

(1992) 07 KAR CK 0021
In the Karnataka High Court
Case No : Writ Appeal Number 1346 of 1992

Sri Koggu alias Narayana Sheety

APPELLANT

Vs

9th Land Tribunal and Others

RESPONDENT

Date of Decision : 27-07-1992

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 15, 45

Citation : AIR 1993 Kar 73

Hon'ble Judges : K.A. Swami, Acting C.J.; A.B. Murgod, J

Bench : Division Bench

Advocate : G.K. Shevgoor, for the Appellant; G. Balakrishna Sastry, for the Respondent

Judgement

1. At the stage of admission Sri Balakrishna Sastry has put in appearance on behalf of the third respondent who is the contesting respondent in this appeal. As far as respondents 1 and 2 are concerned they are the statutory respondents for whom Sri Naik, learned Government Advocate takes notice.
2. As the appeal lies in a narrow compass we are of the view that it can be heard and decided at this stage. Therefore, we have heard this appeal for final disposal itself.
3. This appeal is preferred against the order dated 17th June 1992 passed by the learned single Judge in Writ Petition No. 5118 of 1992.
4. In the Writ Petition the present appellant sought for quashing the order dated 28th Jan., 1992 passed by the IX Land Tribunal, Mangalore in No. LRT.5150/77-78. The Land Tribunal has sent the records for enquiry to the Tahsildar. The learned single Judge has held that the order of the Land Tribunal directing that the records be sent to the Tahsildar would have the effect of awaiting decision on the application filed under S. 15 of the Karnataka Land Reforms Act (hereinafter referred to as "the Act"); that after the receipt of the decision of the Tahsildar, the Land Tribunal has to proceed with the application

filed in Form No. 7 in accordance with law.

5. The contention of Sri Shevgoor, learned counsel appearing for the appellant is that under S. 15 of the Act, the Tahsildar is not competent to decide the question as to whether the 3rd respondent has created or continued the tenancy and that question has to be decided by the Land Tribunal only, therefore, the Land Tribunal acted arbitrarily in sending the papers to the Tahsildar to decide the matter without deciding the issue by itself. It is submitted that the decision on the question as to whether the 3rd respondent has created or continued the tenancy would in turn depend upon the decision of the case pleaded by the 3rd respondent that the land in question was allotted to him during the partition, which took place prior to 1-3-1974; that as. that question also cannot be gone into by the Tahsildar, the order passed by the Land Tribunal is wholly without application of mind and contrary to the provisions of the Act, and it even amounts to abdication of its function.

6. On the contrary, it is contended by Sri Shastri, learned counsel for the third respondent and also by Sri S. R. Naik, learned Government Advocate, that when the jurisdiction is conferred upon the Tahsildar under S. 15 of the Act, to decide the application filed by the landlord for resumption of the land, all the necessary powers to effectively exercise the jurisdiction must be deemed to have been granted even though S. 15 of the Act may not be specific in this regard as otherwise the very object of conferring the jurisdiction will not be served and it will be defeated.

6.1. In the light of these rival contentions, the question that arises for consideration is as to whether S. 15 of the Act empowers the Tahsildar to decide the question as to whether the applicant in the application filed under S. 15 of the Act, has created or continued the tenancy before 1-3-1974?

7. The facts necessary for deciding this question are no more in dispute. It is not in dispute that the lands in question were initially cultivated by the father of the petitioner/ appellant as a tenant even prior to 1-3-1974 and after the death of his father the petitioner has continued to cultivate them as a tenant. Further, he has continued to cultivate them as a tenant even subsequent to 1-3-1974.

8. The 3rd respondent was a soldier in the service of the Armed Forces of the Union during the period from 4-1-1964 to 30-12-1978. The case of the 3rd respondent is that the lands in question fell to his share during the partition which took place long prior to 1-3-1974 and from that time he has continued the appellant as a tenant. On the contrary it is contended on behalf of the appellant/petitioner that the 3rd respondent has neither created nor continued the tenancy; that the father of the appellant/petitioner was a tenant under the ancestors of the 3rd respondent; that when Form No. 7 was filed it was the father of the 3rd respondent who was the landlord, therefore, at the relevant point of time, the 3rd respondent neither created nor continued the tenancy. Thus, there is a dispute between the parties as to whether the 3rd respondent

had either created or continued the tenancy of the appellant.

9. On an earlier occasion, this matter had come up before this Court in Writ Petition No. 26167/1582 against the order passed by the Land Tribunal, granting occupancy right in favour of the appellant. That petition was referred to a Division Bench by VENKATESH, J. on 30th September 1986. By the order dated 18th February, 1988 the Division Bench took a view that there was no need for referring the case to a Division Bench because the learned single Judge was bound by two Division Bench decisions of this Court in *Narasing Gopalrao Desai Vs. The Land Tribunal, Khanapur and Others*, and *Narayan Hanamanth Murali Vs. Land Tribunal*, . Accordingly their Lordships further held thus:

"On merits, we find that one of the questions raised by the petitioner is that the land in dispute which was his family property had come to his share in a family partition in the year 1968. No finding has been recorded by the Tribunal on this aspect of the matter. The fate of the case would hinge on a decision on this question. In case on consideration of the evidence it transpires that no family partition took place, then, the petitioner would have no case at all, and in case it is found that there was a valid family partition and that the land in dispute was allotted to the petitioner, then, other questions on fact which may be necessary to be decided may have to be gone into. In this view of the matter, we find that the best course would be to set aside the order of the Land Tribunal and remit the case for re-decision on merits in accordance with law.

Consequently, we allow this petition, set aside the order of the first respondent-Land Tribunal dated 31st Dec., 1981 in No. LRT 5150/77-78 (Ann. A) and sent back the case to the Tribunal for decision afresh on merits keeping in view the Division Bench Judgments of this Court referred to above. We make no order as to costs."

After the remand, the Tribunal has passed the impugned order. The learned single Judge, as already pointed out, has interpreted the order of the Land Tribunal as amounting to retaining Form No. 7 until the decision is rendered by the Tahsildar under S. 15 of the Act.

10. Thus, the facts of the case, and the events that have taken place in the case as stated above, would make it clear that there is no dispute that the lands in question were under cultivation of the appellant as a tenant. The only fact in dispute is as to creation or continuation of tenancy by the 3rd respondent before 1-3-1974. Now the question for consideration is as to whether this question can be decided by the Tahsildar. It is necessary to notice that the decision on this question is relevant for deciding the application filed before the Tahsildar u/s 15 of the Act. The jurisdiction to consider the application filed under S. 15 of the Act is conferred upon the Tahsildar. Section 15 of the Act reads thus:

"15. Resumption of land by soldier or seaman: (1) A soldier or a seaman who has created or continued a lease in accordance with the provisions of S. 5 shall, subject to the provisions of this Act, be entitled to resume land to the extent of

the ceiling whether his tenant is a protected tenant or not.

(2) The soldier or the seaman shall, if he bona fide requires the land to cultivate personally, issue a notice to the tenant requiring him to deliver possession of the land within the period specified in the notice, which shall not be less than the prescribed period.

(3) The notice referred to in sub-sec. (2) shall be given--

(i) In the case of the soldier in service in the Armed Forces of the Union, at any time not later than one year from the date on which he is released from the Armed Forces or is sent to the reserve;

(ii) In the case of the father, mother, spouse, child and grandchild of a soldier, within one year from the date of the death of such soldier; and

(iii) In the case of a seaman, within one year from the date on which he ceased to be a seaman.

(4) If the tenant fails to deliver possession of the land within the period specified in the notice, the soldier or the seaman may make an application to the Tahsildar within whose jurisdiction the greater part of the land is situated furnishing the prescribed particulars for eviction of the tenant and delivery of possession of the land.

(5) On receipt of such application, the Tahsildar shall issue a notice to the tenant calling upon him to deliver possession of the land to the soldier or he seaman within such time as may be specified in the notice, which shall not be less than the prescribed period, and if the tenant fails to comply, the Tahsildar may summarily evict the tenant and deliver possession of the land to soldier or the seaman.

(6) Where the Tahsildar on application by the tenant or otherwise and after such enquiry as may be prescribed, is satisfied that a notice as required by sub-sec. (2) is not issued, he shall, by notification declare that with effect from such date as may be specified in the notification the land leased shall stand transferred to and vest in the State Government free from all encumbrances. The Tahsildar may take possession of the land in the prescribed manner and the tenant shall be entitled to be registered as an occupant thereof. The provisions of S. 45 shall mutatis mutandis apply in this behalf."

It is clear from the provisions contained in S. 15 of the Act that the Tahsildar is empowered to enquire into the application filed under S. 15 of the Act and satisfy himself that the applicant satisfies the conditions laid down in S. 15 of the Act and he is entitled to the relief sought for. If the Tahsildar is entitled to decide the question as to whether the applicant who has filed the application under S. 15 of the Act is entitled to the relief sought for or not, he is also entitled to consider and decide all the questions that arise for the purpose of determining whether the applicant is entitled to the relief sought for under Sec. 15 of the Act. It is an

accepted rule of interpretation that whenever a jurisdiction is conferred upon an authority and the provisions conferring jurisdiction specifically exclude certain matters from the purview of the jurisdiction of the authority, it shall have to be presumed that the authority is empowered to consider and decide all the questions that arise for the effective exercise of the jurisdiction, as otherwise, the very object of conferring special jurisdiction will be defeated. Section 15 of the Act empowers the Tahsildar to decide the application filed by the landlord for resumption of the land. Fate of such application depends upon the decision, on the question as to whether the applicant has created or continued the tenancy as proof of such fact alone will entitle the landlord applicant to the relief under Sec. 15 of the Act. That being so, to hold that the Tahsildar is not entitled to decide such material issue is to deny the jurisdiction to Tahsildar which has been conferred by the statute and thereby defeat the very object and purpose of conferring such jurisdiction. It is not possible to hold that the essential facts for the Tahsildar to decide the application filed under Sec. 15 of the Act, are to be decided by the Land Tribunal and the Tahsildar has to only make a formal order on the basis of the finding recorded by the Land Tribunal. On the contrary, as held by a Division Bench of this Court in *Narasingh Gopal Rao v. Land Tribunal, Khanapur*, it is the Tribunal which has to await the disposal of the application filed under Sec. 15 of the Act and proceed with the application filed in Form No. 7 in accordance with the decision of the Tahsildar. The relevant portion of the decision is as follows:

"If therefore, the tenant in occupancy of such a land approaches the Tribunal for occupancy, the Tribunal cannot grant occupancy unless there is a proof of vesting that land under S. 15(6). It must therefore, be held that if the proceedings are pending before the Tahsildar, then the Tribunal shall defer consideration of the application for occupancy till the proceedings before the Tahsildar are completed or the appeal, if any, is disposed of by the Assistant Commissioner."

The Division Bench agreed with the view expressed by Bopanna, J. in *Veerabhadrapa Girimallappa v. Land Tribunal, Gokak*, 1981 (2) Kar LJ 272, in which it has been held that once the Tribunal comes to know that the proceedings are pending before the Tahsildar under Sec. 15 of the Act, it should defer consideration of the application of the tenant for occupancy right till the proceedings before the Tahsildar are completed in accordance with law. It is in conformity with this decision the learned single Judge has interpreted the decision of the Tribunal as amounting to deferring the application filed in Form No. 7 for consideration until the application filed under Sec. 15 of the Act is decided by the Tahsildar.

11. Sri Shevgoor, learned counsel appearing for the appellant placed reliance on a Full Bench decision of this Court in *A.H. Thimmappa Vs. T.H. Ramiah*, In that case the question before the Full Bench was as to whether the Taluka Executive Magistrate under the Karnataka Debt Relief Act, 1976 was competent to go beyond the tenor of the deed evidencing the transaction of sale and declare the

transaction as one of mortgage? Considering the scope and ambit of the statute i.e., the Karnataka Debt Relief Act, 1976, the Full Bench came to the conclusion that no such power was, conferred upon the Tahsildar. Accordingly, the Full Bench answered the question as follows:--

"The Sub-Divisional Magistrate or the Taluka Executive Magistrate, as the case may be, under the Karnataka Debt Relief Act, 1979, has no competence to go beyond or behind the tenor of the deed evidencing the transaction of sale and declare the transaction as one of mortgage."

The learned counsel however placed reliance on the following observations made in that decision.

"Whenever a statute does not in express terms confer jurisdiction on an authority to determine particular subject or topic, in order to find out whether such jurisdiction has been impliedly conferred, it is first necessary to examine the scope, ambit, amplitude and the intendment of the statute to find out whether such determination really falls within the true scope of the statute."

What we have said so far does not go contrary to the said observations because in these observations it has been specifically stated that whenever a statute does not in express terms confer jurisdiction on an authority to determine particular subject or topic, in order to find out whether such jurisdiction has been impliedly conferred, it is first necessary to examine the scope, ambit, amplitude and the intendment of the statute to find out whether such determination really falls within the scope of the statute. Therefore, in Thimmappa's case, the Full Bench has not laid-down that it is not open to the Court to go into the question as to whether a particular provision confers jurisdiction to decide the question which is necessary for the purpose of exercise of jurisdiction. We have already pointed out that without the power to determine the question as to creation and continuation of the tenancy by the landlord, exercise of jurisdiction under Sec. 15 of the Act is not at all possible because the very basis for granting relief under Sec. 15 of the Act is that the landlord must have either created or continued the tenancy. Therefore, we are of the view that the Tahsildar is empowered under Sec. 15 of the Act to determine the question as to whether the tenancy was either created or continued by the applicant under Sec. 15 of the Act. We accordingly answer the point raised for determination in affirmative.

12. For the reasons stated above, the Appeal fails and the same is dismissed.

13. Appeal dismissed.