

PETITIONER:
STATE OF KARNATAKA & ANR.

Vs.

RESPONDENT:
UPPEGOUDA & ORS ETC

DATE OF JUDGMENT: 24/09/1996

BENCH:
K. RAMASWAMY, K. VENKATASWAMI, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

We have heard learned counsel for the appellant.

Though the respondents were served with notice, they do not appear either in person or through counsel.

These appeals by special leave arise from the judgment of the Division Bench of the Karnataka High Court made on June 20, 1977 in Writ Appeal Nos. 196A and 197 of 1977.

The admitted facts are that Sy.No.16 admeasuring 2 acres and 30 gunthas of land of Mattighatta village belonged to respondent No.2 (hereinafter called, the 'Land Holder'). Respondent No.1, Puppegouda was put in possession of the land from the year 1950 as tenant under a lease for 5 years which was extended from time to time upto 1960. Renewal of lease deed was executed in 1960 for a further period of 5 years. The Karnataka Tenancy Act, 1961 came into force protecting the tenancy rights. Land Reforms (Amendment) Act introducing Section 44 and other provisions came into force w.e.f. March 1, 1974 abolishing intermediary rights of land-holders and conferment of permanent rights to the tiller of the soil, i.e., tenant. The land-holder became entitled to compensation payable under the Act.

The question is: whether the tenant was continuing in possession as on the date the land stood vested in the State Government so as to confer title on the tenant? A Full Bench of the High Court in Balesha Ram Khot & Ors. vs. Land Tribunal, Chikodi & Ors. [1978(k) KLJ 116] had held that "even if the land was not in actual possession of the tenant, immediately prior to 1st march, 1974 if it was tenanted land, it vested in the State Government. That the land could not be registered in favour of the tenant who was not in actual possession immediately prior to 1st March, 1974 was not relevant for the purpose of deciding the question as to whether the land stood vested in the State Government under Section 44 of the Act".

The tenant who was lawfully entitled to cultivate the land personally immediately prior to the commencement of the Amendment Act, but was wrongfully prevented from doing so is entitled to registration of occupant under Section 45 of the Act.

The Act provides procedure to recover possession from

an unauthorised occupant by a person entitled to such possession (Sections 41, 121 and 129). A tenant who has been wrongfully or illegally prevented from cultivating the land may request the land Tribunal to defer consideration of his application till possession is restored to him and if he recovers possession, he may ask the Tribunal to proceed with his application.

In this case, in view of the fact that the tenant continued in possession of the land from January 30, 1950 upto 2nd June, 1965 when the Mysore Tenancy Act was in force, it protected his possession. Sub-section (2) of Tenancy Act reads as under:

"Notwithstanding any agreement usage or law to the contrary, no tenancy shall be terminated before the expiry of a period of five years except on the grounds mentioned in Section 15.

Provided that with the consent of the landlord any tenancy may be terminated by a tenant before the expiry of a period of five years by surrendering his interest as a tenant in favour of the landlord."

This Court in a recent judgment in P.G. Eshwarappa vs. M.Rudrappa & Ors.[JT 1996 (8) SC 171] held that ejection of a tenant under a decree obtained prior to the coming into force of the Karnataka Land Reforms Act, 1961 had come into force was illegal and that he was entitled to restitution of the possession illegally taken away from him. It was held that on the date when the Act had come into force and the tenant was found to be in possession of the land by operation of sub-section (1) of Section 22, with a non-obstante clause, the tenant shall not be evicted from the land held by him except on the grounds enumerated in clauses (a) to (e) of Section 22.

In this case, the land holder has merely asserted that the tenant had surrendered the land and entries in revenue records were received in support thereof. It is easy to have the entries made with the assistance of patwari who had exclusive custody of the records. The object of the Tenancy Act is to protect the tenants to remain in possession and enjoy it subject to compliance of the provisions of the Tenancy Act. Contracted tenancy come to an end and statutory tenancy sets in operation and so he would be liable for ejection only on proved grounds of statutory contravention, the entries of revenue records are self serving. There was no order of a competent authority of eviction of tenant for contravention of the above mentioned grounds. The proviso, though enables a landlord to obtain possession on surrender, it must be proved strictly, as several devices would be used to circumvent the beneficial provision and illiteracy and ignorance of the tenant would be taken advantage of. There is no proof of eviction of the tenant. The stand taken by the land-holder is not supported by legal setting. The High Court committed grave error of law. Accordingly the judgment of the High Court is not correct in law and stands set aside.

The appeals are allowed with no order as to costs.