

(2005) 12 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 26764 of 2000

Neria Estates Rural Industries Association Private Limited	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 06-12-2005

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 104, 44, 48 A

Citation : (2006) 1 KarLJ 295 : (2006) 1 KCCR 345

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : A. Jaganatha Shetty and V.V. Ujiadhyaya, for the Appellant;
Bharamagowda B. Goudar, High Court Government Pleader, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a registered company registered under the provisions of the Indian Companies Act, 1956 which claims certain property rights over vast extent of lands in S. Nos. 35, 36, 146:44, 146:45, 146:46, 146:47, 146:48, 146:49, 146:50, 146:51, 146:52, 146:53, 146:54, 146:55, 146:56 and 146:57B measuring 15.22, 32.35, 39.32, 268.08, 490.99, 48.84, 37, 25.4, 0.55, 2.17, 0.10, 45.86, 0.30, 1.47, 7.91 and 8838.51 respectively, in all measuring 9754.07 acres in Neria Village of Belthangady Taluk and for which the petitioners had in fact filed an application in Form 7 before the Land Tribunal, Belthangady in No. LRY 46/79-80 and which claim for conferment of occupancy rights came to be rejected in terms of the order dated 25-5-1984, as the Tribunal found that occupancy rights cannot be granted in favour of a company and against which the petitioner in fact had carried the matter in this Court by filing Writ Petition No. 14885 of 1984 which was dismissed on 8-4-1988 against which the petitioner had filed a further Writ Appeal Nos. 1030 of 1988 and 1867 of 1989 which also came to be dismissed in terms of the order dated 21-9-1990 after which the petitioner had filed a SLP before the Supreme Court, which was also rejected in terms of the order dated 26-7-1996 in SLP No. 120 of 1991 and where after the Tahsildar, Belthangady, had taken consequential follow up action by mutating the revenue entries in the revenue records to indicate the name of

the Government as the owner of such extent of lands as in his opinion, the lands had been vested in the State in terms of the provisions of Section 44 of the Karnataka Land Reforms Act, 1961 (for short, "the Act"), as against which the petitioner in fact had been fighting several rounds of litigation, the present writ petition being the second round, as the petitioner had approached this Court in the earlier round against the earlier order of the Tahsildar dated 28-1-1999 and this Court in terms of the order dated 26-8-1999 passed in W.P. No. 11314 of 1999 had quashed this order and had remanded the matter to the Tahsildar who on such remand passed the impugned order dated 20-7-2000 which has been promptly challenged by the petitioner through the present writ petition.

2. Petitioner is aggrieved by the revenue entries effected by the Tahsildar whereunder the Tahsildar had indicated that the lands in question being vested in the State and has shown the name of the Government of Karnataka as the owner of the lands in the RTC records under the impugned order.

3. Sri V.V. Upadhyaya, learned Counsel appearing for the petitioner has urged several contentions.

4. Firstly, he urges that the order passed by the Tahsildar is not at all in consonance with the directions issued by this Court in W.P. No. 11314 of 1999, wherein a similar earlier order of the Tahsildar came to be quashed by this Court.

5. Sri Upadhyaya submits that the Tahsildar has not applied his mind to the formidable objections raised by the petitioner and the Tahsildar has not taken note of the contention of the petitioner that the land is a plantation land and therefore the provisions of the Land Reforms Act themselves are not applicable, as u/s 104 of the Karnataka Land Reforms Act there is an exemption for applicability of the Act to the plantation land and the provisions of Section 44 of the Karnataka Land Reforms Act, 1961 are also not applicable to plantation land, in which event there is no vesting of the land with the Government and if there is no vesting, there cannot be any entry in the name of the State; that the order of the Tahsildar impugned in this writ petition has to be quashed.

6. Sri Upadhyaya, learned Counsel for the petitioner urged that the petitioner has placed considerable material before this Court as additional documents along with I.A. No. I of 2005 to indicate that the lands in question were being used or cultivated as plantation not merely as piece of an agricultural land etc. It is for such reasons that the impugned order is sought to be quashed.

7. Notice has been issued to respondents and they have entered appearance through learned High Court Government Pleader. The statements of objections are also being filed denying the petition averments. It is urged that the writ petition itself is not tenable, is without any merit and it is liable to be dismissed. It is pointed out that the petitioner has been blowing hot and cold taking up contrary stands; that while the petitioner went before the Land Tribunal claiming occupancy rights on the premise that the lands in question were the agricultural lands by indicating so in Form 7 filed u/s 48-A of the Act. The petitioner, after the

Land Tribunal rejected the claim for grant of occupancy rights is now claiming that the lands in question is plantation lands. The action taken by the Tahsildar consequent to the order of the Land Tribunal, rejecting the application of the petitioner having become final, as the petitioner who had fought the litigation up to the Supreme Court having lost the case before the Supreme Court has urged that the revenue records are also backed by the provisions of the act, inasmuch as the lands in question have been vested with the State as on 1-3-1974 and the order dated 20-7-2000 is not the order to bring about such a legal effect but is only a consequential order passed by the revenue authorities to indicate that legal position. It is also urged that the Tahsildar is the Competent Authority to pass an order and direct the change in the entry and that he has acted within his jurisdiction and that adequate opportunity had also been given to the petitioner to place his case before the Tahsildar and the Tahsildar on examination of all the aspects has passed a considered order; that there is no need for interference with such order; that the petitioner having clearly indicated that it was a tenant under a lease agreement of the year 1958 and as on 1-3-1974 being a lessee in respect of an agricultural land, other consequences necessarily follow and therefore urged for the dismissal of the writ petition.

8. Sri Bharamagowda B. Goudar, learned High Court Government Pleader appearing on behalf of the respondents submits that the order passed by the Tahsildar is justified in the facts and circumstances as also based on the legal position; that therefore no interference is warranted in exercise of writ jurisdiction. It is also urged that the petitioner cannot seek determination of the occupancy rights in the present writ petition; that the scope of examination is only with the revenue entries and the petitioner cannot seek to enlarge the scrutiny in a petition under Article 226 of the Constitution, to take it beyond the scope of the statutory provisions under which the Tahsildar himself has acted namely an act only for the purpose of mutating the revenue entries and not for the determination of the right of the petitioner.

9. I have considered the rival submissions. The impugned order is one passed by the Tahsildar acting as a Revenue Authority for the purpose of showing the name of the Government in the revenue records. The Tahsildar acts as a functionary under the Karnataka Land Revenue Act, 1964 and any view expressed is only incidental. It is true that the Tahsildar is not the authority to determine the rights of the parties including to record a finding or to express a view as to who is the owner of a particular piece of land or even in respect of the entire extent of land to which the petitioner had sought for conferment of occupancy rights to say that the lands are vested with the State and the Government is the owner.

10. The order under challenge is an order passed by a Revenue Authority for the purpose of showing the name of a person in the revenue records. It is not an order for determining any rights of any of the parties. If such is the nature of the order, it is not necessary for this Court to examine the various contentions urged by the petitioner, particularly to establish its rights as a lessee in respect of a

land as urged by Sri Upadhyaya, learned Counsel for the petitioner, vis-a-vis the position as indicated by the Tahsildar that the lands in question have been vested in the Government. If the petitioner is a company and it has leasehold rights in respect of certain lands which according to the petitioner is plantation lands and if the petitioner is keen on getting his rights independently determined by a Competent Court, he has to approach the Civil Court. The scope of jurisdiction of this Court is not for examining the rights of a person whether individual or company. The examination is not for ascertaining the nature of the right or for determining the rights of the petitioner before the Court but only for looking into the order passed by a public authority as to whether such orders are in consonance with the statutory provisions and measures up to the test of reasonableness and fairness in public action which is a mandate to all public authorities, under Article 14 of the Constitution of India.

11. In the instant case, the petitioner is seeking to establish its rights in respect of the land by the various contentions as urged by the learned Counsel for the petitioner and through this writ petition. This Court will not undertake such an exercise for such purpose in the guise of examining the fact or otherwise of the impugned order, as to whether it is correct, legal or otherwise or even assuming it to be one without jurisdiction. Examination of the impugned order cannot in any way resolve the basic dispute as to the nature of the land that had vested in the Government. The dispute of this nature is essentially a civil dispute which has to be resolved by a Competent Civil Court and not in Article 226/227 proceedings.

12. The order passed by the Revenue Authority is only for the purpose of showing the entries in the revenue records. It is for this reason, I decline to exercise writ jurisdiction to interfere with the impugned order having regard to the decision of this Court in the case of *Payappa Nemanna Huded v. Chamu Appayya Huded* 1969(2) Mys. L.J. 198 .

13. Reserving liberty to the petitioner to approach the Civil Court, this writ petition is dismissed as one not warranting interference in the exercise of writ jurisdiction under Article 226/227 of the Constitution of India.