

(2015) 04 KAR CK 0343

In the Karnataka High Court

Case No : Writ Petition No. 16996 of 2001 (KLR)

Awamma

APPELLANT

Vs

The Assistant Commissioner Bijapur Sub-Division and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 77A

Citation : (2015) 2 AKR 834 : (2015) 4 KCCR 3113

Hon'ble Judges : Ravi V. Malimath, J

Bench : Single Bench

Advocate : Ravindra Reddy, for the Appellant; A. Syed Habeeb, HCGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ravi V. Malimath, J.

1. The case of the petitioner is that she is a tenant in respect of the land in Sy. No. 136 measuring 5 acres 13 guntas of Areshankar village, Basavana Bagewadi taluk. That she is a tenant since 1963- 64 upto 1999-2000. In terms of Section 77A of the Karnataka Land Reforms Act (for short the "Act"), she made an application seeking grant of occupancy rights. By the impugned order, the same was rejected on the ground that she has inherited 8 acres 23 guntas from her father and therefore is not entitled for land that she has sought for. Sri. Syed Habeeb, learned Government Pleader appearing for respondent Nos. 1 and 2 submits that he supports the impugned order. On being questioned on what ground, he is unable to make any submission. Respondent No. 4 is served but un-represented.

2. Heard learned counsels. I am of the considered view that appropriate relief requires to be granted. The findings recorded by the Land Tribunal is that the petitioner has been cultivating the lands ever since 1963-64 upto 1999-2000. That she has inherited the land from her father to an extent of 8 acres 23

guntas. The claim herein is for 5 acres 13 guntas. Therefore, in terms of Section 77A of the Act she would not be entitled to the lands she has sought for. Section 77A of the Act was enacted in order to give an opportunity to the tenants to make an application for grant of occupancy rights wherein they have not made the same earlier. It is on this basis that an application was made. The proviso narrates that the lands to be granted shall not exceed two hectares of D class of land or its equivalent. The said proviso was inserted by Act 34 of 1998, with effect from 15.02.1999. As on the date the application was made, the proviso was not part of the Act. It has been inserted subsequently. Hence, the same would not apply so far as the present case is concerned. Therefore, the maximum limit as prescribed by the proviso would not be applicable to the petitioner.

3. In view of the findings recorded by the Tribunal that the record of rights has been in the name of the petitioner since 1963- 64 upto 1999-2000 and when the claim is to an extent of 5 acres 13 guntas, the Tribunal committed an error in rejecting the claim purely based on the proviso of Section 77A of the Act. The reasoning assigned by the Tribunal is inappropriate. Consequently, the petition is allowed. The order of the Tribunal dated 25.09.2000 bearing No. LRM/7A/CR/119/99-2000 is quashed. The matter is remanded to the Tribunal to reconsider the matter afresh and pass appropriate orders in accordance with law based on the aforesaid observations.