
(1977) 11 KAR CK 0014
In the Karnataka High Court
Case No : WP. 2286 of 1976

Girijamma

APPELLANT

Vs

The Tribunal, Mangalore and Others

RESPONDENT

Date of Decision : 23-11-1977

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a

Citation : (1978) 1 KarLJ 21

Hon'ble Judges : Govinda Bhat, C.J.;Lal, J

Judgement

Govinda Bhat, CJ.-This matter arises under the Karnataka Land Reforms Act, 1961 (hereinafter referred to as the Act). The Land Tribunal, Mangalore, (respondent-1) on the application of the second respondent (M. Sundara), granted occupancy right under Sec. 48A of the Act in respect of 6 cents of land out of Town Sy No. 186 (Revenue Sy No. 722) of Attavar village. Mangalore City, in his favour. The petitioner's husband Venkappayya is stated to be the owner of the land in question, in which there is a residential house, which is occupied by the second respondent. The total extent of Sy No. 186 is very much more than the land claimed by the second respondent.

2. The second respondent's application before the Land Tribunal filed on 12-8-1974 states that he is a tenant of land measuring 7 cents in Revenue Sy No. 722 of Attavar village. The name of the petitioner was not shown in that application since her husband was dead. Notice was taken to the petitioner and she appeared by her Power of Attorney one Madhusudan Rao.

3. The Tribunal ordered on 18.11.1975 that it would hold local inspection on 21.1.1976. On 30.1.1976. the Tribunal made the impugned order granting occupancy right over 6 cents of land in Revenue Sy. No. 722 corresponding to Town Sy. No. 186 of Attavar village. The said order states that the petitioner's Power of Attorney Madhusudan Rao had consented to the Tribunal granting occupancy right to the second respondent over an area of 6 cents excluding one coconut tree. The Tribunal has stated in its order that in the land in question

there are two cocoanut trees, two jack plants and one Sitapal tree and that the Power of Attorney of the petitioner had expressed his consent to the conferment of the occupancy right excepting one cocoanut tree. The said order has been challenged in this writ petition on several grounds.

4. The first ground is that the land in question is not an agricultural land and the Tribunal has no jurisdiction to grant occupancy right. The second ground is that Madhusudan Rao the Power of Attorney of the petitioner has given no such consent as stated in the order of the Tribunal.

5. The second respondent is represented before us by Sri Riazuddin, learned Advocate appointed by the State Govt to attend to the cases of Schedule Castes and Scheduled Tribes. We called for the Records of the Land Tribunal and Sri H.N. Narayan, learned High Court Govt Pleader has placed before us for our perusal the entire records of the Tribunal relating to this case.

6. The petitioner had made an application before the Land Tribunal to grant her a certified copy of the statement, if any, alleged to have been made by Madhusudan Rao, to which, the Special Tahsildar, Land Reforms, has given an endorsement (Ext."F"). The said endorsement of the Tahsildar who is the Secretary of the Land Tribunal, reads:

"With reference to the copy application filed on 24.2.76 by Sri P. Madhusudhan Rao, the applicant is informed that certified copy of the statements of the parties cannot be granted as only the material averments are recorded on the Order sheet, the enquiry being a summary one".

7. The Records of the Tribunal do not contain even the summary of the alleged statement made by Madhusudhan Rao giving his consent for grant of occupancy right to the second respondent. The order-sheet of 18-11-1975 states, that the proceedings are adjourned to 21-1-1976 for local inspection. The facts observed at the local inspection have not been recorded anywhere in the proceedings. On 30.1.1976 the Tribunal pronounced its order. Apart from what is stated in the order of the Tribunal, which is impugned, there is no other record made to the effect that Madhusudhan Rao had given his consent for conferment of occupancy right in respect of 6 cents to respondent-2, the applicant before the Tribunal.

8. It is clear from a perusal of the entire Records that the order of the Tribunal based on the alleged concession made by Madhusudhan Rao, the Power of Attorney of the petitioner is not supported by any record made by the Tribunal. If the Power of Attorney of the petitioner is giving up a valuable right, his statement ought to have been recorded and his signature obtained. Apart from this, the petitioner had raised an objection as to the jurisdiction of the Tribunal with respect to this land as it is an urban land and not an agricultural land over which the Tribunal has no jurisdiction.

9. The jurisdictional issue should have been decided by the Tribunal. The Tahsildar who verified the particulars, given in the application of the second

respondent, has stated that the land concerned has a town survey number. It is also undisputed that there is a residential house which bears a Municipal number and is subject to Municipal Tax. This fact should have been noticed by the Tribunal and it should have decided the question whether the land claimed can be regarded as agricultural land within the purview of the Act. If the land does not come within the purview of the Act, the Tribunal has no jurisdiction and any amount of consent cannot confer jurisdiction.

10. For the reasons stated above, we allow this writ petition; quash the impugned order dated 30.1.1976, and remit the matter to the Tribunal for adjudication afresh and in the light of this order after affording all interested parties reasonable opportunity of leading evidence and of being heard.

11. It is made explicitly clear that the Tribunal should decide before it proceeds further the question whether the land comes within the purview of the Act.

12. Ordered accordingly. No costs.