

(2003) 11 KAR CK 0055

In the Karnataka High Court

Case No : Writ Appeal No's. 2502 to 2506 of 2000 (KVOA)

Malligenahalli Maheshwarappa and Others

APPELLANT

Vs

K.N. Ramarao (Deceased) by L.Rs and Others

RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 126

Karnataka Village Offices Abolition Act, 1961 — Section 3, 3 (1), 4, 4 (2), 7

Citation : (2004) ILR (Kar) 1433 : (2004) 2 KarLJ 401 : (2004) 1 KCCR 646

Hon'ble Judges : P. Vishwanatha Shetty, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : M. Raviprakash, for the Appellant; Rukmini, for M.S. Gopal, for Respondents-1 to 1 and 3, S.V. Prakash, for Respondents-2(i) to 2(iii) and Ratna N. Shivayogimath, Government Pleader for Respondents-4 and 5, for the Respondent

Judgement

1. The appellants in these appeals and respondents 6 to 15 were the petitioners in Writ Petition Nos: 10209, 10213, 10214 and 10217 of 1996. Respondents 1(i) to 1(v), 2(i) to 2(iii) and respondents 4, and 5 were the respondents in the writ petitions. In these appeals, the appellants have called in question the correctness of the order dated 8th March, 2000 made in the writ petitions referred to above.

2. The facts in brief are as follows:

The subject-matter of dispute in these appeals pertains to lands measuring 33 acres in Sy. No. 26 and 28 acres and 4 guntas in Sy. No. 39 of Salabalugadi, Surahonne Village, Honnali Taluk, Shimoga District. Undisputedly, the said lands were Patel Umbli lands. On the application filed by the 1st respondent-deceased K.N. Ramarao and the 3rd respondent-N. Venkoba Rao who were the holders of the village office, land measuring 23 acres in Sy. No. 26 was re-granted as provided under the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as "the Act") in favour of the said Rama Rao and another 10 acres in the said survey number in favour of deceased 2nd respondent-Ranga Rao. Land

measuring 10 acres in Sy. No. 39 was re-granted in favour of the 3rd respondent-Venkoba Rao by means of order dated 10th September, 1987, a copy of which has been produced as Annexure-A to these appeals. When the matter stood thus, in the year 1993 deceased Rama Rao made an application u/s 7 of the Act praying to evict the respondents 1 to 28, who are unauthorisedly cultivating the lands, and restore the same to their possession. The Tahsildar who was appointed as a Deputy Commissioner u/s 2(d) of the Act to discharge the function of the Deputy Commissioner, by means of notification dated 29th August, 1979 in No. RD 415 MVS 79 made an order dated 23rd February, 1994, a copy of which has been produced as Annexure-H directing eviction of the 28 persons who were in possession and cultivation of the lands on the ground that their possession was unauthorised. In the said order, he further directed that the possession of the said lands should be handed over to the legal heirs of deceased Rama Rao. Aggrieved by the said order, all the 28 persons who were in possession and cultivation of the lands in question preferred an appeal before the District Judge as provided under sub-section (2) of Section 3 of the Act. The District Judge by means of his order dated 25th August, 1995, a copy of which has been produced as Annexure-K to this appeal dismissed the appeal confirming the order-Annexure-H dated 23rd February, 1994 passed by the Tahsildar. Aggrieved by the said order, the appellants in these appeals and respondents 6 to 15 filed the writ petitions out of which these appeals arise, challenging the order-Annexure-H, passed by the Tahsildar and also the order-Annexure-K passed by the District Judge.

The learned Single Judge by means of his order dated 8th March, 2000 dismissed the writ petitions. Aggrieved by the said order, as noticed by us earlier, these appeals are filed.

3. Sri Raviprakash, learned Counsel appearing for the appellants at the very outset submitted that since the respondents 6 to 15 were not immediately available to file the writ appeals challenging the correctness of the impugned order passed by the learned Single Judge could not join the appellants to file these appeals; and under those circumstances they have been made as party respondents in these appeals. Sri Raviprakash challenging the correctness of the order passed by the learned Single Judge and also the orders passed by the District Judge and the Tahsildar impugned in the writ petitions made four submissions. Firstly, he submitted that since undisputedly the lands in question were re-granted u/s 5 of the Act to the holders of the village office i.e., to the aforesaid late Rama Rao, Ranga Rao and the 3rd respondent-N. Venkoba Rao, the Tahsildar in the purported exercise of the power conferred on him as the Deputy Commissioner could not have passed order-Annexure-H. According to the learned Counsel, since the application filed by the said Rama Rao seeking eviction of the tenants was not maintainable before the Tahsildar, the order-Annexure-H passed by the Tahsildar is liable to be quashed by this Court as one without jurisdiction. In support of this submission, he relied upon the judgment of this Court in the case of *Bapu Mallu Khot v. Deputy Commissioner, Belgaum*

and Ors. 1975 (2) KarLJ 315 : ILR 1976 Kar. 92. Secondly, he submitted that since the order-Annexure-H was passed by the Tahsildar without conducting any enquiry and giving an opportunity to the persons against whom order-Annexure-H came to be passed, to establish that they were in possession and cultivation of the lands in question as on 1st March, 1974 and their possession being lawful, it was not permissible for the Tahsildar to pass the impugned order-Annexure-H, the said order is liable to be quashed on the ground that the same came to be passed in disregard of the principles of natural justice. It is his submission that since it is the case of the persons in possession of the land against whom notice for eviction was issued that they were the agricultural tenants in possession and cultivating the land as on 1st April, 1974 and as such they were entitled for grant of occupancy right in respect of the lands in question and the application filed by them was directed to be filed by the Tribunal on the short ground that the Tribunal had no jurisdiction to entertain the application since at that stage no order was made re-granting the lands in question in favour of the holders of the land. The Tahsildar could not have proceeded to make the impugned order without going into the question as to whether the possession of the lands in question by the persons who were admittedly in possession of the same was lawful or they were trespassers on the lands in question. Sri Raviprakash also submitted that the entry in the record of rights and pahani in respect of the lands in question discloses that various persons against whom an order of eviction is sought by deceased Rama Rao, were cultivating the lands in question as tenants and the observation made by the Tahsildar in No. TC 34/64-65, dated 30th July, 1966 also shows that the tenants against whom order-Annexure-H came to be passed were sub-tenants under one Veerabhadrapa. Thirdly, he submitted that the orders-Annexure-H and K. are liable to be quashed on the ground that the said orders came to be passed in a mechanical manner and , without there being any application of mind on the part of the Tahsildar as well as the learned District Judge. Finally, he submitted the learned Single Judge has failed to appreciate all these matters in the course of his order; and he has proceeded to reject the writ petitions only on the ground that the grievance made by the petitioners in the writ petitions was not a valid one. Elaborating this submission, learned Counsel pointed out that the approach made by the learned Single Judge that the writ petitions were belatedly presented, is contrary to facts.

4. However, Smt. Rukmini for Sri M.S. Gopal, learned Counsel appearing for the legal representatives of deceased 1st respondent-K.N. Rama Rao and the 3rd respondent strongly supported the order passed by the learned Single Judge as well as the order passed by the Tahsildar and the District Judge. She pointed out that since the claim made by the tenants was rejected by the Tribunal, the Tahsildar was justified in passing order-Annexure-H.

5. However, Smt. Ratna Shivayogimath, learned Government Pleader, on the basis of the records, submitted that except appellant 2, all the other 27 persons had filed Form 7 claiming occupancy right in respect of the lands in question under the provisions of the Karnataka Land Reforms Act, 1961 seeking grant of

occupancy right in respect of various portions of the land in two survey numbers referred to above and their applications came to be filed on the ground that there was no order made for re-grant of the lands in question in favour of the holders of the land. She also admitted that the order dated 30th July, 1966 refers to the sub-tenancy of the lands in question.

6. In the light of the rival submissions made by the learned Counsels appearing for the parties, the only question that would arise for consideration in these appeals are whether the orders-Annexure-H and K which were called in question before the learned Single Judge and the order passed by the learned Single Judge are liable to be interfered with by us in these appeals?

7. Now, we will proceed to examine each of the contentions urged by the learned Counsel for the appellants. However, before we do so, it is useful to refer to Section 7 of the Act, which reads as hereunder:

"7. Eviction of unauthorised holders etc.--(1) Where any land resumed under Clause (2) of Section 4 is in the possession of an unauthorised holder such unauthorised holder shall be summarily evicted therefrom and the land shall be taken possession of by the Deputy Commissioner in accordance with law:

Provided that no such summary eviction shall be made except after giving the person affected a reasonable opportunity of making representation.

(2) Any order of eviction passed under Sub-section (1) shall be final and shall not be questioned in any Court of law and no injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by the Deputy Commissioner in pursuance of the power conferred by Sub-section (1).

(3) The land from which an unauthorised holder is evicted under Sub-section (1) shall.--

(a) if it was granted or continued in respect of or annexed to an inferior village office to be granted to the holder of such village office; and

(b) in other cases be disposed of in accordance with the law applicable to the disposal of unoccupied - unalienated lands".

Section 7 of the Act extracted above confers power on the Deputy Commissioner to summarily evict an unauthorised holder who is in possession of the land resumed under Sub-section (2) of Section 4 of the Act and take possession of the same in accordance with law. Proviso given to the said provision further provides no such summary eviction shall be made except after giving the persons affected a reasonable opportunity of making a representation. Section 3 of the Act confers power on the Deputy Commissioner among other things to decide the question whether any person is an unauthorised holder. Clause (d) of Sub-section (1) of Section 3 further provides that the Deputy Commissioner should make an order deciding the question as to whether the person is an unauthorised holder or not, only after giving a valid notice and after holding enquiry in the prescribed

manner. This Court in the case of *Bapu Mallu Khot*, supra, strongly relied upon by Sri Raviprakash has taken the view that it is not permissible for the Deputy Commissioner to make an order u/s 7 at the instance of a holder of a land in whose favour re-grant has been made. It is useful to refer to the observation made by this Court at paragraph 3 of the judgment which reads as hereunder:

"3. It is seen from Section 7 of the Act that it authorises the Deputy Commissioner to evict a person in unauthorised possession of a land which stands resumed to Government u/s 4 of the Act and to dispose of the land in favour of the unauthorised holder if he satisfied the conditions mentioned in the said section. Section 7 does not apply to a case where the land has already been re-granted in favour of the holder of an office. If a person in whose favour the land is re-granted finds that a third party is in unauthorised occupation of the land in question, it is open to him to approach the Civil Court to pass a decree for possession against the trespasser. He cannot request, the Deputy Commissioner u/s 7 of the Act to evict the trespasser and to put him in possession of the land, Section 8 of the Act also does not confer on the person in whose favour the land is re-granted, the right to approach the Deputy Commissioner to evict a third party. Section 8 only declares the rights of persons who are holding lands under valid leases. The application before the Assistant Commissioner made by the petitioner was therefore a misconceived one".

Therefore, in the light of the decision of this Court in the case of *Bapu Mallu Khot*, supra, we are of the view that order-Annexure-H, dated 23rd February, 1994 passed by the Tahsildar is liable to be quashed as one made wholly without jurisdiction. Since this aspect of the matter has been completely overlooked by the District Judge as well as by the learned Single Judge, the order-Annexure-K and the order made in the writ petitions are also liable to be set aside.

8. However, though the above conclusion of ours would be sufficient to dispose of these appeals, since the arguments were addressed by the learned Counsels appearing for the parties that no enquiry was held by the Tahsildar and the order passed by the Tahsildar was one without application of mind, we find it desirable to consider the said contention also. While we are unable to agree with the submission of Smt, Rukmini Gopal that the Tahsildar has conducted necessary enquiry and passed order-Annexure-H, we find considerable force in the submission of Sri Raviprakash that there was no enquiry held by the Tahsildar and nobody was examined in the course of the proceedings. This position is also not disputed by the learned Government Pleader. Order-Annexure-H also does not indicate that any of the parties were examined in the course of the enquiry by the Tahsildar. Therefore, on this ground also the order-Annexure-H is liable to be quashed. This aspect of the matter has also been overlooked by the District Judge and also by the learned Single Judge while passing the orders. Further, reading of Annexure-H makes it clear that there is absolutely no application of mind by the Tahsildar. He had proceeded to pass the order in a mechanical manner. Same is the position in order-Annexure-K passed by the learned District

Judge. Though the learned Single Judge has in the course of the order passed by him observed that the District Judge has elaborately considered the matter, in our view, the said conclusion reached by the learned Single Judge is contrary to records. It is useful to extract the relevant portion of the order-Annexure-H passed by the Tahsildar, which reads as hereunder:

"Since Guidance Channappa and the other 27 respondents have failed to establish their right of tenancy u/s 7 of the KVOA Act, 1961 and Act 13 of 1976, their rights cannot be considered.

In view of the applicants having been regularised and to enable them to enjoy the properties in question, under the KVOA Act, 1963 as amended by Karnataka Act 13 of 1976, Section 7 thereof, I hereby order for eviction of the respondents herein from the lands in Survey Nos. 26 and 39 (Salabalu Village) to extent of 23 acres and 18 acres 4 guntas respectively as unauthorised occupants and are trespassers".

Further, the learned District Judge in order-Annexure-K after noting the contentions has come to the conclusion and passed the order impugned. The relevant portion of the order reads as hereunder:

"20. In the instant case there being an order of re-grant in favour of the respondents" father namely, K.N. Rama Rao, the legal heirs, who are petitioners before the Competent Authority are therefore entitled to secure physical possession of the same. To do so, the Tahsildar, discharging the delegated powers has heard the respondents, who are appellants herein, has passed the order, which I find is quite proper, just and legally sustainable. In fact, the appellants have utilised an opportunity to be heard. Therefore, there is no illegality found in the proceedings before the Tahsildar and the order in question being an order passed u/s 7 it has a limited scope. Appellants cannot resist dispossession contending that they have a leasehold right as the said lease is prior to the Act coming in force. Under any circumstances, the facts and circumstances of this case indicates that the appellants have made out no case for this Court to interfere with the impugned order and same has therefore been confirmed and hence the following:

ORDER

Appeals fail. Same is dismissed. Order passed by the 7th respondent-Tahsildar, Honnali Taluk, TTVR No. 6/94-95, dated 25-8-1994 ordering eviction of the appellants is hereby confirmed.

In the circumstances of this case, there will be no order as to cost".

The observation made by the Tahsildar as well as the District Judge in the orders passed by them, in our view, cannot be considered as an order made after application of mind with regard to the questions that had arisen for consideration. Therefore, on this ground also, the order-Annexure-H and K are liable to be quashed. We also find considerable force in the submission of the

learned Counsel for the appellants that the learned Single Judge has proceeded to reject the writ petitions on the ground that there was delay and laches on the part of the petitioners in challenging the orders-Annexure-H and K. In our view, the said conclusion reached by the learned Single Judge is totally contrary to records. The order-Annexure-H was passed on 23rd February, 1994 and the order-Annexure-K was passed on 25th August, 1995. The writ petition was presented before this Court on 19th February, 1996. Therefore, we are of the view that the observation made by the learned Single Judge that there was inordinate delay in challenging the orders-Annexure-H and K is not correct. So far as the order-Annexure-A is concerned, no doubt, there is delay. But, order of re-grant made in favour of the holders of the land is of no consequence so far as the persons who are in actual possession of the lands in question are concerned. If their claim that they were the tenants in possession and cultivation of the lands in question as on 1st March, 1974 is correct, their rights are not affected by virtue of the order of re-grant made. This is made clear u/s 8 of the Act and Section 126 of the Karnataka Land Reforms Act, 1961. Therefore, in view of Section 8 of the Act and Section 126 of the Karnataka Land Reforms Act, if the persons against whom order-Annexure-H came to be passed are able to show before the Tribunal that they were in possession of the lands in question as on 1st March, 1974 notwithstanding the order of the re-grant made in favour of the holders of the lands in question, they are entitled for conferment of occupancy right. As noticed by us earlier, it is admitted by the learned Government Pleader that the claim of the persons who made an application in Form 7 for conferment of occupancy right came to be filed on the ground that on that date the order for re-grant was not made. In our view, the said view taken by the Tribunal is not correct. This Court in the case of *M. Narayana Rao v. Land Tribunal, Honnali and Anr.* 1980(1) Kar. L.J. 39, has at paragraph 6 observed as follows:

"6. There is no substance in the contention of the learned Counsel for the petitioner that since this Patel Umbli land has been re-granted to Narayana Rao under the provisions of the Act of 1961, Thimmappa, whatever might have been his rights or interests in the land previously, cannot, subsequent to the re-grant in favour of Narayana Rao, claim any tenancy right, and consequently occupancy right under the Act. The following observations of the Court in *Mariyappa v. Land Tribunal, Mandya* 1978(1) Kar. L.J. 418., may be noted:

"The main object with which the Karnataka Village Offices Abolition Act was brought into force was to abolish hereditary rights to village offices and the emoluments appertaining to such offices. This Act, unlike other Inams Abolition Acts, does not provide for conferment of ownership or occupancy rights in favour of tenants and other inferior holders. On the other hand, that Act envisages the continuation of such lease, if any, existing on the date of vesting. The relationship between the re-grantees and their tenants would be governed by the existing tenancy laws.

The rights of all those lawfully cultivating as tenants under the holder of the

village office, the authorised holder, and tinder certain circumstances, the unauthorised holder, are saved even after the vesting and regranting of those lands u/s 5, 6 or 7 of the Karnataka Village Offices Abolition Act. The relationship of such lessees and their landlords would be governed by the existing tenancy laws. Hence, the rights of such persons are required to be worked out under the Karnataka Land Reforms Act, 1961".

If viewed in this light it has to be stated that if Thimmappa was a lessee lawfully cultivating the land in question under Narayana Rao prior to the abolition of the Inam in question and if he had continued to cultivate the land as on 1-3-1974, he was entitled to claim occupancy rights under the provisions of the Act"".

(emphasis supplied)

Therefore, since the lands have been re-granted to the holders of the lands, it is open to the tenants either to challenge the orders passed by the Tribunal directing the filing of their application on the ground that no order for re-grant was made or to make a request with the Tribunal to consider their applications and make appropriate orders on merits pursuant to Form 7 filed by each one of them. However, it is made clear that the observation made by us in the course of this order should not be understood by the Tribunal as we having expressed any opinion on the merits of the claim made by the 28 persons against whom an order of eviction was made as per order-Annexure-H as they were tenants of the lands in question as on 1st March, 1974. Though, normally we would have set aside the order impugned only so far as the petitioners in the writ petitions are concerned, however, in the light of the decision of this Court in the case of Bapu Mallu Khot, supra, as the Tahsildar has no jurisdiction to make the order impugned; and also in the light of the conclusion reached by us above, we are of the view that the entire orders-Annexure-H and K are liable to be quashed. In the light of the discussion made above, we make the following.--

ORDER

(i) The order-Annexure-H, dated 23rd February, 1994 passed by the Tahsildar, Honnali and the order-Annexure-K, dated 25th August, 1995 passed by the District Judge are hereby quashed.

(ii) Consequently, the order dated 8th March, 2000 made in Writ Petition Nos. 10209, 10213, 10214 and 10217 of 1996 by the learned Single Judge is hereby set aside.

9. In terms stated above, these appeals are allowed and disposed of. However, no order is made as to costs.

10. Smt. Ratna Shivayogimath, learned Government Pleader is given four weeks time to file her memo of appearance.