

(2015) 09 KAR CK 0017
In the Karnataka High Court
Case No : W.P. No. 42263/2003 (LR)

Vishnu and Others

APPELLANT

Vs

Land Tribunal, Khanapur and Others

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0017

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

Bench : Single Bench

Advocate : R.M. Hiremath and Harish S. Maigur, Advocates, for the Appellant; K. Vidyavati, A.G.A., for the Respondent

Judgement

K.N. Phaneendra, J.—Present writ petition is filed calling in question the order dated 28.05.2003 passed by the Land Tribunal in KLR OCP/SR/1451+147+16 OF Khanapur Land Tribunal, in granting occupancy rights in declaring one Ramachandra Honnurkar as tenant and granting occupancy right pertaining to the land bearing sy. No. 172/1, 171/2 and 172/2 of Jamboti village in Khanapur Taluk, Belgaum district.

2. I have heard arguments of the learned counsel for the petitioners and the respondents.

3. Before advertng to the legal aspects in this case it is just and necessary bear in mind the factual matrix of this case. Petitioners and respondent Nos. 3 to 9 are the members of a joint family. There were two applications in form No. 7 by the members of the joint family. According to the petitioners, one was filed by Sri Omanna Ramachandra Honnurkar and another was filed by his son Ramachandra Honnurkar. Omanna Ramachandra Honnurkar claimed that the said tenancy was enjoyed by entire joint family and he was cultivating the said land as tenant along with his sons including Ramachandra Honnurkar. The case of the respondent Nos. 3 to 9, who are the legal representatives of Ramachandra Honnurkar is that the said Ramachandra Honnurkar is the exclusive tenant

independently enjoyed the tenancy rights, not as a member of the joint family or representing any joint family as such. Therefore, it clearly goes to show that there are two rival claims with regard to the same properties.

4. The Land Tribunal at the earliest stage of the case without clubbing the above said two applications in form No. 7, granted occupancy rights in favour of Omana Ramachandra Honnurkar and his family, vide orders dated 20.11.1975 in KLR OCPSR 1451/74. The said order was challenged before this Court in W.P. No. 6095/1980. This Court vide orders dated 23.01.1985 allowed the writ petition, remanded the matter to the Land Tribunal with a direction to club both the applications filed by Omana and Ramachandra Honnurkar and dispose them off after holding a common enquiry and after following Rule 17 of the Karnataka Land Reforms Rules. After the disposal of the said petition, the statements of the witnesses were recorded, i.e., the statement of one Subhash son of Ramachandra Honnurkar and one Krishna son of Omana Honnurkar were recorded. The Tribunal has passed the second order on 13.01.1993 again granting occupancy rights in favour of the said Ramachandra Honnurkar. By that time, Omana Ramachandra Honnurkar was dead. Therefore, the legal representatives of Omana Honnurkar by name Krishna and others have preferred writ petition before this Court in W.P. No. 6814/1993 on several grounds.

5. This Court has once again found the order of the Land Tribunal as not proper and correct. At that time it was contended before this Court that the Tribunal has not considered the contents of form No. 7 filed separately by the parties and not ascertained the length of their tenancy and the source of tenancy, etc. and the Land Tribunal has also not discussed any documentary materials filed by the parties and not given opportunity to the parties to produce and adduce additional documents. Therefore, this Court with a specific direction again remanded the matter vide order dated 21.08.1998. Paragraph No. 4 of the order in the writ petition is very important which reads as under:

"4. I perused the records and Form No. 7 filed both by the father and the son wherein they have stated the length of their tenancy. The Land Tribunal in the impugned order has failed to consider the very source of tenancy as claimed by the respective parties. Without assigning any reasons, the application filed by the petitioners for production of additional evidence was not considered at all. Even the question formulated by the Tribunal is not in consonance with the claim of the parties in the case. The question in this case is, as stated supra, is as to who is the tenant whether the individual or the joint family and not whether the joint family would become the tenant because of the individual tenancy as formulated by the Tribunal."

6. In view of the above observation, the matter was again remanded to the Land Tribunal. The Land Tribunal after the above said order again passed the order on third time on 28.05.2003 granting occupancy rights once again in favour of the said Ramachandra Honnurkar which is called in question before this Court in this

writ petition.

7. Learned counsel for the petitioner strenuously contended that the very object of remanding the matter has been frustrated by the Land Tribunal. Again the Land Tribunal has not considered Form No. 7 filed by the parties and the evidence recorded by it in proper perspective and also not considered the documentary evidence filed by the respective parties in their proper perspective. Therefore, again the Tribunal has committed the same mistake as committed earlier and it has not followed the directions of this Court.

8. Per contra, learned counsel appearing for the respondents strenuously contended that the proceedings before the Land Tribunal, is a summary proceedings. It need not in detail discuss with regard to the rights and liabilities of the parties, need not look into each and every document and discuss about the documents as if a judicial court. It is a quasi judicial authority. If the reading of the Land Tribunal order if it is shown that it has applied its mind and decided the matter, such appreciation of the facts by the Land Tribunal is sufficient and the order cannot be interfered with. Therefore, the Land Tribunal after considering all the materials on record, has granted the occupancy right in favour of Ramachandra Honnurkar, which calls for no interference.

9. In this background first let me consider what exactly the order passed by the Land Tribunal. The order of the Land Tribunal which is impugned under this writ petition is at Annexure-K dated 28.05.2003. The Land Tribunal has recorded the factual matrix of the case in detail and only at penultimate paragraph it recorded its finding.

"It is stated that the legal representatives of Omanna and the legal representatives of Ramachandra Honnurkar have filed their written arguments separately. Ultimately it is stated that both the parties have produced certain receipts to show that they were paying the rents to the owners and all the receipts are in the name of Ramachandra Honnurkar as tenant. The legal representatives of Omanna have also filed karar (agreement) dated 09.01.1973. In that document the land bearing No. 172/2 has been in the name of Omanna. Therefore, the Tribunal has observed Omanna can't file form No. 7 to other lands. It is not explained by the legal representatives why Omanna has not filed form No. 7 so far as the other lands are concerned. The Kabuliyath has not been changed in favour of Omanna. The Kabuliyath in the year 1946 has been in the name of Ramachandra as a tenant. Even the parties have approached the Civil Courts in O.S. No. 97/1993 and there also it is not clear that Omanna was cultivating the land prior to 1974."

(The findings are in Kannada language)

--

Therefore, for the above said reasons the Land Tribunal has decided to award the occupancy rights in favour of Ramachandra Honnurkar. Except the above said

observation nothing has been done by the Land Tribunal though it remanded itself of the direction issued by this Court in W.P. No. 6814/1993.

10. In the previous order of this Court as noted above, the Court has directed the Land Tribunal to look into all the documents and also find out as per form No. 7 the source of the tenancy as claimed by respective parties. Thereafter if any additional documents are produced, those also to be considered by the Tribunal.

11. In this background I have carefully perused the Land Tribunal records. In Form No. 7 filed by Ramachandra Honnurkar which is at page No. 57 of the Land Tribunal Records wherein the column which is meant for the period for which the applicant has been cultivating the land as tenant, the said Ramachandra Honnurkar has mentioned the source as "since grandfather succession under cultivation" and it is stated that "he has been cultivating the said land as tenant since 40 years."

12. The statement of one Mukundraj Nagoji Rao was recorded by the Chairman earlier which is at page No. 71, the owner of the land he has also stated about the cultivation of the said land by all the brothers of Ramachandra Honnurkar. The deceased Ramachandra Honnurkar has also given statement at page No. 73 recorded by the Chairman wherein he also stated that, himself along with his all brothers have been cultivating the said land. Form No. 7 filed by Omanna which is at page No. 99 of the records it is stated that since 30 years he has been cultivating the said land by himself along with his sons, he has mentioned names of all his sons including Ramachandra Honnurkar.

13. Subsequent to the disposal of the W.P. No. 6095/1980 the statement of Subhash son of Ramachandra Honnurkar was recorded by the Chairman which is at page No. 247 and also the statement of Krishna son of Omanna was recorded on 20.10.1992. The earlier statements of Ramachandra Honnurkar was totally deviated by Subhash son of Ramachandra Honnurkar but the statement of Krishna son of Omanna is nothing but reiteration of the earlier statement of his father as noted in form No. 7.

14. The documents are also produced before the Court at page No. 265 to 367 which are all in Marathi language which appears to be rent paid receipts. Some are in the name of Ramachandra and some are in the name of Omanna. These documents and statements of the witnesses and also contents of Form No. 7 have not been even looked into by the Land Tribunal for the reasons best known to it. Though it is stated by the Land Tribunal in the orders impugned under this petition, that all the Kabuliyath and rent receipts are in the name of Ramachandra but the learned counsel for the petitioner drawn my attention to the documents which are placed before this Court as Annexures-G1 to G18, the rent paid receipts which though bears the name of Ramachandra Honnurkar but it also mentioned rent amount has been paid by the father Omanna. Therefore, the learned counsel stated that the above said documentary evidence and the oral evidence of the parties have not been looked into by the Land Tribunal.

15. The very object of remanding the matter earlier is to ascertain the source of the tenancy, whether that source is on behalf of the entire joint family or it is individual by Ramachandra Honnurkar, that has not been done by the Land Tribunal. It has not referred to the documents, particularly form No. 7, wherein the source of tenancy has been stated by either of the parties and also not considered the evidence of Ramachandra Honnurkar earlier recorded as noted above and also the rent receipts, the amount has been paid by the father of Ramachandra Honnurkar on behalf of Ramachandra Honnurkar, and not considered what evidentiary value that could be attached to the above detailed documentary and oral evidence are concerned.

16. It is the case of the respondents that Ramachandra Honnurkar and his father were not in good terms. He was thrown out of the house and therefore he independently secured the land for tenancy. If that is so, why his father has paid rentals on his behalf, is also not properly looked into to appreciated by the Land Tribunal. Though the Tribunal has very skeletally considered the facts and also some of the documents but it has not been observed the contents of form No. 7 and the evidence of the respective parties earlier and evidence of the legal representatives subsequently recorded and not considered what evidentiary value that could be attached to the contents of form No. 7 and the evidence of the parties.

17. No doubt the quasi judicial authorities need not give lengthy judgment like judicial Courts meticulously going through contents of the materials available but it will not absolve duty of the Land Tribunal at least to look into the prima facie documentary and oral evidence on record and to give its finding. However short the decision may be, but it should depict the application of mind by the Tribunal, if there are no reasons assigned for having not considered those documents though directed by this Court, again in my opinion, this Court has to direct the Land Tribunal to consider all the documentary evidence coupled with the oral evidence and the contents of form No. 7 in detail and then the Tribunal has to take appropriate stand with regard to the granting of occupancy rights either in favour of the entire joint family or in favour of the individual, i.e., Ramachandra Honnurkar.

18. Though this Court has in detail passed the above order it should not be misunderstood by the Land Tribunal that the Court is directing to conduct a roving enquiry into the materials on record, but it should apply its judicious mind to the important documents and contents thereof and particularly the contents of form No. 7 filed by the rival tenants and also the oral evidence lead by the parties and thereafter find out the real source of tenancy, whether it was in favour of the joint family or in favour of exclusively in the name of Ramachandra Honnurkar and thereafter it has to give its finding in accordance with law. Hence, without any other go, under the above said circumstances, the matter is once again remitted to the Land Tribunal to follow the observations made by this Court in this petition and also in the earlier order of this Court in W.P. No. 6814/1993

dated 21.08.1998 and pass appropriate orders in accordance with law.

Registry is directed to return the original records forthwith to the learned Government Advocate.