

(1997) 07 KAR CK 0074

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 1278 of 1990

Vithal Nagappa Metri

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-07-1997

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 108(B)

Citation : (1997) 4 KarLJ 231

Hon'ble Judges : Chidananda Ullal, J

Judgement

1. This is a tenant's revision to challenge the order dated 27-9-1989 in Appeal No. R.A.L.R. No. 33 of 1988, passed by the District Land Reforms Appellate Authority, Belgaum, whereunder the Appellate Authority set aside the order dated 9-12-1987, passed by the respondent 2-Land Tribunal, Belgaum granting occupancy right to the revision petitioner herein.

2. I heard the learned Counsel for the petitioner Sri B.S. Kamate, the learned Counsel Sri G.B. Shastri appearing for the contesting respondents 3 and 4. The respondent 1-State and the respondent 2-Land Tribunal are represented by Sri H. Hanumantharayappa, the learned High Court Government Pleader. The respondents 5 and 6, the formal parties having been served with notices have remained absent.

3. To advert to the facts of the case, the same are as hereunder:

That the father of the petitioner had filed Form No. 7, before the respondent 2-Land Tribunal on 22-7-1974 claiming occupancy right in respect of 38 guntas of land in Sy. No. 666/2 of Yellur village in Belgaum taluk. In the said Form No. 7, it has been claimed that the father of the petitioner was a tenant in respect of the land for 20 years. That the respondent 2-Land Tribunal after issuing notices to all the parties concerned held an enquiry with regard to the above claim of the petitioner's father and granted occupancy right to the petitioner herein by its order dated 9-12-1987. The same was challenged by the respondents 3 and 4 before the District Land Reforms Appellate Authority, Belgaum (hereinafter for

convenience referred to as "L.R.A.A."). Both the petitioners on the one side and the contesting respondents 3 and 4 on the other, had adduced additional evidence before the L.R.A.A., by resorting to applications thereto, whereupon both the sides had adduced additional evidence both oral and documentary. Thereafter, the L.R.A.A., on reappraisal of the evidence on record before the respondent 2-Land Tribunal and further on its own record, had passed the impugned order whereby it reversed the order passed by the respondent 2-Land Tribunal granting occupancy right or in other words to say that in passing the impugned orders the L.R.A.A., had rejected the claim of the father of the petitioner. The said order is now under challenge before this Court in the hands of the tenant. That the subject land originally belonged to one Sangappa Neelakantappa Potdar and consequent to his death the subject land was maintained by the Court of Wards.

4. The learned Counsel for the petitioner Sri B.S. Kamate submitted that the impugned order passed by the L.R.A.A., is totally illegal and is not based on the material evidence on record, both on the records of the Land Tribunal as well as on the records of the L.R.A.A. According to Sri Kamate, the order passed by the Land Tribunal was just and proper and there was no good reason for the L.R.A.A., to interfere with, to set aside the grant of occupancy in the name of the petitioner. He pointedly argued that the petitioner had adduced additional evidence by examining himself and two other witnesses. In support of the claim of the petitioner he had deposed before the L.R.A.A., that even earlier to the year 1938, the father of the petitioner was very much cultivating the subject land as a tenant. He further pointed out that even the evidence of the petitioner before the Land Tribunal was in consonance with the claim filed by the father of the petitioner in Form No. 7. In this context, Sri Kamate had taken me through the proviso (c) to Section 108 of the Land Reforms Act (henceforth the Act), wherein it is provided that with effect from the date on which the land was released from the management of the Court of Wards, all the provisions of the Act shall apply to the land and therefore, Sri Kamate argued that even based on the additional evidence led in by his party, the L.R.A.A., would have confirmed the order passed by the Land Tribunal. Therefore, he prayed that the impugned order passed by the L.R.A.A., be set aside and the order passed by the Land Tribunal in granting the occupancy right be confirmed.

5. As against the above argument of Sri Kamate, Sri G.B. Shastri counter argued that the order passed by the respondent 2-Land Tribunal at the first instance was not based on reasons. According to Sri Shastri, the impugned order was passed according to the whims and fancies of the majority of the members of the Tribunal. While taking me through the impugned order that came to be passed by the Land Tribunal, Sri Shastri pointed out that the Land Tribunal had not given any reason for granting the occupancy right to the petitioner and all that it reads is that the decision was by the majority of the members of the Tribunal. Therefore, according to Sri Shastri, the order passed by the Land Tribunal was totally unjustifiable. While referring to the additional evidence led in by the

respondents 3 and 4 before the L.R.A.A., Sri Shastry pointed out that there is nothing for the petitioner to be aggrieved of the impugned order, for the same was based on material and clinching evidence, as the petitioner had adduced evidence in producing Ex. A-1 notification dated 18-2-1938 issued by the Dewan of Kurundwad State, wherein it was notified that Court of Ward was appointed in respect of the subject land and if there was any objection thereto, the parties objecting thereto could file their objection within a period of six months therefrom, Ex. A-2 lease agreement, executed by the Court of Ward in the name and favour of one Lakshman Omanna Gadikari on 21-3-1938, leasing out the subject land on rent and further Ex. A-3, a registered lease dated 19-4-1944, executed by the father of the petitioner in favour of the Court of Wards for a period of 5 years with an undertaking thereto that the land that was taken on lease would be returned immediately after the lease period of 5 years. It is also the submission of Sri Shastry that even the evidence adduced by B.W. 2 as well as B.W. 3 in support of the case of the petitioner before the L.R.A.A., was also of no assistance to the petitioner, for when A.W. 2 had deposed before the L.R.A.A., that the father of the petitioner was working as a coolie under Sangappanavar, the original owner, B.W. 3 on the other hand deposed before the L.R.A.A., that he was not knowing when the father of the petitioner had taken the subject land for lease.

6. Sri Shastry next argued that even proviso (c) of Section 108 of the Act is also not lending support to the case of the petitioner, for the subject land was never a tenanted land earlier to the year 1944, and that even if subsequent to the year 1944 the subject land was leased, it was leased by the Court of Wards in the name of Lakshman Omman Gadikari and that at no point of time the subject land was leased to the father of the petitioner. Therefore Sri Shastri submitted that the impugned order passed by the L.R.A.A., is just and proper and there is no reason for this Court to interfere with the same.

7. Now the point for my consideration is whether the impugned order passed by the L.R.A.A., is based on material evidence on record and whether the same is called for to be interfered with or not.

8. My answer to the above point is in the negative. The reasons are as hereunder:

I have to point out at the threshold that the father of the petitioner had filed Form No. 7 on 22-7-1974, claiming occupancy right as against the respondents 3 and 4 contending that his tenancy had commenced about 20 years earlier. If it is true that the tenancy of the father of the petitioner had commenced 20 years earlier to the date of application, obviously, that would date back to in and around the year 1954 and not earlier to that year. It is in the evidence on record that the subject land was leased by the Court of Wards at the first instance in the year 1938 to one Lakshman Omman Gadikari and in the year 1944 to the father of the petitioner and that lease was for a specific period of 5 years with an undertaking by the father of the petitioner that he would surrender the subject land immediately after completion of that period of 5 years. Therefore, it cannot

be contended now that the subject land was other than under the Court of Wards. It is also clear from the provision of Section 108 of the Act, that subject to the provisions of Section 119 nothing in the provisions of Act except Section 8, shall apply to lands taken under the management of the Court of Wards or of a Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890. I feel it is relevant to quote here Section 108 of the Act and the same reads as hereunder:

108. Lands taken under management of the Court of Wards, etc.- Subject to the provisions of Section 119 nothing in the provisions of this Act except Section 8 shall apply to lands taken under the management of the Court of Wards or of a Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890, or to the lands taken under management temporarily by the Civil, Revenue or Criminal Courts by themselves or through the receivers appointed by them during the period of such management:

Provided that.-

(a) in the case of a tenancy subsisting on the date of taking over the management, the provisions of Section 44 shall apply and the land shall vest in the Government;

(b) in the case of a tenancy created during the period of management, when the land is released from such management, the tenant shall be dispossessed and the possession of the land shall be delivered to the person lawfully entitled to such possession;

(c) with effect from the date on which such land is released from such management, all the provisions of this Act shall apply to such land". If the case of the petitioner is that the father of the petitioner was a tenant earlier to the year 1938 to take the benefit under the proviso (c) of Section 108 of the Act, it is obvious that the case of the father of the petitioner would have been that he was a tenant earlier to the year 1938. If that is so, at any stretch of imagination the father of the petitioner would not have contended in his Form No. 7 filed in the year 1974 that he was tenant for 20 years. In the circumstances that the petitioner had not adduced additional evidence to show that his father was a tenant earlier to the year 1938, it appears to me that the petitioner made a feeble attempt before this Court to take advantage of the proviso (c) of Section 108 of the Act, only to say contrary to the case that was made out in Form No. 7 filed by his father at the first instance before the Land Tribunal. In my considered view, the petitioner cannot be allowed to say as against the case that was made out by his father in Form No. 7 and therefore the said additional evidence adduced by the petitioner before the L.R.A.A., in my considered view is of no consequence and relief to him; apart from that, even the order passed by the Land Tribunal does not give reasons as to why it has granted the occupancy right to the petitioner. All that it says is that the majority of the members of the respondent 2-Land Tribunal had consented for grant of occupancy right to the

petitioner and it is therefore, the same was granted to him. Therefore, it appears to me that the respondent 2-Land Tribunal had granted the occupancy right for the whimsical reasons and that the same is therefore not based on acceptable reasons relying upon the material evidence on record.

9. In that view of the matter, I do not find any merit in the instant revision and therefore the same fails and accordingly is dismissed. No cost.