

**Abbubaker Beary Vs. Tahsildar**

**Abbubaker Beary Vs. Tahsildar**

**SooperKanoon Citation :** [sooperkanoon.com/382759](http://sooperkanoon.com/382759)

**Court :** Karnataka

**Decided On :** Jan-06-1992

**Reported in :** ILR1992KAR1779; 1992(2)KarLJ125

**Judge :** N.D.V. Bhat, J.

**Acts :** [Karnataka Land Reforms Act, 1961](#) - Sections 22 35, 38, 41(2) and 130

**Appeal No. :** W.P. No. 20924 of 1991

**Appellant :** Abbubaker Beary

**Respondent :** Tahsildar

**Advocate for Def. :** S.R. Shetty, Adv. for R-3

**Advocate for Pet/Ap. :** K.S. Vyasa Rao, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**N.D.V. Bhat, J.**

1. This Writ Petition is directed against the order dated 27.8.1991 passed by the Assistant Commissioner, Kundapur, in No. LRY.SR.2/91.92.

2. The facts relevant for the disposal of this Writ Petition briefly stated are as under :

Petitioner Abbubaker Beary claimed occupancy rights under Section 38 of the Karnataka Land Reforms Act (hereinafter referred to as the Act), in respect of the dwelling house and land appurtenant to it in Sy.No.102/2A before the Land Tribunal, Udupi. The Land Tribunal, Udupi, by its order dated 22.7.1985 rejected his application for the reasons reflected there. Being aggrieved by the same, petitioner preferred Writ Petition No. 2125/1986 before this Court and the said Writ Petition was transferred to the Land Reforms Appellate. Authority. The said Writ Petition which was converted into an appeal before the Land Reforms Appellate Authority was numbered as LRA 791/1988. The Land Tribunal - appellate authority by its order dated 6.4.1989 rejected the appeal. Being aggrieved by the same, petitioner preferred C.R.P. No. 4576/1990 before this Court. However, the same was rejected.

3. When this was so, respondent - 3 - Bhoja Hegde, filed an application before the Tahsildar, Udupi, for summarily evicting the petitioner and to hand over the delivery of possession of the dwelling house and the land appurtenant to it to him.

4. The Tahsildar, Udupi, in proceedings bearing No. LRF. CR.296/90- 91, purporting to act under Sections 39 and 104 of the Karnataka Land Reforms Act directed that the Revenue Inspector, Kapu-Hobli, shall take possession of the aforesaid property and deliver the same to the respondent-3. Being aggrieved by the same, the petitioner preferred an appeal under Section 118/2B of the Act to the Assistant Commissioner, Kundapur. The Assistant Commissioner, Kundapur, by his order dated 27.8.1991 dismissed the appeal. Hence, this Writ Petition.

5. I have heard the learned Counsel on either side.

6. In the light of the submissions made on either side the only point that arises for consideration is as to whether the Tahsildar has the jurisdiction to dispossess or evict the petitioner under any of the provisions of the Karnataka Land Reforms Act.

7. While Sri. Vyasa Rao, the learned Counsel for the petitioner contended that neither the provisions of Section 41 nor the provisions of Section 130 would apply to the facts of the case, Sri S.R.Shetty, the learned Counsel for respondent - 3 asserted that the same would apply Sri S.R.Shetty, the learned Counsel for respondent - 3 put his finger mainly on the provisions of Section 130 of the Act.

8. Before considering the submission of the learned Counsels with reference to applicability or otherwise of the provision of Section 41 and/ or Section 130, it is necessary to remember that the claim of the petitioner that he was an agricultural labourer and as such he was entitled to occupancy rights under Section 38 of the Act to the dwelling house and the land appurtenant to it was rejected by the Tribunal, by the appellate authority, and by this Court. It is necessary to mention here that the Land Reforms Appellate Authority in LRA 791/1988 has clearly held that the instant petitioner has failed to prove that he is an agricultural labourer. This is clear from the copy of the order of the Land Reforms Appellate Authority produced on behalf of the respondent - 3 along with his statement of objection. Further, it is not in dispute that the C.R.P. preferred against the said order was rejected. In para 10 of the Statement of objection it is stated as under :

' The very fact that the petitioner's application under Section 38 is dismissed by the Land Tribunal, Udupi, which was upheld both by the Land Reforms Appellate Authority and this Hon'ble Court, would make the possession of the petitioner unauthorised and unlawful. It is pertinent to note that under Section 80 of the Land Reforms Act no lease in favour of a person who is not an agricultural labourer shall be lawful. Even on this basis the petitioner's possession and occupation is unauthorised and wrongful within the meaning of Section 130 of the Land Reforms Act, 1961.'

9. From what is stated hereinabove, it is clear that in the light of the orders referred to hereinabove, the position of the petitioner in relation to the property in question was not that of an agricultural labourer.

10. If that be so, it will have to be next seen as to whether Section 41 of the Act would enable respondent - 3 to seek the eviction of the petitioner. Section 41 reads as under :

'Procedure for taking possession:

(1) A tenant or an agricultural labourer entitled to possession of any land or dwelling house or site under any of the provisions of this Act or as a result of eviction in contravention of Sub-section (2) may apply in writing for such possession to the Tahsildar. The application shall be made in such form as may be prescribed and within a period of two years from the date on which the right to obtain possession of the land, dwelling house or site is deemed to have accrued to the tenant, agricultural labourer as the case may be.

(2) Save as otherwise provided in this Act, no landlord shall obtain possession of any land, dwelling house or site held by a tenant except under an order of the Tahsildar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land, dwelling house or site, as the case may be, is deemed to have accrued to him.

(3) On receipt of application under Sub-section (1) or (2) the Tahsildar shall, after holding an inquiry, pass such order thereon as he deems fit.

(4) Any person taking possession of any land, dwelling house or site except in accordance with the provisions of Sub-section (1) or (2), as the case may be, shall be liable to forfeiture of crops, if any, grown on the land in addition to payment of costs as may be directed by the Tahsildar and also the penalty prescribed in Section 125.'

11. It is only Sub-section (2), if at all which falls to be considered. However a careful perusal of the said sub-section, would go to show that the same can be called in aid only in the context of a situation where the land, dwelling house or site was held by a tenant. It appears to me that Section 41 can be called in aid in the context of a situation brought about by the contingencies reflected in Section 22 and 35 of the Act. It is therefore not necessary to dilate on that aspect, since the petitioner was not a tenant, within the meaning of the expression as defined in the Karnataka Land Reforms Act, in respect of the property in question.

12. It is next, necessary to see as to whether Section 130 of the Act will apply to the facts of this case. Section 130 reads as under :

' Summary Eviction:

Any person unauthorisedly occupying or wrongfully in possession of any land -

(a) the transfer or acquisition of which either by the act of parties or by the operation of law, is invalid under the provisions of this Act; or

(b) to the use and occupation of which he is not entitled under the provisions of this Act and the said provisions do not provide for the manner of eviction of such person, may be summarily evicted from such land by the Tahsildar after such inquiry as he deems fit and the Tahsildar may make such orders as regards the disposal of such land as he deems fit.'

13. A perusal of the above, would go to show that a person's unauthorised occupation or wrongful possession may be brought about under the circumstances enumerated in Clause (a); similarly, the non-entitlement for the use and occupation is brought about under the circumstances mentioned in Clause (b). The facts of the case leading to the rejection of the application of the petitioner, claiming occupancy rights under Section 38 of the Act, disclose that the application was rejected on the count that the petitioner was not an agricultural labourer. A vague attempt appears to have been made at para No. 10 of the Statement of objection presumably with reference to Clause (a) of Section 130 also; among other things it is stated therein as under :

' It is pertinent to note that under Section 80 of the Land Reforms Act no lease in favour of a person who is not an agricultural labourer shall be lawful. Even on this basis the petitioner's possession and occupation is unauthorised and wrongful, within the meaning of Section 130 of the Land Reforms Act, 1961.'

14. It will suffice if it is stated that it is not a case where any transaction is held to be invalid on its being contrary to Section 80 of the Act. Under these circumstances, I have no hesitation to hold that Clause (a) of Section 130 has no relevance at all.

15. If that be so, it will have to be next seen as to whether Clause (b) can be invoked to evict the petitioner. Before the said clause can come into play it is necessary that the person concerned should be unauthorisedly occupying or wrongfully in possession of any land to the use and occupation of which he is not entitled under the provisions of the Karnataka Land Reforms Act and the said provisions do not provide for the lawful eviction of such person. In other words, the use and occupation of the land should be wrongful on account of one or the other provisions of the Act. It is not as if there is any provision in the Karnataka Land Reforms Act which makes it wrongful for any person to dwell in a house on an agricultural land. Might be, that the possession of a person may be wrongful. At the same time, the same may not be on account of any provision of the Act, !t is only in the context of wrongful possession on the count of any of the provisions of the Karnataka Land Reforms Act that Section 130(b) can be invoked. There are quite a good number of provisions in the Karnataka Land Reforms Act, which make the possession of a particular person wrongful. For instance, if a particular person is in possession of any land in excess of the ceiling limit he cannot be in possession of the same. If he continues to be in possession of the same, the same would obviously be wrongful The said wrongful possession is on the count that he is not entitled to the use and occupation of the same on account of the Karnataka Land Reforms Act. It is not necessary to multiply instances. From what is stated hereinabove, it is clear that the facts of the instant case are indeed not such as would attract the provisions of Section 130(a) or 130(b) of the Act.

16. in the light of what is stated hereinabove, I have no hesitation to hold that neither Section 41 nor Section 130 would apply to the facts of the instant case.

17. Before I conclude, it is necessary to make a mention about one more aspect which has been touched upon by the learned Counsel for the respondent. The learned Counsel submitted before this Court that the instant petitioner has filed a suit at O.S.No.517/1991 before the Munsiff, Udupi, Dakshina Kannada, in respect of the same subject matter and that therefore the instant petition is not maintainable. It is necessary to notice here that the suit is shown to have been filed on 30.9.1991, as can be seen from the copy of the plaint produced on behalf of the respondent. The Writ Petition is filed before this Court on 18.9.1991 that is

to say next before the suit was filed. In that view of the matter I am of the opinion, that the fact that a suit is filed before the Munsiff Court would not defeat the claim of the petitioner in this Writ Petition. Even otherwise it is necessary to notice here that having regard to the fact that the Writ prayed for is mainly in the nature of certiorari, the Writ jurisdiction is not affected because of any alternative remedy since the order in question is one without jurisdiction. Further, Sri.Vyasarao, the learned Counsel for the petitioner also submitted to the Court that the suit has been withdrawn or is being withdrawn at any rate having regard to what is stated earlier. I am of the view that the filing of the suit in the way and manner as has been done by the plaintiff, will not affect this Writ Petition.

18. Hence, for the reasons stated hereinabove, I am of the view that the order dated 9.3.1991, bearing No. LRF.CR.296/90-91 passed by the Tahsildar, as also the order dated 27.8.1991 bearing No. LRY. SR.2/91-92 passed by the Assistant Commissioner are opposed to law.

19. In the result, the Writ Petition is allowed and the orders challenged and referred to hereinabove are hereby quashed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**