

(2010) 01 KAR CK 0019
In the Karnataka High Court
Case No : Writ Appeal No. 1098 of 2008

Veeregowda (Dead) by his LRs.

APPELLANT

Vs

The Land Tribunal and Others

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 45, 48 A (1)

Citation : (2010) 3 KCCR 2069

Hon'ble Judges : Manjula Chellur, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : M.R. Rajagopal, for the Appellant; Srinivas, A.G.A. for ACC Associates, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Challenge in this appeal is to the judgment of a learned Single Judge dismissing the writ petition. In the writ petition, challenge was to an order of the Land Tribunal dated 20-4-1999 (Annexure-L) conferring occupancy rights in favour of the 3rd respondent.

2. Background facts in a nutshell are as follows.

Yediyurappa, father of 3rd respondent, filed an application u/s 48-A(1) of the Karnataka Land Reforms Act, 1961 in Form 7, to register him as an occupant u/s 45 of the Act, in respect of the lands bearing various survey numbers, situated at Maralabbekuppe Village in Kanakapura Taluk. The said application was filed on 30-12-1974 (Annexure-M). Lands claimed by the said applicant belonged to the 2nd respondent. The two items of properties bearing Survey Nos. 491 and 492 were mortgaged by the 2nd respondent in favour of one S. Basappa, under a registered mortgage deed dated 27-4-1960. Subsequently all the 11 items of properties were mortgaged in favour of one M. Kalagi Rudramani Swamy, under a registered mortgage deed dated 15-9-1962. The said mortgagee transferred his rights in favour of one Siddalinga Swamy, under a registered deed dated

9-7-1963, 2nd respondent, who had inherited the said properties, executed a sale deed with a right of redemption in favour of one Doddathi Shivane Gowda on 22-4-1963. Execution of the sale deed was denied and therefore, the proceedings were initiated before the District Registrar, purportedly u/s 74 of the Registration Act, 1908, wherein, an order dated 2-3-1966 was passed directing the Sub-Registrar to register the document with a condition to pay Rs. 15,000/- before getting the sale deed registered. Said order was questioned by Doddathi Shivane Gowda in W.P. No. 575 of 1966. The writ petition was allowed by an order dated 22-1-1969 (Annexure-B). The appellants claim that pursuant to the said orders, the purchaser D. Shivane Gowda became the owner of the property.

3. Form 7 filed by Yediyurappa did not show the name of Veeregowda as the owner. The Tribunal granted occupancy rights. Writ petition was filed questioning the said order, which was allowed and the matter was remanded to the Land Tribunal for fresh consideration. The Land Tribunal by its order dated 17-9-1996, rejected the claim of Yediyurappa. Said order was questioned by the 3rd respondent in the then Land Reforms Appellate Authority and the appeal was registered as A.L.R.A. No. 867 of 1987. Since the Appellate Authority was abolished, C.P. No. 60 of 1990 was filed in this Court, which was allowed and the said appeal was converted and registered as W.P. No. 8613 of 1991, which was allowed on 4-7-1997 (Annexure-D). Said order was questioned by Veeregowda in W.A. No. 6167 of 1997, which was dismissed on 20-3-1997. Thereafter, the Land Tribunal proceeded with the enquiry and passed an order granting occupancy rights in favour of the 3rd respondent on 20-4-1999 (Annexure-L). Veeregowda, questioned the said order in a writ petition, which upon consideration, was dismissed by the learned Single Judge. The death of Veeregowda was not brought to the notice of the learned Single Judge. Hence, the appellants have filed LA. No. 3 of 2008 for condoning the delay in filing the application to come on record as the legal representatives of Veeregowda, LA. No. 4 of 2008 for setting aside the abatement and LA. No. 5 of 2008 to permit them to come on record and prosecute the appeal. Considering the facts and circumstances of the case, we deem it appropriate to allow LA. Nos. 2, 3 and 4 of 2008. The legal representatives of the appellant Veeregowda, who have filed this appeal are permitted to prosecute the writ appeal.

4. There is delay of two days in filing the appeal. LA. No. 2 of 2008 has been filed to condone the delay. No objections have been filed to the application. Hence, the delay stands condoned.

5. We have heard the Learned Counsel appearing for the appellant and the Learned Counsel appearing for the respondents on the merits of the matter. The stand of Veeregowda-appellant, before the Land Tribunal and in the writ petition was that, the 2nd respondent was not in possession and enjoyment of the property, had not leased the property to Yediyurappa prior to 1-3-1974, the appointed day and hence the application filed in Form 7 is not maintainable and no occupancy rights should be granted. The contentions were not accepted by

the Land Tribunal and also by the learned Single Judge. The L.Rs of the appellant, reiterate the said contentions in this appeal.

6. On the contrary, leased Counsel appearing for the 3rd respondent made submissions in support of the findings and conclusion of the Land Tribunal in the order at Annexure-L and the independent finding recorded in the impugned order herein, by the learned Single Judge upon reconsideration of the matter. Learned Counsel made submissions in support of the impugned order passed by the learned Single Judge and seeks upholding of the order passed by the Land Tribunal as at Annexure-L. Learned Counsel submits that, the name of the tenant appear in the RTC record during the relevant period i.e., prior to the vesting of land in the State on 1-3-1974 and the property having vested in the State, has rightly been ordered to be registered in favour of the tenant. Learned Counsel submitted that, the entries in the RTC record has presumptive value. Learned Counsel pointed out that there is no evidence on record showing the possession and enjoyment of the properties by Veeregowda or his legal representatives after the order at Annexure-D was passed and the sale deed was registered. It was pointed out that there is no evidence regarding the redemption of mortgage by Veeregowda.

7. Indisputedly, 2nd respondent was the owner of the property, RTC of the property shows the name of the tenant as on 1-3-1974. All lands held by or in the possession of tenants immediately prior to the date of commencement of the Amendment Act, other than lands held by them under the leases permitted u/s 5 shall with effect on and from the said date, stand transferred to and vest in the State Government, in terms of Section 44 of the Act. Section 45 is regarding registration of tenants of land as occupants of land on certain conditions. Yediyurappa filed an application in Form 7 on 30-12-1974 claiming occupancy rights under the provisions of the amendment Sections 44 and 45 of the Act. Application was allowed, which was subsequently challenged and matter was remanded. After remand, an order was passed on 7-9-1986 rejecting the claim, which was set aside in W.P. No. 9613 of 1991, dated 4-7-1997, which received finality in W.A. No. 6167 of 1997, dated 20-3-1997. Thereafter, enquiry has been held by the Land Tribunal as per the rules and the occupancy rights were granted on 20-4-1999. Section 2(A)(34) of the Act has definition of the tenant used in the Act. Section 4 of the Act provides that a person lawfully cultivating any land belonging to another person shall be deemed to be a deemed tenant, provided (a) the land is not cultivated personally by the owner, (b) if such person was not a member of the owner's family; or (c) a servant or a hired labourer on wages. The meaning of the work "to cultivate personally" has been defined u/s 2(A)(11) of the Act.

8. Yediyurappa, had relied upon the entries in the RTC. The entries in the phanis prior to 1-3-1974 shows that Yediyurappa was cultivating the land. The 2nd respondent has given evidence in the Land Tribunal, regarding leasing of the properties to Yediyurappa. The 3rd respondent has deposed about the tenancy of

her father. Veeregowda did not depose before the Tribunal. The General Power of Attorney holder has deposed. The Tribunal has referred to the evidence on record. The Tribunal on consideration of the matter before it, held that, Yediyurappa was a tenant of the land on the appointed day i.e., 1-3-1974. The Tribunal is a fact finding authority. Before recording its finding in the order at Annexure-L, it has followed the prescribed procedure. Opportunity of hearing was provided to all the parties before it. It is not a case of violation of any statutory provisions or non-consideration of any material evidence placed on record.

9. There is no material on record, which shows that, Veeregowda-- writ petitioner got possession of the properties pursuant to the sale deed dated 22-4-1963 and that he cultivated the same as on 1-3-1974 and hence the property did not vest in the State and hence could not have been granted by the Land Tribunal to the 3rd respondent, on the application filed by her father Yediyurappa.

10. Learned Single Judge has considered the matter in detail and has found no ground to disturb the conclusion arrived at by the Land Tribunal granting occupancy rights. The impugned order passed by the learned Single Judge, in view of the findings recorded by the Land Tribunal, the material on record, in the above view of the matter, cannot be held to be erroneous.

In the result, the appeal is devoid of merit and shall stand dismissed. No costs.