

(2008) 06 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 26819 of 2005

Lakshmi G. Bhat and Others

APPELLANT

Vs

The Secretary and Others

RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 A (2)

Citation : (2008) ILR (Kar) 4355 : (2009) 2 KarLJ 476 : (2008) 5 KCCR 639 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : K. Shrihari, for the Appellant; Nadiga Shivanandappa, HCGP for R1 and R2 and K.M. Nataraj, for R3, R4, R5, R6 and R7, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—These petitioners claiming to be the legal representatives of the deceased Smt. Parameswariamma w/o Subbaraya Bhat, questioning the correctness of the impugned order dated 29th August 1979 passed by the first respondent-Land Tribunal, Sullia in proceeding No. LRY:2639:74-75 granting the occupancy right in favour of 3rd respondent in respect of the land in question, have presented this writ petition.

2. The third respondent claiming to be the tenant in respect of the lands in question had filed Form No. VII for registration of occupancy rights before the first respondent-Land Tribunal-Sullia. The first respondent-Land Tribunal, Sullia, after conducting enquiry and after following the due procedures as envisaged under the relevant provisions of the Land Reforms Act, and in the light of the oral and documentary evidence available on file, has registered the occupancy rights in favour of third respondent holding that, the request of the landowner for an adjournment has been considered and matter was adjourned and thereafter, the land owner was not present and therefore, on the basis of the materials available on record, it has passed the impugned order. Being aggrieved by the impugned order passed by the first respondent- Land Tribunal, Sullia, petitioners herein felt

necessitated to present this writ petition.

3. The principal submission canvassed by the learned Counsel appearing for petitioners- Sri. K. Srihari is that, petitioners are entitled for their share in the joint family property and they have not been notified before registering the occupancy rights in favour of tenant and therefore, the order impugned is bad in law and it is not sustainable. Therefore, learned Counsel appearing for petitioners has prayed to allow the instant writ petition.

4. Per contra, learned Government Pleader appearing for respondents-1 and 2 and learned Counsel appearing for third respondent, at the out set substantiated the order passed by the first respondent- Land Tribunal, Sullia and submitted that, no error or illegality as such has been committed by the first respondent-Land Tribunal in passing the said order and interference by this Court at this distance of time is not justifiable and the third respondent is in settled possession and enjoying the said lands from the time immemorial. Therefore, they submitted that, the writ petition filed by petitioners is liable to be dismissed as devoid of merits.

5. I have heard learned Counsel appearing for petitioners, learned Government Pleader appearing for respondents-1 and 2 and learned Counsel appearing for third respondent. Other respondents served and unrepresented.

6. After critical evaluation of the original records made available by the learned Government Pleader appearing for respondents-1 and 2, including the order passed by the first respondent-Land Tribunal, Sullia and other materials available on file at threadbare, what it emerges is that, the third respondent herein had filed Form No. VII for grant of occupancy rights on 30.12.1974. The said application filed by third respondent had come up for consideration before the first respondent-Land Tribunal, Sullia. The first respondent-Land Tribunal, Sullia, has registered the same in proceeding No. LRY:2639:74-75. The first respondent-Land Tribunal, Sullia, has issued notice u/s 48(A)(2) on 19.8.1977 and the same was published in the Panchayath office and it has also issued the individual notices to the interested parties. In pursuance of receipt of the notice, the mother of the petitioners late Smt. Parameswariamma who was the respondent in the proceedings before the Land Tribunal, Sullia, has prayed for an adjournment on 7.11.1977 on the ground that, due to severe leg pain, she was not in a position to attend the proceeding before the Land Tribunal and requested to grant time to enable her to recover from the pain and to attend before the Tribunal and accordingly, the matter was adjourned. Thereafter, on 13.12.1977 her daughter Smt. Leelavathi-6th respondent herein has submitted a written communication, requesting for adjournment stating that her mother had gone to attend family ritual on 14.12.1977. The said applications submitted by the mother of the petitioners the 6th respondent is found at red ink page Nos.23 and 33 respectively in the original records. Further, after microscopic evaluation of the original records it emerges that, third respondent had produced several receipts for having paid the levy and the said receipts are available in the original

records at red ink page Nos. 34 to 44. Further third respondent has produced the receipts for having paid the assessment of revenue tax at red ink page Nos. 12 to 32. Third respondent has also produced the receipts in Form No. 11 issued by the Karnataka Food and Civil Supplies Corporation Limited which are in his name, for having supplying the food grains, which was grown in the land in question by the 3rd respondent at ink page Nos. 2 to 10. Further it is pertinent to note that, after giving sufficient opportunity to the land owner-Smt. Parameswariamma and to her daughter, 6th respondent, and after following due procedures, the first respondent-Land Tribunal, Sullia, has registered the occupancy rights in favour of third respondent. Not writing a lengthy order by the Land Tribunal is not a ground for declaring that it is not a speaking order. Whether the Land Tribunal has conducted the enquiry as envisaged under the relevant provisions of the Land Reforms Act and Rules and as to whether an enquiry has been conducted on the application filed by third respondent, on the basis of the relevant materials available on file has to be looked into. But in the instant case, after microscopic evaluation of the of the original records available on file as referred above, what it emerges is that, third respondent has produced substantial documentary evidence to establish that he was cultivating the said land as on 1.3.1974 and the said land is vested with the government and therefore, the Land Tribunal, Sullia, has rightly registered the occupancy rights in favour of third respondent. Further, it is significant to note as rightly pointed out by the learned Counsel appearing for third respondent that, fourth respondent herein had filed an application before the Special Tahasildar, Land Tribunal, Sullia on his behalf and on behalf of others on 2.11.1987 for payment of compensation in respect of the proceeding Nos. LRY:1630:2652:2654:2639:1230:74-75 specifically referring that, he has got the Power of Attorney executed by the other legal representatives on 18.4.1977 and he has put his signature in English. But suppressing all these relevant materials available on file and what has been transpired before the Land Tribunal, Sullia, these petitioners after the lapse of several decades have come up before this Court and presented this writ petition stating that they are also the necessary parties to the proceedings and they have not been notified. The said submission made by learned Counsel appearing for petitioners is liable to be set aside at threshold. Having regard to the facts and circumstances of the case as stated above, the writ petition filed by petitioners is liable to be dismissed at threshold as devoid of merits.

For yet another reason, the writ petition filed by petitioners is liable to be dismissed with exemplary costs is on the ground of delay and laches. The impugned order has been passed by the first respondent-Land Tribunal , Sullia, as early as on 29th August 1979 and these petitioners have presented this writ petition on 15th December 2005 and there is an inordinate delay of nearly twenty six years and the said inordinate delay has not been explained by the petitioners satisfactorily by assigning cogent and valid reasons, except making a omnibus statement that they are also interested parties and they have not been notified and they have got their share in the joint family property. In view of not

explaining the inordinate delay satisfactorily by the petitioners by assigning cogent reasons, the instant writ petition filed by petitioners is liable to be dismissed on the ground of delay and laches also.

7 For the foregoing reasons, the instant writ petition filed by petitioners is dismissed as devoid of merits and also on the ground of delay and laches.