

**(2013) 12 KAR CK 0467**

**In the Karnataka High Court**

**Case No : Writ Petition No. 45335 of 2013 (LR-RES)**

Sri B.G. Lakshmikantaraja Shetty

APPELLANT

Vs

State of Karnataka

RESPONDENT

**Date of Decision : 04-12-2013**

**Acts Referred:**

Karnataka Land Reforms Act, 1961 — Section 79A, 80

**Citation : (2013) 12 KAR CK 0467**

**Hon'ble Judges : B.V. Nagarathna, J**

**Bench : Single Bench**

**Advocate : Nagaraja Rao K.S. and Sri. B.N. Suresh, for the Appellant; M.S. Prathima, for R1 and R2, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

B.V. Nagarathna, J.—The order of the Karnataka Appellate Tribunal (hereinafter referred to as "the Tribunal" for short) in Appeal No. 726/2006 dated 12/08/2013 (Annexure-K) as well as the order of the second respondent-Assistant Commissioner, Bangalore North Taluk, Bangalore, dated 11/07/1997 (Annexure-G) are assailed in this writ petition. Briefly stated, the facts according to the petitioner are that he had purchased land bearing Sy. No. 102/2 situated at Amruthahalli Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore, measuring 01 acre 01 gunta under a registered sale deed dated 05/07/1991 from one Sri. Marappa son of late Sonnappa for a valuable consideration, a copy of the sale deed is produced at Annexure-D. The petitioner claims to be an agriculturist and therefore, was entitled to purchase the aforesaid land. Subsequently, in the year 1997, the second respondent initiated proceedings u/s 79A read with Section 80 of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the Act") on the premise that the petitioner was not an agriculturist and therefore, was not entitled to purchase the aforesaid land. The petitioner did not participate in the proceedings before the Assistant Commissioner. By order dated 11/07/1997, the Assistant Commissioner held that

the petitioner was not an agriculturist and therefore, was not entitled to purchase the land in question and passed an order forfeiting the said land to the State. Strangely, that order was assailed by the legal representatives of the vendor of the petitioner in Appeal No. 345/2001 before the Tribunal. That appeal was dismissed by an order dated 09/02/2004 not only on the ground of delay, but also by holding that the appellants therein had no right to file an appeal as they were not aggrieved persons. Subsequently, the petitioner preferred Appeal No. 726/2006 before the Tribunal. Appeal No. 760/2006 filed by one Venkatesh is not a subject matter of this writ petition. The Tribunal, by its order dated 12/08/2013 dismissed the appeal on two counts. Firstly on account of there being a delay of eight years ten months and twenty four days in filing the appeal and secondly, on account of the fact that Appeal No. 345/2001 filed by the legal representatives of the vendor of the petitioner had been dismissed and therefore, that order was squarely applicable to the petitioner's appeal also. Being aggrieved by these orders, the petitioner has filed this writ petition.

2. I have heard the learned counsel for the petitioner, learned Government Pleader appearing for the respondents and perused the material on record.

3. Learned counsel for the petitioner has drawn my attention to the order passed by the second respondent on 11/07/1997 as well as the order passed by the Tribunal. He contended that he did not participate in the proceedings initiated by the second respondent and the impugned order was passed behind his back. As he had no knowledge of that order which was against the petitioner, it was not assailed at an early point of time before the Tribunal. The delay in approaching the Tribunal was solely on account of the fact that the order of the second respondent was an ex-parte order. The Tribunal, therefore, had to condone the delay and also consider the case of the petitioner on merits rather than holding that the appeal could not be considered on merits on account of dismissal of Appeal No. 345/2001 filed by the legal representatives of the vendor of the petitioner. He, therefore, contended that the impugned orders may be quashed and an opportunity be given to the petitioner to appear before the second respondent-Assistant Commissioner.

4. Per contra, learned counsel appearing for the respondents supported the impugned orders and stated that the petitioner has not appeared before the Assistant Commissioner and therefore, no further opportunity can be granted to him at this point of time.

5. Having heard the learned counsel for the petitioner and learned Government Pleader for the respondents, it is noted on a perusal of the impugned order of the Assistant Commissioner that the said order is an ex-parte order, even without going into the question as to whether the petitioner was served with notice by that authority or not as the petitioner has not participated in the proceedings initiated under Sections 79A and 80 of the Act. An order against the interest of the petitioner would have given sufficient cause to the petitioner to approach the Tribunal. The delay in approaching the Tribunal is solely on account of the fact

that the Assistant Commissioner's order was passed in the absence of the petitioner or without his participation in the proceedings. On that account alone, Annexure-G would have to be quashed only for the purpose of enabling petitioner to have an opportunity of being heard in terms of principles of natural justice by the said authority.

6. As far as the order of the Tribunal is concerned, the delay in approaching the Tribunal ought to have been considered in the light of the *ex parte* order passed by the Assistant Commissioner which has not been done so by the Tribunal. That apart, it is noted that the order passed in Appeal No. 345/2001 dated 09/02/2004 was in an appeal filed by the legal representatives of the vendors of the petitioner. They in fact had no *locus standi* to file such an appeal against the order of the Assistant Commissioner. It is in that context, their appeal was rejected without going into merits. That order could not operate as *res judicata* insofar as the petitioner's appeal is concerned. Therefore, the Tribunal was not right in dismissing the appeal filed by the petitioner on that ground.

7. As the petitioner has not had an opportunity of being heard by the Assistant Commissioner before the impugned order at Annexure-G was passed, it would be just and proper to enable the petitioner to participate in the proceedings initiated by the second respondent u/s 79A read with Section 80 of the Act. The petitioner is willing to appear before the second respondent on 06/01/2014 without insisting upon a fresh notice from that authority. If the petitioner appears on that date, the second respondent to consider the case of the petitioner in accordance with law and to pass a speaking order. In the result, the writ petition is allowed in the following terms:

i) Annexures-G and K are quashed.

ii) Petitioner to appear before the second respondent on 06/01/2014 without insisting on a further notice from that authority.

iii) The second respondent to consider the case of the petitioner in accordance with law and to pass a speaking order.

No costs.