

(2006) 06 KAR CK 0117
In the Karnataka High Court
Case No : Writ Petition No. 22144 of 1999

U.T. Radhakrishna Rao

APPELLANT

Vs

M. Venkappayya Nayak and Others

RESPONDENT

Date of Decision : 02-06-2006

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2, 2 (19), 38

Citation : (2006) 3 KCCR 1821

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Vasudha, for G.S. Visweswara, for the Appellant; Sandhya Rao, for K.M. Nataraj, for Respondent 1 and Ramesh B. Aneppanavar, High Court Government Pleader for Respondents 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—This petition is filed by Sri U.T. Radhakrishna Rao challenging the order of the Land Tribunal dated 6.9.1985, Annexure "G" passed by the 3rd Respondent in Case No. 21 of 1981-82.

2. The Petitioner is the owner in possession of Sy. No. 28/1 including 10 cents of lands in Sy. No. 28/1P1 now granted in favour of the 1st Respondent. The father of the Petitioner built a structure which is by the side of the road in Sy. No. 28/1 in 1965. The said structure was leased for the purpose of running a hotel in favour of the 1st Respondent. Respondent No. 1 is running a hotel and a provision store in the said structure. He was residing elsewhere with the members of his family. The said structure occupies about 3 cents of land only without any appurtenant land to the said structure as the structure is by the side of a High Way. The 1st Respondent is not an agricultural labour. The first Respondent filed Form No. 7 claiming to be a chalageni tenant of the land in question. However, it was rejected on 29.8.1981. After rejection of the same, he filed Form No. 2-A claiming occupancy rights in respect of Sy. No. 28 to the extent of 5 cents. A spot inspection was conducted. Thereafter, the Tribunal has

chosen to accept the request of the contesting Respondent in the matter of grant of occupancy rights under the Act. Aggrieved by the said order, the Petitioner filed a Writ Petition in this Court in W.P. No. 18988 of 1985. In the light of the constitution of the appellate authority, the matter was transferred to the appellate authority. Before the same could be considered, the appellate authority stood abolished. C.P. was filed and was allowed. Proceedings were converted as writ petition. This is how the present writ petition is listed before me.

3. Heard Smt. Vasudha, learned Counsel for the Petitioner. She invites my attention to the material facts to say that grant in favour of the contesting tenant is factually and legally unsustainable on the facts of this case. She invites my attention to the material facts to contend that the contesting Respondent cannot be termed to be an agricultural labour for the purpose of grant in his favour. She says that a small businessman is trying to take advantage of the welfare legislation in the matter of occupancy rights. She wants an interference.

4. Per contra, learned Counsel for the Respondent argues that the material facts and the material evidence would show that the contesting Respondent is an agricultural labour and he is entitled for consideration in terms of the order of the Land Tribunal. He supports the order.

5. After hearing, I have carefully perused the material placed on record.

6. Admitted facts would reveal of the contesting Respondent having filed Form No. 7 before the Tribunal seeking for occupancy rights. That Form No. 7 stood rejected in terms of an order passed by the Tribunal on 29.8.1981. While rejecting, the Tribunal has noticed that the contesting Respondent has stated that he is running a hotel and he is doing business. Based on this ground, his application stood rejected. Thereafter, he has chosen to file Form No. 2-A, Annexure "B" and in Form No. 2-A he says that he is an agricultural labour residing in the dwelling house. Evidence was recorded and in the evidence, on 9.8.1985, he says that he is residing in the house for the past 15 years. He is an agricultural labour. It is also seen from Annexure "D" that a licence is provided to the shop. There is also lands provided to him in terms of Annexure "E". The Tribunal while deciding the case in favour of the contesting tenant, unfortunately, has failed to notice the relevant laws and the relevant evidence for the purpose of consideration of occupancy rights in respect of dwelling house. The Tribunal has only given its conclusion on the basis of spot inspection. Spot inspection alone cannot be a decisive factor in the matter of grant of occupancy rights. It could at best be only one piece of evidence or supporting evidence in the matter. In the light of the earlier rejection on the ground of a hotelier and in the light of the licence and the evidence, it is very difficult for this Court to accept the order of the Land Tribunal in the matter of grant of occupancy rights of a dwelling house to the Respondent in the case on hand, as rightly argued by Smt. Vasudha, learned Counsel that the Tribunal has exceeded its jurisdiction in granting occupancy rights in favour of a tenant.

7. Section 2 defines the term "agricultural labourer". A reading of the same would show that to become an agricultural labourer, the principle means of livelihood is manual labour on hand.

Section 2(19) also defines the word "landless person". It also refers to a person who, holding no land whether as owner or tenant, earns his livelihood principally by manual labour on land, and intends to take to the profession of agriculture.

Section 38 provides for grant of dwelling houses of agricultural labourers. A careful reading of the said section would show that agricultural labour is entitled for the grant of occupancy rights and the dwelling house on a land not belonging to him subject to the dwelling house along with the site thereof and land immediately appurtenant thereto and necessary for its enjoyment. Unless it is established that the said dwelling house is necessary for enjoyment, the same cannot be granted.

8. It is to be noticed at this stage, the object of grant of occupancy rights in terms of the Land Reforms Laws. This Court in Radhu Shedthi Vs. Gopalakrishna Kedlaya, has considered the object of the Act. Though it was with reference to the grant of occupancy rights of a land, the said logic is equally applicable in the matter of occupancy rights of the dwelling house in terms of Section 38 of the Act. It is only meant for landless labourer and not to those who have some means to live.

9. In the case on hand, the contesting tenant cannot said to be a landless person in terms of the object. On this ground also the petition has to be succeed. On the facts of this case, I am satisfied that the contesting tenant is unable to prove that he is an agricultural labourer in terms of the material placed on record for the purpose of right u/s 38 of the Act. The Tribunal forgetting the object in the matter of grant and forgetting the "principle employment of manual labour" has chosen to provide a dwelling house to a small hotelier/businessman and such grant is not sustainable in terms of the Land Reforms Act.

10. Petition is accepted. Order is set aside. Form No. 2-A filed by the Respondent stands rejected. No costs.