

(1982) 12 KAR CK 0004
In the Karnataka High Court
Case No : WP 12757/78

Govindaraja Iyengar

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-12-1982

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a(5)

Citation : (1983) 1 KarLJ 539

Hon'ble Judges : M. S. Nesargi, J

Judgement

1. The petitioner has prayed that the order dt. 23-11-1976 passed by the Land Tribunal, Krishnarajanagar, in case No. LRF 932/75 76 conferring occupancy right over 3 acres 10 guntas of land in Sy. No. 608 of Hanasoge village, Krishnarajanagar Taluk, in favour of respondent-3, be quashed.

2. The petitioner has contended that he was inducted in the Indian Army on 10-6-1963 and the lease in favour of respondent-3 was created at that time. He was discharged on grounds of health by 29-10-1971. He filed resumption application before the Munsiff, Krishnarajanagar in RLC No. 80 of 1970. The Munsiff rejected his application on technical grounds. He preferred an appeal before the Dist. Judge and, in the meanwhile, S. 133 of the Kar. Land Reforms Act, 1961 (hereinafter called "the Act") came into force and, therefore, the Dist. Judge referred the issue of tenancy to the Land Tribunal. In the meanwhile, respondent-3 filed Form 7 before the Land Tribunal and it issued notices. The petitioner appeared before the Land Tribunal and filed his written objections on 11-3-1976. The petitioner was not well and, therefore, he could not appear. He sent application for an adjournment and the Land Tribunal adjourned the case No further date was intimated to the petitioner and he came to know of the impugned order when he made enquiries in the office of the Land Tribunal, later.

3. Ext.-A shows that the petitioner disputed the claim of respondent 3 by filing written objections. Respondent-3 has made only the petitioner as opponent before the Land Tribunal. Both the counsel appearing on behalf of the petitioner

and respondent-3 stated before me that when the petitioner joined the Indian Army, he and his brother Srinivasa Iyengar were joint and that there was a partition between them in the year 1971 and that thereafter, the petitioner became the exclusive owner.

4. It is clear from the afore-mentioned facts that the petitioner has not contended that respondent 3 had not cultivated the land as tenant. He has admitted that fact. The resultant position is that when the petitioner joined the Indian Army as a soldier, respondent-3 was already a tenant on the said area. He continued to be the tenant after the petitioner was discharged in the year 1971 and also when the petitioner became the exclusive owner of the land in question in the year 1971. The Land Tribunal has nowhere adverted to these contentions of the petitioner. The Land Tribunal has proceeded on the basis that the petitioner was absent on the date of hearing viz., 23-11-1976.

5. S. 48A (5) of the Act lays down that where an objection is filed disputing the validity of the applicant's claim or setting up a rival claim, the Tribunal shall, after enquiry determine, by order, the person entitled to be registered as occupant and pass orders accordingly.

6. The enquiry to be held by the Land Tribunal is mandatory i.e., when objections to the claim are filed. It does not become mandatory because of the presence of the objector or the land-owner. Even if a land owner files objections and remains absent on the date of hearing, it is incumbent upon the Land Tribunal to hold an enquiry as mandatorily provided by S. 48A(5) of the Act. Such an enquiry has to be held in accordance with the mandatory provisions of S. 34 of the Kar. Land Revenue Act, 1964. As already narrated, the Land Tribunal has nowhere adverted to these objections of the petitioner while passing the impugned order. Therefore, the enquiry conducted by the Land Tribunal is contrary to the mandatory provisions afore mentioned and, hence, it is vitiated.

7. The records maintained by the Land Tribunal are before the Court. The petitioner has contended that he filed objections as per Ext.-A on 11-3-1976. The order sheet dt. 29-6-1976 shows that the respondent, the petitioner herein, was present and he claimed exemption under S. 5 of the Act. Therefore, the Land Tribunal was aware of the objections of the respondent i.e., the petitioner. On that day, the case was adjourned to 16-8-1976. On 16-8-1976 the parties were absent. The Land Tribunal directed issue of notices, and posted the case to 15-10-1976. On 15-10-1976 the petitioner was absent and his brother Srinivasa Iyengar prayed for an adjournment on the ground that the petitioner was ill and the Land Tribunal adjourned the case to 15-11-1976. Signature of Srinivasa Iyengar is found below this order. What happened on 15-11-1976 may be narrated in the words of the Land Tribunal as under:

"15-11-1976. Case called and adjourned to 23-11-1976 for want of time".

It is not noted whether the parties were present on that day. The petitioner stated that he sent an application through his brother Srinivasa Iyengar on

15-10-1976 and the case was adjourned. Therefore, the say of the petitioner that he did not know the adjourned date i.e., 23-11-1976 is highly probalised, particularly in view of the fact that the Land Tribunal has not noted on 15-11-1976 that the petitioner was present before the Land Tribunal. This is another reason why it has to be held that the enquiry has been conducted by the Land Tribunal behind the back of the petitioner.

8. In view of the foregoing reasons, I. allow the writ petition, make the rule absolute, quash the impugned order and direct the Land Tribunal to hold a fresh enquiry into the claim of respondent-3 after notifying the petitioner and all the persons interested in the land and dispose of the same considering the objections filed by the petitioner, according to law. No costs.