

**Gowtham Tendulkar and Another Vs. State of Karnataka and Another**

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**Court :** Karnataka

**Decided On :** Sep-03-1999

**Reported in :** 2001(2)KarLJ485

**Judge :** P. Vishwanatha Shetty, J.

**Acts :** [Karnataka Land Reforms Act, 1961](#) - Sections 2 (A)(11), 79-B and C and 118; [Constitution of India](#) - Articles 226 and 227; Income-tax Act, 1961 - Sections 33-A and 35

**Appeal No. :** Writ Petition No. 13447 of 1993

**Appellant :** Gowtham Tendulkar and Another

**Respondent :** State of Karnataka and Another

**Advocate for Def. :** Sri Chikkavenkataiah, Government Pleader

**Advocate for Pet/Ap. :** Sri Suresh S. Joshi, Adv.

**Judgement :**

ORDER

P. Vishwanatha Shetty. J.

1. In this petition, the petitioner has called in question the correctness of the order dated 31st August, 1987, a copy of which has been produced as Annexure-B passed by the 2nd respondent forfeiting land measuring 22 acres 14 guntas in Sy.

No. 279, land measuring 21 acres 33 guntas in Sy. No, 302 and land measuring 3 acres 34 guntas in Sy. No. 308 of Belgundi Village, Belgaum Taluk, Belgaum District, in favour of the State Government in exercise of the power conferred on him under Sections 79-B and 79-C of the Karnataka Land Reforms Act (hereinafter referred to as 'the Act'), on the ground that the petitioner is not entitled to hold the said lands.

2. Sri Suresh Joshi, learned Counsel appearing for the petitioner challenging the correctness of the order impugned submitted that the entire approach made by the 2nd respondent to the matters in controversy is totally erroneous in law. He submitted that the 2nd respondent has proceeded to pass the impugned order on a total misreading of Sections 79-B and 79-C of the Act. It is his submission that Section 2(11)(iii) of the Act provides for the cultivation of the land by an owner of the land by hired labour and under these circumstances, there is no prohibition either under Section 79-B or under any provision of the Act to continue to hold an agricultural land by a person so long as he is able to get the lands cultivated through hired labour. He submitted that the impugned order proceeds on the assumption that since the petitioner is residing outside the country, it is not permissible for him to continue to get the lands cultivated and as such he is not entitled to hold the lands in question.

3. However, Sri Chikkavenkataiah, learned Government Pleader appearing for the respondents while strongly supporting the impugned order submitted that this petition is liable to be dismissed on two grounds. Firstly, he submitted that since the petitioner has an alternative remedy by way of an appeal provided under Section 118 of the Act and since he has failed to avail of the said remedy, this petition is liable to be rejected on that ground. Secondly, he submitted that since the Tahsildar on consideration of the evidence on record has found that the petitioner is not personally cultivating the lands in question, the said finding being purely a question of fact, this is not a fit case for this Court to interfere with the said finding in exercise of its writ jurisdiction under Article 227 of the [Constitution of India](#).

4. Now in the light of the rival contentions urged by the learned Counsel appearing for the petitioner, the two questions that would arise for consideration in this petition are:

(i) Whether this petition is liable to be rejected on the ground that the petitioner has an alternative remedy?

(ii) Whether the order impugned is liable to be quashed?

5. So far as the first question is concerned, it is no doubt true that Section 118 of the Act provides for a right of appeal against Order Annexure-B to the Karnataka Appellate Tribunal. However, I am inclined to accept the submission of Sri Joshi that this Court having issued rule in this petition as back as in the year 1993, at this stage this Court will not be justified in denying relief to the petitioner only on the ground that the petitioner has not exhausted the alternative remedy. It cannot be disputed that the time allowed to prefer the appeal has already expired. This petition has been pending consideration before this Court for the last nearly six years, and if the petition is dismissed at this stage with liberty reserved to the petitioner to file an appeal it would in my view result in multiplicity of proceedings and cause irreparable injury to the petitioner. This is not a case where there are serious disputed questions of fact are involved which are required to be considered by an Appellate Authority at a greater detail. In my view, on the basis of the finding recorded by the Tahsildar, the matter can be disposed of by this Court. The decision of the Supreme Court in the case of *L. Hirday Narain v Income-tax Officer, 'A' Ward, Bareilly*, relied upon by Sri Joshi supports the above said view. At paragraph 12 of the judgment fairly under similar circumstances the Supreme Court has taken the view that once the petition is entertained by the High Court, it is not desirable to dismiss the petition on the ground that the petitioner has an alternative remedy. It is useful to extract paragraph 12 of the judgment which reads as hereunder:

'12. An order under Section 35 of the Income-tax Act is not appealable. It is true that a petition to revise the order could be moved before the Commissioner of Income-tax. But Hirday Narain moved a petition in the High Court of Allahabad and the High Court entertained that petition. If the High Court had not entertained his

petition, Hirday Narain could have moved the Commission in revision, because at the date on which the petition was moved the period prescribed by Section 33-A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income-tax Officer under Section 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition which was entertained and was heard on the merits'.

6. Further, it is also useful to refer to the decision of this Court in the case of S.N. Srinivasa Murthy and Others v The Corporation of the City of Bangalore, where this Court has held that a case cannot be rejected on ground of alternative remedy after lapse of six years. Therefore, I am of the view that this petition cannot be dismissed on the ground that the petitioner has failed to avail of the alternative remedy.

7. So far as the contention of Sri Joshi that the order impugned is illegal and liable to be quashed is concerned, as it can be seen from the impugned order, the 2nd respondent has taken the view that the petitioner is not entitled to hold the land on the ground that the petitioner is residing in a foreign country and as such he is not entitled to hold the land under Section 79(1)(a) of the Act. While coming to the said conclusion, the 2nd respondent has in my view overlooked the definition of the phrase 'to cultivate personally provided under sub-section (11) of Section 2 of the Act. It is useful to extract the said provision which reads as follows:

'(11) 'To cultivate personally' means to cultivate land on one's own account.-

(i) by one's own labour; or

(ii) by the labour of any member of one's family; or

(iii) by hired labour or by servants on wages payable in cash or kind, but not in crop share, under the personal supervision of oneself or by member of one's family;

Explanation I, .. ..'.

Sub-clause (iii) of sub-section (11) of the Act extracted above in un-equivocal terms defines 'to cultivate personally' means to cultivate on one's own account or by servants on wages payable in cash or kind, under the personal supervision of oneself or by members of one's family. Therefore, the personal cultivation under the Act means and includes to get the agricultural lands cultivated through hired labour or by servants on wages under the personal supervision of the owner himself or members of his family. In my view, the personal supervision does not mean that the owner of the land or members of his family should be on the land itself. Personal supervision under the circumstances must be understood as supervising the cultivation of the land by the labourers. It is the case of the petitioner that the lands in question is only a garden land where a number of mango trees, jackfruit trees and cashew trees are located. The 2nd respondent has rejected the case of the petitioner that he is personally cultivating the lands in question on the ground that though the case had started in the year 1984, the petitioner had not even once attended the Court before him. The said approach made by the 2nd respondent is totally erroneous in law. In my view, the 2nd respondent has totally misunderstood and misread the provision relating to Section 2(11)(iii) of the Act relating to personal cultivation and on such an erroneous understanding of the said provision has come to the conclusion that the petitioner is not personally cultivating the lands in question. There is also no material before the 2nd respondent to come to the conclusion that the petitioner is not cultivating the lands personally. The provisions contained in Section 79-B of the Act results in serious consequences and is in the nature of penalty, depriving a person of his right to enjoy the property. This is clear from sub-section (3) of Section 79-C of the Act, wherein it is provided that by way of penalty the lands may be forfeited to the State Government. Therefore, it is obligatory on the part of the 2nd respondent before forfeiting the land to ensure himself that the requirement of Section 79-B is strictly complied with. It is not permissible for the 2nd respondent to proceed on the basis of inferences and conjectures and on that basis proceed to forfeit the land to the State Government. Therefore, I am of the view that the impugned order is liable to be quashed. Accordingly, it is quashed.

8. In terms stated above, this petition is allowed and disposed of. However, no order is made as to costs. Rule issued is made absolute.

9. Sri Chikkavenkataiah, learned Government Pleader is given four weeks' time to file his memo of appearance.

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