SUPREME COURT OF INDIA

Ram

Vs.

State of Karnataka

C.A.No.7431 of 2000

(Shivraj V.Patil and B.N.Srikrishna JJ.)

17.09.2004

JUDGMENT

Shivaraj V. Patil, J.

1. One Dattoba Daji Saheba Desai filed Form No. 7 under Section 48-A of the *Karnataka Land Reforms Act, 1961* (for short 'the Act') before the Land Tribunal (for short 'the Tribunal), Belgaum, claiming occupancy rights over the land Survey No. 43 measuring 2 acres 23 guntas exclusively to himself. 3 other applicants namely, Baburao Desai, Vishwasrao Desai and Jayawantrao Desai also made similar applications for grant of occupancy rights in respect of the same land claiming 1/4th share each. The Tribunal, after conducting enquiry, by order dated 20.8.1975 granted occupancy rights in favour of these 4 persons as regards their respective shares. Dattoba, aggrieved by the said order, filed Writ Petition No. 5244/1975 before the High Court challenging the correctness of the said order of the Tribunal. The High Court allowed the writ petition, set aside the order of the Tribunal and remanded the case to the Tribunal for fresh disposal. After the remand, the Tribunal after hearing the parties by its order dated 23.6.1981 held that these 4 applicants were entitled for cultivator right to the extent of 1/4th share. Dattoba filed Writ Petition No. 18378/1981 for the second time calling in question the validity and correctness of the order of the Tribunal dated 23.6.1981 alleging irregularities in the conduct of the enquiry by the Tribunal. The High Court again allowed the writ petition, remitted the case to the Tribunal for re-enquiry and disposal. The Tribunal took up the case for the third time after issuing notices to the parties.

2. The Tribunal, by a detailed order dated 23.9.1996 by majority, granted occupancy rights in favour of the 4 branches of the applicants to the extent of 1/4th share each as per the boundaries shown in the order of the Tribunal dated 23.6.1981. Writ Petition No. 29937/96 was filed by the grandsons of Dattoba as legal heirs challenging the order of the Tribunal dated 23.9.1996 contending that the occupancy rights should have been granted exclusively to them. The learned Single Judge of the High Court, on re-appreciation of the evidence, allowed the writ petition by his order dated 10.8.1998 holding that the occupancy rights in respect of the said land vest exclusively in Dattoba's branch and remaining branches of the

family do not have any share in the said land. Jayavantrao Desai, respondent no. 8 in the writ petition, filed Writ Appeal No. 4310/98 before the Division Bench of the High Court questioning the validity and correctness of the order made by the learned Single Judge. The Division Bench of the High Court, after considering the rival contentions, in para 9 of the order held thus:

> "9.This Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India normally cannot re-appreciate the evidence on record which has already been appreciated by the Land Tribunal. Not on one occasion but on all the three occasions, the Land Tribunal on appreciation of evidence on record has found that it is a joint tenancy. That finding of fact cannot be upset by this Court sitting under its writ jurisdiction by re- appreciating the evidence."

3. In this view, the Division Bench allowed the writ appeal, set aside order of the learned Single Judge and dismissed the writ petition. Thus, the order of the Tribunal stood restored. Hence, this appeal by the legal heirs of Dattoba questioning the validity and correctness of the impugned order made by the Division Bench.

4. The learned counsel for the appellants contended that having regard to the evidence both oral and documentary, learned Single Judge was right in reversing the order of the Tribunal holding that the branch of Dattoba was entitled for grant of occupancy rights over the land in question exclusively; Chairman of the Tribunal gave detailed reasons in support of the finding that Dattoba's branch alone was entitled for occupancy rights; Members of the Tribunal did not agree with the Chairman and took the view that the four applicants were entitled for grant of occupancy rights to the extent of 1/4th share each but without assigning reasons and without considering the evidence brought on record; the learned Single Judge was right in reversing the order of the Tribunal as it was based merely on majority opinion there being no support either in law or on facts.

5. In opposition, the learned counsel for the respondents made submissions supporting the impugned order. According to them, the learned Single Judge exercising jurisdiction under Articles 226 and 227 of the Constitution of India ought not have set aside the order of the Tribunal by re-appreciating the evidence as a court of appeal. The learned counsel also submitted that having regard to the undisputed fact that 4 applicants come from the same family of common ancestor and belong to different branches of the family, all the 4 applicants were entitled for grant of occupancy rights over the land in question to the extent of 1/4th share each. It may be stated here that the landlords have not chosen to contest the proceedings.

6. We have carefully considered the respective submissions made on behalf of the parties. The facts found in the case are that: Dettoba Desai applied for grant of occupancy rights over the entire survey no. 43 measuring 2 acres and 23 guntas claiming to be the protected tenant over the said land for over 50 years. Baburao Desai, Bishwasrao Desai and Jayawantrao Desi applied for grant of occupancy rights in respect of the same land requesting for grant of occupancy rights over their share of land which they were cultivating since about 15 years

after partition in the family properties. The landlord did not contest the case as already stated above. The 3 applicants who claimed grant of occupancy rights over their share of the land produced a copy of compromise deed effected during the year 1962 between the applicant Dattoba and the landlord. The land in question was item no. 4 in the compromise deed with respect to which it was stated that the said land shall remain in the possession of all the four. The 3 applicants also requested for spot inspection of the suit land by the Tribunal.

7. The Tribunal visited the land on 20.8.1975 in presence of all the applicants and made enquiries with the adjacent land owners. From the local enquiry and spot inspection, the Tribunal was satisfied that the suit land was in possession of all the 4 applicants and they were cultivating personally their respective shares of land as tenants. The applicant Dattoba did not adduce any oral evidence to rebut the claims of the 3 applicants. However, he relied on R.O.Rs. of 1965-66 and 1973-74. No doubt, entries in these R.O.Rs. showed the name of Dattoba as cultivator. The 3 applicants stated that the entries in the R.O.Rs. remained in the name of Dattoba, being the manager of the joint family but after partition, each one of them was cultivating personally his respective share of the land. The Tribunal accepted the case of the 3 applicants recording that it was satisfied that the 3 applicants were in actual possession of the suit land and were entitled for grant of occupancy rights in respect of their respective shares.

8. Accordingly, the Tribunal granted occupancy rights to all of them by its order dated 20.8.1975 according to their possession over the respective shares of the land. Dattoba filed the writ petition challenging this order of the Tribunal. The High Court allowed the writ petition, set aside the order of the Tribunal and remanded the case to the Tribunal for fresh disposal. After remand, the Tribunal by its order dated 23.6.1981 again held that all the 4 applicants were entitled for cultivatory rights to the extent of 1/4th share each. As can be seen from this order, majority of the Members of the Tribunal concluded that all the four applicants were entitled for occupancy rights in the land in question to the extent of 1/4th share each but the Chairman of the Tribunal did not agree with the majority. Ultimate decision by majority was that each one of the applicants was entitled for grant of occupancy rights in respect of his share in the land. Dattoba filed second writ petition challenging the order of the Tribunal contending that occupancy rights should have been granted exclusively in his favour over the entire land in question alleging irregularities in the conduct of the enquiry by the Tribunal. This time also, the High Court set aside the order of the Tribunal and remitted the case to the Tribunal for re- enquiry and disposal. After holding re-enquiry as directed by the High Court for the third time, the Tribunal by majority concluded that all the four applicants were entitled for grant of occupancy rights over their share of land. Four Members opined to grant of occupancy rights in favour of all the four applicants according to their shares but the Chairman did not agree with them. The effective order ultimately was that all the four applicants were granted occupancy rights over the land in question to the extent of their shares. Aggrieved by the said order of the Tribunal, Dattoba approached the High Court for the third time by filing a writ petition questioning the validity and correctness of the Tribunal. Learned Single Judge of the High Court, on re-appreciation of the evidence placed on record by his order dated 10.8.1998, held thus-

"The evidence on record overwhelmingly and conclusively indicates that Survey No. 43 vested in Dattoba's branch and that the remaining three branches of the family did not have any shares in it. Under the circumstances, the order passed by the Tribunal will have to be set aside. The modification that is necessary is that it will have to be declared that the occupancy rights that have been granted in respect of Survey No. 43 vest exclusively in Dattoba's branch and remaining branches of the family do not have any share as far as this land is concerned."

9. One of the applicants, namely, Jayawantrao Desai filed writ appeal before the Division Bench of the High Court calling in question the validity of the order made by the learned Single Judge. The Division Bench of the High Court found fault with the order of the learned Single Judge and held that the learned Single Judge could not upset finding of fact recorded sitting under writ jurisdiction by re-appreciating the evidence. The Division Bench of the High Court in the impugned order observed that all the four applicants were close relatives; three applicants from the beginning claimed occupancy rights in respect of their respective shares of land; the tenancy of the land stood in the name of their grandfather who was holding tenancy on behalf of the entire family; two times the matter was remanded and three times the Tribunal, appreciating the material on record, held that all the applicants were entitled for occupancy rights and that original tenancy was a joint tenancy; the Division Bench also referred to a document of the year 1919 and observed that in the said document, name of the grandfather of the appellant, Jayawantrao Dessai, found place; spot inspection was made by the Tribunal and it was found that all the four applicants were in possession of the land. The Division Bench also found that the approach and appreciation of the material on record by the learned Single Judge was wrong and he ignored the effect of the spot inspection made by the Tribunal.

10. Although the Chairman of the Tribunal in the third order after remand found in favour of the applicant Dattoba on the basis of entries of R.O.Rs. and land revenue receipts, other members did not agree. It is true that in the third order made by the Tribunal which was set aside by learned Single Judge in the writ petition, the Chairman has given detailed reasons in support of his opinion, the remaining four Members of the Tribunal held in favour of all the four applicants but have not given reasons to come to the conclusion that all of them were entitled for grant of occupancy rights in respect of their respective shares. It may be remembered that four Members of the Tribunal were non- official Members, they were not members judicially-trained. Although they have not given reasons in support of their opinion, their opinion could be supported on the basis of material on record particularly taking note of the fact that the Tribunal consecutively three times found as a fact that all the four applicants were cultivating the respective shares of their land. We are conscious that in the first two rounds, the orders of the Tribunal were set aside by the High Court on finding some irregularities in the procedure followed; those orders did not exist for consideration for the Tribunal deciding the matter for the third time but the evidence and material that was available on record was not erased. No doubt, the R.O.Rs. showed the name of Dattoba as the cultivator in respect of the entire land but the Tribunal having due regard to the spot inspection and local enquiry with the adjacent land owners, compromise deed showing

partition in 1962 and also taking note that Dattoba being the manager of the joint family earlier, his name alone was found in the record of rights, came to the conclusion on facts that all the four applicants were entitled for grant of occupancy rights over their respective shares of land. In somewhat similar circumstances, this Court in Mohan Balaku Patil and others vs. Krishnoji Bhaurao Hundre (Dead) by Lrs., dealing with the presumption available as to the correctness of entries in the record of rights under Section 133 of Karnataka Land Revenue Act, 1964 and displacement of such presumption by a finding of fact to the contrary in enquiry made by the Tribunal under Section 48-A of Karnataka Land Reforms Act, 1961, in paragraph 4 has observed, "When, in fact, the Tribunal made local enquiry by spot inspection and had come to the conclusion that the appellants were in possession, that factor should have weighed with the appellate authority..... Presumption arising under Section 133 of the Act in respect of the entries made in the Record of Rights stood displaced by the finding of fact recorded that the appellants were in actual possession of the land and were cultivating the same....."

11. The Division Bench of the High Court, in our view, was right in taking exception to the order of the learned Single Judge in upsetting the finding of fact recorded by the Tribunal while exercising writ jurisdiction. Thus, having regard to the facts found, looking to close relationship between the parties and also considering spot inspection and the local enquiries made with the adjacent land owners, in our view, the order of the Tribunal holding that all the 4 applicants were entitled for grant of occupancy rights ought not to have been reversed by the learned Single Judge. Finding of fact recorded by the Tribunal, in the light of what is stated above, could not be said to be either perverse or based on no evidence or was bad for non-consideration of material evidence brought on record. By the impugned judgment, Division Bench has rightly set aside the order of the learned Single Judge and dismissed the writ petition.

12. This being the position, we do not find any good ground or valid reason to interfere with the impugned order. Consequently, the appeal stands dismissed. Parties to bear their own costs.