

Joshi Vs. Assistant Commissioner

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Court : Karnataka

Decided On : Jan-13-1994

Reported in : ILR1994KAR530; 1994(1)KarLJ524

Judge : S. Rajendra Babu and ;N.D.V. Bhat, JJ.

Acts : [Karnataka Land Reforms Act, 1961](#); Karnataka Land Reforms (Amendment) Act, 1979 - Sections 15

Appeal No. : W.P. No. 20856 of 1986

Appellant : Joshi

Respondent : Assistant Commissioner

Advocate for Def. : Jayakumar S. Patil, Adv.

Advocate for Pet/Ap. : G. Balakrishna Shastry, Adv.

Judgement :

ORDER

N.D.V. Bhat, J

1. The petitioner has challenged the order dated 13.3.1986 passed by the Assistant Commissioner, Bagalkot. By the said order, the Assistant Commissioner, Bagalkot, set aside the order passed by the Tahsildar, Hungund allowing the application filed by the instant petitioner under Section 15 of the Karnataka Land

Reforms Act (hereinafter referred to as 'the Act' for short).

2. The facts leading to the instant Writ Petition, briefly stated, are as under:

The petitioner is a soldier within the meaning of definition under Section 2(31-A) of the Act. He is still in service. According to him, he is the owner of the disputed land. It is not in dispute that the land in question has been a tenanted land and it is the version of the petitioner that he continued the lease in favour of respondent-3 under Section 5 of the Act. The petitioner wanted to resume the land in question under Section 15 of the Act. With that end in view he issued a notice as required under the provisions of Section 15(2) and (3) of the Act. The respondent No. 3 however did not respond to the request reflected in the notice. The petitioner therefore, after the expiry of statutory period, filed an application under Section 15(4) of the Act praying for eviction of the tenant and for restoration of possession. The Tahsildar issued notice under Section 15(5) of the Act calling upon respondent No. 3 to hand over possession. The tenant neither handed over possession nor did he appear before the Tahsildar and put in his objections to the notice issued by the Tahsildar, Under these circumstances, the Tahsildar, by his order dated 24.4.1985 passed an order directing eviction of the tenant and restoration of possession. Being aggrieved by the said order, respondent No. 3 had preferred an appeal before the Assistant Commissioner, Bagalkot. The learned Assistant Commissioner, on a consideration of the material before him and for the reasons recorded in his impugned order, took the view that the instant petitioner was not entitled to resume the land, with the result, the application filed by him came to be dismissed. It is this order which is challenged in this Writ Petition.

3. We have heard the arguments of the learned Counsel appearing on either sides. In the context of the submissions made at the Bar, the following Points arise for Consideration:--

i) Whether the lease is required to be created during the service of a person as soldier before he can take advantage of the provisions of Section 15 of the Act ?

ii) Whether a soldier is not entitled to resume the land under Section 15 of the Act before he retires from service and,

iii) What order ?

4. It is noticed that the learned Assistant Commissioner, in the course of his order, has taken the view that having regard to the language reflected in Section 5(2) of the Act, it is not permissible for a soldier to take advantage of the said provision unless the lease itself is created during the period when the soldier is in service. In our view, having regard to the settled position of Law in this behalf, this point should not detain us long. A Division Bench of this Court to which one of us was a party (RAJENDRA BABU, J.) has made the legal position clear beyond a pale of doubt. The Bench, in W.P. No. 13606/1987 disposed off on 5.7.1993 Rama v. State, in the course of the Judgment, among other things, has, in the last but two paras, observed as under:

'Further we would make it clear that this Court in NARAYAN HANUMANTH MURALI v. LAND TRIBUNAL : ILR 1986 KAR4059 has explained the scope of understanding Section 5 in respect of creating or continuing tenancies. Even a tenancy created by the father could be continued by the son. The question whether it was prior to coming into force of the Act or subsequent is irrelevant because even a tenancy created by the father could be continued by the son subsequently. If he continues such tenancy and that is a tenancy covered by Section 15(5) of the Act, it does not fall within the prohibition and certainly respondent-4 can make a claim under Section 15. In the present case that is what has been done.'

The observations made by this Court in the aforesaid Decision and culled out hereinabove are absolutely clear and it is therefore not necessary for us to dilate on that aspect, It will suffice if it is observed that the first point raised on behalf of the petitioner is not tenable. If that be so, the next point which is required to be considered is whether the soldier is not entitled to resumption before he retires from service. In order to answer this position, it is necessary to closely examine the provisions adumbrate in Section 15(3) of the Act it stands amended by Act No. 1 of 1979. The said provision reads as under:

'15. RESUMPTION OF LAND BY SOLDIER OR SEAMAN -

(1) XXX XXX XXX(2) xxx xxx xxx(3) The notice referred to in sub-section (2) shall be given -

(i) in the case of a soldier in service in the Armed Forces of the Union at any time not later than one year from the date on which he is released from the Armed Forces or is sent to the reserve;

(ii) in the case of the father, mother, spouse, child or grandchild of a soldier, within one year from the date of the death of such soldier; and,

(iii) in the case of a seaman, within one year from the date on which he ceases to be a seaman.'

We are concerned with the interpretation of Section 15(3)(i) in particular, having regard to the fact that the petitioner is a soldier in service in the Armed Forces, A careful perusal of the relevant provision would go to show that in the case of a soldier in service in the Armed Forces of the Union, he can issue notice at any time not later than one year from the date on which he is released from the Armed Forces or he is sent to the reserve. Sri Jayakumar S.Patil, learned Counsel appearing for the respondent No. 2 laid great emphasis on the expression 'released from Armed Forces' and contended that the said expression would unmistakably go to show that the starting point for taking action under Section 15(3)(i) is the date on which the soldier is released or retires. We do not find any merit in this submission made by Sri Patil. The submission made by Sri Patil cannot be accepted in the context of the clear language reflected in the said provision. It is not at all possible to read a starting point as having been incorporated in the said provision. All that the said provision does is to prescribe the last limit within which the application for resumption will have to be filed by the soldier. It does not anywhere state that the action will have to be taken after the soldier retires from service. The said interpretation cannot be had either from the clear language of the said provision or from the necessary implication. Further, this aspect has been the subject matter of a Decision of the Division Bench, again, of which one of us (RAJENDRA BABU J.,) was a party, in W.P.No. 12716 of 1985

disposed off on 1.6.1993 Shivaji v. Assistant Commissioner. This Court in the said case, in the course of its order, as among other things, observed as under:-

'All that Section 15(3)(i) requires is that a notice will have to be issued calling upon the tenant to deliver possession of the land within a period specified in the notice and such notice will have to be issued not later than one year from the date on which he is released from the Armed Forces and in case of a seaman within one year from the date on which he ceases to be a seaman. But the cut off period is one year from the date of the concerned person being soldier or seaman. There is no prohibition for issue of notice even while in service, but takes effect only on seaman or soldier ceasing to be in service.'

The portion culled out hereinabove makes it abundantly clear that what all Section 15(3)(i) of the Act does is to prescribe the last limit within which the application for resumption will have to be filed. Under these circumstances, it is not necessary for us to dilate on this aspect.

5. Before we close, it is also necessary to make a mention of the submission made by the learned Counsel for the petitioner. It is pointed out by the Learned Counsel for the petitioner that the provisions of Section 5 of the Act do not indicate that a tenancy created at an earlier point of time be continued by the soldier after the right in the said land accrues to him. In fact this very aspect has been considered by the Division Bench of this Court in W.P.No. 13606/1987 in the portion which we have already culled out earlier, in which the earlier Decision in NARAYAN HANUMANTH MURALI v. LAND TRIBUNAL : ILR 1986 KAR4059 was relied on. This aspect has been further explained and the position in this behalf has been made clear beyond a pale of doubt in the Judgment of this Court in W.P.No. 24925/1990 disposed off on 5.8.1993 Ningappa Avamma Astekar v. The State and Ors.. Under these circumstances, it is not necessary for us to dilate any further on this aspect at all.

6. Looked at from any point of view, the contentions raised by respondent No. 2 are not tenable. The order passed by the Assistant Commissioner, Bagalkot reversing the order passed by the Tahsildar, Hungund is liable to be set aside and the order passed by the Tahsildar, Hungund deserves to be restored. Writ Petition

is allowed accordingly. No order as to costs.

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