

(1979) 04 KAR CK 0012
In the Karnataka High Court
Case No : W.P. 591/77

Dhakalu and Another

APPELLANT

Vs

Land Tribunal, Belgaum and Others

RESPONDENT

Date of Decision : 02-04-1979

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48A

Citation : (1979) 2 KarLJ 31

Hon'ble Judges : Swami, J

Judgement

1. In this writ petition under Art. 226 of the Constitution, the petitioners who claim to be the tenants of the lands in question bearing R. Sy. Nos. 12/3, 12/4A 12/5, 12/19, 12/20, 12/21-A, 12/48, 12/13, 12/15, 12/21-B, 12/6, 12/9 and 12/16 of Mavinkatti village near Sambra, District Belgaum. have challenged the correctness of the order passed by the Land Tribunal, Belgaum in No. LRM/ Sambra/ SR. 62 + 62-A dated 6th December, 1976, rejecting their application filed in Form No. 7 for being registered as occupants of the lands in question. After the filing of an application in Form No. 7, the petitioners also filed an application under S. 48-C of the Karnataka Land Reforms Act, hereinafter referred to as the Act, for temporary injunction. While considering that application, the Tribunal has entertained some affidavits and has held the spot inspection. During the course of the spot inspection, it has recorded joint statements of several persons, On the basis of the affidavits and the joint statements of several persons and the entries in the record of rights, the Tribunal came to the conclusion that the petitioners failed to establish their lawful possession of the lands in question and consequently it not only rejected the application for temporary injunction, but it also rejected Form No. 7 itself.

2. The contentions of Sri Goulay, the learned counsel for the petitioners are that the Tribunal was not justified in rejecting the main application filed in Form No. 7 while rejecting the application filed for grant of temporary indjunction; that the Tribunal has not followed the prescribed procedure as per S. 34 of the Karnataka Land Revenue Act while holding an enquiry; therefore, it was submitted that the

order passed by the Tribunal be quashed and the case be remanded for fresh enquiry.

3. The records of the case have been received in this case. On going through the records of the case, it is clear that the Tribunal has not held the enquiry as required by S. 34 of the Karnataka Land Revenue Act. It has taken the joint statements of several persons referred to in the order and those statements are found at pages 111 and 113 of the records of the Tribunal. The recording of the joint statement is not permissible and such statement cannot at all be said to be the statement made by a particular person. Further the affidavits can. not be taken into account inasmuch as the same would be opposed to the provisions of S. 31 of the Karnataka Land Revenue Act, inasmuch as, as per the said section the officer conducting the enquiry is required to record the statement in his own handwriting.

4. In the instant case, as already pointed out, the Tribunal has not held the enquiry in accordance with the provision of S. 34 of the Karnataka Land Revenue Act which are made applicable to the proceedings under the Act. Further, the Tribunal was not justified in law in rejecting the application itself while rejecting the application filed for grant of temporary injunction. The Tribunal should have seen that the scope of the enquiry in respect of an application under S. 48-C is limited and the considerations for grant of an order of temporary injunction will be different from the considerations that are required for granting an occupancy right. The enquiry to be made with regard to an application under S. 48-C of the Act is limited to find out as to whether it is just and proper to grant an order of temporary injunction or to appoint a receiver having regard to the facts and circumstances of the case, and there will not be final adjudication of the rights of the parties; whereas in the case of an enquiry to be held on the application filed in Form No. 7, the scope of such an enquiry will be quite different. The Tribunal will be required to finally adjudicate the rights of the parties in respect of the agricultural land or lands in question. The Tribunal is required to decide several questions with reference to appointed date i.e. 1-3-1974, such as (1) whether the applicant was the tenant of the land in question (2) whether he cultivated the same personally as a tenant on 1-3-1974; and (3) whether the applicant is entitled to be registered as an occupant having regard to the provisions contained in S. 45(2) of the Act etc That being so, the Tribunal in the instant case could not have disposed of the Form No. 7 application while disposing of interlocutory application. As such the impugned order of the Tribunal is unsustainable.

5. Where this illegality in the proceeding was brought to the notice of the learned counsel for the respondents 2 to 4, he could not fairly support the procedure followed by the Tribunal.

6. For the reasons stated above, the order passed by the Tribunal is hereby quashed and the case now stands remitted to the Land Tribunal, Belgaum, with a direction to hold an enquiry afresh and to decide the application filed in Form No.

7 in accordance with law after affording an opportunity to the parties to adduce evidence and after hearing them. No order as to costs.