

(2004) 12 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No"s. 51669 to 51673 of 2003

Smt. Tara A. Prabhu

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 38

Citation : (2005) ILR (Kar) 556 : (2005) 1 KarLJ 220 : (2005) 1 KCCR 106

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : M. Sudhakar Pai, for the Appellant; Ratna N. Shivayogimath, Government Pleader for Respondents 1 and 2 and B.V. Krishna, for Respondents 3(a) to (c), 4(a), 5(a) to (d), 6(a) and (b) and 7(a) to (c), for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—Petitioner Smt. Tara A. Prabhu is challenging the order of the Land Tribunal, Mangalore Taluka, Mangalore, dated 28-6-2003 in this petition.

2. Facts in brief are as follows.-

Petitioner is the owner of land Sy. No. 258 of Kasba Bazar Village, Mangalore measuring 0.24 acres. The said land was acquired by a gift deed. The land is in the heart of Mangalore City opposite to Mahammaya temple. Land consists of several residential houses including five houses occupied by respondents 3 to 7 in the matter. Rent Bonds were executed by the tenants in terms of Annexure-A to E.

3. There is no agrarian relationship of the landlord and the tenants between the parties and therefore the provisions of the Karnataka Land Reforms Act (for short, "the Act") is not applicable. Contesting respondents however filed application in Form 7 claiming occupancy rights. Same was opposed by the predecessors of the petitioner. The Tribunal rejected the claim in terms of the order dated 12-9-1977. Thereafter, they have filed an application in Form 2-A

claiming that they are agricultural labourers in occupation of the respective residential houses. Petitioner states that respondent 5 styling himself as a retired Supervisor of KEB and the respondent 7 styling himself as Clerk of Diamond Garage filed applications. The Land Tribunal by another dated 6-5-1986 registered the respondents as owners. Writ petition was filed by the petitioner in W.P. No. 28300 of 1992. This Court set aside the order of the Land Tribunal and remanded the matter for re-decision. After remand, detailed affidavits were filed in lieu of oral evidence in all the five cases. Petitioner also produces a letter from KSRTC with regard to respondent 3 having worked as Driver. The Land Tribunal in terms of the order dated 28-6-2003 registered the respondents 3 to 7 as owners of the residential houses. Annexure-S is the order. This order is challenged by the petitioner on the ground that in terms of the Act respondents could not be termed as "agricultural labourers" and that, even otherwise, since the lands are situated in Mangalore City, they could not have been granted the residential houses in terms of the Act.

4. Respondents have entered appearance through their Advocates. Statement of objections are filed. In the statement it is stated that the order in question is proper and legal. It is also stated that the respondents were working as agricultural labourers and the rent bonds would prove the factum of tenancy. It is also contended that they are entitled for relief in terms of the Act.

5. Sri Sudhakar Pai, learned Counsel for the petitioner would invite my attention to the material facts to say that the land in question is situated in Mangalore city and that therefore respondents cannot be declared as "agricultural labourers" in terms of the finding of the Tribunal. Learned Counsel also says that the material facts would show that the respondents do not come under the definition of "agricultural labourer" in terms of the Act. He also relies on an earlier order passed in this very case in CRP No. 1678 of 1989, dated 13-4-1989. He also relies on a judgment of this Court in Radhu Shedthi Vs. Gopalakrishna Kedlaya, .

6. Per contra, Sri B.V. Krishna, learned Counsel for the contesting respondents would invite my attention to the material facts to contend that the respondents are agricultural labourers, and that therefore they are entitled for a relief in terms of the Act. He says that mere rejection of Form 7 on an earlier occasion cannot be a ground to reject the subsequent Form 2-A filed by the tenants in terms of the judgment of this Court in Dhananjaya Visweswara Hegde Vs. Jatti Kuppa Naika (Deceased) by L.Rs and Others, He relies on an Anr. judgment in Smt. Boobu Madivalthi And Another Vs. State of Karnataka And Others, to say that the agricultural labourer who has been inducted as tenant of a house located in a land in a village under a rent bond and in possession of it is entitled to be registered as occupant.

7. After hearing I have carefully perused the material on record.

8. The question for my consideration is as to whether the petitioners are entitled for a grant in terms of Section 38 of the Act. The said section provides for grant

of dwelling houses. It states that:

(1)(a) If, in any village, an agricultural labourer is ordinarily residing in a dwelling house on a land not belonging to him, then, notwithstanding anything contained in any other law, but subject to Sub-sections (2) and (3), such dwelling house along with the site thereof and land immediately appurtenant thereto and necessary for its enjoyment, shall, on the date of publication of the Karnataka Land Reforms (Amendment) Act, 1978 in the Official Gazette, vest absolutely in the State Government, free from all encumbrances and the agricultural labourer shall be entitled to be registered as owner thereof.

Sub-section (b) of the said Section 38(1) provides for an application to the Tribunal in a prescribed form and Sub-section (c) provides for a certificate specifying the extent and such other particulars as may be prescribed relating to such dwelling house and land.

9. A careful reading of Section 38 would show that for entitlement of a dwelling house, in terms of Section 38 it is to be proved that an application has been made by the agricultural labourer and that the property is in a village in terms of Sub-section (1) of Section 38.

10. Let me see as to whether respondents prove the factum of lands in question being in a village in terms of the Act.

11. Petitioner in unmistakable terms has stated in para 20 of the petition that the residential houses in question are situated in the heart of Mangalore City in the Corporation limits and are assessed to tax. Same has not been denied by way of counter-affidavit. Even otherwise, it seen that in terms of the arguments submitted before the Land Tribunal that the land in question is situated in Mangalore City and the revenue records do not disclose that the property is in a village in terms of the arguments. At this stage I must also notice that in a connected matter arising in respect of these lands, proceedings were initiated u/s 38 of the Act. Petitioner therein filed Form 2 in respect of certain lands and the matter ultimately reached the authority in terms of the Act. It was stated in the said case that these lands are situated in Mangalore City. That was challenged in CRP No. 1678 of 1989 in this Court. This Court noticed this aspect of the matter and ultimately ruled that "the premises in question was wholly urban in character being inside Mangalore City and being assessed to Corporation tax and cannot therefore be treated as a dwelling house in a village". At this stage, this Court also had to notice a famous Division Bench judgment of this Court in *Vanajakshi v. Land Tribunal, Udupi* and Anr. 1979(1) Kar. L.J. 412 (DB). The Division Bench of this Court in the said case has ruled as follows.-

"While determining whether the premises should be regarded as agricultural or non-agricultural, one must look to the dominant characteristics of such premises. The mere fact that there are some plants and trees in the compound of a house will not render the premises an agricultural one. Likewise the mere fact that in an agricultural land there is a house used as a farmhouse will not render such

premises non-agricultural. No one factor is decisive and the cumulative effect of all factors should be considered".

This Court also ruled that:

"Where the premises were situate within Municipal limits, were assessed to Municipal Tax, the tenancy was monthly and not annual, that the rent was monthly and not annual and the tenant was not an agriculturist by profession, held the conclusion that the premises are non-agricultural cannot be said to be erroneous".

This judgment of the Division Bench categorically states that one must look to the dominant characteristics of the premises in question. If the dominant characteristic theory is applied, it cannot but be held that the houses in question are situated not in a village as argued by the learned Counsel for the respondents, but outside the village in terms of the arguments advanced by the learned Counsel for the petitioner. There are sufficient materials available on record to show that these lands are situated in Mangalore City which fact has been amply proved in terms of the material available on record and therefore the Tribunal is not justified in invoking its jurisdiction u/s 38 of the Act for the purpose of dwelling characteristics of the houses in the case on hand. Any such grant in such a situation would be contrary to Section 38 and that therefore I have no hesitation in holding that these lands are not situated in a village in terms of the order of the Tribunal. However, the learned Counsel for the respondents would say that there is reference of village in certain RTC records. That by itself does not prove that the dwelling houses are in a village. It cannot but be ruled that the dwelling houses at the time of application should be situated in a village and not earlier to it. Test of dwelling houses in a village would arise for consideration at the time of filing of an application in terms of the Act. It was only at that time that a right accrues to the petitioner. If on such principle a dwelling house falls outside a village, then, just because it was in the limits of village earlier cannot come to the aid of a tenant for the purpose of Section 38. Looking from any angle, the arguments of the learned Counsel for the petitioner has to be accepted particularly in the light of the lands being situated within Mangalore City and subjected to tax in terms of the pleadings available on record. Order to this extent is contrary to Section 38 of the Act. In addition, the order in the connected CEP No. 1678 of 1979 also supports the petitioner.

12. Even otherwise, respondents have to prove the second test of status of "agricultural labourer" in terms of the definition. "Agricultural Labourer" has been defined u/s 2(A)(2) of the Act. It defines to mean a person whose principal means of livelihood is manual labour on land. Let me see as to whether respondents have proved their principal means of livelihood is manual labour on land. To decide this one has to go into the factual aspects of the matter.

13. An application at Annexure-J is filed by M. Subraya Jogi, now deceased. It is

dated 28-12-1981. He states in the application that he is an agricultural labourer ordinarily residing in a dwelling house. Evidence was recorded before the authority and in evidence it has come on record that Ravindra Jogi has expressed ignorance with regard to tenancy by his father. Evidence is lacking in the matter of agricultural labour. He is not sure about the status of his father in the case on hand. He has also seen Exhibit P. 1 in the matter. He admits that his father was working as driver in terms of the certificate. Certificate also filed in terms of Annexure-P1 as Annexure-Q is the certificate issued by the KSRTC and it categorically shows that Subraya B. Jogi was working in Mangalore Division of KSRTC as driver since 7-7-1976. In the light of Annexure-Q, it is not possible for this Court to hold that the principal avocation of Subraya Jogi is one of agricultural labour in terms of the Act as argued by the respondents.

14. Insofar as Smt. Seethamma is concerned, evidence is available at Exhibit Rule 1. Dinakar M. states in his evidence that his mother Smt. Seetha was not present when the matter was taken up for evidence. He has also expressed with regard to duration of her having worked as agricultural labourer in the case on hand. A reading of his evidence is not satisfactory. Even otherwise in terms of my earlier finding, lands are situated not in a village in the case on hand.

15. Insofar as third applicant Sanjeeva is concerned, it is stated that there is no difficulty in holding that he is not an agricultural labourer in terms of Annexure-L. In Annexure-L it is categorically stated by Sri Sanjeev that he was the Supervisor in the Karnataka Electricity Board. Therefore his principal avocation cannot be said to be "labour in terms of the definition. Even in evidence, it has come on record that he is a retired Supervisor in KEB. In Annexure-N insofar as late Smt. Seetha is concerned, it is seen that the evidence examined on behalf of sixth respondent speaks of ignorance with regard to the details in the case on hand. As I have already observed, even otherwise in the light of my earlier finding she does not qualify for any grant in the case on hand in terms of Section 38 of the Act.

16. Raghunath Rao is the last applicant who has been granted the land in question. In this regard, this Court has to take notice of Annexure-N in which he has described himself as Clerk in Diamond Garage Foundation. There is some evidence available in the case on hand. But, as I have earlier mentioned, in terms of the definition, an applicant has to satisfy that a person who claims the status of agricultural labourer has to show that his principal means of livelihood is labour on a land. None of the present respondents in terms of the material available on record are able to show that they have satisfied the test in terms of the definition. The Tribunal has chosen to give a finding contrary to the evidence available on record. In these circumstances, this Court has no option but to reject the impugned order thereby rejecting their applications since they have failed to prove the twin test of dwelling house in a village and the status of agricultural labourer in terms of the Act. Therefore, their applications stand rejected in terms of the material available on record.

17. The respondents rely on a judgment of this Court in Smt. Boobu Madivalthi's case. A reading of the said judgment would show that, in that case evidence was available to show that the petitioner therein was inducted as tenant of a house located in a land in a village under a rent bond. It was in those circumstances that this Court has accepted the plea of the tenant in the said case. Material facts also would show that earlier the respondents filed Form 7 claiming as tenants and that application came to be rejected. Thereafter, they filed Form 2-A u/s 38 of the Act. This Court in Dhananjaya Visweswara Hegde's case, has ruled that the tenant in that case, namely Jatti is an agricultural labourer. Each case stands on a different footing. Unless the applicant u/s 38 of the Act is able to show that he has satisfied the twin test in terms of Section 38, he cannot have the benefit under the Act. the Land Reforms Act is meant for genuine agricultural labourer and is not meant for making a wrongful gain out of agrarian reform laws.

18. In the given circumstances, accepting the arguments of the learned Counsel for the petitioner, I deem it proper to allow these petitions, and I do so in the case on hand, thereby quashing the order of the Tribunal and also dismissing the application filed under Form 2-A u/s 38 of the Act. Ordered accordingly. No costs.