R

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 23RD DAY OF DECEMBER, 2021

PRESENT

THE HON'BLE MR. JUSTICE P.S DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE P. KRISHNA BHAT

**WRIT APPEAL NO.15198/2011(LR)**

**BETWEEN:**

SRI. ADMAR MUTT
REP BY ITS MANAGER
UDUPI 576 101
DAKSHINA KANNADA.

... APPELLANT

(BY SRI. VINAY N., ADVOCATE FOR
SRI. MANMOHAN P.N., ADVOCATE)

**AND:**

1. SMT. YASHODA
W/O LATE SRI. G ANANTHA BHATTA
SINCE DECEASED BY LR's

1(a) SRI. VISHNUMOORTHY
S/O LATE SMT. YASHODA
AGED ABOUT 66 YEARS

1(b) SRI. SUBRAMANYA
S/O LATE SMT. YASHODA
AGED ABOUT 62 YEARS,

1(c) SRI. DAMODHARA,
S/O LATE SMT. YASHODA
AGED ABOUT 55 YEARS,

1(d) SMT. JAYALAXMI
D/O LATE SMT. YASHODA
AGED ABOUT 45 YEARS,

1(e) SRI. SRIDHARA,
S/O LATE SMT. YASHODA

AGED ABOUT 43 YEARS,

1(f) SMT. RADHA,
D/O LATE SMT. YASHODA
AGED ABOUT 40 YEARS,

1(g) SRI. VENKATARAMANA,
S/O LATE SMT. YASHODA
AGED ABOUT 38 YEARS,

1(h) SMT. RAMA,
D/O LATE SMT. YASHODA
AGED ABOUT 36 YEARS,

RESPONDENTS NO. 1(a) TO 1(h) ARE
R/A SHIVALLI VILLAGE,
UDUPI TALUK,
UDUPI DISTRICT-576101.

2. THE 3RD ADDL LAND TRIBUNAL
REP. BY ITS CHAIRMAN,
UDUPI.

3. STATE OF KARNATAKA
REP. BY ITS SECRETARY
DEPARTMENT OF REVENUE,
M.S. BUILDING,
BANGALORE 560 001

... RESPONDENTS

(BY SRI. MAHADESHWARAN C.N., AGA FOR R2 & R3
SRI. S. RAJASHEKAR, ADVOCATE FOR R1 (c & e)
VIDE ORDER DATED 17.10.2019 SERVICE OF NOTICE TO R1(a,b,d, f-h) TREATED AS GOOD SERVICE)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.12439/2004 DATED 21/04/2011.

THIS WRIT APPEAL HAVING BEEN HEARD THROUGH VIDEO CONFERENCING/PHYSICAL HEARING AND RESERVED ON 27.09.2021, COMING ON THROUGH VIDEO CONFERENCING/PHYSICAL HEARING FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, ***KRISHNA BHAT J.,*** PRONOUNCED THE FOLLOWING:

**JUDGMENT**

In this intra-court appeal, the appellant-landlord is calling in question the judgment dated 21.04.2011 in W.P.No.12439/2004 (LR) passed by the learned Single Judge of this Court.

2. Brief facts are, one late G.Anantha Bhatta, who is the husband of respondent No.1 had filed an application in Form No.7 of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as 'the Act' for short) in respect of 0.35 acres of land situated in Sy.No.85/23 of Shivalli Village of Udupi Taluk. The second respondent - Land Tribunal (hereinafter referred to as "Tribunal") enquired into the matter after issuing notice to both sides and passed an order dated 23.12.2003 (Annexure-A) granting occupancy right in respect of 0-07-5 acres of land in Sy.No.85/23 of Shivalli Village, Udupi Taluk, in favour of respondent No.1. The appellant herein filed W.P.No.12439/2004 challenging the said order of the Tribunal, which came to be dismissed by the learned Single Judge by order dated 21.04.2011 and that is under challenge in this writ appeal.

3. Learned counsel appearing for the appellant contended that appellant is a Mutt and the applicant in Form No.7 - the late husband of respondent No.1 was working as a cook in the Mutt and the residential premises with appurtenant land in question was given to him only for his occupation and therefore, the Tribunal had no jurisdiction to entertain the application filed in Form No.7 in respect of the said land. It was further contended by him that the subject matter of the enquiry before the Tribunal was not a "land" within the meaning of Section 2(A)(18) of the Act and applicant in Form No.7 was not a "tenant" within the meaning of Section 2(A)(34) of the Act. He therefore submitted that Tribunal had no jurisdiction to enquire into the matter. He submitted that learned Single Judge had misread the evidence placed before the Tribunal and has recorded that the representative of the appellant-Mutt, who appeared before the Tribunal had stated that Form No.7 applicant was a 'tenant' even though the said representative had only stated that applicant was working as a cook in the Mutt and the subject matter of the application was given to him by the Mutt for his occupation. He therefore submitted that the order of the Tribunal

(Annexure-A) as well as learned Single Judge (Annexure - NIL) are illegal and liable to be set aside.

4. Learned counsel for the respondent No.1, per contra, submitted that Form No.7 applicant and subsequently, respondent No.1, who is his widow, had been cultivating the land in question as a 'tenant' under the appellant, since prior to the appointed date and therefore after due enquiry the Tribunal has passed an order granting occupancy rights in favour of the respondent No.1. He submitted that learned Single Judge after appreciation of the entire evidence and the avowed objectives of the Act, has rightly dismissed the writ petition and therefore no interference with such an order is called for.

5. Learned AGA for the State has argued in support of the order of the Land Tribunal and prayed for dismissal of the appeal.

6. We have given careful consideration to the submissions made on both sides and have perused the records.

7. For better appreciation of the contentions advanced before us, it is necessary to make reference to the relevant provisions of the Act namely, Section 2(A)(18) defines the "land" for the purposes of the Act:

> *(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 purposes;*

Section 2(A)(34) reads as follows:

> *(34) "tenant" means an agriculturist [who cultivates personally the land he holds on lease] from a landlord and includes,—*
>
> *(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.*
>
> *(iii) a person who is a permanent tenant; and*

*(iv) a person who is a protected tenant.*

***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 be a tenant."*

8. Section 44 of the Act speaks about vesting of lands in the State Government and as per the same, all lands held by or in possession of tenants immediately prior to the date of commencement of the amendment Act namely, 01.03.1974 with effect from the said date stand transferred to and vest in the State Government. Section 45 of the Act provides for registration of tenants of land on certain conditions. The Act also provides for such tenants making an application in Form No.7 seeking registration as 'occupant' in respect of the tenanted land within a cut-off date. The Land Tribunals constituted under Section 48 of the Act have been vested with the powers of adjudicating upon the claim application made in Form No.7 by the tenants.

9. A perusal of the order of the Tribunal dated 23.12.2003 (Annexure-A) shows that Anantha Bhatta - the late husband of respondent No.1 had filed Form No.7

application in respect of 0.35 acres land in Sy.No.85/23 of Shivalli Village of Udupi Taluk. There is no dispute about the fact that land in question is situated within the town municipal limits of the Udupi Town. As is clear from the provisions of the Act once the application is filed before the Tribunal seeking registration of the applicant as an occupant in respect of the land, the Tribunal is required to enquire into two aspects namely;

(1) Whether the subject land is a 'land' within the meaning of the Section 2(A)(18) of the Act?

(2) Whether the applicant is a 'tenant' within the meaning of Section 2(A)(34) of the Act?

10. A perusal of the impugned order of the Tribunal shows that Tribunal has not framed the said questions for consideration nor has it given any finding thereon with supporting reasons. The clear assertion of the representative of the appellant before the Tribunal was that Form No.7 applicant - Anantha Bhatta was working as a cook in the Mutt and he was given the premises for his occupation. In passing it is observed by the Tribunal that in the subject land there were coconut trees, areca trees and

banana plants. While dealing with a similar situation where the extent of land involved was 27 cents, this Court speaking through the then Hon'ble Chief Justice G.K. Govinda Bhat in a decision reported in **(1975) 2 KLJ 173** (***VENKATESHA SHET v. NARAYAN ACHARI)*** has observed as follows:

> *"6. The preamble of the Act states the scope and purpose of the Act. It states that it is an enactment for making a uniform law in the State of Karnataka relating to agrarian relations, conferment of ownership on tenants, ceiling on land holdings and for certain other matters appearing therein. The Act deals with agrarian relations and ceiling on land holdings besides other incidental matters. The Act is not intended to apply to all lands in the State of Karnataka. It is common knowledge that the Dist of S. Kanara from which this case comes, formed part of the State of Madras where there was no classification of lands as agricultural and non-agricultural. There was no provision in that State requiring the owners of land to obtain conversion for non-agricultural purposes, after payment of what is called Conversion fine. In the erstwhile State of Mysore and in the Bombay and Hyderabad areas which came to this State, there were Revenue Laws which classified lands as agricultural and non-agricultural, and before agricultural lands could be put to non-agricultural purposes the owner was required to obtain conversion after*

*payment of conversion fine. In the dist of S. Kanara and also in the former State of Coorg, there was no such classification of lands as agricultural and non-agricultural. It is common knowledge that throughout the West-Coast, when a house is let there will be some land which forms a compound for the house and within such a compound a few coconut trees or mango trees or such other fruit trees are grown. Within the area of Mangalore Municipality, it is very rare to find a house with a compound where there is no coconut or mango trees. Similar is the case in other towns in the Dist. In the instant case, there is no dispute about the extent of the land on which there is a tiled house. The total extent of the land with the house is 27 cents, which is approximately one fourth of an acre. The defendant contends that there are a few coconut and other fruit trees. In such a case, there is no presumption that the lease is for agricultural purposes. It is also common knowledge that farm-workers are provided with houses by agriculturists. In the Kerala Agrarian Relations Act, there is a special provision made for protection of tenants on such house sites and such tenants are called kudikidappukaran's. There is no corresponding provision under the Act. If the subject-matter of the. suit is wet land prima facie the lease will be one for agricultural purposes and the matter will be one relating to agrarian relations. The land in the instant case has been classified in the revenue records as Punja. Under the Survey and Settlement Scheme in the Dist of S. Kanara. 'Punja', lands*

> *are lands on which only thatching grass naturally grows. Such lands are not brought under cultivation either as wet land or as garden."*

11. Further, a learned Single Judge of this Court while dealing with the question similar to the one involved in the present case reported in ***1980 (1) KLJ 54 (C.V.GOURAMMA v. THE LAND TRIBUNAL, BANTWAL & ORS.)*** has observed as follows:

> "14. ..... It is also common knowledge that in most of the plots in the District, where houses are erected, a few coconut trees or other fruit bearing trees such as mango or jackfruit, are generally planted in the compound. The mere existence of one or few fruit bearing trees in the compound of a house would not make intention of granting the land was for constructing a house or that it was granted as a house site. One has to take into consideration all the circumstances such as nature of the land, the extent of the land granted, the purpose for which it was used, the water facilities etc., for determining whether a particular plot of land is agricultural land or not. The mere existence of a few fruit bearing trees in a compound of a house would not make the plot in question agricultural land on that ground alone..... "
>
> (Emphasis supplied)

12. It is clearly observed in the ***VENKATESH SHET'S*** case supra that in the Undivided South Kanara

District of which Udupi District was a part, it was common knowledge that throughout the west-coast, when a house was let there used to be some appurtenant land which would contain few coconut trees or mango trees or such other fruit trees. In ***GOURAMMA's*** case, the learned Single Judge has relied on the ratio in ***VENKATESH SHET's*** case and further emphasised that while considering the genuineness of Form No.7 filed for conferment of registration as occupant of a "land", this Court should have regard to the fact whether Land Tribunal has considered the circumstances like nature of the land, the extent of the land to be granted, the purpose for which it was used for determining whether a particular land is an agricultural land or not.

13. As observed earlier, it is the definite case of the appellant-Mutt before the Tribunal that Form No.7 applicant Anantha Bhatta was an employee/cook of the Mutt and he was given residential accommodation. It is pertinent to note that the Tribunal has observed that there were some coconut, areca and banana plants. It is pertinent that land in question is urban land and respondent No.1 had been

residing in a house built therein with appurtenant land where some occasional fruit bearing trees were there.

14. Learned Single Judge, as pointed out by the learned counsel for the appellant, has misread the evidence and observed that representative of the appellant had admitted that Form No.7 applicant Anantha Bhatt was a 'tenant' and the Mutt was his landlord. It is required to be noticed that evidence of the representative of the Mutt only shows that consistent version of the appellant-Mutt was that applicant was a tenant in respect of the house let out for his occupation as he was a servant of the Mutt being a cook. This does not amount to appellant admitting the fact that land in question is a "land" within the meaning of Section 2(A)(18) and further that the applicant was a "tenant" within the meaning of Section 2(A)(34) of the Act.

15. It is also evident that land granted by the Tribunal measures only 7½ cents (i.e. 3267 sq. ft.) being an urban property situated in Shivalli Village cannot be a 'land' within the meaning of Section 2A(18) of the Act. Further, the case projected by the Form No.7 applicant shows that there was no written document evidencing the

'chalgeni' tenant relationship between the applicant and the appellant-Mutt. The only document produced during enquiry before the Land Tribunal are the house property tax paid receipts by the respondent No.1-Smt.Yashoda for Door No.8-3-48 of Udupi Town Municipality (one dated 16.01.1992, 13.10.1998, 31.10.2000, etc.). The documents produced by respondent No.1 and factum of grant of only 7½ cents of land (3267 square feet) clearly shows that what was held by late Anantha Bhatta was a house tenancy with appurtenant land.

16. Records of the enquiry before the Land Tribunal produced by the learned AGA – Sri. Mahadeshwaran contains a copy of W.P.No.7587/1978 filed by Anantha Bhatta, Form No.7 applicant. He has described himself as agriculturist – cum – cook in the cause title. Para 2 of the writ petition reads as follows:

> "2.The petitioner appeared in pursuance of the notice issued by the Tribunal and stated before it that he was cook in the Mutt and further he has also stated that the land in question was granted to him on lease basis to him. The said statement has not been properly recorded and the Tribunal has rejected the claim of the petitioner on 20.4.1977 to the effect that the petitioner has

> admitted before the Tribunal that he was not a tenant of the land in question. The order passed by the Tribunal is herewith produced and marked as Exhibit 'B'."

Further para 6 of the writ petition reads as follows:

> "6. The order of the Tribunal is illegal and contrary to law as the Tribunal has not properly understood the statement made by the petitioner that the petitioner being not only a cook, but he is also a tenant of the land in question of which he is residing with his family."

17. The above also shows that he was admittedly a cook in the appellant-Mutt while he further asserted that he was also an agriculturist.

18. The Land Reforms Act, 1961 is undoubtedly a beneficial legislation. It is important to remember that this piece of legislation is meant to preserve, protect and also confer benefits on persons who are able to clearly establish the factum of agrarian relationship as tenant in respect of the land, for which Form No.7 is filed by them to register them as occupants. Such a legislation should not be allowed to be used as a tool for aggrandizing undeserving persons by showing them as tenants in respect of the lands. In this case, it is necessary to notice that the

alleged landlord is a Mutt, which is a religious and charitable institution. Lands are endowed upon such institutions by devotees in the hope that by using the usufructs and other benefits derived out of the land the Mutt could be run and it could promote the religious and charitable activities. In a similar case (***SRI ANJANEYASWAMY TEMPLE, THINDLU, BANGALORE vs. STATE OF KARNATAKA AND OTHERS*** reported in ***2006 (3) KLJ 513)***, a learned Single Judge of this Court has observed as follows:

> "**17.** This Court has to notice one essential feature that arises in such matters. It is no doubt true that the agrarian reform is a welcome measure. But, in the said process, the religious institutions, to which lands have been otherwise provided by devotees, are not to be deprived of their lands unless a very strong case is made out by an applicant seeking occupancy rights thereof. Lands are provided to the temples or Mutts by the devotees for the temple/Mutt activities. If there is a real tenancy, such tenancy has to be respected given to a rightful tenant in the light of agrarian laws. But, a doubtful tenant cannot get temple lands on the ground of agrarian reforms. Authorities and Courts are to be careful in evaluating the merits for the purpose of granting temple lands. Bearing this in mind, let me see as to whether petitioner has made out a case for my interference."

19. In another case (***SRI ADMAR MUTT, UDUPI AND ANOTHER vs. RAMA SHETTY (DEAD) BY L.RS. AND OTHERS*** reported in **2006 (4) KLJ 258**), the learned Single Judge has observed as follows:

> "15. This Court also has to add a word of caution. The land Tribunal has to be careful in considering the claim made against the Mutt and other religious institutions in the light of the land reform laws. Bona fide tiller has to be granted occupancy rights in the light of the laudable object of the Land Reforms Act. But at the same time land reforms laws cannot be made use of by a litigant without there being any material to show tenancy in terms of the laws governing such tenancy rights resulting in the Mutt being deprived of its lard provided by devotees of the Mutt. Insofar as the Mutt/temple lands are concerned, the Tribunal has to be extremely careful in seeing as to whether the tenants were bona fide tenants and that the tenancy is created by those persons who have right to do so in the matter as otherwise, lands granted by the devotees or the believers of that Mutt or temple are lost."

We respectfully concur with the views expressed in the above two decisions.

20. As already noticed, the occupancy conferred on the alleged tenant in this case measures about 7½ cents of

land in Shivalli Village of Udupi Town. The only document produced in support of Form No.7 application by the alleged tenant is house property tax paid receipts issued by the Town Municipality, Udupi. The Mutt has taken a consistent stand that Form No.7 applicant – G. Anantha Bhatta was working as a cook, which is corroborated by the pleadings made by said G. Anantha Bhatta in W.P.No.7587/1978 wherein he has clearly admitted that he was working as a cook while also claiming that he was a tenant in respect of the land. It is common in the undivided district of Dakshina Kannada for urban house properties to have few fruit bearing trees around the premises. In any case, in 7½ cents of land (about 3267 sq. ft.) no agricultural activity can in-fact be carried out. All the above facts clearly show that property subject matter of the order by the Land Tribunal is not a "land" and Form No.7 applicant – G. Anantha Bhatta was not a 'tenant' in respect of the same.

21. In that view of the matter, this appeal deserves to be allowed and it is accordingly allowed. Consequently, the order of the learned Single Judge impugned herein is set aside. As a further consequence thereof, order of the

Tribunal (Annexure-A) is also quashed and Form No.7 - application stands rejected.

No order as to costs.

**Sd/-**
**JUDGE**

**Sd/-**
**JUDGE**

DR