SUPREME COURT OF INDIA

Subhakar and Others

Vs

Harideesh Kumar and Others

Appeal (Civil) 4992-4993 of 2000

(Dr. Ar. Lakshmanan and L. S. Panta, JJ)

13.03.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

Appellants call in question legality of the judgment rendered by a Division Bench of the Karnataka High Court dismissing the writ appeal filed by the appellants.

Background facts in a nutshell are as follows:

The appellants claim to be Chalgeni tenants and claim grant of occupancy rights under the Karnataka Land Reforms Act, 1961 (in short the 'Act'). According to them late Sesu Poojary, the father of the appellants filed an application in Form No.7 before the Land Tribunal, Karkala (for short the 'Tribunal'). The claim was in respect of Survey No.162/1 measuring 2 acres 11 cents and Survey No.176/2 measuring 8 cents in Gandhinagar, Marpady village Moodabedri, Karkala Taluk of Dakshina Kannada District.

Respondent Harideesh Kumar claimed to be the owner of the land on the basis of a gift-deed from his grandfather. Originally, the Tribunal granted occupancy rights to the appellants' father by an order dated 25.4.1981. The said order was challenged in Writ Petition No.10910/84 before the Karnataka High Court and the High Court allowed the writ petition and remanded the matter to the

Tribunal. After remand by order dated 18.12.1996 rendered by a majority Tribunal rejected the claim in respect of 1.81 acres of land and granted 0.30 acres on humanitarian grounds. The appellants as well as the respondent-Harideesh Kumar filed writ petitions challenging the order passed by the Tribunal. Learned Single Judge dismissed the writ petition filed by the appellants and allowed the writ petition filed by the respondent-Harideesh Kumar by a common order. Appellants filed two writ appeals.

Before the High Court the stand of the appellants was that Punja lands in the district are agricultural lands. According to the appellants, the definition of "land" in terms of Section 2(18) of the Act is wide enough to include Punja land. Referring to some earlier decisions the Division Bench of the High Court came to hold that Punja land is not agricultural land and only grass is naturally grown in such land. Though the High Court referred to classification of different Punja lands, it held that whether Punja land is agricultural land is a question of fact. Finding has been recorded that this is not cultivable land and the grass is naturally grown on the land.

Therefore, the stand of the appellants was not correct. It was observed as follows:-

"In view of the above circumstances, we hold that in this case, the land in question is a Punja Land where only thatched grass is grown naturally. There may be some trees on the land. That does not mean that a natural grass growing land is an agricultural land particularly, in the facts and circumstances of this case where a built house is surrounding the land. For all the above reasons, in the present case, having regard to the facts of the case, we make it clear that Punja land in Dakshina Kannada is not an agricultural land. We make it clear that where Punja land is brought under cultivation, it is not a bar on the parties to adduce evidence that such land is brought under cultivation for agricultural purpose. No such evidence is there in this case."

Learned counsel for the appellants submitted that the application under Section 48A of the Act was in relation to two plots. As in Form 7 there was no mention of Survey 176/2. the appellants have no grievance with regard to the findings recorded. But the Tribunal has lost sight of the fact that on spot inspection certain coconut trees were found on the land in question. Before the Tribunal, the Chairman allowed the claim while the other members rejected the same. Reference was made to the fact that the claimant was a government servant and his son had admitted that the lease was obtained from somebody else. It was also admitted that there was tailoring establishment running on the land in question. However, on humanitarian grounds the Tribunal allowed retention of the house and 30 cents of land. Learned Single Judge found that no agricultural activity was possible and the land admittedly was Punja Land. It was further observed that no agrarian relationship was established, and Punja land in the absence of any evidence, cannot be treated as agricultural land. That also was the finding by the Division Bench which further noted that no evidence was brought to show that the land was under cultivation.

These are assailed by the learned counsel for the appellants.

In response, learned counsel for the respondent- Harideesh Kumar submitted that land had been obtained on lease for a period 11 months starting from 1.1.1963 and 29.11.1963. The same also

shows that the claimant's father was a tenant and monthly rent of Rs.2.25 was payable by him. It was further submitted that the son of Subhakar accepted somebody else to be the landlord. Learned counsel for the appellants submitted that she was aunt and was managing the affairs on behalf of the respondent. The said plea is without any basis. In fact, the rent receipt Ex.P5 on which the appellants placed reliance did not indicate any serial number. It was also noted by the learned Single Judge that there was no basis for allowing retention of the house and 30 cents and the same has been rightly set aside.

Section 2(18) of the Act reads as follows:

"Land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non agricultural purposes."

A bare reading of the provision shows that land means agricultural land that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non- agricultural purposes. Therefore, it has to be established that the land was capable of being used for agricultural purposes or purposes subservient thereto. The Tribunal and the High Court have categorically noted the fact that the land being Punja land is not cultivable land and only grass is grown naturally. If the appellants wanted to establish that it was being used for agricultural purposes, evidence should have been led in that regard. The Division Bench has categorically noted that no evidence in that regard was led. Mere reference to the spot inspection to show the existence of a few coconut trees does not establish that the land was capable of being used for agricultural purpose.

In view of the factual finding recorded by the Tribunal and the High Court (both learned Single Judge and the Division Bench) there is no merit in the present appeals which are accordingly dismissed. There will be no order as to costs.