
(2013) 08 KAR CK 0005
In the Karnataka High Court
Case No : Writ Appeal No. 3401 of 2012 (LR-RES)

Leo D'Souza

APPELLANT

Vs

Smt. Lakshmi Amma and Others

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48A

Citation : (2013) 6 KarLJ 109

Hon'ble Judges : V. Suri Appa Rao, J;N. Kumar, J

Bench : Division Bench

Advocate : K. Chandranatha Ariga, for the Appellant; Sriyuths D. Vijay Kumar, Additional Government Advocate and K. Ramabhat, for the Respondent

Judgement

N. Kumar, J.—This appeal is preferred against the order passed by the learned Single Judge, who has set aside the order of the Land Reforms Tribunal and dismissed Form 7 in respect of land bearing Sy. No. 112/6C of Kairangla Village, Bantwal Taluk, to an extent of 4 acres 18 cents. The material on record discloses one Thoduguli Shankar Bhat, was the owner of the aforesaid land along with other lands. After coming into operation of the Karnataka Land Reforms Act, 1961 as amended, one Babi D'Souza filed an application u/s 48A of the Karnataka Land Reforms Act, under Form 7 claiming that he is a tenant under the Thoduguli Shankar Bhat, and requested for grant of the said land. The Tribunal granted occupancy rights by its order dated 25-10-1976, which came to be set aside by this Court in a writ petition preferred remanding the matter back to the Tribunal for fresh consideration. After remand, again the occupancy rights were granted on 26-3-1987, which was again challenged before this Court and the said order also came to be set aside and the matter was remanded back to the Tribunal. Again after remand, the Land Reforms Tribunal granted occupancy rights by an order dated 11-12-2009 on the basis of the report of the spot inspection. It is that order which was been challenged before this Court. This time this Court set aside the said order and held that the aforesaid land is not a tenanted land and accordingly, Form 7 came to be dismissed. It is against the

said order, the appellant has preferred this appeal.

2. The learned Counsel for the appellant assailing the impugned order contends the appellant is cultivating this land subsequent to 1-3-1974 and they are in possession of the property and they are giving rent to the landlords. This is confirmed at the time of spot inspection. They have raised trees and crops. Therefore, the order of the Land Reforms Tribunal granting occupancy rights was legal and valid and the learned Single Judge committed a serious error in interfering with the said order. Therefore, he submits a case for interference is made out.

3. Per contra, the learned Counsel for the respondents supported the impugned order.

4. The material on record discloses there was a lease deed executed between the Thoduguli Shankar Bhat, and his original tenant Babi D'Souza on 15-11-1958, in respect of 4 Sy. Nos. with sub-divisions, in all totaling about 12 acres. Occupancy rights have been granted in respect of the said land. The said orders of the Land Reforms Tribunal is not challenged by the owner. Admittedly in the aforesaid lease deed, the land which is the subject-matter of the proceedings does not find a place. Similarly, though he claims to be in possession of the property from the year 1958 in none of the years prior to 1-3-1974 in the RTCs the name of the tenant is mentioned. Under those circumstances, it is difficult to believe that this land was a tenanted land as on 1-3-1974 and it vested with the Government. Here the conduct of the parties also assumes importance. The landlord had executed a lease deed in favour of the tenant. When the tenant filed an application he did not contest the matter. He contested only in respect of this land which was not the tenanted land. Therefore, the burden was heavy on the tenant to show why this land was not included in the lease deed and even otherwise, he was tenant as on 1-3-1974 cultivating the land at least three years prior to the said date. A spot inspection conducted in the year 2009 cannot be the basis for grant of occupancy rights as that spot inspection does not show what was the position of the land as on 1-3-1974. Therefore, the Tribunal committed serious error in basing his orders on the spot inspection conducted in the year 2009 when there was no material on record to show that as on 1-3-1974 it was a tenanted land and the tenant was cultivating the said land. In that view of the matter, the learned Single Judge was justified in setting aside the order of the Land Reforms Tribunal and holding that the land in question is not a tenanted land. It did not vest with the Government and the application filed in Form 7 is wholly misconceived. The said finding is based on undisputed facts and therefore, we do not see any error committed by the learned Single Judge in passing the impugned order. There are no merit in this appeal.

Accordingly, the appeal is dismissed.