

(2016) 03 KAR CK 0043
In the Karnataka High Court
Case No : Writ Petition No. 17179/2005(LR)

Ishwarappa and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 77A

Citation : (2016) 03 KAR CK 0043

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : I.G. Gachchinamath, Advocate, for the Appellant; Ravi V. Hosamani, AGA, for the Respondent

Final Decision : Allowed

Judgement

B. Manohar, J.—1. Petitioners have filed this writ petition seeking for quashing the impugned order dated 23-05-2005 made in Appeal No. 909/2002 passed by the Karnataka Appellate Tribunal (hereinafter referred to as "the Tribunal" for short), wherein the Tribunal has set aside the order passed by the Assistant Commissioner, Belgaum dated 17-10-2002.

2. The grievance of the petitioners is that, they were the agricultural tenants and they have been in possession and cultivating the land bearing Survey No. 221/1A/2 measuring 3 acres, situated at Kerawad village, Khanapur Taluk. However, they have not filed Form No. 7 seeking for grant of occupancy rights. Subsequently, in view of coming into force of Section 77A of the Karnataka Land Reforms Act ("the Act" for short), the petitioners had filed an application in Form No. 7A for grant of occupancy rights in respect of 3 acres of land in Survey No. 221/1A/2 situated at Kerawad village, Khanapur Taluk. The Assistant Commissioner, after conducting necessary enquiry as provided under Section 77A of the Act, by his order dated 17-10-2002 granted the land measuring 3.00 acres of land in Sy. No. 221/A/2 situated at Kerawad village, Khanapur Taluk. Being aggrieved by the said order, the third respondent herein filed an appeal before

the Tribunal, challenging the same on various grounds and also contended that the petitioners are not the agricultural tenants of the said land. The land in dispute is not a tenanted land as on 1-3-1974 and it was not vested with the State Government. The Tribunal without looking into the original records held that, for the year 1973-74, names of the petitioners are not shown in the revenue records and the petitioners have not fulfilled the conditions imposed under Section 77A of the Karnataka Land Reforms Act and hence, set aside the order passed by the Assistant Commissioner granting occupancy rights in favour of the petitioners by its order dated 23-05-2005. Being aggrieved by the said order, the petitioners have filed this writ petition.

3. During the pendency of this writ petition, the first petitioner died and his legal representatives are brought on record.

4. Sri. Gurudev Gachchinamath, learned advocate appearing for the petitioners brought to the notice of the Court the Annexure-B, i.e. mutation entry for the year 1973-74, wherein the names of tenants have been shown and it was continued till 2001-02. The Appellate Tribunal without considering the original records has passed the order and the same cannot be sustainable and sought for setting aside the order passed by the Karnataka Appellate Tribunal.

5. On the other hand, Sri. Jagadish Patil, learned advocate appearing for Respondent No. 3 argued in support of the order passed by the Tribunal and contended that the names of petitioners were entered as per the order dated 1-12-1973, but immediately, their names have been deleted as per the cancellation order dated 5-4-1974. Hence, the question of continuing the names of petitioners as tenants does not arise. Apart from that, during the pendency of this writ petition, the Tahsildar, Khanapur Taluk also filed an affidavit stating that the land was being cultivated by Sri. Bharmannavar Fakkirappa Basavanappa as on 1-3-1974 the third respondent herein. Further stated that as on 24-07-2007 as per the report of the Revenue Inspector, nobody is in possession and cultivation of the land in question. Hence, the petitioners have failed to prove that as on 1-3-1974, they were cultivating the land and they continued to be in possession of the land. The three conditions imposed under Section 77A of the Act are not fulfilled and sought for dismissal of the writ petition.

6. Sri. Ravi V. Hosamani, learned AGA made available the original Government records. The records clearly disclose that names of the petitioners are continued to be shown in the mutation register from the year 1973-74 till 2001-02. The reasons assigned by the tribunal appear to be contrary to the record. Hence, I feel that it is appropriate to set aside the order passed by the Appellate Tribunal and remand the matter to the Tribunal for reconsideration of the same afresh and direct the Tribunal to pass fresh orders, in accordance with law and on thorough examination of the original records.

7. On perusal of the original records, it is seen that though the names of petitioners were entered in the mutation register on 1-12-1973, the said entry

was cancelled as per the cancellation order dated 5-4-1974. In spite of the said cancellation, mutation entries continued to be in the names of petitioners till the year 2001-02. Hence, the Tribunal has to reconsider the matter afresh and pass appropriate orders, in accordance with law. Accordingly, I pass the following:

ORDER

The writ petition is allowed. The order dated 25-03-2005 made in Appeal No. 909/2002 passed by the Karnataka Appellate Tribunal is set aside and the matter is remanded back to the Appellate Tribunal to reconsider the same afresh and pass appropriate orders, in accordance with law.

Both the parties are directed to appear before the Karnataka Appellate Tribunal on 30th March 2016, without expecting any further notice.

The Registry is directed to forward the copy of this order to the Appellate Tribunal, immediately.