

(2002) 10 KAR CK 0040
In the Karnataka High Court
Case No : Writ Appeal No. 31 of 2001

Rama K. Sundar

APPELLANT

Vs

The 15th Land Tribunal and Others

RESPONDENT

Date of Decision : 30-10-2002

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2 A (18)

Citation : (2003) 3 KCCR 1569

Hon'ble Judges : M.F. Saldanha, J;K. Ramanna, J

Bench : Division Bench

Advocate : K. Giridhar, for the Appellant; P.R. Mohan Rao, for Respondents 2(a) to 2(c) and Chandrashekar Rodnavar, High Court Government Pleader for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—This appeal which arises out of a proceeding under the Karnataka Land Reforms Act is to some extent illustrative of the reverse position that sometimes emerges in this field of litigation when the Karnataka Land Reforms Act, 1961 was promulgated it was categorised as a Social Welfare Legislation in so far as the object of the Act was, in order to confer permanent protection or in other words, to grant occupancy rights which was almost on par with transfer of ownership in respect of agricultural lands that were under cultivation by persons other than owners. From the principle that is incorporated in many of the Land Reforms legislations that have been promulgated from time to time, the spirit of the enactment was that the land should go to the "tiller of the soil" or in other words that the tenant who would have been cultivating agricultural land over a period of time and to whom the protection from its possession was minimal but more importantly who was toiling to raise the produce from the lands and was still required to part with a substantial portion of it in the form of rent, be it in kind or in terms of money, should be given the realistic benefit of enjoying the fruits of the labour. It is undoubtedly a well

intended legislation the idea being to raise the status of the agricultural tenant and to provide, as indicated by us earlier, greater level of security and welfare. We cannot however totally overlook the consequences to the person who owned the land who was virtually deprived of the whole of it and to the effect that the looseness with which the provisions of the Act were drafted providing for a lot of scope for thousands of untenable and unjustified claims being put forward. The position gets grossly aggravated when one finds that the jurisdiction under the Act, was conferred on the tribunals specially set up to hear these cases. These tribunals, as has been the sad experience of the High Court, over the last about 3 decades were manned by a set of persons whose qualifications, experience and above all integrity left much to be desired, as a result of which occupancy rights were indiscriminately conferred irrespective of whether the facts and the law justified it in a large number of instances and there was equal trauma on the other side when in thousands of other cases deserving parties did not get justice, essentially because of ignorance or lack of fighting power or more importantly, inability to "satisfy" the tribunals while the initial objective was that it would be desirable to curtail lengthy litigation by barring Advocates, it turned out that in the majority of cases the claims were won by the claimants or vice versa and finally, the situation came to be rectified. One of the aspects that the Courts did find surfacing again and again was the fact that under the provisions of this Act, claims untenable and undeserving claims were preferred for grant of occupancy rights. These claimants invariably succeeded having regard to the fact that the ambit and scope of this Act was very broad and the end result was that the persons who won in the majority of cases were ordinary middle class persons not very different to the owners who ended up totally landless and penniless. The manner in which the orders were passed has also thrown up the other aspect of the law, that in the majority of instances where the claimants have succeeded to a large extent that they were encouraged to carry on with the greedy litigation with the sole object of grabbing whatever little of the land has been left with the owner. These are aspects of the law which require to be restated because while working with the principle of fairness, the concept of doing justice also presupposes the fact that the Court has to take note of the very important principle that there are two parties before the Court and that while doing justice one cannot move entirely in favour of one at the expense of the other.

2. Having made these observations, we shall straight away deal with the brief facts relating to the present appeal. The Appellant before us is the original applicant before the tribunal. He had filed Form No. 7 claiming occupancy rights in a large number of lands comprising different areas totalling in all about 48 different pieces of land. The tribunal granted almost all the claims of the Appellant but we are here concerned with only two small pieces of land situate in Sy. No. 3/2B2 totally measuring 1 acre 77 cents situate at Nadsal Village, Udupi Taluk, Udupi District. As far as this land is concerned the Appellant contends that it was leased to him by one Balanna Ramanakrishnayya on 19.7.1958 under the provisions of the Madras Cultivating Tenants Protection Act, 1955; since the real

debate as far as this land is concerned hinges on the question whether it constituted agricultural land or not, since it has been categorized as punja land in the various documents including the revenue records. The Appellant's contention was two fold. Firstly, that this land was being used for the purpose of manuring the other wet lands and secondly, that some cultivation was being done on these lands for there are references to the growing of chillies, seasonal vegetables and a few fruit trees. The basic contention is that irrespective of the categorisation in the revenue records the land must be treated as agricultural land since it is capable of being used for cultivation. We shall deal with this contention presently. There has been a lot of litigation between the parties and the Appellant's learned Advocate repeatedly drew our attention to various facets of that litigation but one of the other aspects which assumes some importance emanates from the fact that the land owners contend that the possession was taken over in execution of a Court decree on 28.1.1964 and that the Appellant was not in possession as on the appointed date i.e, 1.3.1974. this is a contested issue because the Appellant's learned Advocate has submitted before us that the mere execution of a delivery note does not signify that his client was dispossessed because in a subsequent litigation filed against him there was a prayer for possession. It is also an aspect which we are required to examine and on which we shall record our findings. The tribunal in this case has passed an order on 6.10.1981 and the Appellant who was aggrieved by the rejection of his claim in respect of the two areas of land that comprises in all 1 acre 77 cents had filed a Writ Petition 2265 of 1982 assailing the rejection which proceeding was transferred to the Land Reforms Appellate Authority, Udupi which was the statutorily constituted Appellate Authority at that time when the appellate authority was abolished, a Civil Petition was filed for the purpose of transferring the proceeding to this Court and it was renumbered as Writ Petition 25178 of 1994 which in turn was heard by the learned Single Judge who passed the order dated 23.10.2000 dismissing the petition in question. This appeal is directed against that order.

3. At the commencement of the hearing Mr. Giridhar, learned Counsel who represents the Appellant raised a preliminary grievance which is to the effect that at the point of time when the proceeding was pending before the appellate authority the Appellant had made an application to that authority for permission to adduce additional evidence. The learned Counsel submits that this was very necessary because the tribunal has after a lengthy narration virtually dismissed the claim of the Appellant on the solitary ground that there is a finding against him in the civil proceedings. Mr. Giridhar submitted that admittedly the record of those proceedings was not before the tribunal and it was his contention that if the tribunal desired to exclusively base its verdict as far as this land is concerned on the findings of the Civil Court that the tribunal ought to have called for and correctly examined all aspects of that litigation in its entirety. According to the learned Counsel the interests of justice requires that all relevant material relating to these proceedings be brought on record in order to give his client a fair

opportunity of substantiating his claim and it was for this reason that an application for additional evidence was filed before the Appellate Authority Mr. Giridhar submits that had the proceeding remained with the Appellate Authority the Authority would have taken the additional evidence on record as it had already passed an order that the Appellant was permitted to adduce additional evidence. His submission is that when the learned Single Judge heard the case even though it was in the form of a writ petition that it was incumbent upon the Court to have either taken the additional evidence on record which was permissible or on the other hand to have remanded the case to the tribunal for this purpose. He has made a serious grievance to the effect that on the face of the Appellate Authority's order the learned Single Judge did neither of the two in so far as neither was the additional evidence taken on record nor was the case remanded, but the learned Single Judge proceeded to review the case on merits and dismissed the writ petition holding that the tribunal's order was perfectly justified. The first submission there fore was that the order of the learned Single Judge be set aside and the case be remanded to the tribunal for adducing additional evidence. In order to satisfy the Court that the application for additional evidence was not a mechanical or frivolous application devoid of substance and that the Appellant genuinely had in his possession a lot of material which supported his case, the learned Counsel produced before us a comprehensive paper book in support of his contention that there was substantial material which required to be looked into and that a remand was fully justified. The Respondents learned Counsel opposed any remand on the ground that a perusal of the paper book will indicate that it contained essentially documents, pleadings and orders relating to the disputes between the parties over the years and it was his submission that nothing prevented the Appellant from producing this material before the tribunal but this was not done and secondly, that this material was also not produced before the learned Single Judge and that consequently, it was too late in the day to ask for a reopening of the proceedings.

4. As far as the reception of additional evidence is concerned there are well defined principles which postulate that additional evidence will normally not be permitted because it goes against the doctrine of finality and there will be virtually no end to the litigation if additional evidence is permitted at different stages, particularly after one or two appellate stages have been passed and that too after lapse of a long period of time. Remands on this ground are also contra indicated because of the damage that the passage of time does, because of the serious effects that it has on the administration of justice and working of the Courts and it is therefore only in a small number of cases where the Court is more than satisfied that the party was validly and genuinely precluded from producing the evidence before the forum in the first instance that a remand for this purpose is allowed. In many of the other cases the Courts have agreed to take on record the additional evidence if the interest of justice so require even at an extended stage of the proceedings which may be pending before the appellate

Court provided the Court is satisfied that the party was validly and genuinely prevented from producing this material earlier. In the present circumstance the record is silent with regard to the all important questions as to why all these materials were not produced before the tribunal Mr. Giridhar's submission is that in the earlier years Advocates were not permitted to appear before the tribunal, that the parties were as a result handicapped with regard to the conduct of these proceedings and that is the obvious explanation. This is a rather a weak explanation because a perusal of the records of thousands of these cases indicate to us that even if the Advocates were not present in the Court room before the tribunal that they were very much working behind the scenes. All the litigations whether it be the subject matter of the paper book or contents of the paper book relate to the years prior to 1972 and consequently, long after Form No. 7 was filed and when the tribunal took up the case for hearing there were really no ground on which the Appellant could justify his non-production of this material because it can never be argued that he was not aware of its existence or could not lay his hands on it.

5. There is an interesting aspect of the law referred to by Mr. Giridhar who submitted that it was within the discretion of the Appellate Authority to grant the application for additional evidence or to reject it and he contends that once the application had been granted that there is really no sanction for any Court to interfere with that order and that the learned Single Judge has totally overlooked this aspect of the law. The learned Counsel is not altogether right there because that was an interim order passed by the Appellate Authority, undoubtedly after hearing the parties, but the High Court is a supervisory judicial forum and at the stage of hearing of writ petition it was certainly within the powers of the High Court to either act in consonance with that order or to take a different view.

6. Another aspect of the law which needs to be restated is the fact that when an application for additional evidence is made it is invariably accompanied by the averment that the evidence is crucial and that it is very important from the point of view of that litigant and that consequently the request should not be denied. Judicial forums invariably overlook one important fact that quite apart from the aspect as to why this was not produced at the appropriate time, that the more important aspect is that the Court must carefully examine what exactly is the additional evidence that is sought to be adduced and do an evaluation as to whether that evidence is of such quality and caliber that it would substantially assist the case of the litigant in question. Unless the answer to this question is in the affirmative the question of permitting additional evidence becomes redundant. It is in consonance with this last principle that we take note of the fact that the additional evidence that is sought to be lead in this case is contained in the paper book produced by the Appellant's learned Advocate and that there is really no oral evidence that is being sought to be adduced. We therefore decided that we will peruse the material in question for the purpose of assessing as to whether the application for a remand on this ground is justified. Having completed this exercise we found that it would be desirable to permit the

Appellant's learned Counsel to refer to this material in the course of his arguments as it was purely academic for us to direct that it should come on record only at the tribunal level. that is the reason why we have permitted all the learned Counsel to refer to this material and we have taken it into consideration while deciding this appeal.

7. The Appellant's learned Advocate has first of all dealt with the aspect relating to the delivery of possession on 28.1.1964. What has been submitted by him in the first instance is that the document dated 19.7.1958 which has been produced before us whereby the Appellant claims that he was a tenant within the meaning of The Madras Cultivating Tenants Protection Act, 1955 would confer on the Appellant the status of a tenant. The learned Advocate submits that what has been held against the Appellant is that pursuant to a decree that came to be passed in some civil litigation that the decree was executed and the Appellant was supposed to have been dispossessed. The two fold submission canvassed before us is to the effect that such a decree could not have extinguished the status of the Appellant who was a tenant and according to the Appellant's learned Advocate there is a procedure prescribed by law which is well settled and which requires that the tenancy has to be terminated in the manner prescribed by law and the land is required to be resumed and that in the absence of any such procedure the Appellant's status as tenant is deemed to have been continued. Two were submissions were advanced, the first being that the delivery warrant or receipt as the case may be that was executed on that date does not bear the signature of the Appellant and the learned Advocate submits that the Appellant had not signed the document because he had refused to surrender the possession and in this back ground, his submission is that the document dated 28.1.1964 could only reflect the taking of the paper possession or symbolic possession and that the Appellant has continued to be in physical possession. His last submission is reinforced through the argument that in a subsequent litigation of which the copies have also been produced, the Respondents/land owners have contended that the Appellant was disturbing their possession and thereafter, the plaint was amended whereby the prayer was put in seeking a decree for possession. His submission is that this is strong evidence of the fact that the Appellant has continued to be in possession and that it is wrong to hold that his possession had come to an end on 28.1.1964.

8. As against this position, the Respondents learned Advocate has vehemently submitted that the delivery of possession on 28.1.1964 was in execution of a Court decree. His submission is that the Appellant's refusal to sign the delivery receipt or memorandum could not make any difference because the document was in execution of a decree it was part of a judicial proceeding and the strongest evidence of the fact that the possession was taken over, apart from the document, emanates from the fact that no further steps were required to be taken in the year 1964 against the Appellant which would have become necessary if he had resisted the taking over of possession. Further more, as regards the subsequent litigation Respondents learned Advocate submits that

this was a protective step because the Appellant was disturbing the possession of his clients and even if some amendment to the plaint was subsequently done that is no evidence of the fact that the Appellant was in possession of the land.

9. We have carefully considered all this material because both the tribunal and the learned Single Judge have recorded concurrent findings against the Appellant on the aspect of delivery of possession and, at the hearing of this appeal the Appellant has produced a new paper book which for the reasons indicated by us we have taken on record and have examined very carefully. The document dated 28.1.1964 has presumptive value and it would be impossible for the Appellant to argue that the possession was not taken over as on that date. We have tested the submission of the Appellant's learned Advocate that he was a tenant and that his tenancy could not have been terminated in this manner, but what emerges from the record is that once the possession came to an end on 28.1.1964, even assuming that he was a tenant, once he was dispossessed that status would also be extinguished. Assuming that the Appellant's learned Advocate is right, and that he was wrongly dispossessed, the remedy for him was to have taken appropriate legal steps to undo the wrong action but there is nothing on record to show any further proceedings were instituted by the Appellant and consequently, as the record stands it will have to be held that his possession came to an end on 28.1.1964. We hardly need to examine the effect of the subsequent litigation because it is quite understandable, if there were some disputes still pending between the parties that some further litigation had taken place. But, merely because the plaint came to be amended at some point of time will not be sufficient to establish that the Appellant was in possession and that too lawfully. A subsidiary argument was canvassed by the Appellant's learned Advocate to the effect that irrespective of anything else, he is deemed to have been tenant on the appointed date as it is his case that even as of today he is in possession. We have already indicated our finding with regard to the aspect of possession and if the record clearly discloses that the Appellant was not in possession after 28.1.1964 the question of deemed tenancy is totally ruled out.

10. The most important aspect of the case centres around the question as to whether the land in question is agricultural land or not. If it is held that it does not answer to the definition of agricultural land, the question of the application of the Land Reforms Act itself would not arise. The Respondents have heavily relied on the original document dated 19.7.1978 which mentions two things, the first being that it was a limited lease for one year only and secondly that the land in question was punja land. We do not need to enter into any elaborate discussion because if the land is designated as punja land then the question of any tenancy rights in respect of that land would not arise. From the description that we have on record it is very clear that there are some structures on that land and that it has also been described as hilly terrian. We need to here deal with the submission canvassed by the Appellant's learned Advocate who has relied on two decisions of this Court reported in 1981 (Kar. LJ) 129 & Subhakar and Others Vs. The Land Tribunal and Others, wherein the Court had occasion to consider

the legal position with regard to the land of this category and to hold that even in case of punja land if it is capable of cultivation then it could be brought within the definition of agricultural land. As far as the factual position is concerned, Mr. Giridhar very heavily relies on the report of the Commissioners which have been produced before us which refer to the fact that there are a few fruit trees on the land and one of the reports does mention that a few chillies and some other plants have been grown there. We need to however add that the Commissioner himself has stated that it was very apparent to him that this was done in an attempt to create the impression that the land is capable of cultivation. We need to mention here that the Respondents learned Advocate brought to our notice a decision of this Court reported in 1980(1) Kar. LJ 54 wherein the learned Single Judge has held that it is not the question of whether the land is capable of being cultivated but the real test is as to whether it is suitable for normal cultivation. The real test to be applied is the question as to whether it has been in fact under regular agricultural cultivation. More importantly Respondents learned Advocate drew our attention to a Division Bench judgment of this Court reported in 1979(1) Kar. LJ 412 wherein the Division Bench of this Court while dealing with an identical situation had occasion to conclusively hold that as far as the District of D.K is concerned punja land is not land within the meaning of Section 2A(18) of the Act. In fairness however we must point out that the Appellant's learned Advocate while dealing with the same judgment pointed out to us that the Division Bench did observe in that very decision that wherever punja land is brought under cultivation it can be considered as agricultural land. We fully accept this proposition, but what emerges from a consideration of the present record is that in the first instance the revenue records themselves categorise the land as punja land. Secondly, there is nothing that emerges from the revenue records which under any circumstance helps the Appellant in so far as there is no reference to cultivation being carried out on that land and thirdly, the evidence that we have on record very clearly establishes that there are some structures and a few fruit trees but that effectively, the land is unsuitable for agricultural operations and in actual fact no regular agricultural operations in the traditional sense are being carried out there. What really clinches the issue is that the onus of proving or establishing that punja lands have been brought under agricultural cultivation shifts to the party who makes the claim and in the present case, absolutely no evidence that can establish that the lands in question are agricultural lands has been produced by the Appellant. It is in this back ground, that we are constrained to hold that both the tribunal and the learned Single Judge were fully justified in recording a finding that the lands in question are punja lands.

11. The Appellant's learned Advocate in the course of his submission did make extensive references to several other aspects which emerge because the parties have been litigating for the past several decades and have been through many litigations through the Civil Courts. In our considered view, it is both unnecessary and improper to import all that material into this proceeding and we have

therefore confined our consideration to examine the material that is before the Court in relation to the claim for the grant of occupancy rights and having done so, we have recorded the finding that the concurrent findings of the tribunal and the learned Single Judge to the effect that the lands in question are punja lands and that the Appellant was not in possession on the appointed date are both liable to be confirmed. Having regard to this position in law, no interference is called for with the order passed by the learned Single Judge. The Appeal fails on merits and stands dismissed. No order as to costs.

Before parting with this judgment, we need to mention two things. The first of them is that we have been very impressed by the conduct of the case by the Appellant's learned Advocate who has put in a tremendous amount of research and effort and has argued the appeal admirably. The results no doubt depend on the state of the record, but we do need to indicate our appreciation for his excellent efforts including the extent of legal research that has been put in. Secondly, it is of importance that this Court clarifies that the ambit and scope of writ petition before the learned Single Judge was strictly confined to the land that is the subject matter of this appeal viz, Sy. No. 2/2B2. Unfortunately, the learned Single Judge has unnecessarily strayed in many of his observations and has even recorded findings with regard to other lands which were not the subject matter of the writ petition and in respect of which occupancy rights have been granted to the Appellant. These observations/findings were uncalled for and we clarify that the same are set aside and will be of no effect.