

SRI SIDDAPPA (DEAD) BY LRS. AND ORS.

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v.

THE STATE OF KARNATAKA AND ORS.

MAY 4, 2000

[S. SAGHIR AHMAD AND R.P. SETHI, JJ.]

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Tenancy and Land Laws :

Karnataka Land Reforms Act, 1961 (as amended by Act No. 1 of 1974)—Ss. 44 and 45—Vesting of land in State Government—Tenant's right to claim occupancy rights—Landlord's claim for resumption of land for personal cultivation, partly allowed—Landlord instead of taking possession of land, filing appeal before the Tribunal—Land continued to remain in possession of tenants—During pendency of appeal, Act amended by which S. 14 omitted and S. 44 was inserted—Tenant's claim for occupancy rights on the ground of being in possession of land on the relevant date—Rejected—On appeal, Held, tenant entitled to claim occupancy rights on the whole land in his possession—High Court not justified in rejecting the claim of tenant.

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Predecessor in interest of appellants was a tenant of the land belonging to respondent-landlord. Respondents initiated proceedings under S. 14 of the Karnataka Land Reforms Act, 1961 for resumption of half of the land for their personal cultivation, which was partly allowed. But despite resumption order, respondent-landlord instead of taking possession of said land, preferred an appeal before the Tribunal for resumption of entire land. Thus, appellant-tenant continued to remain in possession of the land. In the meantime, the Act was amended (by Act No. 1 of 1974) by which S. 14 was omitted and S. 44 providing vesting of land in State Government was inserted. Consequently, appellant-tenant, invoking the provisions of S. 44 of Act, claimed occupancy rights on the ground of being in possession on the relevant date. The said claim was rejected both by the authorities under the Act and the High Court on the ground that the appellants having themselves agreed for resumption of 50% of the land, cannot invoke the subsequent amendment made in the Act. Hence the present appeal.

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Allowing the appeal, the Court

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A **HELD : 1.1. Appellants are entitled to the conferment of occupancy rights on the whole land in their possession under S. 44 r/w. S. 45 of the Karnataka Land Reforms Act, 1961. [999-D]**

B 1.2. Under S. 44 of the Act, all lands in possession of the tenants stood transferred to and absolutely vested in the State Government free from all encumbrances. Under S. 45 of the Act every person who was a permanent tenant, protected tenant or other tenant or where a tenant had lawfully sub-let, such sub-tenant was, with effect from and from the date of vesting, held entitled to be registered occupants in respect of the land of which he was a tenant. In the instant case, it is not disputed that despite passing of order of resumption in their favour, the respondent-landlords had not taken possession of the land which continued to be in possession of the appellant-tenants. Thus, High Court was not justified in negating the claim of tenants to which they were entitled under S. 44 r/w. S. 45 of the Act. [998-E-G]

D **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 771 of 1997.**

From the Judgment and Order dated 24.8.93 of the Karnataka High Court in W.P. No. 4341 of 1979.

E P. Mahale, (Rajesh Mahale for R.C. Kohli for the Appellants.

K.H. Nobinsingh and M. Veerappa for the Respondents.

The Judgment of the Court was delivered by

F **SETHI, J.** Invoking the provisions of Section 44 of the Karnataka Land Reforms Act, 1961 (hereinafter called as "the Act"), the original appellant-tenant approached the authorities under the Act for conferment of occupancy rights on the ground of being in possession on the relevant date. His claim was negated both by the authorities under the Act and the High Court allegedly on the ground that he had made a concession in proceedings initiated under Section 14 of the Act for resumption of land by the landlord. G It was found that as the appellant himself had agreed to forego his claim to the extent to 50% of the land in his occupation, he could not invoke the subsequent amendment made in the Act vide Section 44.

H It is not in dispute that the appellant's father Shri Sadappa was a tenant of the land bearing Survey No.14 measuring 5 acres 6 guntas situated at

Hulaganaktti Village, Kalaghatgi Taluk since about 50 years. The respondents are alleged to have initiated proceedings under Section 14 of the Act for resumption of half of the land for their personal cultivation in the year 1967. The application filed by the landlords was partly allowed on 15.10.1968 in RLC No.348 of 1967 permitting them to resume 2 acres 23 guntas of the land. It is also not disputed that despite orders in their favour, the respondents-landlords did not take the possession in execution of the orders of resumption passed. Instead they preferred an appeal before the Tribunal with a prayer for resumption of the entire extent of land. During the pendency of the appeal, the Act was amended on 1.3.1974 (by Act No.1 of 1974) by which Section 14 was omitted and Section 44 providing vesting of land in Government was inserted. For rejecting the claim of the appellant, the Tribunal and the High Court relied upon the orders passed in favour of the landlords under Section 14 of the Act and did not consider the effect of Section 44 of the Act, which so far as relevant for our purposes, reads:

“44. Vesting of land 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.

(2) Notwithstanding anything in any decree or order of or certificate issued by any Court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any law for the time being in force, with effect on and from the date of vesting and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely:-

(a) all rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Government free from all encumbrances;

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(c) xx xx xx xx

(d) xx xx xx xx

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A (e) xx xx xx xx

(f) the land-owner, landlord and every person interested in the land whose rights have vested in the State Government under clause (a), shall be entitled only to receive the amount from the State Government as provided in this Chapter;

B (g) permanent tenants, protected tenants and other tenants holding such lands shall, as against the State Government, be entitled only to such rights or privileges and shall be subject to such conditions as are provided by or under this Act; and any other rights and privileges which may have occurred to them in such lands before the date of vesting against the landlord or other person shall cease and determine and shall not be enforceable against the State Government.”

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D A perusal of the Section shows that all lands in possession of the tenants, including tenants against whom a decree or order for eviction or a certificate for resumption had been made or issued, stood transferred to and vested in the State Government. The rights, privileges and interests vesting in the owner of such lands stood extinguished and vested absolutely in the State Government free from all encumbrances. Such owners were held entitled only to receive the amount from the State Government as provided in Chapter III of the Act. Consequently, permanent tenants, protected tenants and other tenants holding such lands were held entitled to such rights and privileges and be subject to such conditions as were provided under the Act.

E Under Section 45 of the Act every person who was a permanent tenant, protected tenant or other tenant or where a tenant had lawfully sub-let such sub-tenant was, with effect from and from the date of vesting, held entitled to be registered occupant in respect of the land of which he was a tenant.

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G There does not appear to be any dispute regarding the fact that despite passing of order of resumption in their favour, the respondents-landlords had not taken the possession of the land which continued to be in possession of the appellants-tenants. The Tribunal in its order dated 22nd March, 1979 noted:

H “The records show the applicant’s father and then the applicant’s name as protected tenant and cultivator since 1960 onwards. But there was also order passed by the Tribunal in RCC 348/67 dated 15.10.1968

according to which the landlord was allowed to resume 50% of the land i.e. 2 acres 23 guntas. This was not executed because according to the landlord, he had filed an appeal to resume the entire land and because he was sick. After 1974 he could not take any action to resume the land.”

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Similarly the High Court also observed:

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“It also noticed that the landlord had not resumed the land on account of illness and an appeal also had been preferred thereto.”

It appears that being more influenced by equity than by law, the Tribunal and the High Court rejected the claim of the appellants-tenants to which he was entitled under Section 44 of the Act. The orders of the Tribunal and the High Court, therefore, cannot be sustained and are required to be set aside.

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In view of what has been stated hereinabove, the appeal is allowed and the impugned order of the Division Bench of the Karnataka High Court as well as of the Tribunal are set aside. The appellants are held entitled to the conferment of rights on the whole land in their occupation under Section 44 read with Section 45 of the Act. As no-one has appeared for the respondents to seriously contest the appeal, the appellants are left to bear their own costs.

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S.V.K.

Appeal allowed.

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