

(1986) 10 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 17806 of 1986

P. Seetharam Bhatt

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

Date of Decision : 24-10-1986

Acts Referred:

Citation : (1987) ILR (Kar) 870 : (1987) 1 KarLJ 241

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : A.V. Gangadharappa, for the Appellant;

Final Decision : Dismissed

Judgement

Rama Jois, J.—In this Writ Petition, the following question of law arises for consideration :

"Whether a writ or order can be issued directing the transfer of a proceeding commenced pursuant to Form No. 7 read with Section 48-A of the Karnataka Land Reforms Act("the Act" for short) before the Land Tribunal constituted for a Taluk, to any Land Tribunal constituted for any other Taluk?"

2. The facts of the case, in brief, are as follow : The petitioner has made an application u/s 48-A of the Act in the prescribed Form No. 7 claiming occupancy right in respect of certain agricultural lands specified in his application on the ground that he was lawfully cultivating those lands as a tenant on and prior to 1-3-1974, before the Land Tribunal constituted for Belthangadi Taluk, Dakshina Kannada district. The petitioner has alleged that the Chairman of the Tribunal - the third respondent, pressurised him not to press the application claiming occupancy right accepting some monetary consideration from respondents 6 and 7 and as the petitioner did not agree to the said suggestion of the third respondent, the third respondent told him in open Court that he would dismiss his application without taking any evidence and he also returned some of the documents submitted by the petitioner to the Land Tribunal, on 10-9-86.

3. The petitioner made an application before the Deputy Commissioner, Dakshina Kannada District, praying for staying further proceedings on his application before the Land Tribunal, Belthangadi, and for an order transferring the proceedings to any other Land Tribunal in the district, stating that in the circumstances there was reasonable basis to believe that he was not likely to get justice at the hands of the 2nd respondent-Tribunal. The Deputy Commissioner communicated his decision on the transfer petition presented by the petitioner as per the endorsement dated 22-9-1986 (Annexure C). It reads :

Thereafter, the petitioner has presented this Writ Petition seeking for the issue of a writ of mandamus directing the Deputy Commissioner to transfer the case to any other: Tribunal or. if this Court were to be of the view that the Deputy Commissioner had no jurisdiction to do so, to issue an order transferring the proceedings before the second respondent-Land Tribunal, to any other Land Tribunal. It is in these circumstances, the question set out first arises for consideration.

4. As can be seen from the contents of the endorsement issued by the Deputy Commissioner, he has, on consideration of the provisions of the Act, expressed the view that there was no provision in the Act to transfer the proceedings; from one Tribunal to another Tribunal.

5. Sri A.V. Gangadharappa, learned Counsel for the petitioner, strenuously contended that the proviso to Section 48 of the Act expressly provides for transfer of proceedings from one Land Tribunal to another in a District and the Deputy Commissioner is conferred with the power to order such transfers. In support of this submission, the learned Counsel relied on a judgment of this Court in the case of Rudragowda v. State of Karnataka 1982(2) KLJ 11.

6. In order to appreciate the contention, it is necessary, in the first instance, to set out the relevant portion of the provisions of Section 48 of the Act. It reads :

"48. CONSTITUTION OF TRIBUNALS : (1) The State Government shall, by notification, constitute for each Taluk a Tribunal for purposes of this Act consisting of the following members, namely :

(i) the Assistant Commissioner of the Revenue sub-division having jurisdiction over the Taluk or an Assistant Commissioner specially appointed for the purpose by the State Government ;

(ii) four others nominated by the State Government of whom at least one shall be a person belonging to the Scheduled Castes or Scheduled Tribes.

Provided that if in its opinion it is necessary so to do, the State Government may constitute additional Tribunals for any taluk and the Deputy Commissioner may, subject to any general or special orders of the State Government, distribute the work among the Tribunals in any Taluk.

(2) The Assistant Commissioner shall be the Chairman of the Tribunal."

(Underlining by me)

Sub-section (1) provides for the constitution of a Tribunal for each Taluk. It also specifies that the Assistant Commissioner of the revenue sub-division having jurisdiction over the Taluk concerned and four others nominated by the State Government shall constitute the Tribunal for the Taluk concerned. Sub-section (2) provides that the Assistant Commissioner shall be the Chairman of the Tribunal. The language of the provision is clear and unambiguous. The Tribunal constituted u/s 48(1) of the Act is for a Taluk. The word "Taluk" is not defined in the Act. Section 2(B) of the Act provides that words and expressions used in the Act but not defined shall have the meaning assigned to them in The Karnataka Land Revenue Act, 1964. Section 4 of that Act, inter alia, provides for the division of the area of the State into Divisions, Districts and Taluks. The expression "Taluk" used in Section 48 of the Act has reference to the area of the Taluk demarcated as such u/s 4 of that Act. In fact, to this extent, there is no dispute. Learned Counsel for the petitioner, however, relies on the proviso to Section 48 of the Act, which was added by the Amending Act 18 of 1976. He submitted that under that proviso the Deputy Commissioner was given the power to transfer proceedings pending before a Land Tribunal constituted for a Taluk to another Land Tribunal constituted for any other Taluk, in the concerned district. He submitted that he received support for this submission from the decision of this Court in Rudragowda - (1).

7. The contention is fallacious. Sub-section (1) of Section 48 of the Act provides for the constitution of a Land Tribunal for each taluk, All that the proviso does is, to empower the State Government to constitute additional Tribunals for any Taluk if the Government is of the opinion that having regard to the volume of the claim applications filed before the Land Tribunal constituted for such Taluk, constitution of additional Tribunals is necessary. When one or more additional Tribunals are constituted for a revenue taluk, each Tribunal having jurisdiction over the entire Taluk, it is necessary that there should be some authority to distribute the work between such Tribunals. Therefore, the proviso authorises the Deputy Commissioner of the concerned District to distribute the work among the Tribunals in any Taluk. The proviso does not confer power on the Deputy Commissioner to transfer proceedings before a Land Tribunal constituted for a Taluk to a Land Tribunal constituted for another Taluk. There is no other provision in the Act which provides for transfer of proceedings before a Land Tribunal constituted for a Taluk to any other Taluk. Therefore the Deputy Commissioner has, in my opinion, rightly said in his endorsement that there are no provisions in the Act providing for transfer of proceedings pending before a Land Tribunal constituted for a Taluk to any Land Tribunal constituted for another Taluk.

The submission of the Learned Counsel that the decision in the case of Rudragowda 1982(2) KLJ 11 supports his contention is also untenable. In the case of Rudragowda 1982(2) KLJ 11 the petitioner therein sought for a writ of mandamus from this Court directing the Additional Land Tribunal, Belur, to

forbear from proceeding with the case pending before it. A preliminary objection was raised by the contesting respondents to the effect that as the Deputy Commissioner had the power under the proviso to Section 48 of the Act to consider whether the proceedings before the Additional Land Tribunal should be transferred to another Land Tribunal constituted for Belur Taluk or not, the Writ Petition should not be entertained. The preliminary objection was upheld by this Court holding that the Deputy Commissioner had the power to consider the prayer for transferring the proceedings pending before the Additional Land Tribunal, Belur, to the principal Land Tribunal, Belur. Thus it may be seen the question for consideration in the said case was, whether the Deputy Commissioner had the power to transfer proceedings pending before a Land Tribunal constituted for a Taluk to another Land Tribunal, also constituted for the same Taluk. Therefore, the said decision is not at all apposite to the question arising for consideration in this case.

8. Learned Counsel for the petitioner, next contended that if the Deputy Commissioner has no power to transfer the proceedings pending before a Land Tribunal constituted for a Taluk to the Land Tribunal constituted for another Taluk, this Court in exercise of its power under Articles 226 and 227 of the Constitution of India could make such an order if on the facts and circumstances of the case this Court was satisfied that it was expedient to do so in the interest of justice. This contention urged for the petitioner is equally fallacious. The power of this Court both under Articles 226 and 227 of the Constitution of India is meant to ensure that no Tribunal exceeds its jurisdiction and does not exercise power not vested in it. Therefore, if a Land Tribunal entertains an application in Form No. 7, which ought to have been filed before another Land Tribunal or the Deputy Commissioner on misconstruction of the scope of the proviso to Section 48 of the Act transfers a proceeding pending before a Land Tribunal constituted for a Taluk to a Land Tribunal constituted for another Taluk and such an action is challenged before this Court, it would be the duty of this Court to prevent the Land Tribunal concerned not to exercise jurisdiction which is not vested in it u/s 48 of the Act. The learned Counsel for the petitioner is asking this Court to do actually the converse of it, in that, he wants this Court to transfer a proceeding pending before a Land Tribunal constituted for a Taluk which has jurisdiction to decide the same, to a Land Tribunal constituted for another Taluk which has no jurisdiction to decide the case. It is plain that this Court in exercise of its powers under Articles 226 and 227 of the Constitution of India cannot prevent a Tribunal from deciding a case which it has got exclusive jurisdiction to decide and to send the records to another Land Tribunal which has no Jurisdiction to decide and ask that Tribunal to decide the case.

9. Learned Counsel for the petitioner, however, submitted that this Court in the case of *Ritz Hotels (Mysore) Ltd -v. -State of Karnataka* 1984(1) KLC 301 had held that Article 227 of the Constitution of India enables this Court to transfer the case or proceedings or appeals pending before one authority to another authority. The relevant paragraph of the Judgment is paragraph 5. It reads :

"5. The High Court enjoys under Article 227 of the Constitution not only the power of administrative superintendence but also the power of judicial control over the inferior Courts, Tribunals and all other quasi-judicial authorities which, though not called as Tribunals, but nevertheless exercise judicial power of the State. Therefore, in cases where Section 24 of the CPC is not attracted, Article 227 of the Constitution enables the High Court to transfer the cases, proceedings or appeals from one tribunal or authority to another Tribunal or authority provided the tribunal or the authority to which the case or the proceedings or the appeal is transferred, is competent to try and decide the same."

(Underlining by me)

As can be seen from the above paragraph, the view taken was that under Article 227 of the Constitution of India, in the absence of any specific provision in the concerned statute, this Court can transfer the proceedings pending before a Tribunal to another Tribunal. But at the same time it has been made clear that such an order could be made if only the Tribunal or the authority to which the case or the proceedings or the, appeal is sought to be transferred, is competent to try and decide the same. As pointed out by the Deputy Commissioner very rightly, under the provisions of the Act, a Land Tribunal is constituted for each Taluk and therefore a Tribunal constituted for a Taluk has no jurisdiction and therefore not competent to try a case which is within the jurisdiction of the Land Tribunal constituted for another Taluk. Therefore, the third contention urged for the petitioner is also liable to be rejected. Accordingly it is rejected.

10. Learned Counsel for the petitioner, however, relied on Rule 19 of the Karnataka Land Reforms Rules. That Rule provides that where the lands are situated in more than one Taluk, the application shall be filed before the Tribunal of the Taluk where the greater part of the lands are situated. Learned Counsel submitted that this Rule indicated that a Land Tribunal constituted u/s 48 of the Act had the jurisdiction to decide claims for occupancy right in respect of lands situated outside the Taluk and therefore it should be held that every Land Tribunal constituted for a Taluk has the jurisdiction to decide claims for occupancy right in respect of the lands situated in any other Taluk and therefore the proceedings before a Land Tribunal constituted for a Taluk can be transferred by this Court to a Land Tribunal constituted for another taluk. The said Rule in no way advances the case of the petitioner. The Rule has been framed for the purposes of the Act as authorised u/s 137 of the Act According to Rule 19 of the Rules, in cases where the extent of lands in respect of which occupancy right is claimed, is situated in more than one taluk, it is only the Tribunal constituted for that taluk in which the greater part of the lands are situated, would have the jurisdiction to entertain the application. The said provision only governs a situation referred to in the rule. It does not in any way enlarge the territorial jurisdiction of a Land Tribunal.

11. Learned Counsel for the petitioner submitted that if it is held that the proceedings before a Land Tribunal cannot be transferred to a Land Tribunal

constituted for another taluk, in cases where one or more members of the Tribunal are biased against any applicant, he would suffer irreparably.

12. As can be seen from Section 48(4), it provides for prescribing a quorum for the meeting of the Tribunal. Under Rule 19, the quorum prescribed is three including the Chairman. Therefore, whenever any allegation is made by any party with reasonable basis against any member, it would be prudent for such member not to participate in the proceedings for the reason that in the event of the Tribunal rendering any decision adverse to the party concerned, such a decision would be liable to be set aside in an appeal or in a writ proceeding. However, even if there were to be any allegation against the Chairman, he cannot decline to participate in the meeting of the Tribunal as without him there would be no quorum at all. Whatever that may be, neither the Tribunal could be prevented from exercising the jurisdiction vested in it nor a Member could be prevented from participating in the proceedings of a Tribunal of which he had been nominated as a member, invoking the principles of natural justice, for, such a case would be governed by the doctrine of statutory exception to the applicability of the rules of natural justice (See: *Indian Bank v. Blaze & Co* ILR 1936 KAR 336). Therefore, if any party considers that the decision of the Tribunal is vitiated by bias, he can seek for the setting aside of the decision on that ground in addition to the other grounds available in law.

13. In the result, I answer the question set out in the first paragraph of this order, as below :

"A writ or order cannot be issued directing the transfer of a proceeding commenced pursuant to Form No. 7 read with Section 48-A of the Karnataka Land Reforms Act before the Land Tribunal constituted for a Taluk, to any other Land Tribunal constituted for any other Taluk."

14. Lastly, learned Counsel for the petitioner contended that at least a writ of mandamus should be issued to the State Government to constitute another Tribunal for Belthangady Taluk. As far as this aspect is concerned the petitioner should request the State Government to constitute an additional Tribunal for Belthangady Taluk or to reconstitute the Tribunal for that Taluk setting out the facts and circumstances which warrant such an action on the part of the Government. It is only after such a demand is made and the same is not complied with by the Government without any justification, the petitioner can seek a relief in the nature of writ of mandamus, for, the demand and refusal is a condition precedent for seeking such a relief from this Court.

In the result, the petition is rejected.