

(2015) 11 KAR CK 0262
In the Karnataka High Court
Case No : Writ Petition No. 638/2007 (LR)

Laxmanna

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0262

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Narendra N. Bettad, Advocate for Chaitanyakumar C.M., Advocate, for the Appellant; Shivaputra S. Udbalkar, HCGP, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 03.04.1987 passed by the second respondent the Land Tribunal.

2. The petitioner claiming to be a tenant in respect of the property bearing Sy. No. 129 of Narayanpur village measuring 4 acres 34 guntas had filed an application in Form No. 7 seeking occupancy rights. The Land Tribunal at the first instance had by the order dated 17.10.1981 granted the occupancy right in favour of the petitioner. The respondent Nos. 3 to 5 herein had assailed the same before this Court. This Court had set aside the order passed by the Land Tribunal and had remitted the matter to the Land Tribunal for re-consideration.

3. The Land Tribunal on re-consideration has passed the order dated 03.04.1987 rejecting the Form No. 7 filed by the petitioner and declining the claim for registration of occupancy rights. The petitioner claiming to be aggrieved by the said order, had filed an appeal before the Land Reforms Appellate Authority which had been constituted by then. During the pendency of the appeal filed by the petitioner before the Land Reforms Appellate Authority, the appellate authority was abolished. In that view, the petitioner was required to file civil petition and secure the transfer of the proceedings to this Court. The petitioner however, due

to lack of information had not immediately sought for such transfer and the appeal had been dismissed for default. Though a civil petition was thereafter filed, this Court had held the same to be not maintainable through the order dated 19.12.2005 in W.P. No. 45967/2001 in view of the appeal having been dismissed for default. This Court had however granted the liberty to the petitioner to challenge the order of the Land Tribunal. It is in that view the petitioner has presently assailed the order which is impugned in this petition.

4. In so far as the documents sought by the petitioner, an endorsement has been issued from the Tahsildar that no records are available.

5. The respondents while opposing the instant petition would seek to support the order passed by the Land Tribunal.

6. In the light of the rival contentions, a perusal of the order would disclose that the Tribunal has made reference to the record of rights which was produced before it. From the same it is noticed that though the name of the petitioner was indicated in the record of rights for the periods 1963-64 to 1964-65 as the occupant of the land, the subsequent record of rights for the periods 1969-70 to 1970-71 as also for the periods 1971-72 to 1977-78 contained the name of the respondent Nos. 3 to 5.

7. While contending that the manner of consideration as made by the Tribunal is not justified, the learned counsel for the petitioner relies on the earlier order though had been set aside by this Court on 17.11.1981 to point out that at the point of passing the said order the Land Tribunal had held spot inspection and based on such inspection a conclusion had been reached that the petitioner was a tenant in cultivation in respect of the said land.

8. The learned counsel for respondent Nos. 3 to 5 would however point out that in any event the conclusion that the petitioner is in possession cannot be accepted for the reason that the petitioner had filed the suit in O.S. No. 95/2007 wherein the Civil Court had recorded a finding that the petitioner is not in possession of the suit schedule property and had dismissed the suit by the judgment dated 23.11.2010. In that light it is contended that when the Civil Court had taken into consideration the fact that the respondent Nos. 3 to 5 herein were claiming to be owners of the property having purchased the same and in that light had recorded a finding with regard to the possession the earlier conclusion if any made by the Land Tribunal would not be justified and the subsequent order passed is after referring to the revenue documents wherein the name of the petitioner was not found to be indicated as the occupant and as such the Land Tribunal was justified at the present instance.

9. In the light of the rival contentions, what is necessary to be noticed in a matter of the present nature is that under the provisions of the Karnataka Land Reforms Act a right has been granted to the tenant as a social welfare measure. The Tribunal while considering the claim for grant of occupancy rights in addition to taking note of the documents available before it, would also have to take into

consideration all aspects of the matter and in appropriate cases a spot verification would be necessary to record a finding of fact as the tenants would not have secured the revenue entries though in fact they may be in possession and cultivation of the property. In the instant facts from the order impugned it is seen that there is no reference to the spot inspection that had been made earlier nor has any spot inspection been held after the remand was made by this Court at the first instance. It was very much necessary in the instant case since admittedly the name of the petitioner was entered in the record of rights earlier and was deleted later, though before the appointed date.

10. It is no doubt true that as contended by the learned counsel for respondent Nos. 3 to 5 the petitioner had filed a suit for injunction and had failed therein. However what is necessary to be noticed is that in the said civil suit the petitioner had sought to rely on the order that had been passed by the Land Tribunal at the first instance on 31.10.1981. That the said order in any event had been set aside by this Court and therefore not relied upon. While taking note of the sale deed relied upon by the defendants therein i.e., the respondent Nos. 3 to 5 herein and the entries in the revenue records made pursuant thereto. What would be relevant for consideration in a civil suit is as to whether the plaintiff had established the fact of possession as on the date of the filing the suit and as to whether such possession was established to have been interfered by the defendants. As against the said position, what is necessary to be determined by the Land Tribunal in a proceedings under the Karnataka Land Reforms Act is as to the person who was actually in possession and cultivation as on the appointed date namely 01.03.1974.

11. Therefore, even assuming for a moment that the Civil Court did not find merit in the case of the petitioner, the conclusion that is required to be made by the Land Tribunal is with regard to the possession as on 01.03.1974. If this aspect of the matter is kept in view, as already noticed the tribunal while passing the order dated 03.04.1987 has only taken into consideration the revenue entries in the record of rights to come to a conclusion that as on 01.03.1974 the name of the petitioner was not indicated in the record of rights. However, while taking note of the said position the fact that the Land Tribunal at an earlier point had conducted a spot inspection on 24.04.1981 and at that point had recorded that the petitioner was in possession and cultivation of the land, cannot be totally lost sight of. Though at this point the materials available on record are to be noticed, when the duty is cast on the Land Tribunal to come to a conclusion with regard to the cultivation as on 01.03.1974 and when the matter had been remanded by this Court after setting aside the earlier order dated 17.10.1981, it was incumbent on the Land Tribunal to also hold spot inspection in addition to the documents that were available on record.

12. Therefore in a circumstance where the same has not been done and an appropriate conclusion based on such exercise has not been reached by the tribunal the order dated 03.04.1987 would not be sustainable. The same is

accordingly set aside. The matter is remitted to the Land Tribunal to restore the case No. 97/84-85 on file, issue notice to the parties and re-consider the matter after not only taking into consideration the documents available on record but also conducting spot inspection to find out the actual nature of possession and cultivation of the land. The proceedings be concluded before the Land Tribunal in an expeditious manner.

The petition is accordingly disposed of.