
(1978) 10 KAR CK 0007
In the Karnataka High Court
Case No : WP. 5259/77

Jahirodin

APPELLANT

Vs

Land Tribunal and Others

RESPONDENT

Date of Decision : 27-10-1978

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 45

Citation : (1979) 1 KarLJ 207

Hon'ble Judges : Kudoor, J

Judgement

1. The owner of the land bearing survey No. 108/1, measuring 11 guntas situate in Amanikere village of Srinivaspur Taluk, is the petitioner. He has filed this writ petition under Art. 226(1)(b) and (c) of the Constitution to quash the order dated 10-11-1976 (Ext. "B") made by the 1st respondent-Land Tribunal, Srinivaspur, granting occupancy right in favour of the 2nd respondent Bakshi Baig in respect of the land in question by issue of a writ of certiorari or any other appropriate writ or order.

2. Sri C.B. Srinivasan, learned advocate appearing for the petitioner has raised two contentions in support of the petition. Firstly he contended that the grant of occupancy right in favour of the 2nd respondent is bad in law, because the 2nd respondent claims himself to be entitled to be registered as an occupancy on the ground that his father Mohamed Beig is the tenant of the land in question. Secondly he contended that the petitioner was not given proper opportunity, as the Tribunal did not hold the enquiry in accordance with law.

3. Sri N. Raghupathy, learned advocate appearing for the 2nd respondent, maintained that Mohammed Beig, father of the 2nd respondent, is a tenant in respect of the land in question, that he is too old and the land in question is being cultivated by the 2nd respondent along with his father and as such, there is no prohibition in law for grant of occupancy right in favour of the 2nd respondent. He has also maintained that the Tribunal held a proper enquiry before passing the impugned order.

4. It is undisputed that Mohamed Beig, father of the 2nd respondent is alive. It is the case of the 2nd respondent that he has filed the application in Form No. 7 under S. 48-A (1) of the Karnataka Land Reforms Act, 1961 (shortly called the Act) for being registered as an, occupant in respect of the land in question of which his father is a tenant, since his father is very old and not in a position to cultivate the land. I am afraid whether this ground would enable the 2nd respondent to maintain an applications for registration of the occupancy right. S. 48-A (1) of the Act provides for filing an application for registration of the occupancy right within the time stipulated by a person entitled to be registered as an occupant under S. 45 of the Act for being registered as an occupant in respect of the land he claims. S. 45 of the Act stipulates that subject to the provisions of the succeeding sections of Chapter III, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sublet, such subtenant shall, with effect on and from the date of vesting, be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally. Thus the essential qualification of a person entitled to be registered as occupant is that he was a tenant in respect of the land of which he claims occupancy right before the date of vesting and which he has been cultivating personally. Undoubtedly in this case, the 2nd respondent was not the tenant in respect of the land in question on the date of vesting in, the State Government which was on 1-3-1974. However, it is the case of the 2nd respondent that his father was the tenant on the relevant date and his claim for occupancy right is only through his father on the ground that his father is too old to cultivate the land in question. The Tribunal can grant occupancy right in favour of a person entitled to be registered as an occupant under S. 45 of the Act. Since the 2nd respondent would not come within the purview S. 45(1) of the Act on his own showing, he is not entitled to maintain his claim for occupancy right. If at all it would be the father of the 2nd respondent who could maintain an application for occupancy right if the law allows him to do so. The impugned order Ext. "B" made by the Tribunal is in contravention of the provisions of the Act resulting in substantial failure of justice. In the view I take on the first contention, I do not feel it necessary to pronounce any opinion on the remaining contention advanced on behalf of the petitioner.

In the result, for the reasons stated supra, the rule is made absolute. The impugned order Ext. "B" is quashed. There is no order as to costs.