2019 INSC 1037

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2926 OF 2009

Sri Ganapathi Dev Temple Trust .....Appellant

Versus

Balakrishna Bhat Since Deceased
By His Lrs. And Others ...Respondents

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

The judgment dated 14.11.2007 passed by the Division Bench of the High Court of Karnataka at Bangalore in Writ Appeal No. 984 of 2007 is called into question in this appeal.

By the impugned judgment, the Division Bench set aside the order dated 21.05.2003 of the Tehsildar, Ankola Taluk and the consequential mutation entry No. 7948 dated 28.05.2003 in respect of the suit property; the order dated 30.07.2005 passed by the

Assistant Commissioner, Kumta and the order dated 23.03.2006 passed by the Deputy Commissioner, Uttara Kannada, Karward upholding the aforesaid mutation entry, as well as the order dated 22.03.2007 passed by the Single Judge in Writ Petition No. 12482 of 2006 dismissing the respondents' writ petition for quashing of the mutation entry.

2. The brief facts leading to this appeal are as under:

The Respondent Nos. 1(a) to (e) in the present appeal claim that one late Baba Bommayya Bhat was the *archak* of the appellant Ganapathi Dev temple and he was in actual possession and enjoyment of agricultural land bearing Survey No. 68/2001 to the extent of 4 guntas (mentioned in some of the records as 3 guntas) (hereinafter 'suit property') situated in the village of Avarsa, which he had been cultivating since 1969; that after the death of the said Baba Bommayya Bhat, his son, the late Balakrishna Bhat (husband of Respondent No. 1(a) and father of the Respondents No. 1(b) to 1(e) herein) continued in possession of the suit property and consequently the name of Balakrishna Bhat was entered into the revenue records.

Further that the deceased Balakrishna Bhat, after obtaining necessary permission from the Panchayat, constructed a house in the suit property in 1994 and obtained an electricity connection for the said house; and that after his demise, Respondent Nos. 1(a) to (e) are residing in the same house. Respondent Nos. 1(a) to (e) therefore claimed to be the deemed tenants of the suit property under the Karnataka Land Reforms Act, 1961 ('1961 Act').

3. It is pertinent at this juncture to note the scheme for land reforms as provided under the 1961 Act. Section 2(34) of the 1961 Act defines 'tenant' as meaning an agriculturist who cultivates personally the land he holds on lease from a landlord and includes a person who is deemed to be a tenant under Section 4 of the Act. Section 4 defines a deemed tenant as follows:

> "**4. Persons to be deemed tenants.**—A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not,— (a) a member of the owner's family, or (b) a servant or a hired labourer on wages payable in cash or kind but not in crop share cultivating the land under the personal supervision of the owner or any member of the owner's family, or (c) a mortgagee in possession."

Under Section 44 of the 1961 Act, as substituted by Amending Act No. 1 of 1974, all lands held by or in possession of tenants immediately prior the commencement of the Amendment Act shall with effect from 01.03.1974 ('date of vesting') vest with the State Government. Section 45(1) of the 1961 Act provides for the right of tenants to be registered as occupants of the land vested with the Government as follows:

> **"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."

Section 48A of the 1961 Act enables any person entitled to be registered as an occupant of land under Section 45 to make an application to the Land Tribunal praying for such registration. Respondent No 1(b), Vitthaldas Bhat, filed a Form-7 application under Section 48A in 1979 for grant of occupancy rights in respect of the suit property in his favour, Form-7 being the format for such

application as prescribed under Rule 19 of the Karnataka Land Reform Rules, 1974 ('1974 Rules').

However, during course of enquiry before the Land Tribunal, Respondent No 1(b) himself deposed that he was not cultivating the property and the Form 7 application was made by him on a wrong notion. He stated that the suit property is to remain in the name of the appellant temple and pleaded for dismissal of his application. Hence the Land Tribunal by order dated 28.01.1981 rejected the said Form 7 application filed under Section 48A of the 1961 Act. Thus, it is clear that as of 28.01.1981, and prior thereto, Respondent Nos. 1(a) to (e) were not cultivators of the property, and therefore could not be deemed tenants under Section 4 of the 1961 Act.

By Amending Act No. 23 of 1998, Section 77A was inserted in the 1961 Act which gave one more chance to a person who failed to apply for registration of their occupancy rights under Section 48A within the period specified therein, to apply to the Deputy Commissioner for such registration. Rule 26C of the 1974 Rules prescribes that the format of the application to the Deputy

Commissioner would be per Form 7A of the Rules.

In view of rejection of his son's Form 7 application under Section 48A, the deceased Balakrishna Bhat was not entitled to apply for grant of occupancy rights under Section 77A of the amended 1961 Act. He nonetheless filed a Form 7A application under Section 77A. The Assistant Commissioner, Kumta by order dated 15.03.2000 rightly rejected the application of the deceased Balakrishna Bhat on the ground that it was not possible to confer occupancy rights or grant in view of the earlier Land Tribunal order dated 28.01.1981.

4. Prior to the aforementioned proceedings, the Government's name was entered into the revenue records of the suit property based on the presumption that the deceased Balakrishna Bhat was the tenant of the suit property, and hence the property was vested with the State Government under Section 44 of the 1961 Act. In his order dated 15.03.2000, the Assistant Commissioner specifically observed that the suit property does not come under the purview of the 1961 Act and directed for the removal of the Government's name in the revenue entry of the suit property. This was not

challenged by the respondents herein. However, this direction was inexplicably not effected. Hence, the appellant herein filed an application before the Tehsildar to delete the name of the State Government and Balakrishna Bhat in the revenue records of the suit property.

This application was allowed after enquiry by order dated 21.05.2003, and the appellant's name was entered in the Record of Rights vide mutation entry No. 7948. The Tehsildar's order dated 21.05.2003 entering the appellant's name, based on the previous orders of the competent authorities, was confirmed by the Assistant Commissioner and the Deputy Commissioner by orders dated 30.07.2005 and 23.03.2006 respectively. Respondent Nos. 1(a) to (e) challenged all the aforementioned orders dated 21.05.2003, 30.07.2005 and 23.03.2006 respectively before the learned Single Judge in Writ Petition No. 12482 of 2006, which also came to be dismissed.

However curiously, the Division Bench of the High Court, in the impugned judgment, without appreciating the material on record in its proper perspective, granted relief in favour of the respondents on the ground that they had constructed a house on

the suit property and had been in peaceful possession and enjoyment of the same and that the entry made in their favour in the Record of Rights shall be presumed to be true under Section 133 of the Karnataka Land Revenue Act, 1964 ('1964 Act'). Hence this appeal.

5. Heard learned counsel Shri S.N. Bhat for the appellant and learned counsel Shri R.S. Hegde for the respondent. Both the learned advocates have taken us through the material on record and the relevant provisions of law and put forth their arguments in support of their respective cases effectively.

6. The primary issue which arises for adjudication in this matter is as regards the correctness of the revenue entries in the name of the respondents. As mentioned supra, the respondents had claimed to be in possession of the suit property as tenants since the 1970's. The Land Tribunal as well as the Assistant Commissioner after due enquiry have rejected their claims on two separate occasions. However, the respondents' contention is that since they have constructed a house on the suit property in the year 1994 and are residing therein, their names need to be entered in the revenue record. Such contention cannot be accepted in as much as they

cannot, after failing in all their attempts to claim possession as a tenant, now claim to be in possession by way of construction of house and not as agriculturists. We are at a loss to understand as to on the basis and on what right the respondents can claim to be in possession of the suit property and as to how they could construct a house on a property on which they do not have any semblance of right.

7. The suit property admittedly belongs to the appellant temple. It is also not disputed that the Respondent No. 1(b) and his predecessors were the archaks of the temple. Needless to say, it is the bounden duty of the archak to protect the temple property, and they cannot usurp such property for their own gains. It is relevant in this regard to refer to the judgment of this Court in ***Bishwanath and Another* v. *Sri Thakur Radha Ballabhji and Others***, (1967) 2 SCR 618,:

> "9. Three legal concepts are well settled: (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense…
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> 10. The question is can such a person represent the idol when the Shebait acts adversely to its interest and fails to take

action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest…

11…B. K. Mukherjea in his book '*The Hindu Law of Religious and Charitable Trust*' 2nd Edn., summarizes the legal position by way of the following propositions, among others, at p. 249.
'(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said, to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol.'

This view is justified by reason as well as by decisions."
(emphasis supplied)

Therefore, it is well-settled that the deity in a Hindu temple is in deemed to be a minor, and the Shebait, archaka, etc. or the person functioning as manager/trustee of such temple acts as the guardian of the idol and conducts all transactions on its behalf. However, the Shebait or archaka is obligated to act solely for the

idol's benefit. In ***Sri Thakur Radha Ballabhji*** (supra), this Court affirmed the lower courts' finding that a sale made by the manager of the deity to a third party, which was not for the necessity of the benefit of the idol, would not be binding on the deity, and worshippers or other parties who had been assisting in the management of the temple could apply to have such a sale set aside.

In the present case, since the Respondent No. 1(a) to 1(e) and his predecessors were holding the position of archaks and were involved in the management of the temple, it would have been easy for them to get their names entered in the revenue records, ignoring the interest of the temple. Even otherwise, their attempt to claim occupancy rights over the suit property have failed. As mentioned supra, according to their own admission before the Land Tribunal, they were not in possession of the suit property.

The principle laid down by the Court in ***Sri Thakur Radha Ballabhji*** (supra) would be applicable to the present scenario as well. Hence the appellant temple has the right, through its present

managing trustee, to undertake proceedings for the benefit of the idol for having such wrongful entries set aside, and such wrongful entries would not be binding on the temple.

8. We find that the reasons assigned by the Division Bench in the impugned judgment for granting relief in favour of the respondents, while setting aside the concurrent findings of the three revenue authorities as well as the order of the learned Single Judge, are unacceptable.

9. At this juncture, we find it useful to discuss the provisions of the 1964 Act relevant for adjudicating upon this case. Section 127 of the 1964 Act provides for the preparation of Record of Rights as follows:

> "**127. Record of Rights**.—(1) A record of rights shall be prepared in the prescribed manner in respect of every village and such record shall include the following particulars:—
> (a) the names of persons who are holders, occupants, owners, mortgagees, landlords or tenants of the land or assignees of the rent or revenue thereof;
> (b) the nature and extent of the respective interest of such persons and the conditions or liabilities (if any) attaching thereto;
> (c) the rent or revenue (if any) payable by or to any of such persons; and
> (d) such other particulars as may be prescribed."

Section 128(1) of the 1964 Act requires that any acquisition of rights must be reported to the concerned officer within a period of three months from the date of acquisition:

> "**128. Acquisitions of rights to be reported**.—(1) Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the prescribed officer of the village within three months from the date of such acquisition, and the said officer shall at once give a written acknowledgment of the receipt of the report to the person making it…
>
> …Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the prescribed officer."
>
> (emphasis supplied)

Section 129 provides that the prescribed officer shall enter in the Register of Mutations every such report made to him under Section 128 in respect of acquisition of right in land. Section 129(6) provides that such entries shall be tested and if found correct, shall be certified by the prescribed officer; whereas Section 129(7) provides for the transfer of entries from the Register of Mutations to the Record of Rights after due certification. It is therefore clear that under the scheme of the 1964 Act, there has to be an initial report

made to the prescribed officer certifying the occupant's right in the land, and the entry in the Record of Rights has to be made and certified on the basis of such report.

10. The Record of Rights for the year 1973-1974 shows that the respondents' predecessor Baba Bommayya Bhat was cultivating the suit property and that the deceased Balakrishna Bhat's name was entered in the subsequent revenue entries for the suit property. However, the respondents have not produced on record any report made by them as required under Section 128 of the 1964 Act proving that they had acquired any right or title in respect of the suit property. Nor have they produced any registered document showing that they have acquired any such right, in which case they would have been exempt from the requirement under Section 128.

Further, the respondents herein have not at any point, challenged the Land Tribunal's order dated 28.01.1981 and the Assistant Commissioner's order dated 15.03.2000 which concurrently found that by the respondents' own admission, the suit property belongs to the temple and is not covered by the 1961 Act and the respondents are not eligible for any occupancy rights in the said property. Hence it is not open to the respondents to claim

that the land was deemed to have vested in the State Government under the 1961 Act, and consequently they were not required to have reported acquisition of rights in the suit property under Section 128.

Upon perusal of the relevant provisions of the 1961 Act and the 1964 Act, we are of the considered opinion that if a party has admitted that he is not in possession as a tenant but as an unauthorized occupant of the disputed property, the property cannot be deemed to be vested with the State Government under the 1961 Act. Consequently, the revenue entry should continue to remain in the name of the temple/owner of the property. Such alleged unauthorized occupants have no right to seek an entry in the Record of Rights under Sections 128 and 129 of the 1964 Act, and any entry which is unlawfully made in their favour is liable to be deleted.

The respondents had admitted in 1981 that they did not have any tenancy rights, and, as mentioned supra, the Assistant Commissioner's order had also specifically found that the suit property was not under the purview of the 1961 Act. Hence, there was no basis for the land to be shown as vested in the name of the

State Government under Section 44 of the 1961 Act. Therefore, the revenue entry in the Record of Rights in respect of the suit property wrongfully made in the name of the deceased Balakrishna Bhat, and consequently the Government, without any basis was required to be deleted.

Section 133 of the 1964 Act provides that an entry in the Record of Rights shall be presumed to be true until the contrary is proved, or a new entry is lawfully substituted therefor. An entry cannot be made in the Record of Rights without the valid mutation entry as provided for in Sections 128 and 129 of the 1964 Act. No pleading is forthcoming that a mutation entry was validly made at any point of time in favour of the respondents. In view of the above discussion, since it has been proved that there was no basis for making the revenue entry in respect of the suit property, and a new entry has lawfully been made in the appellant's name, we see no reason to give the respondents the benefit of Section 133 as was done by the Division Bench in the impugned judgment.

Admittedly, the appellant ought to have been more diligent in getting the revenue entry corrected. However, they had explained in their submissions before the Learned Single Judge in Writ Petition

No. 12482 of 2006 that they were under the genuine impression that since the revenue authorities had found that that the writ petitioners (the respondents herein) are not entitled to be registered as tenants of the land, the competent authorities would *suo motu* carry out the necessary corrections in the Record of Rights. However the authorities regretfully failed to do in spite of the direction to this effect given by the Assistant Commissioner in his order dated 15.3.2000, which was not challenged by the respondents herein. The Division Bench has overlooked this aspect of the matter while reaching its conclusions.

Apart from this, the Division Bench has made certain observations which are against the available facts borne out from the record. The Division Bench wrongly observed that there is no documentary evidence that the suit property is in possession of the temple, whereas, as mentioned supra, the records of proceedings show that the respondents themselves have admitted they have no right over the suit property and it belongs to the temple.

Hence on the basis of the materials on the record, we conclude that the entry in the respondents' predecessors' names in the Record of Rights was illegal and the revenue records in respect of

the suit property were correctly modified in the appellant's name by the orders of the revenue authorities dated 21.05.2003, 30.07.2005 and 23.03.2006.

11. Hence the impugned judgment in Writ Appeal No. 984 of 2007 is set aside, and the appeal is allowed.

.....J.
(N.V. Ramana)

.....J.
(Mohan M. Shantanagoudar)

New Delhi; **.....J.**
September 17, 2019. **(Ajay Rastogi)**