

(1998) 09 KAR CK 0067

In the Karnataka High Court

Case No : Writ Petition No"s. 17221 to 17223 of 1995

Smt. Dyamawwa

APPELLANT

Vs

The Assistant Commissioner, Lingsugur Sub-Division,
Lingsugur, Raichur District and Another

RESPONDENT

Date of Decision : 11-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Land Reforms Act, 1961 — Section 84, 85, 87 (1), 88

Citation : (1999) ILR (Kar) 386 : (1999) 5 KarLJ 105

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : Sri M.V. Seshachala and Sri M.V. Vedachala, for the Appellant; Sri K.H. Jagadish, High Court Govt. Advocate, for the Respondent

Judgement

1. By an order u/s 85 of the Karnataka Land Reforms Act, 1961 ("Act", for short) at Annexure-C, the 1st respondent-Assistant Commissioner has concluded that the lands of the petitioners specified therein are taken over to the State Government for violation of Section 85 of the Act. The said Annexure-C is called in question in these writ petitions under Articles 226 and 227 of the Constitution.

2. The procedure followed by the Assistant Commissioner leading to passing of the above said order at Annexure-C was this: The Assistant Commissioner first issued a notice on 22-10-1991, to which, the petitioners promptly replied that the lands are their ancestral property, that they were very much cultivating the said lands and that some one on inimical terms must have given wrong information. The Tahsildar then, as at Annexure-A dated 26-2-1993, gave them notice that they had violated the provisions of the Act and that they should show cause within 7 days or else further steps will be taken. It was thereafter that the impugned order came to be passed. It is also made clear that the Assistant Commissioner acted on the report of the Tahsildar. Section 84 of the Act provides that, where the Assistant Commissioner having jurisdiction over any area in which any land is situated is satisfied that any land within such area has

remained uncultivated for a period of not less than two consecutive years without sufficient cause, he may, by notice serve upon the land owner and any other person entitled to be or in possession of the land, require such persons to cultivate the land within one year from the date of service of such notice.

Section 85 of the Act then provides that, if the land is not cultivated within one year from the date of service of the notice u/s 84, the Assistant Commissioner may, after making such inquiry as may be prescribed, lease out the whole or part of such uncultivated land to any suitable lessee for a period not exceeding five years.

Section 88 provides that, after the expiry of the period of the lease granted under the said Chapter VI, in which all these provisions occur, the Assistant Commissioner shall take over the possession of the land and to deliver possession thereof to the person entitled to such possession. Before that, Section 87(1) makes it clear that, every lease granted under the said Chapter shall be executed by the Assistant Commissioner on behalf of the land owner or other person entitled to be in possession of the land.

Rule 37 of the Karnataka Land Reforms Rules, 1974, inter alia provides that the inquiry to be made by the Assistant Commissioner u/s 85 of the Act shall be a summary inquiry in accordance with the provisions of Chapter III of the Karnataka Land Revenue Act, 1964. Section 34 of the Karnataka Land Revenue Act, 1964 occurring in the said Chapter III provides that, when a summary inquiry is prescribed for determination of any question by or under this Act or any law for the time being in force, the officer conducting inquiry shall himself, as such inquiry proceeds, record in his own hand, in Kannada or in English or in any other language of the taluk or village as declared by State Government, the summary of the evidence and minutes of the proceedings containing the material averment made by the parties interested, the decision and the reasons for the same. The proviso to the said Section 34 is not relevant for the present purpose.

3. I have set out earlier as to the procedure followed by the Assistant Commissioner. First of all, there is no material to conclude that notice u/s 84 had initially been given by him calling upon the petitioners to cultivate the land within one year from the date of service of such notice. Section 85 would come into play only if there is such failure on the part of the petitioners to cultivate the land within one year. Section 85 then enables him to lease the land, that too, for and on behalf of the land owner. But, such action u/s 85 can be taken only after the inquiry as referred to above. No such inquiry has been held in this case. The orders of the Assistant Commissioner at Annexure-C, therefore, are not legally sustainable.

4. Writ petitions are allowed and the impugned order at Annexure-C is quashed.