

(2005) 02 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 2512 of 1993

Y.S. Ramachandra Rao

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-02-2005

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 126, 48 A
Karnataka Land Reforms Rules, 1974 — Rule 17, 17 (6)

Citation : (2005) ILR (Kar) 2111 : (2005) 2 KarLJ 558 : (2005) 2 KCCR 941

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Kalyan Kumar, for H. Kantharaj, for the Appellant; Ratna N. Shivayogimath, High Court Government Pleader for Respondents-1 and 2 and V.C. Thimmaiah, for Respondents-3 and 4, for the Respondent

Judgement

S. Abdul Nazeer, J.—The petitioner claims to be an Archak of Anjaneyaswamy Temple. He had filed an application for grant of occupancy rights of lands measuring 31 guntas in Survey No. 643 situated at Yeragamballi Village, Yelandur Taluk, Mysore District. Likewise, respondents 3 and 4 had made applications for grant of occupancy rights to an extent of 20 guntas and 14 guntas respectively in the same Survey Number. The land in question was admittedly endowed to Sri Anjaneyaswamy Temple, Yeragamballi.

2. The Land Tribunal by an order dated 20-1-1981 had granted occupancy rights in respect of the said Survey Numbers in favour of respondents 3 and 4. Feeling aggrieved by the said order, petitioner filed a writ petition in W.P. No. 2126 of 1983 and this Court by the Order dated 12-11-1984 quashed the said order on the ground that it was not a speaking order and directed the Land Tribunal to make a fresh enquiry in accordance with Rule 17 of the Karnataka Land Reforms Rules, 1974.

3. The Land Tribunal by a subsequent Order dated 8-12-1988 (Annexure-K) granted occupancy rights to an extent of 31 Guntas in the said Survey Number in

favour of the petitioner. Again, the Land Tribunal by an Order dated 19-11-1992 (Annexure-J) granted occupancy rights to an extent of 18 guntas and 13 guntas respectively in the same Survey Number in favour of respondents 3 and 4 respectively. The petitioner has called in question the said Order of the Land Tribunal dated 19-11-1992 (Annexure-J) in this petition.

4. Learned Counsel for the petitioner submits that the Order at Annexure-K granting occupancy rights in favour of the petitioner on 8-12-1988 has become final since it was not challenged by the contesting respondents. Therefore, the Land Tribunal erred in granting occupancy rights of the same land in favour of respondents 3 and 4 as per Annexure-J while reviewing its Order dated 8-12-1988 (Annexure-K). He submits that the respondents 3 and 4 are not tenants and were not in possession of the lands during the relevant point of time. It is further argued that the respondents 3 and 4 have claimed occupancy right in respect of Sy. No. 663 of the same village. The Land Tribunal is not justified in granting occupancy right in respect of Sy. No. 643 in their favour.

5. Learned High Court Government Pleader submits that since the occupancy rights of the same lands are granted in favour of the petitioner as also respondents 3 and 4, both the orders are required to be quashed and the Land Tribunal should be directed to reconsider the matter by clubbing the applications of the petitioner and the contesting respondents.

6. As noticed above, the petitioner had challenged the order of the Land Tribunal dated 20-1-1981 granting occupancy rights in respect of the said land in favour of respondents 3 and 4 in W.P. No. 2126 of 1983 and this Court on 12-11-1984 quashed the said order with a direction to hold an enquiry and pass a reasoned order. When the petitioner and the contesting respondents were rival claimants, it was incumbent upon the Land Tribunal to club all the applications in terms of Sub-rule (6) of Rule 17 of the Karnataka Land Reforms Rules, 1974 and pass a common order. However, when the applications of the respondents 3 and 4 was taken up for consideration after remand, the Land Tribunal had already granted occupancy rights in respect of the same land in favour of the petitioner. The Land Tribunal grants occupancy rights in favour of respondents 3 and 4 in terms of the impugned order while reviewing its previous Order dated 8-12-1988. Therefore, the question for consideration is whether the approach of the Tribunal is just and proper.

7. A Division Bench of this Court in the case of Krishna Shetty and Ors. v. Land Tribunal, Somwarpet and Ors., ILR 1979 Kar. 1681, has held that once an application is duly made for registration of occupancy within the extended time for making such applications, the Land Tribunal cannot refuse to consider that application on the ground that it has already disposed of the earlier application made by some other person in respect of the same land. In such an event, the Land Tribunal can consider the later application u/s 48-A by re-opening its earlier decision on the earlier application and to consider both those applications together and decide the matter afresh.

8. In the case of Basappa Gurusangappa Baragundi Vs. The Land Tribunal, Badami and Others, , a Division Bench of this Court has held that even if one of the rival applicants had filed his application earlier and the Tribunal had granted him occupancy right in respect of the land and subsequently another applicant makes an application within the time-limit provided by Section 48-A in respect of the same land, the Tribunal is bound to consider the later application by setting aside its earlier order and consider both the rival applications.

9. In the case of Mahaveer Chambanna Kallimani and Others Vs. State of Karnataka and Others, , this Court has again reiterated that when two applications were pending before the Tribunal, both the applications are required to be considered together and if necessary by setting aside the order granting one of those applications on an earlier occasion.

10. In the present case, the petitioner was granted occupancy rights on 8-12-1988. The earlier order of the Land Tribunal dated 20-1-1981 granting occupancy right in respect of the same land in favour of the contesting respondents was quashed by this Court and the matter was remanded to the Land Tribunal for fresh disposal in accordance with law. When the Land Tribunal was considering the application of the contesting respondents in terms of the order of this Court in W.P. No. 2126 of 1983, dated 12-11-1984, it was incumbent upon the Land Tribunal to recall the order dated 8-12-1988 and club the application of the petitioner and the contesting respondents and pass a common order. It is true that the Land Tribunal has no jurisdiction to review its previous order. However, whenever two or more applications are made claiming occupancy right in respect of the same land, and one of them was allowed, the only way to consider the later application is to re-open its earlier decision on the earlier application and consider both the applications together and decide the matter. In my view, the Tribunal ought to have recalled the order dated 8-12-1988 and clubbed the applications of the petitioner and contesting respondents and passed a common order. The argument of the learned Counsel for the petitioner that grant of occupancy right in favour of the petitioner has become final is not acceptable in view of the legal position explained above.

11. That brings me to the question whether the Land Tribunal has jurisdiction to grant occupancy right in respect of a Survey Number not mentioned in Form 7 by mistake of an applicant and mentioning a different survey number. A Division Bench of this Court in Padmaraja Athikari v. Land Tribunal, Karkal, W.P. No. 20080 of 1991 (LR), DD: 15-7-1993 (DB), has held that the applicants being villagers may be illiterates and ignorants, there is every possibility that they may mention wrong survey number in their Form 7. If the Tribunal after holding an enquiry ascertains the correct survey number and grants occupancy right in respect of that survey number, such an order cannot be held to be without jurisdiction. It is held as follows.--

"Though the claimant may mention wrong numbers in his or her Form 7, the Tribunal has got jurisdiction to verify and ascertain the correctness of the

numbers because the possibility of mentioning wrong numbers cannot be ruled out since Form 7 will be filed by the villagers who may be illiterates and ignorants. Therefore, the Tribunal after due enquiry finds out the correct survey number and grants occupancy rights in respect of that survey number even though the claimant might have mentioned some survey number wrongly. It cannot be said that the Tribunal has no jurisdiction to pass such order".

Therefore, even if there is a mistake in mentioning the survey number in Form 7 by the contesting respondents, it was permissible for the Land Tribunal to verify and ascertain the correctness of the numbers and pass appropriate orders. Thus, there is no substance in the argument of the learned Counsel for the petitioner that the Tribunal has no jurisdiction to grant occupancy right in respect of Sy. No. 643.

12. As noticed above, the lands in question are endowed to Anjaneya Swamy Temple, Yeragamballi and are governed by the Mysore (Religious and Charitable) Inams Abolition Act, 1955. Section 126 of the Karnataka Land Reforms Act states that the tenants and inferior holders who are entitled to get occupancy rights under the various Inams Abolition Act specified in Schedule II to the K.L.R. Act will have to get their rights worked out only under that Act. By Act 26 of 1979, the Mysore (Religious and Charitable) Inams Abolition Act was amended whereby Section 9 was substituted empowering the Land Tribunal constituted under the K.L.R. Act, 1961 to determine the claims for registration of occupancy and continuation of tenancy. The said amendment was held to be invalid in the case of Shri Kudli Sringeri Maha Samsthanam Vs. State of Karnataka, . No doubt, a Full Bench of this Court in the case of Ramaiah Vs. State of Karnataka and Others, , has held that the order passed by the Land Tribunal prior to the decision in Shri Kudli Sringeri Maha Samsthanam's case, are valid on the Doctrine of de facto Court. Since I have taken a view that the orders impugned are not sustainable in law on its merits the matter will have to be remanded to the Deputy Commissioner, Mysore District, who is the Competent Authority to decide the applications of the petitioners and the contesting respondents. Similar view is taken by this Court in the case of A.C. Anantha Swamy and Another Vs. State of Karnataka and Others,

13. In the result, I pass the following.--

ORDER

(i) The order at Annexure-K, dated 8-12-1988 and the Order at Annexure-J, dated 19-11-1992 are hereby quashed, The matter is remitted back to the Deputy Commissioner, Mysore District for fresh disposal in accordance with law after due notice to all parties concerned,

(ii) I direct the Deputy Commissioner, Mysore District to club the applications of petitioner and respondents 3 and 4 and pass a common order.

(iii) Liberty is reserved to the parties to lead further evidence before the Deputy

Commissioner, Mysore District.

Writ petition is disposed off accordingly. No costs.