HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 15374 OF 2022 (LR)

BETWEEN:

DR. VISHWANATH SHETTY
S/O SRINIVAS SHETTY
AGED ABOUT 81 YEARS
R/A NEXT TO VISHAL CHILDREN
AND MATERNITY HOSPITAL
KODIALGUTHU, MANNAGUDDA
MANGALORE - 575003.

...PETITIONER

(BY SRI. H. PAVANA CHANDRA SHETTY, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REP. BY ITS SECRETARY
REVENUE DEPARTMENT
M. S. BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU - 560001.

2. THE LAND TRIBUNAL
BRAHMAVARA TALUK
BRAHMAVARA, UDUPI DISTRICT
REP. BY ITS SECRETARY.

3. NARASIMHA ACHARYA
S/O GANAPAIAH ACHARYA
AGE: MAJOR
R/AT AVARSHE VILLAGE
BRAHMAVARA TALUK
UDUPI DISTRICT

SINCE DEAD BY LRs.

3(a) SARASWATHI ACHARTHI
W/O LATE NARASIMHA ACHARYA
AGED ABOUT 72 YEARS
R/AT NEAR AVARSHE BHANDSALE
AVARSHE POST, UDUPI TALUK.

3(b) RATHNA DAS
W/O DASA
D/O LATE NARASIMHA ACHARYA
AGED ABOUT 52 YEARS
R/AT HOUSE NO.105, 4TH CROSS
VENKATESHWAS LAYOUT, B.K. CIRCLE
KOTHANOOR DINNE MAIN ROAD
BENGALURU - 560075.

3(c) GANAPATHI ACHARI
S/O LATE NARASIMHA ACHARYA
AGED ABOUT 49 YEARS
R/A NO.60, 3RD CROSS
1ST MAIN, MANGALORE STICHWARE
B.T.M 2ND STAGE
NEAR SHANTHINIKETHAN SCHOOL
BENGALURU - 560078.

3(d) CHANDRA ACHARI
S/O LATE NARASIMHA ACHARYA
AGED ABOUT 48 YEARS
R/AT NEAR AVARSHE BHANSALE
AVARSHE POST, UDUPI TALUK.

…RESPONDENTS

(BY SRI. V. SESHU, HCGP FOR R1 & R2;
SRI. K. CHANDRANATHA ARIGA, ADVOCATE FOR R3(A TO D))

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER IN NO.LRY-30-114-TRI-4460/1980-81 PASSED BY THE 2ND RESPONDENT LAND TRIBUNAL DTD 19.07.2022, THEREBY CONFIRM THE OCCUPANCY RIGHTS

INFAVOUR OF R3 LEGAL HEIRS - R3(a) TO 3(d) HEREIN TO THE LAND BEARING SY.NO.113/2B1, MEASURING 0.57 ACRE AND LAND BEARING SY.NO.113/2D, MEASURING 0.46 ACRE SITUATED AT AVARSHE GRAMA, BRAHMAVARA TALUK, UDUPI DISTRICT PRODUCED AS ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 05.11.2025 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

CAV ORDER

The present writ petition has been filed challenging the order of the Land Tribunal dated 19.07.2022 confirming occupancy rights in favour of the respondents who were tenants and had filed Form No.7 before the Tribunal.

2. The facts that are made out are that the properties in Sy. No.113/2B1 measuring 0.57 acre and Sy. No. 113/2D measuring 0.46 acre fell to the share of the petitioner in terms of the registered partition deed dated 30.09.1965; that there was a building constructed by the joint family of the petitioner which was occupied by

the workmen of the joint family and it is in that capacity the claimant Late Narasimha Acharya was allowed to stay in the building. It is further stated that except such permissive right to reside and occupy the building, Late Narasimha Acharya did not possess any other rights.

3. It is further stated that Late Narasimha Acharya filed a declaration before the Land Tribunal on 31.12.1976 claiming an extent of 1 acre of land in Avarshe Village of Brahmavara Taluk, Udupi District. It is further stated that in the said Form No.7 filed under Section 48-A(1) of the Karnataka Land Reforms Act, 1961 (for short 'the Act') Late Narasimha Acharya had not mentioned the survey number of the property with respect to which tenancy rights were claimed nor had mentioned any measurement.

4. On 28.05.1981, it is stated that the Land Tribunal granted 3 cents of property for the purpose of construction of house while holding that Late Narasimha

Acharya was not a tenant within the definition as prescribed under the Karnataka Land Reforms Act.

5. W.P.No.4438/1988 was filed to quash the order of the Land Tribunal which writ petition was transferred to the Land Reforms Appellate Authority while numbering the appeal as L.R.A.No. 429/1988. It is made out in the petition that evidence was led in before the Land Reforms Appellate Authority and upon it being abolished and C.P.11962/1991 having been filed, appeal was converted into W.P.No. 28424/1997.

6. It is further averred that the order of the Tribunal dated 28.05.1981 came to be set aside and the matter was remanded while reserving liberty for the parties to produce documents and adduce evidence.

7. Finally, the Land Tribunal by order dated 19.07.2022 confirmed occupancy rights in favour of respondents with respect to an extent of 0.57 acre in Sy.

No. 113/2-B1 and 0.46 acre in Sy. No. 113/2D. It is the said order that is challenged before this Court.

8. The Tribunal had framed 2 points for consideration, viz.,

(i) Whether the land which is the subject matter of the present case would fall within the category of 'land' in terms of Section 2(A)(18) of the amendment made to the Karnataka Land Reforms Act, 1961?

(ii) Whether the claimant had proved that he was cultivating the land as on 01.03.1974 and earlier to such date, by way of tenancy?

9. Both the points for consideration were held in the affirmative.

10. As regards point No.(i) for consideration, the Tribunal has specifically held that though the land was punja land the same was brought under cultivation and accordingly, it could be stated that land which is the subject matter of claim of tenancy rights would fall within the definition of Section 2(A)(18) of the Act.

11. As regards point No.(ii), the Tribunal though noted that Form No.7 filed did not mention any survey number, however held that by itself was no reason for rejection of the claim. The Tribunal noticed the money order receipts stated to be the evidence for payment of lease amount which were produced during the earlier proceedings. Further, the Tribunal also relied on the report of the surveyor which according to the Tribunal indicated the claimant to be in possession of land in Sy. No.113/2-B1 as well as Sy. No. 113/2D including the house situated in the said land. Further, the Tribunal noticed the entries in the revenue records indicating cultivation and allowed the claim by confirming grant of tenancy rights.

12. Heard both the sides.

13. Learned counsel for the petitioner Sri. Pavan Chandra Shetty, has raised various contentions: that the name of the petitioner was not mentioned in the appropriate column of Form No.7 though petitioner's name

was found in the RTC from 1967-68 and that the nature of land was shown as 'gudde land' which was incapable of cultivation and would not fall within the definition of land under Section 2(A)(18) of the Act, that the land was in effect Punja land and could not have been the subject matter of claim of tenancy. It was further submitted that mere presence of few trees, which is common in the region would not be sufficient to infer that the land with respect to which Form No.7 was filed was land in terms of Section 2(A)(18) of the Act. It was also contended that claim with respect to specific survey number if not made, then the Form No.7 could not have been considered. It was also submitted that the Form No.7 was not amended despite opportunity for curing the defect.

14. Learned counsel for the respondents Sri. K. Chandranath Ariga, had argued that the RTC with respect to Sy. No.113/2D refer to cultivation of 'paddy' and 'coconut' and accordingly, it is submitted that even if the land was punja land if it was shown to have been

brought under cultivation, the same could still be the subject matter of claim of tenancy rights. It is further contended that as the parties have understood the claim made by Late Narasimha Acharya and that the non-description or non amendment would not vitiate the application. It is further submitted that the surveyor's report having been relied upon does not call for interference in the order of the Tribunal.

15. It is to be noticed that for the purpose of applicability of the Land Reforms Act and recognition of right of the tenant, it is necessary that the land which is the subject matter of dispute must fall within Section 2(A)(18) of the Act. It is only thereafter that there could be an enquiry into establishment of relationship of tenancy. The Tribunal has accordingly, framed two points for consideration on both such aspects as extracted above.

16. The Tribunal as regards the question of land, which is the subject matter of the present petition

recorded a finding that the land in dispute would fall within the definition.

17. The claimant tenant has asserted that the land is 'gudde land' whereas the landlord would contend that the land is 'punja land' and is not capable of being subject matter of tenancy claim.

18. It is to be noticed that the definition of land under Section 2(A)(18) of the Act would indicate that the land is essentially used for agricultural purposes. It is to be noticed that the Apex Court has dealt with the contention of punja land in Dakshina Kannada vis-à-vis definition of land under the Land Reforms Act. The observations in the case of ***Subhakar and other v. Harideesh Kumar and others***[1] at Para Nos. 8 and 9 would be of relevance and the same are extracted as below:

[1] (2007) 9 SCC 561

"8. Section 2(A)(18) of the Act reads as follows:

> *"2. (A)(18) '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";*

9. A bare reading of the provision shows that land means agricultural land that is to say, land which is used or is 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."

19. Thus, it becomes clear that even if the contention of the landlord is accepted, that the land is punja land, that by itself does not disentitle any claim and it could be demonstrated that land has in effect being brought under cultivation, which burden is upon the tenant to establish.

20. The reference to few trees grown in the land by reliance on the survey report dated 07.10.2017 would not further the case of the tenant. The survey report refers to:-

(i) existence of 5 mango trees, 6 coconut trees, 4 jack fruit trees, 3 teak trees and 2 tamarind trees in Sy. No. 113/2B1.

(ii) existence of 5 coconut trees, 3 jack fruit trees, 1 tamarind tree and 10 cashew trees in Sy. No. 113/2D.

21. Firstly, the survey report is of the year 2017. The relevant date as on which the cultivation must be shown is, as on 01.03.1974. Reliance on the report of 2017 which is about 43 years after the cut off date cannot be taken note of to record a finding that there was cultivation as on the relevant date. Further, the report does not indicate any age of the trees so as to draw an inference of existence of trees as on the relevant date. It is also to be noticed that mere presence of few trees in a vast extent of land would not by itself indicate that the land was brought under cultivation.

Secondly, as noticed in ***Subhakar's case (supra)***, the Apex Court has observed that mere existence of few coconut trees would not establish that land was being used for agricultural purpose.

22. The Tribunal has recorded positive finding that there are entries in the pahani of 1973-74 and subsequently, that paddy was being grown. Such finding is

not based on any evidence on record. The only document which may throw some light in support of the case of the tenant is the RTC for the year 1967-68 till 1977-78 with respect to Sy.No.113/2D. The said RTC merely has an entry of 6 cashew trees and there is no reference to paddy. That by itself cannot be stated to be reflective of active cultivation. The presence of few cashew trees in punja land would not indicate active cultivation and use for agricultural purpose. The RTC of the year 1996-97 makes a reference to cultivation of paddy but that cannot be taken note of to record a finding that as on the relevant date, paddy was being cultivated and the same is the case with the RTC of 2001-02 which also cannot be relied upon on same grounds. Accordingly, it can be stated that the finding recorded by the Tribunal regarding cultivation of paddy is a perverse finding.

23. It is also seen from the records before the Tribunal that the partition deed amongst the family members of the landlord would indicate that the land in

113/2B and 113/2D are described as punja land and such partition deed dated 30.09.1965 is registered as Document No.380/1965. This would also throw light on the contention of the landlord and lead to acceptance of the contention of the landlord that the land is punja land.

24. Considering that Form No.7 enclosed at Annexure-B would indicate the description of the land as 'gudde land', the contention of the landlord that land is punja land could be accepted. The tenant not having led any acceptable evidence that such land was brought into cultivation, it could be stated that the tenant has failed to prove that the land was brought into cultivation though it was punja land and accordingly it can be stated that the land which is the subject matter of dispute does not fall within the definition of land under Section 2(A)(18) of the Act.

25. Insofar as the finding on Point No.2 regarding establishment of tenancy relationship, the Tribunal though

has recorded a finding of existence of such relationship, it has heavily relied on the survey report of 07.10.2017 which was conducted pursuant to the order of the High Court. The said report does not in anyway throw light on the nature of relationship.

26. As regards the reliance on the money orders regarding payment of amount evidencing tenancy relationship, the money orders that are stated to evidence payment of geni (ಗೇಣಿ) amount relate to the year 1962 (28.03.1962, 24.03.1962 and 05.04.1962). In the absence of any other evidence to demonstrate payment of geni amount, the money orders of the year 1962 would be weak evidence in order to record a finding as regards continuance of such relationship during the relevant period. The money orders by themselves may not be sufficient to establish the relationship.

27. Further, in light of the finding recorded that the land which is the subject matter of claim cannot be

treated to be land under Section 2(A)(18) of the Act, the finding as regards tenancy relationship would not be decisive nor help the tenant as the land itself does not fall within the purview of the Land Reforms Act.

28. Accordingly, the order of the Tribunal is set aside and the petition is ***allowed***.

Sd/-
(S SUNIL DUTT YADAV)
JUDGE

VP