

(2003) 03 KAR CK 0085
In the Karnataka High Court
Case No : Writ Petition No. 4599 of 2003

Nagappa Poojary

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Citation : (2004) 2 KarLJ 150

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

Bench : Single Bench

Advocate : K. Rama Bhat, for the Appellant; M.E. Prabhu, A.G.A. for Respondents-1 and 2 and B.L. Acharya, for Caveator-Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner is assailing the validity and correctness of the order passed by the Tribunal, dated 28-12-2002 in LRT No. 616/81-82.

2. This is third round litigation coming up before this Court assailing the correctness of the order passed by the Tribunal on the ground that the Tribunal has not conducted enquiry as envisaged under the relevant provisions of the Karnataka Land Reforms Act and Rules. The case of the petitioner is that he is claiming the tenancy rights which was succeeded from his mother in respect of 0.75 acres in S. No. 131/13B in Ullal Village, Mangalore. The said application was rejected by the Tribunal on 12-9-1981. Against the said order, the petitioner has filed the writ petition before this Court in W.P. No. 5174 of 1995. The writ petition was allowed and the matter was remitted back to the Tribunal for fresh disposal. After remand, the Tribunal has passed the order on 26-5-1999 granting occupancy rights in favour of the petitioner. Assailing the said order, the landlady, 3rd respondent, has filed W.P. No. 3892 of 2000. After considering the case put forth by the parties, this Court has allowed the petition and remitted the matter back to the Tribunal with a direction to consider the matter afresh keeping in view the observations made in the petition. After remand, the Tribunal has issued

notice to the parties. Both the parties represented by their Counsels and they have filed written arguments. The Tribunal, after considering the material on record and the documents produced by the respective parties, has passed the impugned order rejecting the claim made by the petitioner holding that the land in question is not a tenanted land nor it is an agricultural land and mere is no relationship between the petitioner and 3rd respondent as tenant and owner. Assailing the correctness of the said order, the petitioner has filed this petition.

3. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents at considerable length of time.

4. The principal ground urged by the learned Counsel for the petitioner is that, the Tribunal has failed to consider the oral and documentary evidence available on record. Further, he has vehemently submitted that the Tribunal has given much weight to the receipt (Annexure-C) produced by the 3rd respondent but that is in respect of Someshwara Village and not in respect of Ullal Village. Therefore, the reliance placed by the Tribunal is not justifiable. The petitioner has examined independent witness in the earlier proceedings. But, the Tribunal has not taken into consideration the evidence available on record. He has further submitted that the petitioner has been cultivating the land in question since for more than 15 years and he is in possession of the same. Therefore, the entire proceedings initiated by the Tribunal and the conclusion reached by it, is contrary to the relevant provisions of the Act and Rules. Hence, he prayed that the impugned order may be set aside.

5. Per contra, the learned Counsel appearing for 3rd respondent has justified the impugned order and has filed detailed statement of objections denying the statement made by the petitioner. The case of the landlady is that the petitioner's mother one Smt. Lakshmi, was a monthly tenant under 3rd respondent in respect of a residential house situated in the property in dispute. The petitioner's mother had executed a rent bond in the year 1958 and it was renewed in the year 1961. Hence, the petitioner has miserably failed to prove that he is an agricultural tenant in respect of the land in dispute. It was specifically contended that the petitioner has not produced any geni chit, geni receipt or levy receipt. Further, the name of the petitioner is not found in the RTC as on 1-3-1974 and prior to that. The burden is cast on the petitioner to prove the tenancy in respect of the land in question that the said land is agricultural land. Further, she has vehemently contended that in Form 7 submitted by the petitioner in the column of occupation, it is shown as "Beedi" but the petitioner has stated that he is an agricultural labourer. Therefore, the statement made in the declaration in Form 3 claiming occupancy rights itself suffice for this Court to reject the claim of the petitioner. Further, it is submitted that earlier where the property is situated was known as "Someshwara" now it is known as "Ullal". Further, she has submitted that the Tribunal after considering the entire material on record has given a categorical finding that the land in question is punja land (non-agricultural land) and not being capable of cultivation. Therefore, she has

submitted that the impugned order passed by the Tribunal rejecting the claim of the petitioner is strictly in compliance with the relevant provisions of the Karnataka Land Reforms Act and Rules.

6. To substantiate her submission, she has placed reliance on the Division Bench decision in K.A. Subba Rao (Deceased) By L.Rs. Vs. Balaram Gowda and Others, . It is held therein.--

"The tenants contended that they have adduced oral evidence of the adjacent cultivator to show that they have been in possession of the land since last 30 years. If a person is in possession of the land, definitely, his name would be entered in the revenue records particularly, when he is in occupation or at least he would have paid the land revenue to show that he is in possession of the land or in some cases, when the persons in possession of the land obtain manures showing that they are in possession of the land or loans are obtained on the basis of the land, their names would find a place in the records. No such evidence is adduced before the Land Reforms Tribunal except the oral evidence of the tenants and the adjacent cultivator. On the other hand, the documentary evidence produced by the landlord shows that he is the owner of the land".

7. I have perused the impugned order passed by the Tribunal carefully and re-evaluated the material available on record with the assistance of the learned Counsels for the parties. The petitioner herein claims to be a tenant in respect of the land in question has filed application for grant of occupancy rights. On two occasions, the Tribunal has rejected the claim of the petitioner. On one occasion only, it has granted the occupancy rights in favour of the petitioner. In view of the dispute between parties, this Court has specifically directed by its order dated 25-2-2002 in W.P. No. 3892 of 2000 that the Tribunal should consider the case afresh on merits after issuing notice to both sides and after affording an opportunity to put their case and pass appropriate orders keeping in view the observation made in the order and especially to decide first what is the nature of land - agricultural or non-agricultural and whether there is agrarian relationship between the parties or not. After remand, the Tribunal, after considering the oral and documentary evidence including the written arguments filed by both the parties has passed the impugned order holding that the land in question is not agricultural and that the petitioner has not produced any authenticated document to show that he is cultivating the land on the basis of "Moolgeni" tenancy. The Tribunal further held that the petitioner has failed to establish the relationship of the owner and the tenant. After perusal of the impugned order carefully and on the face of the record, at any point of time, the land in question is not agricultural land. The Tribunal has also considered the material on record produced by both the parties including the written arguments and has come to the conclusion that the petitioner has not made out a case for granting occupancy rights in respect of the land in question, I do not find any error of law as such committed by the Tribunal in rejecting the claim of the petitioner. Therefore, the petition is liable to be dismissed.

8. Having regard to the facts and circumstances of the case and keeping in view the law laid down by the Division Bench of this Court as relied on by the learned Counsel for respondent 3, in my considered view, the impugned order passed by the Tribunal does not call for interference.

For the foregoing reasons, writ petition is dismissed.

The learned Government Advocate is permitted to file memo of appearance for respondents 1 and 2 within four weeks from today.