

**(1977) 11 KAR CK 0001**  
**In the Karnataka High Court**  
**Case No : WP. 2623/76**

Bakilana Chinnappa

APPELLANT

Vs

Land Tribunal Mercara Tlq. and Others

RESPONDENT

**Date of Decision :** 25-11-1977

**Acts Referred:**

Karnataka Land Reforms Act, 1961 — Section 48a

**Citation :** (1978) 1 KarLJ 75

**Hon'ble Judges :** Govinda Bhat, C.J.

**Judgement**

1. This writ petition, preferred by the land-holder under Art. 226 and 227 of the Constn of India, is directed against the order of the Land Tribunal, Mercara taluk, made in Case No. LRF/TNT/156-74-75 dated 4th March 1976, granting occupancy right in favour of Narayana Achari (respondent-2), under Chapter III of the Karnataka Land Reforms Act, 1961.

2. The petitioner is a land-holder. He has purchased the agricultural lands comprised in Sy. Nos. 149/1, 149/2 and 116 of Mekeri village, Mercara taluk, in the year 1971, from Babu and Laxmana who were the original land-holders. On 17.12.1974 the second respondent-Narayana Achari made an application in Form No. 7 to the Land Tribunal for grant of occupancy right to him in respect of 21/2 acres of land comprised in Sy. Nos. 149/1 and 149/2 of Mekeri village. In the said application, he stated that he has been a tenant since the year 1972. On receipt of the said application, the Tribunal issued notice to the petitioner-landlord in Form No. 9. The said notice, which was produced before me by the petitioner's learned Advocate Sri Bhagavan, states that lands measuring 2.50 acres comprised in Sy. Nos. 149/1 and 149/2 of Mekeri village have vested in the State Government under Sec. 44(1) of the Karnataka Land Reforms Act and the interested parties are required to attend the hearing of the case before the Tribunal on the day stated in the notice.

3. It is relevant to state at this stage itself that neither the application in Form No. 7 made by the second respondent nor the notice in Form No. 9 issued by the

Tribunal to the parties makes any reference to Sy No. 116 of Mekerri village. In other words, the second respondent made no claim in respect of Sy. No. 116 of Mekerri village. The Tribunal also did not issue any notice concerning the said land. Before the Tribunal, the parties appeared and were examined. The second respondent-Narayana Achari filed an affidavit before the Tribunal, wherein he affirmed that he is not pressing his claim. A receipt Ext.R.1 for payment of wages as per terms of the agreement to Narayana Achari was produced before the Tribunal.

4. The Tribunal declined to grant the prayer of the second respondent to withdraw his claim. It held that the case of the petitioner-landholder, that the claimant Narayana Achari was merely a person appointed as a watchman, cannot be believed and that the land in question is tenanted land immediately prior to 1-3-1974 and therefore has vested in the State Government and further, that the second respondent is entitled to grant of occupancy right. The Tribunal has not noticed the fact that in the application made by the second respondent as well as the notice issued to the parties in Form No. 9, there is no mention of Sy. No. 116; and yet it has decided that Sy. No. 116 measuring 75 cents has vested in the State Government and that the second respondent is entitled to grant of occupancy right. How the Tribunal came to the conclusion that Sy. No. 116 of Mekerri village is a tenanted land when there is no claim made to it and no notice was issued to the petitioner to show cause, is a matter that has not been explained to me by the learned Government Pleader who appears for the State.

5. It is also alleged in the writ petition that the name of the second respondent does not appear in the Record of Rights as personally cultivating the lands in question. When there is no application and there is no notice issued in respect of Sy. No. 116, the Tribunal had no jurisdiction to hold that the said Sy. No. 116, has vested in the State Government and that the applicant before the Tribunal is entitled to grant of occupancy right.

6. In regard to grant of occupancy right in respect of Sy. Nos. 149/1 and 149/2, the order of the Tribunal suffers from serious legal infirmities. Sy. No. 149/1, according to Record of Rights, measures 11.20 acres. The Tribunal has held that 1.00 acre out of Sy. No. 149/1 has vested in the State Government. The application in Form No. 7 does not show the demarcation of the portion of the land claimed by the second respondent. Similarly, the notice in Form No. 9 issued to the petitioner also does not demarcate that portion of the land. The order of the Tribunal also does not demarcate the land.

7. When the land comprised in Sy. No. 149/1 measures 11.20 acres, without demarcating a portion of that land, the Tribunal cannot say that 1.00 acre, out of 11.20 acres, has vested in the State Government. Such an order is incapable of being given effect to. Sy. No. 149/2 measures 7.03 acres. The Tribunal has granted occupancy right in respect of 75 cents out of the said area. But, that portion has not been demarcated anywhere. Unless in the notice issued to the landholder the portions of the lands alleged to have vested in the State

Government are clearly demarcated, the landholder cannot meet the case. He should know before-hand as to what is the portion of the land claimed by the applicant before the Tribunal that has vested in the State Government. A notice which merely states that 2.50 acres of land out of Sy. Nos. 149/1 and 149/2 has vested in the State Government, without demarcating the portions and setting out the boundaries, is clearly violative of rules of Natural Justice.

8. The Tribunal has not considered the effect of the statutory presumption arising under Sec. 133 of the Karnataka Land Revenue Act. It has not been shown that the entries in the Record of Rights were got up. The Tribunal has also not taken into consideration the relevant and material fact that no tenancy could have been created after 2.10.1965 under Sec. 5 of the Karnataka Land Reforms Act as it existed prior to 1.3.1974.

9. The second respondent's case was that he has been a tenant from the year 1972. If the second respondent did not want the lands, the Tribunal could not have forced him to take the occupancy right, since the person on whom the occupancy right is conferred has to deposit the occupancy price. When the second respondent has stated before the Tribunal that he does not want occupancy right of the land, such a right could not have been forced upon him.

10. The Tribunal, in my opinion, has altogether ignored the provisions of Chapter III of the Land Reforms Act and violated the rules of Natural Justice. In respect of one land (Sy. No. 116), the Tribunal had no jurisdiction to hold that that Sy. No. 116 has vested in the State Government as it was not the subject matter of the proceeding.

11. The second respondent has not entered appearance before me despite notice.

12. For the reasons stated above, I allow this writ petition and quash the impugned order of the Tribunal. As stated in the earlier part of this order, the land comprised in Sy. No. 116 of Mekeri village is not the subject matter of the proceedings before the Tribunal and therefore it has no jurisdiction to deal with the same. The Tribunal also cannot force occupancy right on the second respondent when he does not want the same. If the State Government desires to pursue the matter, it has to demarcate the portions of Sy. Nos. 149/1 and 149/2 alleged to have vested in it under Sec. 44(4) and after clearly demarcating the portions of the said survey numbers by clear boundaries, the Tribunal has to issue fresh notice in Form No. 9 to the petitioner and adjudicate on the question whether the said portions of the lands have vested in the State Government under Sec. 44(1) of the Act. Time to demarcate the portions of the lands and made the necessary application in that regard is two months from today. If no such application is made before the Tribunal within two months from to-day, the proceedings initiated on the application of the second respondent shall be deemed to have been rejected.

13. It is ordered accordingly. Parties to bear their own costs.