

(2011) 11 KAR CK 0152

In the Karnataka High Court

Case No : Writ Petition No. 38084 of 2011 (LR-RES)

Smt. Jayalakshamma and Sri. S.M. Sreenath

APPELLANT

Vs

Sri. Krishnappa, Smt. Rangamma Since Deceased by her LRs,
G.K. Narayanaswamy and Smt. Rathnamma

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 77 A

Citation : (2011) 11 KAR CK 0152

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : T.S. Amar Kumar, for the Appellant; Shashidhar S. Karmadi, HCGP for R4, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J. Gunjal

1. The petitioners are questioning the order passed by "he Appellate Tribunal remitting the matter to the Competent Authority u/s 77-A of the Karnataka Land Reforms Act for fresh adjudication.

2. The matter arises in the following manner:

The respondent No. 2 and her son had agreed to sell the property bearing Sy. No. 132/1 measuring 0.23 guntas to the grand father of the petitioners.

3. Suffice it to say when the matter had come up to this Court by way of an second appeal the said second appeal of the respondent was dismissed on the ground that there was no substantial question of law, The respondent sought: review of the said order on the ground that he had made an application in Form No. 7A for grant of the said land. this Court was of the view that the question of tenancy may not arise. Nevertheless the application filed by the respondents for grant of land was entertained by the Competent Authority and the said land was

granted. The Competent Authority it appears has made a spot inspection and has found that respondents were in possession. The said order was questioned by the petitioners before the Appellate Tribunal, The Appellate Tribunal has accepted the appeal, but however, remitted the matter to the Competent Authority for fresh disposal with reference to Form No. 7A u/s 77-A of the Act.

4. Mr. T.S. Amar Kumar, Learned Counsel appearing for the petitioners submits that a finding is recorded by this Court to the effect that the question of tenancy does not arise. Hence, in the circumstances remitting the matter to the Competent Authority does not arise.

5. I have given my anxious consideration to the submissions made.

6. Apparently before entertaining the application in Form No. 7A u/s 77-A of the Act two conditions are required to be satisfied. One is that there must be a vesting of the land with the Government inasmuch as the applicant must be a tenant as on 1.3.1974 and the other would be that as on the date he makes an application he must be in possession. It is only if these twin conditions are satisfied the application of the applicant can be considered.

7. Indeed, a full bench of this Court in W.P. No. 28203/04 decided on 22.01.2011 in Para Nos. 18 & 19 of its judgment has observed as to how the vesting would take place and what is the scope of an enquiry u/s 77-A of the Act.

8. A perusal of the order passed by the Competent Authority discloses that such an exercise has not been done. Hence. I am of the view that the order of remand does not warrant interference. Accordingly, petition stands dismissed. The Competent Authority to conclude the proceedings within a period of three months from the date of receipt of the order.

Mr. Shashidhar S. Karmadi, learned High Court Government Pleader appearing for respondent No. 4 is permitted to file memo of appearance within four weeks.