
(1980) 06 KAR CK 0023
In the Karnataka High Court
Case No : WP 2504/80

P. Muniswamy

APPELLANT

Vs

Land Tribunal Anekal and Others

RESPONDENT

Date of Decision : 10-06-1980

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a (4)

Citation : (1980) 2 KarLJ 239

Hon'ble Judges : N. R. Kudoor, J

Judgement

1. In the first instance, notice on rule was issued. The 3rd respondent, who is the only contesting respondent, entered appearance through his Advocate. Records of the proceedings before the Tribunal have also been secured. When the matter is taken up for hearing under "B" group, the counsel for the petitioner is not present. The counsel for the 3rd respondent states that the matter may be taken up for final hearing since the point involved in this writ petition is a short and simple one. Accepting the submission, the writ petition is taken up for final hearing.

2. This writ petition one under Arts. 226 and 227 of the Constitution, is directed against the order dated 7-11-1979 at Annexure-A passed by the 1st respondent Land Tribunal, Anekal, rejecting the application made by the petitioner for being registered as an occupant in respect of two items of lands of which, the 3rd respondent is the owner of S. No. 322 situate in Marsoor village of Anekal Taluk in Bangalore Dist.

3. The material facts leading to this writ petition may be stated as under:

The petitioner made an application in form-7 under S. 48A(1) of the Karnataka Land Reforms Act 1961 (for short the "Act") claiming occupancy in respect of two items of land consisting of 12 guntas in S. No. 374 and 3 acres 23 guntas in S. No. 322 both situate in Marsoor village of Anekal Taluk claiming tenancy for the past 40 years. The 3rd respondent is the owner of S. No. 322 whereas one Suryanarayanaiah and four others were the owners of the other Sy. No. 374, the

total extent of which was 2 acres 22 guntas. However, the petitioner has claimed only 12 guntas of land out of S. No. 374 and the whole of S. No. 322 measuring 3 acres 23 guntas directing his application against Adivappa father of the 3rd respondent and one Chandrasekhariah. No notices of the claim appear to have been sent either to Chandrasekhariah or any of the other persons shown as owners of S. No. 374 in the record of rights. The 3rd respondent alone entered appearance and resisted the claim. The Tribunal made the impugned order rejecting the application made by the petitioner on the ground that the petitioner did not appear before the tribunal in spite of the notice served upon him and also on the basis of a petition, said to have been sent by the petitioner dated 4-10-1979 to the tribunal expressing his desire, not to press his claim made in Form-7. The petitioner has challenged the validity of the said order in this writ petition.

4. It is obvious that the petitioner approached the tribunal with his application in Form-7 for being registered as an occupant in respect of the suit lands on the ground that they were agricultural lands and that he was a tenant in respect of those lands within the meaning of the Act. When a claim is made before a tribunal for being registered as an occupant in respect of certain lands by making an application in Form-7 and that claim is resisted or a rival claim is set up, it is the duty of the tribunal to consider and record its findings in the first instance on two basic questions, viz., (1) whether the land in respect of which the claim is made is or is not an agricultural land and (2) whether the person claiming to be in possession of the land is or is not a tenant of the said land from prior to 1st March 1974. It is the exclusive jurisdiction conferred upon the Land Tribunals constituted under the Act to decide these two basic questions. If these two basic questions are decided by the Tribunal in the affirmative, then only the tribunal must proceed to investigate whether the person who had approached the tribunal for being registered as an occupant is or is not entitled to be registered as an occupant under S. 45 of the Act. To put the matter in another way, the tribunal is conferred with the jurisdiction to decide the claim of a claimant for being registered as an occupant in respect of the land over which he claims occupancy, only when it found that the land claimed by him is an agricultural land within the meaning of the Act and that the land was a tenanted land either on 1-3-1974 or immediately prior to it. If it is found that either the land in question is not an agricultural land within the meaning of the Act or that it was not a tenanted land either on 1.3.1974 or immediately prior to it, then the dispute between the parties in respect of such a land would totally fall outside the purview of the Act and in such a case, the tribunal would cease to have any jurisdiction to deal with the matter. Once the matter is taken before tribunal through an application made by a claimant in Form-7 and that claim is contested by the owner, in my judgment, the tribunal is duty bound to decide the two basic questions referred above, whether the claimant appears before the tribunal and prosecutes his application or remains absent or withdraws his claim, if necessary by issuing a notice to the State, on the evidence, if any, adduced by the parties

or borne out from the records relating to the land in question. If once the tribunal holds in the affirmative on both the basic questions stated above, then it is open to the tribunal to further inquire into the matter and reject the claim of the claimant on the ground that he did not appear before it in spite of the notice and substantiate his case or that he did not wish to prosecute his application. If on the other hand, the tribunal straightaway dismisses the application for default or on the ground that the claim was withdrawn, without recording its findings on the two basic questions referred above, the order of dismissal of the application would be a total nullity, for failure in the proper exercise of the jurisdiction vested in the tribunal under the provisions of, the Act.

5. The view I take in this regard gains support from the provisions of the Act.

6. It is the duty of the tribunal to decide whether a person is a tenant or not and the land in respect of which an application under S. 48A is made, or in respect of which any question, of tenancy is raised or involved, is or is not an agricultural land as provided under clauses (b) and (bb) of subsection (B) of S. 112 of the Act. Clause (i) of sub-section (1) of S. 133 of the Act provides that no civil or criminal court or officer or authority shall, in any suit, case or proceedings concerning a land decide the question whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land from prior to 1st March 1974. Clause (ii) provides that such Court or officer or authority shall stay such suit or proceedings in so far as such question is concerned and refer the same to the tribunal for decision. Clause (iv) provides that the tribunal shall decide the question referred to it under clause (ii) and communicate its decision, to such Court, officer or authority and that such decision of the tribunal shall be final. The combined effect of clauses (b) and (bb) of subsection (B) of S 112 and clauses (i), (ii) and (iv) of sub-section (1) of S. 133 will be that the tribunal under the Act is invested with exclusive jurisdiction to decide the two questions concerning a, land involved in any suit, case or proceeding whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land from prior to 1st March 1974. S. 44 of the Act deals with vesting of the land in the State Government. It provides that all lands held by or in the possession of tenants immediately prior to the date of commencement of the Amendment Act (Amendment Act came into force on 1-3-1974) other than lands held by them under leases permitted under S. 5 of the Act shall with effect on and from the said date stand transferred to and vest in the State Government. S. 45 of the Act deals with the conditions under which tenants could be registered as occupants of the lands vested in the State Government. S. 48A provides for making application to the tribunal by a person entitled to be registered as an occupant under S. 45 and for an enquiry on such application. S. 48A (2) provides for the publication of a public notice in the village in which the land is situated calling upon the landlord and all other persons having any interest in the land to appear before it on the date specified in the notice and also issue of individual notices to the persons mentioned in the application and also to such others as may appeal

to it to be interested in the land. S. 45(3) lays down that the land held by a person before the date of vesting and in respect of which he is not entitled to be registered as an occupant under S. 45 shall be disposed of in the manner provided in S. 77 after evicting such person. Sub-section (8) of S. 48A provides that where no application is made within the time allowed under sub-section (1) of S. 48A, the right of any person to be registered as an occupant shall have no effect. S. 77 deals with disposal of surplus land vesting in the State Government under the provisions of the Act and one of the provisions referred to therein is, sub-section (3) of S. 45.

6.4. A person who had held land before the date of vesting and in respect of which he is not entitled to be registered as an occupant under S. 45 as laid down in sub-section (3) of the said section would include a person entitled to make an application under sub-sec (1) of S. 48A for being registered as an occupant of the land held by him prior to 1-3-1974, but failed to make an application within the time allowed as laid down in sub-section (8) of S. 48A and also a person having made an application under sub-sec. (1) of S. 48A fails to prosecute or withdraws his claim in respect of the land vested in the State Government under Sec. 44 of the Act. Thus, it is the duty of the tribunal while dealing with an application made by a claimant in Form-7 under S. 48A(1) of the Act to decide whether the land in question is or is not an "agricultural land" and the person claiming to be in possession of such land is or is not a "tenant" within the meaning of the Act on the relevant date so as to determine whether the land was vested with the State Government under S. 44 of Act before deciding the question whether the claimant is entitled to be registered as an occupant or not under S. 45 of the Act. Certainly, in view of the various provisions referred above, in particular S. 77 of the Act, the State Government is really interested in the determination of the two basic questions referred above in respect of a land claimed by a claimant for being registered as an occupant even if the claimant is held not entitled to be registered as an occupant. In that view of the matter, I am inclined to hold that a claimant once he makes an application under S. 48A(1) in Form-7 claiming occupancy in respect of any land and later on, either fails to prosecute or withdraws his, application, it is the duty of the tribunal to issue notice to the State Government as provided under subsection (2) of S. 48A, since the State Government is an interested party in the land in securing a decision at the hands of the tribunal in respect of the said land whether the said land is an agricultural land within the meaning of the Act and whether it was held by tenant immediately prior to the date of commencement of the Amendment Act 1974. If it is held by the tribunal that the land in question is an agricultural land and that it was a tenanted land immediately prior to the date of the commencement of the Amendment Act, it follows that the land was vested in State Government under S. 44 and the Government would be entitled to dispose of the same under S. 77 even if the claimant was found to be not entitled to be registered as an occupant on the ground that he fails to prosecute, or withdraws his claim. If, on the other hand the decision is the other way, then the provisions of the Act would

not apply and the matter in question falls outside the jurisdiction of the tribunal to decide the further question whether the claimant is entitled to be registered as an occupant or not under S. 45 of the Act. From what has been stated above, it follows that the dismissal of an application made in Form-7 under S. 48A(1) of the Act without determining the two basic questions referred in the body of this order, even if the claimant fails to prosecute his claim application or withdraws his claim amounts to failure to exercise the jurisdiction vested in the tribunal under the Act properly, rendering the decision a total nullity.

7. in the instant case, the tribunal rejected the application made by the petitioner under section 48A(1) of the Act as per its impugned order Annexure-A without recording its findings on the two basic questions referred above. In that view of the matter, it must be held that the order impugned is a total nullity.

8. In view of the fact that the above finding is sufficient to dispose of this writ petition, I deem it unnecessary to consider the other questions raised by the petitioner in this writ petition.

9. Incidentally I may refer to the contention urged by Shri A.K. Laxmeshwar learned Advocate appearing for the 3rd respondent that S. No. 322 of which the 3rd respondent is the owner is not an agricultural land inasmuch it contains only casurina trees. The 3rd respondent is at liberty to urge this contention before the land Tribunal when the matter goes before it for its reconsideration.

10. In the result for the reasons stated above, the rule is issued and made absolute. The order impugned Annexure-A is quashed. The matter is remitted to the Tribunal for fresh disposal in accordance with law in the light of the observations contained in the body of this order and also after giving notice to the owners of S. No. 374 and giving proper opportunity to all the parties to adduce evidence and also to raise all the pleas that are open to them. There is no order as to costs.