

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5<sup>TH</sup> DAY OF DECEMBER, 2000

BEFORE

THE HON'BLE MR. JUSTICE T.N. VALLINAYAGAM

WRIT PETITION NO. 4219 OF 1992

Between:

M.T. Venkatesh S/o  
Thimmappa Gowda, aged  
43 yrs; r/o Bidarahalli,  
Thyasrandur village,  
Begolli Post,  
Thirthahalli Taluk,  
Shimoga District.

.. Petitioner.

( By Sri U. Panduranga Nayak, Adv. )

And

1. The State of Karnataka  
by its Secretary,  
Revenue Department,  
Vidhana Soudha,  
Bangalore-1.
2. The Land Tribunal Thirthahalli  
by its Chairman,  
Thirthahalli, Shimoga Dist.

3. Subba Naik s/o Nagu Naika,  
major, R/o Thyarandur village,  
Begolli Post, Thirthahalli Tq;  
Shimoga Dist.

.. Respondents

( By Sri Baramagouda, Govt. Pleader, for R1 & R2;  
Sri R. Gopal, Adv. for respondent-3)

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This writ petition filed under Articles 226 and 227 of the Constitution, praying to quash the order dated 3-12-1991 in No. LRT(7) MDG. TNR. 1/74-75, vide Annexure-C.

This petition coming on for hearing this day, the Court made the following:

#### ORDER

The order of the Land Tribunal dated 3-12-1991 in No. LRT(7).MDG.TNR. 1/74-75, filed as Annexure-C, is sought to be quashed in the above writ petition.

2. The land in Sy. No. 63 measuring 8 acres 35 guntas situated in Thyarandur village, Thirthahalli Taluk, has fallen to the share of the petitioner after partition as it was not given cultivation for anybody.

The RTC stands in the name of the petitioner for the years 1970-71 to

73-74. The third respondent applied for grant of occupancy right and his application was evidenced with no boundaries and no particulars. However, the Tribunal by the order dated 5-6-1979 granted 5 acres of land, which order was challenged in W.P. 15823/79. The order was quashed and the matter remitted back. By the impugned order, the Tribunal has confirmed the earlier order granting 5 acres out of 8.35 acres.

3. It is claimed that the land is personally cultivating<sup>ed</sup> by the petitioner which is evidenced by the RTC records and the presumption under section 133 of the Karnataka Land Revenue Act has been drawn by the Tribunal, which is an error apparent on the face of the records. The third respondent has claimed the entire 8.35 acres without any boundaries and the Tribunal has chosen to give the boundaries in respect of 5 acres granted, which is certainly not the job of the Tribunal. As the disputed land is not tenanted land and not vested with the Government on 1-3-1974, the order is prima facie liable to be set

aside.

4. The matter came up before my brother Justice R.V. Raveendran and by the order dated 24-2-1995 he has allowed the writ petition. Subsequently, the order was recalled and again it came up for reconsideration before this Court. It is seen from the revenue records up to 1973-74, the khatedar is shown to be the petitioner's father and the land was personally cultivated by him; the petitioner's name is found subsequent to 1972-73. Five acres 35 guntas of land was lying fallow and this factum is evidenced by the revenue records as well. Therefore, the order is that the third respondent is cultivating 5 acres 35 guntas cannot be sustained. In fact from the evidence of the petitioner it is clear that 5 acres was lying fallow and some time the third respondent used to cultivate some portion of the land. Anyhow, the Tribunal has not given any reason for having not drawn inference on the revenue entries. The contention of the petitioner is that he is in possession of 8 acres 32 guntas. There is no logic for the Tribunal to hold that in regard to 5 acres which was lying fallow that is the third respondent was the cultivator as a tenant. My Brother Justice R.V. Raveendran has considered this aspect also in paragraph 3 of the order already passed by him, which is as follows:

"Normally this Court in exercise of its jurisdiction under Art. 226 will not interfere with the findings of fact. But where the findings are based on no evidence at all or is based on totally extraneous matters, interference becomes necessary. In this case, there is absolutely no evidence to rebut the presumption in favour of the petitioner under sec. 133 of the Karnataka Land Revenue Act, on account of the entries in the Revenue Records. In the absence of such evidence, the Tribunal could not have held that the third respondent was in possession of an extent of 5 acres. The fact that the petitioner was not able to give particulars of Rocks etc., in 5 acres will not mean the third respondent was the tenant. In fact the third respondent was also not in a position to say the extent of land which he was cultivating in Sy.No. 63. There is no material to rebut the presumption arising from the Revenue Records. The Tribunal having rejected the claim of third respondent regarding survey No. 74 on the ground that he was not the tenant, the Tribunal ought to have also rejected the claim in regard to the Sy. No. 63 also. It has failed to do so."

5. I am in entire agreement with such a view expressed by my Brother Justice Raveendran. A Division Bench of this Court in 1987 (2) KLJ p. 127 (Thimmaiah and others vs. Khatumbi) has held that it was the duty of the Tahsildar to verify the record of rights and make a note on the application form No.7 under rule 19. This mandatory requirement of the rule is not observed. The finding of fact recorded by the Tribunal cannot be sustained. Following the above dictum and as

well as the finding that the records do disclose that the case of the petitioner is true, I am of the view that the order of the Tribunal is not sustainable.

6. In this view, the impugned order is quashed and the writ petition is allowed.

Sd/- JUDGE

Vge/-