

(1996) 10 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 25271 of 1993

Vishwanatha and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-10-1996

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 38(4)
Karnataka Land Reforms Rules, 1974 — Rule 9A

Citation : (1997) 5 KarLJ 67

Hon'ble Judges : Chidananda Ullal, J

Judgement

1. The petitioner herein had filed originally W.P. in No. 20307 of 1982 before this Court. The same was transferred to the Land Reforms Appellate Authority, Dakshina Kannada District, Mangalore, to treat and try the same as an Appeal, whereupon,

an appeal in No. LRAT 3737 of 1986 was registered by the Appellate Authority. Subsequently, when the Appellate Authority came to be abolished, the records were called for by this Court, upon a C.P. filed in No. 3359 of 1991. On receipt of the case records, the instant writ petition is registered.

2. I heard the learned Counsel for the petitioner Sri Sarathchandra Bijai for Sri Shailendra M.R., the learned Government Pleader Sri M.N. Ramanjaneyagouda for the respondents 1 and 2 and Sri Sanath Kumar Shetty K. for Sri O.S. Bhat for the respondent 3. I have also perused the records.

3. The petitioner herein had originally filed writ petition in the year 1982 to challenge the order dated 4-10-1985 passed by the Land Tribunal, Mangalore, produced at Annexure-G to the writ petition, whereby the Land Tribunal had rejected the claim of grant of occupancy right to them under Section 38 of the Land Reforms Act.

4. The brief facts of the case are as follows:

The petitioners' mother one Seethamma, wife of Babu Maistry had filed Form 2-

A before the respondent 2-Land Tribunal, for grant of occupancy right under Section 38 of the Karnataka Land Reforms Act in respect of 8 cents of land in Survey No. 753 (T.S. No. 217) of Attavare village in Mangalore Taluk belonging to the respondent 3. In the said Form 2-A, the original declarant claiming herself to be an agricultural labourer sought for registration of occupancy right in respect of the said extent of land. During the pendency of the proceedings, the original declarant Seethamma died, whereupon, the petitioners herein were brought on record as the L.Rs. of the said original declarant.

5. The respondent 2-Land Tribunal after holding an enquiry rejected the claim for grant of occupancy right to the petitioners on the ground that the original declarant was not an agricultural labourer, but she was only a beedi worker. It is that rejection of the claim of the original declarant the petitioners have challenged by filing originally W.P. No. 20307 of 1982 as stated above.

6. The learned Counsel for the petitioner had argued that the occupancy right is heritable as contemplated under Section 24 of the Land Reforms Act. He had also cited a decision in Virupax Krishnaji and Others v Land Tribunal, Ron and Others, 1978(2) Kar. L.J. 41, in support of that argument. He had also drawn my attention to the evidence adduced by both sides before the Land Tribunal. He further submitted that the Land Tribunal in passing the impugned order had not properly weighed and appreciated the evidence on its record. He therefore prayed that the impugned order be quashed and the matter remanded to the Land Tribunal with a direction to it to grant occupancy right to the petitioners herein being the L.Rs. of the original declarant.

7. The learned Counsel appearing for the respondent 3 counter argued that it is only the tenancy right that is heritable under Section 24 of the Land Reforms Act and not the occupancy right under Section 38 of the Land Reforms Act, the one claimed by the original declarant, the mother of the petitioner. His argument is that the right under Section 38 of Land Reforms Act dies with the person and therefore succeeding to that right by the petitioners being the L.Rs. of the original declarant did not arise.

8. While referring specifically to Section 38(3)(d) of the Karnataka Land Reforms Act, the learned Counsel for the respondent 3 submitted that when no application for the occupancy right is made by an agricultural labourer within the time specified, the subject land does not vest in the State, but reverts back to the owner. Hence, he submitted that on the same analogy, with the failure of the case of the petitioners, the land was to revert back to the respondent 3.

9. The learned Government Pleader argued that the Land Reforms Act is a beneficial piece of legislation to be liberally interpreted to extend the benefit to the agricultural labourers under Section 38 of the Land Reforms Act, and according to him, on the demise of the agricultural labourer, that right to succeed to the occupancy rights rests on the L.Rs. He had also pointed out that, when it is a question of house or residence, it is not the benefit to the agricultural

labourer alone, but also to the benefit of his or her family members.

10. Having heard both sides, the points that arise for my consideration are:

(i) Whether the occupancy right under Section 38 of the Land Reforms Act is heritable or not.

(ii) Whether the rejection of the claim of the original declarant by the Land Tribunal in passing the impugned order is just and proper.

11. I proceed to answer the above as follows:

Point No. 1: The learned Counsel for the respondent 3 raised an important issue before me regarding the very continuance of the proceedings by the Legal Representatives of the original declarant, consequent to her death on 2-10-1984. His argument is that the grant of occupancy right is not inheritable as that of the tenancy right under Section 24 of the Land Reforms Act, for, according to him, that right is a personal right limited to the agricultural labourer who had resorted to Form 2-A under Section 38 of the Land Reforms Act and that the same dies with the person. By adverting to Section 38 of the Land Reforms Act, he submitted that in no part of the said provision of law it is so provided for inheritance of that right as in Section 24 of the Act.

12. No doubt in the provision therein for grant of occupancy right to dwelling house of agricultural labourers in the Land Reforms Act, it is not stated that the right of occupancy is heritable as in the case of tenancy right as provided for under Section 24 of the Land Reforms Act. But, if we read sub-section (4) of Section 38 of the Land Reforms Act, it is provided therein that Section 61 of the Land Reforms Act is applicable to the dwelling house or site under Section 38 of the Land Reforms Act of the agricultural labourer as they apply to a tenanted land. To understand that position clearly, it is better to quote Section 61 of the Land Reforms Act, and the same reads as follows:

"61. Restriction on transfer of land of which tenant has become occupant.-(1) Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall within (fifteen years) (from the date the certificate under Section 55 is issued) be transferred by sale, gift, exchange, mortgage, lease or agreement; but the land may be partitioned among members of the holder's joint family.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the occupant registered as such or his successor-in-title to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government (a financial institution, a co-operative land development bank, a co-operative society) or a company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty one per cent of the paid up share capital is held by the State Government or a Corporation owned or controlled by the Central Government or the State Government or both for development of land or improvement of agricultural practices; and without prejudice to any other

remedy provided by any law, in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it shall be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in the payment of such loan.

(3) Any transfer or partition of land in contravention of sub-section (1) shall be invalid (and such land shall vest in the State Government free from all encumbrances and shall be disposed in accordance with the provisions of Section 77).

13. If we read Section 38 and Section 61 of the Land Reforms Act together, we get an impression that the occupancy right to the agricultural labourer is as well a heritable right, or else, in my considered view, it would not have been provided therein in sub-section (1) of Section 61 of the Act for partition of the dwelling house or the site among the members of the holder and further it would not have been provided under Section 61(2) of the Act, that it shall be lawful for the occupant registered as such, or his successor-in-title to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government or a financial institution such as Land Development Bank or a Co-operative Society. This is how, I see the beneficial scheme of the Act with regard to grant of occupancy right to the agricultural labourers in respect of the dwelling houses/sites; let apart it is one of the well accepted principles that the judicial interpretation should be close to the legislative intent.

14. Therefore, I hold that the occupancy right to an agricultural labourer under Section 38 of Land Reforms Act is a heritable right. Hence, I answer Point 1 accordingly.

15. Regarding Point No. 2: In the instant case, the original declarant Seethamma died on 2-10-1984 while the proceedings were pending before the Land Tribunal. The petitioners herein being the L.Rs. were brought on record before the Land Tribunal. As a matter of fact, it is the petitioner 1 who is one of the L.Rs. of the deceased declarant Seethamma, who had adduced evidence before the Land Tribunal on behalf of himself and on behalf of the rest of the petitioners. In his evidence, he had clearly deposed that their mother was an agricultural labourer and besides she was also rolling beedies and that they themselves have paid the tax in respect of the subject house and that their deceased mother were in occupation of the house in question for more than 50 years and they never paid rent in respect of the house at any point of time. Even in the evidence of the respondent 3, he had deposed before the Land Tribunal that he never collected any rent from the original declarant Seethamma. It is important to note that the evidence of the petitioner 1 had not been challenged by the other side at all and therefore it had remained uncontroverted.

16. The Land Tribunal being a fact finding Authority, in my considered view, failed to appreciate the cogent and acceptable evidence on its record and in the process rejected the claim of the petitioners wrongly in the matter of grant of

occupancy right to the petitioners herein. I therefore do find total error in the impugned order passed by the Tribunal in not granting the occupancy right to the petitioners.

17. In that view of the matter, the impugned order is liable to be quashed and the matter is liable to be remanded to the Land Tribunal for passing considered order.

18. In the result, the impugned order passed by the Land Tribunal dated 4-10-1985 rejecting the claim of the petitioners for grant of occupancy right to the petitioners herein is quashed. The matter is remanded to the Land Tribunal with a direction to pass a considered order in the matter of grant of occupancy right to the petitioners in the light of the above observation made by this Court. Let the Land Tribunal do that exercise after issuing notices to all the parties concerned.

19. The writ petition is accordingly allowed. The rule made absolute.

20. In view of the above order, the office is directed to return the original records of the Tribunal, now on the case file of this Court to the Land Tribunal, Mangalore, Dakshina Kannada District, at an early date.