

(1998) 08 KAR CK 0076

In the Karnataka High Court

Case No : Writ Petition No's. 34865 and 34398 of 1997 connected with Writ Petition No. 29723 of 1997

Smt. Vimalamma Ballal and Another

APPELLANT

Vs

Mahabala Shetty and others

RESPONDENT

Date of Decision : 03-08-1998

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 A (3)

Citation : (1999) 1 KarLJ 394

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Sri Chandranath Ariga, for the Appellant; Sri Prakash Hegde and Smt. M.R. Shanthakumari, High Court Government Pleader, for the Respondent

Judgement

1. I have heard the two contesting Counsels in these two petitions as also the learned Government Advocate. The point involved is a straight but rather interesting one namely the question as to whether the proviso in Section 48-A(3) of the Land Reforms Act which was introduced by Act 1 of 1979 and which provides that the Tribunal for valid and sufficient reasons may permit the tenant to amend the application is to be construed as being wide enough to allow an amendment which increases the claim, after the cut-off date namely, 30-6-1979. The controversy hinges around the tenant's Form No. 7 which was originally filed on 21-12-1974 and once again on 1-12-1975. Five lands were shown in that Form No. 7 and we are concerned only with two of them i.e., Sy. No. 175/4 which area was set out as 33 cents and Sy. No. 32/1-A which area was originally shown as 2 acres 6 cents. There was some litigation between the parties which had come upto this Court on an earlier occasion and the case has been remanded to the Tribunal once again. An application dated 4-9-1997 was presented to the Tribunal by the tenant praying for two amendments whereby the claim in respect of Sy. No. 175/4 was increased to 50 cents from 33 cents i.e., an increase of 17 cents and as far as Sy. No. 32/1-A was concerned it was increased to 2.15 acres as against the earlier 2.06 acres. This 2.06 acres recorded an increase of 9

cents. The land owner had opposed the application and the Tribunal finally permitted the amendment to a certain extent whereby Sy. No. 175/4 was corrected to read as 0.50 acres and Sy. No. 32/1-A was modified to 2.15 acres. The Tribunal rejected the application as far as some of the other survey numbers are concerned. The land owner has challenged the granting of the amendment whereas the tenant has challenged the rejection of the remaining area by the Tribunal. Mr. Ariga on behalf of the land owner has submitted that the cut-off date as far as applications under the Land Reforms Act was clearly specified as 30-6-1979 and submits that after this date no application is maintainable. His short contention is that if it not permissible to prefer any fresh claims after this date that it is equally barred as far as preferring any fresh claims through an amendment. He submits that if the jurisdiction of the Tribunal is taken away as far as the entertaining any claims of any nature after the cut-off date that it is not a question of how much is the area but it is the question of applying the absolute bar and that the Tribunal was in error in having permitted the amendment. To support his argument, Mr. Ariga submitted that the application has come after a lapse of 23 years and that even during the earlier litigations there was no mention of any additional areas. His contention is that this is an afterthought and an attempt to get hold of some additional land and that these are further grounds on which the amendment ought not to have been permitted.

2. Mr. Hegde submitted that an amendment effected is a modification in law whereby some material is altered in the original application and that since Section 48-A(3) specifically empowers the Tribunal to permit an amendment and does not lay down any time period within which it is required to be done, that the Tribunal was within its right in permitting the amendment. His contention is that the bar prescribed by the statute as far as 30-6-1979 is concerned is only in respect of new applications and will not affect any existing applications. On facts, he pointed out that in the first instance, the tenant who is an agriculturist came to know of the correct area only when the survey report was received in the year 1987 and secondly, he submits that the survey numbers were always mentioned and that it is only a question of correcting the area which had been wrongly set out. Lastly, he submitted that the delay is not because of any act of his client insofar as many of these cases take a very long time to be heard and it was only after the enquiry commenced that it came to the notice of his client that the area was wrongly mentioned in the original application.

3. It is hardly a question of going into the various reasons, grounds and excuses that are put forward because the short question before me is whether the law does permit an amendment of this type to be carried out after 30-6-1979. For this purpose, I need to look at the basic provision whereby a cut-off date has been provided and this clearly indicates that no claims are entertainable after this date. It is a well-settled principle of jurisprudence that the law does not indirectly permit to do what the law prohibits to do directly. In the present instance, if the party is debarred from presenting a claim after 30-6-1979, the party is equally prohibited from getting over the legal bar by using the device of

an amendment whereby it would not only permit what is directly prohibited but it would nullify the effect of the basic provision which prescribes a time bar. It is not a question of the various grounds that have been put forward because those grounds would come into operation only in a situation where the amendment was permissible, and the Court was ascertaining the bona fides and timeliness of the application. There is no provision under this Act for condonation of delay and artificially extending the period of limitation unlike under the Limitation Act. This being so, the Tribunal was clearly wrong in permitting the amendment.

4. I need to also deal with the argument that the amendment dates back to the original application. Though it does appear that such an argument can save the power to modify. What needs to be borne in mind is that if such an interpretation could be accepted that it would again have the effect of setting at naught the basic provision prescribing the cut-off date. The other argument canvassed by Mr. Hegde in support of the order was that this was only a corrigendum or a rectification. He drew my attention to the principle laid down by this Court in several judgments wherein, even in those cases where the Form No. 7 was vague and some of the exact particulars were not set out, the Court accepted the validity of the Form on the ground that if the lands claimed are identifiable even generally that it would be good enough. Mr. Hegde submitted that in these cases his client have even done better insofar as he set out the area to the best of his ability and when it turned out that the actual area was marginally higher after the surveyor had measured it, that this is only a case of correcting an error and that it could come under the definition of an amendment. The simple answer to this argument is that one has got to see the effect of what is sought to be done whereby a new claim for the first time after 23 years is being made in respect of additional areas of land and the fact that it is in the same Survey Number will not save the situation. If new claims are totally barred, then this claim would also not be permissible.

5. Having regard to the clear cut position in law, the order passed by the Tribunal permitting the amendment is quashed and set aside. The tenant's case will have to be considered on the basis of the unamended Form No. 7.

6. W.P. Nos. 34865 of 1997 and 34398 of 1997 accordingly succeed, W.P. No. 29723 of 1997 fails and stands disposed of. In the circumstances of the case, there shall be no order as to costs. I have heard the learned Government Advocate on merits.