

(1997) 07 KAR CK 0088
In the Karnataka High Court
Case No : Writ Petition No. 23999 of 1995

Mahabalinga Maniyani

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 09-07-1997

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 43, 44, 44 (2) (g), 77 (2)

Citation : (1998) ILR (Kar) 318

Hon'ble Judges : S.R. Venkatesha Murthy, J

Bench : Single Bench

Advocate : G. Lakshmeesh Rao, for R.S. Bhat, for the Appellant; S.N. Aswathanarayan, Government Advocate for R-1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Venkatesha Murthy, J.—The petitioner herein who was an occupant of land as a tenant in Sy.No. 290-1AP measuring one acre 24 cents and Sy.No. 270-4B measuring 22 cents of Bettampady Village, Puttur Taluk sought and obtained occupancy rights under the Karnataka Land Reforms Act in LRYT 6055/74-75 dated 8.2.1988. The petitioner claims that Sy.No. 281-1A measuring 3 acres out of 4 acres and Sy.No. 270-3A measuring 75 cents out of 7 acres 15 cents constituted Kumki to the land of the petitioner in Sy.No. 290/1AP and he is entitled to the kumki privilege in these lands as provided by law. The petitioner apprehends that as per Annexure-B (Circular issued dated 9.4.1992) the Revenue Department of the Government of Karnataka has sought to issue a clarification regarding kumki privilege in Dakshina Kannada, to the effect that on the vesting of land u/s 44 of the Karnataka Land Reforms Act, the tenant who is conferred occupancy rights would not be entitled to kumki privilege. The petitioner who is aggrieved by the interpretation, sought to be given to Sections 43 and 44 of the Karnataka Land Reforms Act has preferred this Writ Petition seeking quashing of Annexure-B.

2. The Madras Board Standing Orders defines a kumki privilege and also a kumki

land. A kumki land is described thus:

"Kumki land is Government waste land within 100 yards of assessed land included in a holding formed prior to fasli 1276,

Kumkidar is a person who is entitled to enjoy the kumki privilege.

A kumkidar is necessarily either the registered holder, walawargdar or mulgenidar of the land to which the kumki privilege is attached."

Kumkidar's privilege is also described thus:

"A Kumkidar's privileges in the land are grazing his cattle, cutting and collecting leaves, timber and other forest produce for his agricultural and domestic purposes."

The question is whether the kumki privilege goes with the land or is personal to the owner of the land.

3. The description of kumkidar referred to above would show that a kumkidar is necessarily either the registered holder, walawargdar or mulgenidar of the land to which kumki privilege is attached. It is clear, therefore, that the kumki privilege goes with the land and the lawful occupant of the land would be entitled to enjoy the privileges in accordance with law.

4. Section 43 of the Karnataka Land Reforms Act reads thus:

"Rights or privileges of tenant not to be affected:

Save as provided in this Act, the rights and privileges of any tenant under any usage or, law for the time being in force or arising out of any contract, grant, decree or order of a court shall not be limited or abridged."

5. It is clear from the above provision that the kumki privilege being recognised by law and attaching to the user of the warg land, would also be available to a tenant.

6. Section 44 of the Karnataka Land Reforms Act provides for vesting of lands held by or in the possession of the tenant immediately prior to 1.3.1974 in the Government. The incidents of such vesting of land in the Government is enumerated in Sub-section (2)(g) of Section 44 of the Act and it reads as follows:

"44, Vesting of the land in the State Government-

(1) XXX XXX

(2) Notwithstanding anything in any decree or order of or certificate issued by any court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely -

(a) xxx xxx; (b) xxx xxx; (c) xxx xxx; (d) xxx xxx; (e) xxx xxx; (f) xxx xxx

(g) permanent tenants, protected tenants and other tenants holding such lands shall, as against the State Government, be entitled only to such rights or privileges and shall be subject to such conditions as are provided by or under this Act; and any other rights and privileges which may have accrued to them in such lands before the date of vesting against the landlord or other person shall cease and determine and shall not be enforceable against the State Government.

7. So Kumki privilege a tenant enjoyed in accordance with law is not only saved u/s 43 but also u/s 44 of the Act, and would continue to be enjoyed by him during the interregnum between the date of vesting under Sub-section (1) of Section 44 of the Act and the date of conferment of occupancy rights and even there after in accordance with law.

8. It is necessary to observe that Sub-section 2 of Section 79 of the Karnataka Land Revenue Act inter alia protects the kumki privilege, subject to general or special orders of the State Government. The kumki privilege could only be extinguished in the manner provided in Section 79(2) of the Karnataka Land Revenue Act. Only by reason of vesting of the land under Sub-section (1) of Section 44 of the Karnataka Land Reforms Act, the kumki privilege does not get extinguished as sought to be made out by the impugned circular Annexure-B, It is unnecessary to examine whether in other cases of disposal of the land coming within the ambit of Karnataka Land Reforms Act, kumki privilege is available.

9. Annexure-B (dated 9.4.1992) is apparently contrary to the specific intendment of Section 43 and 44 of the Act and is ultra vires. Annexure-B which threatens a privilege protected by law cannot continue to exist and should be quashed.

10. The Writ Petition is allowed quashing Annexure-B (No. RD 97 LCA 92, dated 9.4.1992). Rule made absolute.