

(2016) 01 KAR CK 0153
In the Karnataka High Court
Case No : Writ Petition No. 22200 of 2004 (LR)

M. Lakappa Bhandari and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2(12)

Citation : (2016) 01 KAR CK 0153

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : K. Shashi Kiran Shetty, Senior Advocate for Vijay Krishna Bhat, Advocate, for the Appellant; B.P. Radha, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—1. Heard the learned Senior Advocate Shri Shashikiran Shetty appearing for the counsel for the petitioners and Shri S. Shreevatsa appearing for the learned counsel for respondents No. 3 and 4, now represented by their legal representatives.

2. The petitioner, who is no more and is represented by his legal representatives, claims that his father late Lakkappa Bhandari was an agricultural tenant of various lands under late Sankappa Rai. With the coming into force of the Karnataka Land Reforms (Amendment) Act, 1974, late Lakkappa Bhandari had filed Form No. 7 for grant of occupancy rights in respect of various items of land, which are described in the schedule to the petition. The application was considered by the Land Tribunal, Puttur by orders dated 2.5.1981 and 30.7.1981 and the claim of the father of the petitioner was allowed. That order was challenged by the third respondent before this court in a writ petition in WP 27845/1982. During the pendency of the said petition, the appellate authority having been constituted, the matter was transferred to the said authority and during the pendency of the inquiry, the appellate authority was abolished and therefore, the matter was again transferred to this court through a civil petition

and thereafter numbered as a writ petition in WP 15560/1993. The petition was allowed by order dated 23.3.1991. The order of the Land Tribunal dated 30.7.1981 was set aside. So also the order dated 2.5.1981 was set aside and the entire matter was remanded to the Tribunal for a fresh inquiry.

Subsequent to the remand, the parties were again notified and an inquiry was conducted. By order dated 30.1.2004, the Tribunal has rejected the claim of the father of the petitioner in respect of the schedule lands.

It is the case of the petitioner that the Tribunal has rejected the claim on the ground that the father of the petitioner was a family member of the landlord Sankappa Rai and therefore, the question of a family member becoming a tenant under another family member would not arise and that the lease deed relied upon was a concocted document. And further with reference to Section 29 of the Madras Aliya Santhana Act, 1940 without the written permission of the family members, the yajaman has no right to lease out the family properties. Therefore, the lease created by Sankappa Rai was contrary to law.

This, the learned Senior Advocate would submit, proceeds on the premise that a son-in-law could not be a member of the family. The lease deed and the rent receipts produced are concocted documents, though they date back to the year 1961. It is also pointed out that the aliya santhana law applies to Sankappa Rai for a right to share in the property and hence to the extent of each share, any such tenancy created could not be held to be unlawful.

It is also pointed out that on a very preliminary issue, the order of the Tribunal would have to be set at naught. It is not in dispute that apart from the Chairman of the Tribunal, four other members had heard the matter and the order was necessarily to be signed by the Chairman and other members of the Tribunal. Whereas in the instant case on hand, the order is signed by the Chairman and three other members and the other member who had heard the matter is significantly not a signatory to the order and therefore, it is well settled that in such circumstances, the order is rendered void and is a nullity and on that count alone, the order would have to be set at naught.

3. In this regard, reliance is placed on several decisions apart from the tenor of Rule 17(8) of the Karnataka Land Reforms Rules, 1974 (Hereinafter referred to as the "KLR Rules, for brevity), which lays down that the order would have to be signed by all the members of the Tribunal, who heard the matter.

Further, it is contended that the entire documentation that has been produced in respect of the petitioner's case has been trashed only on the ground that they are concocted documents and hence, it has resulted in a miscarriage of justice. On these three grounds, the learned Senior Advocate would submit that the impugned order will have to be set at naught.

4. On the other hand, the learned Senior Advocate, Shri Shreevatsa would firstly point out that insofar as the finding that the petitioner was a member of the

family could not be disputed for the reason that there is a categorical finding of the Tribunal that the petitioner was the son-in-law, who was residing along with his wife and her parents in the same house. This is evidenced by a voters list that was produced and this circumstance was not in dispute. Therefore, it was the opinion of the Tribunal that the petitioner was the member of the family and this could not be negated. The Tribunal has proceeded on the footing that a family member creating a lease in respect of another family member is not contemplated in law. He would further point out that insofar as Sankappa Rai was concerned, there is finding that he was a junior member of the family and the family was governed by the alia santhana law and without the consent of other female members of the family, the yajaman would have no independent right to create a lease.

There can be no argument against the same. The fact is that there is a suit for partition pending, wherein there was a preliminary decree as on the date of the impugned order and the shares were not determined by metes and bounds. In which event, it could not be said that the share of Sankappa Rai, even if he could claim a share in the property, had crystallized. Hence, the further contention that even if Sankappa Rai had no authority to create a tenancy, he cannot be denied right to create tenancy in respect of the extent of property that would fall to his share, is without reference to the division of the property by metes and bounds. Admittedly, there was no such division as on the date of the impugned order and hence it could not be said that Sankappa Rai was vested with any right to create any tenancy. Therefore, the second limb of reasoning of the Tribunal that the tenancy created was not lawful and hence cannot be sustained, cannot be faulted even if it could be said that the petitioner was not a member of the family going by the strict definition as found in Section 2(12) of the Karnataka Land Reforms Act, 1961 (Hereinafter referred to as the "1961 Act", for brevity).

5. Insofar as the further contention that the documents produced by the petitioner have been negated and have not been discussed is concerned, the Tribunal has taken note of the same only to reject it, on a short reasoning that the father-in-law had no right to create a lease in favour of the son-in-law, as there was no vested right in him and apparently no permission of the family members had been obtained in creating such a lease deed. In view of a suit for partition which was pending, it cannot be said that there was any right in the property determined by metes and bounds to enable Sankappa Rai to deal with the same.

Insofar as the further objection as to the order being void on account of the order not having been signed by the Chairman and all the members of the Tribunal is concerned, he would draw attention to Rule 16 of the KLR Rules, which provides for a quorum of the Tribunal and the quorum is constituted when the Chairman and three members are present. In the present case on hand, though the Chairman and all the members had heard the matter, the order was pronounced on a date when the Chairman and three other members were

present and one of the members who was earlier heard the matter, was not present. The learned Counsel would submit that the several judgments which have been cited are all cases where the members were present and had heard the matter, but one of them had either not signed or had not expressed his opinion. This is not a case where the matter was heard and the order was signed on the same day. The matter was heard by all the members along with the chairman, but was signed by the chairman and three members. This is a distinguishing feature which would enable the respondents to claim that the order is valid and cannot be held to be void, but the impugned order not having been signed by one of the members.

6. In the above facts and circumstances, two questions that arise for consideration are, (a) whether the Tribunal was justified in holding that the lease was not lawfully created and hence would not enable the petitioner to claim occupancy rights and (b) whether the order of the Tribunal is void on account of the order not having been signed by all the members.

Insofar as the first question is concerned, on a plain reading of the definition of "family" under the 1961 Act, whether it applied to the landlord or whether it is applied to the tenant or whether the petitioner would be a member of the family can be answered in the negative. He would not be a member of the family as contemplated under section 2(12) of the 1961 Act. However, the further reasoning of the Tribunal rests on the premise that the lease created was not lawful and therefore, the occupancy rights could not be conferred. This cannot be faulted, for it is admitted circumstance that the parties were governed by the aliya santhana law. The property devolves through the female line. The male members admittedly do not have any right in the land in question. Assuming that there was a right of maintenance created in favour of Sankappa Rai, there was no right in the property that had vested in him and even assuming further that in a partition suit, there was a preliminary decree conferring the right of tenancy in respect of the property on Sankappa Rai and that had not culminated in a final decree and there was no division by metes and bounds of the property in question, therefore, without the consent of the female members of the family, as a junior member of the family, he had no right to create such tenancy and any such tenancy created without the consent of the female members was non-est and void. Therefore, the Tribunal having proceeded on the footing that the lease deed could not have been created and any documents produced in support of such a contention cannot stand the test of law, cannot be faulted. Notwithstanding that there may have been a lease deed of the year 1961 and that there were also documents to evidence the payment of rents from time to time, the creation of the tenancy itself is not in accordance with law and could not be recognized.

Further, the contention of the learned Senior Advocate that apart from the petitioner, there were other applicants who had sought occupancy rights claiming shares under the very same Sankappa Rai and those orders have been allowed

to become final with the respondents not challenging the same, cannot be a ground to sustain the tenancy claimed by the petitioner. Two wrongs do not make a right. Therefore, those orders having been left undisturbed would not enure to the benefit of the petitioner.

In so far as the contention that the order of the Tribunal is void for not having been signed by one of the members is concerned, it is necessary to notice Rule 17(8) of the KLR Rules, which reads as follows:

"17(8) The order shall be signed, in addition to the Chairman, by the other members of the tribunal who heard the case."

Rule 16 of the KLR Rules provides for a quorum for a meeting of the Tribunal, which reads as follows:

"16. Quorum for meeting of the Tribunal: The quorum for every meeting of the tribunal (including or adjourned meeting) shall be three members including the Chairman. If within half-an-hour of the time fixed for the meeting there is no quorum, the meeting shall be adjourned. The notice of the date and time of the adjourned meeting shall be communicated to all the members of the tribunal."

7. In interpreting the scope and effect of these rules, the earliest judgment which is cited at the bar is *Kalyanamma vs. State of Karnataka*, 1980 (1) KLJ 34. The question that was addressed was that all the members of the Tribunal, who took part in the proceeding and sat as members of the Tribunal in deciding the case had not signed the order in token of their approval of the order to be issued and also with the reasons to be given. In addressing this question, the learned Single Judge has held with reference to the original records of the proceedings therein that on 12.9.1977, the date on which the impugned order was pronounced, all the five members of the Tribunal including the Chairman were present. The decision of the Tribunal contained in the impugned order was not dictated in the open court on 12.9.1977. The order in question was prepared by dictation to the typist and the transcript was edited by the Tribunal and pronounced in the open court on 12.9.1977. The order made a reference to the presence of all the five members including the Chairman at its preamble portion. It further stipulated that the decision rendered in the order was an unanimous decision of all the members present. However, the order in question was signed by the Chairman and three other members. One of the members who was present on 12.9.1977, when the decision was pronounced, did not subscribe his signature to the order, though it mentioned that it was an unanimous decision of all the members present. The difference in the circumstances in that judgment and the circumstances present in the present case on hand can straight away be distinguished. Hence, the said decision would not apply.

Insofar as the division bench judgment in the case of *Vijaya Bank vs. The Secretary to the Government of Karnataka, Revenue Department*, , ILR 2008 Kar. 1481, is concerned, it is a short judgment, which does not disclose all the particulars of that case, except to state that the deceased respondent No. 4 had

made an application for grant of occupancy rights in respect of certain land and the Tribunal having granted the same, it was challenged before a single judge, who held that it was not signed by all the members of the Tribunal under Section 17(8) of the Karnataka Land Reforms Rules, 1974 and thus set aside the order. The learned Single Judge had found that two members had indeed not signed the order, but it is only a technical lapse not going to the root of the matter. And that the proceedings in question were of the year 1975 and it is after a lapse of 32 years, the challenge was made and the writ petition was dismissed.

The division bench, after going through the order passed by the learned Single Judge, has observed thus:--

"4. After carefully going through the impugned order passed by the learned Single Judge in review and the provisions of Rule 17(8) of the Karnataka Land Reforms Rules 1974, we are of the opinion that the failure of the members to sign the order is not merely a technical lapse but it goes to the very root of the matter. The judicial discipline requires that in a multi member judicial/quasi judicial adjudicatory body, all the adjudicators who have heard the matter should pronounce their written opinion at the same time and place and all of them should sign the order. The said salutary object of law is effectively manifested in Rule 17(8) of the Karnataka Land Reforms Rules. It is evident that five members have heard the matter. Only three members have signed the order and two of them have not signed the order. The Chairman and one of the members who have signed the order have expressed note of dissent for grant of occupancy rights in favour of fourth respondent. Only one of the members who have signed the order has opined that occupancy rights to be granted in favour of fourth respondent. On totality of the consideration of facts and the material, we are of the view that the impugned order of the Tribunal which is not signed by the all the members who have heard the matter is a nullity and the said order cannot be considered as a valid juridical adjudication."

Here again, it is not indicated that the order was signed on the very day it was heard, but on some other day and therefore if the matter had been heard and was not signed by all the members who had heard, on the same day when it was pronounced, then certainly no fault can be found with the interpretation akin to the judgment. Further, there is no reference to Rule 16 of the KLR Rules, which deals with the quorum for an adjourned meeting of a Tribunal. Hence, it cannot be said that the decision can be applied in summarily holding that the order in the present case on hand is a nullity.

Further, in the case of N. Ramaswamy vs. The Land Reforms Tribunal, Anekal Taluk, 2015 SCC Online Kar 3806, the learned Single Judge has held that the impugned order therein was signed by the Chairman and another member of the Tribunal. Three members of the Tribunal had not signed the order, but on the other hand, they had sent a joint letter that their views in the matter had not been ascertained. Their opinion regarding spot inspection had not been obtained. They had called upon the Chairman to cancel the impugned order. Therefore, in

such situation, there can be no doubt that the order of the Tribunal could not be sustained when there was an express protest by other members. Therefore, the said decision would also not aid the argument that the order of the Tribunal would have to be set at naught only on the ground that one of the members had not signed the order.

The learned Government Pleader would enlighten the court from a perusal of the record that a member who had not signed the present order was not present on the day the order was signed and he had not expressed any opinion in the case at all.

Therefore, in order to reconcile the scope and effect of Rule 17(8) read with Rule 16 of KLR Rules, if on the day the matter was heard, the Chairman and four other members were present and if the order was pronounced on the adjourned date of hearing, the quorum for the Tribunal on such adjourned date of hearing, with reference to Rule 16 of the KLR Rules, was complete if the chairman and three other members were present and they would have been competent to hear the matter and even pronounce the order.

8. Accordingly, if they had on the adjourned date of hearing signed the order in the absence of one of the members, who may have been present on the previous date of hearing, but was absent on the adjourned date of hearing, it cannot be said that the order was a nullity. The argument that the matter should have been further postponed to enable the member who was absent, to also be present, in order to sign the order, cannot be sustained. If such procedure is contemplated, there was no need for prescribing a quorum for a meeting of the Tribunal. The quorum would naturally infuse the Tribunal with the jurisdiction to hear matters, to adjourn matters to hear further and pass orders, notwithstanding the absence or presence of one or other members, who are present or absent. For otherwise there is no meaning in prescribing the quorum. Therefore, Rule 17(8) of the KLR Rules should be in consonance with Rule 16 of the KLR Rules and if that is accepted, then the order passed in the present case cannot be faulted. It would be otherwise if all the members present had heard the matter and if on the very day the order is signed and one of the members does not sign, it is in line with the decisions that have been rendered and which have been cited at the bar. The distinguishing feature that this bench would seek to point out is as above.

Accordingly, there is no infirmity in the order impugned and the petition is accordingly dismissed.