

(1977) 06 KAR CK 0014
In the Karnataka High Court

Y. Kichappa Setty

APPELLANT

Vs

V. Somanna Naika and Another

RESPONDENT

Date of Decision : 24-06-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Reforms Act, 1961 — Section 48 A
Karnataka Land Revenue Act, 1964 — Section 133

Citation : AIR 1977 Kar 185 : (1977) ILR (Kar) 1323 : (1977) 2 KarLJ 157

Hon'ble Judges : G.K. Govinda Bhat, C.J

Bench : Single Bench

Advocate : K.V. Narayanappa, for the Appellant; B. Veerabhadrappe and M.P. Chandrakantraj Urs, Government Advocate, for the Respondent

Judgement

1. This writ petition preferred under Art. 226 of the Constitution is directed against the order of the Land Tribunal, Somwarpet Taluk, Coorg, in Case No. LRM VI C/10/74-75 dated 30-10-1975, allowing the application of the first respondent, Somanna Naika in part and granting occupancy right in respect of 3 acres out of 6 acres 52 cents in Survey No. 10/4 and 48 cents out of 1 acre 48 cents in Survey No. 10/11 of Rasulpura village of Somwarpet Taluk in the District of Coorg under S. 48-A of the Karnataka Land Reforms Act, 1961 (hereinafter called "the Act").

2. Survey No. 10/4, according to the Revenue records measures 6.52 acres and Survey No. 10/11 measures 1.48 acres. The first respondent alleging that he is a tenant personally cultivating the said lands, filed an application dated 27-11-1974 in form No. 7 before the Land Tribunal for registering him as the occupant. The applicant stated, inter alia, that his land-holder is one Venkatasubba Setty, the elder brother of the petitioner Kichappa Setty and that he is cultivating the lands as a tenant for the past 23 years.

3. Rule 19 (1) of the Rules made under the Act requires that the Tahsildar of the Taluk concerned, shall verify the particulars mentioned in the application with

reference to the Record of Rights. The Tahsildar of Somwarpet Taluk, who is the Secretary of the Land Tribunal, filed before the Tribunal copies of the Record of Rights, Tenancy and Crop Inspection (R.T.C.) for the years 1967-75 as seen from the case-file produced before me by the learned High Court Government Advocate, Sri. Chandrakantaraj Urs. The Record of Rights shows that the petitioner Kichappa Setty was the actual cultivator during the years 1967-68 to 1974-75; the name of Somanna Naika, the alleged tenant, does not find a place in the said Record of Rights, Tenancy and Crop Inspection. The individual notice, required to be served on the land-holder in form No. 9, as seen from the case-file, shows that the respondent before the Tribunal was Venkatasubba Setty who was called upon to show cause as to why the two lands, Survey Nos. 10/4 and 10/11, should not be registered in the name of Somanna Naika, the applicant. The case was posted in the first instance, on 8-6-1975. On that date, the Tribunal, apparently, did not sit and a second notice was issued calling upon the said Venkatasubba Setty to appear before the Tribunal on 24-6-1975 at 11 a.m. at Kushalnagar. On 24-6-1975, the case was not taken up and ultimately a notice was issued on 3-10-1975 calling upon the parties to appear on 29-10-1975 at 11 a.m. at Kushalnagar. On that day also, the case was not taken up; but it was taken up on 30-10-1975. On that date the statements of the petitioner Kichappa Setty and the first respondent Somanna Naika, were recorded and signed by the Chairman of the Land Tribunal. The statements have been recorded in Kannada. It is not clear whether the statements were recorded by the Chairman or by a clerk as alleged by the petitioner. It appears to me that the statements of the parties were recorded by some person other than the Chairman. I say so because of the difference in the ink used for recording the statements and the signing. In the statement so recorded, it appears that the petitioner conceded that the first respondent was cultivating 3 acres out of 6.52 acres in Survey No. 10/4 and 48 cents out of 1.48 acres in Survey No. 10/11 and the first respondent was paying 30 Battis of paddy as rent annually for the past 23 years. To the same effect is the statement of the first respondent. On the basis of said statement passed the order impugned, which reads:

"Case called. Both present. Deposition recorded. The landlord accepts the cultivation of the land by the applicant. The lands have vested in Government since the lands are tenanted. The Tribunal determines that the applicant is the protected tenant and further confirms the occupancy of 3.00 acres in S. No. 10/4 and 0.48 cents in S. No. 10/11 of Chikkabettiga village in the name of Somanna Naika."

4. The records show that besides the Chairman of the Tribunal, four other members were present of whom Sri F. M. Khan, Member of the Legislative Council of Karnataka in the year 1975 and now a Member of the Rajya Sabha was one. In this writ petition, the petitioner has challenged the order of the Tribunal; he has made serious accusation against Shri F. M. Khan, the then Member of the Land Tribunal, alleging that the petitioner was threatened with dire consequences and imprisonment of six months and a fine of Rs. 500 and

made to sign the statement. This is what the petitioner has stated in para 3 of the writ petition:

"When the case was called the petitioner appeared and he was surprised when he was intimated that the respondent No. 1 had applied for the occupancy rights in respect of the lands referred to above on the ground that he was a tenant. The petitioner denied the tenancy and sought for time to file written objection. But the request was refused. On the other hand one of the members of the respondent No. 2-Land Tribunal whose name is ascertained as Sri F. M. Khan, M.L.C., dictated something to a clerk whose name is ascertained as Sri Rai, working in the Taluk office and the petitioner was directed to sign that statement. On refusal by the petitioner he was threatened with dire consequences of imprisonment of six months and a fine of Rs. 500. The petitioner being an old man was very much afraid of such onslaught and he was forced to sign. The contents were not even read over to him."

5. The petitioner is an old man of 78 years and that fact has not been disputed before me. He was not impleaded as a party-respondent before the Tribunal notwithstanding the fact that the Record of Rights disclosed that the petitioner was the land-holder personally cultivating the lands in question. In the first instance, notice was served on the petitioner's brother Venkatasubba Setty who alone has been impleaded as a party respondent. Subsequent notices were served on the petitioner although he has not been impleaded as a party-respondent. It is relevant to state that the petitioner and his brother Venkatasubba Setty are not members of a joint Hindu family and that there has been a partition effected between them some years ago. If the Tahsildar who is the Secretary of the Tribunal had properly scrutinised the relevant revenue records with reference to the application of the first respondent as required under R. 19 of the Rules made under the Act, the defect in the proceedings of not impleading the petitioner would have been noticed and the Tribunal would have impleaded the petitioner and taken notice to him. In the statement of the first respondent recorded by the Tribunal, he has stated that he has been paying rent at the rate of 30 "battis" of paddy for about 23 years. After the partition between Vankatasubba Setty and the petitioner, the properties have fallen to the share of the petitioner and therefore, the first respondent could not have paid any rent to Venkatasubba Setty. If he was paying rent as stated by him to the petitioner he would have stated in his application before the Tribunal that Venkatasubba Setty is his landlord? Would he have failed to implead the petitioner as the respondent in the proceedings before the Tribunal? No counter-affidavit of Sri F. M. Khan or that of the then Chairman of the Tribunal has been filed before this Court denying the serious accusation made by the petitioner charging threat of imprisonment by Sri F. M. Khan. Though Sri F. M. Khan is not a member of the Tribunal at present, the Secretary of the Tribunal could have obtained the counter-affidavits of Sri F. M. Khan and that of the then Chairman of the Tribunal if the Tribunal disputed the charges levelled by the petitioner before this Court. I asked Sri Chandrantraj Urs, Senior Government Advocate

representing the Tribunal whether he wants any time to file counter-affidavits. He submitted that he has no such instructions and he has been asked to argue only on the basis of the records. It is settled law that where serious accusations are made against any authority or member of a Tribunal in writ proceedings, if the charges are not denied by a proper counter-affidavit they shall be deemed to have been admitted. The first respondent's advocate has filed a statement of objections before this Court denying the allegations made by the petitioner. An affidavit of Somanna Naika has been filed stating that all the averments made in the Writ Petition are incorrect and denied. The first respondent is an interested party. The allegations are made against the Tribunal and the Tribunal members have to deny the charges.

6. The statutory presumption arising under S. 133 of the Karnataka Land Revenue Act is that the entries in the Record of Rights are correct until they are shown to be wrong. Having regard to the course of human conduct and probabilities, it is rather difficult for me to believe that the petitioner would have readily made a statement conceding the claim of the first respondent for approximately a moiety of the lands claimed. The probabilities are that some pressure was brought on the parties by one of the members of the Tribunal. It has to be remembered that the statements of the petitioner and the first respondent were taken during the period of Emergency when persons in the position of Sri F. M. Khan were in a position to get people detained under MISA and ordinary citizens were afraid of such persons. I am, therefore, inclined to hold that the statement of the petitioner was obtained by the Tribunal under threat of imprisonment.

7. Apart from the allegation of threat of imprisonment there is one other serious infirmity in the statements recorded as also the order made by the Tribunal. The first respondent, as stated earlier, has made an application for grant of occupancy right in respect of two lands viz., Survey No. 10/4 measuring 6.5 acres and Survey No. 10/11 measuring 1.48 acres. The statement of the first respondent recorded by the Tribunal does not give the boundaries of the portions alleged to have been cultivated by him. The Tribunal's order also does not demarcate the portions of the two survey sub-divisions, in respect of which occupancy right is conferred on the first respondent. When portions of the survey sub divisions are not demarcated by boundaries before the Tribunal passes the order and the order does not set out the boundaries, such an order is incapable of implementation. It has been repeatedly held by a Division Bench of this Court to which I am a party that when portions of a survey number are claimed to be tenanted lands, such portions should be clearly demarcated and the boundaries specified.

8. For the above reasons, I allow this writ petition, quash the impugned order including the statements recorded from the petitioner as well as the first respondent. The Land Tribunal, Somwarpet, is directed to implead the petitioner and then proceed in accordance with law. The petitioner is entitled to the costs of

this writ petition, which shall be recovered from the Land Tribunal, Somwarpet Advocate's fee Rs. 250. Ordered accordingly.

9. Shri Chandrakantraj Urs, learned High Court Government Advocate, who appeared before me, produced the case-file and assisted the Court, is permitted to file his memo of appearance.

10. Petition allowed.