

(2002) 01 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 29284 of 1991

Y.V. Srinivasa Rao and Another

APPELLANT

Vs

Eranaika and Others

RESPONDENT

Date of Decision : 03-01-2002

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 15, 44, 5, 58

Citation : (2002) ILR (Kar) 1687 : (2002) 2 KarLJ 236 : (2002) 1 KCCR 85 SN

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : Mohan and Padubidri Raghavendra Rao, for the Appellant; M. Shivaprakash and V. Bychappa, High Court Government Pleader, for the Respondent

Judgement

S.R. Bannurmath, J.—Heard the learned Counsel for the petitioner and Counsel for contesting respondents 6, 7, 8(a) and 10(b) though the other contesting respondents 1, 2(a) and 2(b), 3 to 5, 9, 10(a), 10(d) and 10(e) are served long back and have remained unrepresented.

2. The petitioner in this petition has challenged the order of the Land Tribunal, Yelandur Taluk, dated 19-2-1989 granting occupancy rights to the contesting respondents 1 to 10 herein. It is not in dispute that the present petitioner-Sri Sridhar and the deceased petitioner Srinivasa Rao who is the father of Sridhar were the landlords of the lands in dispute and it is also not in dispute that these lands have been leased to respondents 1 to 10 almost 30 to 40 years back.

3. After coming into force the Karnataka Land Reforms Act as amended by Karnataka Act 1 of 1974 these respondents have filed an application in Form 7 praying for grant of occupancy rights in respect of these lands leased to them. On issuance of notice by the Land Tribunal, the petitioners, both father and son appeared before the Tribunal and contested the claim on the ground that both being soldiers serving in the Indian Air Force and Army respectively, the lease created or continued by them is permissible u/s 5 of the Act. Further it was

contended that the land leased or continued by soldiers will not automatically vest with the Government as per Section 44 itself. There is a special machinery provided and as there was no automatic vesting of the land, on coming into force of Act 1 of 1974 the Tribunal had no jurisdiction to consider the case of grant of occupancy rights to the respondents. Evidence in this regard was recorded by the Tribunal and by the impugned order the Tribunal rejected the contentions of the petitioners on the ground (a) that there is no evidence produced by the petitioners herein to show that the land in question had been inherited first by Srinivasa Rao and then by his son Sridhar; (b) that they had admitted tenancy of the respondents; (c) the case of the petitioners that even though said Srinivasa Rao retired in 1966 he has entrusted the management or ownership to his son Sridhar is surprising and an afterthought; (d) it is not established that Sridhar, the petitioner herein was not looking after the land in question; and (e) that it is not established that Srinivasa Rao, the father of the present petitioner was looking after the land. The Tribunal also rejected the contentions of the petitioners on the ground that as under the Karnataka Land Reforms Act, 1961 Srinivasa Rao, should have filed an application for resumption of the lands immediately after his retirement and as he has not done so, the tenancy is deemed to be continued and as such the provisions of Section 5(2) of 1961 Act are not attracted. Accordingly, the Tribunal proceeded to grant occupancy rights to respondents 1 to 10 herein.

4. It is this grant of occupancy which came to be initially challenged before the Karnataka Land Reforms Appellate Authority and when the matter was pending, by virtue of abolition of Appellate Authority the matter came to be transferred to this Court in the present writ petition.

5. Sri Mohan, learned Counsel for the petitioner vehemently contended that the impugned order of the Land Tribunal granting occupancy rights is basically illegal and without jurisdiction. It is contended that once a lease is created or continued by a soldier, such leases have been accepted under the provisions of the Act either under 1961 Act or under the present amendment Act and as such leases have been kept out of the purview of "automatic vesting" as per Section 44 of the Act. It is also submitted that by looking into the provisions of Sections 5, 44, 15 and 58 of the Act, as the act of declaration of vesting has to be done by the Tahsildar since it is not automatic vesting u/s 44 and as there is no such declaration the land is not vested with the State Government and in turn the Land Tribunal will not get any jurisdiction to grant occupancy rights in respect of such non-vesting lands.

6. On the other hand Sri Shivaprakash, learned Counsel appearing for some of the tenants vehemently opposed this contention inter alia contending that neither Section 5 nor Section 15 of the Act have relevance to the present case. It is contended that there is no material produced by the petitioner to show that the lease was created by a soldier i.e., either by Srinivasa Rao or by his son Sridhar, the present petitioner. In the absence of any proof in respect of the

petitioner or his father being soldier as well as admitted fact by the petitioners themselves that the land has been in possession and enjoyment of the respondents/tenants for the last more than 30 years, it cannot be said that the lease was created by a soldier so as to attract the provisions of either Section 5 or 15 of the Act. It is further contended that neither Srinivasa Rao nor his son Sridhar have exercised the right of resumption u/s 15 even if it is presumed that they have continued tenancy and in such case the exemption u/s 44 is not attracted. Hence, the findings of the Tribunal that the land has vested with the Government and in turn Tribunal has jurisdiction to grant occupancy rights is just and proper.

7. I have heard the learned Counsel for the petitioner in detail and perused the records.

8. The fact that Srinivasa Rao and his son Sridhar were soldiers is not much in dispute. It is also not in dispute that Srinivasa Rao retired in the year 1966 or so. According to the petitioner though the land was ancestral land, in an oral partition in the year 1957 he has inherited the right and title in respect of the land in question and continued to do so till 1966 and thereafter it is the present petitioner/son Sridhar who is the landlord of the land. The tenants have disputed this possession on the ground that the lease was created not by Srinivasa Rao but by his father and forefather and that there is no material evidence adduced by the petitioner to show such family arrangement. The Tribunal has also doubted this contention of the petitioners and is one of the grounds for rejecting the said contention as noted above. It is to be noted that the question whether the land was leased by Srinivasa Rao or his father is not very much relevant. If one peruses Section 5 of the Act which contemplates two categories namely, "lease created or lease continued" it means either soldier by himself may create a lease which comes within the sphere of Section 5 or a soldier can continue the lease already created or in existence. Discontinuance would be only by way of resumption of land or the procedure prescribed under the Mysore Land Reforms Act as it was in existence then or under the Karnataka Land Reforms Act, 1961. In view of the clear use of the words "created" or "continued" the question raised by the respondents that as the lease was not created by Srinivasa Rao the soldier, has in my view, no relevance even if it is assumed that the lease was created by the father of Srinivasa Rao, the fact of continuance of such lease by Srinivasa Rao is not all disputed by the respondents. In fact in their Form 7 as well as in the statements before the Land Tribunal they have admitted this position and they have recognised Srinivasa Rao as the landlord on the date of coming into force, either 1961 Act or 1974 Amendment Act. Keeping in view the words "lease created" or "continued" and the factual position in this case that the fact of continuance of lease of Srinivasa Rao is not in dispute, I am of the clear view, that such lease of land in favour of the respondents herein is governed by Section 5 of the Act. Nextly if we turn to the provision of vesting as per Section 44 of the Act the land held by or in possession of tenants immediately prior to the date of commencement of the Amendment Act (1-3-1974) stands transferred

to and vest in the State Government but exception is created in respect of leases permitted u/s 5 i.e., the leases created or continued by a soldier or a seaman. As such even if a lease is created or continued as per Section 5 of the Act there is no automatic vesting of the land u/s 44 and if there is no such transfer and vesting of the tenanted land in the State Government, the Tribunal in turn has no jurisdiction to grant occupancy rights over such land. It is to be noted that there is a separate procedure provided under the Act itself so far as such contingency is concerned. If one peruses Section 15(6) of the Act it is for the Tahsildar to initiate proceedings either suo motu or on an application filed by the tenant and if he is so satisfied he has to make declaration of vesting of such land and only thereafter the concerned Tribunal will have jurisdiction to decide the claim for grant of occupancy rights in such cases.

9. This interpretation of mine is also based on the pronouncement of the Division Bench of this Court in the case of *Narasing Gopalrao Desai v Land Tribunal, Khanapur*. The Division Bench of this Court has in detail considered these aspects and has held that "a tenant of a soldier or seaman cannot get occupancy right unless the land is vested in the Government by a special declaration made to that effect by the Tahsildar as required u/s 15(6) of the Act. Such a land is not vested in the State u/s 44. Section 44 of the Act makes an exception to lands held by tenants under the lease given or continued by a soldier or seaman. Section 5(2) permits a soldier or seaman to create or continue the tenancy although there is a total prohibition of such leasing of agricultural lands u/s 5(1). Hence, if the tenant in occupancy of such a land approached the Tribunal for occupancy, the Tribunal cannot grant occupancy, unless there is a proof of vesting of that land u/s 15(6). If the proceedings are before the Tahsildar, the Tribunal shall defer consideration of the application for occupancy till the proceedings before the Tahsildar are completed or the appeal, if any, is disposed by the Assistant Commissioner".

10. Even if there is some dispute regarding whether the present petitioner has filed such application or not, at this stage, I need not go into this disputed question of fact. Even if such application is not filed as per Section 15(5) of the Act, it is open for the tenants/respondents herein to make an application in this regard before the concerned Tahsildar and only after due enquiry the Tahsildar can declare the lands whether vests in the State Government or not.

11. In view of these findings as the order of the Land Tribunal is without jurisdiction, the same has to be quashed. Accordingly, rule is made absolute, the order dated 19-2-1989 passed by the Land Tribunal, Yelandur, in case No. 90+396+47+213+77+212 / 74-75, 75-76, 76-77 is hereby quashed.

12. However, it is made clear that as per Section 15(6) of the Act, it is open to the tenants/respondents to make such application as is prescribed for declaration of vesting of the land and only after such declaration the Tribunal will have jurisdiction to consider such application. If such an application either u/s 15(1) for resumption is made by the petitioners therein, again the Tahsildar can

consider both the claims of the petitioner and respondents and pass appropriate orders in accordance with law.

13. All the contentions in this regard of the parties are left open.

14. In the facts and circumstances of the case, there shall be no orders as to costs.