

**(2015) 11 KAR CK 0204**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 11889/2007 (LR)**

Ranappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

**Date of Decision :** 06-11-2015

**Acts Referred:**

Karnataka Land Reforms Act, 1961 — Section 133

**Citation :** (2015) 11 KAR CK 0204

**Hon'ble Judges :** A.S. Bopanna, J.

**Bench :** Single Bench

**Advocate :** R.S. Siddapurkar, Advocate, for the Appellant; S. Syed Habeeb, AGA, for the Respondent

**Final Decision :** Disposed Off

## Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 16.07.2007 passed in LRA No. 643/77-78 by the Land Tribunal, Gulbarga at Annexure-F to the petition. The petitioner is seeking appropriate order holding that the petitioner was a tenant as on 01.03.1974. In addition, the petitioner is seeking that the Land Tribunal be held as having no jurisdiction to hold respondent No. 3(a) as the legal heir based on the WILL.

2. The petitioner contends that he is the tenant in cultivation of the land bearing Sy. No. 118/A measuring 32 acres 30 guntas situate at Auradhi village, Gulbarga. The petitioner filed Form No. 7 claiming to be the tenant under Smt. Chandrabagha. Sri Suryakanth is brought on record before the Land Tribunal subsequently as a Legatee under the WILL executed by Smt. Chandrabagha who died during the proceedings. Respondent No. 4 herein is the present owner of the land having purchased the very same property from Sri Suryakanth under a registered sale deed. The right of respondent No. 4 no doubt would stand regulated by the right to be considered as claimed by respondent No. 3 opposing the claim made by the petitioner herein.

3. The Land Tribunal at the first instance by the order dated 29.08.1977 had granted occupancy right in favour of the petitioner. The same came to be assailed in W.P. No. 8890/1977 and this Court by the order dated 16.11.1978 had set aside the order and remitted the matter to the Land Tribunal. The Land Tribunal after reconsideration by the order dated 26.05.1987 had granted the occupancy right. The said order was assailed and was pending in appeal before the District Land Reforms Appellate Authority, Gulbarga in LRA No. 95/1987. The Appellate Authority came to be abolished whereafter the matter was transferred to this Court and registered in W.P. No. 8622/1991. By the order dated 26.08.1986, this Court set aside the order and remitted the matter to the Land Tribunal for reconsideration. Further on the occupancy right being granted, the same came to be assailed in W.P. No. 4141/2003 which was once again set aside and remitted by the order dated 12.01.2005. Subsequent thereto, the instant order impugned in this petition dated 16.07.2007 is passed.

4. Heard the learned counsel for the parties and perused the petition papers including the records received from the Land Tribunal.

5. Though contentions have been urged with regard to the earlier proceedings and the grant of occupancy right in favour of the petitioner at the earlier instance, what is essentially brought to the notice of this Court is the nature of consideration that this Court had directed while disposing of W.P. No. 8622/1991 dated 26.08.1996. Learned counsel for the petitioner would point out that this Court had directed the Tribunal only to take note of the evidence that was available on the record of the Tribunal and thereafter to come to a conclusion. It is pointed out that though the parties had entered into certain settlement when the matter was pending before the District Land Reforms Appellate Authority in LRA No. 95/1987, the same had not seen the light of the day. In that background, the Land Tribunal ought not to have considered the said development, but only on the evidence available before it had come to its conclusion.

6. In that view, it is pointed out that a perusal of the order impugned in this petition would disclose that the Land Tribunal in fact has taken into consideration that aspect as well and thereafter has come to its conclusion. In that light, it is contended that the order passed by the Land Tribunal is not justified and in any event, when the petitioner had established before the Tribunal that he is a tenant in possession and cultivation of the said lands, the Tribunal was required to keep in view the said aspect of the matter and the occupancy right was required to be granted in favour of the petitioner.

7. Learned counsel for respondents No. 3 and 4 would seek to sustain the order passed by the Land Tribunal. It is contended that the remand order at the earlier instance did not restrict consideration of the evidence by the Tribunal in any particular manner. All that this Court has taken note was only that the evidence available before the Land Tribunal is required to be taken into consideration. Even in that light, if the evidence which was available before the Tribunal at the

first instance and the evidence recorded before it subsequent to the remand is taken into consideration, it would disclose that the petitioner was never in possession and cultivation of the said lands and as such, grant of occupancy right would not be justified.

8. Learned counsel would further point out that respondent No. 4 had made necessary enquiries while purchasing the property from respondent No. 3 and during the said process, no other person other than respondent No. 3 was in possession and it is in that circumstance, respondent No. 4 has purchased the property and has developed it thereafter and in fact the property in effect cannot be considered to be an agricultural property itself taking note of the development that has taken place.

9. In the light of the contentions, firstly a perusal of the order dated 26.08.1996 in W.P. No. 8622/1991 would indicate that though this Court had directed that the evidence available before it be considered, there is no restriction to the fact that all relevant aspects were to be taken into consideration by the Land Tribunal. In that light, if the records secured from the Land Tribunal is perused, it is seen that in addition to the evidence which was available on record, on remand, the affidavit evidence of three witnesses has been filed. One Sri Sidramappa who was examined as D.W.2 has stated specific details with regard to the property in question and the manner in which Smt. Chandrabagha and Sri Suryakanth her son were in possession of the said property. Sri Maheboob Sab who was examined as D.W.3 who is another adjacent owner has also spoken with regard to the nature of the ownership of the property in question and the cultivation which was being made by the mother of Sri Suryakanth and after her death, the manner in which he has been enjoying the said property. Yet another witness Sri Arjun was examined as D.W.4 who has also stated the details with regard to the land in question and cultivation that was being made by Sri Suryakanth who is the owner of the said property. There is nothing on record to discredit the evidence that had been tendered by the said witnesses before the Land Tribunal.

10. Therefore, if the evidence in that regard is kept in view, the neighbouring land owners have deposed to the effect that respondent No. 3 herein was in possession and occupation of the property and no other person was cultivating the land in question. While taking note of the said aspect, one another aspect of the matter which also requires to be adverted to is that the petitioner-Sri Ranappa had at an earlier point filed a suit in O.S. No. 399/2007 against Sri Suryakanth i.e., the son of the owner of the property and had sought for grant of injunction by filing I.A. No. 1. The Court below in addition to taking note of the provision contained in the Karnataka Land Reforms Act by which Section 133 would bar the jurisdiction of the Civil Court, has also kept in view the contention with regard to the possession of the property and the said application has been rejected. An appeal filed against the said order in M.A. No. 6/2008 was also dismissed on 19.03.2008. These are also aspects which are to be noticed while

keeping in view the evidence that was available before the Land Tribunal to indicate that the respondents themselves were cultivating the said lands and no other person was cultivating when possession of the petitioner was not proved therein. It is no doubt true that the Land Tribunal while considering the claim for occupancy right would be concerned with the possession as on the appointed date viz. 01.03.1974.

11. Even if that be the position, merely because on the earlier three instances the Tribunal had granted the occupancy right, that in itself cannot be a fact to assume that the petitioner was in possession of the property. The very fact that the orders granting the occupancy right at the first instance had been set aside and the matter had been remitted to the Tribunal and thereafter the Tribunal has taken into consideration the evidence available on record and has also kept in view the subsequent developments wherein the petitioner himself had stated before the Appellate Tribunal that the application in Form No. 7 had been filed on misconception, the totality of the circumstance including the evidence would indicate that the Tribunal was ultimately justified in its conclusion to hold that the occupancy right as claimed by the petitioner is liable to be rejected.

12. When the Tribunal has taken into consideration all these aspects of the matter and based on the evidence available, a finding of fact has been recorded with regard to the nature of the property, possession of the same and cultivation thereto, I see no reason to interfere with the order passed by the Tribunal while exercising the limited jurisdiction in a writ petition.

The petition accordingly being devoid of merit stands disposed of.