

(1979) 02 KAR CK 0023
In the Karnataka High Court
Case No : WP. 12788 to 12791/78

Seethamma

APPELLANT

Vs

Spl. Tahsildar Land Tribunal Shimoga and Others

RESPONDENT

Date of Decision : 07-02-1979

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 42

Citation : (1979) 1 KarLJ 342

Hon'ble Judges : Swami, J

Judgement

1. The petitioners who were the tenants of the lands in question and who have been registered as occupants in respect of the same have, in these writ petitions, challenged the correctness of the orders passed by the Special Tahsildar, Land Reforms, Shimoga. (1st respondent): in LR. SR. RG. Misc. 97/75-76 and LR. SN. RC. Misc. 97(a)/75-76, dated 20-9-1978.

2. The order passed in LR. SR. RC. Misc. 97/75-76 relates to the rent payable in respect of the year 1963-64 and 1964-65 with regard to lands Survey No. 125 measuring 2 acres 20 guntas and S. No. 126/1 measuring 3 acres 15 guntas both situated at Kumsi, taluk and district Shimoga under which the petitioners have been directed to pay Rs. 844-20p. The order passed in LR. SR. NC. Misc. 97(a)/75-76 relates to the rent payable in respect of the year 1970-71 pertaining to the aforesaid lands under which the petitioners have been directed to pay Rs. 422-20p. The contention of the petitioners is that the applications filed by the 2nd respondent for recovery of rent under S. 42 of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the Act") before the 1st respondent in the year 1975-76 in respect of the rent payable for the years 1963-64, 1964-65 and 1970-71, were barred by time. According to the petitioners, in view of the provisions contained in S. 42 of the Act, the rent for the years 1963-64, 1964-65 and 1970-71 became due at the end of the respective years and the 2nd respondent ought to have filed the applications within a period of one year from the date the rents became due and as the applications were filed beyond the period of limitation prescribed under S. 42 of the Act, the same were barred by

time and therefore, the first respondent had no jurisdiction to entertain the same and to pass the orders directing the petitioners to pay the rent to the 2nd respondent. Hence, it was submitted that the impugned orders are null and void and as such, the same should be quashed.

3. The 2nd respondent has put in his appearance through an Advocate and has also filed the statement of objections, in which it has been contended that the applications filed by him before the Special Tahsildar were not barred by time and the arrears of rent in question pertained to the period prior to the date of vesting of the lands in question and as such, the contentions raised by the petitioners are not tenable and the writ petitions be dismissed. The contentions raised by the 2nd respondent as contained in paras 2 and 3 of the statement of objections are as follows:

"The 2nd respondent had obtained decree against the petitioners in case No. T.C. 53/66-67 on the file of the Tahsildar, Shimoga Taluk and under the said decree the petitioners are liable to pay rent for the years 63-64 and 64-65. The rent payable by the petitioner to this respondent for the said years amounts to Rs. 844-20. This respondent had also obtained another decree in R.R.C. 1044/77 on the file of the Additional Munsiff, Shimoga, against the petitioners for a sum of Rs. 806-40, towards the rent for the year 1970-71 As the petitioners have failed to pay the rents inspite of the decree against them, the respondent approached the Special Tahsildar for Land Reforms, Shimoga, for recovery of the rents aforesaid.

3. The applications filed by the respondent before the Special Tahsildar for land reforms are not time barred as they are only applications for recovery of the rents from the petitioner under the previous decree obtained in case No. T.C. 53/66-67 on the file of the Addl. Munsiff, Shimoga. The arrears of rent for the years 63-61, 64-65 and 70-71 are prior to the date of vesting and as such the contention of the petitioners that the 1st respondent has no jurisdiction to pass the impugned order in view of the fact that the lands in question should have vested in the State Government from 1-3-1974 as stated in the para 7 of the Writ Petition are not correct."

The contentions raised by the 2nd respondent are not tenable. If he has already obtained a decree or an order from the Court and the 1st respondent, as contended by him, it is open for him to take such steps as are permissible in law for execution of the said decree or order. But, he could not have filed a fresh application under S. 42 of the Act after the expiry of one year before the 1st respondent for recovery of the rent and further it was not open for the Tahsildar or the Special Tahsildar to entertain an application after the expiry of one year. Apart from the period of limitation, in view of the earlier orders and the decree obtained in respect of the very years, no fresh proceedings could have been instituted under S. 42 of the Act, It is not the case of the 2nd respondent that the applications for recovery of rent in respect of the years in question were pending and the same came to be transferred to the 1st respondent by reason of

the amendment Act No. 1 of 1974; that being so, fresh applications could not have been entertained by the 1st respondent.

4. S. 42 of the Act provides for the procedure for recovery of rent and the application for recovery of rents is required to be filed within a period of one year. The section as it stood prior to the amendment Act No. 6 of 1970, the jurisdiction to deal with the applications filed under the said section, was vested with the Tribunal and the said jurisdiction came to be transferred to the Court by Act No. 6 of 1970; again there was a change made by Act No. 1 of 1974 which transferred the jurisdiction from the Court to the Tahsildar. Sub-sec. (4) of S. 42 of the Act prior to the amendment Act 14 of 1965 was as follows:

"For the purposes of the Indian Limitation Act, 1908, an application under this Section shall be deemed to be a suit for arrears of rent but the period of limitation shall be one year."

By Act No. 14 of 1965, for the words and figures "Indian Limitation Act, 1908" came to be substituted by the words and figures "Limitation Act, 1963". Act No. 1 of 1974, apart from substituting the word "Tahsildar" for the word "Court", in sub-sections (2) and (3) of S. 42 of the Act, it also made substantial changes in sub-section (4) in as much as old sub-section (4) came to be substituted by new sub section (4). The substituted sub-section (4) of S. 42 effected by Act No. 1 of 1974, reads as follows:

"An application under this section shall be filed within one year from the date the rent fell due.

Explanation: For purposes of this section, rent for any year shall be deemed to fall due on the last day of June of that year."

Thus, it is clear that an application under S. 42 of the Act, for recovery of rent in respect of the period covered by the Act, as it stood prior to 1-3-1974 was required to be filed within one year from the date of the arrears of rent becoming due and in respect of the subsequent period as per the newly substituted sub-section (4) by Act No. 1 of 1974 within one year from the last day of June of that year. In the instant case, undisputedly the applications have been filed for the recovery of rent in respect of the years 1963-64, 1964-65 and 1970-71 long after the expiry of the period of one year from the date of the arrears of rent became due. Thus, it is clear that the applications filed by the 2nd respondent, apart from the fact that the same were not maintainable in view of the earlier orders passed with regard to the recovery of rent in respect of the very years in question, the said applications were also barred by time. In spite of this, the first respondent has entertained the applications under S. 42 of the Act and has determined the rent under S. 8 of the Act, and has further ordered for recovery of the same. Thus, the first respondent has acted without jurisdiction in entertaining the applications for recovery of rent and further determining the rent and further directing that the same to be paid by the petitioner to the 2nd respondent under S. 42 of the Act; consequently, the impugned orders are null

and void and the same cannot at all be sustained and the same are hereby quashed.