

SUPREME COURT OF INDIA

Abdul Khader

Vs.

Tarabai & Ors.

C.A.No.1848 of 2005

(G.S. Singhvi and K.S. Panicker Radhakrishnan, JJ.,)

02.05.2011

JUDGMENT

G.S. Singhvi, J.,

1. This appeal is directed against the judgment of the Division Bench of the Karnataka High Court whereby Writ Appeal No. 963 of 2000 filed by the appellants against the order of the learned Single Judge, who declined to interfere with the order passed by Land Tribunal, Gulbarga (for short, "the Tribunal") for grant of occupancy rights to the respondents was dismissed.

2. The predecessor of Abdul Khader, who is now represented by his legal representatives, are said to be Sajjada of the Darga of Hazarath Sheik Sirajuddin Junnedi of Shaik, Roza Gulbarga. Land comprised in survey Nos.5, 6 and 7 situated at village Badepur, Taluk Gulbarga is said to be Service Inam Land under the Darga. Abdul Khader leased out the land to Basavannappa (husband of respondent No.1 - Tarabai) in 1957 for a period of five years at an annual rent of Rs.500/- and on that basis, the latter started cultivating the land.

3. Basavannappa gave interest free loan of Rs.6,000/- to Abdul Khader and also supplied him foodgrains worth Rs.3,500/-. After some time, he filed Suit No.35/1/1959-60 in the Court of Subordinate Judge at Gulbarga for recovery of the loan etc. During the pendency of the suit, the parties agreed to refer the matter for arbitration. After hearing the parties, the Arbitrators passed award dated 15.10.1959. They took cognizance of the fact that the land comprised in survey Nos.5, 6 and 7 was already leased out to Basavannappa for five years and declared that the plaintiff will have to recover the amount from the defendant by taking the land on lease for a period of 19 years after expiry of five years term. Abdul Khader filed objections against the award but the same were not entertained by the Subordinate Judge, who decreed the suit on 29.10.1959 in terms of the arbitration award.

4. After coming into force of the Karnataka Certain Inams Abolition Act, 1977 (for short, "the 1977 Act"), Basavannappa filed an application under Section 5(1) of that Act for grant of occupancy rights by asserting that he was in cultivating possession of land comprised in

survey Nos.5, 6 and 7 since 1957 as a tenant. Respondent No.2 - Shivapal Singh, who is also represented by his legal representatives, filed similar application for grant of occupancy rights in respect of 1 acre 12 guntas land comprised in survey No.6. Abdul Khader too claimed occupancy rights over the land in dispute and submitted form No.7.

5. By an order dated 27.6.1977, the majority of the Tribunal allowed the applications of Basavannappa and Shivapal Singh and held that Basavannappa is entitled to occupancy rights in respect of land comprised in survey Nos.5, 6 and 7 excluding 1 acre 12 guntas. Shivapal Singh was declared as an occupancy tenant in respect of 1 acre 12 guntas land comprised in survey No.6. However, the application of Abdul Khader was rejected on the ground that he had not cultivated the land as a tenant.

6. Abdul Khader challenged the order of the Tribunal in Writ Petition No.8584 of 1977. Basavannappa also filed Writ Petition No.8583 of 1977 questioning the grant of occupancy rights to Shivapal Singh. During the pendency of the writ petitions, Basavannappa died and his legal representatives including respondent No.1 were brought on record and their names were shown in the cause title of the order passed by the learned Single Judge. Both the writ petitions were allowed by the learned Single Judge vide order dated 26.11.1984 on the ground that the Tribunal had decided the applications without recording evidence and remitted the matter for fresh disposal of the applications filed by the parties.

7. After remand, respondent No.1 submitted an application in form No.1. Abdul Khader filed an application for re-grant of the land. The Tribunal recorded the statements of all the applicants. After considering the evidence of the parties and the written submissions filed on their behalf, the Tribunal passed order dated 6.10.1987 and declared that the respondents have acquired occupancy rights in respect of the land which was in their cultivating possession. The relevant portions of order dated 6.10.1987 are extracted below:

".....Even though the landlord is not cultivating the lands, he has requested to dismiss the applications of the other applicants for granting occupancy rights. He has sought to dismiss their application on the ground that he had mortgaged the land to the applicants and not leased the same to them. As he has not produced any documents in support of his claim, his request was rejected. Moreover, he also sought for rejecting the applications of the applicants on the ground that envisaged in Section 79A of the Karnataka Land Reforms Act, as they are not qualified for re-grant of the lands. As he has failed to produce any document to support his contention, it was decided to reject his contention. The applicant has stated that they are in cultivation of the lands as per the decree of the Munsiff Court. In the decree it is stated that the land is leased. Hence, the contention of the landlord is not liable for consideration on any points of view and hence his application is rejected and so unanimously resolved by the members of the Land Tribunal. As per the statement of the Rajshekar S/o Basawannappa, he is the tenant of Sy.No.5, 6 and 7 and Shivapalsingh is the tenant in respect of 1 acre 12 guntas in Sy.No.6. As the landlord and tenants, have filed the application in Form No.1 and in Form No.7, it is decided to club them together and to take decision on Form no.1. Perused the pahani and it is seen that applicants are the

tenants of the lands prior to 1973-74 and thereafter. As per inam extract the land is inam land. In view of the foregoing reasons and also as per Section 5 of the Karnataka Certain Inams Abolition Act, Sri. B.M. Junnedi, the son of the applicant Shri Abdul Khadar Junnedi is not entitled to be granted occupancy rights in respect of land Sy.Nos.5, 6 and 7 of Badeपुर village. The Land Tribunal unanimously decided to grant occupancy rights in favour of Smt. Tarabai W/o Basawannappa in respect of Sy.No.5 measuring 11 acres 10 guntas, Sy.No.6 measuring 7 acres 7 guntas and Sy.No.7 measuring 8 acres 22 guntas and to Shivapalsingh S/o Jeshwanthsingh in respect of 1 acre 12 guntas in Sy.No.6 occupancy rights. "

8. Abdul Khader challenged the order of the Tribunal by filing an appeal before the Land Reforms Appellate Authority, Gulbarga. After abolition of the Appellate Authority in the year 1990, Abdul Khader filed an application before the High Court with the prayer that the record of appeal bearing No.LRA/INA/No.218/87 be summoned from the Appellate Authority and registered as a writ petition. Paragraph 1 of that application reads as under:

"The petitioner late Abdul Khader and Respondents-1 and 2 had filed Application in Form No.1, numbered as LRA/INM/521/81-82 to Respondent No.4, for grant of occupancy rights of Sy.Nos.5,6 & 7 which were Inam land under Karnataka Certain Inam Abolition Act 1977 of Badeपुर village.

Respondent No.4, by its order dated 6-10-87, rejected the Application of Abdul Khader who had occupancy Applications of Respondents- 2 and 3 as stated in its order."

9. The High Court allowed the application and registered the appeal as Writ Petition No. 19622/1991. The plea of Abdul Khader that respondent Nos. 1 and 2 could not have been granted occupancy rights because they were holding the land as mortgagees was rejected by the learned Single Judge by observing that no evidence has been produced to prove that the writ petitioner had mortgaged the land to respondent Nos. 1 and 2. The learned Single Judge then referred to the decree passed by Subordinate Judge, Gulbarga and held that the finding recorded by the Tribunal that respondent No. 1 was cultivating the land from 1957 does not require interference.

10. The legal representatives of Abdul Khader unsuccessfully challenged the order of the learned Single Judge inasmuch as Writ Appeal No.963 of 2000 filed by them was dismissed by the Division Bench of the High Court along with Writ Appeal No. 972 of 2000 filed by another legal heir of Abdul Khader.

11. Shri Shekhar Naphade, learned senior counsel appearing for the appellants argued that the impugned judgment is liable to be set aside because the decision of the Tribunal to grant occupancy rights to the respondents is based on total misreading of the arbitration award. Learned senior counsel submitted that Abdul Khader had created a mortgage in favour of Basvannappa and, therefore, he cannot be said to have been cultivating the land as a tenant as on 1.3.1974, which is sine qua non for grant of occupancy rights under Section 48-A read

with Section 45 of the Karnataka Land Reforms Act, 1961 (for short, 'the 1961 Act'). Shri Naphade then referred to the prohibition contained in Section 79-A of the 1961 Act against the transfer of agricultural land and argued that the application filed by Basavannappa for grant of occupancy rights was not maintainable and was liable to be dismissed because he was a money lender having an annual income of more than Rs.50,000/- from sources other than agricultural lands. Learned senior counsel relied upon the provisions contained in the Hyderabad Abolition of Inams Act, 1955 (for short, "the Hyderabad Act, 1955") and the Hyderabad Tenancy and Agricultural Lands Act, 1950 and argued that the occupancy rights could not have been conferred upon the respondents in respect of Service Inam Lands.

12. Ms. Kiran Suri, learned counsel for respondent No.1 supported the impugned judgment and argued that the Tribunal did not commit any error by granting occupancy right to respondent No. 1 because by virtue of Section 4 of the 1977 Act, the tenure of all Inams stood abolished. Learned counsel further argued that neither the Tribunal nor the High Court misconstrued/misinterpreted the arbitration award in terms of which Basavannappa continued to cultivate the land which had already been leased out to him by Abdul Khader. Ms. Suri pointed out that Abdul Khader did not challenge the decree passed by Subordinate Judge, Gulbarga in the suit filed by Basvannappa and argued that his legal representatives are not entitled to indirectly question the arbitration award, which recognised the fact that Basvannappa was already in possession of the land by virtue of lease granted by Abdul Khader. Learned counsel also pointed out that Basvannappa had filed application under Section 5 of the 1977 Act read with Section 48-A of the 1961 Act and Abdul Khader had filed application under Section 5(3) of the 1977 Act and argued that the Tribunal did not commit any illegality by recognizing that respondent No. 1 had become occupancy tenant because she and her husband were cultivating the land as tenant since 1957 and were doing the same activity on the cut off date i.e. 1.3.1974. In the end, Ms. Suri argued that the Hyderabad Tenancy and Agricultural Lands Act, 1950 cannot be invoked by the appellants because the same stood repealed by virtue of Section 142(1) of the 1961 Act.

13. We have considered the respective arguments. At the outset, we consider it necessary to point out that the Hyderabad Tenancy and Agricultural Lands Act, 1950 upon which reliance was placed by Shri Naphade for raising an argument that occupancy rights could not have been conferred upon the respondents in respect of Inam lands was repealed by Section 142(1) of the 1961 Act, which reads thus:

"142. Repeal and savings.- (1) The enactments specified in Schedule III to this Act, and any other provision of law corresponding to the provisions of this Act, are hereby repealed:

Provided that save as otherwise provided in this Act, such repeal shall not affect,-

(a) the previous operation of the said enactments or provisions of law or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments or provisions of law; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactments or provisions of law;

(d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed:

Provided further that any reference in any enactment or other law or in any instrument to any provision of any of the repealed enactments or provisions of law shall, unless a different intention appears, be construed as a reference to the corresponding provision of this Act."

The Hyderabad Act, 1955 finds mention at serial No.2 in Schedule III appended to the 1961 Act.

14. The argument of Shri Naphade that occupancy rights could not have been conferred upon Basavannappa/respondent No. 1 because of the prohibition contained in Section 79-A of the 1961 Act is being mentioned only to be rejected because Abdul Khader did not produce any evidence before the Tribunal or the learned Single Judge of the High Court to prove that Basavannappa was a money lender and his income was in excess of the limit prescribed under Section 79-A. The Division Bench of the High Court negated this argument by recording the following observations:

"The appellants' learned Advocate vehemently submitted that this is a case in which a fresh or further enquiry must be held for purposes of determining the exact nature of the transaction, for purposes of re-evaluating the revenue records by more importantly, for purpose of deciding everything including the applicability of Sec.79A of the Act. It was submitted before us that the respondent was a wealthy businessman even at the relevant point of time and that was really the reason how the appellants got indebted to him and it was contended before us that was the principal ground on which the bar under Sec.79A was pleaded before the Tribunal. The appellants learned Advocate pointed out to us from the order passed by the Tribunal that this plea had in fact been canvassed but the respondent's learned Advocate was quick to point out to us that even though the reference was made to this contention, that the appellants had not substantiated it. We note two things, the first being that if the appellants pleaded the bar on the ground that the applicant was a wealthy businessman and that his income exceeded the limit prescribed by the section, then the onus of establishing this was on the party who pleaded it viz., the appellants. The Tribunal has recorded in no uncertain terms that this was never done. Secondly, this plea was never taken up at the appellate stage. It was not even contended or argued when the writ petition was

heard by the learned Single Judge and at this late point of time if the contention is raised that the entire enquiry should be re-opened for purposes of ascertaining whether the bar under Sec.79A would be applicable, our answer to the same is that it would not be legally permissible. The Court needs to take into account certain factors that emerge from the doctrine of finality, the first of them being the fact that the stage for holding that investigation had elapsed, once the Tribunal had given its decision and assuming without accepting that the appellant still had enough material in support of that plea under Sec.79A, the last stage in our considered view, for agitating this would have been when the writ petition was filed and when it was taken for hearing. If this has not happened, there can be no question at this late stage for re-opening that issue. This Court will never be technical, but what this Court has to take cognizance of is the sheer impossibility at this point of time of proving the income of an opposite party as of the year March 1974 which would be a total impossibility as far as the appellants are concerned. Secondly, when with regard to the income limits etc., several amendments have been made to the law over the years and a Division Bench of this Court has taken a view that these amendments would be retrospectively applicable. The income limits have therefore been reasonable point of view. We see no ground on which any useful purpose would be served by re-opening that issue."

15. We are in complete agreement with the High Court that having failed to adduce any evidence before the Tribunal, which could enable it to invoke the prohibition contained in Section 79-A of the 1961 Act and having failed to raise this plea before the learned Single Judge, the appellants were not entitled to resurrect the same before the Division Bench. In any case, in the absence of any tangible evidence, the Tribunal or for that reason the High Court could not have denied occupancy rights to Basavannappa or his widow by relying upon Section 79-A of the 1961 Act.

16. The argument that Basavannappa was not entitled to occupancy rights in respect of Service Inam Lands, which were governed by the Hyderabad Act, 1955 merits rejection because no such plea was raised either before the Tribunal or the High Court. We have carefully scrutinized the pleadings of the writ petition filed by Abdul Khader before the High Court and the writ appeals filed by his legal representatives and find that neither Abdul Khader nor the appellants challenged the order of the Tribunal on the ground that occupancy rights cannot be claimed in respect of the Service Inam Lands, which are governed by the Hyderabad Act, 1955. The counsel, who appeared on behalf of the appellants and their predecessor before the High Court, did not raise any such argument. Therefore, there is no tangible justification to allow the appellants to raise a new plea for the first time, the determination of which would require detailed investigation into the issue of facts.

17. The concurrent finding recorded by the Tribunal and the High Court that Basavannappa was in possession of the land in question since 1957 as a lessee/tenant is amply supported by the finding recorded by the Arbitrators that Abdul Khader had given the land on lease for a period of five years at a rent of Rs.500/- per annum. If this was not so, there was no reason for the Arbitrators to say that the plaintiff, i.e. Basavannappa shall have to recover the amount by continuing to occupy the land for 19 years after expiry of the tenure of lease.

18. Before concluding, we may mention that the appellants have not denied one of the foundational facts, namely, that their predecessor Abdul Khader had initially filed an application for grant of occupancy right and after remand, he had applied for regrant of the land in question under Section 5(3) of the 1977 Act. This shows that Abdul Khader knew that the right/interest flowing from Inam land stood abolished by virtue of Section 4 of that Act. Therefore, it is futile for the appellants to contend that the nature of the land continued to be Service Inam and the Tribunal did not have the jurisdiction to entertain the applications filed by the respondents for grant of occupancy rights.

19. In the result, the appeal is dismissed. The parties are left to bear their own costs.