

(2005) 09 KAR CK 0037
In the Karnataka High Court
Case No : Writ Petition No. 45408 of 2004

Smt. Gangamma and Another

APPELLANT

Vs

The Tahsildar and Others

RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 A (6)

Citation : (2005) ILR (Kar) 4852 : (2005) 6 KarLJ 97 : (2005) 4 KCCR 2477

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Jayakumar S. Patil Associates, for the Appellant; Nadiga Shivanandappa, HCGP for R1, R2 to R12, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—Siddaveerappa, the husband of the 1st petitioner and father of the 2nd petitioner had filed an application in Form No. 7 for grant of occupancy right in respect of the lands bearing Sy.No. 150 measuring 9 acres and Sy.No. 151 measuring 14 acres 20 guntas of Tavarakere, Magadi Taluk, Bangalore Rural District. The Land Tribunal by its order dated 11.4.1981 granted occupancy right in respect of the said lands in favour of the said Siddaveerappa. Thereafter, the Land Tribunal issued Form No. 10 in favour of Siddaveerappa on 18.4.1981. The revenue records have also been transferred to the name of Siddaveerappa.

2. A survey of the lands in question was conducted by the competent authority and a report was submitted by the said authority which states that the Siddaveerappa was in possession and cultivation of the lands bearing Sy. No. 153/1 measuring 1 acre 27 guntas and Sy. No. 151 measuring 2 acres 34 guntas during the relevant point of time. The survey report is at Annexure-E. During the pendency of the proceedings since Siddaveerappa died, his legal representatives, the petitioners herein, made an application to the Land Tribunal to suitably modify its previous order dated 11.4.1981 and bring it in conformity with the

survey report. However, the Land Tribunal rejected the said request by the impugned endorsement dated 4.9.2004 on the ground that it does not have statutory power to amend the order. The said endorsement is challenged by the petitioners in this writ petition.

3. I have heard Sri. Jayakumar S. Patil, learned Senior Counsel for the petitioners and Sri. Nadiga Shivanandappa, learned High Court Government Pleader for respondent No. 1. Though the other respondents were served, they have remained un-represented.

4. Learned Senior counsel appearing for the petitioner submits that after the introduction of second proviso to Sub-section (6) of Section 48A of the Karnataka Land Reforms Act, 1961 (for short "Act"), the Land Tribunal has power to correct the extent of the land in any order after causing actual measurements and after giving an opportunity of being heard to the concerned parties. Therefore, the Land Tribunal was not justified in rejecting the application on the ground that it does not have power to amend the order passed by it earlier. It is further argued that the petitioners being the villagers are illiterate and that by error they have not included the correct survey number and the correct extent of the land in Form No. 7. If the surveyor after actual measurement of the land has pointed out the correct extent and correct survey number, it was incumbent upon the Land Tribunal to correct order. Emphasizing the words "in any order" employed in the aforesaid proviso, learned Senior counsel argues that even the order passed prior to the introduction of the above proviso can be corrected by the Land Tribunal.

5. It is evident from the impugned endorsement that the Land Tribunal has rejected the application of the petitioners to correct its order on the ground that it does not have power to do so. By Karnataka Act No. 31/95, second proviso to Sub-section (6) of Section 48-A was inserted which has come into force with effect from 20.10.1995. The said proviso is as under :

"Provided further that the Tribunal may on its own or on the application of any of the parties, for reasons to be recorded in writing, correct the extent of land in any order passed by it after causing actual measurement and after giving an opportunity of being heard to the concerned parties".

6. It is clear from the above proviso that the Land Tribunal may on its own or on the application of any of the parties, correct the extent of land in any order passed by it after causing actual measurement and after giving an opportunity of being heard to the concerned parties. The Land Tribunal has to assign reasons while passing such an order. It may also correct the order passed prior to . the insertion of the above proviso.

7. As rightly pointed out by the learned Senior Counsel, in most of the cases the applicants for grant of occupancy rights are villagers who are basically illiterate and ignorant. There is every possibility that they may mention wrong survey number in Form no. 7 and they may not correctly state the actual measurement of the lands. Keeping in view of this background the legislature has empowered

the Land Tribunal to correct the mistakes in the order passed by it earlier, after causing actual measurement and after giving an opportunity of being heard to the concerned parties.

8. This Court in the case of Y.S. Ramachandra Rao Vs. State of Karnataka and Others, by following the decision of the Division Bench in Padmaraja Athikari v. Land Tribunal, Karkal, WP No. 20080/1991 DD 15.7.1993 has held that even if there is a mistake in mentioning the survey numbers in Form No. 7 by the contesting respondents, it was permissible for the Land Tribunal to verify and ascertain the correctness of the numbers and pass appropriate orders.

9. In the light of the discussions made above, this Court is of the view the Land Tribunal is not justified in rejecting the application seeking correction of its previous order particularly when the surveyor after causing actual measurement has sent his report stating the correct survey number and exact extent of lands in possession and cultivation of Siddaveerappa during the relevant point of time.

10. In the result, writ petition succeeds and it is accordingly allowed. The endorsement issued by the Land Tribunal at Annexure-A dated 4.9.2004 is quashed. The matter is remitted back to the 1st respondent for fresh disposal in accordance with law and in the light of the observations made above, after due notice to all the parties concerned. No costs.