

Panchappa Vs. State of Karnataka

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Court : Karnataka

Decided On : May-30-1988

Reported in : ILR1989KAR974; 1988(3)KarLJ332

Judge : K.A. Swami, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 15 and 48A

Appeal No. : W.P. No. 10837 of 1987

Appellant : Panchappa

Respondent : State of Karnataka

Advocate for Def. : S. Udayashander, HCGP for R-1 to R-3 and ;T.Y. Katwa, Adv. for R-4

Advocate for Pet/Ap. : I.G. Gachchinamath, Adv.

Disposition : Petition rejected

Judgement :

ORDER

K.A. Swami, J

1. In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the order dated 4-6-1976, passed by the Special Tahsildarfor

Land Reforms, Jamkhandi, in Case No. KLR-SR-51. Jamkhandi (Annexure-D) and also the order dated 30-9-1981 passed by the Chairman, Land Tribunal, Jamkhandi, bearing No. KLR.SR.12/B/Kadkol (Annexure-E).

2. Even though the first order was passed on 4-6-1976 and the second one was passed on 30-9-1981, the petition is filed on 16-7-1987 nearly after 11 years from the date of the first order and about 6 years from the date of the second order.

3.1. In this case, the relevant facts are not in dispute. The land in question is S.No. 41/1, measuring 6 acres 38 guntas, assessed at Rs. 21.16 paise situated at Kadakol village, Jamkhandi Taluk, Bijapur District. The 4th respondent was the landlord of the land in question and as claimed by the petitioners, their father was the tenant. On the coming into force of the [Karnataka Land Reforms Act, 1961](#) (hereinafter referred to as the 'Act') and as amended by the Karnataka Act No. 1 of 1974, the 4th respondent who was in the active military service made an application under Section 15 of the Act for resumption of the land in question after due notice to the 1st petitioner. The application was filed on 30-9-1975. It may also be noticed that the father of the petitioners died on 26-4-1962. The names of the petitioners came to be mutated in the mutation register on 25-6-1962 as per the mutation entry No. 1286 produced as Annexure-C. This entry was also certified on 13-7-1962 which fact is also mentioned in Annexure-C. However, the family of the petitioners continued to be joint family. The first petitioner was the kartha of the joint family. In fact, his name was continued in the cultivators column as well as in the other columns as the kartha of the Joint Family. There was a suit filed by the 4th respondent against the 1st petitioner for recovery of arrears of rent in respect of the land in question for the years 1968-69 and 1969-70 in R.R.C. No. 87/80, in the Court of the Additional Munsiff, Jamkhandi. The suit was decreed on 8-7-1971 under Section 42 of the Act. Thus the 1st petitioner continued to represent the joint family and it was against him the decree for arrears of rent was passed. The notice as required by Section 15 of the Act was issued to and served on the 1st petitioner. He appeared before the 3rd respondent in the proceeding initiated under Section 15 of the Act in Case No. KLR.SR.51 Jamkhandi and also gave the statement. On holding due enquiry, the Special Tahsildar passed an order directing resumption of the land in question on 4-6-1976 (Annexure-D).

3.2. Form No. 7 filed by the 1st petitioner was also pending before the Land Tribunal. An enquiry was held and it was rejected having regard to the order of resumption passed on the application filed under Section 15 of the Act by the 4th respondent against the 1st petitioner. It is also not the case of petitioners 2 to 5 that they have filed separate applications in Form No. 7 and those applications have not yet been considered.

On these facts, which are furnished by the petitioners only, the contentions raised by the petitioners are to be examined.

4. It is contended on behalf of the petitioners that the order passed under Section 15 of the Act as per Annexure-D is null and void because it is passed without notice to petitioners 2 to 5. It is not possible to accept this contention. The 1st petitioner's name as a kartha of a Hindu Joint Family consisting of himself and petitioners 2 to 5 as per Annexure-C was entered in the Record of Rights in respect of the land in question. Even a suit for recovery of arrears of rent of the land in question was filed against him and a decree was obtained by the 4th respondent. It was in that capacity he was served with a notice of the proceeding under Section 15 of the Act. He appeared in the proceeding, contested the proceeding and ultimately an order was passed directing resumption of the land. Nearly for 11 years, none of the petitioners raised a little finger against the order. In addition to this, it is the 1st petitioner who filed Form No. 7 in respect of the land in question under Section 48A of the Act. The 4th respondent was a soldier as defined in the Act and was entitled to avail the benefits of Section 15 of the Act. When the law itself gives benefit to such persons and the object of the law in providing such benefit is that the attention of a person who is engaged in the defence of the Country should not be diverted towards protecting his rights in the properties possessed by him. Defence of the Country must be uppermost in his mind and it must receive highest priority and no other matter should interfere and divert his attention. It is with this object, the law has protected the rights of such persons, as otherwise such lands would have been vested in the State and would have become liable to be registered in favour of the tenants cultivating them personally as on 1-3-1974. That being the object of the law, the Court must endeavour and ensure that such an object of the law is not defeated in any

manner and even if there is a minor discrepancy in the order not affecting the merits and not resulting in the miscarriage of justice, it should be overlooked. But in the instant case, there is no such discrepancy nor there is any illegality. When the 1st petitioner as a kartha of the family was entitled to represent the entire joint family consisting of major and minor members, it was not necessary to issue notice to all the members. In fact, the 1st petitioner had filed Form No. 7 representing the entire family on 21-8-1974 in respect of the very land in question making the 4th respondent as the opponent who was the landlord of the land in question. That being so, when for the purpose of making an application in Form No. 7 in respect of the very land in question. the first respondent was competent to represent the entire family he was equally competent to represent the entire family in a proceeding for resumption of the very land and as such it is not possible to hold that he was not competent to represent the entire family. It will be striking at the very root of the conception of a Hindu joint family and the powers of the kartha of a Hindu joint family. Therefore, the contention of the petitioners that as petitioners 2 to 5 were not issued with individual notices, therefore, the proceeding initiated under Section 15 of the Act was vitiated, is liable to be rejected and it is rejected.

5. Learned Counsel for the petitioner placed reliance on a decision of this Court in MEENAKSHAMMA v. LAND TRIBUNAL, RAICHUR AND ORS 1978(1) KLJ 220.. That was a case which related to Form-7 proceeding in which it was held that all the persons interested in the land should be given an opportunity. There is a lot of difference between the application filed under Section 15 of the Act and the application filed in Form No. 7 under Section 48A of the Act. In the first case, land does not vest in the State Government. Therefore, all the concerned persons will not lose the right in it. The first proceeding is a proceeding between the two persons viz., the tenant and the owner of the land wherein the law itself has permitted continuation of the lease in respect of such lands and permitted the lessor to seek resumption of the same. Whereas it is not so in the case of a proceeding under Form No. 7 wherein a determination has to be made as to vesting of the land in the State. In that event, the land owner/s will lose interest in the land and will be entitled to the compensation as provided under the Act. As the land owner/s will lose all the right and the land will vest in the State Government

without any encumbrance, all those persons who are interested in the land will be entitled to notice. Whereas it is not so in the case of a proceeding under Section 15 of the Act which is mainly between the two contesting parties. Hence the aforesaid decision has no application to the case on hand.

6. It is next contended that pending disposal of Form No. 7, resumption proceeding should not have been decided. In support of this contention, learned Counsel placed reliance on a decision of this Court in VENKATACHAR v. LAND TRIBUNAL, K.R. PET AND ORS., 1980(1) KLJ 232. It is sufficient to mention that this decision is overruled by a Division Bench of this Court in NARASING GOPALRAO DESAI v. LAND TRIBUNAL, KHANAPUR, 1984(1) KLJ 387. It is held by the Division Bench, in the aforesaid decision that if a tenant approaches the Tribunal for grant of occupancy right in a case where Section 15 of the Act is attracted, the Tribunal cannot grant occupancy unless there is a proof of vesting of the land under Section 15(6) of the Act. Therefore, it has been further held that if the proceedings are pending before the Tahsildar, then the Tribunal shall defer consideration of the application for grant of occupancy right till the proceedings before the Tahsildar are completed or the appeal if any is disposed of by the Assistant Commissioner. In this case, the decision in PAVADAPPA YELLAPPA v. GOVINDACHARYA 1981(2) KLJ 605 has also been overruled. The decision in Narasing Gopalrao Desai's case has again been followed by another Division Bench of this Court in NARAYAN HANAMANTH MURALI v. LAND TRIBUNAL, BASAVAN BEGEWADI AND ORS., 1986(2) KLJ 257. Thus it is clear that the contention is devoid of merit. It is accordingly rejected.

7. Now coming to the validity of the order passed on Form No. 7 filed by the 1st petitioner, it is contended that notices ought to have been issued to petitioners 2 to 5 also. It is not possible to appreciate this contention. The 1st petitioner himself has filed the application in Form No. 7 as a kartha of the family and none of the other petitioners has filed Form No. 7 and it is not their case that before that there was a partition between them and in that partition the land in question was allotted to the share of other petitioners other than the 1st petitioner. Therefore, when Form No. 7 was considered by the Land Tribunal, the 1st petitioner continued to be the member of the joint family and as such he was entitled to represent the

other petitioners also. The Tribunal held an enquiry in accordance with law, recorded the statement of the 1st petitioner and also that of the father of the 4th respondent. The statement of petitioner No. 1 makes it clear that the present Writ Petition which is filed after 6 years is only intended to take a chance in the matter. The 1st petitioner has stated in his statement before the Tribunal as follows:

That being so, the possession of the land in question which was obtained long back in the year 1981 by the fourth respondent and the petitioners did not raise a little finger against both the impugned orders for seven years. Thus, apart from the fact that there is no merit in the contentions raised by the petitioners, I am also of the view that petitioners are guilty of laches. On that ground also the petition is liable to be dismissed without going into the merits. However, I have examined the case on merits and I am of the opinion that there is no merit in the case.

8. In the result, there is no ground to issue Rule. Petition is accordingly rejected.

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