

(1990) 01 KAR CK 0035
In the Karnataka High Court
Case No : W.P. No. 6072/83

Patel Rama Reddy

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-01-1990

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 94(3)

Citation : (1990) 1 KarLJ 133

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-This writ petition is directed against the impugned notice dated 4.10.1982, copy of which is Annexure "A" ordering eviction of the petitioner from the land measuring 5 acres 20 guntas situated in S.No. 225 of Bantahalli village, Malur Taluk, Lakkur Hobli.

2. The case of the petitioner is that the petitioner has been in continuous possession and enjoyment of the land for over forty years. The petitioner has been in unauthorised possession and cultivation of the land. That without due notice and without holding a regular enquiry, it is stated, that the impugned notice has been issued and such an action is not compatible with either the requirements of law or principles of natural justice.

3. The point for consideration is, whether a show-cause notice was served on the petitioner before the impugned notice came to be issued.

4. There is no basis for the belief that such a show-cause notice was served on the petitioner and enquiry held thereof in accordance with law. The learned Government Pleader appearing on behalf of the State contended that the petitioner has not been in possession of the land since the petitioner was divested of possession on 12.10.1982. Be that as it may, mere dispossession of the petitioner will not lend legitimacy to State action unless action so taken is in conformity with the requirement of law of natural justice. The might of the State cannot be resisted by a villager when it is applied on him even contrary to law. Hence, more dispossession cannot support an action taken in violation of natural

justice. In fact, in a short note case reported in *Kempanna Gowda v State of Karnataka*, 1982(2) Karnataka Law Journal-Short Notes Item No. 8, a Division Bench of this Court held as follows:

"It is therefore obvious that a summary enquiry is contemplated, which enquiry is contemplated, which enquiry becomes obligatory, if the person in unauthorised occupation does not comply with the notice and refuses to hand over possession when the officer approaches him to restore possession. The Act does not contemplate eviction of a person alleged to be in unauthorised occupation, if there is resistance, without holding a summary enquiry as contemplated by Section 39."

It could be thus seen that even in the case of eviction of an unauthorised occupant, a summary enquiry is mandatory and a summary enquiry pre-supposes the obligation of the State to serve a show-cause notice on the unauthorised occupant so as to afford a reasonable opportunity of hearing, for whatever it is worth, to him. This mandatory requirement of law cannot be short-circuited. Power is intended to be exercised fairly and reasonably. In the circumstances of the case, there is no material to believe that a show-cause notice or even a notice was served on the petitioner and that an enquiry was held thereafter before the impugned notice was issued to the petitioner.

5. The stay order granted by this Court was confirmed after hearing the respondents on 11.8.1983 and it is difficult to accept the contention of the learned Government Pleader that the petitioner is no longer in possession of the land in question.

6. In the above circumstances, I am of the opinion, that the impugned notice is unjustifiable and is liable to be quashed. Accordingly I allow this writ petition and quash the impugned notice. The rule is made absolute.

Writ Petition dismissed.