K. KUNHAMBU

*v.*

SMT. CHANDRAMMA AND ORS.

FEBRUARY 10, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

*Karnataka Land Reforms Act, 1961:*

*Section 2(A) (18); 2(A) (34); 45 and 48A—Tenant—Occupancy rights—Grant of—Lands within municipal limits and subjected to property tax—Statutorily notified as Industrial Area—Leased out under a registered deed for purpose of running a saw mill with liberty to carry on any other industry or business—No specific permission or provision to use any portion of the land for agricultural purposes—After coming into force of the Act, Land Tribunal granting occupancy rights in favour of lessee holding that they were in lawful possession and cultivation of the lands—High Court reversing the order in revision—Held, lands were all throughout put to non-agricultural purposes only and claims of the lessee to the contrary have been rightly rejected by the High Court—Raising paddy in one year without any permission of the owner and in contravention of the lease cannot be considered reasonably sufficient to characterize or treat the land or the lease to be for cultivation or agricultural purposes.*

*Sections 2(A) (18) and 2(A) (34)—Land—Tenant—Definition of —Explained.*

*Judicial Notice—Judicial notice to some extent can be taken of the fact that a Saw Mill requires vast extent as appurtenant area for stacking wood and timber before and after sawing.*

**First respondent leased out lands belonging to her for a period of ten years under a Registered lease Deed for the purpose of running a saw mill. Subsequently, appellant purchased the said mill as a running concern under a Deed of Transfer and entered into possession of the leased out lands as well. Pursuant thereto, first respondent executed a fresh registered lease deed in favour of appellant. In the said lease deed, it was specifically stated that purpose of lease of land in dispute was for running a saw mill**

A with liberty to carry on any other industry or business as may be deemed fit within the period of lease. There was no specific permission or provision to use any portion of land in question for agricultural purposes.

Appellant and second respondent after coming into force of the Karnataka Land Reforms Act, 1961 applied before the Taluk Land B Tribunal for grant of occupancy rights under Section 45 thereof in respect of lands, which were subject matter of lease. The Land Tribunal granted occupancy rights in their favour on the view that claimants were in lawful possession and cultivation of the said lands. The first respondent, being owner of lands, moved the High Court against the aforesaid orders. After C constitution of Land Reforms District Appellate Forums, the writ petitions were transferred to Appellate Authority, which upheld the grant of occupancy rights in respect of the lands except a small portion over which the saw mill as such stood and therefore used for non-agricultural purpose. The High Court in revision held that appellant cannot be conferred with occupancy rights, as there was specific stipulation in the lease to use the D property only for industrial or commercial purposes. Hence the present appeals.

Dismissing the appeals, the Court

HELD: 1.1. Absence of any concrete material to show actual and E regular or continuous personal cultivation confirms the position that the lands in question were all throughout being put only to non-agricultural purposes for decades and that the claims on behalf of the appellant to the contrary have been rightly rejected by the High Court. Instead of usual assessment to land revenue, the lands were also found to have been F subjected only to Municipal Property Tax and came to be statutorily notified as an Industrial Area. That explains the purpose recited in the first Registered Lease Deed under which the lands were let only for running a Saw Mill and the other terms and conditions also *per se* would indicate at any rate that the same was not for any purposes related to 'Agriculture" or for cultivation. After the appellant purchased the Saw G Mill as a going concern also, under yet another Registered Lease Deed the appellant obtained the lease once again for running the Saw Mill in that place. It is common knowledge and even judicial notice to some extent can also be taken of the fact that the Saw Mill requires vast extent as appurtenant area also besides the actual mill building for stacking wood and timber etc. before and after sawing. A solitary extract which appears

H

**to have been produced relating to one year showing the raising of Paddy on an extent of land without any permission of the owner and that too in contravention of the lease cannot by any means be considered either relevant or reasonably sufficient to characterize or treat the land or the lease to be for cultivation or agricultural purposes.**

**[256-F-G; 256-D; 256-A-E]**

*State of Karnataka and Ors.* **v.** *Shankara Textiles Mills Ltd.,* **[1995] 1 SCC 295 and** *Om Prakash Agarwal and Ors.* **v.** *Batra Behera and Ors.,* **[1999] 3 SCC 231, distinguished.**

**1.2. It could be seen from the definition of 'Land' in the Karnataka Land Reforms Act 1961 that though it comprehends in the first part land actually cultivated or cultivable, the later exclusionary part of the definition, "but does not includes house site or land used exclusively for non-agricultural purposes" makes it abundantly clear that the actual and exclusive user for non-agricultural purposes, even the land otherwise cultivable or capable of being used for any purposes related to agriculture as enumerated therein, would stand excluded and fall outside the purview of the said definition in Section 2(A) (18) of the Act. When the land in question is itself not 'land' as defined for the purposes of the Act, there is no scope or room for falling back up on the so called object or aim of the legislation to extend the provisions of the Act to areas specifically left outside it against the express legislative mandate and will, policy and intention. In addition thereto, the facts specifically disclosed would equally belie the claim of the appellant being a 'tenant' as defined in Section 2(A)(34) of the Act. [256-G, H; 257-A-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 899-900 of 2004.

From the Judgment and Order dated 21.9.2000 of the Karnataka High Court in L.R.R.P. Nos. 4033 and 3817 of 1990.

P. Krishnamoorthy and Romy Chacko for the Appellant.

V.R. Reddy, P.R. Ramasesh and Sanjay R. Hegde for the Respondents.

The Judgment of the Court was delivered by

**D. RAJU, J.** Leave granted.

The above appeals have been filed against the common Order dated

A 21.09.2000 of a learned Single Judge of the Karnataka High Court made in L.R.R.P. No.3817 of 1990 (filed by the appellant herein before the High Court) and L.R.R.P. No.4033 of 1990 (filed by the first respondent herein), whereunder the learned Single Judge, while affirming that portion of the order passed by the Appellate Authority granting partial relief to the 1st respondent to which the challenge was made by the appellant, also allowed B the claim made by the first respondent herein challenging the order of the Land Reforms Appellate Authority wherein that Authority granted relief in favour of the appellant, for the remaining extent covered by the lease under consideration.

C The salient and relevant factual details necessary for appreciating the contentions of the parties in these appeals are as hereunder: -

The lands in question comprised in Survey No.70/1(2 acres 02 cents); Survey No.70/2 (0-72 cents); Survey No.70/8 (1 acre 70 cents); Survey No.70/9 (22 cents); Survey No.70/10 (19 cents) and Survey No.70/11 (04 cents) D situated in Bolur Village within the Mangalore Municipal Limits, Dakshina Kannada, indisputably belonged to the first respondent and that she leased out the said lands in favour of one P.T. Shankaran Nair for a period of ten years under a Registered Lease Deed dated 04.03.1958 for the purpose of running a Saw Mill under the name and style of "Mysore Saw Mill". Subsequently, the appellant appears to have purchased the said Saw Mill as E a running concern under a Deed of Transfer dated 16.11.1968 and entered into the possession of the leased out lands as well. Since the appellant wanted to enter into direct relationship and obtain rent receipts also in his favour, the first respondent appears to have executed a fresh Registered Lease Deed dated 12.09.1969 in favour of the appellant, in which it appears a specific F reference is made to the Deed of Transfer dated 16.11.1968 for a period of ten years from 01.09.1969 to 31.08.1979. In the said Lease Deed, it has been specifically stated that the purpose of the lease of land in dispute was for running a Saw Mill in the name and style of "Gokulam Industries and Saw Mills" and secured undisputed possession of the above property with liberty to carry on any other Industry or business as may deem fit within the period G of lease. Apart from conspicuous omission or any mention to permit cultivation of any portion of the land in dispute by the lessee, one of the Clauses stipulated that the lessees are liable to keep the Coconut Trees in the leasehold property in proper condition and use only the usufructs of the trees with permission to remove only such of the Coconut Trees, which obstruct the interests of H their Industry. The rent fixed also was a monthly rental, only. There is no

specific permission or provision to use any portion of the land in question for agricultural purposes. While that be the position, the appellant and the second respondent appear to have filed Form No.7 Application under Section 48A before the Taluk Land Tribunal, for grant of occupancy rights under Section 45 of the Karnataka Land Reforms Act, 1961 [hereinafter referred as the 'Act'] in respect of the lands, which were the subject matter of lease. The Land Tribunal, after considering the objections of the first respondent and holding an Inquiry into the claims, appears to have granted occupancy rights in their favour on the view that the claimants were in lawful possession and cultivation of the said lands as on 01.03.1974. The first respondent, who is the owner of the lands, filed W.P. Nos. 1318/1979 and 1319/1979 before the High Court challenging the said orders. After the amendments introduced to the Act in the year 1986 constituting Land Reforms District Appellate Forums. The Writ Petitions seem to have been transmitted to the Appellate Authority, Mangalore, and the said Authority, on considering the materials on record, upheld the grant of occupancy rights in respect of the lands in question, except 25 cents of Survey No.70 over which the Saw Mill as such stood and therefore used for non-agricultural purpose. Aggrieved, the first respondent, as indicated earlier, challenged before the High Court that part of the order granting occupancy rights in favour of the appellant and the appellant challenged that part of the order which denied such occupancy rights in respect of 25 cents of lands, noticed above, over which the Saw Mill building was located.

The learned Single Judge, while dealing with both the revisions, by his common order under challenge came to the conclusion, keeping in view the nature of the lands, the specific object and purpose of the lease, the monthly rental provided for, the absence of any specific provision or permission to raise cultivation and positive stipulation contained to use the property only for industrial or commercial purposes as well as the factum of actual user of the land only for such industrial and commercial purposes, except as to a claim made of cultivation of a portion of the land during one particular year only in 1968-69 without any authorization or permission of the owner for cultivating or raising Paddy, came to the conclusion that the lands in question do not satisfy the definition 'land' contained in Section 2 (A) (18) and that the appellant cannot be held to be a 'tenant' to claim or be conferred with occupancy rights as defined under the Act in Section 2(A)(34) of the Act. In coming to such conclusion, the learned Judge in the High Court applied the principles laid down in some of the earlier decisions of the very Court, which, in his view, squarely applied to the case on hand. Hence, these appeals.

A Shri P. Krishnamoorthy, learned Senior Counsel for the appellant, strenuously contended, while reiterating the stand taken for the appellant before the Authorities below and the High Court that having regard to the relevant provisions of the Karnataka Land Reforms Act, 1961 and the rules made thereunder, the avowed purpose of the Legislation, the original classification of land and the alleged cultivation claimed of a portion of the B demised land, the concurrent findings arrived at by the authorities below are well merited and that the learned Single Judge in the High Court committed a grave error in interfering with the orders passed by the authorities in according occupancy rights. Apart from inviting our attention to the orders of the authorities below and the relevant provisions of the Act, strong reliance C has also been placed on the decisions of this Court reported in *State of Karnataka & Ors.* v. *Shankara Textiles Mills Ltd.*, [1995] 1 SCC 295 and *Om Prakash Agarwal and Ors.* v. *Batara Behera and Ors.*, [1999] 3 SCC 231 in order to substantiate the claims on behalf of the appellant. Per contra, Shri V. R. Reddy, learned Senior Counsel appearing for the 1st respondent, D contesting respondent, with equal force urged that having regard to the patent mistakes committed by the authorities below in the matter of interpretation of the relevant statutory provisions and total misdirection and misconception of vital and relevant facts, the High Court was well justified and necessitated to interfere with the orders of the authorities below and as such no exception could be taken to the reasons assigned therefor by the High Court and no E infirmities whatsoever could be substantiated in the ultimate conclusions as well, to call for any interference in these appeals. Reference was made to the relevant clauses of the Registered Lease Deed between parties as also the Mysore Gazette Notification dated 22.12.1960 containing final notification issued by the Commissioner of Mangalore Municipality within whose territorial F limits the lands in question, situated in the erstwhile Village Bolur, fell declaring these lands, along with several other items, as Industrial Area No.6. In other respects, the reasons, which weighed with the High Court, have also been adopted and reiterated in support of the orders passed in favour of the 1st respondent.

G We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the materials on record, the relevant statutory provisions and the decisions brought to our notice. The Karnataka Land Reforms Act, 1961 has been enacted to be a uniform law in the State of Karnataka relating to agrarian relations, conferment of ownership on tenants, H ceiling on land holdings and certain other incidental and allied matters as envisaged therein. The definition of 'land' as contained in Section 2(A)(18)

reads as follows: A

> "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.*" B
>
> (Emphasis Supplied)

Section 2(A)(34) defines 'tenant' as hereunder:

> "Tenant" means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes — C
>
> (i) a person who is deemed to be a tenant under Section 4;
>
> (ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961;
>
> (iia) a person who cultivates personally any land on lease under a lease created contrary to the provisions of Section 5 and before the date of commencement of the Amendment Act; D
>
> (iii) a person who is a permanent tenant; and
>
> (iv) a person who is a protected tenant. E
>
> *Explanation:* A person who takes up a contract to cut grass or to gather the fruits or other produce of any land shall not on that account only be deemed to a tenant;

A perusal of the orders of the Mangalore Taluk First Land Tribunal F dated 30.11.1978 and that of the Land Reforms Appellate Authority, Mangalore, dated 26.4.1990 shows that they suffer from serious infirmities of very grave nature, in their perception and approach as well as proper understanding of the issues raised for consideration. That apart, they proceeded upon total misdirection of facts relevant for the purpose by going behind records and assuming certain facts noticed by them after disputes arose between G parties as reflecting the real state of affairs. Per contra, the learned Single Judge seems to have dealt with the factual aspect as well in their proper perspective as the case warranted and deserved and found to have applied the correct principles of law, as well. There are certain indisputable facts, which not only undermine efficacy of the claim of the appellant but also expose its H

A hollowness besides the inherent illegalities involved in the same. The lands in question appear to have formed part of the Municipal Limits for a long time and even in the year 1960 came to be statutorily notified as an Industrial Area. That explains the purpose recited in the Registered Lease Deed dated 4.3.1958 under which the lands were let only for running a Saw Mill and the other terms and conditions also *per se* would indicate at any rate that the B same was not for any purposes related to 'Agriculture' or for cultivation. After the appellant purchased the Saw Mill as a going concern also, under yet another Registered Lease Deed dated 12.9.1969 the appellant obtained the lease once again for running the Saw Mill in that place under the name and style of 'Gokulam Industries and Saw Mill'. It is common knowledge and C even judicial notice to some extent can also be taken of the fact that the Saw Mill requires vast extent as appurtenant area also besides the actual mill building for stacking wood and timber etc. before and after sawing. The relevant clauses in this lease deed as well, and the fact that monthly rental was alone stipulated - not annual or to be payable in kind or a share of the produce, go to establish that the purpose of the lease was merely commercial D and industrial and not agricultural or even for any cultivation. Instead of usual assessment to land revenue, the lands were also found to have been subjected only to Municipal Property Tax. A solitary extract which appears to have been produced relating to one year - 1969 showing the raising of Paddy on an extent of 1-58 acres in Survey No.70/8 and 1 acre 24 cents in E Survey No.70/1 without any permission of the owner and that too in contravention of the lease cannot by any means be considered either relevant or reasonably sufficient to characterize or treat the land or the lease to be for cultivation or agricultural purposes. The varying and nebulous stand projected as to alleged cultivation through 2nd respondent also would belie their claims to be more borne out of desperateness to grab the land rather than to be real. F The consistent and overwhelming material disclosing the continuous use of the land at all times for running the Saw Mill notwithstanding a baseless or alleged winding up and closure of Saw Mill business, found to be false and incorrect and absence of any concrete material to show actual and regular or continuous personal cultivation confirms the position that the lands in question G were all throughout being put to non-agricultural purposes only for decades and that the claims on behalf of the appellant to the contrary have been rightly rejected by the High Court.

That apart, it could be seen from the definition of 'Land' in the Act that though it comprehends in the first part land actually cultivated or cultivable, H the later exclusionary part of the definition, "but does not include house site

A or land used exclusively for non-agricultural purposes" makes it abundantly clear that the actual and exclusive user for non-agricultural purposes, even the land otherwise cultivable or capable of being used for any purposes related to agriculture as enumerated therein, would stand excluded and fall outside the purview of the said definition in Section 2(A)(18) of the Act. When the land in question is itself not 'land' as defined for the purposes of B the Act, there is no scope or room for falling back up on the so called object or aim of the legislation to extend the provisions of the Act to areas specifically left outside it against the express legislative mandate and will, policy and intention. In addition thereto, the facts specifically disclosed and categorically found by the High Court on the basis of the materials on record would C equally belie the claim of the appellant being a 'tenant' as defined in Section 2(A)(34) of the Act.

The decision in *Shankara Textile Mills Ltd. case* (supra) has been rendered in totally different context and circumstances and cannot lend, in our view, any assistance to support the claims of the appellant in this case. D It could be seen from the facts of that case, the company, which owned an extent of 49 acres and 38.25 guntas was able to get only an extent of 13 acres and 32.25 guntas converted into non-agricultural land under Section 95(2) of the Karnataka Land Revenue Act, 1964, leaving the remaining 36 acres and 6.5 guntas without any such conversion allowing it to continue as agricultural land. When acquisition proceedings were initiated to acquire the said land for E purposes of Karnataka Improvement Boards Act, 1996, the Company sought to claim under Section 79B (2)(a) of the Act exemption on the ground that the entire extent in its possession was agricultural land and as such was eligible for exemption relying upon Section 81(1)(b)(ii) the lands having been mortgaged to Mysore State Financial Corporation. Though the initial F authority countenanced the claim and the Appellate Authority rejected it, the Company approached successfully the High Court and obtained relief, which came to be challenged in this Court, in that context. The relevant observations of this Court at Paragraph 9, set out hereinafter, as to the nature and character of the land that was really the subject matter of consideration and the reasons G which weighed with this Court to interfere with the order of the High Court would show that, rather helping the plea of the appellant, it would lend support to the stand of the 1st respondent in view of the peculiar facts of this case and the specific factual finding recorded in favour of the 1st respondent as to the long, continuous and consistent user of the land for non-agricultural purposes of running Saw Mill Industry. Paragraph 9 of the decision reported H in *Shankara Textiles Mills Ltd.* (supra) reads as follows:

A "Thus the High Court has proceeded on the basis that there is no specific finding regarding the nature and usage of the land as agricultural and hence, the Special Deputy Commissioner could not treat it to be an agricultural land merely on account of the fact that permission for conversion of the land under Section 95(2) of the Revenue Act was sought (but admittedly not given). Secondly, it has proceeded on the footing that the land in question does not satisfy any of the characteristics as required under the definition of 'land' in Section 2(18) of the Act, i.e., Karnataka Land Reforms Act, investing the authorities with the jurisdiction to take proceedings under Section 79-B of the Act. We are afraid that the High Court has misread the facts on record. The consistent stand taken by the authorities is that the land was never converted for non-agricultural use as required by the provisions of Section 95(2) of the Revenue Act. The mere fact that at the relevant time, the land was not used for agricultural purpose or purposes subservient thereto as mentioned in Section 2(18) of the Act or that it was used for non-agricultural purpose, assuming it to be so, would not convert the agricultural land into a non-agricultural land for the purposes either of the Revenue Act or of the Act, viz., Karnataka Land Reforms Act. To hold otherwise would defeat the object of both the Acts and would, in particular, render the provisions of Section 95(2) of the Revenue Act, nugatory. Such an interpretation is not permissible by any rule of the interpretation of statutes. What is further, the respondent-Company had itself filed a declaration under Section 79-B(2)(a) of the Act stating therein that the entire disputed land was agricultural land and had claimed exemption from the provisions of the said Section 79-B under Section 109 of the Act on the ground that the land was mortgaged to the Mysore State Financial Corporation. We are, therefore, unable to agree with the view taken by the High Court on the point".

The land that was the subject matter of consideration by this Court in above noted case was indisputably agriculture and in such cases of land, unless actual conversion under Section 95(2) of the Revenue Act was sought and obtained, it will not stand excluded from the definition in Section 2(A)(18) of the Land Reforms Act. The provision for conversion of the user of the agricultural land for non-agricultural purposes, as envisaged under the Revenue Act, cannot be pressed into aid to deny or deprive the benefit of the later part of the definition of 'land' in Section 2(A)(18) of the Land Reforms Act to a landowner on the basis of its exclusive user for non-agricultural purposes.

In substance whereas the past exclusive and continuous use for non-agricultural purposes becomes relevant for extending benefit of later part of Section 2(A)(18), Section 95(2) of the Revenue Act becomes relevant only for future conversions of an agricultural land for its non-agricultural user. But in this case on hand even long prior to the coming into force of the Land Reforms Act on 2.10.1965 or the Revenue Act, the land was shown to have been used for non-agricultural purposes of running Saw Mill Industry and by virtue of the very definition of 'land' in Land Reforms Act which does not seem to have been either specifically noticed or considered in the earlier case, no exception could be taken to the decision of the High Court, according relief to the 1st respondent by sustaining her claim.

The decision reported in *Om Prakash Agarwal and Ors.* (supra) also has no relevance, in that the very issue as to the character of the land and whether the said land answers the description and definition of 'land' in Section 2(14) of the Orissa Land Reforms Act, 1960, itself has been remitted for consideration afresh by the Competent Authority in the absence of any evidence on record to adjudicate the same, with opportunity to lead evidence, and the appeal before this Court was against such a remand order only. The general observations made without any particular reference to the meaning or ambit of the definition can be of no assistance to the appellant in this case when, under the definition of the Karnataka Act, the exclusive user of the land for non-agricultural purposes has the inevitable consequence of excluding such land from the purview of the very definition engrafted in Section 2(A)(18) for the purposes of the Act.

For all the reasons stated above, we see no merit in the above appeals, which we direct, shall stand dismissed, with no costs.

M.P. Appeals dismissed.