

(1978) 02 KAR CK 0019
In the Karnataka High Court
Case No : WP.1063 of 1977

Virupax Krishnaji and Others

APPELLANT

Vs

Land Tribunal, Ron and Others

RESPONDENT

Date of Decision : 17-02-1978

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a

Citation : (1978) 2 KarLJ 41

Hon'ble Judges : Puttaswamy, J

Judgement

1. In respect of Survey Nos. 28/1 and 27/1 measuring 2 acres and 35 guntas and 7 acres and 35 guntas respectively situated in Holemannur village, Taluk: Ron, District Dharwar, owned by respondents 2 to 5, one Ramachandra Virupaksha Purohit claiming himself to be their tenant, filed an application before the Land Tribunal, Ron, for conferment of occupancy rights under the provisions of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the 1961 Act"). It appears the original applicant Ramachandra Virupaksha Grama Purohit died on 17-1-75 and on his death, the petitioners who are his grand-sons and who claim to be his successors-in-interest, continued the proceedings before the Land Tribunal, Before the Land Tribunal, respondents 2 to 5 opposed the conferment of occupancy rights to the original applicant or his successors-in-interest principally on the ground that the lands had been mortgaged to the original applicant and had not been leased by them and therefore the original applicant or his successors-in-interest were not entitled for conferment of occupancy rights. Apparently accepting the plea of respondents 2 to 5, the Land Tribunal by its order d]. 28-1-76 (Ext.B) had rejected the application, the validity of which is challenged by the petitioners claiming themselves as the legal representatives of the original applicant.

2. Before I proceed to notice and examine the contention of the petitioners against the impugned order, I propose to deal with a preliminary objection urged by Shri Suresh S. Joshi, learned Counsel for respondents-5 Shri Suresh S. Joshi, vehemently contended that or the death of Ramachandra Virupaksha Grama

Purohit, the application filed by him for conferment of occupancy rights abated or terminated and cannot be continued by his successors-in-interest or his legal representatives and therefore the writ petition filed by the petitioner claiming themselves to be legal representatives of the original applicant was not maintainable before this Court. According to Shri Suresh S. Joshi, "the 1961 Act" in express terms does not provide for continuance of the proceedings for conferment of occupancy rights and therefore the one and the only order that can be passed by the Land Tribunal is to reject such an application. Shri Suresh S. Joshi urged that such a principle has been firmly settled by Bhimiah J, in WP.10445/76 connected with WP. 10962/76, decided on 13-10-77 I have carefully read the order dt. 13-10-77 of Bhimiah J, to ascertain whether such principle as propounded by Shri Suresh S. Joshi has been laid down in these cases. From the order of Bhimiah J, it is seen that one Shivarudra was an applicant for conferment of occupancy rights and he died on 29-11-75. On his death his sons who were his legal representatives were not brought on record and the application for conferment of occupancy rights was granted by the Tribunal in these cases on 30-10-76. On these facts, Bhimiah J, held thus:

"It is settled principle of law that on the death of a party, if his legal representatives are not brought on record the proceeding will abate. Further in the Act, there is no specific provision made for grant of occupancy rights in favour of a dead person."

In my view, the only legal principle enunciated by Bhimiah J, is that proceedings on an application for conferment of occupancy rights: cannot be continued on the death of the applicant and conferment of occupancy rights to a dead person is a nullity or illegal, which principle cannot at all be doubted. Except the above, no other principle that has a bearing to the contention urged by Sri Suresh Joshi has been decided by Bhimiah J, in these cases. Any other question decided is only a decision on the facts of the case and cannot be regarded as enunciating a principle and is of no assistance to Sri Suresh S. Joshi. Beyond so stating Bhimiah J, has nowhere stated that on the death of an applicant, his legal representative cannot be brought on record and the application cannot be prosecuted by his legal representatives as contended by Sri Suresh S. Joshi. I therefore hold that the decision of Bhimiah J, in WP. 10445 of 1976 connected with WP. 10963 of 1976 is not an authority for the proposition contended for by Sri Suresh S. Joshi and therefore requires to be examined de hors the decision of Bhimiah J, in those cases.

3. An agricultural lease even under the general laws of the land viz, the Transfer of Property Act and the Indian Succession Act is heritable and transferable (vide Sec. 109 of the Transfer of Property Act 1882 and Sec. 306 of the Indian Succession Act). In order to put the matter beyond all doubt and repel any contention to the contrary as urged by Sri Suresh S. Joshi, Sec. 24 of the 1961 Act has been enacted which declares that on the death of a tenant, his rights are heritable. When once the rights of a tenant are held to be heritable, it follows

that the successors in-interest or his legal representatives as of right are entitled to continue an application filed by the original tenant for conferment of occupancy rights. In my view, the right to seek for conferment of occupancy rights under "the 1961 Act" is not one of those actions which are covered by the maxim *actio personalis moritur cum persona* (personal action dies with the person) and therefore does not abate on the death of the original applicant for conferment of occupancy rights and that right survives to his legal representatives, who can as of right continue the same.

4. Shri Suresh S. Joshi next contended that in the absence of provisions similar to Order 22 of the CPC in the 1961 Act, the Land Tribunal cannot entertain applications by the legal representatives and decide the tenability or otherwise of the same. Shri N.A. Mandagi, learned Counsel for the petitioner, did not dispute the assertion of Shri Suresh S. Joshi that there were no provisions similar or analogous to Order 22 of the CPC regulating the filing of applications for bringing legal representatives in "the 1961 Act". But he contended and in my opinion rightly that the absence of a specific provision in the 1961 Act does not affect either the jurisdiction or the power of the Land Tribunal to decide such questions, in support of his contention, Shri N.A. Mandagi relied on the ruling of this Court in *Meenakshi v. MSTAT*, (1963) MysLJ. Supl. 180. In *Meenakshi's* case, (1963) MysLJ. Supl. 180, Somnath Iyer J. speaking for the Division Bench, examining the question whether on the death of an applicant for a stage carriage permit, his legal representative can continue such an application and the procedure to be adopted by the Tribunals in dealing with such applications in the absence of express provisions in the Motor Vehicles Act, observed thus:

" There is not, in my opinion, any substance in the argument advanced that unless the Motor Vehicles Act itself provides for the continuation of an application presented by a person who died before that application is disposed of, its continuation by his legal representatives is not possible. Under the scheme of the Act, it is clear that the purpose of the Act, is to enable a person to use his transport vehicle on the public roads after obtaining a permit. Sec. 46 of the Act makes provision for an application for a permit, and, Secs. 47 & 57 of the Act prescribe the procedure for the disposal of that application. It is clear that one of the duties of the Regional Transport Authority when an application is presented under Sec. 46 is to dispose of that application by the adoption of the procedure prescribed by these two sections. If one of the persons who make's an application dies before his application is finally disposed of, and, if the Motor Vehicles Act does not state that the application abates with his death, it is clear that it is for the RTA to mould its own procedure for the purpose of the discharge of its duty imposed on it by Secs. 47 and 57 of the Act. In my opinion, unless a law under which a proceeding is commenced and which enjoins the authority which has the power to dispose of that proceeding to take a decision in that proceeding contains express provision or provisions the necessary implication of which is that that proceeding abates with the death of the person who commenced it, it would be the duty of that authority to invent its own procedure

for the purpose of dealing with a situation like that so that the legal representatives of the person who commenced that proceeding may continue the proceeding which was interrupted by the death of the person who commenced it.

In *Karigowda v. RTA, Hassan* (WP. 1020/61 of Oct 5, 1961), the principle which was enunciated in *Smith v. Williams*, (1922) 1 KB Dn. 158) was applied to a case where, under the provision of S.68F, (1) of the Motor Vehicles Act, the Mysore Govt Road Transport Dept had made applications for permits and that department ceased to exist when the Mysore State Road Transport Corporation was constituted under the provisions of the MSRTC Act. This: Court pointed out that after the GRTD was abolished and that department could no longer prosecute the application made for permits, the Corporation which had succeeded to the undertaking of the department could continue the proceedings commenced by the department for the grant of the permits to it. The following observations of Sankey J, while referring to *Hemming v. Williams* ((1907) 2 IrR. 500), were what were considered to be in point:

The Lord Chief Justice referred to the English cases, including *Hemming v. Williams*, and added that "this construction has since been uniformly adopted", the construction, namely, which allows the matter to proceed by adding the personal representatives of the deceased person in order to give adequate effect to the intention of the Legislature. Later in his judgment he said "A suit is not dead because it is abated". That is the view expressed in *Pemberton on Revivor* p. 15. "It is suspended only, and is capable of being revived by procedure, and when jurisdiction exists in a case in which apt procedure is not provided by statute, the Judge must himself mould a convenient form of procedure, as did the English Common Pleas in *Hemming v. Williams*". I am entitled to do what was done in *Hamming v. Williams* and *Canning v. Farren* namely, mould a convenient form of procedure to meet the case."

"In *Smith v. Williams*((1922) 1 KB 158), in which Sankey, J, made these observations the Respt appealed to the General Commrs against his assessment to income-tax, whereupon the appellant, the surveyor, expressed his dissatisfaction and, by notice in writing under Sec. 59 of the Taxes and Management Act, 1880, required the Commissioners to state and sign a case for the opinion of the High Court. Subsequently and before the case, was signed and filed, the respondent died. A copy of the case when signed was served on the respondent's executor. On motion by the appellant that the proceedings in the appeal may be continued between him and the executor and that the latter be added as respondent, it was held that the proceedings did not abate, that the Court was entitled, in the absence of apt procedure being provided by statute on the subject, to mould a convenient form of procedure so that the appeal could be heard, and that it would do this by ordering that the respondent's executor be added as a respondent.

"In my opinion, if we should find, as we should, that the intention of the legislature was that an application presented by a person for the grant of a

permit should not abate with his death and that it may be continued by his legal representatives. and, if no apt procedure is prescribed by the Act for giving effect to that intention of the legislature, it would be the duty of the RTA to give adequate effect to the legislative intent by moulding a convenient form of procedure for the purpose of enabling the legal representatives to continue the proceeding in the place of the deceased applicant. What was done in *Hemming v. Williams* ((1907) 2 Ir. R. 500) and in *Canning v. Farren* (1907) 2 Ir.R. 480) to what a RTA could also do in a case of that description.

"Mr. Rangaswamy's submission before us that *Karigowda's* case in which the principle of *Smith's* case was accepted is distinguishable from the case before us for the reason that as pointed out by this Court, there was a compulsory duty imposed on the RTA by Sec. 68F of the Act to grant a permit to the MGRTD or the MSRTC, as, the case may be, is a submission which is based upon a distinction which makes no difference. The view of this Court is *Karigowda's* case did not rest upon, the fact that Sec. 68F of the Act made it obligatory on the part of the RTA to make a grant of the permit to the MSRTC but depended upon the principle which was enunciated in *Smith's* case, that if the intention of the legislature is clear and there is no apt procedure prescribed by the statute for giving effect to that intention, the authority functioning under the Act is under a duty to mould its own convenient form of procedure and thereby implement the legislative intent."

I am here concerned only with the enunciation on the latter question as on the former I have held that on the death of the original applicant, his right survives to his legal representatives. In my view, *Meenakshi's* case, (1963) MysLJ. Supl. 180, is a complete answer to the contention of *Shri Suresh S. Joshi*. On the application of the principles enunciated in *Meenakshi's* case, (1963) MysLJ. Supl. 180, it has to be held that a Land Tribunal in the absence of a specific provision to continue the proceedings before it and bring on record the legal representatives, the Land Tribunal should give effect to the legislative intent by moulding an apt and convenient form of procedure for the purpose of enabling the legal representatives to continue the proceedings in the place of a deceased applicant.

5. Let me assume that *Meenakshi's* case, (1963) MysLJ. Supl. 180, does not conclude the matter. Even then the contention of *Sri S. Joshi* does not commend itself to me either on principle or authority. According to *Shri S. Joshi* in the absence of express provisions in the 1961 Act, the Land Tribunal should fold up its hands and simply order the filing of an application where the original applicant is dead. In my view, such a construction of the Act would not advance the purposes and objects of the Act and clearly defeat the purposes and objects of the Act and would result in throwing all the principles of interpretation of statutes to the winds. I have therefore no hesitation to reject the contention of *Shri Suresh S. Joshi*.

6. Earlier I have held that the legal representatives are entitled to continue the

proceedings before the Tribunal. A fortiori they are entitled to challenge the order of the Land Tribunal and maintain this writ petition before this Court.

7. Lastly Shri Suresh S. Joshi contended that the petitioners were not the legal representatives of Ramachandra Grama Purohit. In the course of the Order, the Land Tribunal has observed that the applicants were present evidently referring to the presence of the petitioners. From the order of the Land Tribunal, it is not possible to say whether the petitioners had made an application for bringing them as legal representatives and if so their application had been decided after notice to respondents 2 to 5. Shri N.A. Mandagi, learned Counsel for the petitioners, fairly stated that the Land Tribunal may be directed to decide this question also by permitting them to file an application if not already done. In my view, Shri N.A. Mandagi is right in his submission.

8. Shri N.A. Mandagi, learned Counsel for the petitioners contended that the order passed by the Land Tribunal without conducting an enquiry as required by the 1961 Act and the Rules framed thereunder is not a speaking order. In order to examine the contention of Sri N.A. Mandagi whether the order is a speaking order or not, it is necessary to set out the order of the Land Tribunal in full and the same reads thus: (Ext."B")

It is seen from the order, the Land Tribunal has not given sufficient and clear reasons for rejecting the application for conferment of occupancy rights. Apart from the above, it has not adverted to the nature of the claim made by the applicant, the various documents that were produced. In that view, it has to be held that the order of the Land Tribunal is not a speaking order and is liable to be interfered with under Art. 226 of the Constitution.

9. Shri N.A. Mandagi, learned Counsel for the petitioner, also contended that the Land Tribunal had not recorded the statements of the parties and had not conducted a summary enquiry as required by Rule 17 of the Karnataka Land Reforms Rules. In support of his contentions Shri N.A. Mandagi relied on the Endorsement dated 10-1-77 of the Land Tribunal which reads thus; (Exhibit C)-

From a reading of the Endorsement it is seen that the Land Tribunal has not recorded the statements of the parties and has not conducted a summary enquiry as enjoined by Rule 17 of the Rules and has thus committed a manifest illegality apparent on the face of the record resulting in failure of justice to the petitioners.

10. For the reasons stated above, I quash the impugned order of the Land Tribunal by issue of a writ of certiorari and direct the Land Tribunal to dispose of the application presented by the deceased applicant Shri Ramachandra Virupaksha Grama Purohit in accordance with law and in the light of the observations made in this order. Before deciding the application filed by Ramachandra Virupaksha Grama Purohit for conferment of occupancy rights on merits, the Land Tribunal is directed to dispose of the applications made by the petitioners and others if any to bring them on record as the legal representatives of the deceased applicant after notice to respondents 2 to 5, if necessary by

permitting both the parties to produce such evidence they deem fit to produce on that issue. It is made clear that the petitioners and others if any are free to file applications to bring them on record as the legal representatives of the applicant since deceased if not already filed, which shall be disposed of by the Land Tribunal in accordance with my earlier directions.

11. Rule made absolute. Petitioners are entitled to their costs from respondent-5. Advocate's fee Rs. 100.