

(2006) 08 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 45029 of 2002

Sri K. Vittal Shettigara

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 A (1)

Citation : (2006) 4 KCCR 2068

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : O. Shivarama Bhat, for the Appellant; Nadiga Shivanandappa, HCGP for R1 and R2 and Y. Rajendra Prasad Shetty, For R3 to R5, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The occupancy rights over ten cents of land together with a dwelling unit bearing Sy. No. 128/6B1 in Derebail of Mangalore, belonging to the petitioner was conferred on the respondents 3 to 5, the children of deceased Nagamma, the applicant in form No. 7, u/s 48A(1) of the Karnataka Land Reforms Act, 1961, for short the Act, by order dated 16.11.2002, Annexure "A" of the Land Tribunal, Mangalore. Hence this petition.

2. The petitioner contends that the deceased Nagamma, his maternal aunt, was permitted to stay in the dwelling house purchased by him under a deed of conveyance registered on 24.8.1972, as document No. 764/72-73, in the office of the Sub-Registrar Mangalore, since the petitioner, an employee of the Karnataka Regional Engineering College was provided with a staff quarters for residence. According to the petitioner the property conveyed in the Sale Deed was described as a house site with a dwelling house, well and land appurtenant thereto, together measuring 10 cents, It is the allegation of the petitioner that there was no relationship of landlord and tenant as between himself and the deceased Nagamma, and that the premises was not an agricultural land. It is the further allegation of the petitioner that the Land Tribunal without considering the

dominant characteristics of the premises in question, nor a cumulative effect of all factors, fell in error in recording findings and arrived at conclusions, that the premises was agricultural lands which was lawfully tenanted on the appointed date in favour of the applicant.

3. The petition is not opposed by filing statement of objections of respondents 3 to 5.

4. Having heard the learned Counsel for the parties and perused the pleadings and the order impugned, the only question for consideration is whether in the facts and circumstances, the Land Tribunal was justified in conferring occupancy rights over the premises in question in favour of respondents 3 to 5? If not to what order?

5. The order impugned discloses the framing of the following three questions:

(i) whether the land over which occupancy rights sought for is agricultural land?

(ii) whether the land was tenanted as on 1.3.1974, the appointed date?

(iii) Whether the applicant was a lawful tenant of the said land on the appointed date?

6. In order to answer the said questions, the Tribunal took into consideration the following facts:

The entries in column 7 of the RTC Phani for the year 1968-69 mentions the existence of six coconut saplings. The spot inspection held on 19.8.1981, upon which the Land Tribunal in its order dated 19.8.1981, recorded a finding that the premises was agricultural lands. The petitioner in his cross-examination, admitted that Mangalore City has both agricultural and non-agricultural lands. Lastly the applicant had stated that there were six coconut trees, one arecanut tree, vegetable crop and banana sapling and that she was engaged in house hold work.

7. The observations of a division bench of this Court, in *Vanajakshi v. Land Tribunal, Udipi* and Anr. 1979 (1) KarLJ 412 in the circumstances is apposite;

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.

8. Admittedly, there are no entries in the RTC Phani for any year prior to or on the appointed date, disclosing the name of the deceased Nagamma as the tenant of the land. The land is described as "Punjab" in the RTC Phani. The covenants in the sale deed dated 24.8.1972 describe the premises as a house site, with a

dwelling unit, a well and land appurtenant thereto. The measurement of the premises is admittedly ten cents and is located within the jurisdiction of Mangalore City. The order dated 4.9.1981 of the Land Tribunal, conferring occupancy rights, based on the spot inspection held on 19.8.1981 was quashed by this Court.

9. Having regard to the observation of the Division Bench in Vanajakshi's case, supra, the Land Tribunal was required to consider the cumulative effect of all factors in order to determine whether the premises in question was agricultural or non-agricultural land. The covenants and the description of the property in the sale deed dated 24.8.1972 was an important and relevant material to be considered by the Tribunal, which it eschewed without assigning any reasons. The finding that the premises was agricultural land, recorded by the Land Tribunal in its order dated 4.9.1981, was quashed in an earlier writ proceeding, which was irrelevant and required to be eschewed. That the land was classified as "Punjab", in the revenue records and admittedly had a dwelling house, located in Mangalore city was also relevant material not considered by the Land Tribunal. Thus, to treat the statement of the petitioner in his cross-examination that there were agricultural and non agricultural lands in Mangalore City, as an admission of a fact, that the premises in question was agricultural land, is beyond comprehension.

10. Before the Land Tribunal the only evidence of landlord and tenant relationship between the petitioner and the applicant was the statement of the applicant which was a self interested testimony. In fact the evidence is that she was watering the plants and was engaged in household work.

11. Indeed essentials may be inferred when the facts proved justify the inference. On one hand the Tribunal must not surmise, conjecture or guess, on the other hand it may draw an inference from the proved facts so long as it is a legitimate inference.

12. In my considered opinion the majority of the members of the Land Tribunal, in the absence of relevant material constituting substantial legal evidence, of the facts, in issue, on perfunctory and slender material on record, and sketchy evidence considering assertions of the applicant as an adequate substitute, quite contrary to expected reasonable and judicious adjudication by an objective process of reasoning, recorded inferential findings and jumped to conclusions, virtually on no evidence whatsoever. Such lackadaisical findings based upon mere surmises, conjectures and guesswork, if allowed to be mechanically approved and if this Court also withdraws itself into inclusion, the inevitable causality is justice and approval of rank injustice occasioning gross miscarriage of justice.

In the circumstances, the writ petition is allowed. The order dated 16.11.2002 Annexure "A" of the Land Tribunal is quashed and the proceeding remitted for consideration afresh, after extending a reasonable opportunity of hearing to the parties concerned and to pass orders strictly in accordance with law and in the

light of the observations made supra, in any event within a period of six months from the date of receipt of a certified copy of this order.