

(2003) 03 KAR CK 0047
In the Karnataka High Court
Case No : Writ Petition No. 22252 of 1999

Vincent Stephen D'Souza	Vs	APPELLANT
Joseph D'Souza and Others		RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Karnataka Land Reforms Rules, 1974 — Rule 17

Citation : (2003) ILR (Kar) 1990 : (2003) 3 KCCR 1779

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : B.V. Krishna, for the Appellant; S.S. Sripathy, for R1 and 2 and M.E. Prabhu, AGA for R-5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Patil, J.—The learned Government Advocate accepts notice for respondents 5 and 6.

2. The petitioner, assailing the legality and validity of the order passed by the Land Tribunal, Mangalore, dated 24.3.1999 in proceedings No. LRT 253/81-82 in so far as it relates to the schedule properties, has filed this Writ Petition.

3. The case of the petitioner is that Respondents 1 and 2 filed Form No. 7 for grant of occupancy rights in respect of the lands in question showing respondents 3 and 4 as the owners. When proceedings were commenced, the petitioner represented by his GPA holder, has filed an application to implead himself as a necessary party in the said proceeding on the ground that as per the family settlement deed, he has also got a share in the properties. The Land Tribunal, after considering the oral and documentary evidence on record, granted occupancy rights in favour of respondents 1 and 2. Assailing the said order passed by the Land Tribunal, the petitioner has presented this Writ Petition.

4. Heard the learned Counsel for the petitioner and the learned Counsel for respondents 1 and 2 as also the learned Government Advocate appearing for

respondents 5 and 6. Respondents 3 and 4 are served and unrepresented. Perused the impugned order including the order including the order sheet and reassessed the entire matter thoroughly with the assistance of the learned Counsel appearing on both sides.

5. The principal grounds canvassed by the learned Counsel for the petitioner are that;

1. The application filed by the petitioner has not been allowed by the Land Tribunal;

2. The Land Tribunal has not conducted enquiry as envisaged under the relevant provisions of the Land Reforms Act and Rules;

3. The Land Tribunal has not permitted the petitioner to cross-examine the witnesses;

4. The Land Tribunal has not at all given a finding that as on 1.3.1974, respondents 1 and 2 were cultivating the said lands; and

5. That the land in question are not agricultural lands.

To substantiate his submissions, he has taken me through the order sheet maintained by the Land Tribunal and submitted that though there is a reference regarding participation of the petitioner and his Counsel, there is no order as such passed by the Land Tribunal allowing the application filed by the petitioner to come on record in the proceedings. He submitted that if the petitioner was given an opportunity, he would have brought to the notice of the Land Tribunal that the land in question are not agricultural lands. Further, he pointed out that the order sheet maintained by the Land Tribunal is signed only by two members, whereas the impugned orders is signed by three members which shows that the Land Tribunal has passed the impugned order contrary to the procedure and without application of mind. Further, he submitted that the Land Tribunal has not at all taken into consideration the material placed by the petitioner and therefore, the impugned order is liable to be set aside.

6. Per contra, the learned Counsel for respondents 1 and 2, inter alia, justified the impugned order, he has filed a detailed statement of objections and produced several documents to show that respondents 1 and 2 were tenants as on 1.3.1974 and that the land owners viz., respondents 3 and 4 appeared before the Land Tribunal and gave a statement that respondents 1 and 2 are the tenants. He submitted that the Land Tribunal, after conducting enquiry as required under the Act and rules has granted occupancy rights in favour of respondents 1 and 2 and therefore, no error or illegality as such has been committed by the Land Tribunal. Further, he submitted that the petitioner has left India and staying in Karachi and the so called General Power of Attorney has been considered by the competent Civil Court and it is declared that she is not a GPA Holder of the petitioner. He further submitted that the suit filed by the petitioner for injunction against respondents 1 and 2 has been dismissed and that in the suit filed by

respondents 1 and 2, injunction has been granted in their favour restraining the petitioner from interfering with their peaceful possession and enjoyment of the lands in question. Further, he picked to point out that a part of the land in question has been acquired by the Government showing the name of the father of respondents 1 and 2 and compensation was paid to him. Regarding the reliance placed by the petitioner on the settlement deed alleged to have been arrived between the family members of the petitioner in the year 1952, the learned Counsel for respondents 1 and 2 submitted that after the alleged settlement deed, the petitioner has not taken any steps to get his name entered in the relevant records nor has he produced any documents before this Court to that effect, except making an oral statement that the lands in question are not agricultural lands and therefore, no case is made out by the petitioner to interfere with the impugned order.

7. The learned Government Advocate appearing for respondents 5 and 6, inter alia, justified the impugned order. He submitted that the petitioner has abandoned his rights since several years because after the alleged settlement deed, he has not taken any steps. However, he picked to point out that once the petitioner has participated in the proceedings and thereafter his Counsel is represented and when he has not made any request either for spot inspection or for cross-examination, the question of giving opportunity to him does not arise. He therefore submits that the impugned order is in accordance with law and the Writ Petition is liable to be dismissed.

8. On the face of record, I do not find any error of law as such committed by the Land Tribunal. The submissions made by the learned Counsel for the petitioner that the application filed by the petitioner has not been allowed and no opportunity was given to cross-examine the witness and to put forth his case, have no substance. The petitioner himself has participated in the proceedings, produced documents and thereafter engaged the services of a Counsel who in turn participated in the proceedings. Further, the petitioner has not requested the Land Tribunal to permit him to cross-examine respondents 1 to 4 and therefore, the question of giving opportunity to him or to his GPA holder to cross-examine the witnesses does not arise. Further, except making an oral statement before this Court, the petitioner has not produced any document to show that subsequent to the alleged settlement deed, he is in possession of the lands in question and cultivating the same. Therefore, in my considered view, just an oral submission is not sufficient to declare that the lands in question are not agricultural lands. Further, as rightly pointed out by the learned Counsel for respondents 1 and 2, the suit filed by the petitioner for injunction was dismissed. It is significant to note here itself that the Civil Court declared that the alleged General Power of Attorney is not legal. When this is the material fact, the question of considering the case of the petitioner does not arise. Further, it is observed by the Land Tribunal in the order sheet that respondents 3 and 4 who are owners appeared before it and gave a statement that respondents 1 and 2 are the tenants and that they have no objection for the occupancy rights being

conferred in favour of respondents 1 and 2, When once consent is given and accepted, the question of recording further evidence does not arise. The Land Tribunal has granted occupancy rights in favour of respondents 1 and 2 accepting the statement given by respondents 3 and 4. Further, the contention of the petitioner that the order sheet is not signed by all the members of the Tribunal, has no substance. As per Rule 17 of the Land Reforms Rules, the order shall be signed, in addition to the Chairman, by the other members of the Tribunal who heard the case. In the instance case, it is clear from the certified copy of the impugned order produced by the petitioner at Page No. 14 that the said order is signed by the Chairman and other 3 members. It is not the requirement of Rule 17 of the Land Reforms Rules that the order sheet shall be duly signed by all the members and therefore, I do not find any substance in the said submission made by the learned Counsel for the petitioner. Further, the petitioner has abandoned his rights since several years and at a distance of time, he is challenging the order passed by the Land Tribunal. The same cannot be entertained as there should be an end for such litigations. Further, it is seen from the records that the landlords have filed a case against respondents 1 and 2 for non-payment of rent and that itself is sufficient to hold that respondents 1 and 2 are the tenants of the lands in question. Further, it is pointed out by the learned Counsel for respondents 1 and 2 that a portion of the land was acquired by the Government showing the name of the father of respondents 1 and 2 and compensation was paid to him. These facts prove beyond reasonable doubt that respondents 1 and 2 are the tenants of the lands in question. Therefore, I do not find any illegality or error in the impugned order.

9. Having regard to the facts and circumstances of the case as stated above and taking into consideration the factual and legal aspect of the matter, I do not find any good ground to interfere with the impugned order. Accordingly, Writ Petition is dismissed.