

(1997) 09 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 24370 of 1994

Shivamurthayya

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-09-1997

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 44, 45 (3), 48 A (5), 77

Citation : (1997) ILR (Kar) 3233 : (1998) 1 KarLJ 264

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sri B.S. Patil, for the Appellant; Sri S.S. Guttal, High Court Government Pleader, for the Respondent

Judgement

1. This writ petition is, directed against the order dated 23/25-10-1991 passed by the respondent 1, Assistant Commissioner, Bijapur Sub-Division, Bijapur in Case No. LRM: CR:27:91-92, copy as at Annexure-C to the writ petition. In passing the said order, the Assistant Commissioner while setting aside the ME. No. 192, held that the land had vested u/s 45(3) of the Land Reforms Act, in pursuance whereof, the auction was also directed to be taken u/s 77 of the Land Reforms Act.

2. I heard the learned Counsel for the petitioner, Sri B.S. Patil. The respondent 1, State, respondent 2, Assistant Commissioner and the respondent 3, Tahsildar, Bijapur are served with notices and they remained absent. Therefore, the learned High Court Government Pleader, Sri S.S. Guttal is directed to take notice for the said respondents. I have also heard him.

3. The learned Counsel for the petitioner while taking me through the facts of the case submitted that an extent of 37 guntas of land in S. No. 603/21 of Sarawada village of Bijapur Taluk owned by the petitioner was under cultivation of the petitioner and that at one point of time, the mutation entry for the year 1973-74 down to the year 1988-89, in respect of the said land stood in the name of Mallayya Muragayya Gennur. It is stated that the said Mallayya Muragayya

Gennur is none other than the maternal uncle of the petitioner herein and that the subject land was shown as a tenanted land under the said Gennur in the pahani entries; that subsequently the petitioner herein had initiated ME proceedings before the respondent 3, Tahsildar and got the said ME corrected to show the name of the petitioner herein as the owner in cultivation; that subsequently the respondent 3 had sent a report in No. LRM:CR:27:91-92 to the respondent 2, Assistant Commissioner wherein he had reported that the said land was shown to have been under cultivation under tenancy prior to the year 1973-74; that thereafter a show-cause notice dated 20-8-1991 was issued to the petitioner herein to show-cause as to why the said land be not forfeited to the State. As against the said show-cause notice, it is stated that the petitioner herein had shown cause by his reply dated 4-10-1991 to the respondent 2, Assistant Commissioner; that thereafter on perusal of the reply and further in consideration of the report of the Tahsildar, respondent 3, the respondent 2, Assistant Commissioner had passed the impugned order. Having been aggrieved thereto, the petitioner herein had filed the writ petition to challenge the same.

4. The learned Counsel for the petitioner at the outset pointed out that the respondent 2, Assistant Commissioner did not get jurisdiction to pass the impugned order u/s 45(3) of the Land Reforms Act and further to say that the said land be distributed u/s 77 of the Act. Let apart, he also submitted that when the mutation entry was corrected by the Tahsildar, if at all anybody had the grievance against the same, what was available under law was to file an appeal against the order in the ME proceedings. Sri Patil further submitted that at any stretch of imagination, the Assistant Commissioner did not get jurisdiction to pass the impugned order. While summing up his argument, he submitted that the subject land was not a tenanted land at any point of time and it is for that reason the ME was corrected. Therefore, according to him the question of passing the impugned order by the respondent 2, Assistant Commissioner did not arise. Therefore, he prayed that the impugned order be quashed.

5. The learned Government Pleader on the other hand submitted that u/s 44 of the Land Reforms Act when the subject land was shown as a tenanted land as per the pahani entries from the period earlier to 1973-74 to the year 1988-89, it is obvious that the land had vested in the State. According to him u/s 44 of the Land Reforms Act wherever the land was tenanted it had automatically vested in the State. However, the learned Government Pleader submitted that the respondent 2, Assistant Commissioner did not get jurisdiction to pass an order as the one under challenge. Therefore, his submission is that even if the order is not in consonance with law, there could not be any grievance by the petitioner to file the instant writ petition as the land had vested in State. Before concluding, Sri Guttal had also argued that there is an inordinate delay of 3 years in filing the writ petition to challenge the impugned order. According to him, the instant writ petition is liable to be dismissed on the ground of delay and laches alone. Therefore, he prayed that the petition be dismissed.

6. The short point for my consideration in the instant writ petition is whether the impugned order passed by the respondent 2, Assistant Commissioner is sustainable in law or not.

7. I have to point out here that it is for the Land Tribunal to exercise the jurisdiction to pass any considered order u/s 45(3) of the Land Reforms Act and if it is so, obviously the question of passing the impugned order by the Assistant Commissioner did not arise. It, therefore, appears to me that the impugned order passed by the respondent 2, Assistant Commissioner is totally without jurisdiction and as such on that short ground alone the impugned order is liable to be quashed. Even if it is true that the subject land was tenanted land at one point of time and that it was very much available to the authorities to resume the same, nothing prevented them to move the Land Tribunal to declare that the subject land was vested in the State. In a decision in *Sakrappa Vs. State of Karnataka*, , this Court held as follows:

"Under Section 48A the main scope of the enquiry by the Tribunal is whether a person is a tenant immediately prior to 1-3-1974. That also includes the question whether a person is not a tenant immediately before that date. Section 48-A(5) makes this position very clear. Therefore, Section 112-B(b) is independent of Section 112-B(a). It is open to the Tribunal to decide whether a person is a tenant or not independently of an application u/s 48A or a reference u/s 133 of the Act. Section 48A enquiry is only for the purpose of conferring occupancy rights but a declaration whether a person is a tenant or not would be for purposes other than conferment of occupancy rights u/s 48A. Therefore, the duty to decide whether a person is a tenant or not u/s 112-B(b) is independent of the duty cast on it under Sections 48A and 133 of the Act. . . .It is wrong to construe Section 112-B(b) as anything to do with the declaration relating to 77. . . .Section 112 imposes a duty on the Tribunal and that is mandatory. Therefore, the Tribunal has a public duty to hear and decide any case within its jurisdiction which is properly brought before it. The State Government being a person entitled to the lands which vest in it under the Act can seek a declaration that the lands are tenanted lands u/s 112-B(b). How it should get a declaration is a matter of procedure to be decided by it under its rule making power. A fortiori, it can seek a mandamus in this Court directing the Tribunal to decide such questions afresh if it is found that the Tribunal's order are on the face of it perverse, wholly without jurisdiction, violative of the principles of natural justice or affects its power to carry out the purposes of the Act under Chapters III and IV of the Act. As a corollary, the relief of certiorari to quash such orders will be available to the State Government".

8. It is not in dispute that in the instant case no such motion before the Land Tribunal was made by the State for getting the subject land declared as tenanted land at any point of time. If it is so, in my considered view it is impermissible for the respondent 2, Assistant Commissioner to hold that the subject land had vested in the State u/s 45(3) of the Act and further to hold that the land had to

be forfeited to State and further to direct the Tahsildar to take action as contemplated u/s 77 of the Act.

9. In that view of the matter, I feel that the liberty should be given to the authorities of the respondent 1, State to move the jurisdictional Land Tribunal to get the land declared as tenanted as held by this Court in Sakrappa's case, referred to above. Therefore, I pass the following:

ORDER

The impugned order dated 23/15-10-1991 in Case No. LRM:CR:27:91-92 passed by the Assistant Commissioner, Bijapur, respondent 2 is quashed. The liberty is given to the authorities to move the jurisdictional Land Tribunal if it is permissible for them to move for getting the subject land declared as tenanted land on the relevant date.

The writ petition therefore succeeds and accordingly allowed but with above liberty to the authorities of respondent 1, State; in view of that, let the Registry send a copy of this order, one to the Deputy Commissioner, Bijapur District, Bijapur and another to the Secretary to Government, Revenue Department, Karnataka Government Secretariat, Bangalore, at the earliest.

Sri S.S. Guttal, High Court Government Pleader is permitted to file memo of appearance within four weeks on behalf of the respondents.