

(1979) 03 KAR CK 0006
In the Karnataka High Court
Case No : WP. 1981/77

Siddappa Appanna and Others

APPELLANT

Vs

Land Tribunal, Gokak and Another

RESPONDENT

Date of Decision : 16-03-1979

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a

Citation : (1979) 2 KarLJ 99

Hon'ble Judges : Kudoor, J

Judgement

1. The correctness and legality of the order dated 7-1-1977 (exhibit-B) passed by the 1st-respondent-Land Tribunal, Gokak, granting occupancy right in respect of 1 acre 2 guntas of land comprised in Block No. 394/2 Benchanamardi Village of Gokak Taluk in Belgaum District is under challenge in this writ petition filed by the petitioners who are the owners of the land in question.

2. It is convenient to state a few relevant facts necessary for the disposal of this writ petition which are as under:

The petitioners are the owners of the land in question. The 2nd respondent Kenchappa filed a claim in form No. 7 on 21-9-1974 claiming occupancy right in respect of the said land under Section 48A(1) of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as the "Act"). The petitioners appeared before the land tribunal on the notices being served on them and contested the claim of the 2nd respondent. The land tribunal, after holding an enquiry rejected the claim of the 2nd respondent as per its order dated 10-9-1975 at Exhibit-A. The 2nd respondent once again filed a similar application in form No. 7 under Section 48A (1) of the Act for the same relief viz., for being registered as an occupant in respect of the same land on 15-6-1976. The petitioners resisted the claim of the 2nd respondent on the ground that a second claim for registration of occupancy right is not maintainable in view of Exhibit-A, the earlier order passed by the land tribunal, rejecting his claim for grant of occupancy right in respect of the same land and also further contended that the tribunal has no jurisdiction to entertain

a second claim and hold a fresh enquiry to decide the question of granting occupancy right or not. The tribunal, rejecting the objections raised by the petitioners, allowed the claim and passed the order Exhibit-B granting occupancy right in favour of the 2nd respondent in respect of the land in question. It is the correctness and validity of this order that is under challenge in this writ petition.

3. Shri W.K. Joshi, learned counsel appearing for the petitioners, contended that if once a claim for registration of occupancy right preferred by a claimant in respect of any land is rejected, a second claim by him for registration of occupancy right in respect of the same land is not maintainable and the, tribunal has no jurisdiction to entertain a second claim and if the tribunal grants occupancy right on the second application, the same will be without jurisdiction and wholly invalid. He therefore, argued that the order impugned is liable to be set aside,. In support of this contention, he placed reliance on a decision of this Court in Siddappa Appanna Biradar Patil v. The Land Tribunal Gokak and others, WP. 2867/77 d/- 2-1-78, W.P. No. 2867 of 1977-decided on 2-1-1978).

4. Shri N.A. Mandgi, learned counsel-appearing for the 2nd, respondent, maintained that if the decision of the tribunal rejecting the claim of a claimant on the first application filed by him is a decision rendered on merits, then a second claim for registration of occupancy right in respect of the same land by the same claimant is not maintainable and the tribunal has no jurisdiction to entertain the second claim in such circumstances. However he contended that the land tribunal in the instant case was competent to entertain the second claim preferred by the 2nd respondent and pass the impugned order Exhibit-B, since the earlier order rejecting the claim of the 2nd respondent at Exhibit-A, was not an order passed by the tribunal on merits. On these grounds, he argued that there is no substance in the contention advanced by the learned counsel for the petitioners.

5. Two questions will arise for consideration in view of the contentions canvassed on either side. They are (1) Whether a second claim for registration of occupancy right is maintainable if the claim for registration of occupancy right in respect of the same land was rejected on an earlier application filed by the same claimant: (2) Whether the order Exhibit-A dated 10-9-1975 rejecting the claim of the 2nd respondent for registration of occupancy right in respect of the land in question is not an order on merits.

6. I shall deal with these two points in the order in which they are formulated.

7. Dealing with the question whether a second claim application is maintainable after the rejection of the first application for grant of registration of occupancy right in respect of the same land, this is what this Court observed in Siddappa's case referred above:

"After the rejection of the first application, even assuming that the same had been perversely rejected, the Land Tribunal had no jurisdiction to entertain the second application and reopen the proceedings. Under the Karnataka Land Reforms Act, the Tribunal has no power of review and therefore, it cannot reopen

the proceedings concluded earlier and grant any relief to respondent No. 3 on a later application."

Admittedly, the order Exhibit-A was passed by the land Tribunal rejecting the claim of the 2nd respondent for being registered as an occupant in respect of the land in question on a claim application filed by the 2nd respondent in form No. 7 under S. 48A(1) of the Act. This order was passed by the tribunal on 10-9-1975. The 2nd claim application on which the impugned order Exhibit B was passed was made on 15-6-1976. The order Ext.-A became final since the same was not challenged by the 2nd respondent in any forum and was in force on the date on which he made his second claim application. It is obvious from the order Ext.-A that that order was made by the land tribunal after holding an enquiry on a claim preferred by the 2nd respondent under the provisions of the Act. Under the Act, even after the Karnataka Act 1/1979 came into force, the tribunal has no power of review of its order made under S. 48A of the Act and therefore, it cannot reopen the proceedings concluded earlier and grant any relief to a claimant on a second application even assuming that the earlier order rejecting the claim was either perverse or erroneous. The impugned order Exhibit-B passed by the land tribunal granting occupancy right in favour of the 2nd respondent on a second application filed by him, in effect, would be review of its earlier order Exhibit-A under which the 2nd respondent's claim for grant of occupancy right in respect of the land in question was rejected. The land tribunal has no power to pass an order, reviewing its own earlier order in the absence of any provision in the Act, empowering it to do so. In that view of the matter, it follows that the impugned order Exhibit-B passed by the land tribunal being one without jurisdiction is wholly invalid.

8. This takes me to the second point whether the order Exhibit-A is not an order on merits.

9. Shri. N.A. Mandgi, learned counsel appearing for the 2nd respondent contended that the order Exhibit-A is not an order on merits as it proceeded on the ground that the 2nd respondent herein, who was the claimant before the tribunal was the owner of the land in question as he had deposited the regrant fee in respect of the said land under the Inams Abolition Act. I am unable to persuade myself to accede to this contention for the, reasons I presently show.

10. In dealing with the question of grant of occupancy right, the tribunal has to decide essentially two main points. Firstly whether the land in respect of which occupancy right is claimed is "land" within the meaning of S. 2(A)(18) of the, Act and secondly whether that land was held by or in the possession of a tenant immediately prior to the date of commencement of the Amendment Act No. 1/1974 other than the land held by him under a lease permitted under S. 5 of the Act. If these two conditions are satisfied, then such a land would vest in the State Government with effect on and from the date of commencement of the Amendment Act No. 1/1974 which was with effect from 1-3-1974.

S. 45 of the Act deals with entitlement of the tenants to be registered as occupants under certain conditions. It states that subject to the provisions of the succeeding sections of Chapter III, every person, who was a permanent tenant, protected tenant or other tenant or a lawful subtenant shall be entitled, to be registered as occupant with effect on and from the date of vesting in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he, has been cultivating personally. Thus, it is imperative for the tribunal to decide on an application filed for registration of occupancy right whether the claimant is a "tenant" within the meaning of the provisions of the Act in respect of the land in question on the relevant date. If the claimant fails to establish that he was a tenant within the meaning of the provisions of the Act on the relevant date in respect of the land over which he claims occupancy rights, his claim has to fail. If we scrutinize the order Ext.-A from this angle, it is seen that the tribunal rejected the claim of the 2nd respondent on the ground that he was not a tenant within the meaning of the provisions of the Act but on the other hand he himself was the owner thereof. Whether this finding of the tribunal is just or perverse is not material to decide whether the order in question is on merits or otherwise. Since the order Ext.-A is founded on the consideration of the relevant factor viz., whether the claimant is a tenant or not, on which the tribunal has to give its finding while deciding the claim of a claimant for registration of occupancy right it cannot be contended that it is not an order on merits. For the reasons aforesaid, I am inclined to hold that the order Ext-A is an order on merits.

11. From what has been stated supra, it follows that the petition must succeed.

12. In the result, the rule is made absolute. The impugned order Ext. B is quashed. In the circumstances of the case, I make no order as to costs.