

(2000) 03 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 25073 of 1993

Smt. Reddivara Naramma (Deceased) By L.Rs

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Karnataka Land Reforms Act, 1961 — Section 45, 48 A
Karnataka Land Reforms Rules, 1974 — Rule 17
Karnataka Village Offices Abolition Act, 1961 — Section 5, 6, 8

Citation : (2000) ILR (Kar) 2303 : (2000) 4 KarLJ 524 : (2000) 3 KCCR 63 SN

Hon'ble Judges : N.S. Veerabhadraiah, J

Bench : Single Bench

Advocate : H.R. Venkataramaiah, for the Appellant; Sri M. Narayanappa, High Court Government Pleader and Sri H.N. Shashidhar, for the Respondent

Judgement

N.S. Veerabhadraiah, J.—This is the rival tenant's writ petition questioning the order of the Land Tribunal, Bagepalli in Case Nos. LRM. K. 26-10 and LRM.K.26-3, dated 16-9-1980 rejecting Form No. 7 of the petitioner as well as respondent 3. The lands in question bearing Sy. No. 155 measuring 6 acres 26 guntas, Sy. No. 185 measuring 4 acres 10 guntas, Sy. No. 569 measuring 3 acres 38 guntas and Sy. No. 568 measuring 1 acre 30 guntas are Shanbogue Inam Lands. In respect of the said lands, the petitioner-Smt. Reddivara Naramma, filed an application u/s 48-A of the Land Reforms Act for grant of occupancy in respect of Sy. No. 155 measuring 6 acres 26 guntas, Sy. No. 185 measuring 4 acres 10 guntas and Sy. No. 569 measuring 3 acres 38 guntas claiming to be the tenant under the Shanbogue Adi Subbaiah. So also, the respondent 3-Sadashiva Reddy filed Form No. 7 for grant of occupancy in respect of Sy. No. 568/1 measuring 1 acre 39 guntas and Sy. No. 569 measuring 3 acres 10 guntas claiming to be the tenant under the very same Shanbogue Adi Subbaiah. It appears, the Shanbogue had filed an application u/s 5 of the Karnataka Village Offices Abolition Act, 1961 for regrant of Shanbogue Inamthi lands which was pending before the

appropriate authority. The Land Tribunal registered the applications of both the tenants in Nos. LRM.K.26-10 and LRM.K. 26-3. The Land Tribunal rejected the claim of the tenants on the ground that the disputed lands in question have not been regranted in favour of the Shanbogue and therefore, not entitled for registration of occupancy. The order of the Land Tribunal was questioned by respondent 3-Sadashiva Reddy in W.P. No. 6614 of 1981 before this Court. This Court by an order dated 7-7-1983 quashed the impugned order of the Land Tribunal and remitted the matter for fresh disposal in strict compliance with Rule 17 of the Karnataka Land Reforms Rules. The petitioner-Smt. Reddivara Namma also questioned the order of the Land Tribunal in W.P. No. 40771 of 1982 before this Court. This Court by an order dated 21-7-1986 transferred the proceedings to the Land Reforms Appellate Authority, for disposal in accordance with law. The Appellate Authority registered the case at the first instance in No. DLR.Appl.R 362 of 1986 and later on renumbered it as No. ALRAA 199 of 1987. Subsequently, on the establishment of the Appellate Authority at Chickballapur, the appeal was transferred to the Appellate Authority, Chickballapur and numbered as DLRA 73 of 1990. While the proceedings were pending, the petitioner filed an application under Rule 9 of the Karnataka Land Reforms Appellate Authority Rules read with Order 41, Rule 27 of the CPC praying to adduce additional evidence. As the Appellate Authority came to be abolished, the petitioner filed CP No. 5725 of 1991 which came to be converted to the present writ petition.

2. Learned Counsel Sri H.R. Venkataramaiah, for the petitioner contended that the order of the Land Tribunal is erroneous and not sustain-able in view of the clear provisions of Section 48-A of the Land Reforms Act wherein it is the Land Tribunal which has to grant occupancy in respect of the lands cultivated by the tenant. It is secondly contended that it is clear from the provisions of the Karnataka Village Offices Abolition Act that by virtue of the provisions of the Act that all the lands including the Village Offices hereditary lands are deemed to have been vested with the State from the appointed date and that the Village Office holders and such other persons are entitled to claim regrant of the land in accordance with the provisions of the Act. It is also contended that the Shanbogue has also filed an application for regrant whereas the petitioner being a tenant has filed necessary application in Form No. 7 before the Land Tribunal for grant of occupancy. So also respondent 3 also filed an application, but the Land Tribunal without considering the application only on the ground that the land in question has not been regranted to the Shanbogue has rejected which is not sustainable in law. Therefore, prayed to allow the writ petition with a direction to the Land Tribunal for grant of occupancy as claimed in Form No. 7.

3. The learned Counsel Sri H.R. Venkataramaiah, in support of his contentions above relied on the recent decision of this Court in the case of Ningappa (deceased) by L.Rs. Vs. State of Karnataka and others, , and contended that the Tribunal need not wait till the lands are regranted by the competent authority in favour of the holders of the village. On this ground also, he prays to quash the

impugned order and to direct the Land Tribunal to consider the application for regrant.

4. The learned Counsel further submitted that respondent 3 is a rival tenant in respect of the land in Sy. No. 569. Therefore, prayed to direct the Land Tribunal to club both the applications together and to dispose of the same by a common order.

5. The learned Counsel for respondent 3 Sri H.N. Shashidhar contended that the rejection of the application filed for grant of occupancy is not sustainable and that he has claimed only in respect of two survey numbers. Therefore, prayed to remit back the matter with a direction to the Land Tribunal for grant of occupancy in respect of the said two survey numbers.

6. The learned Government Pleader contended that whether it is the Village Officer or the tenant, that the rights have to be determined under the Village Offices Abolition Act, 1961. Therefore, the order passed by the Land Tribunal does not call for interference since the lands have not been regranted in favour of the Shanbogue. In support of his contentions, he relied on the decision in the case of H. Eswarappa v State of Karnataka, and submits that as long as the lands were not regranted in favour of the Shanbogue or holders of the village, that the tenants are not entitled to claim occupancy. Accordingly, justified the order of the Land Tribunal.

7. In the light of the submissions, the point that arises for consideration is:

Whether the person cultivating the land as a tenant in respect of the land attached to Village Offices after the commencement of the Karnataka Land Reforms Act, 1961, the regrant of land in favour of the holder of a Village Office is a must for grant of occupancy under the provisions of the Karnataka Land Reforms Act, 1961?

8. It is not in dispute that the lands in question are attached to the Village Office of the Shanbogue. It is one A. Adi Subbaiah, who was the Shanbogue and it appears that he has filed an application for regrant of the lands as required u/s 5 of the Karnataka Village Offices Abolition Act, 1961 and the same is pending before the appropriate authority. It is for these disputed lands, the petitioners as well as respondent 3 filed Form No. 7 for grant of occupancy. The Land Tribunal rejected both the rival claims of the tenants on the ground that the lands in question have not been regranted in favour of the Shanbogue under the provisions of the Karnataka Village Offices Abolition Act, 1961, and that the tenancy rights have been created subsequently after 1969.

9. It is pertinent to note that in Form No. 7 filed by the petitioner-Smt. Reddivara Naramma, she is stated to have been cultivating the lands since the last 12 years. Similarly, in Form No. 7 filed by respondent 3-Sri Sadashiva Reddy, it is stated that he has been cultivating the lands since the last 4 years. This makes clear that they were cultivating the lands prior to 1-3-1974. Accordingly, they

have sought for grant of occupancy in respect of Shanbogue Inamthi lands. The Karnataka Village Offices Abolition Act, 1961 was enacted for the purpose of abolition of the Village Offices which were held hereditarily before the commencement of the Constitution and the emoluments appertaining thereto in the State of Karnataka and to provide for matters consequential and incidental thereto. By virtue of the Act, those lands which are under the cultivation by the holders of the Village Offices stand vested with the State and enables the holders of the Village Offices or holders to apply for regrant of the lands under Sections 5 and 6. Section 8 of the Karnataka Village Offices Abolition Act, 1961 enables the tenant to make an application under the tenancy law which was prevailing to seek appropriate relief for grant of occupancy. Section 8 of the said Act reads thus:

"8. Application of tenancy law.-If any land granted or continued in respect of or annexed to a village office by the State has been lawfully leased and such lease is subsisting on the appointed date, the provisions of the tenancy law for the time being in force in that area in which the land is situate shall apply to the said lease and the rights and liabilities of the person to whom such land is granted u/s 5, 6 or 7 and his tenant or tenants shall, subject to the provisions of this Act, be governed by the provisions of the said tenancy law".

A reading of the section makes it clear that subject to the "tenancy law" the tenant is entitled for grant of occupancy.

Section 2(1) of the Karnataka Village Offices Abolition Act, 1961 reads thus:

" "Tenancy Law" means the Karnataka Land Reforms Act, 1961".

This makes crystal-clear that the grant of occupancy is subject to the provisions of the Karnataka Land Reforms Act, 1961.

Section 2(34) of the Karnataka Land Revenue Act, 1964 reads thus:

" "Tenant" means a lessee, whether holding under an instrument or an oral agreement and includes.-

(i) a person who is or is deemed to be a tenant under any law for the time being in force;

(ii) a mortgagee of a tenant's rights with possession, or

(iii) a lessee holding directly under the State Government or a local authority or body corporate".

If a person is cultivating the land by means of a lease under any of the above categories is deemed to be a tenant under the "tenancy law" prevailing, that is, under the provisions of the Karnataka Land Reforms Act, 1961. The Karnataka Land Reforms Act, 1961 came into force with effect from 2-10-1965. The intention of the Legislature is to have an uniform law in the matter relating to agrarian relations, conferment of ownership on tenants, ceiling on land holdings

etc.

Section 2(34) of the Karnataka Land Reforms Act, 1961 reads thus:

"2(34) "Tenant" means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes,-

- (i) a person, who is deemed to be a tenant u/s 4;
- (ii) a person, who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961;
- (ii-a) a person, who cultivates personally any land on lease under a lease created contrary to the provisions of Section 5 and before the date of commencement of the Amendment Act;
- (iii) a person who is a permanent tenant; and
- (iv) a person who is a protected tenant.

Explanation.-A person who takes up a contract to cut grass, or to gather the fruits or other produce of any land, shall not on that account only be deemed to be a tenant".

Thereby, it is manifest that the persons cultivating the land as tenants within the above meaning are entitled for grant of occupancy. The rights of tenants are protected u/s 45 of the Land Reforms Act by filing applications as required u/s 48-A of the Land Reforms Act. It is the Land Tribunal which has to make an enquiry in accordance with Rule 17 of the Land Reforms Rules either for grant of occupancy if it is shown that such person was cultivating the land as on 1-3-1974 or immediately prior to it or to reject the claim if he has not satisfactorily proved the tenancy rights. Though the lands are all attached to Village Offices, that insofar as conferment of tenancy rights is only under the provisions of the Karnataka Land Reforms Act, 1961

10. It is vehemently urged by the learned Government Pleader relying on the decision in H. Eswarappa's case, supra, wherein at the end of para 9 it is observed as follows:

"After the rights of the parties in possession of the lands attached to the Village Office are worked out and determined under the provisions of the Act of 1961 by the authorities constituted under that Act, the Tribunal will have to take up for consideration the applications filed by these petitioners u/s 48-A of the Act and determine as to whether they were tenants cultivating the lands in question as on 1-3-1974. This is how in a case involving lands to which the aforesaid enactments are attracted the investigation has to proceed and until the rights of the parties are determined firstly under the Act of 1955 and thereafter under the Act of 1961, claims arising under the Act cannot be considered and therefore, the Tribunal will have to keep these applications pending instead of disposing them of".

In the decision *supra*, the provisions of Sections 45 and 48-A have not come up for consideration insofar as the grant of occupancy is concerned. In that view of the matter, the said decision has to be treated as *per in curiam*.

In Ningappa's case, *supra*, while considering the provisions of the Karnataka Land Reforms Act, 1961 and also the provisions of the Karnataka Village Offices Abolition Act, 1961, this Court observed that occupancy right to a tenant in such type of cases can be granted whether such Inam land has been regranted or not to the holder of the hereditary Village Office as it is irrelevant in the matter of granting occupancy rights. The decision *supra* lends support to the facts of this case and thereby it has to be held that the order of the Land Tribunal rejecting the claim of the rival tenants on the ground that the lands in question have not been regranted in favour of the holders of the Village Office cannot be sustained. The very object and intention of the legislation in the enactment of the Land Reforms Act is to protect the interests of the tenants who are lawfully cultivating the lands as on 1-3-1974. The tenancy law that is applicable even under the Village Offices Abolition Act is the Land Reforms Act, which is the beneficial legislation. In the light of the above, if a person were to be found cultivating the land as a tenant, on facts, as a matter of right, he is entitled to seek for grant of occupancy. The Land Tribunal is also bound to consider the application either for granting or for rejecting the occupancy in respect of such lands. Particularly, in these type of cases, keeping in abeyance of the applications of the tenants or rejecting Form No. 7 on the ground that the lands in question have not been regranted in favour of the holders of the Village Office, virtually defeats the very purpose of the provisions of the Land Reforms Act. In the light of the foregoing reasons, it is immaterial whether the lands in question were regranted or not in favour of the holders of the Village Office and that a duty is cast on the Land Tribunal to consider such applications of the tenants who are actually cultivating the lands as on 1-3-1974 and the tenants are entitled for registration of occupancy rights as provided u/s 48-A of the Karnataka Land Reforms Act. It is too much to expect to keep the applications pending for years together waiting till the lands are re-granted in favour of the holders of the Village Office. Assuming for a while that if the lands were not regranted in favour of the holders of the Village Office, then ultimately it leads that the tenants cannot seek for grant of occupancy which view cannot be supported.

11. For the foregoing reasons, the impugned order of the Land Tribunal, Bagepalli, dated 16-9-1980 rejecting Form No. 7 of the rival tenants is not sustainable and the same is hereby quashed. The matter is remitted back to the Land Tribunal, Bagepalli to permit the petitioner as well as respondent 3 to lead additional evidence in support of their claims and to hold a fresh enquiry after issuing notice to both the parties and to find out as to who was the tenant cultivating the disputed lands as on 1-3-1974 or prior to it and dispose of the matter according to law. Office is hereby directed to transmit the records forthwith to the Land Tribunal, Bagepalli.

12. Learned High Court Government Pleader is permitted to file his memo of appearance on behalf of the respondents 1 and 2 within four weeks.