

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.9031 OF 2013
(@SPECIAL LEAVE PETITION (C) NO. 3928 OF 2006)**

HARSHA V. RAI ... APPELLANT

VERSUS

STATE OF KARNATAKA & ANR. ...RESPONDENTS

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

By the orders impugned the claim of respondent no. 2 Bhagirathi Bai, since deceased, to be registered as an occupant under Section 45 of the Karnataka Land Reforms Act, 1961 in respect of the land measuring 14 cents in Survey Nos. 353/1 and 353/2 in the Village Attavar in Taluka Mangalore in the District of Dakshina Kannada has been upheld.

Leave granted.

According to the appellant, his mother was the owner of the land measuring in all 14 cents in Survey No. 353/1 and 353/2 at Village Attavar within Taluka Mangalore in the District of Dakshina Kannada. She gave on lease the aforesaid land to Bhagirathi, respondent no. 2 herein by a registered deed dated 26th of October, 1953 on an yearly rent of Rs. 42 and the deed styled as vacant land "chalageni" was executed. According to the appellant, the land at the time of lease contained five standing coconut trees and respondent no. 2, hereinafter referred to as the tenant, was entitled to make improvement therein to an extent of only Rs. 5,000/-. It is the case of the appellant that in terms of the lease the tenant constructed a residential house on the demised property and continued to be in occupation of the same.

By Section 34 of the Karnataka Land Reforms (Amendment) Act, 1973 (Karnataka Act 1 of 1974) Section 44 and Section 45 were substituted with

effect from 1st of March, 1974 in the Karnataka Land Reforms Act, 1961, hereinafter referred to as 'the Act'. Section 44 of the Act, inter alia, provides that all land held by or in possession of the tenants with effect from 1st of March, 1974 (hereinafter to be referred to as the appointed day), shall stand transferred to and vest in the State Government. Section 45 of the Act, inter alia, provides that the land which a tenant has been cultivating personally before the date of vesting shall be entitled to be registered as an occupant. A tenant entitled to be registered as an occupant was required to file a petition before a tribunal under Section 48A of the Act.

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Respondent no. 2, filed an application in the prescribed form, inter alia, alleging that the tenancy in question is in respect of agricultural land and she was cultivating the same prior to 1st of March, 1974 and, therefore, she is entitled to be registered as an occupant in terms of Section 45 of

the Act. The appellant, hereinafter referred to as 'the land owner', resisted her claim and the tribunal rejected the tenant's claim, but the same was set aside by the High Court in a petition filed by the tenant and the matter was remitted back to the tribunal for reconsideration. While doing so, the High Court observed that the tribunal shall consider the "chalageni". After the remand the tribunal conducted spot inspection on 15th of December, 1987 and found existence of a dwelling house, a firewood-depot and a few coconut trees. The tribunal by majority held that the land was not an agricultural land on the date of inspection but concluded that it was used as agricultural land 35-40 years ago and accordingly upheld the claim of the tenant. The dissenting Member, however, observed that the land in question cannot be said to be an agricultural land. The learned Member found that part of the land was leased out by tenant's husband for firewood depot and he is a truck owner. The

dissenting Member expressed his view in the following words:

".....It is learnt from the enquiry that the petitioner's husband is a truck (lorry) owner, the main source of income of the petitioner is from the income derived from the rent and selling the fire-wood from the fire-wood depot. The petitioner is not an agriculturist, at any time. Apart from this the petitioner has no cultivable lands also, because there are 5 coconut trees in the courtyard that cannot be treated the petition land as agricultural lands"

Mr. Basava Prabhu S.Patil, learned Senior counsel appears on behalf of the appellant and submits that the land in question was not an agricultural land on the appointed day. Further the tenant was not an agriculturist and not cultivating the land personally on the said date and, therefore, cannot be registered as an occupant in terms of Section 45 of the Act. Mr. S.N. Bhat appearing for the tenant as also Ms. Vishruti Vijay, learned counsel representing the State submit that the land in question was an agricultural land which was being cultivated personally by the tenant and, therefore, she was

rightly registered as an occupant by the tribunal and the said order has rightly been affirmed by the High Court. In view of the submission advanced it is advisable to refer to the scheme of the Act. As the claim is raised under Section 45 of the Act, we deem it expedient to reproduce the same which reads as follows:

"45. Tenants to be registered as occupants of land on certain conditions.—(1) Subject to the provisions of the succeeding sections of this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sub-let, such sub-tenant shall, with effect on and from the date of vesting be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally.

(2) If a tenant or other person referred to in sub-section (1),—

(i) holds land partly as owner and partly as tenant but the area of the land held by him as owner is equal to or exceeds a ceiling area he shall not be entitled to be registered as an occupant of the land held by him as a tenant before the date of vesting;

(ii) does not hold and cultivate personally any land as an owner, but holds land as tenant, which he cultivates personally in excess of a ceiling area, he shall be entitled to be registered as an occupant to the extent of a ceiling area;

(iii) holds and cultivates personally as an owner of any land the area of which is less than a ceiling area, he shall be entitled to be registered as an occupant to the extent of such area as will be sufficient to make up his holding to the extent of a ceiling area.

(3) The land held by a person before the date of vesting and in respect of which he is not entitled to be registered as an occupant under this section shall be disposed of in the manner provided in section 77 after evicting such person."

The aforesaid section, inter alia, provides that a tenant holding the land and cultivating it personally on and from the date of vesting shall be entitled to be registered as an occupant. The expression 'to cultivate personally', 'land' and 'tenant' have been defined under Section 2(11), 2(18) and 2(34) of the Act. The person claiming to be registered as a tenant has to satisfy that he is not

only a tenant but also an agriculturist who cultivates personally the land held on lease.

Section 2(34) defines 'tenant' as follows:

"2. Definitions.- (A) In this Act, unless the context otherwise requires, -

XXX

XXX

XXX

(34) **"Tenant"** means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes—

(i) a person who is deemed to be a tenant under section 4;

(ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961;

(ii-a) a person who cultivates personally any land on lease under a lease created contrary to the provisions of section 5 and before the date of commencement of the Amendment Act;

(iii) a person who is a permanent tenant; and

(iv) a person who is a protected tenant.

Explanation.—A person who takes up a contract to cut grass, or together the

fruits or other produce of any land, shall not on that account only be deemed to be a tenant;"

It is an inclusive definition and in the present case, we are concerned with the main provision. To come within the definition of tenant a person has to be an agriculturist and such a person is required personally to cultivate the land he holds on lease. The expression 'cultivate personally' has been defined under Section 2(11) of the Act, which reads as follows:

"2. Definitions. - (A) xxx xxx xxx

(11) **"To cultivate personally"** means to cultivate land on one's own account,—

- (i) by one's own labour; or
- (ii) by the labour of any member of one's family or;
- (iii) by hired labour or by servants on wages payable in cash or kind, but not in crop share, under the personal supervision of oneself or by member of one's family;

Explanation I.— In the case of an educational, religious or charitable

institution or society or trust, of a public nature capable of holding property, formed for educational, religious or charitable purpose, the land shall be deemed to be cultivated personally if such land is cultivated by hired labour or by servants under the personal supervision of an employee or agent of such institution or society or trust;

Explanation II.— In the case of a joint family, the land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.;"

As stated earlier, to satisfy the requirement of Section 45 of the Act to be registered as an occupant, the claimant has to satisfy that he is the tenant in respect of land which he is cultivating personally on the appointed day. Neither the tribunal nor the High Court has gone into the question as to whether the property said to have been given on lease to the tenant on the appointed day, came within the definition of land under the Act. Further, the tribunal and the High Court have not addressed the issue as to whether the same was an agricultural land and was being cultivated on or before the appointed day by the tenant personally.

The tribunal has made spot inspection much later than the appointed day on 15th December, 1987 which, in our opinion, has no relevance at all with the rights of the parties. Here, the rights of the parties have to be crystallized on the basis of what existed on the appointed day. Neither the Tribunal nor the High Court has gone into this question in the right perspective. We are of the opinion that the impugned orders of the learned Single Judge and that of the Division Bench as also of the Tribunal deserve to be set aside and the matter remitted back to the tribunal for its consideration in accordance with law. We make it clear that the observation made in this order is for the purpose of its disposal and shall have no bearing on the merit of the case.

In the result, we allow this appeal, set aside the impugned judgment and remit the matter back to the tribunal for reconsideration in accordance with law bearing in mind the observations aforesaid. In the facts and circumstances of the case there shall be no order as to costs.

.....J.
(CHANDRAMAULI KR. PRASAD)

.....J.
(KURIAN JOSEPH)

NEW DELHI,
OCTOBER 7, 2013



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