

(1977) 11 KAR CK 0025
In the Karnataka High Court
Case No : Writ Petition No. 1272 of 1976

Sangappa

APPELLANT

Vs

The Land Tribunal and Others

RESPONDENT

Date of Decision : 21-11-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Mysore Land Reforms Act, 1962 — Section 44 (1), 45, 48 A

Citation : AIR 1978 Kar 47 : (1978) 1 KarLJ 43

Hon'ble Judges : G.K. Govinda Bhat, C.J; M.N. Venkatachaliah, J

Bench : Division Bench

Advocate : L. Govindaraju, for M.M. Jagirdar, for the Appellant; H.N. Narayan, Govt. Pleader and G.V. Thimmappaiah, for the Respondent

Judgement

Govinda Bhat, C.J.—This writ petition arising under the Karnataka Land Reforms Act, 1961, hereinafter called "the Act," raises an important question of law touching the jurisdiction of the Land Tribunal constituted under the Act.

2. The second respondent Srinivas Rao Kasimpurkar is a land-holder in Bidar Taluk. The petitioner Sangappa made an application in form No. 7 u/s 48-A of the Act for grant of occupancy right over an area of 18 acres 18 1/2 gunthas in Survey No. 77 of Kasimpur village in Bidar Taluk belonging to the second respondent land-holder on 31-12-1974. On the said application having been filed before the Land Tribunal, Bidar Taluk, notices were issued in form No. 9 to the petitioner and the second respondent's wife Susheela Bai. In his application, the petitioner had stated that he has been Cultivating the land as tenant since the year 1958. The notice issued in form No. 9 reads thus :

"Whereas the lands mentioned below have vested in the State Government u/s 44(1) of the Act and whereas the Tribunal has to determine the person who is entitled to be registered as an occupant of the said lands u/s 45.

Now, therefore, notice is hereby given to Shri

(here specify the name of the applicant or other person who appears to the Tribunal to be interested in the land) to appear before the Tribunal on 10-4-1975 with documentary evidence, if any.

Description of the land:

Taluk Village S. No. Area Asstt."

Bidar Kashimpur 77 18-A-18 1/2 G.-

(Pan)

On the first date of hearing fixed by the Tribunal, both parties were absent and hence fresh notices were issued and a fresh date was fixed for hearing. On the said date, the petitioner and the second respondent appeared before the Tribunal and made their statements. The second respondent conceded that the petitioner has been cultivating a moiety of the land in Survey No. 77 since 1963. Thereafter the matter was adjourned to a further date of hearing and finally on 6-11-1975, the Tribunal passed the impugned order holding that the land claimed by the petitioner was not a tenanted land and the application is a collusive one apparently got up in order to evade the ceiling provisions of the Act as the land-holder Srinivasa Rao owns lands in excess of the ceiling limit. The Tribunal rejected the application of the petitioner and directed the Tahsildar, who is the Secretary of the Tribunal, to take action u/s 66 of the Act to vest the land in Government. Aggrieved by the said order, the petitioner has approached this Court for relief under Articles 226 and 227 of the Constitution.

3. The second respondent does not oppose this writ petition. The State has entered appearance through Shri H. N. Narayan, learned High Court Government Pleader.

4. The first argument urged by Shri Govindaraju appearing for Shri M. M. Jagirdar, learned counsel for the petitioner, is that the Tribunal has travelled outside its jurisdiction when it held that the land has vested in the State Government under Chapter IV of the Act and it had no jurisdiction to direct the Tahsildar to take action u/s 66 of the Act. The second ground urged by the learned counsel is that the parties were given no opportunity to meet the new case made out by the Tribunal, viz., that the application is a collusive one and the land is not a tenanted land.

5. In our opinion, both the grounds urged by the learned counsel are well-founded and the order of the Tribunal is clearly vitiated on both grounds. We have set out in the earlier part of this order the notice issued to the parties in form No, 9. The jurisdiction of the Tribunal in proceedings under Chapter 111 of the Act is restricted to applications for grant of occupancy rights in respect of tenanted lands vesting in the State Government on 1-3-1974. The provisions of Section 44 and other Sections in Chapter III of the Act make this position abundantly clear. Chapter III is not concerned with lands under the personal cultivation of the land-holders, irrespective of the fact that the lands so

possessed and cultivated are in excess of the ceiling limit fixed by the Act. The jurisdiction of the Tribunal to initiate proceedings under Chapter III arises on an application being made by a person claiming to be the tenant of a land or lands alleged to have vested in the State Government on 1-3-1974 u/s 44 of the Act. It has no Jurisdiction to take any proceedings under Chapter III in respect of lands not vested in the State Government on 1-3-1974 u/s 44(1) of the Act. The notice in form No. 9 issued to parties stated that "whereas the land has vested in the State Government u/s 44(1) of the Act," the interested parties are required to appear before the Tribunal with documentary evidence to decide the issue of grant of occupancy right applied for. The notice in form No. 9 has been prescribed under the Rules made under the Act. The rules do not provide for issue of a notice either to the person claiming to be the tenant or to the land-holder to meet the case of the State that the alleged tenancy is a collusive one and that the land is actually under the personal cultivation of the land-holder and the application for grant of occupancy right has been got up in order to defeat the ceiling provisions of the Act under Chapter IV. When a notice in form No. 9 is issued pursuant to proceedings taken u/s 48-A of the Act, the case which the land-holder has to meet is whether the land in question is a "tenanted land."

6. In the instant case, the question whether the application of the petitioner was a collusive one brought about in order to evade the ceiling provisions did not arise at all. Neither the petitioner nor the second respondent was required to meet any such case.

7. In the year 1975 when the Tribunal decided the case, the proper authority who had jurisdiction to consider and decide whether a land-holder is in possession of land in excess of the ceiling limit, was the Tahsildar. Chapter IV of the Act contains provisions relating to land-ceilings. After prescribing the ceiling limits in respect of different classes of lands and also exemptions from the ceiling provisions in respect of certain categories, Section 66 provides for filing of declaration of holdings by land-holders in actual possession of lands in excess of the ceiling limits prescribed by the Act. Such declarations have to be filed before the Tahsildar who is required to determine whether the land-holder is in possession of lands in excess of the ceiling limit and if so, which are the lands required to be surrendered to the State Government. Section 67 was amended by Karnataka Act No. 44 of 1976 which was published in the Gazette dated 2-6-1976. Under the amended provisions, the Tahsildar, on receipt of the declaration u/s 66, shall verify the particulars contained therein and thereafter place the declaration and the connected records before the Tribunal and thereupon the Tribunal has to enquire and determine the extent of the holding and the area by which such extent exceeds the ceiling area. The competent authority to make out a case that a land-holder in possession of lands in excess of the ceiling limit, in order to defeat the ceiling provisions, has brought about fictitious or collusive tenancies, is the Tahsildar who represents the State. The Tahsildar, while placing the declaration of the land-holder before the Tribunal, has to make out such a case and thereupon the Tribunal has to issue notice to the

land-holder and also the alleged tenant to meet such a case. The Tribunal is an independent forum set up under the Act to adjudicate upon controversies between two adversaries. The Tribunal suo motu cannot come to the conclusion that the tenancy claimed or set up is collusive, when no such case was put forward by the Tahsildar.

8. This is not a solitary case of this type. There are a number of cases which have come to this Court where the Tribunals in the State have suo motu held in proceedings under Chapter III that the alleged tenancy is a collusive one got up in order to defeat or evade the ceiling provisions of the Act. In cases of this type, what the Tribunal has to do is to club the proceedings arising under Chapter IV, after the land-holder files his declaration u/s 66, with the proceedings initiated on the application of the alleged tenant u/s 48-A, of the Act. The Tribunal has to decide, in the first instance, the proceedings arising under Sections 66 and 67 of the Act after affording reasonable opportunity both to the land-holder and the alleged tenant to meet the case, if one is made out by the Tahsildar, that the alleged tenancy is a collusive one. If the Tribunal rejects the case of the Tahsildar, then it has to make an appropriate order in the proceedings u/s 48-A of the Act. If the land-holder in such a case does not contest the tenancy, there is no option but to grant occupancy right in the proceedings u/s 48-A.

9. The learned Government Pleader was unable to say whether or not, in the instant case, the Tahsildar, in the proceedings arising u/s 66 of the Act, had made out a case that the tenancy set up by the petitioner is a collusive one. The Tribunal passed the order impugned as stated earlier, on 6-11-1975, i.e., before Section 67 of the Act was amended. At that time, the Tribunal had no jurisdiction to decide the question arising under Chapter IV. The Tahsildar alone could have decided this question.

10. It is, therefore, clear that the Tribunal has, in the instant case, travelled outside its jurisdiction.

11. For the reasons stated above, we allow this writ petition, quash the impugned order and remit the matter to the Tribunal to adjudicate afresh upon the application of the petitioner in the light of this order. If the proceedings arising on the declaration of the second respondent u/s 66 of the Act are pending and the Tahsildar, in such proceedings, has made out a prima facie case that the land in question is not a tenanted land, then both the proceedings should be clubbed together and disposed of in the light of this order.

12. The petitioner is entitled to his costs which shall be recovered from the third respondent, State of Karnataka, Advocate's fee Rs. 100/-.

13. Petition allowed.