

(2003) 01 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 46687 of 2002

Lawrence D'Souza

APPELLANT

Vs

Kariya Moolya and Others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Citation : (2003) 6 KarLJ 249 : (2003) 1 KCCR 60 SN

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

Bench : Single Bench

Advocate : S.K. Acharya, for the Appellant; M.E. Prabhu, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner assailing the correctness of the impugned order dated 19-8-1980 in No. LRY/111/97/TRI/50/80-81 (Annexure-C) passed by the Land Tribunal, Udupi has filed this writ petition.

2. The case of the petitioner is that, father of the petitioner and the father of the 2nd respondent are brothers and the 1st respondent is claiming the occupancy rights as tenant in respect of the land belonging to the petitioner in Sy. Nos. 241/2, 302/1, 303/2A and 308/2B measuring 2 acres 6 guntas, 2 acres, 1.46 acres, 0.72 cents. This writ petition is confined to the above survey numbers only and not in respect of other survey numbers where the occupancy rights are granted by the Land Tribunal, as these properties have fallen to the share of the petitioner's father by virtue of a Will dated 8-5-1958. The 1st respondent has not shown the owner of the property in respect of these survey numbers and the Land Tribunal has not issued any notice and it has proceeded to dispose of the same unilaterally behind the back of the petitioner. The Tribunal has not conducted the enquiry as provided under the relevant provisions of the Land Reforms Rule. Therefore, the impugned order passed by the Land Tribunal is liable to be set aside on this ground alone. The petitioner came to know about the order passed by the Land Tribunal in the month of June 2002 when he and

his family members were inclined to hold partition. Immediately, he has filed this writ petition.

3. Heard the learned Counsel for the petitioner and the learned Government Advocate for respondents 3 and 4 at a considerable length of time.

4. The principal submission of the learned Counsel for the petitioner is that, the impugned order passed by the Land Tribunal is liable to be set aside on the ground that either petitioner or his father has been impleaded as a party as they are interested parties to the proceedings. The Tribunal has passed the impugned order unilaterally behind the back of the petitioner. Secondly, he submitted that the Tribunal has not conducted any enquiry as provided under the relevant provisions of the Act and Rules. He vehemently submitted that as per Annexure-A, Will executed in the year 1958 the above survey numbers have fallen to the share of the petitioner's father and if the opportunity has been given to the petitioner or his father by the Land Tribunal, they might have substantiated this case and establish the fact that at no point of time the 1st respondent was cultivating the land as a tenant. Thirdly, he submitted that the lands are Punja lands and it is not available for grant of occupancy rights in favour of the 1st respondent. This aspect of the matter is not at all considered by the Land Tribunal. On this ground only the writ petition may be allowed.

5. Per contra, the learned Government Advocate appearing for respondents 3 and 4, inter alia, contended and submitted that the writ petition is liable to be rejected on the ground of delay and laches. The petitioner has not explained the delay satisfactorily by assigning cogent reasons and at this distance of time, the petitioner has abandoned his rights to prosecute the case.

6. The 1st respondent, herein has filed Form 7 for grant of occupancy rights. The owner of the land was shown as ". . . , D'Souza". In the said Form 7 he has shown Sy. Nos. 241, 302 and 303 are dry lands. The said application filed by the 1st respondent had come up for consideration before the 3rd respondent-Land Tribunal on 19-8-1980. The Land Tribunal recorded the statement of the 1st respondent and the landowner Sri Peter D'Souza. The landowner has stated that the 1st respondent was cultivating the land as a tenant and that he had no objection to grant occupancy rights in favour of the 1st respondent. In view of the statement made by the landowner, the occupancy rights was confirmed in favour of the 1st respondent in respect of the land in question along with other survey numbers as early as on 19-8-1980. The petitioner has not produced an iota of evidence to show that he is the owner of the land in question, except producing Annexure-A, the Will alleged to have been executed in the year 1958. It is not the case of the petitioner that in pursuance of the said Will his name was entered in the relevant records, nor has he produced any documents to show that he is the owner of the said land and his name is found in the relevant records at the time of filing this writ petition. Therefore, the said submission made by the petitioner placing reliance on Annexure-A has no substance. Therefore, the petitioner has not made out any case to interfere with the

impugned order passed by the Land Tribunal. Hence, I do not find any error of law or illegality committed by the Land Tribunal in granting the occupancy rights in favour of 1st respondent on the ground that the landowner has given the statement stating that 1st respondent is a tenant and he has no objection to confirm the occupancy rights in his favour. The submission of the learned Counsel for the petitioner that the above 4 lands in question are shown as dry land, as such, 1st respondent is not entitled for occupancy rights. Except making this bald statement, he has not produced any authenticated documents to show that the lands in question are Punja lands. In Form 7, the 1st respondent has shown the lands as dry lands and dry lands can be cultivated with the help of natural rain. Therefore, there is no substance in the submission of the learned Counsel for the petitioner. The petitioner has not made out any case to interfere with the impugned order passed by the 3rd respondent and the petition is liable to be rejected.

7. Yet another reason the writ petition is liable to be rejected at threshold as rightly pointed out by the Government Advocate is on the ground of delay and laches. The impugned order passed by the 3rd respondent is on 19-8-1980. The present petition is filed on 19-12-2002. There is an inordinate delay of more than 22 years. The petitioner has not explained the delay satisfactorily, except stating that he came to know about the order passed, by the Land Tribunal recently when he and his family members are partitioning the property in the month of June 2002. The reasoning assigned by the petitioner for condoning the delay is not bona fide nor there is any truth. The petitioner is bound to explain each and every day's delay in approaching this Court. In the instant case, there is an inordinate delay of 22 years. Much credibility cannot be given to the explanation offered by the petitioner for condoning the delay. Therefore, the petitioner has not made out any case to condone the delay in filing this writ petition. In my considered view, the petitioner has not made out any case or shown any bona fides for condoning the delay. Hence, the writ petition is liable to be rejected on the ground of delay and laches at threshold.

8. Having regard to the facts and circumstances of the case as stated above and taking into consideration the factual and legal aspect of the matter, interference with the impugned order is unwarranted.

Accordingly, the writ petition is dismissed on the ground of delay and laches as also on merits.

The Government Advocate is permitted to file memo of appearance within four weeks.