

Byalappa Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jun-23-1981

Reported in : AIR1982Kant99; ILR1981KAR1017

Judge : D.M. Chandrasrekhar and ;N. Venkatachala, JJ.

Acts : Karnataka Land Reforms Act, 1962 - Sections 2(10), 2(18) and 45; ;
[Constitution of India](#) - Article 133

Appeal No. : Writ Appeal No. 96 of 1981

Appellant : Byalappa

Respondent : State of Karnataka and ors.

Advocate for Def. : K. Channabasappa, Adv.

Advocate for Pet/Ap. : P. Vishwanatha Shetty, Adv.

Judgement :

Venkatachala, J.

1. By consent of learned counsel, this appeal was treated as having been posted for hearing and we heard them.

2. This appeal is from the order of Bhimiah, J., in Writ Petition No. 6512 of 1977. Respondent 3 therein has presented this appeal. Since the petitioner therein died

during the pendency of the writ petition, his legal representatives are arrayed as respondents 3 (a) to 3 (d) in this appeal. For the sake of convenience, the parties will hereinafter be referred to according to their respective positions in the writ petition.

3. Respondent 3 had made two applications under S. 48-A of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as 'the Act') before the Land Tribunal, Bangalore North Taluk (hereinafter referred to as 'the Tribunal'), seeking occupancy right in respect of 3 acres 1 gunta of land comprised in Survey No. 41/2 of Sasvegatta village, Bangalore North Taluk, belonging to the petitioner. Those applications were granted by the Tribunal by its order dated 18-6-1975. That order was impugned in the writ petition from which the present appeal has arisen. There, the petitioner's grievance was that the Tribunal had made the order impugned therein without holding a proper enquiry. According to him, statements of the parties and their witnesses had not been recorded and the purported evidence on which the Tribunal had based its order, could not have been relied upon by the Tribunal, as he (the petitioner) was not given an opportunity to rebut the same. His further grievance that, he was not afforded by the Tribunal opportunity to substantiate the case put forward by him in the statement of objections filed before the Tribunal.

4. The learned single Judge, who heard the writ petition, quashed the impugned order of the Tribunal and further rejected respondent-3's applications under Section 48-A of the Act.

5. In this appeal, Shri P. Viswanatha Shetty, learned counsel for the appellant (respondent-3 in the writ petition), had no grievance in regard to the quashing of the order of the Tribunal by the learned single Judge. But, he contended that the learned single Judge was in error in himself appreciating the purported evidence on which the Tribunal had made its order and rejecting respondent-3's applications for grant of occupancy rights. He maintained that the learned single Judge should have remitted the case to the Tribunal to decide the case afresh after recording the evidence properly.

6. The proper course for the learned single Judge was to remit the case to the Tribunal for a fresh disposal according to law (Muniyellappa v. Krishna Murthy : AIR1977 Kant137). Moreover, when the petitioner's grievance in the writ petition, was that he did not have sufficient opportunity to put forth his case before the Tribunal, it was absolutely necessary to afford now to his legal representatives such opportunity and not have been decided by Judge on reappreciation which, even according to the not worthy of consideration.

7. Shri K. Channabasappa, learned counsel for present respondents 3 (a) to 3 (d) (legal representatives of the deceased petitioner), sought to sustain the order of the learned single Judge on a ground different from the one on which he (the learned single Judge) based his order. Shri Channabasappa argued that the applications under Section 48-A of the Act had to be dismissed because the land in question was not an agricultural land and the applicant for such land could not be regarded as cultivating it immediately prior to 1-3-1974. Elaborating his contention, Shri Channabasappa submitted that the provisions of S. 45 of the Act apply only to an agricultural land and not to a non-agricultural land, that a person who raises casuarina plantation on a land could not be regarded as cultivating an agricultural land and hence he could not claim grant of occupancy right in respect of such land.

8. Shri Channabasappa, is right in his submission that in view of the definition of the word 'land' in sub-section (18) of S. 2, the provisions of S. 45 apply only to an agricultural land and not to a non-agricultural land. But, that definition includes a land which is capable of being used for agricultural purposes and also a forest land. A land on which casuarina trees are grown, is undoubtedly capable of being used for agricultural purposes. Even if a land on which casuarinas plantation is raised, is regarded as a forest land, such forest land also comes within the definition of the word 'land' in S. 2(18). Hence, we have no hesitation in rejecting the contention that the land in dispute is not an agricultural land.

9. We shall now examine whether raising casuarina trees can be regarded as cultivation.

9A. Sub-section (10) of S. 2 which defines the term 'to cultivate', reads :

'(10) 'to cultivate' with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce whether by manual labour or by means of cattle or machinery, or to carry on any agricultural operation thereon; and the expression 'uncultivated' shall be construed correspondingly;

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 cultivate such land.'

10. As pointed out by the Supreme Court in Income-tax Commr. v. Benoy Kumar : [1957]32ITR466(SC) , at one time 'agriculture' was understood in its primary sense of cultivation of field and that too, for the production of food crops for human beings and beasts, that limited interpretation could not be adhered to even though tilling of the land, sowing of the seeds, planting or similar work on the land were of basic operations, the scope of crops produced was enlarged and all crops raised on the land -whether they were food crops or not - were included in the crops raised by agriculture. The mere fact that casuarina is not a food crop, would not make raising of casuarinas trees any the less, cultivation. As observed by the Supreme Court in Benoy Kumar's case, if a person plants on a vacant land, trees with a view that they should grow into a forest, as for example casuarina plantations, and expends labour and skill for that purpose, the produce from such trees would be clearly agricultural produce. There is of preparing watering and them, should not be regarded as coming within the ambit of 'cultivation'. It is not the case of Shri Channabasappa that casuarina trees standing on the land in dispute, were of spontaneous growth and were not raised by human efforts.

11. The Explanation to sub-section (10) of S. 2 excludes from the ambit of the word 'cultivate', only operations like 'mere cutting or gathering fruits or, other crops on any land. The necessary implication from such exclusion is that raising trees by operations like preparing the soil, planting saplings, watering and maturing them and tending them, is not excluded from the definition of the word 'cultivate'.

12. However, Shri Channabasappa relied on the decision of the Madras High Court in Bharathi Swarbigal v. Duraiswamy (AIR 1931 Mad 659) in which it was

held that a person occupying a land used for growing casuarina trees, could not be regarded as a tenant under the Madras Estates Land Act. In our opinion, the decision in that case turned on the provisions of that Act and no assistance can be derived from that decision for deciding a case arising under the Karnataka Land Reforms Act.

13. Thus, raising of casuarina trees which are not of spontaneous growth, comes within the ambit of cultivation.

14. Hence, we reject the contention of Shri Channabasappa that no occupancy right can be granted to the tenant of a land who raises casuarina trees thereon.

15. In the result, we allow this appeal partly, uphold the order of the learned single Judge in so far as he quashed the order of the Tribunal, but reverse his order in so far as he held that the applications under Section 48-A of the Act, should be rejected. We remit those applications to the Tribunal with a direction to dispose them of in accordance with law after holding a fresh enquiry. We make it clear that the Land Tribunal should not be influenced by any observations made by the learned single Judge regarding the merits of the rival claims of the parties.

16. In the circumstances of this appeal, there will be no order as to costs.

17. After we pronounced the above judgment, Shri K. Channabasappa, learned counsel for respondent 3, made an oral application for grant of a certificate of fitness to appeal to the Supreme Court from our judgment.

18. In deciding the Point at controversy, we have followed the judgment of the Supreme Court in Income-tax Commissioner v. Benoy Kumar : [1957]32ITR466(SC) . Hence, in our view, no substantial question of law of general importance, which needs to be decided by the Supreme Court, can be said to arise from our judgment.

19. Accordingly, we decline to grant the certificate sought for and dismiss the oral application.

20. Appeal partly allowed.

