

M.V. Venkataramanappa Vs State of Karnataka and Others

Court: KARNATAKA HIGH COURT

Date of Decision: March 18, 2016

Acts Referred: Karnataka Land Revenue Act, 1964 - Section 133

Hon'ble Judges: Anand Byrareddy, J.

Bench: Single Bench

Advocate: Tajuddin, Advocate, for the Appellant; B.P. Radha, Government Pleader, for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

Anand Byrareddy, J.

1. It is the case of the petitioner that he and his father were tenants in respect of five items of land namely, Survey

Nos. 21 measuring 3 acre 39 guntas; 31 measuring 6 acre 8 guntas; 32 measuring 3 acre 35 guntas; 35 measuring 20 guntas and 36 measuring 15

guntas, of Seethanayakanahalli village, Malur Taluk, Kolar District. In this regard, the petitioner had filed Form No. 7 before the Land Tribunal,

seeking grant of occupancy rights in respect of the same.

2. It transpires that the claim of the petitioner was rejected earlier, in respect of which, a writ petition was filed before this court in WP

34957/2004, which was disposed of on 4.1.2005, remitting the matter to the Land Tribunal, for a reconsideration and directing that the petitioner

as well as the third respondent be permitted to adduce oral evidence and produce documentary evidence and thereafter to adjudicate on the

matter and decide the same.

It is the case of the petitioner that he has produced the RTC extracts for the year 1970 to 1975 in respect of the above lands which reflects that

the petitioner was actually cultivating the lands in question. The petitioner had furnished orders of the Assistant Commissioner, Kolar Sub-Division

in RA 16/78-79, which was filed in OS No. 30/1984. It is further stated that the lands in question were inam lands and with the coming into force

of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (Hereinafter referred to as the "1954 Act", for brevity), the lands had

vested in the State and on the lands being regranted at the instance of the inamdar the petitioner being a khadim tenant under the inamdar was

entitled to claim tenancy under the Karnataka Land Reforms Act, 1961 (Hereinafter referred to as the "KLR Act", for brevity) and consequently,

an application having been filed with material to indicate that he was cultivating the land as on 1.3.1974, the Tribunal was not justified in denying

the claim of the petitioner and hence would submit that the Tribunal has acted in violation of the Rules and the procedure inspite of a specific

direction of this court that the matter shall be decided in accordance with the same and hence the petitioner is before this court.

It is alleged that the third respondent is a high profile landlord and wields much influence and control over the members as well as the chairman of

the Tribunal and he has influenced them to pass an order in favour of the third respondent. The mischief on the part of the third respondent in

wielding such influence and the authorities acting to his tune is evident from the fact that the petitioner's name having been entered in the revenue

records was sought to be challenged on the ground that it was illegally entered and the Tahsildar after holding an alleged inquiry, has proceeded to

cancel the entry in favour of the petitioner and that order was passed on a Sunday, which itself is indicative of the mischief played by the concerned

authority and this has been reflected even in the proceedings before the Land Tribunal where the claim for occupancy rights has been illegally

turned down inspite of abundant material available to demonstrate that the land having been regranted in favour of the inamdar. The petitioner, who

was a khadim tenant under such inamdar having produced abundant material to prove his possession as a tenant and the Tribunal having rejected

the same, has resulted in a travesty of justice. Therefore, the petitioner seeks that the order be set aside and the occupancy rights be directed to be

conferred on the petitioner.

The learned counsel for the petitioner also claims that the petitioner has been recognized as a khadim tenant in the regrant order made by the

Deputy Commissioner at the instance of the third respondent seeking such regrant. Therefore, the added material evidence was available, which

the Tribunal has ignored and therefore has resulted in a miscarriage of justice.

3. The learned counsel for respondent No. 3, on the other hand, would contend that it is not true that the petitioner or his father were tenants for

50 years prior to the filing of the petition. The petitioner or his father were never tenants as on 1.3.1974 or prior thereto. It is voluntarily claimed

that respondents Nos. 4 and 5 have been set up by respondent No. 3. Respondents No. 4 and 5 had filed applications much prior to the petitioner

in the year 1974-75. The fourth respondent had filed Form No. 7 on 28.12.1974 and he has been granted occupancy rights in respect of the land

in survey No. 21. The third respondent does not claim any right in respect of the land bearing survey No. 21. That one Gopasandra Muniyappa

had been granted occupancy rights to an extent of 3 acre in survey No. 21. The petitioner has not impleaded Muniyappa and the petitioner has

failed to implead the owner of the land in survey No. 21 and the writ petition would have to be dismissed on that ground alone. The allegation that

the petitioner was in possession of the lands from 50 years is not proved. The petitioner had not produced any documents before the Land

Tribunal to show his possession as a tenant as on 1.3.1974. The averment that Krishnappa, the father of the petitioner was cultivating the land

under the third respondent is not proved. The petitioner's allegation that he had stored cow dung in the petition lands is also not proved.

Thoranahalli village is situated 4 1/2 kilometers away from Seethanayakanahalli. Therefore, there is no merit in the contention that he would come 4

1/2 kilometers to store the cow dung and the petitioner would not be in a position to cultivate the land. The third respondent is an agriculturist and

he is in actual possession of the land. The allegation that the third respondent owns more than 100 acre of land and has sold 24 acres of land and

that the third respondent has got another 20 acre is claimed to be false.

It is contended that the third respondent had filed a suit in OS 210/2003 and that suit was dismissed for default. A Miscellaneous petition having

been filed was allowed and the suit was restored and was pending as on the date of the petition before the Civil Judge, Junior Division, Malur. The

Land Tribunal had conducted an inquiry in addressing all aspects. The petitioner was represented by an advocate and written arguments were filed

and the Tribunal has addressed the material and documentary evidence on record.

4. The Tribunal has answered the question whether the land was tenanted by the petitioner as on 1.3.1974, in the negative since there was no

evidence to establish the tenancy. The Tribunal found the name of the petitioner or his father did not appear in the RTC for the year 1973-74 and

held that the statutory presumption under Section 133 of the Karnataka Land Revenue Act, 1964, was in favour of the third respondent and there

was no evidence produced to rebut the same. To compound the situation, the petitioner in his cross-examination, had admitted that he had no

documents for having paid rents and there were no other documents to prove any lease deed in his favour. It is also found that the name of the

petitioner could not be entered illegally for the year 1973-74 insofar as the land bearing survey Nos. 31 and 32 are concerned. Respondent No. 3

had filed an appeal to the Tahsildar immediately on such entry being made and without any notice to the third respondent, the Tahsildar had, after

holding an inquiry, passed an order dated 23.2.1975 in dispute No. C5/1973-74, holding that the name of the petitioner was entered illegally and

ordered cancellation of the same.

5. The learned Counsel would submit that the allegation that the order has been passed on Sunday is not examined and it would be wholly

irrelevant since that order has attained finality. Though that order was challenged in appeal, the same has been dismissed by order dated

29.7.1975. Hence, the question has attained finality and therefore, the petitioner seeking to rake up issues that have attained finality is not

permissible.

In holding that the third respondent was actually in possession was preceded by a spot inspection and the statement of the villagers was recorded

and a mahazar was drawn up and it was thereafter that the Tahsildar had passed an order that the name of the petitioner has been wrongly entered

in the revenue records. The father of the third respondent had indeed filed an application under the provisions of the 1954 Act and the lands had

been regranted in favour of the third respondent by an order of the Special Deputy Commissioner for Inams which is produced at Annexure R.9 to

the statement of objections. It was recorded that though several tenants were claiming to be in possession of the lands, the same has been negated

on the ground that they have not proved their possession. The record of rights in respect of the land bearing survey No. 31 for the year 1970-71

to 1974-75 would show that the third respondent was in possession for one year, namely, 1973-74 and the petitioner's name was illegally entered

and the same has been set at naught in respect of the land bearing survey No. 32 for the years 1975-76 to 1977-78. The personal cultivation of

the same by the third respondent is evident from the record of rights. Similarly, in respect of land bearing survey No. 35, the land is shown as

government tank and is not tenanted. The record of rights in respect of survey No. 36 for the year 1965-66 to 1974-75 shows that the land was in

the possession of the third respondent and the name of the petitioner was not entered. The record of rights for the year 1972-73 to 1974-75 in

respect of land bearing survey No. 36 shows that the third respondent was in possession of the same.

6. Further, in the suit filed in OS 189/1975, the Court had directed that the third respondent be appointed as a Receiver of the suit schedule

property and the third respondent was to cultivate the same and submit accounts till the proceeding before the Land Tribunal was concluded. The

petitioner having failed to produce any document before the Land Tribunal, the documents so produced by the petitioner were indeed considered

by the Tribunal and none of the documents are relevant. Therefore, the Tribunal having rejected the claim of the petitioner cannot be faulted.

The application filed by the petitioner's father, who is said to have filed an application for grant before the Deputy Commissioner - Inams, was

rejected. This aspect is clear from Annexure-C produced by the petitioner himself, which was not challenged by the petitioner at all. The learned

counsel, therefore, seeks that the petition be dismissed.

7. The learned counsel for the petitioner, however, by way of reply, would insist that the Land Tribunal itself has held at para 23 of its order that

the land bearing survey No. 36 was in the name of the petitioner and in spite of which, the petitioner's claim for occupancy rights having been

rejected is, on the face of it, an illegal order and would require to be set at naught. It is found that from an examination of the record and on the

basis of the rival contentions of the parties, the Tribunal has addressed all aspects of the matter and held in favour of the third respondent insofar as

the claim for occupancy rights by the petitioner is concerned. However, there is one aspect of the matter wherein there was a rival claim by another

tenant in respect of the land bearing survey No. 21, which the petitioner was also claiming. The third respondent has nothing to do with that item of

land. However, since there was a rival claim, the Tribunal could not have passed separate orders in respect of the land in survey No. 21. It ought

to have clubbed the petitioner's claim as well as the claim of respondents No. 4 and 5 together and ought to have decided by a common order.

Except for this aspect, there is no illegality to be found in the order of the Land Tribunal.

Consequently, the petition is allowed in part. The matter is remanded to the Tribunal. Insofar as the claim in respect of survey No. 21 is concerned,

it is noticed that the Tribunal also having granted occupancy rights in favour of respondents No. 4 and 5 in respect of that item of land, it would

have no choice, but to reject the petitioner's claim. Therefore, it ought to have clubbed the petitioner's claim in respect of survey No. 21 with that

of the claim raised by respondents No. 4 and 5 and a common order ought to have been passed. This being in total violation of Rule 17 of the

Karnataka Land Revenue Rules, 1974, the matter is remanded to the Tribunal only in respect of the land bearing survey No. 21. The claim of the

petitioner in respect of other items of land is unsustainable and therefore, the petition is dismissed insofar as the other items of land are concerned.