
(2015) 07 KAR CK 0155
In the Karnataka High Court
Case No : Writ Petition No. 29914/2003 (LR)

Madhukar Dharma Majalikar

APPELLANT

Vs

The Land Tribunal and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Citation : (2015) 07 KAR CK 0155

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : R.M. Kulkarni, for the Appellant; Ravi V. Hosamani, AGA, Advocates for the Respondent

Final Decision : Allowed

Judgement

B. Veerappa, J—The tenant filed the above writ petition against the order passed by the Land Tribunal, Karwar, dated 20.2.2003 made in TNC-MSC-SR-3318, rejecting Form No. 7 filed by the petitioner.

2. It is the case of the petitioner that the petitioner is the son of Dharma Tumu Majalikar who was tenant in respect of property bearing Sy. No. 192/2 measuring 5 acres 09 guntas of Shirwada village, Karwar Taluk under one Sri Lakshman Ajagaonkar. He was cultivating the land personally long prior to 1.3.1974 and was also paying rents to Sri Lakshman Ajagaonkar. Sri Dharma Tumu Majalikar made an application in Form No. 7 for grant of occupancy rights in respect of properties in Sy. Nos. 165/1, 165/2 and 192/2, measuring 5 acres 9 guntas of Shirwad Village, Karwar Taluk. It is also stated that earlier the Land Tribunal granted occupancy rights in favour of father of petitioner on 07.02.1977 to the entire extent of land. But in the measurement was given as 1 acre 9 guntas. Therefore, the father of the petitioner was constrained to file application before the Land Reforms Appellate Authority, Karwar and the Land Reforms Appellate Authority has corrected the survey number but not the extent on 12.01.1990 and therefore, the petitioner filed LRRP. No. 980/1990 before this Court and during the pendency of the said LRRP, the owner Laxman Ajagaonkar had died and his

son Dattu Ajagaonkar was brought on record as his legal representative. According to the petitioner, and in the said revision petition the landlord has admitted that Dharma Tumu Majalika is a tenant only in respect of 1 acre 9 guntas of land and not to the entire extent of land as contended and to that extent, the order of the Land Tribunal was correct. However, after considering the entire material on record, this Court by its order dated 19.6.1997 was pleased to allow the LRRP. 980/90 in the following terms:

"(i) the impugned order in No. DAA/WP/AP/67/88 dated 12.1.1990 in correcting the S. No. as 192/A3 as against the original S. No. 192/2 but showing the extent wrongly as 1 acre 5 guntas as against 5 acres 9 guntas is set aside;

(ii) that the order dated 7.2.1997 passed by respondent No. 1, Tribunal in tenancy proceeding No. TNC.MSC.SR. 3348 Karwar in so far as the same related to grant of occupancy right to the petitioner in respect of S. No. 192/2 [would have been correctly mentioned as 192/A3] in respect of 5 acres 9 guntas [also show as 1 acre 5 guntas] is quashed.

(iii) The matter is remanded to the Land Tribunal with a direction to it to hold a *denovo* enquiry in respect of the claim of the petitioner pertaining to second item of land i.e. 5 acres 9 guntas in S. No. 192/A3 as set out in his Form No. 9.7. The Land Tribunal is further directed to hold such an enquiry if necessary by holding a spot inspection too, after issue of notices to the petitioner herein and further to the parties as set out in Form No. 7 filed by the petitioner and in the event of the parties were to be found dead, the notices to be issued by the Land Tribunal to the LRs thereof;

(iv) The Tribunal is also directed to hold such an enquiry in strict compliance of Rule 17 of the Land Reforms Rules by affording every opportunity to the parties to place their respective side of the case before it as expeditiously as possible and latest 6 months from the date of commencement of proceedings."

3. It is also the case of the petitioner that after remand, the Land Tribunal passed by the impugned order rejecting the application Form No. 7. Therefore, the petitioner is before this Court.

4. The respondents have not filed any objections to the main petition.

5. I have heard the learned Counsel for the parties to the lis.

6. Sri R.M. Kulkarni, learned Counsel for petitioner, has contended that the impugned order passed by the Land Tribunal rejecting the application is without any basis and the Land Tribunal has not considered the mahazar/panchanama made on 2.2.1977 wherein it has been clearly mentioned that the father of the petitioner was cultivating the land in Sy. No. 192/A. 3 wherein he was raising both paddy as well as vegetables in 0.25 guntas each and remaining land was uncultivable and he also contended that after remand, the Tribunal has not held any spot inspection as directed by this Court in LRRP. 980/1990 dated 19.6.1997 (as per annexure-M). It is also contended that the Tribunal has not considered

annexures-B. 1 and C. 1 while passing the impugned order. No opportunity was given to the petitioner and he further contended that landlord has not stepped into the witness box and GPA holder has admitted that the father of the petitioner has been in possession of 1 acre 9 guntas and the Tribunal has not also followed the procedure contemplated under Rule 17 of the Karnataka Land Reforms Rules. Therefore, he sought to set aside the order passed by the Land Tribunal.

7. Per contra Sri Ravi V. Hosamani, learned AGA appearing for respondents 1 and 3 as well as Sri N.V. Yaji, learned Counsel appearing for R. 2 sought to justify the impugned order and the learned AGA strenuously contended that, the Tribunal considered all the material facts and come to the right conclusion that the petitioner failed to prove his tenancy as on 1.3.1974. Therefore, he sought to dismiss the writ petition.

8. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties to the lis and perused the entire material on record.

9. The fact that petitioner's father was cultivating the property in question for more than 40 years prior to filing of the application and he has raised certain crops as per the mahazar (panchanama) conducted on 2.2.1977 is not in dispute. The landlord has not filed any objection nor produced any documents to show that he was cultivating personally. This court while remanding the matter has directed the Tribunal to hold de-novo enquiry in respect of the claim of petitioner pertaining to property in question i.e. Sy. No. 192/A. 3 measuring 5 acres 9 guntas, after holding spot inspection, if necessary, after issuing notices to the petitioner and further the parties set out in Form-7 filed by the petitioner, in the event of parties were to be found dead, the notices to be issued by the Land Tribunal to the LR's thereof and directed the Tribunal to hold enquiry in strict compliance of Rule 17 of the Land Reforms Rules by affording every opportunity to the parties to place their respective side of the case before it as expeditiously as possible and latest before six months from the date of commencement of the proceedings.

10. After remand, the tenant/petitioner examined as P.W. 1 and one witness was examined as P.W. 2. P.W. 1 Madhukar Dharma Majalkar, has are stated on oath that he has been cultivating the land in question from the life time of his father and thereafter he is cultivating the land as a tenant and the landlord never cultivated the same. The witnesses Chandrakanth P.W. 2 has stated on oath that the land has been cultivated by the father of the petitioner and he was present for the panchanama drawn. The landlord was also called as well as the father of the petitioner and other officers were present. In the land, the petitioner has raised paddy and other crops and he has also stated that petitioner has raised trees and the landlord never cultivated the land personally and all the fruit bearing trees and other trees have been raised only by the father of the petitioner.

11. One Chandrakant Thaku Naik has been examined as P.W. 2, on behalf of landlord, who stated on oath that he was cultivating the land through coolie and the GPA holder of landlord, Shasikant Vishwanath Patarvekar has stated on oath that the landlord has been cultivating the land and neither the petitioner nor his father never cultivated the land as tenant. Admittedly, the landlord who was alive as on the date of examination made by the Tribunal on 24.8.2002, has not stepped into the witness box nor denied the submission made by the tenant that he was cultivating the land for more than 40 years.

12. The Rent Receipts produced by the petitioner as annexures-B. 1 and C. 1 in the present writ petition for the year 1941-1942 and 1973-74, state that the father of the petitioner was paying rent to the landlord and the rent receipt was issued by the landlord. Annexure-C. 1 dated 16.05.1973 for the year 1973-74 in respect of Sy. No. 192/A. 3 which depicts that the father of the petitioner has been paying rent to the landlord, which clearly indicates that the petitioner's father was cultivating the land from the year 1942 and after his death till 16.05.1973. The said material aspect has not been considered by the Tribunal before passing the impugned order.

13. This Court in LRRP. 980/1990 dated 19.6.1996 specifically directed the Tribunal to hold de-novo enquiry afresh, by giving opportunity to both parties and after holding spot inspection, if necessary, to pass the order after following strict compliance of Rule 17 of the Karnataka Land Reforms Rules. Admittedly, after remand no spot inspection is conducted. In the impugned order, the Tribunal has referred that there was no necessity to conduct spot inspection. The witnesses on behalf of tenant specifically stated on oath that the petitioner and their father was cultivating the land for more than 40 years and the landlord never cultivated the lands and he never stepped into the witness box to deny the tenancy rights claimed by the petitioner and his father. The material produced before the Tribunal discloses that the father of the petitioner was cultivating the land and thereafter, the petitioner has been cultivating the land. The material documents have not been properly considered by the Tribunal and no spot inspection was held as directed by this Court and there is no strict compliance of the provision of Rule 17 of the Karnataka Land Reforms Rules, 1974. The object of the Land Reforms Act is to ensure that proper opportunity is given to all the parties to prove their case before coming to the conclusion and pass orders.

14. As already stated, in the proceedings before the Land Tribunal, the landlord has not been stepped into the witness box. There are materials which are indicating that the petitioner and his father has been cultivating the land as on 01.03.1974. The same has not been considered properly. Therefore, in the interest of justice, the matter requires reconsideration by the Land Tribunal afresh after giving opportunity to all the parties and after holding spot inspection and pass orders in accordance with law.

15. In view of the aforesaid reasons, writ petition is allowed. The impugned order passed by the Land Tribunal on 20.2.2013 vide Annexure-H and the order of

Corrigendum/Correction of survey number dated 5.3.2003 as per Annexure-J are quashed and the matter is remanded to the Land Tribunal, Karwar, for fresh consideration in accordance with law, after holding spot inspection and after giving fresh opportunity to both parties and pass order in strict compliance of the provision of Rule 17 of the Karnataka Land Reforms Rules 1974, as expeditiously.

Ordered accordingly.