

(2005) 12 KAR CK 0003

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 1775 of 1990

Shivanna (Deceased) by L.Rs

APPELLANT

Vs

Puttabasavaiah (Deceased) by L.Rs and Others

RESPONDENT

Date of Decision : 05-12-2005

Acts Referred:

Karnataka Land Reforms (Appellate Authority) Rules, 1986 — Rule 10
Karnataka Land Reforms Act, 1961 — Section 4, 45

Citation : (2006) 3 KarLJ 159 : (2006) 1 KCCR 277

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.G. Bhat, for the Appellant; B. Rudra Gowda, for Caveator
Respondents 1(A) to 1(E) and A.R. Sharadamba, High Court Government Pleader
for Respondents 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner, represented by his legal representatives being aggrieved by the order dated 28th February, 1990 on the file of the District Land Reforms Appellate Authority, Tumkur in L.R.A. No. 40 of 1999, reversing the order passed by Land Tribunal, Tiptur, dated 18th February, 1987 in proceedings No. LRF. 18/76-77, has presented the instant revision petition.

2. The petitioner claiming to be a tenant had filed the application for registration of occupancy rights in respect of Sy. No. 41 measuring 5 acres 20 guntas situate at Jakkanahalli Village, Kibbanahalli Hobli, Tiptur Taluk. The said application filed by petitioner had come up for consideration before the Land Tribunal, Tiptur-third respondent herein on 5th September, 1977. The application filed by petitioner was rejected. Against the said order passed by Land Tribunal, Tiptur, petitioner filed Writ Petition No. 12125 of 1977 before this Court. The writ petition filed by petitioner was allowed by this Court and the order passed by Land Tribunal, Tiptur, dated 5th September, 1977 was set aside and the matter was remanded back to the Land Tribunal for fresh consideration. After remand, the Land

Tribunal took up the matter on 18th December, 1987 and registered occupancy rights in favour of petitioner on the ground that, his name is found in the RTC at column 12(2) for the agricultural year 1967-68. Being aggrieved by the said order passed by Land Tribunal, Tiptur, dated 18th December, 1987, the first respondent herein, represented by his legal representatives, has filed the appeal on the file of the Additional Land Reforms Appellate Authority and numbered as L.R.A. No. 53 of 1988 and subsequently, it has been transferred to the District Land Reforms Appellate Authority (hereinafter called the "Appellate Authority"), Tumkur District, Tumkur and renumbered as L.R.A. No. 40 of 1999. Along with the appeal, the appellant has filed the application praying leave of the Appellate Authority to prosecute the appeal as envisaged under Rule 10 of the Karnataka Land Reforms (Appellate Authority) Rules, 1986. The said application seeking leave to prosecute the appeal had come up for consideration before the Appellate Authority on 25th August, 1988. After hearing both sides, the application has been allowed and that order has become final. The Appellate Authority after careful perusal of the entire original records available on file and after critical evaluation of the oral and documentary evidence, adduced by both parties, and with reference to Exhibits A. 1 to A. 14, produced by deceased first respondent, now represented by his legal representatives, and Exhibits C. 1 to C. 8 produced by deceased petitioner, now represented by his legal representatives, by assigning cogent reasons with reference to credible documentary evidence has set aside the order passed by Land Tribunal, Tiptur, dated 18th December, 1987 and allowed the appeal filed by the deceased first respondent by its order dated 28th February, 1990 in L.R.A. No. 40 of 1999. Being aggrieved by the said order passed by Appellate Authority, referred above, reversing the order of the Land Tribunal, Tiptur, petitioner herein felt necessitated to present the instant revision petition.

3. The principal submission canvassed by learned Counsel appearing for petitioner, now represented by his legal representatives, is that, the appeal filed by deceased first respondent is not maintainable on the file of the Appellate Authority against the order passed by Land Tribunal, dated 18th December, 1987, on the ground that, the second respondent has also filed an appeal in L.R.A. No. 3 of 1988 against the same order and the said appeal filed by second respondent has been dismissed by the Appellate Authority by its order dated 15th July, 1988 and second respondent is none other than the vendor of the first respondent and that, the said order has become final. Deceased first respondent claiming to be predecessor of the land in question was not a party to the proceedings before the Land Tribunal and therefore, assailed the correctness of the order passed by the Land Tribunal and the appeal has been entertained contrary to the relevant provisions of the Karnataka Land Reforms Act, 1961 (hereinafter called the "Act") and Karnataka Land Reforms Rules, 1974 (hereinafter called the "Rules"). He submitted that, the Appellate Authority has also failed to appreciate that, there is inordinate delay in preferring the appeal and the same has not been considered nor any finding is given to that effect.

Instead, the Appellate Authority has proceeded to pass the impugned order without giving any finding on the question of delay and allowed the appeal filed by first respondent by reversing the order passed by Land Tribunal. Therefore, the impugned order passed by the Appellate Authority is liable to be aside.

4. Per contra, learned Counsel appearing for respondents 1(A) to 1(E), who are the legal representatives of deceased, first respondent and learned Government Pleader appearing for respondents 3 and 4 inter alia, contended and substantiated the impugned order passed by the Appellate Authority. Learned Counsel for first respondent submitted that, the impugned order has been passed by the Appellate Authority, after evaluation of the oral and documentary evidence available on file. He further submitted that, it is not the case of deceased petitioner that, he was cultivating the land as tenant since, as a matter of fact, he has filed the application claiming as inamdar and also vendor; and second respondent herein has also filed the application for regrant of the land. The applications filed by deceased petitioner and the second respondent had come up for consideration before the Assistant Commissioner and the Assistant Commissioner, after holding an enquiry, has regranted the land in favour of second respondent on 2nd May, 1973. Assailing the correctness of the said order of regrant made by Assistant Commissioner in favour of second respondent, petitioner herein has filed M.A. (VOA) No. 32 of 1973 on his behalf, and on behalf of his mother and father and another appeal in M.A. (VOA) No. 42 of 1973 has been filed by petitioner's mother and father. Both the appeals filed by the petitioner and the mother and father separately, had come up for consideration before the District Court on 28th September, 1973. Both the appeals filed by petitioner, petitioner's mother and father are dismissed holding that; regrant made in favour of second respondent is in accordance with law. Assailing the correctness of the order passed by the District Court in M.A. (VOA) No. 32 of 1973 and M.A. (VOA) No. 42 of 1973, petitioner herein filed a writ petition before this Court and the same was dismissed.

5. After the dismissal of the said writ petition, petitioner claiming to be tenant has filed Form 7 on 28th December, 1974, 28th December, 1976 and 11th March, 1977 respectively, for registration of occupancy rights. The said applications filed by deceased petitioner had come up for consideration before the Land Tribunal, Tiptur and the Land Tribunal, Tiptur has registered occupancy rights without conducting enquiry in strict compliance of Rule 17 of the Rules and there is also no finding recorded by the Land Tribunal regarding the question as to whether, the land in question is a tenanted land or was the same vested in Government as on the relevant date. As a matter of fact, the land in question is a Talwar inam land and the petitioner has failed to substantiate his claim before the Appellate Authority by producing any substantive evidence. Along with himself, petitioner has examined two independent witnesses to substantiate his case, viz., Sri Boregowda and Sri Ramaiah. Learned Counsel appearing for first respondent further submitted that, the evidence given by the said parties on behalf of petitioner has been rightly rejected by the Appellate Authority for the reason

that, once the matter is concluded and the land is declared as "talwar inam land", entertaining Form 7 for registration of occupancy rights is not justifiable only on the basis that, petitioner's name is found in the relevant records for the year 1967-68 and that, the same is not sufficient to prove that, he is cultivating the land in question as tenant. To substantiate his submission, he placed reliance on the judgment of the Division Bench of this Court in Timmakka Kom Venkanna Naik Vs. Land Tribunal, , wherein it is held that, the common ingredient is the lawful nature of the holding by the person who cultivates the land. In other words, no person can be called a tenant unless he cultivates the land lawfully and the lawful nature will have to be substantiated by a lease or by the factors stated in Section 4 etc. A person who is not inducted lawfully, but cultivates the land, cannot claim the status of a tenant at all.... The aforesaid Division Bench judgment has been followed by another Division Bench of this Court in the case of A.G. Lakshminarayana v. State of Karnataka 2001(9) Kar. L.J. 451: ILR 2002 Kar. 62. Therefore, he submitted that, the revision petition filed by the petitioner is liable to be dismissed at the threshold itself.

6. I have heard learned Counsel for petitioner, learned Counsel appearing for respondents 1(A) to 1(E) and learned Government Pleader appearing for respondents 3 and 4. The second respondent is served and unrepresented. After careful perusal of the order passed by the Land Tribunal, dated 18th December, 1987 and the order passed by the Land Reforms Appellate Authority dated 28th February, 1990 in L.R.A. No. 40 of 1990, it emerges on the face of the order passed by Land Tribunal, Tiptur that, the Land Tribunal has committed an error much less material irregularity in passing the order dated 18th December, 1987 and the Appellate Authority has rightly allowed the appeal and set aside the order passed by Land Tribunal. The Appellate Authority has appreciated the evidence on record and given a specific finding holding that, the petitioner has failed to establish that, he is cultivating the said land as tenant as on 1st March, 1974, nor has he produced any documentary evidence to establish that, he is cultivating the said land as tenant. The said reasoning given by the Appellate Authority, after appreciation of the oral and documentary evidence, is just and proper. Regarding the finding of fact against the petitioner, it is significant to note that, the petitioner earlier claiming to be "talwar" of the village, had filed an application for regrant of the land in question under the Karnataka Village Offices Abolition Act, 1961 and second respondent also claiming to be "talwar" of the village, had filed the application for regrant of the same land. The applications filed by both the parties had come up for consideration before the Competent Authority-the Assistant Commissioner. The Assistant Commissioner, after holding an enquiry and after affording an opportunity to both parties, regranted the land in favour of second respondent, on 2nd May, 1973 in proceedings No. INA (TMS) 25/71-72. Assailing the correctness of the said order passed by the Assistant Commissioner, petitioner himself, his mother and father, all the three have filed separate appeals in M.A. (VOA) No. 32 of 1973 and M.A. (VOA) No. 42 of 1973 respectively. The appeals filed by petitioner and his mother and father had come

up for consideration before the District Judge, Tumkur, dated 28th September, 1973. The District Court, after appreciation of the oral evidence of Hallappa and Shivanna, who are the holders of lands situate in Jakkanahalli Village, has held that, they do not seem to have any axe to grind against the appellants-petitioner herein and their evidence regarding the office of talwar of Jakkanahalli appears to be probable and natural and further, their evidence is corroborated with the evidence of each other and their evidence is in turn further corroborated by the evidence of Lakkamma, the second respondent herein. Further, the District Court has observed that, the evidence of those two witnesses absolutely remains unchallenged in the records as there is no cross-examination by the on behalf of petitioner in respect of these two independent witnesses. The District Court has further believed the corroborated testimony of the second respondent Lakkamma and her two witnesses, viz., Hallappa and Shivanna. The petitioner has failed to produce any authenticated document or examine any witnesses to substantiate his claim nor produced any rebuttal evidence. Against the said common order passed by District Court, referred above, petitioner has filed writ petition before this Court and the said writ petition filed by petitioner was also dismissed by this Court.

7. Be that as it may, the petitioner suppressing all these facts, has again initiated proceedings by way of filing the application in Form 7 u/s 45 of the Land Reforms Act for registration of occupancy rights. Not one, three applications have been filed by him, as stated above. The said applications filed by petitioner have been rejected by the Land Tribunal on 5th September, 1977 and against the said order of rejection, petitioner has filed Writ Petition No. 12125 of 1977. The said writ petition has been allowed and the matter has been remitted back to the Land Tribunal. After remand, the Land Tribunal took up the matter for consideration and without reference to the earlier proceedings, under the Village Offices Abolition Act, has proceeded to grant the occupancy rights in favour of petitioner only on the sole ground that, his name is found in column 12(2) for the year 1967-68 and without giving any finding as to whether the land in question vested in Government as on 1st March, 1974 and three years prior to that date. This shows beyond all reasonable doubts that, the Land Tribunal has not conducted the enquiry in strict compliance of the mandatory provisions of the Act and Rules. Against the said order, the deceased first respondent has filed the appeal before the Appellate Authority in L.R.A. No. 40 of 1990 with a view to prosecute the appeal as provided under Rule 10 of the Karnataka Land Reforms Appellate Authority Rules. The Appellate Authority, after hearing both sides has granted leave to prosecute the appeal and the said order passed on 25th August, 1988 has become final since petitioner has not chosen to challenge the said order before any authority. However, at this distance of time, it is not open for petitioner to take the specific ground regarding entertaining the appeal.

8. Further, one important aspect to be taken into consideration in the instant case is that, there was a proceedings initiated under the Village Offices Abolition Act in respect of the land in question, wherein regrant of the said land has been

made in favour of second respondent herein Smt. Lakkamma and that, the said order of regrant has become final as the same has not been challenged. When the petitioner claiming to be tenant of the land in question, after failing in the proceedings under the Karnataka Village Offices Abolition Act, had filed the application in Form 7, and the said land was not available and not vested in Government as on the relevant date, filing the application in Form 7 and entertaining the same is not justifiable. This aspect of the matter has not been taken into consideration by the Land Tribunal while passing the order. If these aspects of the matter are taken into consideration, having regard to the totality of the case on hand, in my view, there is absolutely no justification or good grounds to entertain the instant revision petition. Therefore, interference by this Court in the impugned order passed by Appellate Authority is not justifiable. Nor the petitioner has made out any good grounds to entertain the instant revision petition.

9. Further, learned Counsel appearing for petitioner has taken a specific ground and specifically submitted that, the Appellate Authority has not taken into consideration the delay in filing the appeal and has also failed to give any finding regarding the same. The said submission and the specific ground taken by learned Counsel for petitioner has no legs to stand for the simple reason that, the Appellate Authority has given a specific finding at paragraph 18 (internal page 15) of its order. The Appellate Authority, placing reliance on the judgment of the Single Judge of this Court in *Deva Rao v. Vyavasaya Seva Sahakari Sangh, Pattan and Ors.* 1981(2) Kar. L.J. 303, has considered the point of delay in detail by extracting the relevant portion of the judgment and thereafter condoned the delay in filing the appeal. Therefore, at any stretch, I do not find any justification or good grounds to entertain the instant revision, as stated above. Accordingly, the revision petition filed by petitioner stands dismissed as devoid of any merits.