

**Jadiyappa and Others Vs. Land Tribunal Represented by Its Chairman and Others**

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**Court :** Karnataka

**Decided On :** May-15-2014

**Judge :** N.K. Patil & Pradeep D. Waingankar

**Appeal No. :** Writ Appeal No. 5097 of 2012 (LR)

**Appellant :** Jadiyappa and Others

**Respondent :** Land Tribunal Represented by Its Chairman and Others

**Judgement :**

(Prayer: This Writ Appeal Filed U/S 4 Of The Karnataka High Court Act Praying To Set Aside The Order Passed In The Writ Petition No.24195/2003 Dated 24/07/2012.)

1. This appeal is filed by the appellants questioning the validity and correctness of the order dated 24.07.2012 passed by the learned Single Judge in Writ Petition No.24195/2003(LR), whereby the Writ Petition filed by the respondent Nos.2 and 3 came to be allowed by setting aside the order challenged in the Writ Petition and remitted the matter to the Land Tribunal for fresh consideration keeping in view the observations made by the learned Single Judge during the course of the order passed in Writ Petition.

2. The facts in brief which gave rise to this appeal are as follows:

Sy.No.2 measuring 4 acres 33 guntas of Lakkenahalli village in Nelamangala Taluk is a 'Jodidar Inam Land'. The forefathers of the respondent Nos.2 and 3 were cultivating the said survey number by paying 'Vara' to 'Jodidars'. After the Land Reforms Act came into force, the respondent Nos.2 and 3 filed an application in Form No.7 for grant of occupancy right in respect of aforesaid survey number cultivated by them. The Land Tribunal upon enquiry granted occupancy right in respect of Sy. No.2 in favour of the respondent Nos.2 and 3 by order dated 09.11.1981. According to the appellants, it was a Talwari Service Inam Land granted as Inam to Ganga Narasaiah the father of the appellants in view of the service rendered by him as Talwar. Inam granted to Talwar are excluded from the purview of the Mysore (Personal and Miscellaneous) Inam Abolition Act, 1954. As such, Ganga Narasaiah was registered as the holder of minor Inam under Section 8 of the Act by an endorsement No.89/31 dated 10.03.1964 by the Special Deputy Commissioner for Inam Abolition, Bangalore. Though, Ganga Narasaiah was registered as the holder of minor Inam in respect of Sy.No.2, the Land Tribunal granted occupancy right in favour of the respondent Nos.2 and 3. So, Ganga Narasaiah preferred Writ Petition No.4733/1982, which came to be dismissed. Against the order of dismissal of Writ Petition, he preferred Writ Appeal No.826/1987, wherein the Land Tribunal was directed to treat the legal representatives of Ganga Narasaiah as parties to Form No.7 filed by respondent Nos.2 and 3 legal representatives of Kempaiah by order dated 01.03.1990. According to the appellants, the land in question is a Talwar Inam Land and they being Talwars have been cultivating the land and it was granted to them by the Special Deputy Commissioner for Inams. Thus, the appellants claim that the land in question is a Talwar Inam Land, whereas the respondents claim that it is a Jodidar Inam Land. In other words, there is a rival claim in respect of the aforesaid survey number by the appellants on the one hand and the respondent Nos.2 and 3 on the other hand. After remand of the matter in Writ Appeal, the Land Tribunal held a fresh enquiry and came to the conclusion that it has no jurisdiction to grant occupancy right on the ground that it is a Talwar Inam Land and the application for re-grant is pending and that the Land Tribunal has no jurisdiction to grant the occupancy right in respect of the said survey number which made the Land Tribunal to reject the application filed by the respondent Nos.2 and 3 in Form No.7

for grant of occupancy right by order dated 07.01.2003. Aggrieved by the rejection of the application by order 07.01.2003, the respondent Nos.2 and 3 preferred Writ Petition No.24195/2003 before the learned Single Judge. The learned Single Judge upon hearing the counsel appearing for both the parties and upon consideration of the material placed on record, set aside the order passed by the Land Tribunal and remitted the matter to the Land Tribunal for fresh consideration keeping in view the observation made during the course of the judgment by order 24.07.2012.

3. Questioning the validity and correctness of the order passed by the learned Single Judge, this appeal is preferred by the appellants on the ground that the order passed by the learned Single Judge is illegal and contrary to law. The observation made by the learned Single Judge that despite the judgment and decree passed in O.S.No.216/1956, it is the jurisdiction of the Land Tribunal to make an enquiry as to who is in possession and cultivation of the land as on appointed date is not proper. The learned Single Judge has failed to take note of the fact that the respondents are claiming tenancy right through their father Kempaiah who filed a suit O.S.No.216/1956 before the Munsiff Court, Doddaballapur for declaration that he is permanent tenant of the scheduled property under 'Jodidar' by paying 'Kandayam' for 30 years and for grant of permanent injunction restraining the father of the appellants from entering into the suit scheduled land and disturbing the possession of the plaintiff- Kempaiah, which came to be dismissed on merits by judgment and decree dated 25.03.1959. The learned Single Judge has also failed to note that the finding given by the Civil Court as to the possession of the land at an undisputed period of time is binding on the Land Tribunal.

4. We have heard both the learned counsel for the appellants and the respondent Nos. 2 and 3 and the learned Government Advocate for respondent No.1. Perused the records.

5. Learned counsel appearing for the appellants would submit that the order passed by the learned Single Judge is illegal and contrary to law. The observation made by the learned Single Judge that despite the judgment and decree passed in

O.S.No.216/1956, it is the jurisdiction of the Land Tribunal to make an enquiry as to who is in possession and cultivation of the land as on appointed date is not proper. The learned Single Judge has failed to take note of the fact that the respondent Nos.2 and 3 are claiming tenancy right through their father Kempaiah who filed a suit O.S.No.216/1956 before the Munsiff Court, Doddaballapur for declaration that he is permanent tenant of the scheduled property under 'Jodidar' by paying 'Kandayam' for 30 years and for grant of permanent injunction restraining the father of the appellants from entering into the suit scheduled land and disturbing the possession of the plaintiff-Kempaiah, which came to be dismissed on merits by judgment and decree dated 25.03.1959. The learned Single Judge has also failed to note that the finding given by the Civil Court as to the possession of the land at an undisputed period of time is binding on the Land Tribunal. Hence, he sought to allow this appeal and to set aside the order passed by the learned Single Judge while confirming the order passed by the Land Tribunal.

6. Per contra, the learned counsel appearing for the respondents has argued the in support of the order passed by the learned Single Judge and sought for dismissal of the appeal.

7. Upon hearing both the learned counsel for the appellants and the respondents and upon going through the entire material on record, the only point that arises for our consideration is as follows: "Whether the impugned order passed by the learned Single Judge is sustainable in law?"

8. It is seen from the records that both the appellants and the respondent Nos.2 and 3 are claiming rival tenancy right over Sy.No.2, measuring 4 acres 33 guntas of land of Lakkenahalli village, Nelamanagala Taluk. The case of the appellants is that it was a Talwari Service Inam Land attached to the office of the Tawari of Jodi, Lakkenahalli village. It was granted to Talwar Sanjeeva, who was great grand father of Ganga Narasaiah, the father of the appellants, who was in possession and cultivation by paying 'Kandayam' as Talwar of Jodi. It is the case of the respondent Nos.2 and 3 that their father Kempaiah was in possession and cultivation of the said land as Jodidar of Lakkenahalli village. Since the possession

was disturbed by the Ganga Narasaiah, the father of the respondent Nos.2 and 3 filed O.S.NO.216/1956 in the Court of Munsiff at Doddaballapur for declaration that Kempaiah is the permanent tenant of the suit schedule property under the Jodidar by paying 'Kandayam' for 30 years and for a decree of permanent injunction restraining Ganga Narasaiah from entering upon the suit schedule land and from disturbing the possession of the Kempaiah over the schedule property. Upon merits by a judgment and decree dated 25.03.1959, the suit came to be dismissed holding that plaintiff-Kempaiah is not in possession of the suit land. On the other hand, the defendant No.1 Ganga Narasaiah is in possession of the suit land as the Talwar of Jodi, Lakkenahalli village.

The appeal preferred against the judgment and decree in R.A.No.168/1959 before Civil Judge at Bangalore also came to be dismissed on 15.01.1963. Thus, the finding given by the Civil Court at an undisputed period of time has attained finality in view of the dismissal of R.A.No.168/1959. The said finding given by the Civil Court at an undisputed period of time is binding on the Land Tribunal while considering an application in Form No.7 filed by Kempaiah the father of respondent Nos.2 and 3 for grant of occupancy right in respect of the said survey number. At the cost of repetition, it has to be stated that the father of respondent Nos.2 and 3 Kempaiah filed O.S.No.216/1956 against Ganga Narasaiah the father of appellants before Munsiff Court, Doddaballapur, to declare that he is the permanent tenant of the suit land and for a decree of permanent injunction restraining the defendant from interfering with the possession and enjoyment of the suit land by Kempaiah. The suit came to be dismissed on merits holding that the plaintiff is neither the tenant nor in possession and cultivation of the land and on the other hand, it has been declared that the defendant Ganga Narasaiah is in possession and cultivation of the land. The appeal filed by Kempaiah against the judgment and decree in R.A.No.168/1959 before Civil Judge, Bangalore, also came to be dismissed by judgment and decree dated 15.01.1963 confirming the finding given by the Munsiff Court, Doddaballapur. Since the finding was given by both the Courts at an undisputed period of time i.e., before 01.03.1974, it is binding on the Land Tribunal while considering an application filed for grant of occupancy right in Form No.7 by the father of respondent Nos.2 and 3 Kempaiah. Since the father of respondent Nos.2 and 3 was not a tenant of the land in

question as on 01.03.1974 the appointed day, the question of vesting the land with Government as on 01.03.1974 does not arise. When the land does not vest with Government, there cannot be a tenancy and therefore, consideration of application in Form No.7 filed by Kempaiah, the father of respondent Nos.2 and 3 before the Land Tribunal, Nelamangala, does not arise. When there is no tenancy the Land Tribunal gets no jurisdiction to entertain the application in Form No.7. Added to that, since the land in question is a Service Inam Land the occupancy rights of which have been conferred in favour of Ganga Narasaiah the father of the appellants by Special Deputy Commissioner for Inam Abolition, Bangalore, as per endorsement No.89/31 dated 10.03.1964, the Land Tribunal rightly rejected the application in Form No.7 filed by Kempaiah holding that it has no jurisdiction to consider the application by order dated 07.01.2003. When such being the case, there was no justification for the learned Single Judge to set aside the order on the ground that Civil Court finding as to possession is not binding on the Land Tribunal. The learned Single Judge would have been right in saying so if the suit filed by the father of respondent Nos.2 and 3 before the Munsiff Court, Doddaballapur or Regular Appeal before Civil Judge, Bangalore was pending on 01.03.1974. We do not agree with the view expressed by the learned Single Judge that the finding given by the Civil Court is not binding on the Tribunal and that the Tribunal is required to make an independent enquiry. It has been made very clear by the Division Bench of this Court in a decision reported in 2010 (1) Kar. L.J. 192 (DB) (B.R. Ganganna gowda (Since Dead) By Lrs. Vs State of Karnataka and Others, wherein it has been held as under:

"KARNATAKA LAND REFORMS ACT, 1961, Section 48-A - Grant of occupancy right - Suit instituted before Karnataka Land Reforms Act came into force by tenant against landlord for injunction restraining landlord from interference with his possession - Suit dismissed - Held suitor not a tenant - Tenant filed appeal - Appeal dismissed - Tenant filed second appeal which was also dismissed - When Karnataka Land Reforms Act came into existence he filed application in Form 7 before Land Tribunal claiming to be a tenant of the same land which was subject-matter of earlier round of litigation - Tribunal granted occupancy rights in favour of tenant - Against order of Tribunal landlord filed writ petition - Petition allowed and order of Tribunal set aside - Matter remanded back to Tribunal - Tribunal rejected

application for grant of occupancy right - Tenant filed writ petition - Writ petition was allowed - Matter again was remanded -k Tribunal in third round of litigation rejected application filed by tenant and confirmed its earlier order - Tenant filed LRA before Land Reforms Appellate Authority - Matter transferred to High Court - High Court held applicant not a tenant of land - Tenant challenged order in appeal - Held - Before the Karnataka Land Reforms Act came into force the Competent Civil Court has negated the contention of tenant - When appellant was not a tenant of the land in question as on 1-3-1974, the question of vesting land in question as on 1-3-1974, the question of vesting land with Government does not arise - When land does not vest with Government question of consideration of alleged tenancy by Tribunal does not arise - Tribunal cannot entertain the application filed in Form 7 - When land has not been vested mere revenue entries in records will not ensure benefit to tenant since he has already held to be not a tenant - Appeal by tenant dismissed."

9. The ratio laid down by the Division Bench of this Court is aptly applicable to the case on hand. For the above reason and the aforesaid ratio laid down by the Division Bench of this Court, the impugned order passed by the learned Single Judge in Writ Petition No.24195/2003 is liable to be set aside. Accordingly, we proceed to pass the following order. Appeal is allowed. The order dated 24.07.2012 passed by the learned Single Judge in Writ Petition No.24195/2003(LR), is hereby set aside, while confirming the order No.LRF.LKH.2,9,..75-76 dated 07.01.2003 passed by Land Tribunal, Nelamangala.

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