

(2006) 07 KAR CK 0079
In the Karnataka High Court
Case No : Writ Petition No. 9316 of 2006

Motamma

APPELLANT

Vs

The Land Tribunal and Others

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 44, 45, 48 A (2), 48 A (4), 48 A (5)
Karnataka Land Reforms Rules, 1974 — Rule 21C, 35, 36, 37

Citation : (2007) 4 KarLJ 633

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Amaresh A. Angadi, for the Appellant; M. Keshava Reddy, AGA for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The Writ Petition is directed against the order dated 3.8.2002 Annexure-"S" of the Land Tribunal, Devanahalli, rejecting the 3rd respondent's application in Form No. 7.

2. The petition averments disclose that by order dated 16.7.1981 in Case No. LRF 16/74-75, the Land Tribunal, Devanahalli, conferred occupancy rights over land measuring 2 acres 8 guntas in Sy. No. 13 of Lingadheeragollahalli Village, Kundana Hobli, Devanahalli Taluk, in favour of the 3rd respondent, pursuant to which, the petitioner claims to have purchased the said land from the 3rd respondent under a deed of sale dated 23.1.1988, Annexure "A", registered as Document No. 1191/87-88, in Book-1, Volume 1348, Pages 196 to 199, in the office of the Sub-Registrar, Devanahalli, on 11.2.1988. It is further stated that on 9.7.1992 the Revenue Officials having drawn a mahazar, recording the factum of cultivation of land by the petitioner, the Tahsildar, by order dated 9.10.1997, directed the substitution of the name of the petitioner in the revenue records. It appears the 4th respondent, the brother of the 3rd respondent filed W.P. No. 8439/1997 calling in question the order dated 16.7.1981 of the Land Tribunal,

granting occupancy rights in favour of the 3rd respondent, which was quashed by order dated 27.11.1997 and the proceeding remitted for consideration afresh. It is the allegation of the petitioner that the 3rd respondent withdrew his application in Form No. 7 in collusion with the 4th respondent resulting in the order dated 3.8.2002 rejecting the application in Form No. 7. Hence this Writ Petition.

3. Sri Amaresh A. Angadi, Learned Counsel for the petitioner contends that the petitioner is an interested person entitled in law to question the order of the Land Tribunal rejecting the application in Form No. 7 filed by the 3rd respondent and hence has the locus standi to maintain this petition. Elaborating on the said contention, learned Counsel drew my attention to Sub-section (2) of Section 48-A of the Karnataka Land Reforms Act, 1961 (for short "Act") to contend that although the petitioner purchased the land on 23.1.1988, he has an interest in the land on account of being in possession.

4. Having regard to the contentions advanced by the petitioner it is necessary to examine the relevant provisions of the Act and the Karnataka Land Reforms Rules, 1974 for short "Rules". Chapter III of the Act relates to conferment of ownership on tenants. Section 44 of the Act deals with vesting of lands in the State Government. It provides that all lands held by or in the possession of tenants immediately prior to the date of commencement of the Amendment Act (w.e.f. 1.3.1974) other than lands held by them under leases permitted u/s 5 of the act shall with effect on and from the said date stand transferred to and vested in the State Government. The conditions under which tenants could be registered as occupants of the lands vested in the State Government are dealt with in Section 45 of the Act. Section 48-A provides for making of application to the Tribunal by a person entitled to be registered as an occupant u/s 45 and an enquiry on such application. Section 48-A(2) of the Act runs thus:

(2) On receipt of the application, the Tribunal shall publish or cause to be published a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it on the date specified in the notice. The Tribunal shall also issue individual notices to the persons mentioned in the application and also to such others as may appear to it to be interested in the land.

A plain reading of the aforesaid provision makes it clear that in a proceeding commenced by the Land Tribunal, over an application in Form No. 7, u/s 48(A) (1) of the Act, to confer occupancy rights, the persons who are entitled to notice and to participate must also be those who can show that they have an interest in the land.

The consequences of the conferring of occupancy rights by the Land Tribunal results in its registration u/s 55 of the Act which reads:

55. Issue of certificate of registration.- (1) On receipt of the final orders passed under Sub-section (4) or Sub-section (5) of Section 48-A, subject to such rules

as may be prescribed, the Tahsildar shall issue a certificate that the tenant has been registered as an occupant. The certificate shall be conclusive evidence of such registration.

(2) The Tahsildar shall forward a copy of the certificate issued under Sub-section (1) to the concerned Sub-Registrar who shall, notwithstanding anything contained in the Registration Act, 1908 (Central Act 16 of 1908) or any other law, register the same.

The corresponding Rule 21-C reads:

21-C. Issue of certificate of occupancy.- Immediately on receipt of the final orders passed by the tribunal u/s 48A, conferring occupancy rights to a tenant, the Tahsildar shall issue a certificate to such tenant that he has been registered as an occupant.

5. The Certificate in Form No. 10, registering the occupancy rights over the lands as directed by the Land Tribunal in its final order u/s 48A, is conclusive evidence of registration and the Sub-Registrar is bound to register the same under Sub-section (2) of Section 55. Thus a person on whom occupancy rights are conferred gets an interest in the land. The failure to cultivate personally is visited with eviction as provided for in Section 60, while transfer of the said land within the period specified results in the transfer being rendered invalid and vesting of the land in the State u/s 61 of the Act.

6. Section 60 and 61 reads:

60. Failure to cultivate personally.- Notwithstanding anything contained in any law, if at any time after the tenant has been registered as occupant, under any of the foregoing provisions, such tenant fails to cultivate the land personally for three consecutive years, he shall, unless the Tahsildar condones such failure for sufficient reasons, be evicted and the land shall be disposed of in accordance with the provisions of Section 77.

61. Restriction on transfer of land of which tenant has become occupant. - (1) Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall, within fifteen years from the date of the final order passed by the Tribunal under Sub-section (4) or Sub-section (5) or Sub-section (5A) of Section 48A be transferred by sale, gift, exchange, mortgage, lease or assignment; but the land may be partitioned among members of the holder's joint family.

(2) Notwithstanding anything contained in Sub-section (1), it shall be lawful for the occupant registered as such or his successor-in-title to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government, a financial institution, a co-operative land development bank, a co-operative society or a company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty one percent of the paid-up share capital is held by the State Government or a Corporation owned or controlled by the Central

Government or the State Government or both for development of land or improvement of agricultural practices; and without prejudice to any other remedy provided by any law, in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it shall be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in the payment of such loan.

7. Section 62 of the Act provides for surrender of the land to the State Government by the registered occupant or his successor in title, who intends within six years from the date of registration to give up personal cultivation and receive an amount equal to the premium paid, from the State Government.

8. A conjoint reading of the aforesaid statutory provisions discloses that the conferment of occupancy rights on a person, does not automatically cloth the person with absolute title over the property on account of restriction over the conveyance, except otherwise by a partition or succession, for a period of 15 years from the date of final order, rendering any such transaction of sale in contravention of Section 61(1) to be invalid and the land to vest in the State Government. The consequences of failure to cultivate the land as well as intention not to cultivate the land by the person conferred with occupancy rights is to fulfill the laudable objective of conferring occupancy rights and to ensure that lawful tenants do possess the lands without having to part with it to unscrupulous persons, in the least, during the period specified. Having regard to the financial instability and illiteracy of tenants, the legislature in its wisdom thought fit to prohibit the tenant from doing away with the lands over which occupancy rights are conferred and also to keep at bay persons taking advantage of the situation. From the foregoing provisions it is clear that the intention of the legislature was to enable lawful tenants to secure occupancy rights over the lands in their occupation from absentee landlords as also dissuade them from doing away with the lands during the period specified. The penalty for contravention indicates that the person conferred with occupancy rights has no right to convey the said land during the period of 15 years.

9. In the admitted facts of this case, the Land Tribunal conferred occupancy rights on the 3rd respondent by order dated 16.7.1981 u/s 48A of the Act. There is no material placed to establish the issue of Form No. 10 registering the occupancy rights u/s 55(1) of the Act, nor a registration by the Sub-Registrar u/s 55(2). The 3rd respondent having secured an interest in the land could not have conveyed the same by sale in favour of the petitioner, during the period of 15 years on account of the embargo imposed by Section 61 of the Act.

10. Even otherwise failure of the 3rd respondent to cultivate the land personally for three consecutive years, unless condoned by the Tahsildar would stand to be evicted. Section 62, as noticed supra provides for surrender of land to the State Government in the event the 3rd respondent intended to give up cultivation within 6 years from the date of registration. Applying the aforesaid provisions of law, the registered Sale Deed dated 23.1.1988 in favour of the petitioner cannot

but be said to be invalid, and conveying no title. In the face of indisputable and unimpeachable evidence, the sale transaction in favour of the petitioner by the 3rd respondent is without any doubt invalid and the possession of the lands by the petitioner is only as a trespasser. Thus the petitioner cannot claim to be a "person interested" as set out in Section 48(A)(2) of the Act. The contention of the petitioner that he is a person interested in the land entitled to notice of the proceedings before the Land Tribunal is without merit and is rejected.

11. In order to appreciate the next contention of the learned Counsel for the petitioner, that the possession of the lands is legal and valid, it is essential to notice what the law envisages as action to be taken by the Revenue Department of the State in case of contravention of the provisions of the Act. Section 81-A of the Act makes it mandatory for every transferee of agricultural land to make a declaration in duplicate, in Form No. 15 under Rule 35 of the Rules, to the Sub-Registrar in relation to any document of transfer of land by sale, gift, exchange, etc, when presented for registration under the Registration act, 1908, disclosing the lands held by him. Sub-section (2) of Section 81-A, casts a corresponding duty on the Registering Authority to forward one copy of the declaration to the prescribed officer, which is the Tahsildar, as provided in Rule 35 of the Rules, who under Sub-section (3) may obtain information necessary and take action deemed fit in accordance with the provisions of the Act. Rule 35(3) requires of the Tahsildar to verify the correctness of the particulars furnished in the declaration more particularly the land acquired by the transferee by making such local enquiry and inspection as he considers necessary. If the Tahsildar has reason to believe that there is contravention of any of the provisions of the Act, he is required to take action in accordance with the Act and Rules.

12. Section 82 of the Act provides for reporting by the Village Officer and every officer of the Revenue, Registration and Land Records Departments to the Prescribed Authority, the Assistant Commissioner as set out in rule 36 of the Rules, over the transaction in contravention of any provision of the Act, which comes to their notice. Section 83 of the Act postulates an inquiry by the Assistant Commissioner into the illegal transaction and on a declaration of contravention of any of the provisions of the Act, the transaction is deemed to be null and void, resulting in a penalty of forfeiture and vesting of the land, in the State Government. The procedure for holding of the inquiry u/s 83 is as contemplated by Rule 37 of the Rules.

13. In the light of the aforesaid provisions the Village Officer, the Tahsildar, Revenue Inspector, the Sub-Registrar and officers of the Land Records Department, have deliberately failed to discharge their statutory duties to bring to book, the transaction of sale by the 3rd respondent in favour of the petitioner, in respect of the subject land, but on the contrary have assisted the petitioner in substituting his name in the Revenue Records in respect of the lands in question. In this view of the matter too the petitioner cannot claim to be a person interested on the basis of entries in the revenue records and being in lawful

possession of the lands as certified by the Revenue Authorities in the alleged spot inspection.

14. It is admitted that this Court by order dated 27.11.1997, in W.P. No. 8439/1997, quashed the order dated 16.7.1981 of the Land Tribunal granting occupancy rights in favour of the 3rd respondent, thus effacing the said order and restoring the consideration afresh of the declaration in Form No. 7 filed by the 3rd respondent. Thus the petitioner did not secure a better title than what the 3rd respondent had in the property in question.

15. After the remand, 3rd respondent is said to have withdrawn his application in Form No. 7 resulting in the impugned order dated 3.8.2002. According to the learned Counsel for the petitioner the Land Tribunal ought to have issued notice to the State Government since it is an interested party in the land in securing a decision of the Tribunal in respect of the said land in question.

16. It is no doubt true that an enquiry before the Land Tribunal is to decide whether the land in question is or not agricultural land and the person claiming to be in possession of such land is not a tenant within the meaning of the said term under the Act, on the relevant date, so as to determine whether the land was vested in the State u/s 44 of the Act before deciding the question as to whether the applicant is entitled to be registered as an occupant or not u/s 48A.

17. The contention of the Learned Counsel is without merit for two reasons. In the first place the order impugned is not challenged by the State Government, nor records placed to establish that the land was lawfully tenanted as on the appointed date. Except for an entry in the Pahani RTC, showing the name of the applicant as a cultivator, that by itself and nothing more, cannot be said to be conclusive proof of lawful tenancy, more so since the applicant withdrew the application, leaving no evidence of lawful tenancy. Secondly the petitioner has no locus standi to question the order, in view of the fact that the sale transaction under which he claims a right, is in contravention of the provisions of the Act and hence illegal.

18. From the contentions advanced by the petitioner it is apparent that his grievance is against the 3rd respondent who executed the deed of conveyance, for valuable consideration. The redressal of the said grievance is not by invoking the writ jurisdiction of this Court but elsewhere. The decisions referred to by the learned Counsel for the petitioner, in the circumstances have no application.

19. Having noticed the deficiencies in the action of the Revenue and Registering Department of the State, it is hoped that the authorities concerned would take action in accordance with law over the said officers whose conduct is most reprehensible to say the least, and ensure, that in future there is strict compliance of Sub-section (2) of Section 55 and Section 82 of the Act in so far as it relates to lands over which occupancy rights are granted by the Land Tribunal.

The Writ Petition is without merit and is accordingly rejected. Let a copy of this

order be forwarded to the Chief Secretary, Government of Karnataka for needful action.