

(2008) 06 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 4993 of 2006

Smita and Another

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 27-06-2008

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 (2), 48 A

Citation : (2008) ILR (Kar) 4091 : (2009) 9 KarLJ 169 : (2008) 5 KCCR 637 SN

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

Bench : Single Bench

Advocate : K.B. Adhyapak, for the Appellant; Nadiga Shivanandappa, HCGP for R1, R10 and R11, H. Thipperudrappa, for R3A, R4 A-c, R5 A-E, R6(A) and R7 and P. Mahesh, for R8 (A-B) and R9 (A) and (B), for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioners, being aggrieved by the order dated 23rd June 1977 vide proceedings No. TNC/T/SR/3 667 /Athani in respect of land bearing survey No. 203 situate at Krishna Kittur Village, Athani Taluk, on the file of the second respondent - Land Tribunal, Athani vide Annexure-G and the Certificate issued in Form No. 10 by the Special Tahsildar, Athani dated 30th November 2004 vide Annexure-N in favour of respondents 3 to 9, have presented the instant writ petition. Further, petitioners have sought for a direction, directing the second respondent - Land Tribunal, Athani to reject the application filed by respondents 3 to 9 since the said land is not a tenanted land as on 1st March 1974.

2. The grievance of petitioners in the instant writ petition is that, land bearing Sy.No. 203 measuring 09 acres 01 guntas situate at Krishna Kittur Village, Athani Taluk, Belgaum District, originally belonged to one Srimant Chintamanrao @ Madhavarao Patavardhan and he had been cultivating the said land and has been in possession of the same for the agricultural years 1965-66 to 1973-74 as owner. The land owner Sri. Srimant Chintamanrao Patavardhan died on 2nd January 1972 at Wanless Hospital, Miraj. It is stated that, the said Chintamanrao

Patavardhan had a son by name, Gopalrao Patavardhan, who also died on 31st October 2000 at Pune. The first petitioner is the wife of Gopalrao and the second petitioner is the son of said Gopalrao. Petitioners herein have succeeded the property from the original owner - Sri. Chintamanrao Patavardhan as his daughter-in-law and grandson respectively. When things stood thus, third respondent herein - deceased Gurupad, now represented by his legal representative (3a), had filed Form No. 7 for registration of occupancy rights in respect of the land in question as referred above as on 1st September 1976 in his favour. The application filed by third respondent-late Sri. Gurupad tenant in respect of land in question had come up for consideration before the Land Tribunal, Athani dated 23rd June 1977 and the Land Tribunal, in turn, after following the procedure as envisaged under the relevant provisions of the Act and Rules, has registered the occupancy rights in favour of the applicants - respondents 3 and 4 herein, in respect of an extent of 06 acres situate on the southern side of Survey No. 203 of Krishna Kittur village, Athani Taluk, Belgaum District, holding that, they are eligible to be registered as occupants. The Land Tribunal has proceeded to register the occupancy rights in favour of the applicants therein solely on the basis that, the Power of Attorney Holder on behalf of the legal heirs of Sri. Chintamanrao Patavardhan has sent an application on 4th September 1976 stating that, he has no objection to register the applicant as occupant. Accordingly, after conducting enquiry, the Tribunal has registered the occupancy rights by its order dated 23rd June 1977 in favour of applicants therein.

3. The main ground urged by learned Counsel for petitioners in the instant writ petition is that, there is no notice to these petitioners and that, the impugned order has been passed behind the back of petitioners unilaterally. It is petitioners' case that, as soon as it came to their knowledge, immediately they have rushed to this Court and presented the instant writ petition on 31st March 2006 and that, the delay in presenting the instant writ petition is bona fide in nature and not intentional or deliberate. Therefore, having regard to this back ground, petitioners herein felt necessitated to present the instant writ petition.

4. The principal submission canvassed by Earned Counsel for petitioners is that, in the record of rights, the name of tenant has not been shown in column No. 12(2) and it is shown as "khudda" (meaning "self"). Therefore, this aspect of the matter ought to have been considered by the Land Tribunal and rejected the claim of the applicants/claimants/tenants herein - respondents herein. The said principal submission canvassed by Earned Counsel appearing for petitioners cannot be accepted and is liable to be rejected at the threshold itself for the simple reason that, for the agricultural years 1965-66 to 1973-74, in column No. 12(2), the mode of cultivation is shown as "self and in column No. 12(3), it is shown as "1". From the said entries, what emerges is that, they are cultivating the, said land as agriculturist under self cultivation. Therefore, the said entries cannot be accepted nor the same are of any assistance to them in the instant writ petition. The specific submission of learned Counsel for petitioners, as stated

above, cannot also be accepted for the simple reason as referred in the preceding paragraphs that, at no point of time, neither late Sri. Chindamanrao nor his son late Sri. Gopal Rao had cultivated the land in their own capacity and mode of cultivation is shown as "khudda" and "1" meaning self cultivation. Therefore, the Tribunal has rightly not relied upon the entries found in the record of rights at Column Nos. 12(2) and 12(3) and passed the impugned order based on the categorical statement made by a well qualified responsible person before the Tribunal that, they do not have any objection to register the occupancy rights and further stating that, the applicant heirs hold 1/2 (half share) in the suit land and so whatever compensation will be granted in respect of half share of the suit lands in the case should be allowed and paid to the applicants heirs and rest half share be paid to the other landlord. Therefore, the Land Tribunal, after taking note of the letter/representation dated 4th September 1976, sent by the General Power of Attorney Holder, Sri. B.K. Patil, which is found at ink page 85 in the original records, has rightly passed the impugned order. Therefore, the said specific submission made by the learned Counsel appearing for petitioners is liable to be rejected at the threshold itself.

5. I have heard learned Counsel appearing for petitioners and learned Counsel appearing for respondents.

6. After careful evaluation of the original records made available by learned Government Pleader, threadbare, and the order passed by the Land Tribunal, what emerges is that, in fact, due notice has been served by the Land Tribunal on the basis of the entry found in the record of rights and the same has also been duly received and acknowledged on 25th May 1977 by one Sri. B.K. Patil who claims to be the General Power of Attorney holder of the legal heirs of late Sri. Chintamanrao, which is very much available at blue sketch ink page.37. Meanwhile, before the issuance of the notice itself, the said General Power of Attorney holder has submitted a detailed representation dated 4th September 1976 stating that, he appears on behalf of the legal heirs and submits that they have no objection to record the names of the present tenants to the suit lands as occupants u/s 48(2) of the Land Reforms Act. Further, it is stated in the said representation that, necessary orders as regards the compensation and its allotment as requested may be passed. It is also specifically stated that, even though applications are sent to bring the heirs of deceased land lord Sri. Chintamanrao alias Balasaheb Madhavrao Patwardhan on record and to issue notices to them, on 22nd May 1976, it appears from the notices sent by Land Tribunal that, the heirs are not finally brought on record as yet as the said notices were still issued in the name of deceased person only. Accordingly, the said GPA holder has requested the Land Tribunal to pass appropriate orders in the matter. Further, in the said representation, the GPA holder has stated that, necessary orders may be passed regarding compensation and its allotment in proceedings No. TNC.K/SR/650 and TNC/K/SR/3667. When this is the factual aspect of the matter on behalf of the petitioners that, the GPA holder has represented the petitioners and submitted a representation stating that, the heirs

have no objection to register the occupancy rights in favour of tenants in respect of the land in question, the principal ground urged by petitioners has no substance nor the same can be taken into consideration at this belated stage on the ground that, they are not party to the proceedings and no notice as such was issued to them.

7. The petitioners themselves have categorically stated that, after death of Sri. Chintamanrao, one Sri. Gopalrao has succeeded the property as his son and subsequently, he also died on 31st October 2000 at Pune. Therefore, what emerges from the same is that, neither the petitioners nor their predecessors have ever cultivated the land in question and the said aspect has been rightly taken into consideration and appreciated by the Land Tribunal coupled with the admission made by the GPA holder representing the petitioners. Further, the Land Tribunal, taking into consideration some of the receipts issued in the name of Sri. Rudrappa Patil and Tamanna Wadagale and other applicants and the extent of the land held by the respective tenants in Sy.No. 203 and other material available on file, has specifically referred that, all the five applicants therein have equal share in 06 acres namely late Sri. Gurupad Tammanna holds 1/5th share with Ramu Tamanna Wadagali and the remaining applicants hold 1/5th share along with their brothers. Further, it is observed in the order passed by Land Tribunal that, the applicants have stated that, they have paid L.B. in respect of the suit land in the name of different applicants. The Tribunal after considering all these relevant material available on file and going into ground reality, has registered the occupancy rights. Hence, I do not find any error or illegality as such committed by Land Tribunal in passing the impugned order nor petitioners have made out any good grounds to interfere in the instant writ petition, at this belated stage. Hence, the writ petition filed by petitioners is liable to be dismissed as devoid of merits.

8. Yet another reason as to why the writ petition filed by petitioners is liable to be rejected at the threshold itself is, on the ground of inordinate delay in approaching this Court in as much as the impugned order passed is as far back as on 23rd June 1977 and the instant writ petition is presented on 31st March 2006, after lapse of nearly 29 years. The said inordinate delay has not been satisfactorily explained by assigning cogent reasons. The delay explained by petitioners that, they came to know of the order only in the year 2005, when they received the notice and immediately they have collected the material and presented the instant writ petition, cannot be accepted for the reason that, when the notice was issued in the name of original land owner, as per the name found in the record of rights, as provided u/s 48-A of the Act and the public notice in Form Nos. 8 and 9 are also issued and published in the village chawadi and the matter is settled in the year 1977 itself, not in favour of one respondent, but totally in favour of five claimants, it would have been the talk of the entire village. Taking shelter under the guise that, petitioners came to know when they received the notice regarding compensation, is not justifiable. Therefore, from all the above aspects, what reveals is that, even though the order is passed by Land

Tribunal in the year 1977, petitioners have not made sincere efforts to receive the compensation. Knowing fully well, petitioners have also not chosen to redress their grievance before the appropriate legal forum or at least before this Court within the reasonable time. Therefore, the explanation offered by petitioners at para. 13 of the writ petition cannot be given much credibility. Hence, the writ petition filed by petitioners is liable to be dismissed on ground of delay and laches also.

9. In the light of the facts and circumstances of the case, as stated above, the writ petition filed by petitioners is liable to be dismissed on both counts, viz. merits as well as on delay and laches.