Supreme Court of India
State Of Karnataka vs Krishnaji Shrinivas Kulkarni on 16 December, 1993
Equivalent citations: 1994 SCC (2) 558 JT 1993 Supl., 353
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
STATE OF KARNATAKA

Vs.

RESPONDENT:
KRISHNAJI SHRINIVAS KULKARNI

DATE OF JUDGMENT16/12/1993

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
RAY, G.N. (J)

CITATION:
1994 SCC (2) 558 JT 1993 Supl. 353
1993 SCALE (4)683

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. RAMASWAMY, J.- Special leave granted.

2. These appeals arise from the order of the Division Bench dated January 18, 1990 of the Karnataka High Court in Writ Petition Nos. 1 1 21511223 of 1985 and batch. The respondents own different extents of agricultural lands situated at Jambaga and other villages in Bijapur District of Karnataka State which were in erstwhile part of Bombay province. They leased out their lands to M/s Sugarcane Products and Industries Ltd., a registered company, by a registered lease dated April 1, 1942 for a period of 30 years which stood expired on March 31, 1973 but remained in'possession as tenant. The Karnataka Land Reforms Act, 196 1, Act IO of 1962 (for short 'the Act') was amended by Amendment Act 1 of 1974 (for short the 'Amendment Act'). The latter came into effect from March 1, 1974. Section 79- B of the Act prohibits holding of agricultural land by certain persons. Sub-section (1)(b) declares that with effect from the date of the commencement of the Amendment Act, it shall not be lawful for a company to hold any land. Sub-section (2) thereof mandates every such company

to furnish to the Tehsildar having jurisdiction over the land, a declaration containing the particulars of such lands and such other prescribed particulars. Under sub-section (3) thereto the Tehsildar after inquiry made in the prescribed manner should send the statement to the Deputy Commissioner who declares, by notification that, "such land shall vest in the State Government free from all encumbrances". Sub-section (4) gives right to the owner of the land payment of compensation prescribed in Section 72. The lessee-company submitted a declaration, though purported to be under Section 66, but on the facts it must be one under Section 79-B(2). The Tehsildar after conducting the inquiry and giving opportunity to the respondents submitted the declaration to the Deputy Commissioner who published in the prescribed manner. Thus 600 acres of demised lands stood vested in the State free from all encumbrances. The respondents challenged the action in the writ petitions contending that as on March 1, 1974 the company was not holding the demised land as a tenant. The company, therefore, was incompetent to file any declaration under Section 66 and it cannot be treated to be under Section 79- B. Its possession is not lawful and that, therefore, the land does not stand vested in the State. The company was not a holder under Section 79-B. The landowners are holders of the lands. The High Court in the impugned order rightly held that the impugned order was without authority of law, being outside the purview of Section 79-B(3) of the Act and the ownership of the respondents, however, was not declared.

3.It is contended for the State that under Section 79- B(1), a person in possession cultivating the land personally shall alone be entitled to hold the land. The company having been declared to be disentitled to hold the lands on or from March 1, 1974 and being enjoined under sub-section (2) to furnish a declaration to the Tehsildar having jurisdiction over the land or greater part thereof, it is the "holder" for the purpose of Section 79-B of the Act. It is made clear by sub-section (1) of Section 79-B. Shri Javali, learned senior counsel for the respondents, placing reliance on Section 2(1 1) of the Karnataka Land Revenue Act, 1964, contended that the possession of the company was unlawful as the lease had expired by efflux of time. Five hundred acres were taken possession by the lessors, landowners and 600 acres though remained in possession of the company, the Act did not divest their title. Only the title of the land under personal cultivation of the tenant having existed jural relationship of landlord and tenant alone stood divested as envisaged under Section 44. On expiry of the lease in the year 1972-73 the possession of the tenant was not juridical, but only as tenant holding over but in unlawful possession. The lessors did not accept the rent from the tenant. Therefore, the company has neither right to file any declaration under Section 66, nor under Section 77-B(2) nor is it filed within 90 days' limitation prescribed thereunder. Section 79-B(2) postulates "holder of the land" while Section 44 speaks of "land in personal cultivation of the tenant". They bring out the distinction that the holder must be one in lawful possession and personally cultivating the land under Section 2(11) of the Act. Since the tenant was not cultivating the land, nor had juridical possession, the declaration under Section 79-B(3) is illegal and the interpretation given by the High Court is correct. In Support thereof he placed reliance on Section 2(2 1), "the landowner", Section 2(3 1) "holder", Sections 5, 19, 20, 44, 58, 62, 66 and 77.

4.With a view to appreciate the rival contentions it is necessary to look into the scheme of the Act and the purpose envisaged therein. The Act is an agrarian reform prescribing "ceiling on land holding" and "conferment of ownership on tenant". Section 2(1 1) defines personal cultivation, the details of which are not material, but the Explanation 1 to Section 2(1 1) amplifies that the land held

by a society, etc. shall be deemed to be cultivating personally, if such a land is cultivated by hired labour or by servants under the personal supervision of an employee or agent of such institution, society, trust, etc. Under Section 2(21), the owner of the land has been defined with an extended inclusive definition. Section 2(34) defines tenant to mean an agriculturist who cultivates personally the land "he holds on lease from a landlord". Section 5 prohibits grant of lease or creation of tenancy after March 1, 1974 for any period whatsoever. Sub-section (2) gives exemption to seamen or soldiers with which we are not concerned. Section 6 postulates that "no tenancy of any land shall be terminated merely on the ground that the period fixed for its duration whether by agreement or otherwise has expired". In other words, Section 6 manifest the legislative intention that notwithstanding the expiry of the lease by efflux of time, the tenancy on account thereof, should not stand terminated. A conjoint reading of Sections 19, 20, 58, 60, 62 read with Section 44 indicates that on or from March 1, 1974 the tiller of the soil should alone be entitled to remain in possession and should personally cultivate the land. The pre-existing right, title and interest of the landowner stood extinguished and the lands stood vested in the State free from all encumbrances. The Act confers ownership rights on the tenants in the manner prescribed by the Act. If he either ceases to cultivate the land or leases to others or contravenes the grant, the conferment of ownership of land stands terminated. The resultant consequences are that the lands shall stand divested from him and revested in the State Government for the purpose of assignment to the other tiller. Section 44 expressly divests the title of the landowner and conferred right only for compensation under Section 72. Equally Section 79-B prohibits the company or any charitable society or trust or cooperative society, etc. to hold the lands. Sub-section (1) expressly mandates that "no person other than a person cultivating land personally" shall be entitled to hold land. In other words, a person be it owner or a tenant, but be in possession and personally cultivating the land has been statutorily permitted to hold the land. The holding of the landowner is subject to the ceiling under Section 66. The company etc. was prohibited to hold land. A duty has been imposed by subsection (2) of Section 79-B to furnish within 90 days, to the Tehsildar having jurisdiction a declaration concerning the land held by it in the prescribed manner. In other words, the company is enjoined to make the declaration. "On making such a declaration" that the specified land was held by it, subsection (3) provides the procedure for inquiry. On compliance thereto and submission of a report after the prescribed inquiry, by the Tehsildar, the Deputy Commissioner, he has been empowered to declare by the notification that such land "shall vest in the State Government free from all encumbrances" and take possession thereof in the prescribed manner. The definition of bolder under Section 2(1 1) of the Land Revenue Act undoubtedly defines, to mean "in lawful possession of land, whether such possession is actual or not". We are not so much concerned with the lawful possession or possession of a tenant holding over for the purpose of interpreting the provisions of the Act. Section 6, as seen earlier, specifically declares that despite the expiry of lease by efflux of time, the tenancy would not stand terminated and that, therefore, the possession of the tenant/company statutorily remains to be juridical possession. The phrase "holder" of the land in Section 79-B must be construed from that perspective. The contra-contention violates the scheme and defeats the purpose of the Act. It is to be remembered that in respect of the matters covered under the Act, the jurisdiction of the civil court has been ousted and conferred on the Tribunals under the Act. There is no forum created under the Act to decide the rights of the landowner and the erstwhile tenant.

5.In Bhawanji Lakhamshi v. Himatlal Jamnadas Danil the facts were that after the lease had by the appellant expired by efflux of time they remained in occupation and were paying the rent to the lessor. The leases were determined by issue of notice under Section 106 of the Transfer of Property Act and the suit was filed for decree of eviction on the ground of personal requirement. One of the defences was that after the lease was determined the lessor accepted the rent. Therefore, as tenant holding over he was entitled to the protection of Section 13 of the Bombay Rent Act. That was negatived by all the courts and decree for eviction was granted. This Court held that the act of holding over, after expiry of the lease, does not create a tenancy of any kind. After he continued with the consent of the landlord he is tenant at sufferance and without consent he is not a tenant holding over. Under Section 116 of Transfer of Property Act the assent of the landlord for the continuance of the possession after the lease was determined creates a new tenancy, but there must be bilateral assent expressly or otherwise. Accordingly it was held that there was no proof that the landlord had accepted the rent agreeing to continue the tenancy. The ratio therein has no application to the facts of this case. In M.C. Chockalingam v. V. Manickavasagam2 the question therein was whether the lessee of a cinema theatre, after the expiry of the lease was having lawful possession under Rule 13 of Madras Cinemas Regulations. In that context this Court held that by the language of Rule 3 it is implicit that the owner is having a title to the property if he can satisfy the licensing authority that the tenant, though was 1 (1972) 1 SCC 388: (1972) 2 SCR 890 2 (1974) 1 SCC 48: (1974) 2 SCR 143 in possession, his possession was not lawful, but litigious possession and he is not entitled to the renewal of the licence. Lawful possession cannot be established without a concomitant existence of lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless his consent becomes under special law, irrelevant. Lawful possession is not litigious possession and must have some foundation in legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person who is wrongly or forcefully dispossessed from it. Therefore, the ratio in the above decision also is not of any assistance to the respondents. It is also equally well settled law that of the expiry of the lease of the landlord, the rent of the landlord continues to receive without protest, he acquiesced to the continuance in possession by the lessee and unless he is lawfully ejected his possession cannot be held to be unlawful.

6.As seen, admittedly the respondents as on March 1, 1974 did not have possession of the lands. The company lessee continued to hold the land. By operation of Section 6 though its lease had expired by efflux of time, the lease did not stand terminated. In other words, his possession remains juridical possession under the Act. Therefore, on its being prohibited to remain in possession, the company was enjoined under Section 79-B(2) to furnish declaration and accordingly he did furnish to the Tehsildar, though mistakenly done by quoting Section 66(1). Quotation of a wrong provision does not take away the jurisdiction of the authorities to inquire under Section 79-B(3) of the Act. The Tribunals, therefore, had jurisdiction to inquire into and publish the declaration as enjoined under Section 79- B(3) of the Act. The demised 600 acres land held by the company stood vested in the State free of encumbrances.

7.Accordingly the order of the High Court is clearly illegal. It is set aside and the action of the Deputy Commissioner under Section 79-B(3) is upheld. The appeals are allowed, but without costs.