

(2005) 02 KAR CK 0037

In the Karnataka High Court

Case No : Writ Petition No's. 32532 and 32533 of 2003

Smt. Rajamma and Another

APPELLANT

Vs

The Land Tribunal and Others

RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 108, 110, 4, 44, 45

Citation : (2005) 3 KarLJ 81

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Shantesh Gureddi, for the Appellant; L. Sridhar, High Court Government Pleader for respondent-1 and S.G. Bhat, for respondents - 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Writ Petition No. 32532 of 2003 is filed praying to quash the impugned Order passed by R-I in No. LRF 349/74-75, dated 28-4-2003 (Annexure-K).

2. Husband of the first petitioner and father of the second petitioner Chikkannaiah was a tenant in respect of agricultural lands comprised in Sy. No. 121/3 situated at Kadugondanahalli, Bangalore North Taluk to an extent of 01 acre 10 guntas acres since 1968-69. After coming into force of the Karnataka Land Reforms Act, 1961, petitioner's father filed his application in Form 7 for grant of occupancy rights in his favour as required u/s 48-A of the Act. The said land belonged to one Merit Haji Mohammed Ismail Sab. Certain dispute arose in the family of said Merit Haji Mohammed Ismail Sab and one Sri Shankar Ramakrishna was appointed as receiver in the year 1970 and thereafter in 1973, the respondents claim that they were appointed as receivers in respect of certain properties of Merit Haji Mohammed Ismail Sab. An application filed by the petitioner's father was allowed and occupancy rights were granted in his favour by the Land Tribunal. Aggrieved by the said grant one Jaheer Ahmed filed Writ

Petition Nos. 8827 and 8828 of 1980. Those petitions were allowed and the matter was remanded for fresh disposal by this Court. After remand, the Tribunal rejected the claim of the petitioner's father on the ground that the lands come under the custody of the receiver u/s 108 of the Karnataka Land Reforms Act. Petitioner's father filed an appeal before the Appellate Authority. In the light of abolition of Appellate Authority, civil petition was filed in this Court and the said civil petition was converted into W.P. No. 20323 of 1993. The said petition was allowed by this Court and the matter was remanded once again by this Court. After remand, the Tribunal granted occupancy rights on 26-10-1998. That was successfully challenged in W.P. No. 8265 of 1999. Petitioner filed a writ appeal. The Division Bench confirmed the Order passed in the writ petition. During the pendency of the matter before the Tribunal, petitioner filed a memo that the respondents 2 and 3 are no longer the receivers of the estate of the deceased Merit Hajee Mohammed Ismail Sab. No objections were filed. The Tribunal deleted the names of respondents 2 and 3. Against the deletion Order respondents 2 and 3 filed W.P. No. 33087 of 2001. This Court again remanded the matter. After remand, the Tribunal rejected the case of the petitioner. The said Order is challenged by the petitioners in this petition.

3. In W.P. No. 32533 of 2003 petitioner's father was cultivating 1 acre 17 guntas of land in Sy. No. 122/2 of Kadugondanahalli, Bangalore North Taluk. The facts in this case are same or similar as in W.P. No. 32532 of 2003. Petitioners in this petition are before me challenging the impugned Order passed by respondent 1- the Land Tribunal, Bangalore North Taluk, Bangalore dated 28-4-2003 in its proceedings No. LRF/351/74-75, Annexure-K.

4. Learned Counsel for the petitioners Sri Shanthesh Gureddi, would argue that a reading of the Order would show that the Land Tribunal has not applied its mind to the material facts. According to him, the Land Tribunal without reference to the facts and the evidence has chosen to pass the impugned Order contrary to the well-accepted principles of passing a speaking Order in such matters. He says that Section 108 proviso is applicable to the facts of this case. Learned Counsel also says that revenue entries do support his case.

5. Per contra, Sri S. G. Bhat, learned Counsel for the respondents 2 and 3 would say that the Tribunal is right in rejecting the claim. Section 108 proviso is wholly in applicable to the facts of this case. He says that even according petitioners own admission, tenancy was not existing on the relevant date in terms of the statute and even if any tenancy is there it was after appointment of receiver. Therefore, learned Counsel says that the orders of the Tribunal do not require my interference.

6. Since facts and contentions in both the cases are same or similar this common Order is passed.

7. The first objection of the learned Counsel for the petitioner is that the impugned orders are non-speaking orders. Learned Counsel relies on a judgment

of this Court in Noorjahan v. Radhakrishna Shenoy and Ors. ILR 1979 Kar. 194.. It is no doubt true that a detailed procedure has been prescribed in terms of the Karnataka Land Reforms Act. In the case on hand, after recording evidence and in the light of the various orders, the Tribunal has chosen to pass a detailed Order with reasons. I do not think that the present order's are in any way contrary to the judgment of this Court. The argument of non-speaking Order does not appeal to me in the given circumstances in the light of a reasoned order.

8. The next submission is that revenue records support the petitioner and that therefore the Tribunal ought not to have accepted the case of the respondent. Let me see as to whether the revenue entries support the case of the petitioner. Petitioners have produced Annexure-B and B1. In Annexure-B for the years 1968-69 to 1970-71, name of Chikkannaiah is shown. In Annexure-B1 for the year 1971-72 the names of Chikkannaiah and Shankara Ramakrishna is shown. For the years 1972-73 and 1973-74 names of C. A. Mallick and K. A. Karim are shown.

9. In W.P. No. 32533 of 2003 petitioner has filed Annexure-B and it is stated in Annexure-B that for the years 1971-72 to 1974-75, the name of Papaiah is shown. It is to be noticed at this stage that the Sri Shankara Ramakrishna was appointed as receiver in the year 1970. This is also admitted in the written arguments of both the applicants filed before the Tribunal. When the petitioners themselves admit that the official liquidator was appointed in 1970 in terms of the proceedings it is very difficult for this Court or for the Tribunal to rely on such revenue entries for the purpose of grant in terms of the Act. Prima facie value for revenue entries get diluted in this case. The Tribunal has noticed this aspect of the matter for rejecting the case of the petitioners. I do not think that the petitioner can get occupancy rights on such unsustainable revenue entries only. At this stage, I must also notice the application filed by Chikkannaiah. He categorically says that right from 1971-72 to 1974-75 he was cultivating the lands. He further admits that a receiver was appointed in 1970 it would mean that he was claiming occupancy rights through the receiver. Same is the case in the connected matter. In these circumstances, the Tribunal is right in rejecting the case of the petitioners in terms of the Act.

10. Petitioners lay stress on Section 108 of the Act. Sri Shanthesh Gureddi, learned Counsel would say that the tenancy was subsisting and that therefore the proviso is available to him. Per contra, Sri S. G. Bhat, denies the same. Let me see as to whether the argument of the petitioner can be accepted in the case on hand.

11. Section 108 deals with lands taken the management of Court of wards. The said Section reads as under:

"108. Lands taken under management of the Court of wards, etc.--Subject to the provisions of Section 110 nothing in the provisions of this Act except Section 8 shall apply to lands taken under the management of the Court of wards or of a

Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890, or to the lands taken under management temporarily by the civil, revenue or Criminal Courts by themselves or through the receivers appointed by them during the period of such management:

Provided that--

(a) in the case of a tenancy subsisting on the date of taking over the management the provisions of Section 44 shall apply and the land shall vest in the Government.

(b) in the case of a tenancy created during the period of management, when the land is released from such management, the tenant shall be dispossessed and the possession of the land shall be delivered to the person lawfully entitled to such possession.

(c) with effect from the date on which such land is released from such management all the provisions of this Act shall apply to such land".

12. A reading of Section 108(a) would show that in the case of a tenancy subsisting on the date of taking over the management the provisions of Section 44 shall apply and the land shall vest in the Government. Admitted facts would show that no subsisting tenancy is available in terms of the pleadings and in terms of the material available on record. Therefore, the Tribunal rightly ruled that the petitioners cannot said to be tenants as on 1-3-1974 for the purpose of grant of occupancy rights. In fact the so-called tenancy is after appointment of the receiver. Tenancy is claimed through the receiver in terms of the material on record. Therefore the proviso is not available to the petitioners as argued by Sri Shantesh Gureddi. Parties rely on several judgments in this regard.

13. This Court in Ramappa Kadappa Konnur Vs. Sangappa Parappa Kavalli, has considered the scope of Section 108 of the Act. In the said case, this Court has categorically ruled in para 53 reading as under:

"Section 108 of the Karnataka Land Reforms Act excludes all provisions of the Act from the lands taken under management of Court of Wards. That means the deeming status as a tenant u/s 4 also gets excluded. The effect of Section 108 is to wipe out any rights if any accrued or vested in a person as a tenant under the Court of wards".

14. This Court again in Huvappa Mahadev Mense Vs. Land Tribunal, 2. has considered the scope of Section 108 and ruled in para 21 as under:

"The main provision of Section 108 makes it clear that nothing in the provision of the Karnataka Land Reforms Act except Section 8 relating to rent shall apply to lands taken under the management of Court of wards. That means, provisions such as Sections 4, 45 and 48-A are not at all applicable. In fact a person inducted to cultivate and by the Court of Wards does not even come within the definition of "tenant" under the Karnataka Land Reforms Act. The land falls

outside the sweep of the Karnataka Land Reforms Act during the period of management by Court of Wards".

15. These two judgments support the respondent. The Tribunal after . noticing these two judgments rightly in my view accepted the case of the respondent.

16. Before concluding, I deem it proper to notice a memo of undertaking filed by Sri S. C. Bhat, learned Counsel for respondents 2 and 3 undertaking not to evict the petitioners from the immovable property described in the memo. Objections have been filed with regard to memo. In the light of the objections, I am not inclined to express any opinion with regard to the contents of the memo.

17. In the result, petitions stand rejected. No costs.