

Gopal Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Feb-04-2003

Reported in : ILR2003KAR3686; 2003(4)KarLJ537

Judge : V. Gopala Gowda, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 21, 24 and 48A

Appeal No. : Land Revenue Revision Petition No. 2593 of 1989

Appellant : Gopal

Respondent : State of Karnataka and ors.

Advocate for Def. : T.A. Ramachandraiah, High Court Government Pleader for Respondents-1 and 2

Advocate for Pet/Ap. : K. Giridhar, Adv. for ;M.B. Prabhakar, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

V. Gopala Gowda, J.

1. One Vittal Rukka Kemarpant filed Form 7 before the Land Tribunal for grant of occupancy rights in Sy. No. 119 of Kadasalli Village, Yellapur Taluk. The Land

Tribunal by its order dated 20-12-1978 granted occupancy rights. The 3rd respondent filed Appeal No. 269 of 1986 against the said order. While the Revenue Member of the Appellate Authority concurred with the order of the Land Tribunal, the Judicial Member took a different view.

2. In view of the conflicting views among the members of the Appellate Authority, the matter was referred under Section 116-B of the Karnataka Land Reforms Act to the opinion of the local Civil Judge. The Civil Judge by his order dated 7-1-1988 in C. Misc. No. 97 of 1987 concurred with the view of the Judicial Member. Based on the majority decision, the Appellate Authority by its order dated 23-1-1988 allowed the appeal and set aside the order of the Land Tribunal. By that time the original applicant had expired. The proceedings had been continued holding that the applicant has no legal representatives.

3. The present petitioner, claiming to be Class II heir, being the sister's son of the original applicant, filed Appeal No. DAAA. A.P. 3/88 questioning the correctness of the order dated 23-1-1988 passed by the Appellate Authority setting aside the order of the Land Tribunal. By order dated 7-11-1988 the Appellate Authority dismissed the same as not maintainable. The petitioner has filed this revision petition seeking to set aside the two orders passed by the Appellate Authority.

4. By order dated 11-6-2001 service of notice on 3rd respondent is held sufficient. As a result, there is no contest to the claim of the petitioner that he is the legal representative of deceased original applicant.

5. Learned Counsel for the petitioner has relied upon the decision in Sangappa Kalyanappa Bangi (dead) through L.Rs v. Land Tribunal, Jamkhandi and Ors., : AIR 1998 SC3229 wherein it is held that heirs of deceased tenant are entitled to tenancy rights. Since the heirship of the petitioner is not disputed, the same is accepted.

6. The reasons assigned by the Appellate Authority in its order dated 7-11-1988 for rejecting the appeal filed by the petitioner are totally erroneous and irrelevant. When the petitioner claimed that he is the heir of deceased applicant, the Appellate Authority should have conducted enquiry to ascertain the same. Without

doing so, it has rejected the appeal holding that it was not maintainable, thereby the tenancy right that would be accrued to the petitioner had been defeated. The Appellate Authority was also not right in holding that under what provision the petitioner filed the application. It is well-settled that omission to mention the provision of law or wrong mentioning of the same shall not be the ground for rejection of the application of the petitioner, but the contents are relevant. Hence, the order dated 7-11-1988 passed by the Appellate Authority is wholly unsustainable and liable to be set aside.

7. Coming to the order dated 23-1-1988 of the Appellate Authority, the order of the Land Tribunal has been set aside merely because of the majority decision of the Judicial Member and the opinion of the Civil Judge. The majority decision is that the land is not tenanted and it had not vested in the Government and hence the Land Tribunal had no jurisdiction to grant occupancy rights. The basis for such a decision was the entry in the record of rights in which the name of the tenant was not found. But, the tenant had adduced rebuttal evidence in support of the tenancy right. The Appellate Authority did not consider the same. However, the Land Tribunal has elaborately considered the oral evidence adduced and has rightly held that the land is tenanted and it vested with the Government. The Land Tribunal being fact-finding authority, has recorded reasons in support of its conclusion and the Revenue Member was right in this regard. The Judicial Member has not assigned any reason to disagree with the same. It follows that the order passed by the Appellate Authority is liable to be set aside.

8. The Apex Court in the case of Santosh Hazari v. Purushottam Tiwari (deceased) by L.Rs, : [2001]251ITR84(SC) , has held at paragraph 15 which relevant portion is extracted as hereunder.--

'15. .. While writing a judgment of reversal the Appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the Trial Court must weigh with the Appellate Court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the Appellate Court is not competent to reverse a finding of

fact arrived at by the Trial Judge. As a matter of law if the appraisal of the evidence by the Trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the Appellate Court is entitled to interfere with the finding of fact....'.

9. Accordingly, the revision petition is allowed and the order of the Appellate Authority is set aside. The order passed by the Land Tribunal is restored. It is further ordered to treat the petitioner as the legal representative of the original applicant.

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