SUPREME COURT OF INDIA

Maruthi Jaiwant Nakadi

Vs.

Eknath G.Navarekar (Dead) by Lrs.

C.A.No.1027 of 2001

(Tarun Chatterjee and Dalveer Bhandari JJ.)

14.12.2009

JUDGEMENT

Tarun Chatterjee, J.

1. This appeal by special leave arises from the judgment and order dated 4th June, 1998 passed by the High Court of Karnataka at Bangalore in LRRP No. 1960 of 1989, whereby the High Court had allowed the Petition filed by the Landlords/Respondents, under Section 121A of the *Karnataka Land Reform Act,1961*(in short `the Act') setting aside the orders passed by the Additional 2 Land Reforms Appellate Authority, Sirsi and the Land Tribunal, Halyala.

2. The Tenant/Appellant in this appeal, claiming to be the tenant of Block No. 20 measuring 11 acres and 17 guntas of Kumbarkoppa Village in Haliyal Taluk (hereinafter referred to as `land in question'), filed an application in Form No. 7 before the Land Tribunal, Halyala claiming occupancy rights under the Act. In his application it was alleged that he was cultivating the land in question for many years and was paying rent on crop share basis. It was further alleged by the tenant/Appellant that since the Landlords/Respondents never stayed in the Kumbarkoppa Village, the question of cultivating the land in question by them would not arise at all. Accordingly, the appellant prayed for an order of occupancy right in respect of the land in question on the aforesaid allegations.

3. The Landlords/Respondents denied the material allegations made in the application filed by the Tenant/Appellant, inter alia, alleging that the land in question was never leased to anybody and was cultivated through coolies, even the revenue records from the year 1956 onwards showed the names of the landlords themselves and the mode of cultivation as No.2, i.e. through hired labourers.

> "Accordingly, Landlords/Respondents prayed for rejection of the application filed by the appellant claiming occupancy rights in respect of the land in question."

4. By an order dated 6th of December,1998, the Land Tribunal, Halyala allowed the application of the tenant/Appellant holding that it was the appellant who continued to cultivate the land in question and therefore entitled to claim occupancy rights.

5. Feeling aggrieved, the Landlords/Respondents filed an appeal before the Appellate Authority, Sirsa which dismissed the appeal of the Landlords/ Respondents and confirmed the grant of occupancy rights relating to the land in question in favour of the tenant/Appellant inter alia holding that:-

> "1) The Landlords/Respondents could not prove by cogent and sufficient evidence that they were in cultivation of the land in question;
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> 2) The presumption of the entry in the record of rights stood rebutted by the oral evidence of the tenant/appellant;
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> 3) The admission of the Landlords/Respondents that they were not staying in the Kumbarkoppa village would itself be sufficient to grant occupancy rights in favour of the appellant."

6. Aggrieved by the order of the Appellate Authority, the Landlords/Respondents filed a revision petition under Section 121A of the Act which came to be registered as No. 1960 of 1989 before the High Court of Karnataka at Bangalore. The High Court, by the impugned judgment, had set aside the concurrent findings of fact of the Tribunals below and thereby allowed the application by the landlords/respondents under Section 121A of the Act and rejected the application of tenant/appellant for grant of occupancy rights in respect of the land in question. It was, inter alia, held in the impugned order that the tenant/appellant had failed to rebut the presumption of entries in the record of rights by adducing reliable evidence and, therefore, had failed to prove their tenancy relating to the land in question.

7. Before us, the pivotal issues raised by the learned counsel for the parties were as follows:

> "a) Whether the High Court, exercising jurisdiction under Section 121A of the Act can re-appreciate the evidence and come to a contrary finding to that of the Tribunals below ? b) Whether the High Court, while exercising jurisdiction under Section 121A of the Act, could set aside the concurrent findings of fact recorded by the Tribunals below only because another view was possible ?"

8. We have heard Mr. Chandrashekhar, learned counsel appearing on behalf of the tenant/appellant and Mr. S.N. Bhat, learned counsel appearing on behalf of the landlords/Respondents. We have carefully examined the impugned judgment of the High Court as well as the orders of the Tribunals below. Before proceeding any further it is necessary to understand the scope of Section 121A of the Act.

The power conferred on the High Court to revise the order of the Tribunal below has been provided in Section 121A of the Act which reads thus:

> "The High Court may at any time call for the records of any other order of proceeding recorded by the Appellate Authority under this Act or any other law for the purpose of satisfying itself as to the legality of such order or as to the regularity of such proceeding and may pass such order with respect thereto as it thinks fit."

9. The scope of Section 121A of the Act has been widely discussed in the case of *Jagdeesh v. State of Karnataka*[1], in which one of us was a party (Chatterjee J.). In paragraphs 8 and 9 of the said decision it has been made clear as to when the High Court could interfere with the concurrent findings of fact arrived at by the Tribunals below in exercise of its jurisdiction under Section 121A of the Act for setting aside the concurrent orders of the Tribunals below. In this view of the matter, it would be appropriate to reproduce Paragraphs 8 & 9 of the decision which reads as below:

> "8. From a plain reading of Section 121A of the Act, under which revisional jurisdiction can be exercised, it would be clear that the High Court, while exercising such power is entitled to re-appreciate the evidence when it finds that the conclusion arrived at by the appellate authority runs contrary to the materials on record and when it finds that there is no evidence to support the conclusion of the appellate authority or when it finds that the reasons given by the appellate authority are absolutely perverse and cannot be supported by the evidence on record. It would also be clear from a plain reading of Section 121A of the Act that the High Court is also entitled to interfere with the orders of the Tribunals below when the material evidence on record was ignored or a finding was such that no court would come to such conclusion or that the decision of the Tribunals below was manifestly unjust.
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> 9. We have carefully examined the provisions under Section 121A of the Act, which is the revisional power under the Act, and also the provisions under Section 115 of the *Code of Civil Procedure* (for short "the Code"). So far as Section 115 of the Code is concerned, it has been made clear that it is only in case of a jurisdictional error or when the courts below had acted with material irregularity in the exercise of their jurisdiction that the question of interfering with such an order can arise, otherwise, the High Court is not entitled to interfere with any other order which does not satisfy the conditions laid down for interference under Section 115 of the Code. On the other hand, in our view, under Section 121A of the Act, it would be open to the High Court to interfere with the orders of the tribunals below as the High Court is empowered to look into the legality of the order or regularity of the proceedings although, in the exercise of revisional jurisdiction under Section 115 of the Code, the High Court is not entitled to look into the legality of the order or the regularity of the proceedings but only entitled to interfere with the orders of the Tribunals or the courts below when it finds that they have a) exercised a jurisdiction not vested in them by law, or b) failed to exercise a jurisdiction so vested, or c) acted in the exercise of their jurisdiction illegally or with material irregularity. Reading the aforesaid provisions viz., Section 121A of the Act and Section 115 of the Code, we have no hesitation in our mind to hold that the revisional power exercised by the High Court under Section

121A of the Act is wider than the one exercised by the High Court in its revisional jurisdiction under Section 115 of the Code.

As noted herein earlier, since Section 121A of the Act clearly empowers the High Court to look into the legality of the orders impugned, therefore, it would be open to the High Court to consider the material evidence on record, when it finds that such evidence was not at all considered by the tribunals below or when the conclusion arrived at by the tribunals below run contrary to the materials on record or when it finds that there is no evidence to support the conclusion of the tribunals below or that the reasons given by the tribunals below are absolutely perverse or a finding was such that no court would come to such a conclusion or that the decisions of the tribunals below were manifestly unjust."

10. In the present case while setting aside the findings of the Tribunal, the High Court made the following findings:

"In the present case, except the oral evidence of the tenant no material has been placed before the court.

According to the tenant, he is cultivating the land since 1962 and has been paying 40 bags of paddy per year towards rent. He has stated that he has got a residential house at Kumbarkoppa Village and also a cattle shed in the land. He has admitted that he has not taken any receipt from the landlords and that on the say of Eknath Gopal Navarekar, one of the landlords, he was coming to Kumbarkoppa to cultivate the land in question. As against this evidence there is evidence of the landlord who has stated that, though his two brothers are staying away from the land in question as they are in service, it is one of the brothers,, viz., Shankar Gopal Navarekar, Petitioner 2, who is staying at Haliyal which is just 5 km away, is getting the land cultivated through hired labourers or coolies. He has also stated the land was never leased to anybody and that sometimes the tenant was also engaged as a coolie.........................."

"He has further stated apart from the oral evidence that the landlords have produced the revenue records from the year 1962 onwards which shows that it is the petitioners who are in possession and cultivation of the land in question. The mode of cultivation is also shown as No. 2 which is through hired labourer or coolie. There is absolutely no rebuttable evidence produced or even suggested from him to show these entries are false and fabricated. As observed by this Court in the case of *Radhakrishna Setty v. Land Tribunal, Somwarpet, & Another*[2], the statutory presumption arising out of the revenue record should be given due importance and the mere subjective satisfaction of the Tribunal is not enough. The tribunal has to give reasons to discard the entries in the record of rights. Thus there is no rebuttal evidence led by the tenant to show that, though he was cultivating the land in question, his name was not entered for some reason or even due to high handedness of the landlords. The only circumstance relied upon by the Tribunal and the Appellate authority is the statement of the landlord that the tenant is residing at Kumbarkoppa and one of the tenant is staying at Haliyal

which is 5km away and it is not possible for him to cultivate the land by himself or through coolie; that as 2 out of 3 Appellants are staying away on job it is not possible for the landlords to self- cultivate the land and that by admitting that the tenant was sometimes engaged as coolie, the presumption arising under Section 133 of the Act has been rebutted".

11. Finally, while setting aside the findings of fact, the High Court, came to a conclusion:

> "As noted by me earlier, the discussion of the Appellate Authority and the tribunal is absolutely based on no material evidence. The so called admissions of the landlord are not admissions at all.............
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> I find that the reasoning given by the Appellate Authority as well as by the Tribunal are totally baseless without any evidence and they have relied upon the so-called statement and arrived at the finding merely on conjectures and surmises."

12. From a careful examination of the findings given by the High Court, as quoted hereinabove, it would be clear that the High Court, while setting aside the concurrent orders of the Tribunals below, has rightly taken into consideration that although the tenant/Appellant was claiming to be cultivating the land in question, he had failed to produce any receipt taken from the Landlords/Respondents in lieu of rent and on the other hand, the High Court was fully justified in holding that the Landlords/Respondents had produced the entries made in record of rights relating to the land in question from the year 1962 which amply proved that the landlords/respondents were cultivating the land in question and in absence of any reliable evidence it was difficult to prove that the tenant/appellant was in cultivation of the land in question.

13. We are also in agreement with the High Court, when the High Court had held that the statutory presumption arising out of the revenue record must be given due importance and mere subjective satisfaction of the tribunal was not enough. It was for the tribunal to give reasons to discard the entries made in the record of rights. The High Court also, in our view, was fully justified that there was absolutely no rebuttal evidence led by the tenant/appellant to show that though he was cultivating the land in question his name had not been entered for some reason or even due to the high handedness of the landlords/respondents.

Furthermore, in view of our discussions and findings made herein above and considering the power and scope of the High Court under Section 121A of the Act to interfere with the findings of fact of the courts below and the power and scope of the High Court to interfere under Section 115 of the Code of Civil Procedure, we do not find any ground to upset the judgment of the High Court which is impugned before us.

14. Accordingly, we do not find any infirmity and illegality in the impugned judgment of the High Court. The appeal has thus no merit and is, therefore, dismissed and there will be no order as to costs.

[1] *[AIR 2008 SC 1304]* [2] *[1977(2) Kar.L.J., 281]*