

(2007) 07 KAR CK 0067

In the Karnataka High Court

Case No : Writ Petition No. 28838 of 2003

M.D. Ramakantha Rao

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-07-2007

Acts Referred:

Constitution of India, 1950 — Article 50
Karnataka Land Reforms Act, 1961 — Section 77 A, 77 A (1)

Citation : (2007) ILR (Kar) 3845 : (2007) 6 KarLJ 672

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : R.B. Sadashivappa, for the Appellant; Narayanappa, AGA for R1 and R3 and L. Mallesh, for R4 and R5, for the Respondent

Judgement

Mohan Shantanagoudar, J.—The petitioner filed application in Form No. 7A under the provisions of Section 77A of Karnataka Land Reforms Act, praying for grant of occupancy rights over the lands bearing Survey Nos. 191/ 1,216/1 and 217/1, measuring 2 acres 5 guntas, 2 acres 8 guntas and 2 acres 22 guntas respectively, situated at Chikkamaralavadi village.

2. The application came to be dismissed by the Assistant Commissioner in respect of Survey Nos. 216/1 and 217/1 and whereas, the application in respect of Survey No. 191/1 was allowed. Challenging the rejection of the application in respect of Survey Nos. 216/1 and 217/1, the petitioner herein filed Appeal No 674/2002 before the Karnataka Revenue Appellate Tribunal, Bangalore. The appeal came to be dismissed by the order dated 28th March 2003. Hence, this writ petition is filed.

3. The orders of both the authorities below in so far as they relate to the rejection of the application filed by the petitioner in respect of Survey Nos. 216/1 and 217/1, are against the material on record. Both the authorities below have reasoned that the entries in the revenue records did not stand in the name of the petitioner immediately prior to 1.3.1974 and that therefore, he is not entitled for

grant of occupancy rights. This reasoning is not only illegal, but also perverse under the facts and circumstances of the case.

4. To verify the entries in the revenue records, the original records are summoned. Learned Government Advocate has made available the original records. It is clear from the records that the entries consistently stood in the name of the petitioner from 1970 onwards till 1973. It is also mentioned in the Record of Rights that the petitioner's father - M.G. Daulat Rao was cultivating the property on "vara" basis, means on tenancy basis. Thus, it is clear that the petitioner's father was cultivating the properties in question as a tenant prior to 1.3.1974. However, strangely the name of father of respondent No.4 came to be abruptly entered in revenue records for the year 1973-74. Obviously, it is a got up entry made only for the purpose of preventing the petitioner from getting the occupancy rights over the tenanted properties. The Karnataka Land Reforms Act was amended in the year 1974 substantially with a view to declare the tillers of the tenanted lands as occupants of such lands. The appointed day was 1.3.1974. Thus, the entries must have been got changed in the year 1973-74 abruptly by the land owner to overcome the effect of the amended Karnataka Land Reforms Act. Thus, the entries of the year 1973-74 should not have been the sole basis for rejecting the claim of the tenant, particularly in the light of earlier entries, and other attending circumstances.

5. As aforementioned, the name of the tenant appeared in the revenue record till 1973. They also depict that the property was being cultivated on "vara" basis, i.e., tenancy basis. If it is so, there will have to be a valid order of surrender, in case if the tenancy is to be discontinued. Admittedly, in this matter, there is neither an order of resumption in favour of the land owner nor an order of surrender against the tenant u/s 14 of the Karnataka Land Reforms Act as it then stood. Unless the property is actually surrendered in pursuance to the valid order of surrender, the tenancy will be continued. Therefore, in this matter also, in the absence of any order of surrender, the tenancy was not discontinued, but was continued even in the year 1974. Thus, no presumptive value can be attached to the entries of the year 1973-74 which abruptly came into existence without any basis. Or in the alternative, it can be safely said that the presumption arising out of entries in the revenue records for the year 1973-74 stood rebutted by the fact that there is no order of surrender of tenancy. This aspect of the matter is totally ignored by the authorities below. Looking to the facts and circumstances and the material on record, it is clear that the petitioner's father was cultivating the property as a tenant as on the appointed date. Even thereafter the possession remained with the tenant. Hence, the occupancy rights are entitled to be granted in favour of the petitioner.

6. It is relevant to note that the Private Secretary of the Revenue Minister, by name one Ramegouda, K.A.S, has written letter dated 4.12.2000 to Tahsildar, Kanakapura Taluk, intimating the Tahsildar that the application filed by the petitioner is illegal and that therefore, his application should be dismissed. The

said letter is found at Page No.31 of the records maintained by the authority below. Curiously, the said letter also mentioned that tenant i.e., applicant i.e., petitioner is in possession of the property, which means, the landowner is not in possession of the property. The copy of the letter is Xeroxed and made part of this order for better understanding of the things.

Xerox Copy of the letter

7. Learned advocate for the petitioner (tenant) submits that, it seems, based on the said letter of the Private Secretary of the Revenue Minister, the Assistant Commissioner has acted and consequently dismissed the application filed by the petitioner. According to him, the order of the Assistant Commissioner is not based on the facts, but on extraneous circumstances. Be that as it may, such an attitude of the Private Secretary of the Minister in interfering with the administration of justice is liable to be condemned in heavy words.

In such matters and under the scheme of Land Reforms Act the original authority i.e., jurisdictional Assistant Commissioner acts as a quasi-judicial authority and he does not act purely as an executive authority. He functions as a Tribunal. The Tribunals are the resultant of vast proliferation of governmental activities under which it is necessary to entrust the executive authority with the right of deciding quasi-judicial issues in the place of Courts. Some of the reasons for emergence of this system are that the ordinary courts are already overburdened with work and it would be less expensive for the parties concerned to get the controversy resolved. It is economical from the point of view of total cost for a litigant, claimant or applicant that he incurs in normal litigation.

The dictionary meaning of the word Tribunal" is "the seat of Judge". Thus, the quasi-judicial authority is required to act judiciously. Its proceedings are deemed to be judicial proceedings and in certain procedural matters, it has the powers of Civil Court. It is an independent body and acts without any bias. It is required to follow the principles of natural justice in deciding the cases. The quasi-judicial bodies should be left unfettered by any extraneous guidance by the executive with a view to achieve the fair and objective administration of law. The exercise of judicial powers by the quasi-judicial authorities are regulated by law and rules and not by administrative directions. In this context it is relevant to note the observations of the Apex Court in the case of B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, which read thus:

It would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law, that in exercising their authority and in discharging their quasi-judicial function, the Tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. If the exercise of discretion conferred on a

quasi-judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions laid down the principles which have to be followed by the tribunals in dealing with the said matters. The scope of the jurisdiction of the tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said tribunals may also be prescribed subject of course to the inevitable requirement that these provisions do not contravene the fundamental rights guaranteed by the Constitution. But what law and the provisions of law may legitimately do cannot be permitted to be done by administrative or executive orders.

Thus, it is clear that the quasi-judicial authorities must conform to the minimum standards of fairness and justice, which may be expected by a litigant before the Court of law. The decision should be made by the application of known principles or laws. As the Assistant Commissioner being an administrative authority is conferred with the quasi-judicial functions, he should be allowed to perform his function without fear or favour. The quasi-judicial authority has some of the attributes and trapping of judicial function, though not all. The decision of a quasi-judicial body should not be subjected to the scrutiny of the executive. Under the scheme of Indian Constitution, the executive has to obey judicial orders. Review of the decision of the quasi-judicial body by executive will amount to interference with the exercise of judicial function as has been held by the Apex Court in the case of *Union of India v. K.M. Shankarappa* (2001) 1 SC 582. The quasi-judicial authority must act "fairly" and follow "fair procedure". The Secretary or Minister cannot direct, instruct or request the quasi-judicial authority to decide the matter in a particular manner.

The independence of the judiciary is an essential attribute of rule of law. Article 50 of the Indian Constitution postulates separation of judiciary from the executive. The brooding omnipresence of Article 50 which lays down, as a directive principle of State policy, that the State shall take steps to separate judiciary from the executive in the public services of the State. The provision is occurring in the Chapter IV of the Constitution of India. The said Chapter relating to Directive principles of State policy is the "Conscience of the Constitution", which embodies the social philosophy of the Constitution and its basic underpinnings and values. Article 50 of the Constitution of India plainly reveals, without any scope for doubt or debate, the intent of the Constitution makers to immunise the judiciary from any form of executive control or interference. Separation of judiciary from the executive is the cherished goal of the Indian Constitution. If the exercise of discretion conferred on quasi-judicial Tribunal is controlled by a direction of the executive, that forges fetters on the exercise of quasi-judicial authority and the presence of such fetters would make such authority completely inconsistent with the well accepted notion of judicial

process. Thus, the interference of the Private Secretary of the Minister or the Minister in the discharge of quasi-judicial functions of the Assistant Commissioner is deprecated.

9. Looking to the totality of the facts and circumstances, the impugned order cannot be sustained. In view of the above, the application in Form No. 7A filed by the petitioner is entitled to be allowed. However, it is relevant to note at this stage that the petitioner cannot be granted occupancy rights exceeding 2 hectares of "D" Class land in view of the mandatory language employed in proviso to Section 77-A(1) of the Land Reforms Act, (one hectare of land is equal to 2.471 acres). The total extent of the lands claimed by the petitioner is 2 acres 5 guntas, 2 acres 8 guntas and 2 acres 22 guntas in Sy. Nos. 191/1, 216/1 and 217/1 respectively, i.e., total 6 acres 35 guntas. Petitioner is thus entitled only to 2 hectares ($2 \times 2.471 = 4.94$ acres), i.e., about 5 acres as aforementioned. The original authority has granted the occupancy rights over the land bearing Sy. No. 191/1, measuring 2 acres 5 guntas and the same has remained unchallenged. Thus, the petitioner is entitled to the land to the remaining extent of 2 acres 35 guntas, so as to make it 2 hectares. Sy. No. 217/1 measures 2 acres 22 guntas. The measurement of the said land is nearer to the remaining extent to which the petitioner is entitled to. Thus, the petitioner may be granted occupancy rights over the land bearing Sy.No.217/1 also, measuring 2 acres 22 guntas. In view of the mandatory provisions contained in proviso (2) of Section 77-A(1) of the Land Reforms Act, the petitioner is not entitled to Sy. No. 216/1, measuring 2 acres 8 guntas, inasmuch as, the same if granted, would exceed 2 hectares. Hence, the following order is made:

The order dated 25.6.2002 passed by the 3rd respondent vide Annexure-"F" in so far as it relates to rejection of application for the lands bearing Survey Nos. 216/1 and 217/1, is concerned, and the order dated 28.3.2003 passed by the KAT, Bangalore in Appeal No. 674/02 vide Annexure-"G" stand modified. The application filed by the petitioner in Form No. 7A for grant of occupancy rights is allowed in respect of Sy. No. 191/1, measuring 2 acres 5 guntas and Sy. No. 217/1, measuring 2 acres 22 guntas. The occupancy rights shall be granted in his favour over the said lands. The application in respect of Survey No. 216/1 is dismissed.

Writ petition is allowed in part accordingly.

Copy of this judgment shall be sent to Chief Secretary and Principal Revenue Secretary of the State Government with a direction to circulate the judgment among all the quasi-judicial authorities in the State.