

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5TH DAY OF AUGUST 2005

BEFORE

THE HON'BLE MR.JUSTICE K.RAMANNA

WRIT PETITION NO.13164/97 (KLRA).

BETWEEN:

Y.VASANTHA RAO,
S/O.Y.BAVANI RAO,
AGED ABOUT 60 YRS,
REP.BY HIS P.A.HOLDER
SMT.Y.KUSUMA RAO,
R/AT.YEKKAR VILLAGE,
MANGALORE TALUK,
D.K.DIST.

PETITIONER

(BY SRI K.S.GOWRISHANKAR, ADV.)

AND:

1.THE 7TH LAND TRIBUNAL,
MANGALORE TALUK,
REP.BY ITS CHAIRMAN,
MANGALORE.

2.STATE OF KARNATAKA,
REP.BY ITS SECRETARY,
REVENUE DEPT.
VIDHANA SOUDHA,
BANGALORE.

3.SANJEEVA MOOLYA,
S/O.NAKRA MOOLYA,
MAJOR, R/AT.TENKA YEKKARU,
MANGALORE TALUK,
D.K. DIST.

4.SAADU HENGASU,
W/O.NAKRA MOOLYA,

MAJOR, TENKA YEKKARU,
MANGALORE TALUK,
D.K. DIST.

5.KAVOOR KRISHNA RAO,
S/O.SRINIVASIAH,
MAJOR, TENKA YEKKARU
VILLAGE, MANGALORE TALUK,
D.K. DIST.

6.DEPUTY COMMISSIONER,
D.K.DIST. MANGALORE.

.. RESPONDENTS

(BY SRI R.KUMAR, HCGP FOR R-1, 2 AND 6 AND SRI
I.THARANATH POOJARY, ADV. FOR R-3 AND 4)

THIS WRIT PETITION IS FILED U/S.151 CPC r/w SEC.17 OF KLR
ACT r/w ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA
PRAYING TO CONSIDER THE APPEAL NO.LRAT.1337/86 FILED BEFORE
THE LAND REFORMS APPELLATE AUTHORITY, MANGALORE.

THIS PETITION BEING RESERVED AND COMING ON FOR
PRONOUNCEMENT OF ORDER THIS DAY, COURT MADE THE
FOLLOWING:

ORDER

This is a writ petition filed by the petitioner against an order
dated 31.12.1991 passed by the 1st respondent/Land Tribunal,
Mangalore, in LRT.1573/79-80, 267/79-80 and 187/80-81 whereby,
the application Form No.7 filed by the petitioner came to be rejected
but granted occupancy right in favour of respondents 3 and 4 mainly
on the ground that inspite of the petitioner ~~he~~ is in possession of the

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lands bearing Sy.Nos.37/2 measuring 8 Acres 94 Cents, 37/3 measuring 24 Cents and 11/2 measuring 7 Acres 48 Cents and the Tribunal has grossly erred in appreciating the evidence and rejected his claim but granted occupancy right in favour of respondents 3 and 4 is contrary to law though the chairman expressed his opinion to grant occupancy right in his favour which is a minority view. Though the chairman was of the view that the respondent No.3 and 4 are not entitled for occupancy right but the majority of members of the Tribunal have wrongly come to the conclusion in granting occupancy right in favour of respondents 3 and 4 and infact, respondent No.3 admitted during the enquiry that he had never cultivated the land for the last 20 years but the so called statement is not found in the LCR and the statements recorded by the Tribunal were not read out to the parties and the Tribunal has not given any opportunity to cross-examine respondents 3 and 4 by the petitioner. Hence, this writ petition.

2. Brief facts leading to this case are that initially petitioner herein had filed a Writ Petition No.24855/82 before this Court against the order of the 1st respondent dated 31.12.1981 in view of the



amendment brought to the Land Reforms Act, Land Reforms Appellate Authority was constituted and therefore, the W.P.No.24855/82 came to be transferred to the Land Reforms Appellate Authority. When the Appeal No.1337/86 was pending, again an amendment was brought to the Land Reforms Act abolishing the appellate authority. Therefore, the petitioner herein filed a CP.4505/91. After hearing, this Court allowed the said CP and permitted the petitioner to convert the appeal into writ petition. Accordingly, the case was registered in WP.13164/97. It is seen that the petitioner herein filed Form No.7 on 15.3.1979 claiming occupancy right in respect of several items of land and in Form No.7 he has clearly mentioned that one Kavoor Krishna Rao was the owner of the said land. Likewise, 4th respondent Sadhu Hengasu filed Form NO.7 on 9.12.1974 for grant of occupancy right in respect of Sy.No.11/02 measuring 7 Acres 48 Cents wherein it has been mentioned that one Kavoor Krishna Rao is residing at Mumbai West, Dhoncheli and one Sanjeevamoolya/respondent No.3 to an extent of land in Sy.No.37 and 61 respectively measuring 8 Acres 94 Cents and 24 Cents respectively. So also land bearing Sy.No.11/2 measuring 7

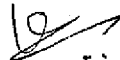


Acres 48 Cents was granted in favour of Sadhu Hengasu but her application came to be rejected as she is not a tenant.

3. Heard the arguments of the learned counsel appearing on both sides and the learned HCGP appearing for the State.

4. It is contended by the learned counsel for the petitioner that the petitioner and one Srinivasa Rao, mortgaged the land for Rs.1,000/- in favour of Bhavani Rao, father of the petitioner on 1.10.1927 but not redeemed the mortgaged the land. Therefore, the Tribunal ought not to have been granted occupancy right as the father of the petitioner has not leased out the lands in question in favour of respondents 3 and 4 at any point of time. It is further submitted by learned counsel for the petitioner that the majority of the members of the Land Tribunal have wrongly held that respondents 3 and 4 were cultivating the lands as tenants under one Krishna Rao Kavoor, is incorrect and therefore, the impugned order under challenge is liable to be quashed.

5. On the other hand, learned counsel for respondents 3 and 4 vehemently contended that petitioner has no locus standi either to file



Form NO.7 claiming occupancy right or to challenge the order of rejection and declaration in Form NO.7 filed by the 1st respondent. If the father of the petitioner had purchased those lands in the Court auction and prior to that one person is stated to have mortgaged the lands in favour of his father then he will not become as tenant to the property of his own father. Though the Tribunal has rightly rejected the claim of the petitioner that he has no legs to stand to file this writ petition and the writ petition is liable to be dismissed. It is contended that the Tribunal had given an opportunity for both parties to adduce evidence and to cross-examine the witnesses. It is further contended that Para.5 of the memorandum of writ petition shows that Srinivasaiah, father of 5th respondent had executed a mortgage deed in favour of Bhavani Rao and since he has not redeemed the mortgaged property by paying amount, therefore, Bhavani Rao filed suit for recovery and the same was decreed by the Civil Court and then he purchased the said property in Court auction and therefore, he cannot become the tenant of his own property. Hence, the petition is liable to be dismissed.



6. Per contra, learned H.C.G.P. appearing for respondents 1 and 2 canvassed that the impugned order under challenge is a well reasoned order and after holding a detailed enquiry, the Tribunal has passed the order rejecting the claim of the petitioner and he cannot become a tenant of his own father's property and hence, the petition is liable to be dismissed.

7. I have carefully examined the materials placed on record. On perusal of Form No.7 filed by this petitioner as well as respondents 3 and 4 for grant of occupancy right in respect of the lands mentioned in their respective Form NO.7. It is clear from the materials placed on record that this petitioner as well as respondents 3 and 4 have mentioned that one Kavoor Krishna Rao was the owner of the land and he had sent letter to the Secretary, 7th Addl.Land Tribunal, stating that respondents 3 and 4 are cultivating the lands in question and he has no objection for grant of occupancy right in their favour. But the Tribunal herein has not examined the owner of the land. Infact, he claims to be the tenant of the property. One cannot become a tenant to his own property or owned by his father. When there is a specific averment in the contention taken by the petitioner in

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the writ petition/memorandum of appeal that his father had purchased those lands in Court auction and then the majority members of the Tribunal have rightly come to the conclusion that the petitioner was not a tenant and he is not entitled to seek occupancy right in respect of 3 items of the landed property.

8. It is seen that the statements of the parties and the letters submitted by Kavoor Krishna Rao to the Secretary, 7th Addl. Land Reforms Appellate Authority, that the petitioner is not a tenant cultivating the lands in question and respondents 3 and 4 are cultivating the lands. It is contended by the learned counsel for the petitioner that the land in question is not an agricultural land and that it is not a ground to differ the findings recorded by the Land Tribunal. Considering the admission made by earlier owner Kavoor Krishna Rao, except the petitioner, respondents 3 and 4 are cultivating the land as a tenant and therefore, considering the facts and circumstances of the case, the Tribunal found that tenant i.e., respondents No.3 and 4 are in actual possession of the land and they were cultivating the land and under Section 133 of the Land Reforms Act. In respect of the entries in the R.O.R. the owner is cultivating the land stood displaced.



Since the Tribunal is the fact finding body and that the Tribunal referred the matter to Surveyor to find out what was the extent of the land in possession of the petitioner and respondents 3 and 4. Accordingly, Surveyor issued notice to both parties and got measured the land in question and submitted this report, which discloses that the lands in question are in possession of respondents 3 and 4 and therefore, the Tribunal is right in rejecting the application of the petitioner that he is not at all a tenant. More over, Kavour Krishna Rao has not challenged the order of granting occupancy right in favour of respondents 3 and 4 and since the petitioner has no locus standi to challenge, the writ petition fails and the same is dismissed.

Mvs/

Sd/-
Judge