

(2006) 01 KAR CK 0091
In the Karnataka High Court
Case No : Writ Petition No. 33558 of 2000

Somayya and Others

APPELLANT

Vs

State of Karnataka and Narayan Bhat (Since dead by L.Rs.
Gowri, Krishna and Poornima)

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Land Reforms Act, 1961 — Section 45, 48 A, 49, 77 A

Citation : (2006) 3 KCCR 1700

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : K.S. Desai, Mahesh Desai and R.L. Patil, for the Appellant; R. Nagendra Naik and R.K. Hatti, G.P. for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramanna, J.—This is a writ petition filed by the legal representatives of late Kollagonda challenging the order dated 29.7.2000 passed by the Assistant Commissioner, Bhatkal whereby the second respondent rejected the Form No. 7 filed by deceased Kollagonda to the remaining extent of 27 Guntas of land out of Survey No. 343/1 situate at Koppa village, Bhatkal Taluk. Therefore, assailing the said order he has come up with this writ petition only on the ground that the impugned order is contrary to law and without holding a proper enquiry, rejected the application saying that application filed u/s 77A is not maintainable and the Tribunal is not justified in passing a cyclostyled order which is highly illegal and arbitrary and the Tribunal has not recorded the statement of the parties concerned. Without proper enquiry, the Tribunal rejected the application filed by the L. RS. of late Kollagonda which is illegal and is in violation of the principles of natural justice and Article 14 of the Constitution of India. Hence this writ petition.

2. Heard the learned Counsel for the legal representatives of the deceased

petitioner/applicant, learned Counsel for R-3 (a to c) and learned High court Government Pleader for respondent Nos. 1 and 2 and perused the records. During the course of arguments, learned Counsel for the L. Rs. of the deceased petitioner contended that initially Kollagonda, the father of the petitioners filed Form No. 7 wherein he has claimed only 20 Guntas of land out of SY.No. 343/1 which was measuring 1 Acre 20 Guntas. Subsequently, he filed an application in Form No. 7A u/s 77A of the K.L.R. Act but the Tribunal without holding proper enquiry passed the impugned order, dated 29.7.2000 and it is not a speaking order and the deceased Kollagonda who was cultivating the land as a lawful tenant to the extent of 1 Acre 17 Guntas but his claim limited only to an extent of 20 Guntas. Therefore, the Tribunal has granted 20 Guntas of land and he is not debarred from filing a fresh application u/s 77A as he has already constructed a house and he is paying necessary tax and revenue, Therefore, rejection of the application filed in Form No. 7A by the petitioners is a clear violation of the mandatory provisions of K.L.R. Act and Rules and principles of natural justice.

3. On the other hand, learned Counsel for respondent Nos. 3(a) to (c) contended that since the petitioner has already availed the opportunity by filing an application for grant of occupancy rights to the extent of 7 Guntas, he cannot subsequently file an application for grant of remaining 27 Guntas of land out of SY.No. 343/1 of Koppa village and the Tribunal has rightly rejected the application. Since, the application filed u/s 77A is not at all maintainable, there is no need to hold a detailed enquiry and the Tribunal is right in rejecting the application at the threshold. Therefore, the present writ petition is not at all maintainable.

4. In support of this contention, learned Counsel for the respondents No. 3(a) to 3(c) has relied on a decision reported in ILR 204 Kar 3666 (Nathappa, Since Deceased By L.Rs. v. Venkatarayappa and Ors.) wherein this Court has held as follows:

It is clear from the language employed in Sub-section (ii) of Section 77A(1) of the Act that a person being entitled to be registered as an occupant of such land u/s 45 or 49 of the Act, has failed to apply for registration of occupancy rights in respect of such land under Sub-section (i) of Section 48A of the Act within the period prescribed, alone is entitled for grant of lands u/s 77A of the Act. It is also clear that for grant of lands u/s 77A of the Act, the applicant has to fulfill all the three conditions contained in Sub-sections (i) to (iii) of Section 77A(1) of the Act read with the proviso to the said section. The object of Section 77A of the Act is to provide an opportunity to the tenants who could not avail of the opportunity in the first instance to file an application in Form No. 7 for grant of occupancy rights. The object of Section 77A of the Act cannot be taken as to provide one more opportunity to those who had already availed the first opportunity of claiming occupancy rights in Form No. 7 and whose application was partially granted and partially not granted by the Land Tribunal. An application u/s 77A is

not the same of the application u/s 45 of the Act. An application u/s 45 is for confirmation of occupancy rights and an application u/s 77A of the Act is for the purpose of grant of lands. Admittedly, father of the petitioners had applied for grant of occupancy rights in respect of the lands in question u/s 48A of the Act earlier. The petitioners cannot maintain an application for grant of the same lands u/s 77A of the Act.

5. On the other hand, learned High Court Government Pleader for respondent Nos. 1 and 2 submits that when once the father of the petitioners had availed an opportunity by filing an application in Form No. 7 for grant of occupancy rights to the extent of 20 Guntas, now he cannot file a fresh application in Form No. 7A u/s 77A claiming remaining extent of 27 guntas out of Sy.No. 343/1 and there is a clear bar u/s 77A that those who have not availed of the opportunity by filing application in Form No. 7A claiming occupancy rights, such persons are entitled to file application u/s 77A(i). In the instant case, Tribunal is right in rejecting the application filed by the petitioner. Therefore, learned High Court Government Pleader prays for dismissal of the writ petition.

6. I have carefully examined the material placed on record. It is an undisputed fact that one Kollagonda, the father of petitioners 1 to 5 had filed Form No. 7 claiming occupancy rights to the extent of 20 Guntas and accordingly occupancy rights has been granted. That the Tribunal has already conferred occupancy rights to the extent of 20 Guntas of land and the petitioners herein have not challenged the earlier order granting occupancy rights to the extent of 20 Guntas of land by the Tribunal. Petitioners have not given any cogent reasons. When late Kollagonda himself stated that he is said to have been in possession of the entire extent of the land Sy.No. 343/1 under deceased respondent No. 1, he ought to have claimed the entire extent. Without challenging the earlier order, he has filed Form No. 7 claiming remaining extent of 20 Guntas. When a tenant who had availed of an opportunity by filing an application in Form No. 7 claiming occupancy rights to some extent of the land, either he or his L. Rs are not entitled to file a fresh application u/s 77A claiming the remaining extent of the land by filing an application in Form No. 7A and there is a clear bar u/s 77A(iii) of the Karnataka Land Reforms Act and it is also not in dispute that late Kollagonda, the father of the petitioners has not challenged the earlier order. When the late Kollagonda limited his claim to the extent of 20 Guntas, the Tribunal is right in granting whatever the claim made by him in the earlier application in Form No. 7. Therefore, the main object of Section 77A of Karnataka Land Reforms Act is to see that those who have not filed an application claiming occupancy rights before the Tribunal that they were the tenants immediately prior to 1.3.1974 and that they have not claimed earlier. Such persons are allowed to file Form No. 7 claiming occupancy rights but in the instant case, that Section 77A of the Karnataka Land Reforms Act cannot be taken into consideration to provide one more opportunity to the applicant or his legal heirs are to file an application under Form No. 7A. When once such an opportunity was availed by filing Form No. 7 claiming occupancy rights, such persons or his legal heirs are not entitled

to file fresh application. Therefore, the Tribunal is right in rejecting the application filed by the petitioners under Form No. 7A. There is no need to hold fresh enquiry to find out whether the deceased petitioner/applicant was in possession of remaining 27 Guntas or not out of Sy.No. 343/1. Hence writ petition is dismissed as devoid of merits.