

(1977) 12 KAR CK 0016
In the Karnataka High Court
Case No : WP. 4004 of 1977

Narasimha Setty K.G. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-12-1977

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 44

Citation : (1978) 1 KarLJ 208

Hon'ble Judges : Bhimiah, J

Judgement

1. This is a land-holder's writ petition under Art. 226 of the Constitution of India seeking for the issue of a writ of certiorari quashing the order passed by the Land Tribunal, Tumkur, granting occupancy rights infavour of respondent-3 in Sy. Nos. 20, 21, 22 and 23 of Tumkur Kasaba village.

2. The 3rd respondent filed an application in form No. 7 claiming to be the tenant of the lands for nearly 35 years.

3. The petitioners challenged the claim of the 3rd respondent on the ground that the 3rd respondent was not the tenant of the lands in dispute , and the lands were not agricultural lands as they were alienatod for non-agricultural purposes as per Ex."B" dated 22-9-1966. Further they contended that the pahani entries are in their names and that there was no pahani entry in favour of the 3rd respondent. Their case is that the lands were converted lands for industrial purposes. The 3rd respondent was kept as a watchman of these lands. They were selling the usufructs of some mango trees and were receiving the proceeds They were also getting the lands cultivated personally after the lands were purchased by the family members. The Land Tribunal held enquiry examined the 4th petitioner and the 3rd respondent in the course of the enquiry. The members of the Land Tribunal held a spot inspection and examined the Bajudars in the course of the spot inspection Upon consideration of the oral evidence the Land Tribunal has reached the conclusion that the entries are not correctly made and relied upon the oral evidence adduced in the proceedings and granted occupancy

rights in-favour of the 3rd respondent.

4. The following questions arise for decision in this writ petition.

(1) Whether the lands in question are lands within the meaning of the provision of Sec. 2(18) of the Karnataka Land Reforms Act 1961 (to be hereinafter called the "Act") and whether the Land Tribunal had jurisdiction to grant registration of occupancy rights in these lands.

(2) Whether the 3rd respondent has proved that he was in possession of the lands in question on the date of vesting and even prior to that period as a tenant.

5. Now taking the 1st question for determination it may be stated that there is overwhelming evidence to prove that the lands in Sy. Nos. 20, 21, 22 and 23 of Tumkur Kasaba village are not lands within the meaning of Sec. 2(18) of the Act. The petitioners have produced Ex."B" dated 22-9-1966 issued by the Tahsildar, Tumkur Taluk, informing the original land-holder K. Narayana Shetty that the alienation of an extent of 4 acres 20 guntas out of Sy. Nos. 21, 22 and 23 of Tumkur Kasaba village has been sanctioned for industrial purposes, as per the order No. ALN SR 159/66-67 dated 21-9-1965 of the Assistant Commissioner, Tumkur Sub-Division Tumkur, subject to leaving of road margins per rules and also other usual conditions which may be imposed by the Town Municipal Council concerned. The applicant was also directed to obtain necessary licence before constructing the building from the local body concerned. By another endorsement dated 8-11-1967, which is marked as Ext. "A", the original land-holder was informed that similar sanction had been granted in respect of Sy. No. 20 also. Ext. "C", is the Index of lands in respect of these survey numbers, wherein the person in possession is shown as K. Narayana Shetty, father of petitioners 4 and 5. It bears testimony to the fact that these lands were alienated for non-agricultural purposes. Exhibit "D" is the Record of Rights relating to these survey numbers. The entry init reads thus:

These survey numbers have been shown in Exhibit "D" as non-agricultural Kharab. The entries in the Index of Land and the Record of Rights conclusively establish that the lands in question were alienated for non-agricultural purposes in the year 1966-67 and these lands ceased to be agricultural lands after the order of alienation passed by the Assistant Commissioner, Tumkur Sub-Division, Tumkur, as early as in 1966

6. Sec. 2(18) of the Karnataka Land Reforms Act, 1961 (to be hereinafter called the "Act") defines the word "Land". It means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non-agricultural purposes. Thus, it is clear from the definition of "Land" in the Act, that the lands in question ceased to be agricultural lands in the year 1966, itself, and they were exclusively used for non-agricultural purpose and house sites.

7. Sec. 44 of the Act, lays down:

"All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under Sec. 5, shall, with effect on and from the said date, stand transferred to and vest in the State Government."

Under this section lands which fall within the definition of Sec. 2(18) of the Act, alone stand transferred to and vest in the Government.

Sec. 45(1) of the Act, says that, subject to the provisions of succeeding sections of this Chapter, every person who was a permanent tenant protected tenant or other tenant or where a tenant has lawfully sublet, such sub-tenant, shall with effect on and from the date of vesting, be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or subtenant before the date of vesting which he was cultivating personally.

8. Reference to lands made in this section is the land which falls within the definition of Sec. 2(18) of the Act. It is only with reference to such lands a tenant is entitled to be registered as an occupant if he was personally cultivating the land before the date of vesting. The, land Tribunal is empowered to hold an enquiry to determine whether a person is entitled to be registered as an occupant under Sec. 45 of the Act, in respect of the lands defined in Sec. 2(18) of the Act, and not in respect of the lands used exclusively for non-agricultural purposes and also used for house-sites.

9. The duties of the Tribunal as defined under Sec. 112(b) of the Act, are confined to decide whether a person is tenant or not in respect of the lands which fall within the definition of Sec. 2(18) of the Act, which does not include house sites and land used exclusively for non-agricultural purposes. Therefore, there is total lack of jurisdiction for the Land Tribunal, Tumkur, to entertain an application under Sec. 48-A of the Act, and grant occupancy rights in favour of 3rd respondent in respect of the lands in question which were alienated for non-agricultural purposes like house sites and industrial purposes. Therefore, the impugned order granting occupancy rights in favour of 3rd respondent in respect of the lands in question is illegal and invalid. Thus the impugned order is vitiated and the petitioners are entitled to the issue of a writ of certiorari for quashing the impugned order.

10. Now turning to the 2nd question, it may be stated that the Tribunal was at great pains in making out a case of tenancy in favour of 3rd respondent in the face of overwhelming documentary evidence in favour of the petitioners. The petitioners have produced pahani copies from the year 1968-69 up-to-date in which there is total absense of the name of the 3rd respondent and the method of cultivation is shown as

"swantha" (personal). The entries in the Record of Rights and the Pahanis raise a legal presumption under Sec. 133 of the Karnataka Land Revenue Act, in favour of the petitioners. Sec. 133 of the Act, says:

"An entry in the Record of Rights and a certified entry in the Register of Mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor."

In the instant case, the Tribunal has wholly failed to raise a legal presumption in favour of the petitioners by merely observing that incorrect entries have been made. This observation is without basis. Contrary is not proved by oral evidence in view of the alienation proceedings already referred to with reference to Index of Lands, Record of Rights and Endorsement granted to one Narayana Setty. They further reinforce the pahani entries in favour of the petitioners produced in the case. The failure on the part of the Land Tribunal to raise the legal presumption in favour of the petitioners has vitiated the impugned order.

11. There is yet another circumstance which requires to be noticed in this case. The 3rd respondent applied in form No. 7 stating that he has been a tenant for over 35 years. But the age of the 3rd respondent given in form No. 7 is also 35 years. He has not mentioned in his application that his father ever cultivated the lands. He filed this application on 16-12-1975. But when he was examined by the Tribunal, he has not explained how he could have cultivated the land from 35 years. But in the course of cross-examination of 4th petitioner, he has put a suggestion that 30 years ago, his father and himself were brought to this land which the 4th petitioner has denied. The oral evidence recorded at the time of spot inspection by the Land Tribunal further makes the matter worse and takes away the credibility of the evidence of other Bajudars, who in one voice say that the 3rd respondent was cultivating the land for nearly 25 years when he was only a ten year old boy. Thus the 3rd respondent has miserably failed to prove that he was cultivating as tenant of the land In question for nearly 35 years. He has made a false claim of tenancy in respect of these lands. The finding of the Land Tribunal, in these circumstances borders on arbitrariness and, therefore, it cannot be sustained.

12. The Land Tribunal has referred to certain house existing on the land In question and which was in the occupation of the 3rd respondent. The 3rd respondent's habitation in the house does not confer upon him any right. The petitioners have fairly conceded that he was kept there as a Watchman, which is consistent with the stand taken by the petitioners. After the alienation, there is nothing wrong in the petitioners to keep a Watchman. It is in evidence that a portion of the land was granted to the Rotary Club as charity. Before this Court the petitioners offered to make lumpsum payment to the 3rd respondent for "he services he rendered as a Watchman. But the 3rd respondent declined to accept it for reasons best known to him.

13. For the reasons stated above, the impugned order is liable to be quashed.

Accordingly, it is quashed. Writ petition is allowed. No costs.