

(2008) 06 KAR CK 0085

In the Karnataka High Court

Case No : Writ Petition No's. 22126 and 22277 of 2005

E.A. D'souza

APPELLANT

Vs

Cyril Josep Rodrigues and Others

RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 A (1)

Citation : (2008) ILR (Kar) 3819 : (2008) 3 KCCR 2079

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : B.L. Acharya, for the Appellant; Nadiga Shivanandappa, HCGP for R3 and R4 and Vyasa Rao K.S., for R1 and R2, for the Respondent

Judgement

N.K. Patil, J.—The common petitioner questioning the correctness of the orders passed by the V Land Tribunal, Karkala dated 30/07/1981 and 22/08/1981 vide proceedings Nos. TRL 92/81-82 and TRL 166/81 -82 insofar as it relates to Sy. No. 174/1 OB 1 measuring 0-10 acres and Sy. No. 161/1B1 measuring 0.17 acres situate at Pucchamogaru village, Karkala Taluk respectively, has presented these Writ Petitions.

2. The grievance of the learned Counsel appearing for the common petitioner in these Writ Petitions is that, the petitioner claims that he is the owner of the lands in question and he is in peaceful possession and enjoyment of the said lands and that the first respondent made an attempt to interfere with the peaceful possession and enjoyment of the said lands. After verification, he came to know that the lands in question have been registered in the name of the first respondent by the Land Tribunal by passing the above said impugned orders. The petitioner was neither a party to the proceedings before the Land Tribunal nor any notice was issued in that behalf and the Tribunal has proceeded to grant occupancy rights unilaterally without compliance of the principles of natural justice. Therefore, the petitioner is constrained to approach this Court immediately after the date of knowledge without any delay, by presenting these

writ petitions.

3. I have heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

4. After careful perusal of the impugned orders passed by the V Land Tribunal, Karkala, as per Annexure "A" in both the cases, it is manifest on the face of the said orders that, the Tribunal has not conducted proper enquiry as envisaged under the relevant provisions of the Land Reforms Act and Rules and further it appears that the petitioner is not a party to the proceedings before the Land Tribunal and that the petitioner has purchased the land in question in the year 1932 and it is his claim that he is in possession of the schedule lands. If that is the case, the Tribunal ought to have issued notice to the interested persons u/s 48A(1) of the Land Reforms Act. In the instant case, on careful perusal of the cause title of the order passed by the Land Tribunal, it can be seen that, the petitioner is not a party to the proceedings. In view of non-issuance of notice and not affording any opportunity to the petitioner and in view of the gross violation of the principles of natural justice, the impugned orders passed by the V Land Tribunal cannot be sustained. Hence, the same are liable to be set aside only insofar as it relates to the lands in question as referred above.

5. Further, it is pertinent to note that there is inordinate delay of 24 years in filing these writ petitions taking shelter on the ground that the petitioner was not a party to the proceedings and no notice was issued in that behalf. Notwithstanding the fact that as per Section 48A(1) of the Karnataka Land Reforms Act, all the interested persons are required to be notified, the petitioner has not been notified and as such no material is available before this Court to show that notice was issued to the petitioner and the same is served on him or there is no reference about the same in the impugned orders, in the interest of justice and keeping in view the merits of the case, the inordinate delay of 24 years in filing these petitions is liable to be condoned subject to payment of cost by the petitioner to the first respondent for the inconvenience caused to him and also to the High Court Legal Services Authority.

6. Having regard to the facts and circumstances of the case, these Writ Petitions are allowed in part on payment of cost of Rs. 5,000/- (Rupees Five Thousand only).

7. The impugned orders passed by the V Land Tribunal, Karkala in proceedings Nos. PRL 92/81-82 and PRL No. 166/1981 -82 vide Annexures "A" in both the Writ Petitions insofar as it relates to Sy. No. 174/1 OBI measuring 0-10 cents and Sy. No. 161/1B1 measuring 0-17 cents situate at Pucchamogaru village, Karkala Taluk, are hereby set aside and the matter is remanded to the Land Tribunal, Karkala to reconsider the matters afresh in accordance with law after affording sufficient opportunity to the petitioner and the respondent No. 1 in the first case and respondents 1 and 2 in the second case and also any interested parties to lead their evidence and decide the matters in strict compliance of Rule 17 of the

Land Reforms Rules read with Section 34 of the Land Revenue Act and dispose of the same in accordance with law as expeditiously as possible keeping in view that the matter is pending adjudication between the parties since several decades.

8. The Land Tribunal, Karkala, is directed to permit the petitioner and the contesting respondents in both the petitions to lead their evidence and also permit them to submit their written statements and necessary documents to substantiate their respective stands for redressal of their grievances and thereafter, the Tribunal shall proceed further as per the directions issued by this Court as stated supra The petitioner is directed to pay cost of Rs. 2,000/- (Rupees Two Thousand only) to the first respondent and deposit the remaining Cost of Rs. 3,000/- (Rupees Three Thousand only) before the High Court Legal Services Committee within two weeks from the date of receipt of the order, failing which, the order passed by the Land Tribunal, Karkala, shall stand restored.