

(1998) 06 KAR CK 0075

In the Karnataka High Court

Case No : Writ Petition No. 4240 of 1998

V. Chandranna and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-06-1998

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 133, 38, 44, 48, 48 A

Citation : (1998) 5 KarLJ 685

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri V. Lakshminarayana, for the Appellant; Sri R.I. D'sa, Government Advocate, for the Respondent

Judgement

1. The question involved herein is short but of far reaching effect. It pertains to the jurisdiction of the Tribunals constituted u/s 48 of the Karnataka Land Reforms Act, 1961 (hereinafter the "Act").

2. The above question has arisen in the context of the order dated 26-3-1997 (Annexure-E) passed by the respondent Land Tribunal. This order has been passed by the Tribunal in the guise of its jurisdiction u/s 48A of the Act. This order pertains to an agricultural land measuring 2 acres 1 gunta of Sy. No. 12/2 of Gattahalli Village, Sarjapur Hobli, Anekal Taluk, Bangalore Rural District.

3. It is not in dispute that Smt. Sarvamangala and her mother late Chennabasamma were owners of the land in question as on 1-3-1974. According to the petitioners, this land was sold by the owners jointly to the predecessor-in-title of the petitioners under a registered sale deed dated 26-2-1988 (Annexure-A) on a representation that it was not a tenanted land. It is a matter of record that the 4th respondent Sri Ramaiah filed successive writ petitions before this Court, the last being W.P. No. 26399 of 1974 (dated 20-10-1994) asserting that though he had filed an application in Form 7 before the Tribunal claiming occupancy right over the land in question within the prescribed period but the Tribunal has refused to entertain the said claim on the ground that he had not

filed any application as claimed. This Court, by a detailed order, disposed of the said writ petition with a direction to the Tribunal that it should record evidence to determine whether the 4th respondent herein had filed any application in Form No. 7 in respect of the land in question, permitting the parties to produce necessary evidence in proof of their respective cases. The Tribunal, thereafter, held fresh enquiry and as of fact concluded that no application in Form No. 7 claiming occupancy was filed by respondent Ramaiah. Nonetheless, it has further held and directed that "since the disputed land in Sy. No. 12/2 was a tenanted land as on 1-3-1974, it is decided that according to Section 44 of the Karnataka Land Reforms Act, it has to be taken over by the Govern- ment and the Tahsildar is directed to take action u/s 77 of the said Act".

4. Sri Laxminarayana, learned Counsel appearing for the petitioners, has questioned the jurisdiction of the Tribunal to direct the Tahsildar to take over the land and take action for distribution as per Section 77 of the Act by contending that the Tribunal has been vested with the powers u/s 48A of the Act either to accept or to reject an application filed in Form No. 7 claiming occupancy by a tenant in cultivating possession and if, as a matter of fact, no application was at all filed by the tenant then there was no occasion for the Tribunal to record any finding on any issue relating to tenancy muchless to direct any functionary under the Act to take over possession of the land and distribute the same.

5. Though I called upon the learned Advocate General to substantiate with reference to the provisions of the Act whether the Tribunal has any such power but he could not do so in any convincing manner. Under the hope that the Revenue Secretary and Law Secretary of the State, who are supposed to be in touch with the effective administration of the provisions of the Act dealing with agrarian reforms, which is still to be attained to the professed level despite lapsing of half a century from the day of Indian independence but they were also of no help in the matter.

6. I am right now concerned with the jurisdiction of the Tribunal vested under Chapter III of the Act which provides for "Conferment of Ownership on Tenants". Clause (35) of Section 2 of the Act defines "Tribunal" to mean the "Tribunal constituted u/s 48 of the Act". Section 48 empowers the State Government to constitute for each Taluk a Tribunal for purposes of the Act by a notification in the manner provided therein.

7. On an examination of the provisions of the Act, it is found that the Tribunal has been vested with the powers of adjudication of certain issues under Sections 7, 38, 48A, 67 and 133 of the Act.

8. I may first deal with the powers and jurisdiction of the Tribunal envisaged u/s 48A of the Act. The relevant sub-sections thereof being (1), (2), (4), (5) and (5-A) are being quoted hereunder:

Section 48A. Enquiry by the Tribunal, etc. --(1) Every person entitled to be registered as an occupant u/s 45 may make an application to the Tribunal in this

behalf. Every such application shall, save as provided in this Act, be made before the expiry of a period of six months from the date of the commencement of Section 1 of the Karnataka Land Reforms (Amendment) Act, 1978.

(2) On receipt of the application, the Tribunal shall publish or cause to be published a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it on the date specified in the notice. The Tribunal shall also issue individual notices to the persons mentioned in the application and also to such others as may appear to it to be interested in the land.

(3) The form of the application, the form of the notices, the manner of publishing the notices and all other matters connected therewith shall be such as may be prescribed. The Tribunal may for valid and sufficient reasons permit the tenant to amend the application.

(4) Where no objection is filed, the Tribunal may, after such verification as it considers necessary, by order, either grant or reject the application.

(5) Where an objection is filed disputing the validity of the applicant's claim or setting up a rival claim, the Tribunal shall, after enquiry, determine, by order, the persons entitled to be registered as occupant and pass orders accordingly.

(5-A) Where there is no objection in respect of any part of the claim, the Tribunal may at once pass orders granting the application as regards that part and proceed separately in respect of the other part objected to.

(6) xxx xxx xxx

xxx xxx xxx

xxx xxx xxx".

9. Section 67 of the Act finds place in Chapter IV of the Act dealing with "Ceiling on Land Holdings". Section 66 provides for filing of declaration by persons holding agricultural lands beyond a particular limit. Section 67 which is material for the present case reads thus:

"67. Surrender of lands in certain cases.--(1)(a) Save as provided in Section 66A, on receipt of the declaration u/s 66 the Tahsildar shall--

(i) verify the particulars contained therein as regards the survey number and the extent of the land;

(ii) determine to which class, A, B, C or D, the land belongs; and

(iii) place the declaration and the connected records before the Tribunal.

(aa) Where a portion of the holding declared before a Tahsildar is situated within the jurisdiction of another Tahsildar, the former shall send a copy of the declaration to the latter, who shall make the verification and determination

specified in items (i) and (ii) of clause (a) in respect of such portion and send the copy of the declaration and the connected records to the former Tahsildar, who shall place them before the Tribunal.

(b) Thereupon and after such enquiry as may be prescribed, the Tribunal shall determine the extent of the holding and the area by which such extent exceeds the ceiling area.

(c)xxx xxx xxx

10. Section 7 empowers the Tribunal to restore the possession to tenants dispossessed under certain circumstances. Similarly, Section 38 provides for registration of agricultural labourers as owners of the dwelling houses etc.

11. The next relevant Section is 133, which finds place in Chapter XI providing for "Miscellaneous". This Section reads as under.--

Section 133. Suits, proceedings, etc., involving questions required to be decided by the Tribunal.--(1) Notwithstanding anything in any law for the time being in force--

(i) no Civil or Criminal Court or Office or Authority shall, in any suit, case or proceedings concerning a land decide the question whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land from prior to 1st March, 1974;

(ii) such Court or Officer or Authority shall stay such suit or proceedings in so far as such question is concerned and refer the same to the Tribunal for decision;

(iii) all interim orders issued or made by such Court, Officer or Authority, whether in the nature of temporary injunction or appointment of a Receiver or otherwise, concerning the land shall stand dissolved or vacated, as the case may be;

(iv) the Tribunal shall decide the question referred to it under clause (1) and communicate its decision to such Court, Officer or Authority. The decision of the Tribunal shall be final.

(2) Nothing in sub-section (1) shall preclude the Civil or Criminal Court or the Officer or Authority from proceeding with the suit, case or proceedings in respect of any matter other than that referred to in that sub-section.

12. A simple reading of the aforesaid provisions as quoted above make it quite clear that u/s 48A, the Tribunal acquires jurisdiction only on receipt of an application filed by a person in Form No. 7 as prescribed under Rule 19 of the Karnataka Land Reforms Rules, 1974 (hereinafter the "Rules") within the prescribed time i.e. on or before 30-6-1979 and not otherwise -- Girija C. Hegde v The Land Tribunal, Coondapur and Others, Basappa v Land Tribunal, Bagalkot Taluk and Others. I had taken the same view in the case of Jingra Moolya Vs. Balakrishna, , holding that.-

"The Tribunal can assume jurisdiction to adjudicate the claim of occupancy right,

inter alia, only if an application to the said effect is filed by the person concerned within the prescribed time. If no such application is filed, then, the right of occupancy, even if admissible in respect of any piece of land, is lost because Section 48-A(8) provides that "Where no application is made within the time allowed under sub-section (1), the right of any person to be registered as an occupant shall have no effect". The Legislature has not invested the Tribunal to exercise any suo motu jurisdiction in this regard".

13. Filing of an application in Form 7 within the prescribed time is sine qua non for assumption and exercise of jurisdiction u/s 48A of the Act. In absence of any such application, any enquiry or direction issued by the Tribunal becomes ultra vires being beyond its powers under the Act and thus a nullity and consequently making it legally unenforceable. Similarly, u/s 67 of the Act, the Tribunal can proceed to determine the issues pertaining to land in excess of ceiling prescribed only when the Tahsildar places the declaration and the connected records before the Tribunal. Similarly, u/s 133 of the Act, the Tribunal can decide the question pertaining to nature of the land and whether the person claiming to be in possession of land is or is not a tenant of the said land prior to 1-3-1974 only when any of these questions are referred to it either by the Civil or Criminal Court or any other officer or authority, who in the absence of the said exclusionary clause would have had the competence to decide such questions.

14. The above view of mine is duly substantiated by Section 112(b) of the Act enumerating the duties of the Tribunal which read as under:

Section 112.--Duties of Tahsildar and Tribunal.--The duties and functions of the Tahsildar and Tribunal shall be as specified below.-

(A) Duties of Tahsildar.

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

(B) Duties of Tribunal.--

(a)to make necessary verification or hold an enquiry including local inspection and pass orders in cases relating to registration of a tenant as occupant, u/s 48A;

(b)to decide whether a person is a tenant or not;

(bb)to decide whether the land in respect of which an application u/s 48A is made or in respect of which any question of tenancy is raised or involved, is or is not an agricultural land;

(bbb)to decide question referred to it u/s 133;

(bbbb)to issue interim orders u/s 48C;

(bbbbbb)determination of the land to be surrendered u/s 67;

(c)to hold necessary enquiry (including local inspection) and pass orders in cases relating to registration of agricultural labourers as owners of dwelling houses and land appurtenant thereto u/s 38;

(d)to perform such other duties and functions as are imposed on the Tribunal under the provisions of this Act or under any rule made thereunder.

15. Coming to the facts of the present case, admittedly, as found by the Tribunal, no application in the prescribed Form and within the time prescribed was filed by the 4th respondent claiming occupancy in respect of the land in question. Therefore, the Tribunal could not have exercised its jurisdiction u/s 48A of the Act. After recording its finding to the above effect, the Tribunal became functus officio. Similarly, there was no reference by any Court or authority in terms of Section 133. Therefore, the impugned order of the Tribunal is not justifiable even under that provision as well.

16. Incidentally, a question may arise that if the land was infact tenanted immediately prior to 1-3-1974 being the date of commencement of the Karnataka Land Reforms (Amendment) Act, 1973 and prima facie, it is found by the authorities that under the Act the land had vested in the Government pursuant to Section 44 of the Act and becomes liable to be disposed of in terms of mandate u/s 45(3) read with Section 77 of the Act, but if the action is resisted by any person either in possession or otherwise on the ground that either the land is not an agricultural or that it was not tenanted on the given date, then which Court, Tribunal or Authority can legally decide such an issue?

17. On an examination of the scheme of the Act, I do not find any provision under which either the Tribunal or any authority has been empowered to adjudicate the said issues and, therefore, if a dispute of such nature arises then it can be resolved only by a Civil Court and not atleast by the Tribunal constituted under the Act.

18. Accordingly, the impugned order is quashed partially to the extent it has directed the Tahsildar to distribute the land u/s 77 of the Act. Anyhow, it is clarified that it will be open for the Tahsildar to proceed in the matter in accordance with law of his own and in that event the petitioner, if so advised, may seek legal remedy for redressal of his grievance, if any. No order as to costs.