Monthi Menezes(D) By Lr. vs Devaki Amma (D) By Lr.. on 23 April, 2019

Equivalent citations: AIRONLINE 2019 SC 554

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Bench: Abhay Manohar Sapre, Dinesh Maheshwari

REPOR

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3539 OF 2009

MONTHI MENEZES (D) BY LR. ..... APPE

VS.

DEVAKI AMMA (D) BY LR. & ANR. ..... RESPON

JUDGMENT

Dinesh Maheshwari,J.

1. This appeal by special leave is directed against the judgment and order dated 12.03.2008 as passed by Division Bench of the High Court of Karnataka at Bangalore in Writ Appeal No. 2202 of 2006, affirming the order dated 17.11.2006 as passed by learned Single Judge in Writ Petition No. 11344 of 1999. 1.1. By the said order dated 17.11.2006, learned Single Judge of the High Court allowed the writ petition filed by respondent of the present appeal (now represented by her legal representative) and set aside the order dated 28.01.1999 passed by the Land Tribunal, Bantwal Taluk, Karnataka in TNC No. 10579 of 1974- Reason:

> 95 whereby the Tribunal had declared the applicant Shri Bona Menezes (predecessor of the present appellant - who is also represented by her legal representative) as tenant of 3.07 acres of land in Survey No. 119/2A1 of Kuriyala village.

2. The relevant background aspects of the matter could be taken note of as follows:-

2.1. The Amended Karnataka Land Reforms Act, 1961 (the 'Act of 1961') came into force w.e.f. 01.03.1974. By virtue of amended Sections 44 and 45 thereof, all the tenanted lands vested with the Government and all the tenants were entitled to be registered as occupants1. Every person entitled to be registered as an occupant under Section 45 was required to make an application in that behalf before the Tribunal within the stipulated time. Such an application was required to be made in Form 7 appended to the Karnataka Land Reforms Rules, 1974.

2.2. Shri Bona Menezes, predecessor of the appellant, made an application in the prescribed Form 7, claiming occupancy rights over various parcels of land while alleging that he was cultivating the land in question for about 40 years on payment of 50 Muras of rice per annum to the landlord; and he was also making 1 For ready reference, the relevant provisions contained in sub-section (1) of Section 44 and sub-section (1) of Section 45 are extracted 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.

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 sublet, 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.

payment of land revenue and levy. The landlord (respondent herein) appeared in response to the notice issued on the application so made by Shri Bona Menezes and specifically raised objection in respect of the land in Survey No. 119/2A1, which is the subject matter of dispute in the present appeal. The landlord also raised objection in relation to the land comprising Survey No. 143/2B, Survey No. 144/2 and Survey No. 144/6 while stating no objection in granting occupancy rights to the applicant on other parcels of land. The main plank of the case of the landlord had been that the said parcels of land comprising Survery Nos. 119/2A1, 143/2B, 144/2 and 144/3 were 'Punja' lands, which were not cultivable and were not leased to the applicant.

2.3. After taking necessary evidence and after spot inspection on 06.03.1981, the Land Tribunal came to the conclusion that so far as the land comprising Survey No. 119/2A1 was concerned, the applicant was using the same for agricultural purpose and in fact, without this land, he cannot cultivate the other parcels of land. The Tribunal, therefore, rejected the objections of landlord in regard to this land in Survey No. 119/2A. However, as regards other parcels of land for which, the

landlord had raised objections namely, those comprising Survey No. 143/2B, 144/2 and 144/3, the Tribunal found that they were situated at a distance away from the agricultural land of the applicant and hence, rejected his claim in that regard. Accordingly, the Tribunal, by its order dated 18.06.1981, registered the applicant as an occupant in relation to the other parcels of land that were not objected to as also in relation to land comprising Survey No. 119/2A1 to the extent of 3.07 acres. The Tribunal concluded the matter as follows:

> "The lands leased have vested with the Govt as on 1.3.74 as per amended Land Reforms Act. Hence applicant is registered as occupant for the lands mentioned below-
>
> | | Sy. No. | Extent |
> |---|---|---|
> | 1. | 18-3B | 0-17 |
> | 2. | 18-4 | 0-21 |
> | 3. | 18-20 A | 0-16 |
> | 4. | 18-21 AF | 2-39 |
> | 5. | 18-22 | 0-30 |
> | 6. | 20-1 | 2-68 |
> | 7. | 119/2A1 | 3-07 |
> | | | 8-08" |
>
> Noticeable it is that the applicant had claimed occupancy rights over the entire Survey No. 119/2A admeasuring 4.71 acres but he was granted occupancy rights only to the extent of 3.07 acres therein.
>
> 2.4. Aggrieved by the aforesaid order dated 18.06.1981, the respondent-landlord preferred a writ petition in the High Court, being W.P.No. 19746 of 1981, essentially questioning the grant of rights in relation to the said 3.07 acres of Survey No. 119/2A1. The High Court allowed the writ petition and remanded the matter for fresh inquiry as regards the said land of Survey No. 119/2A1.
>
> 2.5. In the detailed inquiry undertaken pursuant to the order of remand, the Land Tribunal recorded the statement of parties while extending opportunity of cross-

examination to the respective opponents and also took on record the documentary evidence adduced by the parties. After thorough examination of the material on record, the Tribunal again found justified the claim of the applicant as regards the said 3.07 acres of land in Survey No. 119/2A1 and allowed his claim, inter alia, with the following findings and observations in its impugned order dated 28.01.1999:-

> "During the spot investigation what is found is that the sy no. 119/2A is divided by a stone making it 119/2A1 and 119/2A2- first belonging to applicant and another belonging to landlord. 119/2A1 measuring 3.07 acres is in possession of applicant and 119/2A2 measuring 1.64 is in possession of landlord and the same are divided by

stone. The same is also clarified by the survey and measurement report.

From the above it is clear that sy no. 119/2A1 3.07 acres was in possession of Bona Menezes as on 1.3.74 and prior to it.

In this back ground if lease chit is perused it becomes clear that it mentions that for better cultivation and development of SY No. 19/4, 18/22, 20/1 this disputed piece of land was included for procuring manure wood fodder etc. In Bantwal taluk of South kanara District it is common practice not to include in lease chit. Hence in this background it is declared that Applicant was lawful tenant of sy no. 119/2A1

3.07 acres.

Further it is seen that for Khatha no. 34 applicant has paid land cess. This khatha no. 34 is included in lease chit and hence lease chit covers sy no. 119/2A1.

Disputed land is abutting leased lands. For better cultivation fodder, grass wood etc are very essential which can be procured from this disputed land. Applicant was giving ½ muras of rice p.a. separately for this land. Declaration is also filed in time. As per the surveyor report of 1977 and 1981 there was a stone fencing demarcating 3.07 acres in sy no. 119/2A1 and 119/2A2. hence applicant is entitled to be registered as occupant of 3.07 acres in sy no. 119/2A1." 2.6. Aggrieved by the aforesaid order dated 28.01.1999, the landlord preferred a writ petition (W.P.No. 11344 of 1999) before the High Court. The Learned Single Judge of High Court proceeded to allow the said writ petition by the impugned order dated 17.11.2006, essentially on the ground that Punja land, not brought under cultivation, is not to be classified as agricultural land while relying upon a Division Bench decision of the High Court in the case of Subhakar and Ors. v. The Land Tribunal, Karkala Taluk, Karkala and Ors.: (1994) KLJ 524. The learned Single Judge also observed that, even otherwise, there was no material on record to establish lawful tenancy, much less landlord-tenant relationship over the land in question. According to the learned Single Judge, the Tribunal was swayed by the fact that the applicant was in possession of the land at the time of spot inspection, but mere possession, by itself, was not sufficient to establish lawful tenancy or landlord-tenant relationship. The Learned Single Judge also observed that the payment of land revenue was of no relevance and further that the Land Tribunal had ignored the relevant material on record while proceeding on irrelevant material and under misconception of law. The Learned Single Judge allowed the writ petition while observing, inter alia, as under:-

"3. Even otherwise, an examination of the order impugned discloses that there is no material on record to establish a lawful tenancy, much less a landlord-tenant relationship over the Punja land in question. The Tribunal was swayed by what it noticed at the time of spot inspection that the applicant was in possession of the land. Mere possession by itself and nothing more cannot establish lawful tenancy or landlord- tenant relationship. So also, the receipts for having paid the land revenue in respect of the land in question is not substantial legal evidence of a fact of existence of a lawful tenancy. Payment of tax has no relevancy to the claim of tenancy. The

> Land Tribunal, without considering relevant material on record and eschewing irrelevant material, by a misconception of law and fact, conferred occupancy rights in favour of the applicant over land which was not agricultural. In that view of the matter too, the order impugned is unsustainable.
>
> In the result, the Writ Petition is allowed. The order dated 28.01.1999 Annexure "B" of the Land Tribunal is quashed." 2.7. Aggrieved by the order aforesaid, the applicant-appellant preferred an intra-

court appeal but the same was dismissed by the Division Bench of High Court while observing as under:-

> "2. The only point that would arise for consideration is whether the land being a punja land, which is an undisputed fact, was brought under cultivation and was it in fact treated as an agricultural land as on the appointed date i.e. 1.3.1974. The tribunal, no doubt, based on the spot inspection made somewhere in the year 1981 comes to a conclusion that it was brought under agricultural operations, on the other hand, the records reveal that even as on the appointed dated, Smt. Devaki Amma, the landlady was in possession and enjoyment of the Sy. No. 119/2A-1. The contention of the landlady is also to the effect that except this land all other lands were the subject matter of Chalageni Chit.

3. The Learned Single Judge by referring to a Division Bench Judgment of this Court in the case of SUBHAKAR AND OTHERS VS. THE LAND TRIBUNAL reported in 1999(4) KLJTR 524, held that unless there is positive evidence to show that as on 1.3.1974, though the land being described as Punja Land was brought under cultivation, there cannot be grant of any occupancy rights in respect of such lands. The said observation of the learned Single Judge is based on record and especially the fact of tribunal placing reliance on the spot inspection made in the year 1981, almost seven years after the appointed date. We do not find any good ground to interfere with the said order of the learned Single Judge."

3. Assailing the order aforesaid, it has strenuously been argued on behalf of the appellant that her predecessor was entitled to a lawful tenancy in respect of the land in question comprising Survey No. 119/2A1, admeasuring 3.07 acres where he had grown mango trees, cashew and grass for grazing cattle. Learned counsel has argued that the Tribunal had on two occasions categorically found that the applicant was in possession of the land in question as on 01.03.1974 and immediately prior to it; that the land in question was necessary for cultivation of the adjacent land available with the applicant; and that such a fact was borne out of the lease chit also. Learned counsel also argued that the High Court has failed to take note of the definition of "agricultural" and that of "land" as contained in Sections 2(A)(1) and 2(18) of the Act of 1961. According to the learned counsel, the land in question answers to the description in Section 2(18) of the Act of 1961 and occupancy rights could not have been denied. Per contra, learned counsel for the contesting respondent has vehemently argued that no case for interference in the orders passed by the High Court is made out, particularly when the applicant had not produced any documents before the Land Tribunal so as to establish the

fact that the land in question was an agricultural land as on 01.03.1974. According to the learned counsel, the Land Tribunal relied only upon the spot inspection conducted on 06.03.1981 and granted occupancy rights in favour of the applicant without examining the question as to whether the land in question was an agricultural land as on 01.03.1974; and when the land in question had admittedly been a Punja land, the Tribunal could not have granted occupancy rights therein, for Punja land being essentially a non-agricultural land.

4. Having heard learned counsel for the parties and having examined the record of the case with reference to the law applicable, we are inclined to allow this appeal and while setting aside the orders impugned, remand the case to the High Court for deciding the writ petition afresh on merits and in accordance with law.

5. We have taken note of the relevant part of the observations made by the Land Tribunal as also by the High Court in this matter. In a comprehension of the entire matter, we are constrained to observe that while disapproving the order passed by the Land Tribunal, the High Court appears to have proceeded either on irrelevant considerations or while ignoring the relevant aspects of the matter. It is for this reason we feel it imperative that the matter be restored for reconsideration by the High Court.

6. As noticed, the Land Tribunal in the first place examined the entire matter in detail and upheld the objections of the landlord in relation to the land comprising Survey Nos. 143/2B, 144/2 and 144/3, though the applicant was claiming the occupancy rights therein too. As regards the land comprising Survey No. 119/2A1, though the applicant claimed occupancy rights over 4.71 acres, the Tribunal granted such rights only to the extent of 3.07 acres after finding that such parcel of land was being used for agricultural purposes and without this land, the applicant cannot cultivate the other parcels of land. After the matter was remanded by the High Court for reconsideration, the Tribunal undertook fresh inquiry as regards the said land of Survey No. 119/2A1 and again accepted the prayer of the applicant with the clear finding that the applicant was in possession of 3.07 acres of land in Survey No. 119/2A1 as on 01.03.1974 and prior to it. The Tribunal also held that this land was given to the applicant for better cultivation and development of other parcels of land with him and therefore, non-inclusion of this parcel of land in the lease chit was of no adverse effect on the claim of the applicant. As regards such categorical findings of the Tribunal, the learned Single Judge proceeded to observe that mere possession or mere payment of land revenue was of no effect because there was no material on record to establish a lawful tenancy and landlord-tenant relationship.

7. With respect, we are unable to find if the learned Single Judge at all adverted to the reasons that had prevailed with the Tribunal that the land in question was allowed to the tenant for better cultivation of other parcels of land. The learned Single Judge also observed, with reference to the Division Bench decision in Subhakar's case (supra) that unless Punja land was shown to have been brought under cultivation, it would not be recorded as agricultural land. However, in the said decision, Division Bench of Karnataka High Court has also observed that the question as to whether Punja Land is cultivable or not is a pure question of fact. In the said decision, grant of occupancy rights was denied on the given set of facts, where only thatched grass had grown naturally on the

land in question that was shown to be Punja land and it was also found that there was a built house surrounding the land in question. The said decision in Subhakar's case (supra) could only be read in the context of the facts therein and the relevant factual aspects of the present case cannot be ignored.

8. While dealing with the intra-court appeal against the order so passed by the learned Single Judge, the Division Bench, in paragraph 2 of its judgment has even gone to the extent of observing that, as per the record, the landlord was in possession of the land in question as on the appointed date. In fact, such had not been the finding even by the learned Single Judge, who proceeded to observe that mere possession by itself cannot establish lawful tenancy. The findings of the Tribunal, on the contrary, had been that the applicant Shri Bona Menezes was in possession of the land in question as on 01.03.1974 and even prior to it.

9. The significant aspects of the matter, as taken into consideration by the Tribunal, had been that there was a reference in the lease chit about mango trees, cashew, tamarind and the lessee was to enjoy the fruits of the allied land also. The Tribunal also observed that for the purpose of cultivating other land, the applicant had to depend upon the land in question and hence, the said land was also to be considered as included in the lease chit. The Tribunal also found that the original Survey No. 119/2A was divided by stone, making it No. 119/2A1 and No. 119/2A2; and the first one, being No. 119/2A1 admeasuring 3.07 acres, was in possession of the applicant whereas the other one, being No. 119/2A2 admeasuring 1.64 acres, was in possession of the landlord.

10. Hereinabove, we have only indicated the relevant aspects emanating from the findings of the Land Tribunal and it is but apparent that the High Court, while dealing with the writ petition as also the writ appeal has not adverted to such categorical findings of the Tribunal.

10.1. Apart from the above, it is also apparent that the High Court did not examine the definition of "land" as set out in Section 2(18) of the Act of 1961 to find if the land in question answers to the description therein.2 The wide-ranging meaning assigned to the expression "land" for the purpose of the Act of 1961 makes it clear that the expression refers not only to the land which is actually used for agricultural purposes but even to the land which is used or is capable of being used for agricultural purposes or even the purposes subservient thereto. On the facts and in the circumstances of this case, the said definition deserves due consideration while dealing with the challenge to the order made by the Tribunal.

11. In view of the aforesaid, where we find that the High Court has not adverted to all the facts of the case as also to the law applicable, the proper course in this matter would be to remand the matter and to request the High Court to decide the writ petition afresh on merits and in accordance with law. 2 Section 2 (18) reads as under:-

> (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 purpose;.

12. It is also noticed that while issuing notice in this matter on 18.07.2008, this Court ordered status quo in relation to possession of subject of dispute to be maintained. While granting leave on 08.05.2009, the said interim order was confirmed until the disposal of this appeal. In the totality of circumstances of the case, it is also appropriate that such interim order remains in operation until final disposal of the writ petition by the High Court.

13. In the interest of justice, it is also made clear that we have not expressed any opinion on the merits of the controversy and the observations herein are relevant only for the purpose of our reasons for remanding the matter. Hence, the matter involved in the writ petition remains open for decision afresh by the High Court on merits, without being influenced by any observation made in the orders impugned or in this order.

14. Hence, this appeal succeeds and is allowed to the extent and in the manner that the impugned orders dated 12.03.2008 and 17.11.2006 are set-aside and Writ Petition No. 11344 of 1999 is restored for reconsideration of the High Court in accordance with law. Until final disposal of the writ petition, status quo in relation to possession of subject of dispute shall be maintained by all the parties. To put the record straight, it is also provided that the legal representatives of the respective parties, as substituted in this appeal, shall stand substituted in the writ petition and the High Court shall proceed with the matter after amending the cause title accordingly.

14.1. The matter being an old one, we would request the High Court to take necessary steps for early disposal of the writ petition, preferably within six months from today.

.....J. (ABHAY MANOHAR SAPRE) .....J. (DINESH MAHESHWARI) 1 New Delhi, Date: 23rd April, 2019.