

(2013) 07 KAR CK 0098

In the Karnataka High Court

Case No : Writ Appeal No. 3187 of 2010 (LR)

Sri Mahabala Shetty

APPELLANT

Vs

State of Karnataka, Special Officer Land Reforms Tribunal and
Sri Vasudeva Bhat

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Karnataka Land Reforms Act, 1974 — Section 77A
Karnataka Land Reforms Rules, 1974 — Rule 26(C)(1)

Citation : (2013) 4 AKR 450 : (2013) ILR (Kar) 5538

Hon'ble Judges : Ravi Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : K. Prasanna Shetty, for the Appellant; B.S. Prasad, Advocate for R3 and Sri M. Keshava Reddy, AGA for R1 and R2, for the Respondent

Judgement

Ravi Malimath, J.—The petitioner filed an application for grant of occupancy rights in Form No. 7, to an extent of 12 items of land. By the order dated 30.11.1977, the land Tribunal granted occupancy rights for the said lands. On 30.11.1998, the petitioner filed an application under Form No. 7A for grant of occupancy rights of two additional items of land which according to him were left out by oversight at the time of filing Form No. 7. By the order dated 01.03.2006, the Land Tribunal allowed the application and granted occupancy rights for the said two lands. The land owners being aggrieved by this order, filed an appeal before the Karnataka Appellate Tribunal. The Tribunal by its order dated 19.09.2008 allowed the appeal. Questioning the same, the petitioner-tenant filed the instant writ petition.

2. The learned Single Judge by the impugned order dismissed the writ petition on the ground that an application in Form No. 7A is not maintainable, since the tenant had earlier filed an application in Form No. 7. Aggrieved by the same, the petitioner has filed the present appeal.

3. The learned counsel for the appellant contends that the order passed by the

learned Single Judge and the Tribunal are erroneous and liable to be set-aside. That the Tribunal has rightly granted occupancy rights in the application filed under Form No. 7A. Therefore, the writ appeal requires to be allowed by confirming the order of the Land Tribunal.

4. On the other hand, the learned counsel for the respondent defends the impugned order.

5. It is a matter of fact that the petitioner had earlier filed Form No. 7, seeking occupancy rights which were granted. Form No. 7 is in terms of Rule-19(1) of the Karnataka Land Reforms Act, 1974, which enumerates that the applicant shall furnish particulars of the land held under each separate tenancy, etc. This Form No. 7 has been applied for by the appellant and lands have been granted.

6. Subsequently, the petitioner has filed an application in Form No. 7A. Form No. 7A is in terms of Rule-26(C)(1) of the Karnataka Land Reforms Rules, 1974, with regard to procedure for grant of land by the Deputy Commissioner or by an Officer authorized under Section-77A of the Act. Section- 77A of the Act is with reference to grant of land in certain cases, which reads as follows:

77A-Grant of land in certain cases--

(1) Notwithstanding anything contained in this Act, if the Deputy Commissioner, or the [or any other officer authorized 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 under Section- 45 or 49, has failed to apply for registration of occupancy rights in respect of such land under sub-section (1) of Section- 48A 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 [x x x x] grant the land to such person subject to such restrictions and conditions and in the manner, as may be prescribed.

7. Therefore, the power to grant land in terms of Section- 77A of the Act is by filing Form No. 7A under Rule-26(C)(1) of the Karnataka Land Reforms Act. The condition for invoking Section- 77A of the Act is that the person should be entitled to be registered as an occupant of such land under Section- 45 or Section- 49 and who has failed to apply for registration of land in respect of such land under Section- 48(A) of the Act, within the period specified therein and other conditions.

8. The facts in the instant case are different. Admittedly, it is not a case that the

appellant has failed to apply for registration of occupancy rights. On the contrary, an application was filed in Form No. 7 claiming occupancy rights and the same has been granted. Once Form No. 7 has been granted, the tenant is precluded from making an application in Form No. 7A. The condition as imposed in Section-77A is that the occupant should have failed to apply for occupancy rights within the specified date. It is only then that an application under Form No. 7A can be made. If application in Form No. 7 has been made, no application under Form No. 7A would lie. The same would be opposed to the provisions of Section- 77A of the Act. In view of these facts, there is no error committed by the Tribunal or by the learned Single Judge. Form No. 7A filed by the applicant is opposed to law and it is not maintainable. No order can be passed on such an application. Consequently, the appeal being devoid of merits is dismissed.

Two weeks time granted to file Power for respondent No. 3.