

Ramakrishna Aithala and Another Vs. Smt. Bhagi Shettigarthy (Deceased) by L.R.

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Court : Karnataka

Decided On : Jan-25-2000

Reported in : ILR2000KAR1880; 2000(3)KarLJ134

Judge : S.R. Venkatesha Murthy, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 2(34), 38(1) and (3), 44, 45, 48-A and 77; Karnataka Land Reforms Rules, 1974 - Rules 9-A(1) and 17; Karnataka Land Reforms (Amendment) Act, 1978

Appeal No. : Land Reforms Revision Petition No. 619 of 1988

Appellant : Ramakrishna Aithala and Another

Respondent : Smt. Bhagi Shettigarthy (Deceased) by L.R.

Advocate for Def. : Sri R.K. Hatti, High Court Government Pleader,; M/s. Shetty and Hegde Associates and ;Sri A.G. Shivanna, Adv.

Advocate for Pet/Ap. : Sri P. Ganapathy Bhat, Adv.

Judgement :

ORDER

1. The parties are referred to according to their array in the Land Reforms Appellate Authority, Mangalore.

2. The first respondent Bhagi Shettigarthy filed an application in Form 2-A under Section 38 of the Karnataka Land Reforms Act (hereinafter called the 'Act') before the Land Tribunal, Mangalore, seeking ownership in respect of Door No. 19-2-C in Survey No. 233 of Idya Village, Mangalore Taluk on 30-12-1981, claiming that her father constructed a small house on the land granted by the landlord and also planted 6 coconut plants. The Land Tribunal sought verification of the claim by referring the matter to the surveyor and on 23-7-1985, a mahazar was prepared by the surveyor that 233 survey number given in the application as 228 was wrong and that the correct survey number was 65/4B. Thereafter the first appellant and first respondent were notified by the Land Tribunal. The Land Tribunal is purported to have conducted an enquiry between 6-9-1985 and 13-3-1986 and made the order dated 16-5-1986 conferring ownership rights in respect of 10 cents of land and the building thereon lying in Survey No. 65/4B of Idya Village in favour of the first respondent.

3. Admittedly the second appellant has been conferred occupancy rights under Section [459] of the Act in respect of the Survey No. 65/4B of the Idya Village and she has become the owner of the same. Before the Land Tribunal only the first appellant was made a party who had no subsisting interest in the land in question.

4. Being aggrieved by the order of the Land Tribunal, as aforesaid, the appellants filed an appeal to the Land Reforms Appellate Authority, Mangalore (hereinafter referred to as the 'Appellate Authority') in LRA(H) 53/86. The Land Reforms Appellate Authority, Mangalore, on motion permitted, the parties to tender evidence oral as well as documentary. The appellants challenged the order of the Land Tribunal on the ground that (i) there was no enquiry conducted as contemplated in law; (ii) the case of the first respondent Bhagi Shettigarthy come within the explanation to Section 38(1)(a) of the Act and she was not entitled to ownership rights in respect of the property in question; that Bhagi Shettigarthy was not an agricultural labourer; that the claim made by first respondent did relate to the property in question as the survey number on which the building is situated is

different from what is stated in Form 2-A; that without amendment of the application, the Land Tribunal got no jurisdiction to adjudicate on the claim and that in any event the order of the Land Tribunal did not conform to the requirement of Section 38 of the Act.

5. The Appellate Authority which recorded the evidence of the appellants and first respondent, negatived all the contentions of the appellants and has dismissed the appeal. The Appellate Authority found that notwithstanding the absence of an application for amendment of the application in Form 2-A by the first respondent, the Land Tribunal was right in examining the case of first respondent as being one for conferment of ownership in respect of the house located in Survey No. 65/4B of Idya Village on the ground that, being a social legislation a liberal construction to effectuate the object sought to be achieved viz., confer ownership of house occupied by agricultural labourers, should be adopted; that the first appellant, in any event, has not objected to the procedure adopted by the Land Tribunal; that the case of first respondent was outside the ambit of explanation of Section 38(1)(a) of the Act, as the owner was not living in any portion of the property claimed by the appellant 2; that the house was located in a village; that the first respondent was an agricultural labourer; that she was entitled conferment of ownership in respect of the entire extent of 0.18 cents land and building therein though the claim of first respondent was for only 0.10 cents of land only and dismissed the appeal. The entire order of the Appellate Authority is attacked as perverse, which for reasons to follow, should be sustained.

6. Under Section 38(1) of the Act, if an agricultural labourer is residing in a house constructed on land and not belonging to him, situated in a village, as on the date of publication of Karnataka Land Reforms (Amendment) Act, 1978, such dwelling house with the site thereon and the land immediately appurtenant thereto, vests in the State Government free all encumbrances and such agricultural labourer, subject to sub-sections (2) and (3) of the Act, would be entitled to seek registration as owner thereof; the exception being that the agricultural labourer should not be residing in a dwelling house which is the portion of the house of the owner or it should not be temporary residence.

7. Section 38(2) of the Act enables an agricultural labourer to make to the Land Tribunal an application in the prescribed form on or before 31-3-1983 and on such an application being made the Land Tribunal should conduct an enquiry as contemplated under Section 48-A of the Act and make an order registering the applicant as the owner of the dwelling house and the immediate appurtenant land and forward a copy thereof to the Tahsildar to enable him to determine the amount the land owner is entitled to for extinguishment of the right in such land and for issue of registration certificate to an agricultural labourer.

8. Section 38(2) of the Act enables the owner of the dwelling house in which the agricultural labourer is residing, to offer any other site within 1 k.m. from the said dwelling house and pay the cost of construction of a similar dwelling house including the cost of shifting to the new building house. If the agricultural labourer does not comply the Land Tribunal could be moved under Section 38(3) of the Act for adjudication regarding compliance with Section 38(2) of the Act. On enquiry the Tribunal may make an order directing the agricultural labourer to shift to the new site within a specified time and on non-compliance by the agricultural labourer, he could be evicted from the dwelling house. If within the stipulated time (31-3-1983) the agricultural labourer does not make an application under Section 38(1) of the Act, his right to be registered as an owner gets extinguished and the dwelling house and the land shall be deemed to have not vested in the State Government. Section 38(4) of the Act provides that the restriction, contemplated in Section 61 of the Act would apply equally to be grants made under Section 38 of the Act.

9. The records of the Land Tribunal pertaining to first respondent's application would show that the Land Tribunal has not recorded any evidence as contemplated under Section 48-A of the Act read with Rule 17 of the Karnataka Land Reforms Rules, 1974 (the 'rules' for short). In the records all that is found in the report of the surveyor, and xerox copy of a rent bond dated 1-11-1974 purported to be executed by the first respondent and the decision of the Land Tribunal dated 16-4-1986. Obviously the Land Tribunal's order is in contravention of Rule 17 of the Rules. That is the reason why the Appellate Authority recorded evidence tendered by both the parties and has rendered findings on facts.

10. Not much can be said against the finding recorded by the Appellate Authority that the first respondent is an agricultural labourer as defined under the Act, though the first respondent was admittedly inducted into the premises as domestic labourer and she, during the period not doing labour in petitioner's house, was doing agricultural coolie also.

11. It is undisputed that the first respondent did not make any application for amendment of the Form 2-A at any time either before the Land Tribunal or before the Appellate Authority, for correction of the survey number of the land as S.No. 65/4-B of Idya Village. The Appellate Authority has sought to observe that the Land Tribunal could, by virtue of Section 48-A(3) of the Act, permit amendment of the application in Form 2-A for valid and sufficient reasons. The Appellate Authority has gone on to observe that the Act being for amelioration of the living conditions of agricultural labourers, the grant of ownership rights, after a survey must be regarded as permitting an amendment of the claim, especially as the first appellant had not contested the amendment before the Land Tribunal. The perversity of this reasoning is demonstrated by the Appellate Authority not having scrutinised the records of the Land Tribunal at all, as the proceedings of the Land Tribunal are in violation of Rule 17 of the Rules. The object sought to be achieved by the Act does not empower either the Land Tribunal or the Appellate Authority to flout the provisions of the Act and do whatever it thinks is right. The reasoning of the Appellate Authority, suffers from the vice of 'whatever it thinks is right' attitude and deserved be deprecated.

12. Section 113 of the Act provides for application of the Code of Civil Procedure in respect of all applications and proceedings under the Act before the Court, except to the extent expressly provided under the Act. Even if the provisions are in terms inapplicable to the procedure before the Land Tribunal, the principles would be applicable being in consonance with the requirements of natural justice. An amendment of an application in Form 2-A has to be spelt out in writing so that the opposite party has an opportunity of contesting the same, besides enabling the Land Tribunal to examine the same for making an order thereon. There is no question of assuming that the application in Form 2-A relates to whatever is found in the occupation of the alleged agricultural labourer. Having regard to the effect of

Section 38(3)(d) of the Act, if an application is not made in respect of the property clearly identified therein, within the time i.e., 31-3-1983, the right for registration as an owner is lost to the agricultural labourer. Any amendment could be sought and obtained only within 31-3-1983 and not thereafter. So the first respondent lost her right to seek and secure registration as owner of the dwelling house in question, and the property that stood vested in the State under Section 38(1) of the Act, gets diverted under Section 38(3)(d) of the Act, as distinct from agricultural land tenanted as on 1-3-1974, stands vested in the State under Section 44 of the Act once and for all, irrespective of the fact whether an application under Section 45 of the Act is allowed or not.

13. The first respondent admitted in her evidence before the Appellate Authority stated what is in her occupation is one room, jagali (pial) and lean-to-roof portion. Though first respondent has sought to deny that she has executed Ex. A(1) rent bond dated 1-11-1974, the appellants have proved it by evidence of the first appellant and the attester of Ex. A(1) I. Narayana Bhat. Ex A(1) is executed by the first respondent in favour of second appellant. What is significant to note from Ex, A(1) is the description of the property leased as one room, jagali and a lean-to-roof area. The property leased to first respondent is described as the eastern part of premises bearing No. 1-92 in S. No. 65/4B. First respondent has thus corroborated the description of the property leased as being a part of the building bearing No. 1 of 1992. The appellants have also produced and proved Ex. A. 22-the lease deed executed by Anandi Hengsu dated 1-11-1974 in favour of the second appellant in relation to the western half of premises No. 1/92, consisting of a room, jagali and a lean-to-roof. Thus, it is established by the appellant that premises No. 192, consisted two identical half portions, the eastern half portion being leased to the first respondent and the western half portion being leased to Anandi Hengsu. The Appellate Authority clearly failed to examine the oral and documentary evidence to find whether first respondent and Anandi Hengsu were really sisters as alleged by first respondent. First respondent's father is Subbu Shettigar, whereas Anandi Hengsu's mother's name of Gowri Shettigarthi. The first respondent explained in her evidence how Anandi Hengsu was regarded by her as a sister and that is because she came to live with her. What is significant to note is that she is unable to state whether Gowri Shettigarthi was the mother of Anandi Hengsu. If so

claimed by first respondent Anandi Hengsu was the sister of first respondent she could not have felt any difficulty in naming her own mother as the mother of Anandi Hengsu. First respondent states that Anandi was residing with her owing to illness, at the time of her deposition in 1987; whereas she was found to have died in 1984 as per the death extract produced in the case. It is clear that Anandi Hengsu was unrelated to the first respondent and held the other portion of the building No. 1-92 independently under the lease deed Ex. A-22 and the first respondent had no right or possession whatsoever to the portion covered by Ex. A-22 on the relevant date. The Appellate Authority ignored material evidence to the contrary in coming to the conclusion that the entire unit bearing No. 1/92 was held by first respondent as a dwelling house. The Appellate Authority took a perverse view that if Anandi Hengsu held the western part of the house bearing No. 1/92 under A-22, she would have also filed application in Form 2-A and the fact that she did not do so demonstrated that first respondent held the entire house. The fact that one Anandi is recorded in the ration card produced by first respondent proved nothing as first respondent has lied about her relationship with Anandi Hengsu the executant of Ex. A-22. The finding recorded by the Appellate Authority that the first respondent has been in possession of entire building bearing No. 1/92 on the relevant date is a clear surmise and is perverse.

14. The appellants have by clear evidence demonstrated that the premises No. 1792 consisted of two portions and the eastern portion was leased to first respondent and Anandi Hengsu was the tenant of the western half portion till her death in 1984. Thus as on the date first respondent filed the application in Form 2-A, she was in occupation of one room, jagali and a lean-to-roof portion on the eastern side of the building. The western half portion of the building was tenanted by Ahandi Hengsu till her death.

15. Claim for conferment of occupancy rights in respect of agricultural land vested in the State by operation of Section 44 of the Act and claims for conferment of ownership on agricultural labourers of the dwelling house on a land belonging to another under Section 38 of the Act are distinct and do not overlap to any extent. When once an agricultural land vests in the State under Section 44 of the Act, it could be disposed of under Section 45 of the Act in accordance with the procedure

laid down under Section 48-A of the Act and/or disposed under Section 77 of the Act. The scheme of Section 38 of the Act is totally different and an agricultural labourer, on proof of his claim, would be entitled to be registered owner, subject to the right of the owner of the dwelling house to offer a separate site and payments specified under Section 38(2) of the Act, besides transferring ownership and possession of the site to the agricultural labourer. What is significant to note is that the agricultural labourer would be entitled to only such immediately appurtenant land as is necessary for enjoyment of the dwelling house. It is clear that the agricultural labourer would not be entitled to claim the whole of survey number or sub-number of the land on a part of which the dwelling house is located. The Land Tribunal has to determine what extent of 'immediately appurtenant land' would be necessary for the enjoyment of the dwelling house and confer ownership rights on the agricultural labourer to that extent of appurtenant land and cannot grant the whole of the land as appurtenant land when the house is built on a very small extent, as in this case. Such determination would not come within the ambit of expression 'land immediately appurtenant thereto and necessary to its enjoyment'. By seeking to do so under Section 38 of the Act, the Land Tribunal would be usurping a function specified in Sections 44 to 49 of the Act. It is needless to reiterate that agricultural tenants defined under Section 2(34) of the Act and agricultural labourers defined under Section 2(2) of the Act form distinct and different classes of persons and the same person cannot lay claim for both the status. Under the guise of conferring ownership rights on an agricultural labourer under Section 38 of the Act, the Land Tribunal cannot grant any land in excess of what is absolutely necessary for the enjoyment of the dwelling house in which the agricultural labourer is residing. The impugned order of the Appellate Authority does precisely what is not permitted under Section 38 of the Act.

16. The prayer column of Form 2-A which is part of the Rules of 1974 reads as follows.-

'Form 2-A ...

.....

.....

as dwelling house and the land as dwelling house and the land appurtenant thereto not exceeding 0.05 cents (2.24 acres or 2 guntas) under Section 38(1)(b) of the [Karnataka Land Reforms Act, 1961](#)'.

17. How far the Form 2-A in the Schedule to the Rules of 1974 can be availed of to interpret Section 38 of the Act requires examination. The Supreme Court had occasion to examine a similar contention in the M/s. Aphali Pharmaceuticals Limited v State of Maharashtra and Others and the relevant observations read as follows.-

'29. This brings us to the question of interpretation of the Act and the Schedule with the explanation, in view of the submission that the explanation could not have rendered Item 3(i) of the Schedule redundant. Was there any change of intention of the legislature in this regard?

30. A Schedule in an Act of Parliament is a mere question of -drafting. It is the legislative intent that is material. An explanation to the Schedule amounts to an explanation in the Act itself. As we read in Halsbury's Laws of England, Third Edition, Vol. 36, para 551:

'To simplify the presentation of statutes, it is the practice for their subject-matter to be divided, where appropriate, between sections and Schedules, the former setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a matter of arrangement, and a Schedule is as much a part of the statute, and as much an enactment, as is the section by which it is introduced'. The Schedule may be used in construing provisions in the body of the Act. It is as much an act of legislature as the Act itself and it must be read together with the Act for all purposes of construction. Expression in the Schedule cannot control or prevail against the express enactment and in case of any inconsistency between the Schedule and the enactment the enactment is to prevail and if any part of the Schedule cannot be made to correspond it must yield to the Act. Lord Sterndale, in *Inland Revenue Commissioner v Gittus* , said:

'It seems to me there are two principles of rules of interpretation which ought to be applied to the combination of Act and Schedule. If the Act says that the Schedule

is to be used for a certain purpose and the heading of the part of the schedule in question shows that it is prima facie at any rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for the purpose, and if you can satisfy the language of the section without extending it beyond that purpose you ought to do it. But if in spite of that you find in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is prima facie to be used. You cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the schedule and the definition of the purpose of the Schedule contained in the Act'.

31. The above observation was not disapproved in appeal (1921)2 AC 81. However, the basic principle is that in case of a conflict between the body of the Act and the schedule, the former prevails. In the instant case we do not find any such conflict'.

Similar observations are made by a Constitution Bench of the Supreme Court in *M/s. Ujagar Prints v Union of India and Others*. Section 38 of the Act itself, apart from employing the expression 'land immediately appurtenant to and necessary for enjoyment' has not specified what should be that extent but has left it to be determined by the Tribunal. But in the Form 2-A the prayer column what could be the limit of that extent is clearly indicated. I do not see any conflict between the two if the dominant object of Section 38 of the Act is understood i.e., granting ownership rights of dwelling house occupied by an agricultural labourer. Read harmoniously, it is clear that the Land Tribunal could grant immediately appurtenant land to a limit of 2 guntas only, depending on the circumstances of each case. Any other interpretation of Section 38(1)(a) of the Act, by which grant of land in excess of 2 guntas along with dwelling house, would render the word 'immediately' otiose an exercise not permissible in law.

18. It is clear that the expression 'land immediately appurtenant to and necessary for enjoyment cannot be construed so as to give to the agricultural labourer a large

extent of land, by ignoring the word 'immediately' as has been done by the Appellate Authority in this case. Any interpretation of the expression 'appurtenant' lands ignoring the preceding word 'immediately' would be doing violence to Section 38 of the Act. Therefore, the expression 'land immediately appurtenant thereto and necessary for the enjoyment' would have to be given its full effect by restricting the grant of the appurtenant land to that which is absolutely necessary for the enjoyment of the dwelling house of an agricultural labourer in accordance with the limit specified in Form 2-A. What is contemplated by the expression referred to above is that the agricultural labourers to whom the dwelling house is granted should also be entitled to such appurtenant land as is necessary for providing light and air to the dwelling house. All other requirements such as some land for raising a kitchen-garden or raising a few trees are not really necessary for the enjoyment of the dwelling house; whereas light and air are necessities which are to be provided for while the dwelling house is sought to be parceled out and given to agricultural labourer under Section 38 of the Act. A limit of 0.05 cents or 2 guntas of appurtenant land is, apparently found to be necessary for the enjoyment of the dwelling house depending on the dimensions of the dwelling house. It has to be noticed that the immediately appurtenant land that has to be parceled out and granted to an agricultural labourer is in addition to the area of the land on which the house is constructed. 242 sq. yards (2 guntas) of open space is indeed a very substantial portion of land for being parceled out as appurtenant land and that is the reason why in Form 2-A the limit is set as not exceeding 0.05 cents or 2 guntas. In these circumstances, it is clear that while determining the 'land immediately appurtenant to and necessary for the enjoyment' of the dwelling house, the Land Tribunal would have to take into consideration the extents specified in Form 2-A and find out how much of land not exceeding 2 guntas could be granted to an agricultural labourer. Under the guise of determining the land immediately appurtenant to the dwelling house and necessary for its enjoyment, the Land Tribunal would have no jurisdiction to resort to grant the entire survey number or sub-number of the land on which the house is constituted, an exercise which would really amount to encroaching on the power that is vested in the Land Tribunal under Sections 44 to 49 of the Act.

19. In the instant case, the second respondent is apparently granted the entire extent of 18 guntas in survey No. 65/4B by exercise of the power by the Land Tribunal under Section 38 of the Act. The Land Tribunal by resorting to its power under Section 38-A of the Act cannot nullify the grant in favour of the second appellant under Section 45 of the Act. The order of the Land Reforms Appellate Authority and the Land Tribunal precisely constitutes an illegal exercise of power by reason of failure to appreciate the true scope of Section 38 of the Act. The order made by the Land Reforms Appellate Authority in favour of the first respondent is without jurisdiction and is liable to be set aside.

20. More importantly, the first respondent would not be entitled to even make an application under Section 38 of the Act as the claim of the first respondent would be hit by explanation to Section 38(1)(a) the Act which reads as follows.-

'38(1).....

.....

.....

Explanation.--For the purpose of this clause, an agricultural labourer residing in a dwelling house which is a portion of the house of the owner or which is a temporarily residence on such land and shall not be regarded as ordinarily residing therein'.

(emphasis supplied)

In the instant case, it is established as a fact that there are two portions of the house in 1/92, and even on the first respondent's admission, she is a lessee of one room, jagali and a lean-to-roof which constitutes the eastern portion of the house. The western half portion of the house is established to be leased out to Anandi Hengsu. The Land Reforms Appellate Authority proceeded to hold that the house in the occupation of the first respondent is different from the house in the occupation of the owner and the owner not being in possession of any part of the house bearing No. 1/92, the second appellant could not be regarded as being in possession thereof and was not therefore entitled to avail the explanation to

Section 38(1)(a) of the Act. All that the explanation to Section 38(1)(a) of the Act stipulates is that where an agricultural labourer is residing in dwelling house, which is a portion of the house of the owner he would not be entitled to seek ownership rights for it. The explanation does not stipulate that in the remaining portion of the house of the owner, the owner must be actually residing. It follows that the benefit of Section 38(1)(a) of the Act would not be available to an applicant seeking ownership rights of a portion of the house in which the agricultural labourer is residing, when the rest of the building is occupied either by the owner or leased out to any other tenant. In these circumstances, the claim of the first respondent for ownership rights in respect of the property comes within the ambit of explanation to Section 38(1)(a) of the Act and her application could not be entertained for granting any relief, by the Land Tribunal.

21. In these circumstances, the order of the Land Reforms Appellate Authority is illegal and cannot be sustained. The order of the Land Tribunal is set aside. Consequently, the revision is allowed rejecting the application filed in Form 2-A by the first respondent.