

(2014) 06 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No. 81404/2013 (KLR-RES)

Gousemohiddin

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 06 KAR CK 0047

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : S.G. Kadadakatti, Advocate for the Appellant; K.S. Patil, HCGP for R1 and R2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

H. Billappa, J.—The learned Government Pleader is directed to take notice for the respondents 1 and 2.

2. In this Writ Petition under Articles 226 and 227 of the Constitution of India, the petitioners have called in question the order dated 23.12.1975 passed by the Land Tribunal, Dharwad, in Case No. KLR/NVL/SR: 19, vide Annexure-C.

3. By the impugned order at Annexure-C, the Land Tribunal, Dharwad, has granted the occupancy rights in favour of the Fakrusab Avrang Kusugal.

4. Aggrieved by that, the petitioners have filed this writ petition.

5. The petitioners claim that their father Mohammad Hanif Makandar and two others are the owners of 1/3rd share in the land bearing Block No. 28, measuring 3 acres 4 guntas of Navalur Village, Dharwad Taluk. The deceased Fakrusab Avrang Kusugal filed Form No. 7 claiming occupancy rights in respect of the land bearing Block No. 28, measuring 3 acres 4 guntas of Navalur Village, Dharwad Taluk. The applicant did not implead the petitioners' father and others as parties. The petitioners' father was in possession and enjoyment of the land in question

to the extent of 01 acre 01 gunta. The Land Tribunal without holding any enquiry has granted the occupancy rights in favour of Fakrusab Avrang Kusugal. Therefore, this writ petition.

6. The learned counsel for the petitioners contended that the impugned order cannot be sustained in law. He also submitted that the petitioners' father and two others are the owners of 3 acres 4 guntas of land in Block No. 28 of Navalur Village, Dharwad Taluk. Without making them parties Fakrusab Avrang Kusugal has filed Form No. 7 claiming occupancy rights. The Land Tribunal, without holding any enquiry has granted occupancy rights in favour of Fakrusab Avrang Kusugal and therefore, the impugned order cannot be sustained in law.

7. As against this, the learned Government Pleader submitted that the impugned order has been passed in the year 1975 and the petitioners have approached this Court in the year 2013 and there is inordinate delay of nearly 38 years in approaching this Court and therefore, the writ petition cannot be entertained.

8. I have carefully considered the submissions made by the learned counsel for the parties.

9. I find considerable force in the submission of the learned Government Pleader. The petitioners claim that they are the sons of Mohammad Hanif Makandar. Their father and two others are the owners of the land bearing Block No. 28, measuring 3 acres 4 guntas of Navalur Village, Dharwad Taluk. One Fakrusab Avrang Kusugal has filed Form No. 7 claiming occupancy rights in respect of the land bearing Block No. 28, measuring 3 acres 4 guntas of Navalur Village, Dharwad Taluk. The Land Tribunal has granted occupancy rights in favour of Fakrusab Avrang Kusugal by order dated 23.12.1975. The order indicates that both the parties were present and considering that Fakrusab Avrang Kusugal was cultivating the land occupancy rights have been granted in his favour. The petitioners have approached this Court during August 2013. The impugned order has been in the year 1975. There is inordinate delay of nearly 38 years in approaching this Court. The explanation offered is unacceptable. Therefore, the writ petition cannot be entertained. It is liable to be dismissed on the ground of delay.

10. Accordingly, the writ petition is dismissed.