

(2011) 12 KAR CK 0362
In the Karnataka High Court
Case No : Writ Petition No. 5323 of 2004 (LR)

Sri. B. Ramayya Bhat Since Deceased by His L.Rs., B. Krishna Bhat, Since Deceased by Proposed L.Rs. and Others APPELLANT

Vs

State of Karnataka, The Land Tribunal and Sri. Sheena Kurup RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Citation : (2011) 12 KAR CK 0362

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : N. Shankaranarayana Bhat, for the Appellant; Shashidhar S. Karundi, HCGP for R1 and R2, Sri. Ravishankar Shastry, for R-3 for G. Balakrishna Shastry, for the Respondent

Final Decision : Allowed

Judgement

Ajit J. Gunjal

1. This Court is reluctantly remitting the matter to the Land Tribunal for fresh disposal for the following reasons;

The petitioners claim to be the absolute owners of the land measuring 3.64 acres in sy.no. 181/3 of Panaje village of Puttur Taluk, Dakshina Kannada District. The subject matter of this Writ Petition is to an extent of 1.25 cents. Suffice it to say that the third respondent herein made an application for grant of occupancy rights in form no. 7 to an extent of 1 acre 25 cents. The said application was granted initially and the matter was before this Court in W.P.NO. 4160/1979. This Court allowed the Writ Petition and the matter was remanded to the Land Tribunal for fresh enquiry. Thereafter, the Land Tribunal once again granted occupancy rights in favor of the third respondent. Once again the said order, was questioned by the landlord before the Land Reforms Appellate Authority and the said appeal was dismissed. Aggrieved by the same, the landlord was before this Court in LRRP. No. 1605/1990. The said revision was allowed and the matter was

remanded to the Land Tribunal. On remand once again, the Land Tribunal has granted occupancy rights.

2. Mr. Bhat, learned Counsel appearing for the petitioners vehemently submits that there is divergent opinion amongst the members inasmuch as two of the members would record a finding that the respondent is not a tenant and two of the members would record that he is a tenant. Indeed, the Chairman has exercised his casting vote in favor of the members who have accepted the application. He further submits that the impugned order is not a speaking order and most of the documents have been misread.

3. Mr. Shastri, learned Counsel for the respondent no. 3 supports the order and submits that records would clearly disclose that the third respondent was cultivating the land as a tenant.

4. I have perused the petition papers as well as the records.

5. in the first instance, it is to be noticed that the total extent of land is 3.64 acres and the claim is in respect of 1.25 acres. Form no. 7 indeed discloses that the claim is in respect of 1.24 acres and it is not in dispute that this forms a part of a bigger area that is 3.64 acres. Time and again, it is stated that whenever a smaller extent is claimed in a bigger extent, the boundaries are required to be mentioned. Form no. 7 does not disclose that boundaries are given. It is not disputed that spot inspection was done. But however, the said spot inspection is required to be done with reference to the claim made by the applicant in form no. 7 and the boundaries given there under. In the absence thereof, I am of the view that grant of occupancy rights to an extent of 1.24 acres cannot be sustained. It is to be noticed that the impugned order also does not mention the boundaries of 1.24 acres, assuming that spot inspection was done and in the spot inspection, this area is carved out.

6. The case set up by the petitioners is that the land was leased in favor of Kunikanna Madiwala. He cultivated the land for some time and thereafter, it appears that he has surrendered it. Indeed an affidavit was also filed in the earlier proceedings and also a statement is made by him before the Land Tribunal. But however, the question of surrender is to be considered and decided by the Land Tribunal once again. The Land Tribunal has recorded a finding that there is an entry in the revenue records indicating that the third respondent was a chalgani tenant. But however, the record of rights which are made available in the writ proceedings as well as in the Tribunal records do not disclose that such an entry is made in the revenue records. The Tribunal it appears has relied solely on the oral evidence of the parties without referring to the other documents and attending circumstances. Having said so, I am of the view that the impugned order warrants interference. Hence, the following order:

ORDER

(i) The petition is allowed,

(ii) The impugned order is quashed,

(iii) The matter stands remitted to the Land Tribunal for fresh disposal in accordance with law.

(iv) It is open for the respondent - applicant to mention the boundaries,

(v) Rule is made absolute.

7. Shri Shashidhar S.Karamadi, High Court Government Pleader is permitted to file his memo of appearance within a period of four weeks.