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(1982) 10 KAR CK 0011

In the Karnataka High Court

Case No : WP 4274/78

Sangawwa and Others — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 15-10-1982

Acts Referred:
Karnataka Land Reforms (Amendment) Act, 1978 — Section 43(1)

Citation : (1983) 2 KarLJ 39

Hon'ble Judges : M. S. Nesargi, J

Judgement

The petitioners have prayed that the order dt. 11-1-1978 passed by the Land Tribunal, Shorapur, in Cases Nos. LRT/7/ 1/75 76/Wagangera, and LRT/7/4, 5210/ 75-76, be quashed.

The records maintained by the Land Tribunal are before the Court having been called for. Sri Indrajeet Shah, learned Advocate appointed by the Government to represent the Land Tribunals in such matters, has prayed that he may be permitted to file memo of appearance. Permission is granted.

The lands involved in this case are Sy. Nos. 206 and 209. of Wagangera Village, Shorapur Tq. The petitioners claimed occupancy rights over both the lands by filing form No. 7 on different dates which are 18-8-1975 and 18-11-1975. Respondent-4 filed form No. 7 on 18-11-1975 claiming occupancy right over Sy.No. 206 only. The Tribunal has rejected the claims of the petitioners and respondent-4 by the impugned order, which is at Annexure-B, on the basis of the Civil litigation narrated to some extent in the course of the impugned order, and on the ground that the claims have been filed after 31-12-1974 without any prayer for condonation of delay as required by S. 48A (1) of the Karnataka Land Reforms Act, 1961, (to be hereinafter referred to as ''the Act''). So far as the cause of the litigation in OS No. 147 of 1970 narrated by the Tribunal in the impugned order is concerned, the counsel for the petitioner, and respondent 4 stated that ultimately this Court has, in RSA No. 341 of 1974. by its judgment dt. 25-7-1980, remained the matter to the trial Court with a direction to decide the

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suit after the issue in regard to tenancy is decided by the Land Tribunal, apparently in view of S. 133 of the Act. Therefore, the only point that arises for consideration in this writ petition is whether the Tribunal was right in dismissing the claims on the ground that they had been filed after 31 12 1974, without giving any application for condonation of delay as required under S. 48A (1) of the Act.

Karnataka Land Reforms (Amendment) Act, 1978 (Karnataka Act No. 1 of 1979) (to be hereinafter referred to as the Amendment Act), was passed and it received the assent of the President on 18-12-1978. S. 43(1) of the Amendment Act reads as follows:

"43. Validation, Savings etc-(1) All applications filed under S. 48A of the principal Act after 31st Deer 1974 and on or before the 30th day of June 1977, shall, notwithstanding anything contained in any judgment, decree or order of any Tribunal or Court, be deemed tohave been filed according to law and shall have effect for all purposes as if they had been filed under the said S. 48A as amended by this Act and accordingly, (a) no order made by a Tribunal or any Court rejecting such application as invalid, only on the ground that sufficient cause has not been shown for the delay in filing the same, shall be deemed to be and always to have been of no legal effect whatsoever, and (b) all such applications shall be deemed to be pending in such Tribunal or Court and shall be disposed of in accordance with the principal Act as amended by this Act".

Cl. (a) of S. 43 (1) of the Amendment Act makes it abundantly clear that rejection of a claim by a Tribunal on the ground that sufficient cause had not been shown for the delay in filing the same, has no legal effect. Therefore, the finding of the Tribunal that the petitioners and respondent 4 had not filed any application for condonation of delay as required under S. 48A(1) of the Act, has no legal effect-Plain reading of S. 43 (i) of the Amendment Act makes it crystal clear that all applications filed under S. 48A of the Act after 31-12 1974 and on or before 30-6-1977, shall be deemed to have been filed according to law, notwithstanding anything contained in any order of the Tribunal, and they shall have the effect, for all purposes, as if they had been filed under S. 48A, as amended by the Amendment Act. This shows that the claims filed before 30-6-1977 have been saved retrospectively despite the fact being that orders have been passed in regard to those claims by any Tribunal. That means, even an order of rejection is included in this provision.

Now the question is as to how to give effect to this provision. The solution can be found in the decision of this Court in Basappa v. Land Tribunal, (1979) 2 Kar. LJ 370. The Division Bench, which rendered the decision, was dealing with the question involving two rival applicants. One applicant had filed the claim earlier and the Tribunal had disposed it of in his favour, and the other applicant had filed his claim later, but within the period extended off and on, by the Government, and the Tribunal had rejected his claim by stating that occupancy right over the very land had been already granted in the earlier case. This Court held that in

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view of the extension of time for filing claims, the Tribunal was bound to consider the later application by setting aside its earlier order and that it had to consider both the rival applications. The very principle applies to this provision also. Therefore, the Tribunal bad to, on its own, set aside the impugned order in view of S. 43 (1) (a) of the Amendment Act and consider the claims of the petitioners and respondent-4, holding that their applications were still pending before the Tribunal, as provided in S. 43 (1) (b) of the Amendment Act. In view of this position, the impugned order cannot be sustained,

In the result, this writ petition is allowed, the rule is made absolute and the impugned order is quashed. The Tribunal is directed to consider the claims of the petitioners and respondent-4, by clubbing the same, as if their claims have been pending before it, and after affording reasonable opportunity to ail concerned, and dispose of the same according to law.

No order as to costs.

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