

(2019) 07 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition No. 11969, 11970 Of 2008(LR

Yusuff Ali Khan And Ors

APPELLANT

Vs

State Of Karnataka And Ors

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48A
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 KAR CK 0048

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : R.Kothwal, B.P.Radha, T.A.Karumbaiah, Syed Khader Nawaz,
Ikramulla Khan, Arun Shyam.M

Final Decision : Allowed

Judgement

1. The owners of land bearing Sy.Nos.59 to 64 of Meesaganahalli village, Jala Hobli, Devanahalli Taluk, Bengaluru District, have come up in these two writ petitions impugning the order of the Land Tribunal, Devanahalli, in conferring occupancy right in respect of aforesaid lands in two proceedings bearing No.LRF.6/1974-75 and LRF.7/1974-75 in favour of contesting respondents in these proceedings.

2. Brief facts leading to these two writ petitions are as under:

The subject matter of proceedings before the Land Tribunal, namely (1) Sy.No.59 measuring 5 acres 03 guntas, (2) Sy.No.60 measuring 5 acres 03 guntas, (3) Sy.No.61 measuring 5 acres 01 gunta, (4) Sy.No.62 measuring 5 acres, (5) Sy.No.63 measuring 5 acres 02 guntas and (6) Sy.No.64 measuring 4 acres 36 guntas, were the properties belonging to one Abdul Gafar Sharief Saheb and his daughter Norojahan Begum @ Laila Begum.

3. The records would indicate that Abdul Gafar Sharief Saheb sold Sy.Nos.59 to 62 under two registered sale deeds of even date ie., on 5.3.1965 in favour of two

brothers, namely Moosa Khan and Yusuf Ali Khan. The lands which were sold in favour of Moosa Khan are Sy.Nos.59 and 60 and with reference to Yusuf Ali Khan, it is Sy.Nos.61 and 62. So far as Sy.Nos.63 and 64 are concerned, which were standing in the name of Noorjahan Begum, she sold the same in favour of one Hassaine Khan under registered sale deed dated 11.12.1964.

4. The registered sale deeds under which aforesaid three persons, who are also brothers purchased the lands in question are produced in these proceedings at Annexures-A and B in WP.No.11969/2008 and at Annexure-A in WP.No.11970/2008. The contents of the sale deeds would clearly reveal that the owners of the lands, namely Abdul Gafar Sharief Saheb who sold Sy.Nos.59 to 62 under two registered sale deeds and his daughter Noorjahan Begum who sold Sy.Nos.63 and 64 under another registered sale deed, were in cultivation, possession and enjoyment of the said lands and while executing the said sale deeds possession is also delivered in favour of the aforesaid three purchasers.

5. Admittedly, the aforesaid sale deeds are registered documents which are executed in favour of the respective purchasers much before the amended provisions of the Karnataka Land Reforms Act, 1961 (KLR Act for short), coming into force introducing Section 48A to the Act in granting rights to the tenants of the lands to seek occupancy rights in respect of the said lands. Therefore, at an undisputed point of time, under registered documents the title and possession of the lands is transferred to three brothers, namely Moosa Khan, Yusuf Ali Khan and Hassaine Khan.

6. The records would indicate that after the appointed date under the amended provisions of the KLR Act, two persons have filed applications seeking occupancy right in respect of aforesaid 6 lands. Admittedly, they are also brothers. First of the applications is filed by Mohammad Fakruddin on 31.12.1974 where he would seek occupancy right in respect of Sy.Nos.59, 60, 61 and 62. It is seen that for the very same lands, another application is filed by one D.Abdul Hameed on 28.6.1979. So far as lands bearing Sy.Nos.63 and 64 are concerned, only one application is filed by D.Abdul Hameed, which is dated 31.12.1974, in other words, he is claiming occupancy right in respect of all the 6 lands, whereas Mohammad Fakruddin claims occupancy right only in respect of 4 lands, namely Sy.Nos.59 to 62.

7. It is seen that the said two applications are taken up together by the Land Tribunal in proceedings bearing Nos.LRF.6 and 7 of 1974-75. So far as proceedings No.LRF.6/1974-75 is in respect of considering occupancy right of Sy.Nos.59 to 62 and proceedings No.LRF.7/1974-75 is in respect of Sy.Nos.63 and 64. In these two proceedings notice was issued to everybody and evidence was recorded, where the applicants, namely Mohammad Fakruddin and Abdul Hameed were not in a position to produce any documents to demonstrate that tenancy right was granted in their favour by the owners viz., Moosa Khan and Yusuf Ali Khan, who are purchasers of Sy.Nos.59 to 62 and Hassaine Khan, who has purchased Sy.Nos.63 and 64. In fact, not even a scrap of paper was

produced by said two applicants before the Land Tribunal in support of their claim. However, they relied upon revenue entries in RTC to demonstrate that on the cut-off date their names were shown in Column No.12 as cultivators, as such, they are entitled to seek occupancy right.

8. Accordingly, at the first instance, the applications filed in No.LRF.6/1974-75 and LRF.7/1974-75 were disposed of by two separate orders, each dated 28.8.1979. Against which it is seen that the owners filed two writ petitions. First of them is, WP.No.18657/1984 in challenge to the order of Land Tribunal in LRF.No.6/1974-75 and WP.No.18659/1984 is in challenge to the order of Land Tribunal in LRF.No.77/1974-75. In the meanwhile, the Land Reforms Appellate Authority was constituted to go into the correctness or otherwise of the order issuing occupancy certificate by the Land Tribunal. Hence, the said two writ petitions were transferred to the Land Reforms Appellate Authority where the WP.No.18657/1984 was registered as LRA.No.427/1986 and WP.No.18659/1984 was registered as LRA.No.420/1986, where the said appeals are dismissed on the ground of non prosecution. It is stated that at the relevant point of time, out of three brothers, two brothers, namely Hassaine Khan and Moosa Khan were dead and it is only Yusuf Ali Khan who was alive but, he was bedridden.

9. It is in this background, nothing was done in the matter after dismissal of appeals before the Land Reforms Appellate Authority. Thereafter, belatedly these two writ petitions are filed by surviving Yusuf Ali Khan and the legal heirs of Moosa Khan and Hassaine Khan contending that grave injustice is caused to them/land owners by the persons who do not have any manner of right, title or interest in the lands in question; that merely on the basis of revenue entries in RTC showing the name of said persons as cultivators in Column No.12 the Land Tribunal has granted occupancy certificate in favour of the applicants which is wrongly confirmed by the Land Reforms Appellate Authority in dismissing the appeals filed by the land owners on technicalities, out of them two had died and one was seriously ill and bedridden at the relevant point of time.

10. In these proceedings, the contesting respondents who are applicants before the Land Tribunal in Nos.LRF.6/1974-75 and LRF.7/1974-75 are opposing these writ petitions mainly on the ground of delay and laches.

Secondly, on the ground that the order of the Land Tribunal is just and proper, inasmuch as the same is considered after recording the evidence of the parties where the applicants have demonstrated to the satisfaction of the Tribunal that they were tenants of the lands in question at the relevant point of time.

11. In this proceedings, entire records pertaining to proceedings in No.LRF.6/1974-75 and LRF.7/1974-75 on the file of the Land Tribunal, Devanahalli, as well as the proceedings in appeals bearing Nos.LRA.427/1986 and 420/1986 on the file of Land Reforms Appellate Authority, Bengaluru, were secured through learned Additional Government Advocate appearing on behalf of the State.

12. On going through the aforesaid records, it is clearly seen that the lands in question were Darkasth lands which were granted in favour of Abdul Gafar Sharief Saheb and his daughter Noorjahan Begum. Admittedly, the lands bearing Sy.Nos.59 to 62 were under the ownership of said Abdul Gafar Sharief Saheb and land bearing Sy.Nos.63 and 64 were granted in favour of his daughter Noorjahan Begum. It is seen that father and daughter both have executed in all three sale deeds in respect of aforesaid 6 lands.

13. First of the sale deeds is by daughter - Noorjahan Begum on 11.12.1964 which was executed by her in favour of Hassaine Khan with reference to land bearing Sy.Nos.63 and 64 of Meesaganahalli, Jala Hobli, Devanahalli Taluk, Bengaluru District, where she would categorically state that the said lands were in her possession, cultivation and enjoyment and that, she has sold the same in favour of Hassine Khan, the respondent in LRF.No.7/1974-75. It is further seen that on the date of execution of sale deed, she would state that the lands in question have been sold in favour of Hassaine Khan and possession thereof is also delivered to him. However, there is no reference to any tenancy right being granted in favour of either Abdul Hameed or any other person in the said sale transaction.

14. The records would indicate that in spite of sale of aforesaid 6 lands, the revenue entries have continued both in column Nos.12 as well as 9 in showing the name of original owners Abdul Gafar Sharief Saheb and his daughter Noorjahan Begum without either changing the name of owners or the person in possession of the lands thereby clearly indicating that the revenue authorities have ignored the registered sale deeds which were registered in the Sub Registrar's Office with 'J' Form being appended thereto, which is not acted upon and necessary entries with reference to change in the name of ownership is not carried out, consequently question of disturbing the entries in Column No.12 also did not arise. Therefore it is clear indication that possession and title of the lands as it was prior to 1964 is continued in the revenue records without bringing on record the change in the title and consequential possession of lands in question in the revenue records.

15. Incidentally, similar is the situation with reference to lands in Sy.Nos.59 to 62 which were sold in favour of Moosa Khan and Yusuf Ali Khan under two registered sale deeds dated 5.3.1965, where the revenue entries continued even thereafter in the name of owner Abdul Gafar Sharief Saheb, which has resulted in the lands being shown as in possession and cultivation of a person other than the owner as on the cut off date i.e., 1.3.1974 after the amendment to the KLR Act, coming in the force. It is this mistake on the part of revenue authorities is taken advantage by two brothers, namely Mohammad Fakruddin and Abdul Hameed, who would file two separate applications; one by Mohammad Fakruddin on 31.12.1974 seeking exclusive tenancy right in his favour in respect of 4 items of lands bearing Sy.Nos.59 to 62 and second one is by his brother Abdul Hameed with reference to very same lands on 28.6.1979 claiming tenancy right against Abdul

Gafar Sharief Saheb. Infact, said Abdul Hameed would file one more application on 31.12.1974 in seeking occupancy right in respect of Sy.Nos.63 and 64 which were sold by Noorjahan Begum in favour of Hassaine Khan under registered sale deed dated 11.12.1964. However, it is stated that in the RTC of Sy.Nos.59 to 62 it is only the name of Mohammad Fakruddin is there and in respect of Sy.Nos.63 and 64 it is the name of Abdul Hameed is seen.

16. It is seen that said three applications filed by the brothers, namely Mohammed Fakruddin and Abdul Hameed were registered in LRF.Nos.6 and 7 of 1974-75 on the file of the Land Tribunal, Devanahalli, where there is an attempt by the applicants in claiming their exclusive possession of the lands as tenants, which is highly doubtful. However, the Land Tribunal when it took up the said applications together has failed to appreciate the fact that, how two different persons could be claiming exclusive tenancy right in respect of very same lands i.e., Sy.Nos.59 to 62. This Court would use the said expression in view of the fact that the applications of Abdul Hameed and Mohammad Fakruddin are on different dates and in both the applications they claim exclusive tenancy right for 4 items of lands in Sy.Nos.59 to 62. Whereas, when it comes to Sy.Nos.63 and 64, it is only Abdul Hameed who claims occupancy right in respect of said lands as tenant.

17. Incidentally, in the proceedings before the Land Tribunal both the brothers (Mohammad Fakruddin and Abdul Hameed) would not produce even a scrap of paper to demonstrate that tenancy right was conceded in their favour by the purchasers under sale deeds dated 11.12.1964 and 5.3.1965 from Abdul Gafar sharief Saheb and his daughter Noorjahan Begum. However, it is on the basis of default committed by the revenue authorities in not changing the names of the original owners in RTC of aforesaid 6 lands even after sale deeds being executed by them, the alleged tenants taking advantage of the old entries where they could demonstrate tenancy right under the erstwhile owners of the lands have tried to set up claim against subsequent purchasers, which is clearly seen in the applications which are filed by them.

18. In the instant proceedings, the applications admittedly are of the years 1974 and 1979. The records would clearly indicate that as on 1974 and 1979 neither Abdul Gafar Sharief Saheb nor his daughter Noorjahan Begum were owners of the lands in questions, which fact was not even within the knowledge of the applicants. Hence, they include the names of Abdul Gafar s/o Mohammed Usman Sharieff and Laila Begum w/o Mazrulla Macoias as 1st landlords and as and by way of abundant caution the names of Moosa Khan, Yusuf Ali Khan and Hassaine Khan are also included as 2nd landlord, thereby clearly indicating that they were not certain about the sale transaction which had taken place. In fact, it is only a chance litigation which they started by filing Form No.7 before the Land Tribunal.

19. As expected, the Tribunal without looking into the correctness or otherwise of the documents available on record and without calling upon the applicants to demonstrate before it whether they have any written document to show that the tenancy right is granted in their favour, proceeded to believe the version of the

tenants as well as the erstwhile owners, who tried to clandestinely support the applicants. It is quite interesting how Noorjahan Begum would have any interest in the lands when she has received the entire sale consideration prior to 11.12.1964 and executed sale deed in respect of lands bearing Sy.Nos.63 and 64 in favour of Hassaine Khan to come back and give evidence to say that Mohammad Fakruddin and Abdul Hameed are tenants in possession and occupation of the lands in question. However, if that were to be true, then why did she not mention the same in the sale deed which was executed by her in favour of Hassaine Khan or why for that matter her father Abdul Gafar Sharief Saheb also did not mention that in the sale deeds which were executed by him in favour of Moosa Khan and Yusuf Ali Khan on 5.3.1965, where nothing would have prevented them in stating that the lands which were sold by them was subjected to tenancy right; that the persons who were in cultivation of the same as tenants is either Abdul Hameed or Mohammad Fakruddin and that, possession would still continue with them. However, interestingly, these two persons, namely Abdul Gafar Sharief Saheb and Noorjahan Begum would state in the sale deeds executed by them that the lands in question were in their possession, cultivation and enjoyment, which they have conveyed in favour of Yusuf Ali Khan, Moosa Khan and Hassaine Khan under three different sale deeds and they would also state that possession is also delivered by them to the purchasers.

20. In the instant proceedings, the hitch in the entire transaction is lapse on the part of revenue authorities in not effecting relevant revenue entries in RTC in showing the names of the purchasers as owners of the lands in question and consequently, the persons in possession of the same by entering their name in column No.12, has given room to the applicants to claim the lands in question clandestinely, which was allowed by the Land Tribunal.

21. The other ground raised in these writ petitions is to the effect that Abdul Hameed one of the applicants is also a member of the Land Tribunal, Hosakote. In fact, when the way in which the Land Tribunals are functioning is looked into, the fact that this man (Abdul Hameed) had a say in the Order of the Land Tribunal in granting occupancy right in favour of the applicants, cannot be ruled out. In that regard, when the material on record is seen, the manner in which the Land Tribunal has proceeded to accept the applicants before it as tenants merely on the basis of revenue entries, would clearly indicate that the allegations made in the writ petitions cannot be brushed aside as baseless doubt.

22. The orders of the Land Tribunal dated 28.8.1979 were initially subject matter of writ petitions and later remitted to the Land Reforms Appellate Authority in Appeal Nos.427 and 420 of 1986 after constitution of the same, which were disposed of respectively on 30.9.1987 and 11.11.1988, where it is clearly seen that as on that date two of the appellants were dead, the other appellant, namely Yusuf Ali Kahn was said to be ill and bedridden and therefore, said appeals were not conducted by him properly. Thereafter, when the petitioners herein, namely one of the original appellant and the legal representatives of

other two appellants came to know about the aforesaid order of the Land Reforms Appellate Authority, they have come up in these two writ petitions.

23. It is seen that, there is an inordinate delay in filing these two writ petitions and in normal circumstances, this Court would have dismissed the writ petitions only on the ground of delay and laches. But in the instant case, this Court is not willing to pursue that in spite of the fact that, under similar circumstances, in several judgments this Bench and the other Co-ordinate Benches of this Court have held the delay to be one of the main grounds. However, when those judgments are looked into, it is seen that, on facts they are distinguishable and those are the cases where tenancy right was established. Therefore, when a right is established and while asserting the same if there is any delay, the same cannot be dismissed on the ground of delay and laches as it was done in earlier occasions.

24. In fact, here is a case where two brothers, who are totally unconnected to the lands in question and in respect of which they are not in a position to show any semblance of right in the manner of tenancy right, merely on the basis of a default entry in RTC for the relevant period are trying to assert their tenancy claim to vast extent of valuable land belonging to three brothers, which they have purchased for valuable consideration under registered sale deeds. In the instant case, what is seen is, even the earlier vendors in favour of the petitioners herein have worked against the interest of the purchaser in trying to give false evidence before the Land Tribunal which is contrary to the contents of the sale deeds executed by them; further the evidence of the petitioners herein itself would clearly indicate that they have purchased the lands under registered sale deeds and the third parties namely Abdul Hameed and Mohammad Fakruddin prevented them from enjoying the lands from 1971 to 1979.

25. The mentioning of aforesaid period is relevant for the reason that in the year 1971, there was no vested right in Noorjahan Begum and her father and even assuming that they are owners of the lands in question, their claim that the applicants are tenants of said lands in the absence of any document, cannot be entertained. Therefore, when the evidence available on record would clearly indicate that the lands in question were not cultivated by anybody from 1971 to 1979 how the applicants before the Tribunal could file an application seeking occupancy right by filing Form No.7 itself is an enigma and for all these transactions, the root cause is required entry not being altered in showing the name of purchasers, Moosa Khan, Yusuf Ali Khan and Hassain Khan as owners in column No.9 and consequently, they having secured possession of the lands from their erstwhile owners, their names should have been reflected in column No.12 pursuant to sale deeds dated 11.12.1964 and 5.3.1965 executed in their favour. Since such a procedure is not followed and the formality of changing name is not adhered to by revenue authorities, it has come to the aid of illegal claim by Mohammad Fakruddin and Abdul Hameed, who cannot be considered as naïve persons since one of them is admittedly a member of the Land Tribunal, who is

aware of the procedure in which he could raise tenancy claim to the lands in question.

26. In the aforesaid circumstances, this Court is of the considered opinion that delay and laches cannot be held against the actual owners when the claim is by totally unconnected persons. Therefore, if such claim is considered liberally, it amounts to supporting unsustainable claim of the applicants, namely Mohammad FAKruddin and Abdul Hameed, who cannot be remotely related to lands in question subsequent to 1964 and 1965, where the erstwhile owners have sold said lands in favour of 3 brothers, namely Moosa Khan, Yusuf Ali Khan and Hassaine Khan, irrespective of the fact that the erstwhile owner Noorjahan Begum supported their tenancy claim by giving evidence before the Land Tribunal. Again this Court would take a pause here and reiterate the fact that Noorjahan Begum having parted with her title and possession of lands in question in favour of Hassaine Khan and her father in favour of Moosa Khan and Yusuf Ali Khan, had no semblance of obligation to appear before the Land Tribunal to give evidence to support the case of the applicants, namely Mohammad FAKruddin and Abdul Hameed contrary to the averments made by her and her father in the registered sale deeds, where they have conveyed not only title but also possession to the purchasers.

27. In that view of the matter, this Court by overlooking the objections raised by the respondents, namely the so-called alleged tenants these writ petitions are required to be allowed and consequently, the orders of both the Land Reforms Appellate Tribunal in dismissing the appeals and the orders of Land Tribunal in conferring occupancy right in favour of contesting respondents herein are required to be set aside.

28. At this juncture, the learned counsel for the contesting respondents/tenants would submit that it is just and proper that the matters should be remanded back to the Land Tribunal for fresh consideration since it is a fact finding authority and this Court being a Revisional Court exercising powers under articles 226 to revise the orders of the Tribunal. However, this Court is not inclined to accept the said submission for the reason that, in these type of matters for nearly 30 years it has become an habit to remand the matter back to the land Tribunal and the Land Tribunal passing wrong orders for extraneous reasons, this Court setting aside the same and remand it back again for fresh consideration. Therefore, if this Court can revise the orders, it can also assess the facts contained by appreciating the material which would support the correctness or otherwise of the claim of both parties and give quietus to that, which is permissible under Article 226 of the Constitution. Indeed, it is not necessary that this Court should always remand the matter back to the lower authorities for fresh consideration thereby encourage litigation and give one more opportunity to the parties to come back to this Court in seeking further revision. Hence, in the facts and circumstances, this Court find it appropriate to give quietus to these matters and decide the same by taking a final call on the issue.

29. Accordingly, by allowing these writ petitions, the order passed by the Land Reforms Appellate Authority, Bengaluru, in No.LRA.427/1986, dated 30.9.1987 and LRA.420/1986, dated 11.11.1988 are set aside, consequently the orders of conferring occupancy right in favour of contesting respondents by the Land Tribunal, Devanahalli, in No.LRF.6/1974-75 and LRF.7/1974-75, both dated 28.8.1979 are also set aside in holding that the petitioners in these two petitions are the registered absolute owners of land bearing Sy.Nos.59 to 64 under 3 registered sale deeds dated 11.12.1964 and 5.3.1965 executed by Noorjahan Begum in favour of Hassaine Khan and Abdul Gafar Sharief Saheb in favour of Moosa Khan and Yusuf Ali Khan.