

(2005) 02 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 40133 of 2001

Smt. Ummakka (deceased) by L.Rs.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 112 B, 2 A (18), 48 A

Citation : (2005) 2 KCCR 899

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Subhash and Rajesh Associates, for the Appellant; B.L. Acharya, for Respondent 4, Rajaram, for Respondents 3 and 4 and Kempanna, Government Pleader for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—The writ Petitioner is a chalgenedar in respect of property in Sy. No. 49/3A along with other properties let out to her on lease for agricultural purposes. The Petitioner being aggrieved by the order of the Land Tribunal, Mangalore dated 17.8.1981 in LTR No. 352 of 1981-82 in rejecting the occupancy rights in respect of Sy. No. 49/3A of Padavu Village, preferred WP 18760 of 1981 before this Court. In view of the constitution of the Land Reforms Appellate Authority, the matter was transferred to the appellate authority at Mangalore. Meanwhile, by amendment to the Land Reforms Act, Appellate Authority was abolished and, as such the Petitioner made an application to revive the writ Petition by filing an application on 24.1.1991 which is renumbered as CP 915 of 1991. The original Petitioner died on 31.8.1991 leaving behind the applicants to succeed her estate. Applicants are one Balakrishna Shetty, Leelavathi Shetty and Shobha Shetty.

2. The original Petitioner one Smt. Ummakka wife of Nemi Shetty claiming to be the tenant in respect of Sy. Nos. 38/6, 39/1, 39/3, 39/6, 49/3A1 of Padavu village measuring 39 cents, 10 cents, 37 cents, 2.661/2 cents and 85 cents

respectively. After the enactment of the Karnataka Land Reforms (Amendment Act of 1987), the original Petitioner filed an application in Form 7 dated 24.8.1974 for occupancy rights in respect of the above agricultural lands claiming that all along the Petitioner was cultivating the lands. The application filed by the Petitioner was considered by the Land Reforms Tribunal in No. 352 of 1981-82 along with other applications filed by owner one Ramarao at LRT 347 of 1981-82. After holding an enquiry, the 2nd Respondent - Land Tribunal, Mangalore passed an order on 17.8.1981 granting occupancy rights in favour of the Petitioner in respect of four items of agricultural lands and rejected the claim of the Petitioner in respect of Sy. No. 49/3A. As such, the same has been assailed by the Petitioner in the writ Petition originally filed in WP 18760 of 1981 to the extent of 85 cents and claiming grant of occupancy rights in her favour.

3. The Mulgenidar who is arrayed as 3rd Respondent has also filed an application before the Tribunal in respect of property in Sy. No. 49/3A to the extent of 85 cents mentioning four more items of properties in addition to that and in the claim of the 3rd Respondent, it is stated that since 1933, they have taken the property from the owner Bassil Mission Church on a rental of Rs. 60.2.0 and also it is his contention that it is only 70 cents wherein no agricultural activity is being carried out. When the said 3rd Respondent had taken the property on lease (mulgeni), there was a house for which the 3rd Respondent had incurred expenses for repairs. Only in the year 1979, original claimant Ummakka had planted some coconut plantations and that the said property is in the possession of the 3rd Respondent and except this property, other properties mentioned and as claimed by Ummakka in the year 1938 were leased to her by way of chalgeni.

4. The said contentions were resisted before the Land Tribunal at Mangalore by Ummakka representing herself through Balakrishna Shetty. The Bassil Mission Church, original land owner, was also represented wherein it has stated that about 70 cents of land was given to 3rd Respondent on mulgeni basis and also that it is a vacant space and there is no agricultural activity and the 3rd Respondent is not an agriculturist and the house built on the said land measuring 70 cents was by the 3rd Respondent himself and the said land falls within the limits of Municipality and the Bassil Mission also claimed the property before the Land Tribunal and sought for rejection of the claim of the 3rd Respondent as well as Ummakka the Petitioner. Based on the submission and contentions of the parties the Land Tribunal has formed an opinion that, to the extent of 70 cents in Sy. No. 49/3A land has been utilised for non-agricultural purposes and it is not an agricultural land and as per the statement of Ummakka herself, there are four houses in the said land. Denying the contention of the Petitioner that it is an agricultural land, Tribunal has come to the conclusion that the land has been used for non-agricultural purposes thereby, it has rejected the claim of the Petitioner-Ummakka and the 3rd Respondent also who had set up a counter claim. Thus by granting occupancy rights to the extent mentioned in favour of Ummakka in respect of other properties as noted above, the claim of Ummakka to an extent of 70 cents in so far as land in Sy. No. 49/3A is rejected.

5. While contesting the claim of the Petitioner, the 3rd Respondent has filed counter contending that the land in question is a punja land and no agricultural operation is existing in the land in question or is the land in question is capable of being cultivated. It is also submitted that land in question measures about 85 cents and it is a barren land which is situate within the heart of the City Corporation limits and the property in question is in possession of the legal representatives of the 3rd Respondent since 1937. They have also produced the mulgeni transfer deed in favour of Sri Ramarao - original Respondent and stated that after the execution of deed of transfer in favour of Shambhu Shetty in the very portion of the same survey number, the Respondents who are the legal representatives of 3rd Respondent - original Respondent , had not retained any right in respect of the portion of the land transferred in favour of Shambhu Shetty as per Annexure-R16. Accordingly, it is stated that the claim of the Petitioner has to be dismissed as there is no merit in their contention.

6. On behalf of the Bassil Mission Trust, they have submitted that the property belongs to them and it is a non-agricultural property where buildings are situate and at no point of time, the property was cultivated and as such, they have sought for dismissal of the Petition.

Having heard the Counsel for the respective parties, the point that arises for consideration are whether the property in Sy. No. 49/3A measuring 70 cents was leased out to Smt. Ummakka by the 3rd Respondent on chalgeni and that agricultural activity was being carried out by her or that the land in question is a non- agricultural land which was in possession of the 3rd Respondent in which case the claim of the Petitioner cannot be considered and, whether having regard to the nature of the order passed by the Land Tribunal, Mangalore, the matter requires reconsideration for objective assessment and to ascertain as to whether the land in question, as on the date of filing of the application, as per the Land Reforms Act, was a land used for agricultural purposes or not and to determine the issue and whether it was non-agricultural property belonging to Basil Mission Trust and as such, Basil Mission Trust is entitled for the same.

7. In Annexure-C at page 126 of the record in so far as Sy. No. 49/3A is concerned, i.e., the RTC extract, the total area is shown as 10 acres 51 cents for the year 1968-69. As many as 12 persons are shown as mulgenedars. In Column, 8, the property in question said to have been leased from one Ramarao Shanbagh is also shown as Khuski to the extent of 85 cents. The crops that are grown are mentioned as Halasu, Maavu and Tengu. But Annexure-D is said to be of the year 1955 wherein the mulgeni in respect of this property i.e., Sy. No. 49/3A is said to be in favour of the Respondent i.e., one Ramarao Shanbogh. There is a mention of other Survey numbers also. The land in question consists of open land, wet land, garden land with coconut and arecanut trees and also punju gudde which was said to be given for cultivation on chalgeni. It is seen in the order of the Land Tribunal, based on the submissions made by the rival claimants in so far as property in Sy. No. 49/3A IA 4, the Tribunal has observed

that till 1.3.1974 the land in question was not brought under cultivation. Since Ummakka has stated that there are four houses on the land, the Land Tribunal has formed an opinion that it is not an agricultural land and, based on the submission made on behalf of the land owners, the Tribunal has come to the conclusion that the said land was given to build houses, for non-agricultural purposes and thereby rejected the claim of both the claimants - Smt. Ummakka and Ramarao Shanbogh.

8. Learned Counsel for the Petitioner by referring to the RTC extracts regarding the nature of the land, relied upon the decision of this Court in the case of Subhakar and Ors. v. Land Tribunal, Karkala Taluk, Karkala and Ors. in 1999 (4) KLJ 524 wherein it is held that "Land on which only thatched grass are grown naturally without human efforts to make such grass grow and such lands in District of Dakshina Kannada are called "Punja land" which are not brought under cultivation and hence are not "land" within meaning of Section 2A(18) of the Act. However, where "Punja Land" is brought under cultivation, it can be considered as agricultural land". Based on the above ratio, it is argued that punja land was brought under cultivation and it was given for chalgeni to Ummakka by mulgenedar Ramarao Shanbogh. It is also argued by the Counsel for the Petitioner that there is no mention of houses in the lease deed executed by Ramarao in favour of Ummakka in respect of the land in question and that the land in question is an agricultural land. However, based on the submission, without there being cogent material to form such an opinion, the Tribunal has arrived at a conclusion that the land in question was used for non-agricultural purposes as such, it declined to grant occupancy rights in favour of the Petitioner.

9. Per contra, learned Counsel for the Respondent relying upon the decision in Venkatesha Shet v. Narayan Achari, in 1975 (2) KLJ 175 contended that punja lands are lands on which thatching grass naturally grows and such lands are not brought under cultivation and accordingly contended that the land in question as per the description, is only punja land and at no point of time, it was brought under cultivation and it does not form the subject matter of tenancy to confer occupancy rights in favour of chalgenedar and submitted that there is no merit in the contention of the Petitioner's Counsel and has prayed for dismissal of the Petition.

10. Learned Counsel has also relied upon the RTC extracts issued indicating that at columns 8 and 9, nothing has been mentioned in so far as the land in question is concerned and accordingly submitted that the land in question is only a land used for non-agricultural purposes and was in possession of Ramarao Shanbogh. He also referred to decision in Bhamy Panduranga Shenoy v. B.H. Ravindra and Ors. 1980 (2) KLJ 129 wherein it is held "The number of trees in the suit lands is not so large as to regard the same as agricultural garden lands. In Dakshina Kannada District, it is quite common that residential houses and industrial and commercial units in towns are surrounded by coconut trees and other fruit bearing trees and also have in addition, kitchen-gardens. Having regard to all

these factors, I am of the opinion that the suit-holding is not an agricultural holding and the 1st Respondent is not carrying on any agricultural operations therein." Accordingly, he submitted that in view of the ratio laid down in the above said decision, the land in question is purely a non-agricultural land which was never the subject matter of chalgeni and there is no merit in the contention of the Petitioner. To the same effect, learned Counsel also relied on the decision in C.V. Gouramma v. Land Tribunal, Bantwal and Ors. 1980 (1) KLJ 54.

11. As can be seen, the RTC extract said to have been issued by the Office of the Tahsildar, Mangalore is produced to show that at Columns 8 and 9, the nature of the land is mentioned as Khuski and also the existence of several fruit bearing trees and this certificate has formed part of the record. In another certificate issued in favour of the Respondent -Ramarao Shanbogh, there is no such mention. Further, it is the submission of the Petitioner's Counsel that the houses referred to in the land in question are thatched huts and cannot be strictly called as houses and being used for non-agricultural purposes. More over, Petitioner-Ummakka had cultivated the said land by raising some plantation crops. The Land Tribunal has not held proper enquiry in so far as the land in question to ascertain and to form an opinion whether the land was brought under cultivation or not and whether it is an agricultural property or non-agricultural property as on the date of filing of the application claiming occupancy rights.

12. Section 112(B) of the Karnataka Land Reforms Act, 1961 deals with the duties of the Tribunal which is extracted below for reference:

Duties of Tribunal:

- a. to make necessary verification or hold an enquiry including local inspection and pass orders in cases relating to registration of a tenant as occupant u/s 48-A.
- b. to decide whether a person is a tenant or not;
- bb. to decide whether the land in respect of which an application u/s 48-A is made or in respect of which any question of tenancy is raised or involved, is or is not an agricultural land.

A perusal of the order of the Land Tribunal goes to show that no such enquiry/local inspection was carried out by it before coming to the conclusion that the land in respect of which occupancy rights were claimed by the rival parties is an agricultural land or otherwise.

13. Further, it is seen Annexure-C refers to RTC that is issued which has formed part of the record. Similarly, during arguments in respect of the land in question, learned Counsel for the Respondent has produced the RTC extract said to have been issued by the Tahsildar's office wherein no mention is made in Columns 8 and 9 as to the nature of the land. Although both the RTC extracts are said to be for the year 1968-69, in one RTC extract which forms part of the record, the land is shown as khuski and presence of crops is also shown therein. In another certificate said to have been issued by the Tahsildar and produced during

arguments, there is no such mention. The same requires some enquiry by getting a report from the Commissioner or making spot inspection and also by giving opportunity to produce material and establish their contention.

14. Except that the Tribunal is shown to have made an order holding that the land is a non-agricultural land only on the ground that there are four houses in existence as per the statement of the Petitioner - Ummakka, there is no basis on which the Land Tribunal could have come to that conclusion in so far as the land which is the subject matter of the writ Petition. Under these circumstances, while not interfering with the finding of the Tribunal to the extent of the order in so far as other lands are concerned, the Tribunal may have to be directed to hold an enquiry, if necessary by securing report or to make spot inspection and after affording opportunity to both the parties and to give a finding in respect of the property in question.

In view of the above discussion, the writ Petition is allowed and the impugned order is set aside to the extent indicated above. The matter is remanded back to the Land Tribunal, Mangalore for fresh enquiry after affording opportunity to both the parties and to give a finding as to whether the land in question is an agricultural or non-agricultural land and whether it was part of chalgeni given to Ummakka by the mulgenedar Ramarao Shanbogh and for disposal in accordance with law.

In the circumstances of the case, there is no order as to costs.