was inducted by the petitioner into the lands even prior to the coming into force of the Act of 1954 and on transformation of his right from one of a superior holder or owner, the second respondent's status became that of a protected tenant u/s 9A of the Act of 1954 who, on the coming into force of the Act of 1961 acquired the right to present an application u/s 45 of the Act of 1961 for registration of occupancy rights. The submission that second respondent has not been inducted into lands by the petitioner subsequent to the coming into force of the Act of 1954 and, therefore, his possession is unlawful is, thus, totally baseless. The learned Counsel for the petitioner relied on the decision of the Division Bench in *Shri Dharmarayaswamy Temple Vs. Chinnathayappa*, Reliance is placed by him on the passage at para 15(ii) of the said decision to drive home the point that it is only those tenants who had been inducted after the date of vesting of inam lands under the Act of 1954, in respect of which occupancy rights had been granted in favour of an inamdar are entitled to grant of occupancy rights under Act of 1961 which reads:

"15(ii) From that decision it follows that there could be claim of occupancy rights under the Land Reforms Act by a person, in respect of lands in respect of which occupancy rights had been granted in favour of an Inamdar under the Personal and Miscellaneous Inams Abolition Act, on the ground that he had become tenant subsequent to the date of vesting/grant of occupancy rights on the inamdar under the Inams Abolition Act. The Land Tribunal has also the jurisdiction to grant occupancy rights if such a claim is found to be true. This is the ratio of the decision in *Muniyallappa's* case in which the effect of an occupancy right granted to an Inamdar under the Mysore (Personal and Miscellaneous) Inams Abolition Act in the context of a claim for occupancy rights under the Land Reforms Act was considered."

The Division Bench was merely interpreting the observations made by this Court in *MUNIYALLAPPA v. KRISHNAMURTHY*. But even before making reference to the decision in *Muniyallappa's* case, their Lordships referred to the two categories of persons who could lay claim for grant of occupancy rights under the Land Reforms Act in para 15 itself. The said observation reads:

"In the said case the Division Bench pointed out in respect of lands in respect of which an erstwhile Inamdar had secured occupancy rights under that Inam Abolition Act only two categories of persons could claim occupancy rights under the Land Reforms Act. They are (1) Those who were recognized as ordinary tenants u/s 9A; (2) Those who became tenants after the grant of occupancy rights to the Inamdar."

As in my considered opinion the case of the second respondent is fully covered by the first category of persons viz., persons who were recognized as ordinary tenants u/s 9A of the Abolition Act of 1954, the submission, that the second

respondent having been a tenant even prior to the coming into force of the Act of 1954 is not entitled in law to be registered as an occupant of the erstwhile inam lands has no legs to stand. The ruling advances the case of the second respondent rather than that of the petitioner as the case of the second respondent is squarely covered by category one. What matters is not the time of induction but the nature of possession by a tenant of the lands. If possession of the lands has the sanction of law as it indeed it had, in the present case, the time of induction, whether it is prior to the Act of 1954 or thereafter, is besides the point.

7. The persons who were entitled to file application under the Act of 1954 were the kadim tenants, permanent tenants, quasi-permanent tenants and holder of minor imams. The second respondent who was cultivating the lands under the petitioner as a sub-tenant, therefore, was not entitled to present any application for grant of occupancy rights in his favour. As such a right was not available to him then, no fault could be found now for his failure to present an application under the Inams Abolition Act. This very issue had come up for consideration of this Court in *RANGACHAR v. LAND TRIBUNAL* 1979 (1) Kar. LJ. 457. Dealing with the said issue Venkatesh, J., as he then was, has succinctly stated how and why an application filed u/s 48A of the Act by the tenant in occupancy cannot be defeated on the ground that the lands were inam lands and the rights of the applicant who was a sub-tenant under the inamdar at the time of coming into force of Act of 1954 were extinguished by the vesting of the lands in the Government by the Act of 1954. The relevant observation at para 10 of the order, reads:

"One of the contentions of the writ petitioner is that if the respondents were tenants actually cultivating the lands in question, they should have obtained occupancy rights under the provisions of the Act of 1954. He says that not merely they did not do so, but, on the other hand, he has obtained occupancy rights u/s 5 of the Act, and that, in the circumstances the respondents had no right to claim occupancy rights under the provisions of the Act. Under the Act of 1954, in so far as the inferior holders are concerned it is only the Khadim tenants, permanent tenants, and Quasi- permanent tenants, who are entitled to occupancy rights Sub-tenants cultivating under them cannot claim any occupancy rights under that Act (Act of 1954). u/s 3 of the act of 1954, as a consequence of the inam vesting in the State Government, it is only the relationship of landlord and tenant between the inamdar on the one hand and his khadim tenants, permanent tenants, and quasi-permanent tenants on the other that would be extinguished. The subsisting relationship of tenancy, if any, between the khadim tenant, permanent tenant, and quasi-permanent tenant and the holder of a minor inam on the one hand and that of their tenants (sub-tenants), cultivating the inam lands on the other would in no way affected by the coming into force of the Act of 1954."

The lands vesting in the Government on the coming into force of the Act of 1954

brings about a change in the status of not only those persons who were entitled to present an application for registration of occupancy rights. It affects the rights of others who may not have been provided with the right of seeking grant of occupancy rights in their favour. After vesting of the lands under the Act of 1954 while the tenant acquires the status of a superior holder the person who was cultivating the said lands as sub-tenant becomes a full-fledged tenant under the superior holder. If this state of affairs continued till 1.3.1974 the lands once again vest in the Government and this time around the tenant who is in occupation and cultivation of the lands becomes entitled to apply for occupancy rights u/s 45 of the Act of 1961, notwithstanding the fact that he was not entitled to such a remedy under the Act of 1954. The question of omission on the part of a sub-tenant to claim for grant of occupancy rights also does not arise in such situation because a sub-tenant was not entitled under the Act of 1954 to move an application for grant of occupancy rights in his favour, the said right being limited to only those persons enumerated u/s 4, 5 and 6 of the Act of 1954. The transformation of the sub-tenant as a full-fledged tenant entitled him to stake claim for occupancy rights under the Act of 1961 if he continued to cultivate the lands in his capacity as a tenant. In the said facts and circumstances of the case the lands not being excluded from the purview of the Act, the Deputy Commissioner has no jurisdiction over such lands.

8. The decision cited by learned Counsel for the petitioner in Puttaiah Vs. Land Tribunal and Others, , is of no assistance to the petitioner as it was a case in which a person claiming himself to be the inamdar had sought for recalling of the order passed earlier granting occupancy rights to another person under the Abolition Act, 1955. It is in those circumstances in an inter se dispute between two persons each of them claiming to be inamdars, that the Court held that the jurisdiction lies with the Deputy Commissioner and not the Land Tribunal under the Abolition Act 1955. Points 1 and 3 are answered accordingly.

9. Point No. 2:

Mr. Nanda Kishore, learned Counsel for the petitioner, submits that Sy.No. 55 was duly converted for non-agricultural use in the year 1970 itself and u/s 44 read with Section 2(18), the land goes outside the purview of the Act of 1961. It is his contention that the application for conversion having been made on 14.9.1970 which was received on 16.9.1970, the land should be deemed to have been converted four months after the date of application u/s 95(5) of the Karnataka Land Revenue Act, 1964. The Deputy Commissioner having failed to pass any orders within the stipulated period of four months from the date of presentation of the application, the subsequent order passed by the Deputy Commissioner dated 7.2.1974, he submits, is nonest in the eye of law and has no legal force. In the same vein, he also contends that the proceedings before the Mysore Revenue Appellate Tribunal and this Court do not change the position in law. He cited the decision in GOPALAPPA v. GURUSHANKARAIHAH 1983(2) KAR.L.J. 148 and in D.S. LAKSHMINARAYANA RAO v. THE LAND TRIBUNAL, DODDABALLAPUR ILR 1980

KAR 285, for the proposition that where the conversion of land is complete and permission is deemed to have been granted, the Land Tribunal has no jurisdiction with regard to claims made under the Act of 1961 in respect of such lands. There could be no doubt about the correctness of the ratio laid down in those decisions. In the present case, however, the Deputy Commissioner passed the order on 7.2.1974, albeit after the expiry of the statutory period within which he ought to have disposed off the application for conversion. The petitioner herein took the said order of refusal to Karnataka Appellate Tribunal in appeal No. 875/74 (LR) and the Tribunal by its order dated 28.2.1975 allowed the appeal on the ground that the conversion must be deemed to have been granted. The respondent No. 2 herein preferred a Writ Petition challenging the order of the Karnataka Appellate Tribunal in W.P.No. 9864/79 and this Court disposed off the said Writ Petition by order dated 25.5.1988 observing that if the petitioner were to succeed in the appeal before the Land Reforms Appellate Authority (which was then pending), then the order of conversion would stand and on the contra, if the respondent No. 2 were to succeed and the order of the Land Tribunal were to be confirmed by the appellate Authority, then the order of conversion passed by the Karnataka Appellate Tribunal on 28.2.1975 would stand quashed. The petitioner herein has not preferred any appeal against the said order passed by this Court in W.P. No. 9864/79. When the order passed in W.P.No. 9864/79 has become final and conclusive, the petitioner cannot be permitted to reopen the issue and to contend, relying on the legal outcome of the delayed order made by the Deputy Commissioner, that there is deemed conversion. This question has been gone into and determined by this Court in W.P.No. 9864/79 and the petitioner having suffered an adverse order in the hands of the appellate authority, it is not open to him now to urge anything contrary to the consequences that follow such an order made after hearing both sides. In the said fact situation, this ground is not available to the petitioner for challenging the order of grant of occupancy rights passed by the Land Tribunal and affirmed by the appellate Authority.

10. It is the further contention of learned Counsel for the petitioners that the pahanis from 1961 to 1971 stand in the name of the petitioner and the pahanis produced by respondent No. 2 for the years 1972 -1974 could not have been considered by the Land Tribunal in the light of the specific case made out by the second respondent that he is a tenant of the lands in question for 20 years prior to 1974,. He, therefore, contends that the presumption u/s 133 of the Land Revenue Act, 1964 does not arise as there is inconsistency between the statement made and the pahani entries. The Land Tribunal is only required to notice the entry for the relevant date which is 1.3.1974 and if as on that date it is shown to the satisfaction of the Land Tribunal that the tenant was in possession and cultivation of the lands, then there is no need for the Land Tribunal to refer to the earlier entries. The entry as on 1.3.1974 being the only relevant entry for purpose of determining the rights of the parties before the Tribunal, a mere statement by a tenant that he was cultivating the lands over a long period cannot be termed as inconsistent with the pahani entries. Further,

the petitioner also did not take any steps regarding the entry of the second respondent's name in the RTC only for a period of three years. If he had any grievance about the same, nothing prevented the petitioner to have redressal of his grievance with the appropriate authorities in the appropriate forum. Learned Counsel for the petitioner also placed reliance on the "mafi pass" issued to him by the forest department for removal of timber. But this "mafi pass" relates to the year 1964 and, therefore, it is of no help to the petitioner.

11. Therefore, I find that the order passed by the appellate authority affirming the order passed by the Land Tribunal granting occupancy rights to respondent No. 2 does not suffer from any error of jurisdiction or illegality to call for the interference of this Court in revision. The revision is, therefore, liable to be dismissed.

12. The revision is, accordingly, dismissed.