

(2014) 12 KAR CK 0199

In the Karnataka High Court

Case No : Writ Appeal Nos. 1563 and 1950 of 2007 (LR)

Nadakerappa

APPELLANT

Vs

Pillamma

RESPONDENT

Date of Decision : 30-12-2014

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 44, 48A, 48A
Karnataka Land Revenue Act, 1964 — Section 34

Citation : (2014) 12 KAR CK 0199

Hon'ble Judges : Rathnakala, J;N.K. Patil, J

Bench : Division Bench

Advocate : K. Suman for C.V. Nagesh, Advocate for the Appellant

Judgement

Rathnakala, J.—Both these appeals arise out of the common order passed in W.P. Nos. 27230/2002 and 23034/2002, which was filed by the appellants of W.A. No. 1950/2007.

2. The appellants of writ appeal No. 1563/2007 are the legal heirs of late Nadikerappa, who was the 3rd respondent in both the writ petitions.

3. Briefly stated, the appellants are the class I legal heirs of late Mariyappa. Said Mariyappa was the owner of the land bearing Survey Nos. 4/7, 4/2, and 1/11, measuring 35 guntas, 25 guntas and 1 acre 14 guntas respectively of Srigandadakaval Village, Bangalore North Taluk, having purchased the same under a registered sale deed dated 30.08.1954 from its owner Venkatappa, son of Muneerappa. Nadikerappa claiming to be the tenant of the land, filed form No. 7 for confirmation of the occupancy right in respect of the above mentioned lands and two other items in survey Nos. 4/14 and 65. Vide its order dated 30.04.1982, the Land Tribunal granted occupancy rights in favour of late Nadikerappa over the lands bearing survey Nos. 4/7 to an extent of 35 guntas, in survey No. 4/2 to an extent of 25 guntas and in survey No. 1/11 to an extent of 25 guntas. Certificate of registration was issued to him in respect of the said property on deposit of the premium amount of Rs. 462/- by late Nadikerappa. He

was ordered to pay the compensation amount vide dated 27.11.1984. Name of one Ramakrishnappa, son of Byrappa was shown as the land owner in the order of the Land Tribunal, since that was the name shown by late Nadikerappa in his Form No. 7 dated 30.10.1974. Nadikerappa had filed another Form No. 7 dated 31.12.1974, leaving the column blank in respect of the owner of the land. Challenging the order of the Tribunal, Mariyappa filed writ petition No. 12461/1984; during the pendency of the writ petition, Land Reforms Appellate Authority was constituted and the case was transferred to the said Authority and was numbered as LRA. No. 179/1986, but the appeal came to be dismissed for default vide order dated 27.02.1989. Late Mariyappa had filed a petition before the Tahsildar, Bangalore North Taluk, to rectify the entry for the year 1989-90 by arraying his name in respect of 29 guntas in survey No. 1/11. Late Nadikerappa contested the matter, contending that he has been granted occupancy rights in respect of 25 guntas of land. The Tahsildar dismissed the petition of Mariyappa vide order dated 25.04.1992, which was appealed by late Mariyappa before the Assistant Commissioner in R.A. No. 196/1992-93 and the appeal came to be dismissed on 26.10.1995. In the meantime, Mariyappa died in the year 1993 and a writ petitioners filed revision petition before the Special Deputy Commissioner against the order of the Assistant Commissioner in Revision Petition No. 118/2001 and the same was allowed vide order 19.04.2002. Nadikerappa challenged the said order in his writ petition No. 20187/2002, which came to be allowed vide order 01.07.2002, by setting aside the orders of all the three authorities below. The said order was confirmed in writ appeal No. 3971/2002. In the meanwhile, late Nadikerappa filed a civil suit in O.S. No. 7459/1991 before 7th Additional City Civil Court, Bangalore for injunction in respect of 1 acre 14 guntas of the land in survey No. 1/11 of Srigandadakavalu village. He was granted temporary injunction against the owners. The writ petitioners challenged the said orders in MFA. No. 319/1993 before this Court, which came to be dismissed on 08.07.1998, directing the writ petitioners not to cut and remove the standing Nilagiri trees on the land to an extent of 29 guntas. After a full-fledged trial, O.S. No. 7459/1991 was decreed on 21.05.2003. Now the said judgment is in challenge in RFA. No. 1134/2003 before this Court. The application filed by the appellants seeking stay of the judgment and decree of the trial Court is dismissed.

4. In the year 2002, Nadikerappa filed an application before the Land Tribunal to correct the clerical mistake in the order dated 30.04.1982. On receipt of his application, the Tribunal issued notice to the legal heirs of late Mariyappa i.e., the writ petitioners calling upon them to appear for the enquiry scheduled on 1.6.2002 at 11.00 a.m. The writ petitioners have challenged the said notice in Writ Petition No. 23034/2002 and have also challenged the order of the Land Reforms Appellate Authority dated 27.02.1989 dismissing the case for default and also the order passed by the Land Tribunal on 30.04.1982 in LRFs. 1359/1974 and 226/1974 (conferring occupancy right in favour of late Nadikerappa), in W.P. No. 27230/2002.

5. When the matter came up for consideration before the learned Single Judge, after hearing both parties and taking over all view of the entire matrix, the Writ Petition No. 27230/2002 was dismissed, on the ground of enormous delay of 13 years on the part of the writ petitioners in challenging the orders of the Land Tribunal and Land Reforms Authority. So far as the writ petition No. 23034/2002 filed challenging the show cause notice of the Tahsildar was concerned, on noticing that the order passed by the Tribunal grating only 25 guntas of land in survey No. 1/11, was acted upon by both the parties for more than 20 years; it is a question of fact and has remained unquestioned and Nadikerappa cannot be allowed to reopen the matter in respect of 25 guntas of land in survey No. 1/11 after a time gap of 20 years. In that view of the matter, the notice issued by the Land Tribunal to the petitioners was quashed by allowing writ Petition No. 23034/2002. Said order is under challenge in W.A. No. 1563/2007.

6. On appearance of both parties in both appeals, the original records from the Land Tribunal were ordered to be produced. By taking note of the fact that late Nadikerappa in the year 2002 had not filed any application for amendment of order of Land Tribunal but had filed a memo with carbon/Xerox copies of his previous application (Annexures-R23 to R28) seeking amendment to the order of the Land Tribunal, direction was given to the Government Advocate to secure information and file an affidavit of the concerned Official of the Tribunal, whether any registers are maintained to note the application received by the Land Tribunal especially from 1982 onwards and if it is maintained, to produce such original registers. Since the appellants had produced a copy of the endorsement issued by the Special Tahsildar, Bangalore North Taluk, the learned Government Advocate was directed to file affidavit as to whether a detailed enquiry was conducted with regard to the availability of Annexures R-23 to 28 and applications (carbon copies) and also on what basis he can issue endorsement/Annexure N (that Nadikerappa had not submitted original applications). Accordingly, on 28.2.2008, the Special Tahsildar filed his affidavit bringing on record the following facts, as under:

"2. On 23.05.2002 a memo was filed by the Sri. Nadikerappa in L.R.F. No. 1359/74-75 c/w. 226/74-75 seeking to pass orders on the applications dated: 23.09.2002, 27.09.1989, 25.04.1992, 15.5.1995 and 07.12.1999. The said applications were received in my office on 23.05.2002 along with the memo. The said applicant had enclosed a copy of the each application as stated above, which are all Xerox copies or carbon copies. The said memo and the copy of the said applications are found at page 241 to 246, on our file.

3. I submit that the signature of the Tahasildar and the seal dated: 03.06.2002 on 14.06.2002 denotes that the copies have been given to persons who have sought for cop of the said documents. this is evidenced by the copy application dated: 13.06.2002 filed by M/s. Vishwanath Associates, Advocate. This application is found at page 255. As per the request, copies are were given.

4. After verifying the file, it is found that the Revision Petition was filed by

Pillamma and others who are the Legal representatives of Late Mariyappa. The Special Deputy Commissioner has passed the order on 19.04.2002 holding that the necessary entries in the Revenue records such as mutation, R.T.C. etc., in the name of Nadikerappa should be to the extent of land measuring 25 Guntas in Sy. No. 1/11 of Srigandadakaval Village, Yeshwanthpur Hobli, Bangalore North Taluk and balance 29 Guntas of land in the name of Mariyappa.

6. One Sri Kallegowda filed an application seeking certified copies of the application filed by Nadikerappa on different dates. Therefore, my office has made a note that the carbon copies of the applications as directed to be given to Kallegowda. (Application and the note is found in our file at page 278). The endorsement was issued stating that the copies of the applications are given there are carbon copies produced by Sri. Nadikerappa. It is also stated that there are no original applications. This endorsement is produced as Annexure-N in the writ appeal. I have verified the register maintained in the office and the applications filed by Sri. Nadikerappa. I submit that none of the entries shows the acknowledgment for having received the application by my office at any date. The register maintained also does not show the entry for having received the applications.

7. I am producing the entire file and the registers and entire Land Tribunal file in respect of Sy. No. 1/11 for the kind perusal of this Hon'ble Court. I submit that there are no original application filed by Sri Nadikerappa in our office file. There are no entries for having received the said applications."

7. In the light of the above facts and circumstances, the learned Senior Advocates representing both sides have presented their rival submissions with authorities in support of their contentions. We have also heard learned High Court Government Pleader appearing for respondents/State.

8. While Sri M.R. Naik, Senior Advocate on behalf of the appellants of W.A. No. 1950/2007 submits that entire proceeding before the Land Tribunal was vitiated; knowing fully well, as to with whom the ownership of the land lies, Nadikerappa by suppressing the vital material filed his applications in the Form No. 7; in one application dated 30.10.1974, he did not mention the name of the landlord and in another application dated 31.12.1974, he has mentioned the name of one Sri Ramakrishnappa, S/o. Byrappa, a fictitious person as his landlord. Filing Form No. 7 twice is not permissible under the scheme of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the Act" for short). Now he is questioning the claim of the owners on the ground of delay and latches but said ground is not available to him. He has purposefully kept the real owner of the land away from the proceedings before the Land Tribunal. The proceedings before the Land Reforms Appellate Authority was dismissed not on merits but for the default in the absence of late Mariyappa on 27.02.1989. The authority had no jurisdiction to dismiss the case though the owner did not prosecute his case, if it is shown that the land was a tenanted land on the appointed date/01.03.1974, the land vested with the government and it was not legal on the part of the appellate

authority to dismiss the case without recording any finding. The legal heirs of Mariyappa having no notice of the order passed by the Tribunal, filed the writ petition, on getting the notice from the Tribunal about the application filed by him seeking amendment of the order of the Tribunal, there is no willful delay on their part. It is evident from the report of the Tahsildar that Nadikerappa made fraudulent and deceptive effort to get enlarge the relief from the Land Tribunal. It is not as if he was unaware of the owner of the land in the statement given by him before the Tribunal. He has categorically stated that the Phanis stood in the name of Mariyappa and had given application to change the name. The Tribunal without making proper enquiry as contemplated under Section 48A of the Act, by cryptic order has confirmed occupancy right in respect of three items of the land. Nadikerappa having played fraud by suppressing material facts while filing Form No. 7 and further fabricated documents as is evinced by the affidavit of the Tahsildar dated 28.02.2008, his legal heirs are not entitled for any relief of occupancy rights and the order passed by the Land Tribunal in LRF Nos. 1359/74-75 c/w. 226/74-75 dated 30.04.1982 is liable to be quashed.

9. In reply, Sri K. Suman, learned Senior Advocate on behalf of the appellants in Writ Appeal No. 1563/2007 submits that late Nadikerappa had no intention to play fraud on anybody much less Mariyappa; being an illiterate person, without knowing the consequences he filed Form No. 7 twice, however, both applications were filed within stipulated time; Ramakrishnappa is none other than the nephew of original owner Venkatappa; ever since confirmation of occupancy right, he was litigating for remaining 29 guntas of land in Sy. No. 1/11 and had filed applications for rectification of Land Tribunal's order. He was prosecuting his case at the same time before Revenue and Civil Reforms. He cannot be faulted for lapses on the part of the officials for not maintaining the registers and keeping the records intact. Mariyappa during his lifetime had acquiesced the order of the Land Tribunal; his only contest to the order of the Land Tribunal was in respect of 29 guntas of land in survey No. 1/11; the matter has reached finality both on revenue side and civil side. During his lifetime, Mariyappa did not challenge the order passed by the Land Reform Appellate Authority. Now, his legal heirs are estopped from questioning the legality of the order passed by the Land Tribunal. A bare reading of the order of the Land Tribunal discloses that his prayer in respect of 1 acre 14 guntas was not rejected. He had applied in respect of 5 items of land; in respect of survey No. 1/11, by typographical mistake the extent was mentioned as 25 guntas in stead of 1 acre 14 guntas. It was open for him to seek for amendment of the order of the Land Tribunal. The Tribunal would not have passed the order behind the back of the landowner, hence, issued show cause notice. Instead of contesting the application filed by him, they have challenged the show cause notice in the writ petition which is not maintainable. The petition is premature. Long delay and laches disentitles his legal heirs from questioning either the legality of the order passed by the Land Tribunal or show cause notice issued at his behest.

10. Leaned High Court Government Pleader submits that there is a long delay on

the part of Nadikerappa in seeking amendment to the order of the Land Tribunal dated 30.04.1982, but virtually it is an application to enlarge the extent of land in the said survey number, which amounts to making a fresh claim which is not permissible and is against the intent of the scheme of the Act. As evinced by the report of the Tahsildar, Nadikerappa manipulated the documents to make it appear that he is diligently prosecuting his case. Likewise, delay and laches on the part of the land owners disentitles them for any relief.

11. At this length of time, settled matter cannot be unsettled.

12. Both learned Senior Advocates in support of their respective contention have placed reliance on judgments of this Court and the Apex Court. Of course, now law on the subject on hand is established by various judicial pronouncement of this Court and the Apex Court. But beyond the rival submissions made at the Bar, what meets our eye is, the irregularity in the conduct of the proceedings by the Land Tribunal and the way in which the application is disposed of.

13. Admittedly, Nadikerappa filed his application in Form No. 7 twice, once on 30.10.1974 and again on 31.12.1974. In the first application, the name of the owner of the land was not shown though in the records of rights, name of Mariyappa, s/o Ramappa was shown as the Khathedaar at column No. 9 for the relevant time. In the application dated 31.12.1974, he has mentioned the name of Ramakrishnappa, whom he alleges to be the nephew of Venkatappa, the original owner of his land. On presentation of Form No. 7, the Tribunal under Section 48-A of the Act is obliged to proceed with subsections (2) (3) and (4) of Section 48A of the Act, which read as under:

"48-A. Enquiry by the Tribunal, etc.: (1)

(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 person mentioned in the application and also to such others as may appear to it to be interested in the land.

(3) The form of the application, the form of the notices the manner of publishing or serving the notices and all other matters connected therewith shall be such as may be prescribed. The Tribunal may for valid and sufficient reasons permit the tenant to amend the application.

(4) Where no objection is filed, the Tribunal may, after such verification as it considers necessary, by order either grant or reject the application."

14. But in the case on hand, no such effort was made though name of Mariyappa was forthcoming at column No. 9 of the RTC as on 1.3.1974. During his statement, Nadikerappa had undertaken to produce documentary proof about his tenancy under Ramakrishnappa. But the Tribunal without waiting for further proof on the same day disposed of his case, as below:

"Case called. Applicant present. Deposition recorded. Respondent absent despite the service of notices. As seen from the RTC. The applicant Shri Nadakerappa, S/o. Thimmanna has been shown as Tenant for S. No. 4/7, 4/2, 1/11 of Sunkadakatti village. He has applied for S. Nos. 4/14 and 65 but he has no records. Hence, the applicant is registered as occupant for the following lands and the applicant has got Pahani records from 1972-1973.

His request for S. Nos. 4/14 and 65 are rejected."

15. The conclusion is not supported with reasoning and it is contrary to Rule 17 of the Karnataka Land Reforms Rules, 1974 read with Section 34 of the Land Revenue Act. No finding is recorded as to whether the land in question vested with the Government as on 1.3.1974 under Section 44 of the Act and whether the applicant established the relationship of tenant and landlord between himself and the owner whose name he had mentioned in his application. The order passed is violative of principles of natural justice insofar keeping the original owner away from the proceedings. When the tenant himself had stated that he has further documentary proof in respect of the lands in question, the Tribunal was bound to examine the said documentary evidence before disposing of the application. When the Land Tribunal conferred occupancy right by ex parte order, by omitting to serve the notice to the landlord, this Court has set aside such order with a direction to the Tribunal to pass fresh order after due service of notice to parties. The contention of the tenant that the matter for decades have been acquiesced by the owner, is of no avail when the very foundation on which the Us has subsequently developed is fragile. It is trite that a mere subjective satisfaction of the Tribunal that the applicant before it, is a tenant, is insufficient. It has to pass a speaking order and reason to come to said conclusion must be disclosed in the said order.

16. In that view of the matter, we are of the considered opinion that the order of the Land Tribunal dated 30.4.1982 in LRA Nos. 226/1974 & 1359/1974 and the order of the Land Reforms Appellate Authority in LRA No. 1791/1986 dated 27.2.1989 are liable to be quashed by issuing a Writ of Certiorari and also the impugned order of the learned Single Judge in W.P. No. 27230/2002 is liable to be set aside. Since the very order of conferring the occupancy right in favour of the tenant is now quashed, the later applications filed by the tenant for amendment of the order of the Land Tribunal become infructuous. The Land Tribunal has to pass a speaking order as per the observation made supra and after giving opportunity to both the parties.

17. In that view of the matter, we pass the following:

ORDER

1. The writ appeal No. 1950/2007 is allowed.

2. The order of the learned Single Judge dated 25.07.2007 insofar it relates to W.P. No. 27230/2002 is set aside.

3. The order passed by the Land Tribunal in LRF Nos. 226/1974 & 1359/1974 dated 30.04.1982 and the order passed by the Land Reforms Appellate Authority in LRA No. 179/1986 dated 27.2.1989 are quashed.

4. The Writ Appeal No. 1563/2007 stands disposed of.

5. The matter is remanded to the Land Tribunal for fresh consideration.

6. The Tribunal is directed to issue notice to all the parties who are interested in the subject matter of the case and decide the case in accordance with the relevant provisions of the Land Reforms Act and Rules as expeditiously as possible, as the matter pertains to the year 1982.

7. The Appellants and Respondents are permitted to adduce their oral and documentary evidence to substantiate their respective defence.

All the contentions are kept open.