

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

WRIT PETITION NO.49831/2012 (LR) DATED:25-06-2019

SRI CHARLES GREGORY REGO S/ O LATE GABRIEL VICTOR REGO VS. FR. MULLER'S CHARITABLE INSTITUTIONS
KANKANADY, MANGALORE-575 002, D.K. DISTRICT AND OTHERS

ORDER

The original landlord of land bearing Sy.No.24/7A, measuring to an extent of 25 cents, situated at Kankanady village, Mangaluru Taluk, has come up in this writ petition impugning the order of the Land Tribunal, Mangaluru, Dakshina Kannada District, dated 5.10.2012 in proceedings bearing No.LRT.256/1979-80.

2. Brief facts leading to this writ petition are as under:

Petitioner herein is original owner of land bearing Sy.No.24/7A of Kankanady Village, Mangluru Taluk, is not in dispute.The total extent of land in the aforesaid survey number under the ownership of petitioner is 1 acre 94 cents.The said 1 acre 94 cents in its entirety is given to 1st respondent herein under registered Mulgeni Chit vide document bearing No.2387/1945.

3. Admittedly, 1st respondent – Mulgeni tenant is a Charitable Institution which is running a Hospital at Mangluru. It has given an extent of about 23 cents in land bearing Sy.No.24/7A to the wife of 2nd respondent on chalgeni tenancy under registered Chalgeni Chit dated 19.9.1964 vide Annexure- C, whereas the Mulgeni Chit in favour of 1st respondent is at Annexure- B. The Chalgeni Chit, which is executed in favour of the wife of 2nd respondent would indicate that 2nd respondent's wife Smt.Lucy Coelho, who was working as Midwife in the Hospital run by 1st respondent-Institution was given the said property on tenancy. The chalgeni tenancy in favour of 2nd respondent's wife would indicate that an extent of 23 cents which was given to her on lease consisted of a house, a well and several trees standing in the said property, bounded by the boundaries referred to in Chalgeni Chit and identified as Sy.No.24/7A with classification as Punja land and shown as such in the registered chalgeni document.

4. Subsequently, when an amendment was brought into the Karnataka Land Reforms Act, 1961, in the year 1974, after the appointed date 2nd respondent's wife who was enjoying the chalgeni right to an extent of 23 cents in the aforesaid property filed Form No.7 seeking occupancy right in respect of said extent of land. A copy of the application vide Annexure- D would indicate that in the said application she has described her profession as Midwife in Father Mullars Hospital, that she is tenant of 23 cents in Sy.No.24/7A of Kankanady village.In Form No.7, she would describe the same as Punja land and would state that she has been cultivating the said land for 10 years before filing the application in form No.7.

5. The application of 2nd respondent's wife in Form No.7 was registered in proceedings bearing No.LRT.256/1979-80 on the file of Land Tribunal, Mangaluru. The said application came to be allowed by order dated 7.1.1981 in granting occupancy right in favour of 2nd respondent's wife. The said order of Land Tribunal was subject matter of challenge before this Court in WP.No.22331/1981 which was filed by 1st respondent herein contending that the property which was let-out to 2nd respondent's wife was not an agricultural land, that the same was given to her as a residential house and also on the ground that she was not an agriculturist. The said writ petition was allowed by order dated 9.2.1983 and the matter was remanded back to the Land Tribunal for fresh consideration.

6. In the remanded matter, after hearing the parties, the Land Tribunal by its order dated 11.2.1992 again confirmed the occupancy right in favour of 2nd respondent's wife, which was challenged by the landlord petitioner herein for the first time by filing a writ petition in WP.No.9583/1999, which was taken up for consideration and disposed of by a Co-ordinate Bench of this Court by its order dated 17.6.2002, consequently remanded the matter for fresh consideration before the Land Tribunal for second time.

7. In the second remand, the Land Tribunal once again allowed the application filed by the alleged tenant (2nd respondent's wife) by order dated 24.9.2005, which was challenged for the second time by the landlord – petitioner herein by filing WP.No.24957/2005, which came to be allowed on 22.9.2008 basically on the ground that the manner in which evidence was recorded by the Tribunal was not proper and that, the Tribunal by accepting the affidavit evidence could not have proceeded to dispose of the application. The said order of the Co-ordinate Bench of this Court was subject matter of challenge in an intra court appeal by 2nd respondent's wife in WA.No.215/2009, which came to be dismissed by judgment dated 6.8.2010. With this, the matter got remanded to the Land Tribunal for third time.

8. In the third remand, the Land Tribunal heard the matter and disposed of the same by order dated 5.10.2012, where the tenancy claim of 2nd respondent's wife is accepted to an extent of 25 cents though in Form No.7, the claim is only to an extent of 23 cents in accepting the said land as agricultural land. It is this order, which is now sought to be challenged by the landlord-petitioner herein in this writ petition on several grounds. First of that is, the land which was leased by the original owner, petitioner herein to 1st respondent-mulgeni tenant is not for agricultural activity but it is for other purposes and the land which was subject matter of tenancy being Punja land could not have been subjected to cultivation. It is further stated that, the activities of 1st respondent is running Charitable Institutions, Educational Institutions as well as Hospital. Therefore, neither it was the intention of 1st respondent to take the land on lease for cultivating nor the said land was being capable of cultivation as agricultural land.

9. To support said grounds, the learned counsel for the petitioner would take this Court through Annexure- C which is the Chalgeni Lease registered by 1st respondent in favour of 2nd respondent's wife. Though the said document is referred to as Mulgeni Chit, the contents thereof would clearly indicate that the Author of lease, namely 1st respondent itself was a Mulgeni Tenant. Therefore, the tenancy which is given by 1st respondent

to 2nd respondent's wife is chalgeni tenancy though the nomenclature of document would indicate that the same is Mulgeni Chit.

10. The learned counsel for the petitioner would further take this Court through the contents of Annexure- C, Chalgeni Chit, where the property which is leased to 2nd respondent's wife by 1st respondent is a house situated within 23 cents of land in Sy.No.24/7A of Kankanady Village, which includes besides the house, a well, several coconut trees, jackfruit trees, mango trees and other trees, thereby clearly indicating that there is hardly any space left for agricultural activity. The learned counsel would also take this Court through the application filed by 2nd respondent's wife at first place to demonstrate that neither she nor any of her family members are agriculturists.

11. Infact, the application in Form No.7 filed under Rule 19 (1) under Section 48A (1) of the Karnataka Land Revenue Act, 1964, clearly discloses that the profession of the applicant before the Land Tribunal is that of a Midwife in Father Mullars Hospital and in the said application itself she would state that the extent of land that is leased to her is 23 cents in Sy.No.24/7A of Kankanady Village, which according to Chalageni Chit is Punja land, as seen in Chalgeni Chit at Annexure- C.

12. The learned counsel for the petitioner would also take this Court through the evidence of 2nd respondent, who is none other than the husband of Chalgeni Tenant, where he would state that by profession he is a Postman, that he and his wife both were working as Midwife and Postman. It is seen that though the 2nd respondent was working as Postman, his office was situated within the premises of 1st respondent's Charitable Institution, where he was posted as Postman by the Indian Postal Department.

13. The second respondent in his evidence would state that his wife was working from morning 8 a.m., to 6 p.m., in the evening and he was working as Postman from 8 a.m., in the morning to 3 p.m., in the afternoon and sometimes it would go up to 4 p.m., thereby clearly indicating that most part of the day both of them were working as Midwife and Postman in their respective departments and that, there was hardly any scope for them to carry on agricultural activity.

14. With this, when the evidence with reference to the extent of land available to them is seen, it is highly doubtful that the land in question could be utilized for agricultural activity. Indeed, such a factual position is seen with reference to land and its location from the schedule in Annexure- C, which would indicate that the property which is let-out on chalgeni tenancy is situated within the limits of panchayath Board of Kankanady village, which is in the outer limits of Kankanady B village of Mangaluru Taluk, in clearly indicating that the same was not the locality where agricultural activity was carried out during the period when chalgeni tenancy was registered in favour of 2nd respondent's wife in the year 1964. When fact situation was such in the year 1964, this Court can visualize what would be the position of land as on 1.3.1974 i.e., appointed date when 2nd respondent's wife filed application seeking occupancy right in respect of the land in question contending that she is carrying on agricultural activity in the said land.

15. Pausing for a while here, this Court would look into the provisions of the Land Reforms Act. Admittedly, the Karnataka Land Reforms Act is of the year 1961. In or around 1974 with an intention to ensure that the cultivators and tillers of land will have the benefit of having ownership over the land which is cultivated by them, an amendment was brought to Section 48 of the Karnataka Land Reforms Act by introducing Section 48A and also introducing a provision to the tenants to seek regularization of their cultivation in the form of getting occupancy right to the said land to ensure that the tillers will become owners of the land. It is with such laudable object, the amendment to Karnataka Land Reforms Act came into force on 1.3.1974, the appointed date.

16. No doubt, such an amendment benefited several lakhs of tenants across the State of Karnataka. However, abuse to that law is not an exception. But the said abuse when seen in larger perception, is more in the Town of Mangaluru where unfortunately even today the properties are referred to by survey numbers and taking advantage of the same, even a property which is situated at Mangaluru Town is claimed as agricultural land. When admittedly, the extent of land which is let-out is as small as 10, 15, 20 or 30 cents in the form of residential house with open space surrounded with several trees, are shown as if it is an agricultural land which is let-out for cultivation. The said fact situation is not different when we look at the case on hand.

17. Admittedly, in this proceedings, the tenant of the land in question is Mrs. Victor Coelho, in the year 1964 she was working as Midwife in the Hospital run by the 1st respondent Charitable Institution. As stated by her husband in his evidence before the Tribunal, her working hours was quite strenuous, which is from morning 8 a.m., to evening 6 p.m.,. Though it is official working time, in Hospitals normally there is no fixed time or tenure to Midwives and Nurses, who on many occasions would work continuously for long hours and they hardly have any time for any other activity. Similar would be the situation of her husband, 2nd respondent in this proceedings, who is Postman by profession. Though he stated that he was working between 8 a.m., and 3 p.m., generally and sometimes up to 4 p.m., in the evening, it is clear that his job is distribution of post in the area which is notified to him, which would take most of his time in the day. With such profession by the husband and wife, it is doubtful to believe that they were carrying on agricultural activity in 25 cents of land, where major portion is utilized by a house and a well with some standing trees numbering to 10 to 15 as could be seen from the evidence of the petitioner with hardly any open space left for cultivation by the tenant, who has taken the said house on lease for residential purpose, which is now projected as if the said land was given to her for cultivation. Be that as it may.

18. As seen in most of the decisions rendered by the Land Tribunals in the District of Mangaluru, even for 4 cents or 5 cents of land, the Land Tribunal has given an opinion that the land which was let out on chalgani lease is utilized for agricultural activity when the contents of lease as well as nature of property would indicate that the lease is in respect of a residential property. Similar is the situation in the case on hand, wherein surprisingly, the Land Tribunal, Mangaluru, does not look into any of the aspects, discussed supra. It just conveniently ignore the evidence that is available on record. It even go to the extent of ignoring the law as it

stands today, which does not recognize the tenancy of Punja land while considering grant of occupancy right in favour of 2nd respondent's wife successively on four occasions; for the first time on 7.1.1981; second time on 11.2.1992 when the matter was remanded by this Court; third time on 24.9.2015 again on remand by this Court and finally for the fourth time in the year 2012, which order is subject matter of this writ petition.

19. However, after giving careful consideration to the material on record and also on going through the evidence, this Court is of the considered opinion that tenancy of land bearing Sy.No.24/7A of Kankanady Village, measuring to an extent of 23 cents is not a land which is let-out for agricultural activity. Even otherwise, the classification of said land being Punja land as shown in the Chalgeni Chit, which is at Annexure-C and in Form No.7 where the 2nd respondent's wife, the applicant in Form No.7 herself would admit that the land in question is Punaj land, question of considering the said land for granting occupancy right does not arise.

20. However, the learned counsel for the contesting respondent stated that Chalgeni Chit, Annexure- C, does not indicate that the property is let-out for residential use. On the contrary, when the same is looked into, it would indicate that it is tenancy right for carrying on agricultural activity. He would also try to assert that, if it is the intention of 1st respondent mulgeni tenant to lease the land in-question for residential purpose, it would not have leased 25 cents of land to 2nd respondent's wife and it would have leased less than said extent. He would further contend that the evidence of landlord is not properly appreciated and if the same would have been done, it would have strengthened the tenancy claim of 2nd respondent's wife-applicant before the Land Tribunal. However, in view of the discussion on Chalgeni Chit executed in favour of 2nd respondent's wife by 1st respondent, Form No.7 filed by the applicant before the Tribunal and the evidence of the husband of the applicant before the Tribunal, this Court find that none of the contentions of the learned counsel for the contesting respondent stand to reason.

21. Accordingly, this writ petition is allowed and the order dated 5.10.2012 in proceedings bearing No.LRT.256/1979-80 on the file of Land Tribunal, Mangaluru, is hereby quashed.