

(2004) 08 KAR CK 0022

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 3464 of 1989 connected Writ
Petition No. 9105 of 2000

Veerabhadraiah

APPELLANT

Vs

The Land Tribunal and Others

RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 118
Karnataka Land Reforms Act, 1961 — Section 43

Citation : (2004) 6 KarLJ 553 : (2004) 4 KCCR 2837

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : V.S. Jagannath, Ravishankar, in L.R.R.P. No. 3464 of 1989 and M.R. Rajagopal, in W.P. No. 9105 of 2000, for the Appellant; V. Byelappa, Government Pleader for Respondent No. in W.P. No. 9105 of 2000 and for Respondent Nos. 1 and 2 in L.R.R.P. No. 3464 of 1989, B.V. Mallareddy, in W.P. No. 9105 of 2000 and R. Sridhar Hiremath, in L.R.R.P. No. 3464 of 1989, for the Respondent

Judgement

V. Gopala Gowda, J.—These two matters pertain to the same property. Hence, they are heard together and disposed of by this common order.

2. The land involved is Sy. No. 171/6 of Doddaballapur Village measuring 0-28 guntas. Mr. Veerabhadraiah, the petitioner in LRRP and respondent 3 in the writ petition is the owner of the same (hereinafter referred to as "the landlord"). Rahim Khan, the petitioner in the writ petition and 3rd respondent in the LRRP is the tenant of the same (hereinafter referred to as "the tenant").

3. The tenant filed application in Form 7 before the Land Tribunal seeking conferment of occupancy rights in respect of the land in question. After conducting enquiry, the Land Tribunal granted occupancy rights in favour of the tenant by its order at Annexure-A, dated 12-6-1986. The landlord challenged the said order in appeal before the Land Reforms Appellate Authority. The Appellate Authority dismissed the appeal as per the order at Annexure-B, dated

19-5-1989. Being aggrieved by the same, the landlord filed the LRRP.

4. It appears that the landlord borrowed loan from the Primary Cooperative Agriculture and Rural Development Bank by furnishing the land in question as security. Since the landlord became defaulter, the Bank raised dispute and obtained an award on 6-12-1991. To execute the award, execution in CEP No. 331 of 1993-94 was initiated in which notice was issued as per Annexure-E to the writ petition. The tenant filed suit in O.S. No. 378 of 1995 for a declaration that he is not liable to pay the amount and that the land in question is not liable to be sold for recovery of the loan amount. The suit was dismissed on 24-9-1999 as barred u/s 118 of the Karnataka Co-operative Societies Act, 1959 and also bad u/s 125 of the Act vide Annexure-F to the writ petition. In those circumstances the tenant has filed the writ petition seeking to quash the execution proceedings in CEP No. 331 of 1993-94 as per the notice at Annexure-E and to declare that the land in question is not amenable for sale under the Karnataka Co-operative Societies Act.

5. Granting the relief sought for by the tenant in the writ petition to quash the execution proceedings depends upon finalisation of the tenancy issue of the land. Hence, the Court proceeds to take LRRP first for consideration to put an end to the tenancy issue. Both the Land Tribunal and the Appellate Authority have concurrently held in favour of the tenant. The Land Tribunal considered the entries in the RTC and found that the tenant has cultivated the land on the appointed date 1-3-1974 and immediately prior thereto as his name was entered for the years 1972-73 and 1973-74. The Land Tribunal also considered the "Kararu Patra" and held that it was genuine document. On the basis of the admission of the landlord that the land was tenanted in 1971-72 the Tribunal concluded that the land was tenanted and Rehman Khan is the tenant. The Appellate Authority re-appreciated both oral and documentary evidence brought on record and concurred with the findings of the Tribunal. Though the landlord categorically denied execution of lease agreement dated 5-5-1972 (Ex. B. 2), the Appellate Authority found that the same was written by the landlord himself and even he has signed as scribe therein. The lease was for 5 years. Even the witnesses examined on behalf of the landlord have admitted that Rehman Khan was cultivating the land. The lease deed, the entries in the R.T.C. and the evidence of the witnesses have beyond doubt proved that Rehman Khan is the tenant of the land. Hence, both the Land Tribunal and the Appellate Authority were justified in holding as such and the grant of occupancy rights in favour of the tenant is perfectly in order. No interference is warranted with those orders. Hence, the LRRP is liable to be dismissed.

6. Now, coming to the writ petition, the tenant is not a party to the loan transaction nor he was a party in the dispute raised by the Bank. Therefore, the loan proceedings are not binding on him. Consequently, he being the tenant of the land, the tenanted land cannot be brought for sale for recovery of the loan raised by the landlord. That apart, as per Section 43 of the Karnataka Land

Reforms Act, 1961, the rights and privileges of a tenant shall not be limited or abridged. In other words, the right of the tenant shall not be affected.

7. There is yet another reason not to sell the land for the recovery of loan dues of the Bank. u/s 44 of the Karnataka Land Reforms Act, 1961, all the tenanted lands vests with the State Government free from all encumbrances. Therefore, the land in question ought not to have been taken as security by the Bank. After grant of occupancy rights, the tenant acquire right to enjoy the land subject to the obligations, restrictions and limitations. That being so, the landlord could not have raised loan on this tenanted land nor the Bank sanctioned the loan. Having sanctioned the loan, it is for the Bank to recover the dues from the landlord and it is the obligation of the landlord to clear the loan amount. Instead of proceeding against the land in question, the Bank may proceed with recovery from the landlord.

8. For the reasons stated above, LRRP No. 3464 of 1989 is dismissed. W.P. No. 9105 of 2000 is allowed and the execution proceedings in CEP No. 331 of 1993-94 against the land in question are quashed with liberty to the Bank to proceed against the landlord for recovering its dues in accordance with law.