

(1999) 08 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 20482 of 1993

Ningappa (deceased) by L.Rs.

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 A
Karnataka Land Reforms Rules, 1974 — Rule 17
Karnataka Land Revenue Act, 1964 — Section 34
Karnataka Village Offices Abolition Act, 1961 — Section 8

Citation : (2000) ILR (Kar) 978 : (2000) 2 KarLJ 554

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri P.G. Mogali, for the Appellant; Sri Basavaraj Bannur for Sri F.V. Patil and Sri S.N. Hatti, A.G.A., for the Respondent

Judgement

1. The petitioners, in this petition, are the sons of one late Ningappa.
2. In this petition, the petitioners have called in question the correctness of the order dated 30th of October, 1980, a copy of which has been produced as Annexure-B, passed by the Land Tribunal, Hirekerur, rejecting the claim of the petitioners to register them as occupants in respect of the land measuring 37 guntas in Survey No. 10/7 situated at Nesvi Village, Hirekerur Taluk, Haveri District.
3. The few facts that may be relevant for the disposal of the writ petition, may be stated as hereunder:
 - (a) The father of the petitioners the aforesaid Ningappa filed Form No. 7 seeking registration of occupancy right in respect of the land, referred to above, as provided u/s 48-A of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the Act"). During the pendency of the proceedings before the Tribunal, the father of the petitioners expired. However, the mother of the petitioners appeared before the Tribunal. According to the petitioners, the mother of the

petitioners, who had appeared before the Tribunal, had sought conferment of occupancy right in respect of the land in question on the ground that her husband was in possession and cultivation of the land in question as an agricultural tenant as on 1-3-1974 and immediately prior to that date. It is their further case before this Court that their mother did not make a statement that no rent was being paid to the landlord for the land in question, which was taken on lease by their father. In this connection, it is useful to refer to the statement made in paragraph 3 of the petition, which reads as hereunder:

". . . . It is submitted that the petitioners" father died during the pendency of the application. The Tribunal did not bring all the legal representatives on record. But, however, these petitioners" mother appeared before the Tribunal and gave her statement, stating that they are cultivating the land since many years and the said land is an inam land and is also regranted. The petitioners" mother further stated that they have also paid the necessary amount for regrant. The said amount is paid on 19-6-1969. The Record of Rights showing that the land is regranted is produced at Annexure-A. It is submitted that the statements made by the petitioners" mother is not completely recorded. Further, it has been recorded by the Clerk of the Tribunal. She never stated that owner is relative and the land is not regranted. This part of the statement is totally false. After her statement was recorded she was asked to go home and they would inform the next date of hearing. The petitioners" mother being an illiterate woman, believing the words of the Clerk of the Tribunal went home. But uptill today, she has not received any communication from the Tribunal. Strangely, the Tribunal on the very same day, i.e., on 30-10-1980 rejected the application filed by the father of the petitioner. The said order is produced at Annexure-B. It is humbly submitted that the order was not at all pronounced in open Court and also it is not intimated as required by law. Hence, the petitioners were not aware of the same till this day. These petitioners came to know of the order only in the 1st week of May, 1985 when respondent 5 tried to dispossess these petitioners from the land in question. Then they immediately approached the Tribunal and were surprised to see the order and obtained the copy of the same on 4-5-1985 and after collecting the necessary amount are approaching this Hon"ble Court. . . .".

On the other hand, it is their specific averment in the writ petition that the statement made by the mother of the petitioners was not properly recorded and it was recorded by a Clerk of the Tribunal. They also further asserted in the petition that she never stated before the Tribunal that the owner is a relative and the land was not regranted to the village office holder. According to them, the statement made by the mother of the petitioners wherein it is recorded that the mother of the petitioners had admitted that no rent was being paid to the landlord i.e., the holder of the village office, and the landlord was her relative, was not properly recorded. It is the case of the petitioners that they came to know about the impugned order only during the first week of May, 1985 when an attempt was made by the 5th respondent to dispossess them from the land in question. It is also asserted by them that their mother did not admit that there

was no order of regrant made in favour of the holder of the village office. The petitioners, in support of their claim that the land in question was given on lease to their father, relied upon the entries in the Record of Rights and Pahani and they have produced the copies of the Record of Rights and Pahani for the years 1982-83 to 1984-85. Sri Mogali, learned Counsel appearing for the petitioners, in the course of the hearing of the petition, placed before me the certified copies of the Record of Rights and Pahani for the years 1955-56 up-to-date.

(b) However, the Tribunal has rejected the claim of the petitioners for grant of occupancy rights in the order Annexure-B only on the ground that there was no order of regrant made in favour of the holder of the village office as provided under the provisions of the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as "the Village Offices Abolition Act"); and, therefore, even if the land in question was a tenanted land, in the absence of the order of regrant, occupancy right cannot be granted in favour of the tenant. It is useful to extract the relevant portion of the order of the Tribunal which reads as hereunder:

4. Sri Mogali, learned Counsel appearing for the petitioners, challenged the order impugned on three grounds. Firstly, he submitted that the finding recorded by the Tribunal that in the absence of an order of regrant made in favour of the holder of the village office, a tenant is not entitled for conferment of occupancy right, is totally erroneous in law. Secondly, he submitted that the observation made by the Tribunal that the mother of the petitioners had admitted that there was no order of regrant made in favour of the holder of the village office, is factually incorrect and contrary to the records. In this connection, he drew my attention to the statement made in the writ petition, wherein it is asserted by the petitioners that an order of regrant was made in favour of respondent 4-Shankarappa Basavappa Doddamallappanavar. He also submitted that even prior to the order of regrant, the father of the petitioners had paid the prescribed premium amount on 19th of June, 1969. In support of this submission, he referred to me the entries made in the Record of Rights and Pahani, a copy of which has been produced as Annexure-A, wherein at Column No. 6, it is stated as "Hosa Sharath" and Entry No. "2230". According to Sri Mogali, "Hosa Sharath" and Entry No. "2230", referred to in the Record of Rights and Pahani clearly show that there has been an order of regrant made in favour of the holder of the village office. Thirdly, he submitted that the impugned order came to be passed without conducting an enquiry as prescribed under Rule 17 of the Karnataka Land Reforms Rules read with Section 34 of the Karnataka Land Revenue Act. He also pointed out that when the father of the petitioners had expired, the Tribunal was duty-bound to give notice to all the legal heirs of the father of the petitioners and hear them and then take appropriate decision in the matter. Therefore, he submitted that since the said procedure has not been followed, the order impugned is liable to be quashed on that ground also. Sri Mogali, in support of his contention that a person, who is in possession and cultivation of an agricultural land as a tenant even in respect of an inam land, is entitled for grant of occupancy right, relied upon the Division Bench decision of this Court in the

case of B.C. Hanuma Reddy v Land Tribunal, Bangalore South and Others, and M. Narayana Rao v Land Tribunal, Honnali and Another.

5. However, Sri Basavaraj, learned Counsel appearing for the third respondent, while strongly supporting the order impugned, submitted that since it was admitted by the mother of the petitioners that there was no order of regrant made in favour of the holder of the village office; and also she had admitted that there was no rent paid to the landlord and the Tribunal having accepted the said statement made by the mother of the petitioners, this Court, in exercise of its writ jurisdiction under Article 227 of the Constitution, should not interfere with the order impugned. He also relied upon the Division Bench decision of this Court in the case of State of Karnataka Vs. Gowrawwa, , and drew my attention to paragraphs 7 and 8 of the said judgment, wherein this Court has taken the view that unless an order of regrant is made, a tenant is not entitled for conferment of occupancy right in respect of the land held by the holder of a village office. He further pointed out that the claim of the petitioners that the land in question was leased to their father, is totally baseless.

6. In the light of the rival contentions advanced by the learned Counsel appearing for the parties, the two questions that would arise for consideration in this petition, are-

(1) Whether, in the absence of an order of regrant made in favour of the holder of a village office as provided under the provisions of the Act, the tenant, who was in possession and cultivation of the land as on 1-3-1974 or immediately prior to it, is entitled for conferment of occupancy right in respect of that land under the provisions of the Act?

(2) Whether the impugned order is liable to be quashed on the ground that the order passed by the Tribunal is vitiated for the reason that the statement of the petitioners' mother was not properly recorded and the question whether there has been an order of regrant or not, has not been considered by the Tribunal as required by it?

Re. Question (1):

7. Section 8 of the Village Offices Abolition Act gives protection to a tenant and provides that the rights of such tenant are governed by the provisions of the Land Reforms Act, by which he was governed. It is useful to extract Section 8 of the Village Offices Abolition Act, which reads as follows:

"8. Application of Tenancy Law.--If any land granted or continued in respect of or annexed to a village office by the State has been lawfully leased and such lease is subsisting on the appointed date, the provisions of the tenancy law for the time being in force in that area in which the land is situated shall apply to the said lease and the rights and liabilities of the person to whom such land is granted u/s 5, 6 or 7 and his tenant or tenants shall, subject to the provisions of this Act, be governed by the provisions of the said tenancy law.

Explanation.--For the purpose of this section, the expression "land" shall have the same meaning as assigned to it in the tenancy law referred to above".

Now, the question is whether, in the backdrop of Section 8 of the Village Offices Abolition Act, the petitioners' right for conferment of occupancy right under the provisions of the Act can be denied only on the ground that there was no order of regrant made in favour of the holder of a village office. In my view, the answer should be in the negative. Section 8 of the Village Offices Abolition Act, extracted above, clearly states that if any land granted or continued in respect of or annexed to a village office by the State has been lawfully leased and such lease is subsisting on the appointed date, the provisions of the tenancy law for the time being in force in that area in which the land is situated shall apply to the said lease. Therefore, even if an order of regrant is not made in favour of the holder of a village office as provided under Sections 5, 6 or 7, it will not affect the rights of a tenant and his rights are governed by the provisions of the tenancy law applicable where the land is situated i.e., if the land is situated within the area of Bombay Karnataka Area as in this case, the rights of such tenant are governed by the provisions of the Bombay Tenancy and Agricultural Lands Act before the coming into force of the Act and after coming into force of the Act, the provisions of the Act. There is no provision either in the Bombay Tenancy and Agricultural Lands Act or the Act which makes imperative for a tenant to claim tenancy that there should be an order of regrant in the case of lands governed by the provisions of the Village Offices Abolition Act. Section 8 of the Village Offices Abolition Act or any other provision in the said Act nowhere provides that there should be an order of regrant made u/s 5, 6 or 7 of the Act for conferment of occupancy right in favour of a tenant. Section 5, 6 or 7 of the Act provides for the procedure for regrant of the land under certain circumstances. That has nothing to do with the rights of tenants to seek conferment of occupancy right as provided under the Act. Therefore, I am unable to accept the submission of Sri Basavaraj that in the absence of an order of regrant made in favour of the holder of the village office, the petitioners are not entitled to seek conferment of occupancy right in respect of the land in question. In this connection, it is useful to refer to the observations made by the Division Bench of this Court in the case of Hanuma Reddy, supra, at paragraphs 7, 11 and 12 of the decision, which read as hereunder:

"7. Section 5 of the Village Offices Act undoubtedly prohibited transfer of a Service mam land. The question is whether a lease is a transfer for the purpose of that section. The word "transfer" has not been defined in the Village Offices Act. No doubt, Section 5 of the Transfer of Property Act defines the expression "transfer of property" as an act by which a living person conveys property in present or in future, to one or more other living persons or to himself and one or more other living persons. But that definition is for the purpose of the Act. It is well-settled that the definition of a word occurring in one enactment, cannot be imported for interpreting the same word occurring in another enactment. Under the Transfer of Property Act, a lease of a property is, no doubt, a transfer of

property as defined u/s 5 of that Act. But it does not follow that for the purpose of Section 5 of the Village Offices Act, a lease is necessarily a transfer. In the absence of any definition of the word "transfer" in the Village Offices Act, that word should, in our opinion, be understood according to its ordinary meaning. In ordinary usage, a sale or a gift of a property is understood as a transfer of that property. The lease of a property being one of the ordinary modes of enjoying that property by its owner, is not understood in common parlance as a transfer of that property.

11. It is a matter of common knowledge that Service inam lands held by superior Village Officers like Shanbhogues and Patels were generally leased by them and very rarely they were personally cultivating such lands. Their emoluments consisted of rents that they were getting from such lands. It could not have been the intention of Section 5 of the Village Offices Act to prohibit Patels and Shanbhogues from enjoying the lands given to them towards their emoluments, by leasing them to actual cultivator from year to year or for short periods like four to five years.

12. It is significant that Section 8 of the Mysore Village Offices Abolition Act, 1961 (hereinafter referred to as the Abolition Act) provides that if any land granted or continued in respect of, or annexed to, a village office by the State, had been lawfully leased and such lease was subsisting on the appointed date (1-2-1963), the provisions of the tenancy law for the time being in force in that area in which the land was situate, should apply to such lease and that the rights and liabilities of a person to whom such land was granted u/s 5, 6 or 7 and his tenant or tenants should, subject to the provisions of the said Act, be governed by the provisions of the said tenancy law. Unless lease of Service inam lands was lawful, Section 8 would not have provided for giving protection to tenants of such lands".

Therefore, the only question that is required to be considered by the Tribunal for grant of occupancy right is, whether the applicant, who seeks occupancy right in respect of the land in question, was cultivating the land in question as on 1-3-1974 and immediately prior to that date as a tenant? All other considerations, like, regrant of the land in favour of the holder of the village office etc., are irrelevant. The question is whether Sri Basavaraj, learned Counsel for respondent 4, can derive any assistance from the decision of this Court in the case of Gowrawwa, supra? In my view, the said decision mainly proceeded on the basis that the tenant in the said case, had failed to establish that he was cultivating the land in question as on 1-3-1974. No doubt, in the said case, there is an observation made that there was no order of regrant made in favour of the holder of the village office. The said observation was made in the course of that decision in the light of the conclusion reached that the tenant had failed to establish that he was cultivating the land in question as on 1-3-1974. Otherwise, the view expressed by this Court in the said decision would run counter to the provisions contained in Section 8 of the Village Offices Abolition Act. This is also

clear from the observations made in the later portion of paragraph 9 of the said decision, which reads as follows:

"9. if she is in possession of documentary evidence to show that land was lawfully leased to her, after regrant in favour of the holder of the village office, and that the lease was subsisting as on 1-3-1974".

Further, if the said decision is to be understood as laying down that the order of regrant is necessary, in my view, the said decision is to be treated as per incuriam. In my view, I am supported by the decision of the Supreme Court in the case of *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, . The observations made by the Supreme Court at paragraphs 40 and 41 of the said decision, read as hereunder:

"40. "Incuria" literally means "carelessness". In practice per incuriam appears to mean per ignoratium. English Courts have developed this principle in relaxation of the rule of stare dedsis. The "quotable in law" is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority" (*Young v Bristol Aeroplane Company Limited*). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu Vs. Rajdewan Dubey and Others*, , this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an Appellate Court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind". (*Salmond on Jurisprudence*, 12th Edn., p. 153). In *Lancaster Motor Company (London) Limited v Bremith Limited*, the Court did not feel bound by earlier decision as it was rendered "without any argument, without reference to the crucial words of the rule and without any citation of the authority. It was approved by this Court in *Municipal Corporation of Delhi Vs. Gurnam Kaur*, . The Bench held that, "precedents sub-silentio and without argument are of no moment". The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao Vs. The Union Territory of Pondicherry*, , it was observed, "it is trite to say that a decision is binding not because of its conclusions but in regard to its

ratio and the principles, laid down therein". Any declaration or conclusion arrived at without application of mind or proceeded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law".

Therefore, in the light of the above conclusion, I am of the view that the order impugned is liable to be quashed and the matter requires to be remitted to the Tribunal for consideration.

Re. Question (2):

8. Even on this question also, I am of the view that the petitioners are entitled to succeed. Entry No. 2230 in Annexure-A shows that there has been an order of regrant. Rule 19 of the Rules requires that the Secretary of the Tribunal should make an entry with regard to the Record of Rights and Pahani. In the instant case, the claim for conferment of occupancy right has been rejected on the ground that the mother of the petitioners had stated before the Tribunal that there was no order of regrant. It is the case of the petitioners, as observed by me earlier, that the mother of the petitioners had not made any such statement. In this case, I need not go into the question whether the mother of the petitioners had made such statement or not. Even if the mother of the petitioners had made such statement, in my view, a duty was cast on the Tribunal to conduct an enquiry and decide the question as to whether an order of regrant has been made or not, in case the Tribunal comes to the conclusion that such an order of regrant is imperative before occupancy right is conferred on the petitioners. As noticed by me earlier, Section 8 of the Act makes it explicit that in respect of a land which is a tenanted land, the rights of the parties are governed by the provisions of the tenancy law and the person, who gets an order of regrant as provided u/s 5, 6 or 7, is bound by the provisions of the tenancy law. When that is the position, an obligation is cast on the Tribunal, which is conferred with the duty of adjudicating upon the tenancy rights of the parties, to conduct an enquiry to determine as to whether a person, who has filed Form No. 7, is entitled for conferment of occupancy right or not. It is so because all the tenanted lands statutorily vest with the State Government. The Tribunal cannot act upon the statements of the parties mechanically made and proceed to pass an order. As stated earlier, a duty is cast on the Tribunal to conduct an enquiry as prescribed under Rule 17 of the Rules. In the instant case, the Tribunal has rejected the claim of the petitioners only on the ground that there is no order of regrant. Therefore, I am of the view that the finding recorded by the Tribunal that there was no order of regrant, also requires to be set aside and the Tribunal is directed to reconsider the said question.

9. In the light of the discussion made above, impugned order dated 30th of October, 1980 passed by the Land Tribunal is hereby quashed. The matter is remitted to the Tribunal for fresh disposal in the light of the observations made above. The Tribunal shall conduct a fresh enquiry and take a fresh decision in the

matter after giving an opportunity to the parties and in accordance with law. The parties are reserved liberty to lead fresh evidence in support of their respective claims, if they so desire. The Tribunal shall take a fresh decision as expeditiously as possible and at any event of the matter, not later than nine months from the date of receipt of a copy of this order. However, it is made clear that the quashing of the impugned order will not affect the rights of the parties whoever may be in possession of the land in question.

10. In terms stated above, this petition is allowed and disposed of. Rule issued is made absolute.

11. Sri S.N. Hatti, learned Additional Government Advocate, is permitted to file his memo of appearance within four weeks from today.

12. The office is directed to send back the original records to the Land Tribunal forthwith.