
(1983) 08 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No's. 4377 and 4550 of 1978

Narasing Gopalrao Desai

APPELLANT

Vs

The Land Tribunal, Khanapur and Others

RESPONDENT

Date of Decision : 25-08-1983

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 15, 15 (6), 18 (2), 44, 48 A

Citation : AIR 1984 Kar 69 : (1984) 1 KarLJ 360

Hon'ble Judges : S.R. Rajasekhara Murthy, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : G.D. Shirgurkar, for the Appellant; V.C. Brahmarayappa, Government Advocate and B.V. Krishnaswamy Rao, for the Respondent

Judgement

1. These two writ petitions filed under Article 226 of the Constitution, have come up before us upon a reference made by Venkatesh J. on the ground that the petitions raise important questions of law of far-reaching consequences. It is true that the questions raised are of considerable importance and they relate to the rights of a soldier or seaman to resume the tenanted lands, and the rights of the tenants to get occupancy in respect of such lands connected with the scope of jurisdictions of the Land Tribunal and the Tahsildar under the Karnataka Land Reforms Act, 1961 (The "Act").

2. The events leading to the petitions are as follows:

S.No.38 measuring 7 acres and 30 guntas situate in the village Mudewadi, Khanapur Taluk, Belgaum District, belongs to Narasimha Gopal Rao Desai who is the petitioner in both the writ petitions. The said land originally belonged to his joint family and under a family partition which took place in 1959, it was allotted as against the share of the petitioner. The petitioner joined the Indian Air Force as far back in Oct., 1952 and was discharged from service on Dec.3,1973.

3. M.M. Gurav (the "tenant") respondent 3 in both the writ petitions was in possession of the said land as a tenant of the joint family for several years and

he was allowed to continue as tenant under the petitioner after the family partition.

4. The petitioner with a view to resume the land appears to have issued a notice calling upon the tenant to surrender possession of the land, but the tenant refused to do so. So, the petitioner moved the Tahsildar with an application u/s 15 of the Act to evict the tenant and for delivery of possession of the land. Before the Tahsildar, the petitioner appears to have given his service particulars while producing a copy of the notice issued by him to the tenant as required by Rule 4 of the Karnataka Land Reforms Rules, 1974 (the "Rules"). The tenant while resisting the action however, admitted that the petitioner was his landlord, but he contended that he was cultivating the land since his forefathers and his tenancy was not created by the petitioner and therefore he was not liable to be evicted. The Tahsildar accepted the contentions of the tenant and made an order dated Oct. 7, 1975 dismissing the application of the petitioner by observing that he did not comply with the conditions set out in S. 15 and did not create the tenancy when he was in service and therefore could not seek resumption of the land from the tenant.

5. Against the order of the Tahsildar, the petitioner preferred an appeal to the Assistant Commissioner, Belgaum, u/s 18(2) of the Act. The Assistant Commissioner also dismissed the appeal by giving some more reasons. He has stated that the petitioner did not create the tenancy. He did not produce any record evidencing his military service. There was no written lease creating or continuing the tenancy as between the parties. The written lease alone could form the basis for evicting the tenant u/s 15 of the Act.

6. Challenging the validity of these orders, the petitioner has preferred W. P. No. 4550 of 1978.

7. The tenant claiming occupancy right in respect of the land S. No. 39 had approached the Land Tribunal, Khanapur u/s 48-A of the Act. The record shows that the petitioner was placed *ex parte* in that proceedings and the Tribunal by order dated June 16, 1977 granted occupancy right to the tenant. The petitioner has challenged the validity of that order in W.P.No.4377 of 1978.

8. Two primary questions arise for consideration in these petitions. The first as to the right of the cultivating tenant to get occupancy right in respect of the land belonging to a soldier or seaman. The second relates to the right of the soldier or seaman to resume the land from his tenant. These two questions are intertwined and could be conveniently disposed of by reference to Section 5, 15 and 44.

9. Section 5 of the Act provides

5. Prohibition of leases, etc.-(1) Save as provided in this Act, after the date of commencement of the amendment Act, no tenancy shall be created or continued in respect of any land nor shall any land be leased for any period whatsoever.

2. Nothing in sub-section (1) shall apply to a tenancy created or continued by a

soldier a tenancy created or continued by a soldier or a seaman if such tenancy is created or continued while he is serving as a soldier or a seaman or within three months before he became a soldier or a seaman.

(3) Every lease granted under sub-sec,(2) shall be in writing.

10. Section 15 provides:

15. Resumption of land by soldier or seaman:

(1)A soldier or a seaman who has created or continued a lease in accordance with the provisions of Section 5 shall, subject to the provisions of this Act, be entitled to resume land to the extent of the ceiling whether his tenant is a protected tenant or not.

(2) The soldier or the seaman shall, if he bona fide requires the land to cultivate personally, issue a notice to the tenant requiring him to deliver possession of the land within the period specified in the notice, which shall not be less than the prescribed period.

(3) The notice referred to in sub-sec.(2) shall be given-

(i)in the case of the soldier in service in the Armed Forces of the Union, at any time not later than one year from the date on which he is released from the Armed Forces or is sent to the reserve:

(ii) in the case of the father, mother, spouse, child and grand-child of a soldier within one year from the date of the death of such soldier; and

(iii) in the case of a seaman, within one year from the date on which he ceases to be a seaman.

(4) If the tenant fails to deliver possession of the land within the period specified in the notice the soldier or the seaman may make an application to the greater part of the land is situated, furnishing the prescribed particulars for eviction of the tenant and delivery of possession of the land.

(5) On receipt of such application, the Tahsildar shall issue a notice to the tenant calling upon him to deliver possession of the land to the soldier or the seaman within such time as may be specified in the notice, and if the tenant fails to comply, the Tahsildar may summarily evict the tenant and deliver possession of the land to the soldier or the seaman.

(6) Where the Tahsildar on application by the tenant or otherwise and after such enquiry as may be prescribed, is satisfied that a notice as required by sub-section (2) is not issued, he shall, by notification declare that with effect from such date as may be specified in the notification the land leased shall stand transferred and vest in the State Government free from all encumbrances. The Tahsildar may take possession of the land in the prescribed manner and the tenant shall be entitled to be registered as an occupant thereof. The provisions of S. 45 shall mutatis mutandis apply in this behalf.

11. Section 44 so far as it is material, provides;

44. Vesting of land in the State Government - (1) 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.

12. Section 5(1) prohibits creation of tenancy or continuance of any tenancy after March 1, 1974 the date on which the Amending Act 1 of 1974 came into force.

13. Section 5(2) is in the nature of an exception to S. 5(1). Sub-section (2) prior to its amendment by Amending Act No. 3 of 1982, did not prohibit a soldier or a seaman to create lease in respect of an agricultural land. By Section 3 of the Amending Act No. 3 of 1982, the word "created" in sub-section, (2) was substituted by the words "created or continued". The amendment thus enabled the soldier or seaman to create or continue such tenancy.

14. Section 5(3) requires every lease granted under sub-section (2) shall be in writing. There was no corresponding amendment to S. 5(3) by Amending Act No. 3 of 1982.

15. Consistent with the concession afforded to soldiers and seaman to create or continue the tenancy, the legislature has enacted Section 15 conferring on them the right to resume their lands from the tenant irrespective of the nature of the tenancy. If they bona fide require the land to cultivate personally, they shall issue a notice to the tenant, calling upon him to surrender possession of the land. Such a notice shall not be less than 6 months as required under R.4 of the Rules. The notice, however, could be given at any time not later than one year from the date on which a soldier is discharged from the Armed Force or is sent to the Reserve and in the case of a seaman within one year from the date on which he ceased to be a seaman. The right to resume has also been extended to the father, mother, spouse, child or grand-child of a soldier. They could issue notice within one year from the date of death of the soldier. If the tenant willingly parts with possession and delivers the land to the landlord, then the matter ends there. If however, the tenant refuses to deliver possession of the land, the soldier or seaman may make an application to the jurisdictional Tahsildar for delivery of possession of the land. The Tahsildar upon receiving such application shall issue notice to the tenant calling upon him to deliver possession of the land to the soldier or seaman and if the tenant fails to comply with the demand even thereafter, the Tahsildar should summarily evict the tenant and put the soldier or seaman in possession of the land.

16. What then should happen to the tenanted land if the soldier or seaman has not exercised his option to resume it. Section 15(6) provides that if the soldier or the seaman has not asked for possession of the land and has not issued any

notice calling upon the tenant to surrender possession of the land, the Tahsildar either on an application by the tenant or otherwise, shall issue a notification declaring that the land leased shall stand transferred and vest in the State Government free from all encumbrances. The notification of the Tahsildar will have the effect of vesting the land in the State Government. The land then will be available for granting occupancy right to the person entitled thereto.

17. Section 15(6) however, is not clear as to the authority which is competent to grant occupancy right in respect of the land vested in the State. Mr. Shirgurkar, counsel for the petitioner, submitted that it is the Tahsildar who is competent to grant occupancy right and not the Land Tribunal, Mr. Brahmarayappa, Govt. Advocate on the other hand contended to the contrary.

18. It seems to us that the Land Tribunal alone has got the jurisdiction to grant occupancy right. Section 112 provides for the duties of the Tahsildar and the Tribunal. Section 113(A)(c) provides that the Tahsildar has got right to declare the vesting of the land in the State Government u/s 15(6). Section 112(B) (bb) provides power to the Tribunal to decide the nature of the land and the question of tenancy involved. Section 133(1)(iv) also provides that the Tribunal shall decide the said questions. These provisions coupled with Ss. 45 and 48-A indicate clearly that it is the Land Tribunal which has exclusive jurisdiction to grant occupancy right even in respect of the land belonging to the soldier or seaman. But it must be pointed out that the Tribunal could grant occupancy right to a claimant only when the Tahsildar makes a declaration under S. 15(6) forfeiting the right of the landlord and vesting such land in the State. The Tribunal has no jurisdiction to consider the claim of any person for occupancy right before such a declaration is made by the Tahsildar.

19. In the instant case, the tenant has approached the Land Tribunal claiming occupancy right even before the petitioner could approach the Tahsildar for delivery of possession. The Tribunal has granted occupancy right in favour of the tenant. The Tribunal has stated that the petitioner was absent despite due service of notice and the record of rights indicates that the tenant was cultivating the land. It is alleged that the petitioner wrote a letter dated May 19, 1979 to the Tribunal stating that he is an ex-serviceman and his application for resumption of land was rejected by the Tahsildar, Khanapur, and the appeal preferred against that order was pending before the Assistant Commissioner, Belgaurn. In the said letter, he has requested the Tribunal to postpone the final decision till the disposal of his appeal by the, Assistant Commissioner. The Tribunal in its order has not referred to that letter. We do not know whether that letter was placed before the Tribunal. Even assuming that there was no such letter, the Tribunal, in our opinion, was "not justified in granting occupancy right to the tenant before the land is vested in the State by the declaration of the Tahsildar as required under S. 15(6) of the Act.

20. Bopanna, J. in *Veerabbadrappa Girmallappa v. Land Tribunal, Gokak* (1981 (2) KarLJ 272) while examining the scope of Section 15 has observed that it is

open to the Tribunal to go into the question of tenancy, but if it is found that proceedings u/s 15 are pending before the Tahsildar, it should defer consideration of the application of the tenant for occupancy till the proceedings before the Tahsildar are completed in accordance with law.

21. Venkatesh, J., on the other hand, has taken a contrary view. in Pavadappa Yellappa v. Govindacharya (1981 (2) Kar LJ 605) the learned Judge observed:

"When applications under S. 48-A of the Act for grant of occupancy are pending before a Tribunal the Tahsildar should not proceed with the claims of the landlord arising under S. 15 for resumption, till the claims before the Tribunal are finally disposed of."

The learned Judge continued:-

"The Tahsildar does have such powers under sub-section (5) of S. 15 to deal with such a claim but it is relevant to note that Section 15 does not provide for or contemplate any elaborate inquiry on such claims. However, it is fair to assume that if, in a given case, it is raised that the lease was not one created or continued u/s 5 the Tahsildar may have to go into that question since that involves his very jurisdiction to deal with the claim. He may also have to consider as to whether prior notice had been issued by the landlord as required by sub-section (2) of S. 15 before calling upon the tenants to deliver vacant possession of the lands."

22. The learned Judge while following his own earlier decision in Venkatachar v. Land Tribunal, K. R. Pet (1980 (1) Kar LJ 232), further observed:-

"..... that if an application filed by the tenant is pending in the Tribunal, the Tahsildar will have to Stop the proceedings commenced before him under, S. 15 involving the very lands, and has to dispose of the claim only after final orders are made by the Tribunal."

23. It seems to us that the proper consideration to the intent of the legislature for enacting S. 15 of the Act has not been given by the learned single Judge in Pavadappa Yellappa's case. The tenant of a soldier or seaman cannot get occupancy right unless the land is vested in the State by a special declaration made to that effect by the Tahsildar as required under S. 15(6) of the Act Such a land is not vested in the State u/s 44. Section 44 of the Act itself makes an exception to lands held by tenants under the lease given or continued by a soldier or seaman. Section 5(2) permits a soldier or seaman to create or continue the tenancy although there is a total prohibition of such leasing of agricultural lands by Section 5(1). If, therefore, the tenant in occupancy of such a land approaches the Tribunal for occupancy, the Tribunal cannot grant occupancy unless there is a proof of vesting that land u/s 15(6). It must, therefore, be held that if the proceedings are pending before the Tahsildar, then the Tribunal shall defer consideration of the application for occupancy till the proceedings be fore the Tahsildar are completed. or the appeal, if any, is

disposed of by the Assistant Commissioner.

24. We entirely agree with the view taken by Bopanna, J., in Veerabbadrappa Girmallappa's case (1981 (2) Kar LJ 272) and overrule the decision in Pavadappa Yellappa's case (1981 (2) Kar LJ 605) and Venkatachar's case (1980 (1) Kar LJ 232).

25. The order of the Tribunal granting occupancy right to the tenant M. H. Gurav, cannot, therefore, be sustained.

26. This takes us to the next question urged by Mr. B. V. Krishnaswamy Rao. He urged that the petitioner cannot invoke the provisions of S. 15(3) for resumption of the land, since the tenancy in question has not been evidenced by a written lease as required under S. 5(3). Section 5(3) provides that every lease granted under sub-section (2) shall be in, writing. In other words, the lease granted by a soldier or seaman shall be in writing. Does this requirement in writing also apply to a lease continued by a soldier or seaman is the question herein to be, considered.

27. We have earlier pointed out that Section 5(3) did not undergo any corresponding change when S. 5(2) was amended by Karnataka Act 3 of 1982. By S. 3 of Karnataka Act 3 of 1982 the words "created or continued" were substituted for the word "created" in S. 5(2). The effect of the amendment is that a soldier or seaman could create a fresh tenancy or continue the existing tenancy. Otherwise, there appears to be no other reason to leave S. 5(3) untouched when s. 5(2) was amended by Karnataka act.No.3 of 1982. That means, the existing tenancy could be continued by a soldier or seaman either by express terms or by implied understanding. Acceptance of rent coupled with an assent of the soldier or seaman may be sufficient to continue the tenancy. The document evidencing the same may not be necessary. That again is a concession to soldiers and seaman.

28. In the instant case, it is an admitted fact that the petitioner upon the family partition has continued the tenancy of M. M. Gurav. The question now to be considered is whether the petitioner has a right to resume the land in possession of the tenant. The legislature u/s 15 has provided summary remedy for resumption of a land from the tenant. The petitioner could resume lands to the extent of ceiling. But he must issue a notice as required under Rule 4 of the Rules. Such a notice shall not be less than six months. It shall be given at any time not later than one year from the date on which he is released from the Armed Forces or he is sent to the Reserve. If the tenant fails, to deliver possession of the land within the period specified in the notice, the Tahsildar, when moved, must make a summary enquiry to evict the tenant.

29. The Tahsildar and the Assistant Commissioner in the instant case, has not at all looked into the documents produced by the petitioner regarding his service particulars. The petitioner has produced the necessary particulars, of his service in the Airforce. He has also produced a copy of the notice issued by him asking

the tenant to surrender possession of the land. The authorities have ignored all these documents and proceeded on an erroneous view of the law.

30. "The matter therefore, in our opinion, calls for a fresh enquiry.

31. In the result and for the reasons stated above, w.P.No.4377 of 1978 and W.P.No.4550 of 1978 are allowed and the impugned orders are quashed. The matter stands remitted to the Tahsildar for denovo enquiry and disposal in accordance with law and in the light of the observations made. The Tribunal may keep the application of the tenant pending till the proceedings u/s 15 are completed by the Tahsildar or by the Appellate Authority, if any appeal. Thereon is preferred.

32. Parties will pay and bear their own costs.

33. Petition allowed.