

(1999) 11 KAR CK 0028

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 768 of 1988

Smt. Girijamma

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-11-1999

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 126, 141
Karnataka Village Offices Abolition Act, 1961 — Section 8

Citation : (2000) 3 KarLJ 327

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri R. Gopal, for the Appellant; Sri H.S. Surendra, High Court Government Pleader and Sri K. Chandrasekhar, for the Respondent

Judgement

1. The husband of the petitioner filed Form No. 7 before the Land Tribunal, Bhadravathi, for conferment of occupancy rights in respect of the land in Sy. No. 15 of Koppa Village in Holehonnur Hobli. By an order dated 30-10-1976 the Land Tribunal rejected the application on the ground that since the land in question is a service inam land, it had no jurisdiction to entertain the application. W.P. No. 41345 of 1982 filed challenging the said order had been transferred to the Appellate Authority pursuant to amendment to the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the Act") providing appeal provision against the orders passed by the Land Tribunals. It was registered as appeal in L.R.A. (W) No. 650 of 1986. The appeal also came to be dismissed by the Appellate Authority by the impugned order dated 13-8-1987 upholding the order of the Land Tribunal. The petitioner has filed this revision petition challenging both the orders.

2. Heard the learned Counsel for the parties and perused the impugned orders.

3. Both the Land Tribunal and the Appellate Authority have failed to bear in mind the provisions of Sections 126 and 141 of the Act, which are extracted hereunder:

"126. Application of Act to inams:

For the removal of doubts it is hereby declared that the provisions of this Act insofar as they confer any rights and impose obligations on tenants and landlords shall be applicable to tenants holding lands in inam and other alienated villages or lands including tenants referred to in Section 8 of the Karnataka Village Offices Abolition Act, 1961 but subject to the provisions of the said Act and to landlords and inamdar holding in such villages or lands".

"141. Tenure Abolition Acts:

Nothing in this Act shall affect the provisions of any of the Land Tenures Abolition Acts specified in Schedule II to the Act, insofar as such provisions relate to the conferment of the right of an occupant or grant of a ryotwari patta in favour of any inferior holder or tenant in respect of any land held by him".

A plain reading of Section 126 of the Act leaves no room for doubt about the application of the provisions of Act to the tenants holding lands in inam, including the tenants referred to in Section 8 of the Karnataka Village Offices Abolition Act, 1961. Since the deceased husband of the petitioner as also the petitioner claimed tenancy rights, the Land Tribunal should have adjudicated the same in accordance with the provisions of the Act in the light of Section 126 of the Act read with Section 141, which in unequivocal terms stipulates that the provisions of the Act shall not affect the provisions of any of the Land Tenures Abolition Acts insofar as conferment of right of an occupant.

4. The reason assigned by the Appellate Authority in paragraph 6 of its order—that no records have been produced to show that the land in question had been regranted and in the absence of production of document in that regard, question of granting occupancy rights do not arise, cannot be accepted. For granting occupancy rights, production of regrant order is not the relevant consideration. The consideration is, whether the land is a tenanted land on the appointed date and whether the claimant was tenant thereof.

5. Before the Appellate Authority the petitioner has adduced additional evidence and also produced certain documents in proof of the tenancy. The landlord has not contested the proceedings. The evidence adduced by the petitioner and the documents produced have not been either rebutted or controverted. The witnesses examined on behalf of the petitioner have spoken about the petitioner cultivating the land as tenant after the death of her husband. The receipts for having paid paddy proves the tenancy of the petitioner. Even the pahanis also prove the tenancy of the petitioner and her deceased husband. Even though the document produced by the petitioner for having deposited the occupancy price of Rs. 375/- has been disbelieved by the Appellate Authority on the ground that it is a xerox copy, the evidence adduced and the other documents produced by the petitioner prove beyond doubt that the husband of the petitioner and after his death the petitioner is the tenant of the land in question. In paragraph 6 the Appellate Authority has categorically recorded a finding that the 3rd respondent

(landlord) has no interest in the land since the land is tenanted. Therefore, there is no impediment whatsoever for granting the occupancy rights in favour of the petitioner in respect of the land in question.

6. Accordingly, the revision petition is allowed. The orders of the Land Tribunal and the Appellate Authority are set aside. The application filed by the husband of the petitioner before the Land Tribunal claiming occupancy rights is allowed. The Land Tribunal is directed to confer occupancy rights on the petitioner in respect of the land in question within a period of one month from the date of receipt of a copy of this order and within a month thereafter the Tahsildar is directed to issue the Occupancy Certificate to the petitioner in accordance with the provisions of the Act and the Rules framed thereunder.