

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

ON THE 5TH DAY OF DECEMBER, 2013

BEFORE

HON' BLE MR. JUSTICE RAVI MALIMATH

LRRP NO.5886 OF 1988

BETWEEN:

1. Kallappa S/o Kulappa Managolli

Since deceased by his L.Rs *

1(a) Kalakappa S/o Kallappa Managolli,
age:35 years,
Occ:Agriculturist,
Tq:Yelburga,
Dt:Koppal.

Amended vide order dated 12-11-2003

2. Basappa Kalakappa Managolli,
Age:58 years,
Occ:Agriculturist,
Tq:Yelburga,
Dt:Koppal.

... PETITIONERS

(By Sri. V.R.Datar, Advocate)

AND

1. Chandrashekarappa Karibasappa
Nalwad
Age: major,
R/o Sidnekoppa,
Tq: Yelburga,
Residing at Gadag, Dt: Koppal.

2. Siddappa S/o Malleshappa Nalwad,
Age: major,
R/o Sidnekoppa,
Residing at Gadag,
Tq: Yelburga,
Dt: Koppal.

Since deceased by L.Rs*

R2(a) Sangamma
W/o Siddappa Malwad,
Age: 70 years,

R2(b) Babanna S/o Siddappa Nalwad
Age: 40 years,

Since deceased by L.Rs **

R 2(b)(i) Smt. Sujatha, W/o Babanna
@ Suresh Malwad
Age: 45 years,
Occ: Housewife.

R 2(b)(ii) Deepa D/o Babanna
@ Suresh Nalwad
Age: 23 years

R 2(b)(iii) Pradeep D/Babanna
@ Suresh Nalwad
Age: 21 years

R 2(b)(iv) Trupti D/o Babanna
@ Suresh Nalwad
Age 19 years

All are R/o Vokkaligara Oni, Gadag.

** Amended vide order dated 23-9-2013.

R2(c) Mahantesh S/o Siddappa,
Age:36 years,

R2(d) Pakeerappa S/o Siddaiah

R2(e) Sushelamma,
W/o Kote Shivappa,
Age:35 years,

All are r/o Vakkalgeri Oni,
Gadag.

R2(f) Sarvamangala
W/o Late Raju,
Age:30 years,
R/o Kotambli Oni, 2nd Ward,
PO:Kortagi,
Tq:Gangavathi,
Dt:Koppal

3. Land Tribunal,
Yelburga,
By its Secretary.

4. State of Karnataka,
By its Secretary,
Department of Revenue
M.S.Building, Bangalore.

(By Sri: R.S.Siddapurkar, Advocate, for R-1,
Sri S.M.Shettar & Sri K.S.Korishettar, Advocates,
For R-2A,R2C-R2F, Sri Vinayaka S.Kulkarni,
HCGP, for R-3 & R-4, Sri S.S.Motagi,
Advocate, for R-2B(A-D)

This LRRP is filed under Section 121-A of Karnataka Land Reforms Act, against the order dated 30/5/1988 passed in R.A.No.1098/1986 and 1099/1986 on the file of the Land Reforms Appellate Authority, Raichur, allowing the appeal and setting aside the order passed by the Land Tribunal, Yelburga in case nos.75-76/1539 and 1538, dated 10/11/1984.

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

ORDER

The petitioners claim to be the tenants of old Sy.No.157, new no.189, measuring 21 acres 33 guntas and old Sy.no.125 and new Sy.No.141, measuring 16 acres 20 guntas situated at Sidnekoppa village, Yelburga Taluk. That they were tenants much prior to the year 1952. They were declared as protected tenants in terms of the order dated 7-3-1952 of a certificate issued under Section 35 and 37 of the Hyderabad Tenancy and

Agricultural Lands Act 1950. Respondents 1 & 2 are the landlords of the said lands. After coming into force of the amended Karnataka Land Reforms Act, the first petitioner filed an application in Form No.7 with respect to Sy.No.189(old Sy. No157) for grant of occupancy rights. The tribunal initially rejected the Form No.7 of the first petitioner and granted occupancy rights in favour of the second petitioner. Aggrieved by this, the parties filed writ petition No.25233/1981 and 3936/1977 respectively. The order of the Land tribunal was set aside and the matter was remanded for a fresh enquiry. On remand, the petitioners were granted occupancy rights, by the order dated 10-11-1984. The landlord challenging the same, filed writ petition Nos.7629/1985 and 7630/1985. On constitution of the appellate authority the writ petitions were transferred therein and numbered as R.A.Nos.1098 & 1099/1986. On considering the same, the appellate authority allowed the appeal by declaring that the grant of occupancy rights in favour of the petitioners herein is erroneous. The order of the land Tribunal was set aside.

Aggrieved by the same, the petitioner-tenants have filed the present petition.

2. Sri V.R.Datar, the learned counsel appearing for the petitioners contends that the impugned order of the appellate authority is bad in law and liable to be set aside. That the appellate authority misguided itself in considering the issues that were not germane for deciding the appeal. That unnecessary weightage was given to the record of rights. That the appellate authority failed to consider the true scope of the case made out by the tenants. That admittedly, in terms of Ex.D-2, the petitioners were declared as protected tenants by the order dated 7-3-1952. Therefore, ever since then, the petitioners are protected tenants in terms of law. That this certificate has not been challenged. It remains unchallenged even as on date. That there is no material to show that the said order has been questioned. There is no material to show as to how the name of the tenant was deleted and as to how the deletion took place. He further pleads that the case of

the landlords cannot be accepted. The only case of the landlords is that since the year 1955, they are in possession of the lands in question. However, they have not placed any material as to how they entered the lands in question. In view of the admitted fact of Ex.D-2, the appellate authority committed an error in reversing the order of the Tribunal.

3. On the other hand, the learned counsel for the landlord defends the impugned order. He contends that the record of rights stand in his name from 1955 onwards. That since the record of rights stand in his name, it is he who is in cultivation of the land in question. Therefore, the appellate authority was right in rejecting the plea of the tenants.

4. Heard Sri V.R.Datar, the learned counsel appearing the petitioners and Sri S.M.Shettar and Sri K.S.Korishettar, the learned counsels appearing for the

landlord respondent No.2, since deceased by his L.Rs and the learned Government Pleader for respondents 3 & 4.

5. An affidavit dated 22-11-2013 is filed by the Tahsildar. He has stated that efforts were made by him to procure the records. He has been to the Land Tribunal, Yelburga, the Advocate General's Office, Bangalore, Gulbarga Bench of the High Court of Karnataka and inspite of his best efforts the records of this case were not found in any one of these offices. Therefore he pleads his inability to produce the records before this Court. However, on a specific question being asked to the learned counsel for the petitioners and respondent No.2, they submitted that the matter may be proceeded without the records. Even then, the petitioners have filed a copy of Ex.D.2 before this Court. Both counsels submit that so far as the exhibits are concerned, they are not disputed by either one of them. However, the dispute is only so far as the interpretation of the exhibits are concerned. Therefore they submit, that the absence of the records does not

prejudice any of their rights. On such submissions, the matter is considered for final disposal at their request. Therefore, the petition is heard, based on the available material.

6.(a) The petitioner would have to show that he is the tenant in order to claim occupancy rights.

(b) Section 2(34) of the Karnataka Land Reforms Act defines tenant as follows:-

"Tenant" means an agriculturist who cultivates personally the land he holds in lease from a landlord and includes-

- (i) a person who is deemed to be a tenant under Section 4;*
- (ii) a person who was protected from eviction from any land by the Karnataka Tenants(Temporary Protection from Eviction) Act, 1961;*
- (ii-a) a person who cultivates personally any land on lease under a lease created contrary to the provisions of Section 5*

*and before the date of commencement
the Amendment Act.*

(iii) a person who is a permanent tenant; and

(iv) a person who is a protected tenant.

*Explanation- A person who takes up a contract to cut
grass, or to gather the fruits or other produce of any
land, shall not on that account only be deemed to be
a tenant."*

(c) Section 2(27) of the Karnataka Land Reforms
Act defines 'protected tenant' as follows:-

*"Protected Tenant" means a person of any land if
he has held it continuously and cultivated it personally
for a period of not less than twelve years prior to the
appointed day, and includes*

*(i) in the Belgaum Area, a person who was
recognised to be a protected tenant
under Section 4-A of the Bombay
Tenancy and Agricultural Lands Act,
1948 as in force in that area before the
appointed day, and*

- (ii) *in the Gulbarga Area, a person who has deemed to be a protected tenant under the Hyderabad Tenancy and Agricultural Lands Act, 1950 as in force in that area before the appointed day;*

Explanation-(i) If the tenant came to hold the land by inheritance or succession from another person or if he has held such land as a tenant and is an heir to such person, the period during which such other person held such land as a tenant shall be included in calculating the period of twelve years under this clause;

- (ii) *If the tenant holding the land held, as a tenant, at any time within the twelve years before the appointed day from the same landlord in the same village, any other land which he cultivated personally the period during which he held such other land shall be included in calculating the period of twelve years under this clause;*

- (iii) *where any land is held by two or more persons jointly as tenants all such*

persons shall, if any one of them cultivated and continues to cultivate such land personally be deemed to be protected tenants in respect of such land;

(iv) If a tenant had sublet a land on account of any temporary disability, he shall be deemed, for purposes of his acquiring rights of a protected tenant, to continue in possession and cultivate the land personally for the period of the sub-lease;"

(d) 'Protected Tenant' is defined in terms of Section 2(r) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 as follows:

2(r) "protected tenant" means a person who is deemed to be a protected tenant under the provisions of Sections 34 to 37.

(e) Section 35 of the Hyderabad Tenancy and Agricultural Lands Act reads as follows:-

"35. Decision of claims-(1) *If any question arises whether any person, and if so what person, is deemed under Section 34 to be a protected tenant in respect of any land, the landholder, or any person claiming to be so deemed, may, within one year from the commencement of this Act, apply in the prescribed form to the Tahsildar for the decision of the question and the Tahsildar shall, after enquiring into the claim or claims in the manner prescribed, declare what person is entitled to be deemed to be a protected tenant or, as the case may be, that no person is so entitled.*

(2) A declaration by the Tahsildar that the person is deemed to be a protected tenant or, in the event of an appeal from the Tahsildar's decision such declaration by the Collector on first appeal or by the Board of Revenue on second appeal, shall be conclusive that such person is a protected tenant and his rights as such shall be recorded in the Record of Rights or, where there is no Record of Rights, in such village record as may be prescribed."

(f) Section 37 of the Hyderabad Tenancy and Agricultural Lands Act, reads as follows:-

"37. Persons not entitled under Section 34 deemed in certain circumstances to be protected tenants.-

(1) Every person who at the commencement of this Act holds as tenant any land in respect of which no person is deemed to be a protected tenant under Section 34, shall, on the expiration of one year from such commencement or, the final rejection of all claims by any other person to be deemed under Section 34 to be a protected tenant in respect of such land, whichever is later, be deemed to be a protected tenant in respect of such land unless the landholder has before such expiration or final rejection as aforesaid made an application in the prescribed form to the Tahsildar for a declaration that such person is not a protected tenant.

Provided that where the landholder is a minor or a person serving in the Naval, Military or Air Forces of India he shall make the application for declaration before the expiry of one year from the date on which the minor attains majority, or

the landholder ceases to serve in the Naval, Military or Air Forces of India.

Provided further that where the landholder is a person permanently incapable of cultivating the land by reason of mental disability, the person who succeeds to the land on the death of the said landholder shall make the application within one year from the date on which he succeeds to the land.

Explanation-Where the land is held under more than one joint landholders the last two provisos shall not apply unless such landholders are subject to a disability specified in the said provision.

(2) If after enquiring, in the prescribed manner into such application, the Tahsildar refuses to make such declaration and his decision is not set aside by the Collector on first appeal or by the Board of Revenue on second appeal, the tenant shall be deemed to be a protected tenant.

(3) The rights as a protected tenant of a person deemed under sub-section (1) or sub-section(2) to be a protected tenant shall be recorded in the Record of Rights or, where there

is no Record of Rights, in such village record as may be prescribed.”

7. The plea of the petitioner is that he is a protected tenant. That the definition of tenant includes a person who is a protected tenant. A protected tenant includes, in the Gulbarga area, a person who is deemed to be a protected tenant under the Hyderabad Tenancy and Agricultural Lands Act, 1950. Ex.D-2 is the certificate produced by him which evidences the same. The copy of Ex.D-2 has been placed for consideration before this Court. The learned counsel for the petitioner has filed a memo in the Court today along with self attested xerox copy of Ex.D-2. The same is taken on record. Its existence and contents are not disputed by the landlords. It would narrate that it is the certificate issued under Section 35 and 37 of the Hyderabad Tenancy and Agricultural Lands Act, 1950.

8. The definition of protected tenant is in terms of 2(r) of the Hyderabad Tenancy and Agricultural Lands Act, 1950. In exercise of such powers, the certificate was issued under Section 35 & 37 of the Hyderabad Tenancy and Agricultural Lands Act. As a consequence whereof the petitioners were declared to be protected tenants. The definition of tenant under Section 2(34) of the Karnataka Land Reforms Act includes a protected tenant. The definition of 'protected tenant' under Section 2(27) of the Karnataka Land Reforms Act includes a deemed tenant under the Hyderabad Tenancy and Agricultural Lands Act. In terms of Section 2(r) of the Hyderabad Act 'protected tenant' means a person who is deemed to be a protected tenant under the provisions of Section 34 to 37 of the Act. Ex.D.2 is the certificate issued under Section 35 and 37 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. Therefore ever since that date namely, 7-3-1952 the petitioners are the protected tenants. The case of the landlord is that the record of rights show that his name appears in the record of rights from the year

1955 onwards. Since the record of rights shows his name since the year 1955 onwards, he is the person in occupation of the land in question. Therefore, the order of the appellate authority is sought to be sustained.

9. I have considered in depth the order of the appellate authority. It relies on various exhibits produced by the landlord as well as the tenant. The finding of the Tribunal was reversed by the appellate authority by relying on the various exhibits produced therein. However, a reading of the order of the appellate authority does not disclose any finding recorded by the appellate authority as to why Ex.D-2 has been overlooked. Merely relying on the record of rights standing in the name of the landlord since 1955 onwards would not be sufficient. The certificate in terms of the exhibit D.2 would necessarily indicate that the petitioners are the protected tenants. That they are protected tenants for life. That they are protected tenants until and unless the certificate is either set aside or reversed or otherwise. There is no such material produced

by the landlord. Infact it is not even their case. They admit Ex.D.2. Their only case is based on the existence of their name in the record of rights since the year 1955. Therefore, I'am of the considered view that the findings of the appellate authority based on the record of rights and other exhibits, namely, the patta receipts, revenue receipts etc., are off the point. When Ex.D-2 clearly shows that the petitioner-tenants are protected tenants, the order of the appellate authority therefore cannot be accepted.

10. A right is granted to the landlord under Section 44 of the Hyderabad Tenancy and Agricultural Lands Act to terminate such a protected tenancy. In order to overcome Ex.D-2, it was relevant for the landlord to show that proceedings were initiated under Section 44. Such a right has not been exercised by the landlord. No proceedings have been initiated by the landlord to terminate such a protected tenancy. Therefore the protected tenancy of the petitioner in terms of Ex.D-2 continues. Merely because the record of rights stands in

the name of the landlord, does not absolve him of such a situation. There is no material to show as to how and in what manner the tenant was either evicted or in what manner the landlord entered into the land in question. Under these circumstances, the appellate authority committed a gross error by overlooking Ex.D-2 and rejecting the plea of the tenants. That the surrender of tenancy or termination of a tenancy has to be made in a manner known to law. Herein no proceedings are taken out for the said purpose. Under these circumstances, I'm of the considered view that the appellate authority committed a gross error in interfering with the order passed by the tribunal. Ex.D-2 is sufficient to hold that the petitioners are protected tenants and continue to be as such, until the order is set aside. The relevancy of the various other exhibits, the pass book and the patta receipts are of no consequence at all. They were all required to be considered only in the absence of any document evidencing tenancy.

11. Ex.D-2 is not disputed. It is not the case of the landlord that Ex.D-2 does not exist. Infact none of their contentions are opposed to Ex.D-2. Under these circumstances, in view of the admission of Ex.D-2, the admission itself is a sufficient ground, to grant tenancy rights to the petitioner.

For the aforesaid reasons, the petition is allowed. The order dated 30-5-1988 passed in R.A.No.1098/1986 and 1099/1986 by the appellate authority, Raichur, is set aside. The order dated 10-11-1984 passed by the Land Tribunal, Yalburga, in Case Nos.75-76/1539 and 1538 is restored.

Rule made absolute.

SD/-
JUDGE

Rsk/-