

(2012) 06 KAR CK 0055

In the Karnataka High Court

Case No : Writ Appeal No"s. 2373-2379 of 2012, 2546-2555 of 2012 (LR)

M Ramu and Others

APPELLANT

Vs

The Assistant Commissioner Bangalore North Sub Division
Bangalore, etc etc and Others

RESPONDENT

Date of Decision : 04-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Reforms Act, 1961 — Section 48 A

Citation : (2012) 6 KarLJ 129

Hon'ble Judges : Vikramajit Sen, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Padmanabha Mehale, for Sri Naveed Ahamed in WA No 2373 of 2012, for the Appellant; R. Padmanabha for R-2 to 8, Sri B. Veerappa, AGA for R-1 and for State in WA No 2373 of 2012, Sri H. Basavaraju for R-2, Sri B. Veerappa, AGA for R-1 and State in W.A. No. 2374/2012, Sri Padmanabha Mehale, for Sri Naveed Ahamed, in W.A. No. 2375/2012, Sri S.J. Puranik for R-20 in W.A. 2378-79/12, Sri B. Veerappa, AGA for R-1, in W.A. No. 2375/2012, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, C.J.—These Appeals assail the Order dated 12.04.2012, passed by the learned Single Judge allowing the writ petition and quashing the impugned order of the Land Tribunal Bangalore North Taluk (Tribunal for short) dated 7.02.2006. Late Gujjarappa had purchased agricultural land in Survey No. 221 measuring 39 guntas situated at Doddigunta village, Kasaba hobli, Bangalore North Taluk and had granted a lease in favour of M. Ramu, the Appellant before us. The Appellant claims that the lease in question was agricultural in character, whereas it is contended by the Respondents that only a portion of a house thereon had been given on rent to the Appellant. On 26.12.1974, the Appellant filed an application in Form No. 7 u/s 48A of the Karnataka Land Reforms Act before the Tribunal, claiming occupancy rights, which came to be allowed on

23.03.1989. This Order was assailed by way of Writ Petition No. 15773/1991 by the legal heirs of the original owner, late Gujjarappa and it was allowed on 5.07.1996 remanding the matter back to the Tribunal for fresh consideration and determination. In the second salvo of litigation, the Tribunal noted the stance of the legal heirs of late Gujjarappa, inter alia, that the Applicant/Appellant was merely staying in one of the houses situated in the property in question. A perusal of the said Order dated 07.02.2006 discloses that it was founded entirely on the basis of revenue records i.e., the Record of Rights (RTC) for the year 1966-67 to 1975-76 containing the name of the Appellant in column No. 12 (2) followed by the name of late Gujjarappa. However, the impugned Order does not disclose any discussion vis-?-vis the owner's version that the land stood converted from agricultural to non-agricultural user viz., for residential user. The Occupancy rights were granted in favour of the Appellant. Thereupon, several writ petitions came to be filed which have been allowed by the impugned Order dated 12.04.2012. Incidentally, a further hearing was granted to Appellant/Respondent No. 2 in W.P.No. 99/2007 on the day following the hearing of arguments and pronouncement of decision, the appellant herein had appointed Senior Counsel for the purposes. The Writ Court noted the arguments addressed on behalf of the respondent -

- (a) There was no conversion order,
- (b) Conversion must be u/s 93 of the Mysore Land Revenue Code,
- (c) Land remains to be agricultural land even if it is not used for agricultural purposes,
- (d) No Power of Attorney was given by the Appellant/Tenant authorizing the sale of the property and
- (e) Question of tenancy has to be decided by the Land Tribunal and not by the Court. Even in the second hearing granted to the Appellant, the Writ Court stood steadfast to its earlier conclusion to the effect that the Order of the Land Tribunal passed on 07.02.2006 deserved to be quashed.

2. The first question which has been pithily discussed by the learned Single Judge was that the Power of Attorney had been duly executed by the Appellant and was legally efficacious to sell/transfer his rights to third parties. Since the Appellant had sold all his rights in the land, he no longer possessed locus-standi to agitate any question, claim or any rights to the land. It is significant to note that the person to whom the Appellant had sold the land have evinced no interest in the present litigation even though the fruits thereof would enure to them and not to the Appellant. Having conveyed all his rights in the land to third parties, the present litigation can only be viewed as a device of extortion, or harassment or blackmail aimed at the present bona fide purchasers from the landlord or his legal representatives. Having so noted, the writ Court need not have proceeded further in the matter since exercise of extraordinary jurisdiction under Article 226 of the Constitution is purely discretionary.

3. Be that as it may, so far as the other questions are concerned, it was incumbent upon the Tribunal to deal with the contentions urged by the Owners pertaining to the conversion of the property. We cannot appreciate the manner in which the Tribunal assumed the agricultural character of the land without categorically countenancing the contentions of conversion of the land in question, especially since the genuineness or veracity of the documents placed on record by the Respondents have not been doubted. The first document is dated 15.04.1946 which evidences that late Gujjarappa was permitted to use the land for non-agricultural purposes and that he had paid the requisite conversion fee. The order dated 5.09.1972 passed by the Assistant Commissioner, Bangalore Sub-Division, Bangalore in DCB.25/71-72 states as follows:

By virtue of the fact, that the Ex-Kayamguttadar of Doddikunte Village, had sanctioned conversion in the capacity of the Commission Holder confirmed on him by the resident and that the same was upheld by the High Court of Mysore, Bangalore, permission is hereby accorded for reducing the assessment in respect of Sy.Nos. 130/2 (0-22) and 221 (0-39) thereof. It is also directed that necessary entries shall be incorporated in the Record of Rights register.

Added to this, the property has also been assessed to tax by Bruhat Bangalore Mahanagara Palike (BBMP) and the taxes are being paid by the assesses from time to time.

These aspects should have been considered by the Land Tribunal and having failed to do so, the impugned Order dated 07.02.2006 contains a fatal lacuna. The records show that the Respondents have purchased parcels of land from the legal successors of late Gujjarappa and have built residential houses thereon. As mentioned before, the persons to whom the land was sold by the Appellants have not prosecuted the proceedings and therefore have tacitly accepted the ownership of the Respondents. It should also be overlooked that the occupancy rights granted in favour of the appellant would not be transferable to a third party and therefore, regardless of the conversion of the land, the erstwhile tenant/occupant or persons deriving title from him, would be bereft of any legal claim for occupancy. For these manifold reasons we find no error in the impugned Order of the learned Single Judge. The Appeals are, as already observed malafide, extortionate and/or vexatious in nature and are dismissed with exemplary costs which we quantify at Rs. 25,000/-.