

(2006) 12 KAR CK 0041
In the Karnataka High Court
Case No : Writ Appeal No. 5390 of 2002

Sri. Aboobakkar

APPELLANT

Vs

The Authorised Officer (H.Q. Assistant to the Deputy
Commissioner D.K.) and Another

RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 45, 48, 48 A, 77 A
Karnataka Land Reforms Rules, 1974 — Rule 17

Citation : (2007) 2 KCCR 817

Hon'ble Judges : S.R. Bannurmath, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : U. Abdul Khader, for the Appellant; Gangadhar Sangolli, HCGP for
Respondent 1 and K.M. Nataraj, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Bannurmath, J.—Aggrieved by the order dated 3-9-2002 passed in W.P. No. 25879/2002 by the learned Single Judge allowing the writ petition and quashing the order of the Authorised Officer dated 28-3-2002, the presented appeal is filed.

2. The claimant claiming to be an agriculturist applied for grant of occupancy right u/s 77-A of the Karnataka Land Reforms Act (hereinafter referred to as "the Act") in respect of the land bearing Sy. No. 161/2A measuring 10 cents of Savanoor Village, Puttur Taluk, Dakshina Kannada District. Though the claimant claimed occupancy rights for 10 cents, the Authorised Officer has granted only 6 cents. According to him, though the Appellant had filed application in Form No. 7 for grant of occupancy rights in respect of the lands bearing Sy. Nos. 38/2, 38/5 and in respect of 161/A-2, the Tribunal while granting occupancy, had inadvertently left out to include the present Survey number i.e., 161/2A. As such, after coming into force of the provisions of Section 77-A, he approached the Authorised Officer and by the impugned order dated 28-3-2002, the same

was granted to him. Aggrieved by the same, Respondent No. 2 herein approached this Court in W.P. No. 25879/2002. This Court on hearing both sides allowed the writ petition by holding that as the present Appellant has already granted certain lands by the Land Tribunal u/s 48A of the Act, his application u/s 77-A of the Act is not at all maintainable. Accordingly, it quashed the order dated 28-3-2002 and hence, the present appeal.

3. Sri.U. Abdul Khader, learned Counsel for the Appellant contended that the learned Single Judge has failed to take into consideration the effect, aims and objects of the provisions of Section 77-A of the Act. It is submitted that even if the Appellant had approached the Tribunal for grant of occupancy right in respect of other lands that will not prevent him from claiming occupancy rights in respect of another land, which he did not include in his original Form No. 7. Taking us through the provisions of Section 77-A of the Act, it is stated that the conditions which are required to be complied with or demonstrated by the applicant is that immediately before 1-3-1974, the land claimed by the claimant u/s 77-A of the Act does not exceed one unit and has vested with the State Government u/s 44 of the Act and that, he continued to be in actual possession and cultivation of the said land on the date of commencement of the Amendment Act No. 23/1977. It is submitted that as the Appellant fulfills all the conditions, the learned Single Judge was in error in reversing the order of the Land Tribunal and hence, the same is liable to be set aside, thereby quashing the order of the Authorised Officer.

4. Sri. K.M. Nataraj, learned Counsel for the contesting Respondent, on the other hand, sought to justify the order passed by the learned Single Judge to contend that the scope, objects and the reasons of Section 77-A of the Act have been explained by this Court in three decisions in the case of,

i) S.C. Chandrappa v. State of Karnataka and Ors. reported in 2005 AIR Kant. H.C.R. 1752.

ii) Hosabayya Nagappa Naik and Others Vs. State of Karnataka and Others, .

iii) K.P. Ramanna Rai v. Assistant Commissioner, Puttur reported in AIR 2006(1) Kant 341. and the learned Single Judge has rightly rejected the Petitioner's claim.

5. It is submitted that unlike the procedure prescribed u/s 48 of the Act for grant of occupancy, Section 77A has been inserted by the Legislature to help those tenants who have inadvertently failed to file any application in Form No. 7 in respect of the land vested with the State Government and still continue to be in possession of such land. It is submitted that in the present case as admitted by the Appellant himself even though he was aware of requirement of filing Form 7 and in fact has invoked the jurisdiction of the Land Tribunal for grant of occupancy right in respect of some other survey numbers including the part of original survey number Sy. No. 161, he cannot now contend that there was inadvertence on his part for not asking grant of occupancy right in respect of the land in question. In this regard, it is also stated that by looking to the aims and

objects of the provision and the actual words there is vast difference in exercise of jurisdiction by the authorities u/s 48-A vis-a-vis Section 77-A of the Act. u/s 48-A of the Act, if a land is tenanted, it gets vested with the State and only on application of the tenant, the occupancy rights can be granted to him. Whereas the condition prescribed in respect of Section 77-A of the Act is that the lands which were already vested with the State alone can be brought within the purview of Section 77-A of the Act. It is submitted for Respondents that as in the present case as rightly observed by the learned Single Judge, the Appellant has neither demonstrated that the land already vested in the State nor has he shown that there was inadvertence or otherwise for his not claiming occupancy right in respect of this land while he filed his application earlier. Therefore, the impugned judgment of the learned Single Judge is just and proper and needs no interference.

6. After going through the three judgments of the three different Division Benches of this Court referred to above, Sri. Abdul Khader, learned Counsel for the Appellant as well as Sri. Sangolli, learned Addl. Government Advocate contended that the provisions of Section 77-A opens with a non-obstante clause "notwithstanding anything contained in the Act", the procedure applicable to Section 48-A are not applicable to Section 77-A of the Act. This Court in the three considered judgments referred to above has not at all looked into the non-obstante clause.

7. Heard both the learned Counsel at length, perused the impugned order and the law declared by this Court in the aforesaid three judgments as well as the provisions of the Act.

8. At the outset, it is to be noted that the non-obstante clause in Section 77-A is made or introduced only to differentiate the procedure prescribed for grant of the land in the Section un-like which is prescribed for similar exercise under different other enactment or even the very Land Reforms Act. But under the Land Reforms Act, a procedure is prescribed for grant of occupancy rights in respect of tenanted lands in Section 48-A of the Act. In that provision, only a person entitled to be registered as an occupant u/s 45 of the Act can file an application in the prescribed form i.e., Form No. 7 within the time limit prescribed before the Land Tribunal. The Land Tribunal, after receipt of such application has to follow certain procedure and issue notice to the landlords and also to the persons interested in the land to appear before it and only after holding the enquiry as prescribed under the Rule 17 of the Karnataka Land Reforms Rules, can grant or reject the grant of occupancy rights. However, considering the fact that many of the times, the tenants being illiterates and were not aware of their rights and failed to take opportunity of grant of occupancy right as provided u/s 48-A of the Act, and for the purpose of those few, the legislature, had thought it fit to introduce Section 77-A of the Act by Act 23 of 1998. Under this provision, it is the Deputy Commissioner or any others Officer authorized by the State is empowered for grant of land, in such cases where ever claims were made u/s 77-

A of the Act. As the procedure for such grant is totally different, in our view, the non-obstante clause was introduced. It is also to be noted that u/s 48-A, it is grant of occupancy rights, whereas u/s 77-A, it is the grant of land which stood vested in the State either because it is tenanted or because of being excess in ceiling etc. However, from the careful reading of provisions of Section 77-A of the Act, it is clear that for the purpose of such grant of land, it must be shown that the land is vested with the State Government u/s 44 of the Act. Unless it is vested, the Deputy Commissioner or the Authorised Officer cannot get jurisdiction to such grant.

9. In the present case, it is not the case of the Appellant that he was ignorant of the provisions under the Land Reforms Act viz., Section 48-A for claiming the grant of occupancy. In fact, it is the case of the Appellant himself that he has filed an application in Form No. 7 for grant of occupancy right in respect of two other lands. While the enquiry was going on, he claimed occupancy in respect of another land bearing Sy. No. 161-A2, which is nothing but a part of the present land in dispute. The Tribunal has granted occupancy to the Appellant for the lands claimed by him in Form No. 7 and also in respect of part of the present land. It is only thereafter taking advantage of the introduction of Section 77-A of the Act, the present application has been filed claiming grant in respect of another portion in the very Sy. No. 161. Almost in similar circumstances, this Court in the case of S.C. Chandrappa-2005 AIR-Kant. H.C.R. 1752 considered the scope of enquiry and the procedure as well as the jurisdiction u/s 77-A vis-a-vis Section 48-A of the Act, it observed thus:

An applicant in Form No. 7A u/s 77-A of the Act is not entitled to seek an opportunity to establish that he was in actual possession and personal cultivation of the land concerned as a tenant on the appointed date i.e., on 1-3-1974 or the date on which the amendment Act No. 23 of 1998 came into force with effect from 1-11-1998. The factum of possession and status of the applicant as on the appointed date should be an undisputed fact. The land in respect of which applicant in Form No. 7A is made is a tenanted land and such land must have been vested in the State Government already and that the Government records should reflect that position. The proceeding u/s 77-A cannot be equated to a proceeding initiated by the Land Tribunal in pursuance of an application in Form No. 7 made u/s 45 of the Act. It needs to be noticed that he is in actual possession and personal cultivation of the subject lands as on the appointed date i.e., 1-3-1974, the Land Tribunal is duty bound to grant occupancy rights of such lands. But, that is not situation u/s 77-A of the Act. Section 77-A of the Act is only an enabling provision to grant a land, which is already vested in the State Government to an applicant. No applicant in Form No. 7 can claim a land as a matter of right or as a matter of course. For varieties of reasons, the Assistant Commissioner may not grant land to an applicant. Secondly, a person who has missed the bus due to his indolence cannot be treated on par with a person who is vigilant in working out his legal remedies by making application in Form No. 7 within the stipulated time because law helps the vigilant and not the indolent.

That seems to be the legislative policy behind Section 77-A of the Act. If the legislature wanted to help even those tenants who did not make application in form No. 7 within the stipulated time to secure grant of occupancy rights, of course, the law maker would have extended the time to make Form No. 7 applications.

(Underlined by us)

10. Even earlier, in the case of Hosabayya Nagappa Naik and Others Vs. State of Karnataka and Others, , this Court has considered the difference of procedure for grant of occupancy right u/s 48-A of the Act and grant of land u/s 77-A of the Act. It is held thus:

We say this for yet another reason namely that the last date for filing of application u/s 45 in Form No. 7 had been extended from time to time. If the scope of enquiry contemplated u/s 77-A of the Act was to be the same as an enquiry u/s 48A of the Act, then it would have been the simplest thing for the Legislature to extend such date instead of providing for a separate provision as u/s 77A. On the other hand, the Legislature has advisedly provided for an enquiry under the Section and two very important distinguishing features have to be noticed. One is that the authority to whom the application u/s 77-A is to be made is the Deputy Commissioner or any other Officer authorized by the State Government in this behalf and not the Land Tribunal which is the inquiring authority u/s 48A of the Act and secondly that the application in Form No. 7A is for grant of land whereas an application under Form No. 7 of the Rules and filed u/s 45 of the Act was for grant of occupancy rights.

11. Reconsidering the provisions in the case K.P. Ramanna Rai, reported in 2006 (1) AIR Kar Reported 341, it is held that "once the Appellant had filed earlier Form No. 7 claiming grant of occupancy rights, he cannot claim benefit of grant of land u/s 77-A of the Act on the ground of bonafide error, inadvertent mistake, etc."

12. On considering these three pronouncements of three separate Division Benches, it is to be noted that though the learned Single Judge has not dealt with this aspect elaborately, in our view, he has almost followed and expressed same as that has been expressed in the aforesaid three pronouncements. As we have already noted, it is not as if the applicant/Appellant was unaware of the availability of remedy u/s 48-A of the Act. He has in fact, prayed for grant of occupancy right in respect of two survey numbers and also during the enquiry has claimed grant of occupancy in respect of part of the every same survey number in dispute. It is only having kept quite and only taking advantage of introduction of Section 77-A, the Appellant has come up with the present application for grant of land, which has been though considered in his favour by the Authorised Officer and the same has been reversed by the learned Single Judge of this Court. In our view, the purpose of grant of land u/s 77-A is different from grant of occupancy rights.

One more thing to be noticed is that unlike Section 48-A of the Act, where it is required for the applicant to show that because he or his predecessors were tenants of the land in question by operation of Section 44 of the Act, the land stood vested with the State Government. However, u/s 44 of the Act and the words "Such land referred to in Clause 2 (ii) and (iii) of Section 77-A means only vested lands" and not the lands claimed by the applicant. There is absolutely, no material to show that the land claimed by the Appellant stood vested in the State Government as per Section 44 of the Act and as this is a condition precedent unless the land stood vested in the State Government, the Authorised Officer had no jurisdiction to grant the land to the applicant.

13. Considering all these aspects, in our view, the learned Single Judge was justified in holding that the grant of land in favour of the Appellant by the Authorised Officer was not in accordance with law and has rightly set aside the grant. We see no reasons to differ with the reasons of the learned Single Judge and even otherwise on independent assessment of the entire law and facts, we also come to the same conclusion.

14. In the result, the appeal stands dismissed as it is devoid of merits.