

(2001) 07 KAR CK 0087

In the Karnataka High Court

Case No : Writ Petition No. 21379 of 2001

Smt. Nagamma and another

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 26-07-2001

Acts Referred:

Citation : (2001) ILR (Kar) 4935 : (2001) 5 KarLJ 548 : (2001) 4 KCCR 2578

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri Srikrishna for Sri A. Keshava Bhat, for the Appellant; Sri M.G.S. Reddy, High Court Government Pleader and Sri A.V. Gangadharappa, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri Srikrishna for Sri A. Keshava Bhat, learned Counsel for the petitioners; Sri M.G.S. Reddy, High Court Government Pleader for respondent 1 and respondent 2 and the learned Counsel, Sri A.V. Gangadharappa for respondent 3.

2. The brief facts of the case are that the petitioners are the owners in possession of the land mentioned in the schedule having inherited the rights of their predecessor late Sesu-Master and they are in possession and enjoyment of the land. The 3rd respondent claiming that he was the tenant under the predecessor of the petitioners had filed Form 7-A before the Land Tribunal, Belthangady for registration of occupancy right in respect of certain lands in Venoor Village. The Land Tribunal after enquiry had granted certain lands to the 3rd respondent by its order dated 12-12-1977 in No. LRY 8/75-76 as per Annexure-B. The 3rd respondent had not claimed S. No. 24/2 and even according to the survey conducted by the Land Tribunal, the schedule land was not in possession of the 3rd respondent. Subsequently, he filed Form u/s 7-A claiming occupancy right in respect of this S. No. 24/2. The Assistant Commissioner, Puttur, passed an order granting occupancy right in favour of the

3rd respondent vide order dated 25-1-2001 in No. GDIS LRF: 12, 13, 19/98-99. This order is questioned in this petition.

3. The learned Counsel for the petitioners has vehemently argued that the Tribunal has passed the order mechanically without applying its mind. Further, the application itself was not maintainable as the 3rd respondent made two applications earlier claiming occupancy right in respect of other lands and this survey number was not included in these applications. Therefore, the Tribunal ought to have rejected the application. He also submitted that there is absolutely no material to hold that the respondent 3 is in possession of the property and he was never a tenant. No evidence also was recorded notwithstanding the fact that the petitioners have filed their written objections whose name is found in the R of R for the year 1974. Even the lease deed also does not refer to in respect of this survey number. For the foregoing reasons, he submitted that the petition may be allowed.

4. The learned Counsel for the respondent 3 submitted that the respondent 3 had filed two applications on earlier occasions and this survey number was not included. The survey was conducted and according to the survey report that survey number was not mentioned to be in his possession. Whatever was sought for in those applications was granted as he was in possession. The Assistant Commissioner formed his own opinion on the basis of the materials. The petitioners were represented by an Advocate and he did not even suggest to lead evidence. The 3rd respondent is a schedule caste illiterate person. Therefore, he was not aware of the procedure and the Assistant Commissioner ought to have advised him about the procedure. He has been residing in a part of the land. He also further submitted that there is no prohibition u/s 77-A to make fresh applications in respect of such land which was not included in earlier applications. Therefore, he submitted that there is no lacuna as such in the order passed by the Assistant Commissioner and hence the impugned order does not call for interference. The learned Advocate as usual fully supported the impugned order.

5. In view of these arguments, it is now necessary to reproduce Section 77-A which reads:

"Grant of land in certain cases.-- (1) Notwithstanding anything contained in this Act if the Deputy Commissioner [or any other officer authorised by the State Government in this behalf] is satisfied after holding such enquiry as he deems fit, that a person.-

(i) was, immediately before the First day of March, 1974 in actual possession and cultivation of any land not exceeding one unit, which has vested in the State Government u/s 44, and

(ii) being entitled to be registered as an occupant of such land u/s 45 or 49 has failed to apply for registration of occupancy rights in respect of such land under sub-section (1) of Section 48-A within the period specified therein, and

(iii) has continued to be in actual possession and cultivation of such land on the date of commencement of the Karnataka Land Reforms (Amendment) Act, 1997,

he may [within one year from the date of commencement of the Karnataka Land Reforms (Amendment) Act, 1997] grant the land to such person subject to such restrictions and conditions and in the manner, as may be prescribed". From the bare reading of the section, it is no doubt true that it starts with non-obstinate clause but the respondent 3 had filed two applications for grant of occupancy rights which were allowed. Admittedly, this survey number was not included in any one of those applications. Those two applications were allowed. However, without giving any finding in regard to those two applications which have become final and conclusive, it is necessary to dispose of this petition filed by the petitioner.

6. It is a settled law that only one application can be filed claiming occupancy right and if any survey number was left out, it was open to the claimant to file an amendment application as provided under the Act. In this case, the respondent 3 apparently has not filed any amendment application in any one of the earlier Form 7 to incorporate this particular survey number which he claimed under the impugned order. On the other hand, after Section 77-A came to be incorporated in the statute by Amendment Act of 1997 he filed this application.

7. This Court in the case of *Giriyappa and Others Vs. State of Karnataka and Others*, has held that though the CPC is not made applicable to the proceedings before the Land Tribunal, in the backdrop of the provisions contained in Section 48-A and Rule 19, the principle underlying Order 2, Rule 2 of the Code of Civil Procedure, can be applied or otherwise it will lead to multiplicity of proceedings. In that case, the father of the petitioner had not claimed occupancy rights in respect of one land in S. No. 11/1 even though he had filed Form 7 in respect of other lands. But the Form 7 filed by one other person in respect of that land was rejected by the Tribunal on the very same day on which the Form 7 filed by the father of the petitioners was allowed. After the death of their father, the petitioners filed yet another Form 7 in respect of S. No, 11/1 claiming occupancy rights. The question that arose for consideration was whether Form 7 filed by the petitioners, even though their father had not made any claim in respect of this land in Form 7 filed by him, is maintainable. This Court has held that it is not maintainable as referred to above.

8. The learned Counsel for the respondent 3 contended that the decision came to be rendered by this Court only in respect of filing Form 7 by two persons claiming occupancy right but the wording of Section 77-A is clear and unambiguous that if a person has not filed application in Form 7-A in respect of such land, he can file a petition. The very object in not entertaining the second application is to avoid multiplicity of proceedings and in addition to that this is abundantly clear from Rule 19 of the Karnataka Land Reforms Rules which reads:

"Form of application and notice.--(1) The application under sub-section (1) of

Section 48-A shall be in Form 7. The application shall furnish particulars of all the lands held under each separate tenancy in one or more than one Taluk in respect of which the applicant claims to be entitled to be registered as an occupant. Where the lands are situated in more than one Taluk, the application shall be filed before the Tribunal of the Taluk where the greater part of the lands are situated. On receipt of the applications, the Tahsildar shall send extracts of the application to the Tribunals concerned. So far as the lands in his Taluk are concerned, the Tahsildar shall verify the particulars mentioned in the application with reference to [the revenue records including the record of rights wherever they are prepared and also note] the same on the application. The public notice and the individual notice referred to in sub-section (2) of the said section shall be in Forms 8 and 9 respectively".

From the bare reading of this Rule it is clear that the applicant shall furnish all particulars of the lands held by him. If the 3rd respondent was in possession of this particular property, he ought to have mentioned the said property in his application. Further, in sub-clause (i) of sub-section (1) of Section 77-A it is stipulated that the applicant must establish that he was in possession and cultivation of the land which has vested in the State Government and being entitled to be registered as an occupant of such land under Sections 47 and 49 and if he failed to apply for registration of occupancy right in respect of the said land, then only the application can be considered. In this case, the application has to be considered harmoniously with Section 77-A of the Act and Rule 19 of the Rules. Thus, it is clear that if the respondent 3 was cultivating the property as on 1974 or previous to that date, he would not have failed to mention this survey number in anyone of the applications filed by him. However, it appears that this application came to be filed only to make wrongful gain. Already respondent 3 had obtained declaration in respect of the other properties claimed under 2 other applications filed on an earlier date and the petitioner did not question the same and respondent 3 probably wants to take advantage of the same.

9. The learned Counsel for respondent 3 further argued that respondent 3 belongs to scheduled caste and he is an illiterate. Therefore, he did not know the procedure. This argument is liable to be rejected. Being illiterate he filed two applications and claimed occupancy rights in respect of other properties. That shows that he was very well advised by someone. Even if he is treated to be illiterate he has sufficient knowledge and experience as to what should be done. As stated above, if he were to be in possession of the property he would not have failed to incorporate this survey number in any one of those applications. Under the circumstances, the only irresistible conclusion that can be drawn is that the 3rd respondent has taken advantage of the subsequent amendment to the Land Reforms Act by incorporating Section 77-A.

10. In an unreported judgment of this Court in the case of Naikara Gadirappa v State of Karnataka and Others , it is held:

"Form 7 will have to be read with this rule which also provides that every applicant should state in the said application the particulars of any other land held by him including the land held by any other member of his family, either as owner or tenant. Rule 19 extracted above also categorically lays down that the application shall furnish particulars of all the lands held under each separate tenancy in one or more than one Taluk in respect of which the applicant claims to be entitled to be registered as an occupant. The requirement that an application should be exhaustive of all the lands claimed by an applicant obviously is based on certain purpose and to prevent piecemeal applications so that there may be a consolidated enquiry and hearing by a Tribunal competent to decide a particular application. This also will enable the Tribunal competent to decide a particular application. This also will enable the Tribunal to appreciate the objections if any of the landlord as to the genuineness of the claim of the applicant by pointing out the impracticability of a person holding lands in different places. The principle behind the requirement of Rule 19 and Form 7 is not foreign to legal proceedings, which is almost similar to Order 2, Rule 2 of the Code of Civil Procedure. Mr. Hudlamane contended that this requirement should not be read as a mandatory requirement having regard to the fact that the applicants are generally poor, illiterate and ignorant villagers. I cannot accept this contention because the entire legislation is meant for the benefit of the agriculturists and the legislature was certainly aware of the fact that those who invoke the provisions of the Act will be mostly ignorant, illiterate and poor villagers. If the requirement of the law is not to be adhered to strictly, there would have been necessary power to relax the requirement. Having regard to the object behind this requirement of Rule 19 and Form 7, I am constrained to hold that these are the mandatory requirements, failure to comply which will render the application defective".

11. In addition to this it is incumbent on the applicant/respondent 3 to establish that immediately before 1st March, 1974, he was in actual possession and cultivation of the land as tenant. The object of Section 77-A is abundantly clear that those who were in possession of the property prior to March 1974, could only file an application in Form 7-A. In this case, the respondent 3 had filed two applications but he had not included this survey number and therefore, the learned Counsel submitted that his application is maintainable as he had not filed application in respect "of such land". Reference "of such land" should be considered along with the object of the section and also Rule 19. Further, there are no other documents available to make out that he was in possession of the land as on that date.

12. The learned Counsel further argued with reference to Record of Rights produced before this Court to show that his name appeared in the Record of Rights for the year 1967-68. Apparently, for subsequent years his name is not found in respect of these survey numbers. From 1968 to 1980-81 it is shown as the entries were not made. That being the case, it is for the respondent 3 to establish as to why his name was not entered subsequent to 1968. A stray entry

in a Record of Rights or pahani at a long distance of time prior to 1974 would not lead to draw an inference that he was a tenant. The entry immediately prior to 1974 is the predominant consideration while dealing with Section 77-A of the Act. Except this entry, there is no other material placed before the Assistant Commissioner to hold that the claimant was in possession of the property. Therefore, I am of the firm view that the 2nd respondent committed an error in holding that the 3rd respondent is a tenant in respect of the land described in Form 7-A filed by him and the same is maintainable. The 2nd respondent has not applied its mind on all these aspects. Therefore, the order calls for interference.

Accordingly, the petition is allowed. The impugned order is set aside.