

2018 SCeJ 728

SUPREME COURT OF INDIA

Present: Justice N.V. Ramana and Justice S. Abdul Nazeer, JJ.

UNIVERSITY OF MYSORE - Appellant,

versus

RAJIAH (DEAD) by Lrs. & ors. - Respondents.

Civil Appeal Nos.170-173 Of 2011

23 March, 2018

(i) Karnataka Land Reforms Act, 1961, Section 107 - Any land belonging to the Government or belonging to or held on lease by a University established by law is not subject to the provisions of the Karnataka Land Reforms Act. [Para 24]

(ii) Writ - Delay - Neither the University nor the Government of India was made a party to the proceedings before the Land Tribunal though Mysore Palace was made a party, it has nothing to do with the lands in question at the relevant point of time - The lands in question did not vest in the State Government on the appointed date, namely, 1.03.1974 but it belongs to University - . On coming into force the Karnataka Land Reforms Act, 1961 R filed a declaration seeking occupancy right in respect of the said land - After contest, the Land Tribunal granted occupancy right in respect of the said land in favour of R . It is only when the Deputy Commissioner informed the University that some persons are trying to get the records changed in their names on the basis of the order of the Land Tribunal, the University took steps to challenge the said order - The records produced before us clearly establishes that the University has taken steps to challenge the said order diligently thereafter - We are of the view that the High Court was not justified in dismissing the writ petitions on the ground of delay and latches.

JUDGMENT

S.ABDUL NAZEER, J. - (23 March, 2018) - The appellant-University of Mysore has filed these appeals challenging the common judgment and order passed by the High Court of Karnataka, Bangalore, in RSA Nos.456 of 2000, 457 of 2000, and in W.P. Nos. 1649 of 2001 and 4302 of 2001 dated 25.06.2004, whereby the High Court has dismissed the appeals and the writ petitions.

Rajaiah since deceased by his LRs and Chamundi (hereinafter referred to as the 'private respondents') both sons of late Nanjaiah Thavarekatte, filed two suits, being OS No. 20/1995 and OS No.21/1995, on the file of the Second Munsiff and JMFC at Mysore against the University of Mysore (hereinafter referred to as 'the University') for injunction

restraining the University, their officials, subordinates or anybody acting on their behalf from interfering with their possession and enjoyment of the suit schedule properties. The suit schedule property in OS No. 20/1995 is as under:-

“Patta land bearing Sy. No.4, situated at Kurubarahalli, Mysore Taluk, measuring 4.00 acres, and kharab land 4.00 acres of the same Sy. Number, abutting to the same land, situated at Kurubarahalli, Mysore Taluk, bounded on –

East : by Main road.
 West : By Holla.
 South : By Bull road
 North : By Private land.”

The suit schedule property in OS No. 21/1995 is as under:-

“Patta land bearing Sy. No.4 measuring 4.00 acres, situated at Kurubarahalli, Mysore taluk, and land measuring 4.00 acres of kharab land, situated in the same number, abutting to the said land, situated at Kurubarahalli, Mysore, bounded on the

East : By Halla & Property of Rajaiah
 West : By property of R.K. Muthu
 South : By Bull road.
 North : By land of Narayanappa.”

3. In O.S. No. 20/95 the case pleaded by the private respondent-Rajaiah is that he was the tenant of 4 acres of land in Sy. No.4 of Kurubarahalli village, Mysore, and the landlord was Maharaja of Mysore. On coming into force the Karnataka Land Reforms Act, 1961 (for short ‘the KLR Act’) he filed a declaration seeking occupancy right in respect of the said land. After contest, the Land Tribunal granted occupancy right in respect of the said land in his favour. He has been in possession and enjoyment of the said property.

4. The case put forth by the private respondent-Chamundi in OS No.21/95 is that his father late Nanjaiah was an agricultural tenant in respect of 4 acres of patta land abutting 4 acres of Kharab land situated in Sy. No.4 of Kurubarahalli village, Mysore under Maharaja of Mysore. On enforcement of the Act, the schedule property vested in the Government. His father had filed a declaration seeking grant of occupancy right in respect of the aforesaid 4 acres of land. After contest, the occupancy right had been conferred upon his father on 5.6.1981. After the death of his father the *khata* of the said property was transferred to his name and that he has been in possession and enjoyment of the said property.

5. In both the suits, private respondents have further contended that the defendant-University has got no manner of right, title and interest over the said property and that the

officers of the University are interfering with their possession and enjoyment of said property.

6. University filed written statement in both the suits denying the plaint averments. It was contended that the President of India had executed a deed of lease dated 30.11.1970 in respect of 22 acres of land in Survey No.4 of Kurubarahalli, Kasaba Hobli, Mysore Taluk bounded on the North by remaining portion of Sy No.4, South by road, East by road and West by remaining portion of Serial No.4 of Kurubarahalli in its favour. The lease was for a period of 99 years. Based on the lease deed, University has been in absolute possession and enjoyment of the aforesaid land. The suit scheduled property is part and parcel of this land. It was contended that the private respondents have no manner of right, title or interest whatsoever in respect of the said property.

7. On the basis of the pleadings of the parties, the trial court framed relevant issues. The parties have let in evidence in support of their respective contentions. On appreciation of materials on record, the trial court dismissed the suits by judgment and decree dated 5.2.1998.

8. The private respondents challenged the said judgment and decree by filing RA Nos.87/98 and 88/98 before the II Addl. Civil Judge (Senior Division), Mysore. After hearing, the First Appellate Court allowed the appeals on 6.3.2000 and the suits filed by the private respondents were decreed only insofar as 4 acres of patta land is concerned. Both the suits in respect of kharab land to an extent of 4 acres each were dismissed.

9. University challenged the said decree of the First Appellate Court by filing RSA No. 456 of 2000 and RSA No.457 of 2000 before the High Court.

10. During the pendency of these appeals, University filed WP No.1649 of 2001 and WP No. 4302 of 2001, challenging the legality and correctness of the order dated 5.6.1981 passed by the Land Tribunal, Mysore, in KL/RF/4480/79-80 and 4481/79-81 (Annexure P-3) whereby occupancy right in respect of 4 acres of land each has been granted in favour of the private respondent Rajaiah, and Nanjaiah, father of the other private respondent Chamundi. It was contended that by a deed of gift dated 12.8.1965, Maharaja of Mysore had gifted 22 acres of land in Survey No.4 of Kurubarahalli village, Kasaba Hobli, Mysore Taluk, in favour of the President of India and the President of India leased the said land in favour of University by executing a lease deed dated 30.11.1970. The land in question did not belong to the Maharaja of Mysore, when Rajaiah and Nanjaiah had made applications for grant of occupancy right. Having regard to Section 107 of the KLR Act, the application filed by Rajaiah and Nanjaiah was not maintainable. It was further contended that the order passed by the Land Tribunal granting occupancy right was without jurisdiction. It was also contended that the University was not made party to the proceedings before the Land Tribunal. Mysore Palace was made a party to the proceedings which has nothing to do with the land in question at the relevant point of time. University has assigned cogent reasons for the delay in filing the writ petitions challenging the order of the Land Tribunal.

11. The High Court by a common judgment dated 25.6.2004 dismissed the appeals as well

as the writ petitions.

12. The State of Karnataka has filed objections to these appeals on 13.4.2012 contending that the private respondents have managed to create certain bogus documents to their advantage and produced the same before the civil court so as to establish their claim over the lands in question contending that the occupancy right has been granted in their favour. It was further contended that on verification of the records, it was noticed that K.L.R.M. No. 4480/79 is in respect of Survey No.42 of Dadadahalli village, Mysore Taluk, which is to an extent of 2 acres and the occupancy right as per Form No.10 was granted to one Sri Siddaiah, son of Madaiah. K.L.R.M. No.4481/79 is in respect of Survey No.39 of Dadadahalli village, Mysore Taluk, which is to an extent of 2 acres, and the occupancy right has been granted in favour of Sri Shivanna, son of Nanjegowda. On perusal of the Declaration Register pertaining to Kurubarahalli village, Mysore Taluk, it was noticed that there is no entry for having filed declaration in Form No.7 by the private respondents. The K.L.R.F. bearing No. 4480/79 and 4481/79 is in respect of lands pertaining to Dadadahalli village, Jayapura Hobli which has been fraudulently made use of by the private respondents, creating Form No.10 in their favour just to claim rights illegally over the land belonging to the University. The private respondents have not filed any application in Form No.7 in respect of the suit schedule property as per the register maintained with respect to Kurubarahalli village. It is also stated that the respondents-plaintiff have not come to the court with clean hands. Therefore, Tahsildar, Mysore Taluk, has filed a complaint to the jurisdictional police vide letter dated 23.1.2012 and the jurisdictional police have filed an FIR before the 3rd JMFC Court, Mysore, wherein the case has been registered against the LRs of the Rajaiah and Nanjaiah under Sections 465, 466, 468, 471,120(B) and 420 of IPC and Section 192(a) of the Karnataka Land Revenue Act, 1964.

13. Shri Guru Krishna Kumar, learned senior advocate, appearing for the appellant-University, submits that the title set up by the private respondents over the subject land is fraudulent and based on forged documents. Rajaiah and Nanjaiah had not filed applications for grant of occupancy right in respect of the schedule lands. The applications have been filed by Sri Siddaiah and Sri Shivanna in respect of some other land in Dadadahalli village. The reference numbers for applications for another village have been unscrupulously used while forging the Land Tribunal's order dated 5.6.1981.

14. Alternatively, it is submitted that Maharaja of Mysore had granted 22 acres of land in Survey No.4 of Kurubarahalli, Kasaba Hobli, Mysore Taluk of Kurubarahalli in favour of President of India by a registered gift-deed dated 12.8.1965 (Annexure P-1) and that the said land was leased in favour of the University by the President of India by a deed of lease dated 30.11.1970 (Annexure P-2). The land did not belong to the Maharaja of Mysore on the appointed date. Neither the University nor the Government of India was made party to the proceedings before the Land Tribunal. But, Mysore Palace was made a party which has nothing to do with the land when the alleged application was made for grant of occupancy right. The KLR Act has no application to the lands belonging to the Government or held on lease by a University having regard to Section 107 of the said Act.

15. It is further argued that the private respondents are not in possession of the schedule

property. Possession of the land is and has been with the University. Upon discovery of the fraud perpetrated by the private respondents, the University by way of I.A Nos.12-15 of 2010 and the State of Karnataka by way of written statement along with the affidavit, placed the relevant documents on record before this Court as far back as in the years 2010-12. The private respondents have not placed on record any rebuttable documents. It is argued that the University has also assigned justifiable reasons for the delay in approaching the High Court for quashing the order of the Land Tribunal. The High Court has, however, failed to accept the said reasons.

16. Shri Devadatt Kamat, learned Additional Advocate General, appearing for the respondent-State of Karnataka, has supported the stand taken by the appellant-University. He has produced the original records in relation to the lands in question. He has pointed out that the land did not belong to the Mysore Palace when the applications said to have been made by Rajaiah and Nanjaiah for grant of occupancy right. The order dated 5.6.1981 at Annexure P-3 is a forged document.

17. Shri Nagmohan Das, learned senior counsel appearing for the private respondents, supported the judgment of the High Court. It is submitted that the Land Tribunal has rightly granted the occupancy right in respect of the said lands in favour of the private respondents. When the appellant-University tried to interfere with their possession, they filed the suits for injunction which were decreed by the First Appellate Court. The High Court has rightly dismissed the second appeal filed by the University. Learned counsel prays for dismissal of these appeals.

18. We have carefully considered the submissions of learned counsel for the parties made at the Bar and carefully perused the materials placed on record.

19. Having regard to the contentions urged, the first question for our consideration is whether the University is a lessee of the schedule property. It is clear from the materials placed on record that originally the property in question belonged to the Maharaja of Mysore. He gifted the said property to the President of India for starting Logopedics Institute in Mysore as per registered gift-deed at Annexure P-1, dated 12.8.1965. Since the land was not suitable for the said purpose, Union of India requested the University of Mysore to give some other land and accordingly the University gave 32 acres of its land. In lieu of the same, the Union of India leased 22 acres of the said land for 99 years commencing from 30.11.1997 in favour of the University. This is evident from the registered lease deed at Annexure P-2 dated 30.11.1970. It was a vacant land. The schedule properties are a part and parcel of the said land. It is thus clear that the University was the lessee of the said land.

20. This takes us to the next question as to whether Rajaiah and Nanjaiah had made applications for grant of occupancy right in respect of the schedule lands and whether the order of the Land Tribunal at Annexure P-3 dated 5.6.1981 is in respect of the said lands. The University and the State Government have contended that the contesting respondents have managed to create bogus documents to their advantage in relation to the land in question. In order to test the correctness of this submission, we have verified the original

records produced by the learned Additional Advocate General representing the State Government in relation to the properties in question. The order dated 5.6.1981 of the Land Tribunal at Annexure P-3 shows that the Land Tribunal passed the order granting occupancy right at Annexure P-3 in KL/RF/4480/79-80 and 4481/79-80. A perusal of the records reveals that K.L.R.M. No.4480/1979 is in respect of Sy. No.42 of Dadadahalli village, Mysore Taluk to an extent of 2 acres of land and occupancy right in the said case was granted to one Sri Siddaiah, son of Madaiah. K.L.R.M. No.4481/79 is in respect of Sy. No.39 of Dadadahalli village, Mysore Taluk to an extent of 2 acres of land and the occupancy right in the said case was granted in favour of Sri Shivanna, son of Nanjegowda. The Declaration Register maintained by the Land Tribunal pertaining to Kurubarahalli, Mysore Taluk does not contain any entry for having filed declaration form in Form No.7 by Rajaiah and Nanjaiah. As noticed above, K.L.R.F. No. 4480/79 and 4481/79 is in respect of lands belonging to Dadadahalli village, Jayapura Hobli which has been used by Rajaiah and Nanjaiah for creating Form No.10 in their favour in respect of schedule land.

21. The University has filed IA Nos.12-15 of 2010 narrating the aforesaid facts along with the supporting documents. The State Government has also given the aforesaid particulars in their statement of objections. IA Nos. 12-15/2010 have been filed in the year 2010 and the State Government has filed objections in the year 2012. Respondents have not filed any rebuttal documents or additional written statement. It is clear that the order of the Land Tribunal at Annexure P-3 is a fabricated document.

22. Now let us consider the alternative submission of the University that the alleged application of Rajaiah and Nanjaiah for grant of occupancy right was not maintainable and the alleged order at Annexure P-3 has been passed without jurisdiction. Section 44(1) of the KLR Act, 1961 which came into force w.e.f. 1.3.1974 provides for vesting of the land in the State Government. It reads as under:

“44. Vesting of lands in the State Government.—(1) All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under Section 5, shall, with effect on and from the said date, stand transferred to and vest in the State Government.”

23. The KLR Act is not made applicable to certain lands. This is clear from Section 107 of the Act. The relevant provisions for the purpose of this case are sub-Section (1)(i) and (iii) of Section 107, which is as under:

“107. Act not to apply to certain lands.—(1) Subject to the provisions of Section 110, nothing in this Act, except Section 8, shall apply to lands,—

(i) belonging to Government;

[(ii) * * * * *];

(iii) belonging to or held on lease by or from a local authority, an Agricultural Produce

Marketing Committee constituted under the Karnataka Agricultural Produce Marketing Regulation Act, 1966 (Karnataka Act No. 27 of 1966), a University established by law in India, [a research institution owned or controlled by the State Government or the Central Government or both] [an Agricultural Research Institution recognised by the State Government or the Central Government], the Karnataka Bhoodhan Yagna Board established under the Karnataka Bhoodhan Yagna Act, 1963 (Karnataka Act No. 34 of 1963).”

24. It is clear from the aforesaid provisions that any land belonging to or held on lease by a University established by law is not subject to the provisions of the KLR Act. The said Act is also not applicable to the land belonging to the Government. In the instant case, the land in question belongs to the University. The registered gift deed dated 12.8.1999 at Annexure P-1 executed by Maharaja of Mysore in favour of the President of India and the lease deed dated 30.11.1970 executed by the President of India in favour of the University clearly establishes the said fact. Therefore, assuming that Rajaiah and Nanjaiah had made applications for grant of occupancy right in respect of the schedule property, the said applications were not maintainable and the order at Annexure P-3 has been passed without jurisdiction. Therefore, the private respondents cannot claim any right in respect of the schedule lands on the basis of the order at Annexure P-3.

25. There is also no merit in the contention of the learned senior counsel appearing for the private respondents that the writ petitions are highly belated. As has been stated above, neither the University nor the Government of India was made a party to the proceedings before the Land Tribunal. Though Mysore Palace was made a party, it has nothing to do with the lands in question at the relevant point of time. The lands in question did not vest in the State Government on the appointed date, namely, 1.03.1974 as it belongs to University. It is only when the Deputy Commissioner informed the University that some persons are trying to get the records changed in their names on the basis of the order of the Land Tribunal, the University took steps to challenge the said order. The records produced before us clearly establishes that the University has taken steps to challenge the said order diligently thereafter. We are of the view that the High Court was not justified in dismissing the writ petitions on the ground of delay and laches.

26. The order dated 20.1.2012 of the Assistant Commissioner at Annexure R-6 clearly shows that the University is in possession of the said land. It is submitted at the Bar that the said order of the Assistant Commissioner has been challenged by the private respondents before the High Court by filing a writ petition and that the said writ petition is pending. It is also evident that the criminal case filed by the jurisdictional police against the private respondents is also pending before the 3rd JMC Court, Mysore. The concerned courts are requested to dispose of these cases expeditiously in accordance with law.

27. In our view, the High Court was not justified in holding that the private respondents are in possession of the lands in question. They do not have title or are in possession of the said lands. It is also clear that the University is in lawful possession of the said lands. We are further of the view that the High Court was not justified in dismissing the writ petitions filed by the University challenging the order of the Land Tribunal at Annexure P3. The High Court was also not justified in dismissing the Regular Second Appeals filed by University.

28. For the afore-stated reasons, the judgment and the decree, of the High Court in R.S.A Nos. 456/2000 and 457/2000, as also of the First Appellate Court in RA Nos. 87 and 88 of 1998 are set aside. The judgment and decree dated 5.2.1998 passed by the Trial Court in OS Nos. 20/95 and 21/95 is restored. The order of the High Court in W.P. Nos.1649/2001 and 4302/2001 is set aside and the writ petitions filed by the University are allowed. The order dated 5.6.1981 of the Land Tribunal, Mysore (at Annexure P-3) in No. KL/RF/4480/79-80 and 4481/79-80 is hereby quashed.

29. The appeals are accordingly allowed. There shall be no order as to costs.

Ss