
(2011) 11 KAR CK 0367
In the Karnataka High Court
Case No : Writ Petition No. 13787 of 2008 (LR)

Mrs. M Monakka

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Citation : (2011) 11 KAR CK 0367

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : Sukumar Jain, for the Appellant; Shashidhar S. Karmadi, HCGP for R1 and R2, Sri. S.V. Shastri, for R5, R6 and R8 R-4 and R-7 SD, for the Respondent

Final Decision : Allowed

Judgement

Ajit J. Gunjal

1. The petitioner's father makes an application in Form No. 7 for grant of occupancy right on 17.8.1974. The Land Tribunal granted occupancy rights in respect of one item of land measuring 50 cents in Sy. No. 36/2 rejecting in respect of The remaining extent of land. The original tenant by name, Annu Gowda, father of petitioner died on 21.5.1982. The petitioner questions the said order by way of a writ petition before this Court in W.P. No. 4055/1993. The said writ petition was allowed and the matter was remitted to the Land Tribunal for fresh disposal After remand, the Land Tribunal has once again granted occupancy rights only in respect of Sy. No. 36/2- measuring 50 cents and in so far as the remaining claim is concerned, it is rejected. Hence, this writ petition.

2. I have heard the learned Counsel appearing for petitioner as well as the State.

3. The learned Counsel appearing for petitioner submits that an opportunity was not given to the petitioner to put forth her case as has been evidenced by the observations made during the course of the order. He further submits that the levy receipts would disclose that petitioner is cultivating the remaining survey

numbers also.

4. The learned Government Pleader supports the impugned order.

5. Apparently, an observation is made by the Tribunal during the course of the order that after remand, the petitioner has not participated in the proceedings. But however, what is significant to note is that the petitioner had executed a power of attorney in favour of one Lakshmi Hengasu, who has participated in the proceedings, The Tribunal has rejected the claim on the ground that it is Lakshmi Hengasu, the power of attorney, who is in possession. Hence, the petitioner is not entitled to occupancy rights in respect of the remaining area.

6. I am of the view that the Tribunal ought to have taken Into consideration as to the reason why the petitioner did not participate in the proceedings and as to why the power of attorney was executed. Indeed, I am of the view that if necessary, the Tribunal ought to have in the circumstances, summon the petitioner and verify whether she was cultivating the land. Having said so, I am of the view that the impugned order is in violation of principles of natural justice. Hence, the following order:

Petition is allowed in part, The impugned order passed by the Land Tribunal is set aside and the matter stands remitted to She Land tribunal for fresh disposal excluding the survey No. 36/2 measuring 50 cents. The occupancy rights in respect of the said area of 36/2 measuring 50 cents is confirmed. The remand is with reference to the remaining 5 items of land. Rule is issued and made absolute.

Sri Shashidhar S. Karamadi, learned HCGP is permitted to file memo of appearance within four weeks from today.