

(2008) 06 KAR CK 0088
In the Karnataka High Court
Case No : Writ Petition No. 18088 of 2003

Neelakanth Punnappa Halabhavi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-06-2008

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 48 A

Citation : (2008) 6 KarLJ 111 : (2008) 3 KCCR 222 SN

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

Bench : Single Bench

Advocate : T.N. Raghupathy, for the Appellant; Nadiga Shivanandappa, HCGP for R1 and 2 and B.S. Kamate, for R3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner, questioning the impugned order date 1st January 1993 bearing No. KLR. SR. Girigaon: 3 on the file of the Land Tribunal, Chikodi vide Annexure A in respect of land bearing No. 41/4 measuring 02 acres 02 guntas situate at Girigaon village, Chikodi Taluk, has presented the instant writ petition.

2. One Smt. Laxmi Bai Girigouda Patil has filed Form No. 7 for registration of occupancy rights in respect of Sy. No. 41/4 measuring 02 acres 02 guntas situate at Girigaon village, Chikodi Taluk. The Land Tribunal, by its order dated 22nd January 1982, has rejected to grant the occupancy rights in favour of the applicant, Smt. Laxmibai. Being aggrieved by the said order, she assailed the said order before this Court by filing Writ Petition No. 20437/1982 and the said writ petition filed by her was allowed and the order passed by Land Tribunal was set aside by this Court by its order dated 18th January 1984 in respect of the land in question with a direction to the Land tribunal to dispose of the application filed by Smt. Laxmi bai, after holding fresh enquiry in compliance with Rule 17 of the Karnataka Land Reforms Rules. After remand, the Land Tribunal took up the matter for re-consideration and registered the occupancy rights in favour of Smt. Laxmibai by its order dated 1st January 1993. Being aggrieved by the said order,

petitioner herein has presented the instant writ petition contending that, the order passed by the Land Tribunal suffers from illegality and arbitrariness for the reason that, as per Section 48-A of the Karnataka Land Revenue Act, service of individual notice on the owner is mandatory and the said requirement has not been complied with. It is the case of petitioner that, the Land Tribunal has not issued any notice to the petitioner and therefore, the impugned order passed by the Land Tribunal is liable to be set aside in view of non compliance of the principles of natural justice. Further, it is contended in the petition that, the land in question is a temple property and that, petitioner being the wahivatdar of the said temple property and is also cultivating the said land personally, the land Tribunal ought to have afforded an opportunity of being heard before passing the impugned. On the other than, the Land Tribunal, without notice to the petitioner, has proceeded to register the occupancy rights in favour of deceased Laxmi bai, represented by respondents 3 and 4. Therefore, it is petitioner's case that, without any justification and without any relevant material, the Land Tribunal has registered the occupancy rights in favour of deceased Smt. Laxmibai. Hence, it is liable to be set aside.

3. Per contra, learned Counsel appearing for respondents 3 and 4, inter alia, contended and substantiated that, the impugned order passed by Land Tribunal is just and proper and that, no error or illegality as such has been committed in passing the impugned order. Further, he submitted that, the impugned order passed by Land Tribunal is as early as in the year 1993 and the instant writ petition is presented on 8th April 2003, after lapse of a decade. Therefore, the writ petition filed by petitioner is liable to be dismissed on merits as well as on delay and latches.

4. I have heard learned Counsel appearing for petitioner and learned Counsel appearing for respondents.

5. I have perused the original records made available by learned Government Pleader on 2nd June 2008 and today. After careful perusal of the said original records, including the impugned order passed by the Land Tribunal, Chikodi, I do not find any error or illegality as such committed by the Land Tribunal in registering the occupancy rights in favour of late Smt. Lakshmi Bai Girigouda Patil, represented by respondents 3 and 4 herein nor petitioner has made out any good grounds as such to entertain the instant writ petition after lapse of nearly a decade. It is significant to note after critical and microscopic evaluation of the original records available on the file of the Land Tribunal, Chikodi and the order sheet maintained by the Land Tribunal that, the Land Tribunal both before and after remand, has duly complied with the procedure as envisaged u/s 48-A in as much as, individual notice has been issued to the petitioner on 10th December 1981 and the same has been duly acknowledged by the petitioner also. The copy of the said notice has been addressed mentioning the name of the petitioner, C/o. Halabhavi Medical Shop, Chikodi and that, he is not the resident of Girigaon village. Copy of the notice is very much available in the original

records at green ink page. 103. Further, it emerges from the order sheet maintained by the Land Tribunal, Chikodi that, petitioner has appeared and participated in the proceedings and put his signature in the order sheet maintained by the Land Tribunal, on 21st December 1981 and also on 22nd January 1982 at ink page No. 6. Further, after remand, it can be seen that, petitioner was present in the proceedings before the Land Tribunal and signed the order sheet on 28th September 1991, which is found at ink page 8. The said signatures are also cross verified with the vaklalath filed on behalf of petitioner which is duly signed by the petitioner in the present writ petition and the same tally with each other. Therefore, the said specific ground urged by petitioner that, there is violation of the mandatory provision of the Karnataka Land Reforms Act and that no individual notice has been issued to the petitioner and therefore, the impugned order passed by Land Tribunal, has no legs to stand and the same has no substance. Knowing fully well, petitioner has participated in the proceedings and has intentionally and deliberately suppressed the relevant clinching material available on file. The Land Tribunal, after critical evaluation of the oral and documentary evidence and other relevant material available on file, has specifically recorded the finding that, in respect of Sy. No. 41/4 measuring 02 acres 02 guntas situate at Girigaon village for the agricultural years 1971-72 to 1973-74, the names of Smt. Laxmibai Girigouda Patil and LR Sri. Neelakanta Punnappa Halabhavi has been shown along with Sri. Basaveshwara Deva wahivatdar in kabjedar's column and in cultivator's column, the name of Smt. Laxmibai Girigouda Patil has been recorded. Further, the Land Tribunal, has specifically recorded in the operative portion of its order that, petitioner, in spite of giving sufficient opportunity has failed to substantiate his defence. Therefore, having no other option, the Land Tribunal has proceeded to pass the impugned order on the basis of the relevant clinching material available on its file and registered the occupancy rights in favour of deceased tenant represented by respondents 3 and 4. Therefore, I am of the view that, there is no error or illegality as such committed by Land Tribunal in registering the occupancy rights in favour of deceased tenant represented by respondents 3 and 4. Hence, the impugned order passed by Land Tribunal is just and proper and that, petitioner has not made out any good grounds as such to entertain the instant writ petition after lapse of more than a decade. Hence, the writ petition filed by petitioner is liable to be dismissed as devoid of merits.

6. Yet another reason as to why the instant writ petition is liable to be dismissed is, on the ground of delay and laches. It is pertinent to note that, there is an inordinate delay of more than ten years in presenting the instant writ petition. Moreover, the said delay has also not been explained properly except taking the specific ground that, there is no individual notice issued to petitioner and that, they came to know only when the fourth respondent has filed false application in Form No. 7-A in respect of land in question. Further, petitioner has stated that, on coming to know of the filing of Form No. 7-A by fourth respondent, immediately after thorough verification, he has come up before this Court by

presenting the instant writ petition and that, the delay caused is not intentional. But, after going through the original records threadbare, it is seen that, petitioner has been issued with the mandatory notice and he has also acknowledged the same and actively participated in the proceedings before the Land Tribunal. The petitioner has not properly explained the inordinate delay of more than ten years in approaching this Court. The reasons assigned by petitioner for explaining the delay caused cannot be given much credibility for the reasons stated supra. Being well aware of the proceedings before the Land Tribunal, petitioner has strenuously participated in the proceedings both before remand and after remand, and has been issued with notices on both occasions and petitioner has put his signature after remand also, in the order sheet maintained by the Land Tribunal dated 28th September 1991 at ink page 8.

7. Therefore, in view of not explaining the inordinate delay satisfactorily without giving valid and genuine reasons, in my view, the writ petition filed by petitioner is liable to be dismissed on the ground of delay and laches also.

8. Having regard to the facts and circumstances of the case, the writ petition filed by petitioner is liable to be dismissed both on merits as well as on delay and laches. Accordingly, it is dismissed.