

(2016) 02 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 112519/2014 (LR)

Narayan Nagappa Naik and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Section 151

Constitution of India, 1950 — Article 226, Article 227

Karnataka Land Reforms Act, 1961 — Section 48A(1), Section 48A(3), Section 48-A(3)

Citation : (2016) 02 KAR CK 0048

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : S.V. Yaji, Advocate for Narayan V. Yaji, Advocate, for the Appellant;
K. Vidyavati, AGA, for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—1. The petitioners filed the above writ petition for writ of certiorari to quash the order passed by the 2nd respondent/Land Tribunal dated 23.01.2013 bearing No. LRM-SR-18/903 vide Annexure - F in the writ petition and direct the 2nd respondent to allow the application filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure dated 22.02.2003 vide Annexure -C.

2. It is the case of the petitioners that the late Krishnappa Nagappa Naik/ husband of the 1st petitioner and father of petitioner Nos. 2 to 4 filed Form No. 7 claiming occupancy rights in respect of Sy. No. 83 Susagaddi Village, Bhatkal Taluk to an extent of 17 guntas 4 anas before the Land Tribunal. After death of Narayana Nagappa Naik, the petitioner came on record as legal heirs. During the lifetime of the said Krishnappa Nagappa Naik, he had filed an application in Form No. 7 on 26.08.1978 claiming occupancy rights in respect of the said land. The Land Tribunal, Bhatkal by an order dated 21.09.1981 rejected the claim of the tenant.

3. Aggrieved by the said order, the said original tenant Krishnappa Nagappa Naik filed Writ Petition No. 20501/1993 before this Court. This Court after hearing both the parties by an order dated 25.07.2002 allowed the Writ Petition and set aside the order of the Land Tribunal and remanded the matter for fresh consideration in accordance with law, after giving an opportunity to all the parties to the lis.

4. In the meanwhile, the owner of the land has filed O.S. No. 38/1957 seeking possession of the land in question. However, the suit came to be dismissed. Thereafter, during the pendency of the proceedings before the Land Tribunal, the original tenant Narayana Nagappa Naik filed an application dated 22.02.2003 under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure before the Tribunal for amendment of Form No. 7 filed on 26.08.1978 in area column instead of 5 guntas, it should be amended as 16 guntas. The said application was resisted by the landlord.

5. The Land Tribunal after hearing both the parties by its impugned order dated 23.01.2013 rejected the application holding that the amendment application claiming large extent in the original application is not permissible. Against the said order, the present writ petition is filed.

6. I have heard the learned counsel for the parties to the lis.

7. Shri S.V. Yaji, learned counsel appearing on behalf of Shri Narayan V. Yaji has contended that the impugned order passed by the Land Tribunal rejecting the application for amendment is contrary to law and the Tribunal failed to notice that he is not seeking the amendment of Form No. 7. He wants to change the extent by way of amendment by giving reasons and not sought for change of any survey number. Therefore, the Tribunal ought to have allowed the amendment application. Therefore, he sought to quash the impugned order by allowing the writ petition.

8. Per contra, Smt. KVidyavati, learned AGA for respondent Nos. 1 and 2 contended that when the cut off date was fixed to file the original application Form No. 7 as 30.06.1979, the present application filed on 22.02.2003 for amendment of larger extent than the original application cannot be permitted. Even new application for inclusion of the lands cannot be allowed to amend original application, in view of the dictum of this Court in the case of Chennappa Gowda and others. Therefore, she sought for dismissal of the writ petition.

9. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record.

10. It is an admitted that that the petitioner filed Form No. 7 as long back as on 26.08.1978 claiming occupancy rights under the 3rd respondent in respect of Sy. No. 83 to an extent of 5 guntas out of 17.4 of Susgadi Village, Bhatkal Taluk and it is also not in dispute that the Tribunal considering the entire material on record by an order dated 21.01.1981 rejected his application holding that the tenant

failed to prove his tenancy as on 01.03.1974. The said order was subject matter before this Court in Writ Petition No. 20501/1993 and this Court, after hearing both the parties by an order dated 23.07.2002 allowed the writ petition and remanded the matter to the Land Tribunal for fresh consideration only on the ground that an opportunity was not given to the parties before passing the impugned order.

11. Though the petitioner's father filed an application, as long back as on 26.08.1978 and even after rejection his claim for occupancy rights by the Land Tribunal on 21.01.1981, he has not filed an application for amendment for larger extent of the land before the Tribunal. After the order passed by this Court on 23.07.2002 to remand the matter for consideration afresh. He filed the present application on 22.02.2003 to amend the larger area in column No. 5 as 16 guntas instead of 5 guntas in Form No. 7 filed on 26.08.1978. The Tribunal considering the application and objections of the parties has rejected the application for amendment by the impugned order holding that the petitioner tenant cannot be permitted to claim larger extent than the land claimed in the original Form No. 7. Therefore, the contention raised by the learned counsel for the petitioners cannot be accepted.

12. Admittedly, the Form No. 7 filed in the present case on 26.08.1978 claiming an extent of 5 guntas of land. The cut off date to file original Form No. 7 was fixed by legislature on 30.06.1979 and the Tribunal rejected the claim of tenancy on 21.09.1981 and this Court allowed the writ petition and remanded the matter to the Land Tribunal for fresh consideration on 23.07.2002. The present application filed for amendment on 22.02.2003 to include the larger extent after a lapse of 25 years, to amend the Form No. 7 filed in the year 1978 in the area column as 16 guntas instead of 5 guntas. It is not his case throughout till 22.02.2003 that he was cultivating 16 guntas and not 5 guntas and no material documents have been produced. The present application filed is an after thought. The same cannot be encouraged. Section 48A(3) of the Karnataka Land Reforms Act deals with the form of the application, the form notices, the manner of publishing or serving the notices and all other matters connected therewith shall be such as may be prescribed. The Tribunal may for a valid reason, permit the tenant to amend the application. The legislature was conscious and the provisions of Section 48-A(3) of the Act does not state that the tenant can file application at any time according to his whims and fancies even after beyond the cut off date fixed by the legislature to file Form No. 7.

13. Any application for amendment either by way of correction of survey number or extent or even inclusion of new survey number must have to be filed within 30.06.1979. Admittedly in the present case the application for amendment of extent filed on 22.02.2003 beyond the time limit prescribed by the legislature is not maintainable. Therefore, the Land Tribunal has no jurisdiction to consider the application for amendment.

14. This Court while considering the very issue of amendment in the case of R.

Krishnaswamy Rao v. Lakshmaiah Setty and others reported in , 1989 (3) Kar.LJ. 440, at para 6 held that application seeking amendment of area to include fresh area, though in the same survey number amounts to fresh time not entertainable as under:

"6. Learned Counsel for the first respondent, however, maintained that the first application read with the subsequent application made before the Tribunal would show that what the first respondent was seeking was only an amendment to the earlier application. We are of the view that as the first respondent had not claimed that he was a tenant of any item of lands under the appellant he was at liberty to make afresh application only before the expiry of 30-6-1979. Not having done so, he is now trying to contend that the fresh application was in the nature of an amendment to the first application. It cannot be regarded as an application for amendment of the original Form No. 7. In the result, we answer the question set out first as follows: No person can make an application in Form No. 7 or an application in the nature of an amendment after the expiry of the period fixed under Section 48A(1) of the Act seeking occupancy right in respect of new item of land not included in the application filed within time.

Therefore, the ratio of the said decision is that no fresh claim can be made by way of an amendment after the expiry of the last date fixed under the statute. Consequently, the question that will arise for consideration is whether the amendment sought for by the first respondent amounts to a fresh claim."

15. This Court while considering the provisions of Section 48-A(3) of the Karnataka Land Reforms Act in the case of Chennappa Gowda and others v. State of Karnataka and others reported in , 2002 (6) Kar.LJ. 178 held that amendment to include new item of land not included in the original application held not permissible after expiry of period prescribed for making application as under:

"10. Admittedly, in the present case the time to file application under Section 48-A(3) was originally 6 months from 1-3-1974 which came to be later amended and extended till 30th June, 1979. As such any amendment application either by way of correction of survey number or extent or even inclusion of new survey number must have to be filed within 30-06-1979. Admittedly, the present application filed by the petitioner as the records disclose and is undisputed is on 24-7-1980. As such the amendment application being filed beyond the time-limit prescribed was itself not maintainable one. No doubt on the earlier occasion when the petitioner approached this Court in W.P. No. 11237 of 1982, DD: 6-1-1984 the law regarding this aspect was not laid down. But as on this date considering this petition as the law is clear now, it has to be held that the amendment application filed by the petitioner on 24-7-1980 was beyond the time-limit prescribed and as such the Tribunal itself would not have got jurisdiction to consider the amended claim of the petitioner. Even though the Tribunal has not rejected the claim of the petitioner on that count since, in my view as the jurisdiction of the Tribunal depends on the applications filed within the time-limit prescribed, no purpose would be served by just remanding the

case to the Tribunal to get same declaration of non-maintainability of the amendment application. In the light of the Division Bench pronouncement in the case of KA. Subba Rao, supra, in my view, the petition is devoid of merits and has to be rejected only on the ground of amendment application being filed beyond the prescribed time-limit and as such the Tribunal having no jurisdiction to decide the claim of the petitioner."

16. In view of the aforesaid admitted facts of the present case and in view of the dictums of this Court stated supra, the petitioners have not made out any ground to interfere with the impugned order passed by the Land Tribunal under extraordinary writ jurisdiction, exercising the powers under Articles 226 and 227 of the Constitution of India. Accordingly, the writ petition is dismissed.