

(2012) 09 KAR CK 0273

In the Karnataka High Court

Case No : Writ Petition No. 34545 of 2011 (LR-RES-PIL)

Sri Joghade Veerashappa and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 45 (3), 48 (6), 7

Citation : (2012) 09 KAR CK 0273

Hon'ble Judges : Vikramajit Sen, C.J.;Aravind Kumar, J

Bench : Division Bench

Advocate : S.R. Anuradha, for the Appellant; R. Devadas, AGA for R-1 to 3 and Sri T.N. Raghupathy, Advocate for R-4, for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—Petitioners who claim to be the residents of K. Belegal village, Siraguppa Taluk, Bellary District are seeking for issue of writ of certiorari by quashing the order dated 18-01-2011 - Annexure-A passed by the Land Tribunal, Siraguppa, whereunder land measuring 13.79 acres situated in Sy. No. 267 of K. Belagal Village, Siraguppa Taluk is ordered to be given to the earlier pattadar i.e., 4th respondent herein and are also seeking for a direction that Survey Number reflected in the earlier order of the Tribunal dated 14-08-1986 -Annexure B as 267 instead of 276 be corrected. We have heard the arguments of Smt. S.R. Anuradha, learned counsel appearing for the Petitioner, Sri R Devadas, learned AGA appearing for Respondents -1 to 3 and Sri T.N. Raghupathy, learned counsel appearing for Respondent No. 4.

2. It is contended by learned counsel for the Petitioner that Petitioners hail from backward section of the society and apart from being economically backward and they are all landless agricultural labourers residing at K Belgal Village and they are entitled for grant of free land from the Government as per the provisions of Karnataka Land Reforms Act, 1961 (hereinafter referred to an "Act"). It is also contended that there are several such agricultural labourers in their village who

are similarly placed like petitioners. It is contended that land bearing Sy. No. 267 of their village was subject matter of tenancy adjudication before the Land Tribunal - second respondent, since Sri Sannaramappa had filed an application for grant of occupancy rights in respect of said land and Tribunal by its order dated 06-04-1979 rejected the application by holding that he was a created tenant and while mentioning the Survey Number, there was a typographical error and it was typed as 276 instead of 267. Said order was questioned by 4th respondent in W.P. 13687/1981 which came to be set aside and the matter was remanded to the Land Tribunal for fresh enquiry by order dated 21-11-1984 and on such remand, Tribunal rejected the application for grant of occupancy rights and held that lands stood vested with the State Government by order dated 14-08-1986.

3. Though said order was challenged by the tenant in R.A. No. 31/1988 before Land Reforms Appellate Authority, Bellary, appeal came to be dismissed for non-prosecution which has reached finality. Thereafter, a notification having been issued u/s 45(3) of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as the "Act" for brevity) on 23-05-1990 for disposal of the land, came to be challenged by 4th respondent herein in W.P. No. 16552/1990 contending inter alia that the order of Tribunal dated 14-08-1986 was relating to Sy. No. 276 and not 267 and as such, the said notification relating to Sy. No. 267 was bad in law. The learned Single Judge of this Court by order dated 17.4.1985 allowed the writ petition and quashed the notification dated 23-5-1990 and directed the Tahasildar to verify the correct Survey Number and take appropriate action. It is pursuant to this order the second respondent has passed the order dated 18-01-2011 by purported exercise of power u/s 45(3) of the Act which is impugned herein.

4. It is the contention of Smt. Anuradha, learned counsel appearing for the petitioner that land Tribunal has no authority of law to give the land in question to the Pattadar when it has stood vested with the Government under the Karnataka Land Reforms Act particularly when it has held in its earlier order that land vested with the State Government and as such, the earlier order cannot be ignored or land can be given back to the Pattadar. She would further elaborate her submission by contending this Court while disposing of the writ petition 16552/1990 on 17-04-1995 (Annexure-D) had only directed the Tahsildar to enquire into the error in Survey number and take action in accordance with law and it was only this exercise which Tribunal ought to have undertaken and it did not have the power to grant the land to fourth respondent. She would also contend that Tribunal having given a finding that Sy. No. entered in the order dated 23-05-1990 is erroneous it ought to have revived earlier order and it did not have the power to frustrate the order dated 23-5-1990 and if impugned order is allowed to stand, then the very purpose of the Karnataka Land Reforms Act, 1961 which ensures equal distribution of land to the landless persons gets defeated. As such, she prays for quashing of the impugned order.

5. Per contra, Sri TN Raghupathy, learned counsel appearing for the fourth respondent submits that proceedings for distribution of land to the landless persons was initiated by issuing a notification dated 23-05-1990 which was on the basis of the proceedings initiated by the Land Tribunal in R/LAQ/41/76 culminating in order dated 14-08-2006 and Survey Number mentioned in these two proceedings, namely the order of the Land Tribunal dated 14-08-2006 and the notification dated 23-05-1990 being 276 & 267 respectively, the learned Single Judge in Writ Petition No. 16552/1990 filed by fourth respondent challenging the said notification had rightly held that neither Land Tribunal nor the appellate authority had passed any order in respect of Sy. No. 267 of K. Belagal village and as such, notification dated 23-05-1990 issued in respect of Sy. No. 267 was rightly quashed and third respondent Tahsildar therein was directed to verify the correct Survey Number and take appropriate action and contends in this factual background, second respondent has rightly passed the impugned order and ordered for giving the land in question i.e., Sy. No. 276 to the fourth respondent herein who had admittedly purchased the same under a registered sale deed dated 18-09-1969 and as such he prays for dismissal of Writ Petition. He would also submit that Tribunal has held the tenant has failed to prove the tenancy and petitioner's right in this Writ Petition is traceable to only Section 77 of the Karnataka Land Reforms Act, 1961 and said notification having been quashed in Writ Petition No. 16552/1990 petitioners have no vested right over the land and they also do not have locus standi to question the order of the Tribunal. He also submits there is no order passed against fourth respondent and it is not a public interest litigation and present litigation is speculative and prays for dismissal of the writ petition.

6. Having heard the learned Advocates appearing for the parties and on perusal of the original records made available by the learned Government Advocate, we have noticed following facts:

Land bearing Sy. No. 267, K Bellagal village, measuring 13 acres 79 cents was claimed to be under the tenancy by one Sri Sannaramappa and he filed an application in Form No. 7 for grant of occupancy rights on 29-12-1974. Land Tribunal registered the said application as 41/LRM/76 and by order dated 06-04-1979 rejected the application. It is to be noticed that in the said order, the Survey Number of the land which has been mentioned is 276 though it has been mentioned in Form No. 7 as 267. In the original case sheet (face sheet) of the Tribunal are entered on the basis of entries found in Form No. 7. In the instant case both in Form No. 7 and order sheet Survey Number is reflected as 267. Land Tribunal by order dated 6-4-1979 rejected the application on the ground application is not genuine. Aggrieved by the order of Land Tribunal dated 06-04-1979, tenant preferred Writ Petition No. 13687/1981 and learned Single Judge of this Court by order dated 21-11-1984 allowed the Writ Petition and quashed the order of the Land Tribunal dated 06-04-1979 and remitted the matter back to the Land Tribunal for fresh disposal in accordance with law. It is to be noticed at this juncture that fourth respondent herein had been arrayed as

respondent No. 3 in the said Writ Petition and he was served and un-represented.

7. On such order of remand being passed in W.P. No. 13687/1981, the Land Tribunal took up the matter for adjudication afresh and issued notices to the concerned parties and recorded the statement of both the tenant and landlord. Fourth respondent herein who had been arrayed as landlord in tenancy proceedings appeared before the Tribunal and gave statement on 19-11-1985. It has been stated by landlord before Tribunal in his statement that Sri Sannaramappa is his tenant and he was inducted as tenant by him after purchase, but no written lease agreement has been drawn in this regard. The statement of the tenant was also on same lines. These statements obviously refer to Form No. 7 filed by tenant wherein Survey Number mentioned is 267. However, Tribunal by order dated 14-08-1986 rejected the application for grant of occupancy rights and it was held that land had stood vested in the State and ordered for taking over the land to the Government for the purposes of distribution u/s 45(3) of the Act, to the landless persons, since the tenant had failed to seek restoration u/s 7 of Karnataka Land Reforms Act. Even in this order dated 14-08-1986 the survey number reflected was 276.

8. Aggrieved by order dated 14-08-1986 fourth respondent herein preferred Writ Petition No. 13252/1987 before learned Single Judge. Said Writ Petition No. 13252/1987 came to be transferred to Land Reforms Appellate Tribunal by order dated 16-09-1988 in view constitution of an Appellate Authority as per 116-A of the Act. On such transfer, matter came to be registered as R.A. No. 31/1988 and notices were issued to the parties and they were duly served. The appellate authority by its order dated 29-06-1989 dismissed the appeal for default and admittedly same has become final.

9. Thereafter third respondent passed an order on 23-05-1990 (Annexure-C) for taking over possession of land bearing Sy. No. 267 measuring 13 acres 79 cents unencumbered from the possession of fourth respondent herein. This order dated 23-05-1990 was challenged by fourth respondent in Writ Petition No. 16552/1990 contending inter alia that he is owner of the land bearing Sy. No. 267 measuring 13 acres 79 cents and it is not a tenanted land and said order has been passed based on the basis of the order of Land Tribunal and Land Reforms Appellate Authority which related to Sy. No. 276 and order dated 23-05-1990 relates to land in Sy. No. 267 which is sought to be distributed by Tahsildar inviting applications from the landless persons and as such sought for quashing of the same. The learned Single Judge by order dated 17-04-1995 allowed the Writ Petition and quashed order dated 23-05-1990 and directed the Tahasildar to verify correct Survey Number and take appropriate action.

10. It is necessary to note at this juncture itself that fourth respondent herein has been contending that he is the owner of Sy. No. 276 in various Forms. Even in the Writ Petition No. 13252/1987 filed by very same fourth respondent, it was contended as under:

That the petitioner is the owner in possession of the land bearing Sy. No. 276 measuring 10 acres 7 guntas situated at village K. Belagal, Taluka Shiruguppa, Dist. Bellary.....

This statement of fourth respondent would clearly go to show that claim of fourth respondent was in respect of Sy. No. 276 and not 267 at all and he had been questioning the order passed by Land Tribunal before this court and Land Reforms Appellate Authority which orders reflected the Survey Number as to 276. At no point of time, fourth respondent agitated in respect of land in Sy. No. 267.

11. As seen from the original records third respondent informed the Deputy Commissioner, Bellary by communication dated 28-03-1989 that Survey number has been wrongly typed as 276 instead of 267 in the orders of Land Tribunal as well as Land Reforms Appellate Authority and sought for further directions in this regard. The Deputy Commissioner intimated the Tahasildar by communication dated 26/27-12-1989 that mentioning of wrong Survey Number was only a clerical mistake and as such directed the Tahsildar to rectify said mistake and take steps for taking over the land. Accordingly land measuring 13.79 was taken over by the State on 29-01-1990 as per mahazar drawn of even date as seen from the original records and thereafter revenue records have been rectified. It is thereafter order dated 23-05-1990 referred to supra came to be passed which came to be set aside in Writ Petition No. 16552/1990 by order dated 17-04-1995 by remanding the matter to Tahsildar for re-verification of Survey Number.

12. The Tribunal pursuant to the order passed by this Court in W.P. No. 16552/1990 dated 17-04-1995 took up the matter for adjudication afresh and thereafter has passed the order dated 18-01-2011 which impugned in the present writ petition whereunder it has been ordered for the land in Sy. No. 267 measuring 13.79 acres to be given to the earlier pattadar Sri K B Srinivasa Reddy i.e., fourth respondent herein. At this juncture, it requires to be noticed that while passing the said order, Land Tribunal has also noticed that while rejecting the application for tenancy rights on 06-04-1979 that Chairman in the order has in his handwriting had written that application for tenancy rights is filed in respect of Sy. No. 267 and this order written by the Chairman while being typed by mistake it was entered as 276 in the typed copy of the order. Having said so, the Tribunal by majority (except the Chairman) decided to handover the land to fourth respondent since tenancy rights cannot be conferred on the applicant who had filed form No. 7 earlier. A perusal of the said order would clearly go to show that there is no whisper as to any exercise having been undertaken by the Land Tribunal with reference to verifying the correct survey number namely, as to whether it is survey No. 267 or 276 was the subject matter, but has proceeded to pass the order in question without application of mind at all. Perusal of the original records made available by the learned Advocate would clearly go to show that Form No. 7 was filed by the tenant in respect of Sy. No. 267, the Chairman of the Land Tribunal in his own hand writing

had entered that the occupancy rights related to Sy. No. 267, the order sheet dated 26-12-1978 in LRM/41/76 would disclose that it was relating to Sy. No. 267, the sworn statement of the tenant recorded on 06 04-1979 would disclose the land to which tenancy rights sought for was Sy. No. as 267, the notices of hearing issued to the tenant as well as the fourth respondent by the Special Tahsildar and Secretary of Land Tribunal, Sy. No. 267 has been reflected and it is in this background, this Court while disposing of the writ petition 16552/1990 directed the Tahsildar to verify the correct Survey Number and then pass orders.

13. In fact, the order of the Land Tribunal would become final under sub-section (6) of Section 48A of the Act and Tribunal on an application of any of the parties is empowered to correct any clerical or arithmetical mistake for reasons to be recorded as per first proviso of the Act and Tribunal under second proviso of the Act either suo-motto or on an application of any of the parties correct the extent of the land in any order passed by it after taking actual measurement and after giving opportunity to the concerned parties. It would be necessary to extract Section 48A(6) and provisos thereunder which reads as under:

48 -A. Enquiry by the Tribunal, etc-

(1) XXXXX

(2) XXXXX

(3) XXXXX

(4) XXXXX

(5) XXXXX

(6) The order of the Tribunal under this Section shall be final and the Tribunal shall send a copy of every order passed by it to the Tahsildar and the parties concerned:

Provided further that the Tribunal may, on the application of any of the parties, for reasons to be recorded in writing, correct any clerical or arithmetical mistakes in any order passed by it:

Provided further that the Tribunal may on its own or on the application of any of the parties, for reasons to be recorded in writing, correct the extent of land in any order passed by it after causing actual measurement and after giving an opportunity of being heard to the concerned parties.

Thus, the exercise of the power by the Tribunal in the instant case was circumscribed by the statutory provision as well as the direction issued by this Court in W.P. No. 16552/1990 and it could not have travelled beyond the statutory provision or the direction issued by the learned Single Judge in W.P. 16552/1990.

14. As noticed herein above, in the instant case, the Land Tribunal has proceeded to readjudicate the matter and virtually has exercised the power of review by

substituting its earlier order of vesting of the land in the State dated 14-08-1986 and nullifying its effect which is impermissible both in law and on facts. The fourth respondent having challenged the order of the Tribunal dated 14-08-1976 in W.P. No. 13252/1987 which was subsequently transferred to the Land Reforms Appellate Authority on account of amendment to the Land Reforms Act and this writ petition having been renumbered as R.A. No. 31/1988 had ended in dismissal and thereby matter having reaching finality it could not have been re-opened by this detour and taking umbredge under the order passed in W.P. No. 16552/1990 and seek relief which otherwise was impermissible. In that view of the matter also, the order of the Land Tribunal dated 18-01-2000 cannot be sustained.

In the result, we pass the following order:

ORDER

- (1) Writ Petition is hereby allowed.
- (2) Order dated 18-01-2011 passed by second respondent -Land Tribunal is hereby quashed.
- (3) Land Tribunal is hereby directed to pass necessary orders of rectifying the mistake in the Survey Number forthwith at any rate, within an outer limit of 30 days from the date of receipt of this order and thereafter pass necessary orders u/s 45(3) of the Act and distribute the land to landless persons in accordance with law, if it is found that it relates to Sy. No. 267 of K Belagal village.
- (4) Costs made easy.