

(2011) 12 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 2980 of 2003 (LR)

Sri. M.S. Subbaiah Since Deceased by His Lrs Sri. M.S.
Srikantaiah

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 133

Citation : (2011) 12 KAR CK 0046

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : K.K. Thyamma and Sri. G.A. Vishwanatha Reddy, for the Appellant;
D.R. Rajashekarappa Advocate for R4 (A and B) and 5 and Sri. Shashidhar S.
Karmadi HCGP for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

Ajit J. Gunjal

1. The subject matter of this writ petition is Sy.Nos.90, 12 & 13/2. The original applicant one Muniyappa makes an application in Form No.7 for grant of occupancy rights. Initially, the occupancy rights was granted, which was the subject matter of a writ petition before this Court. This Court allowed the writ petition in part and remitted the matter to the Land Tribunal for fresh consideration in respect of the above mentioned lands. On remand the Tribunal has granted occupancy rights once again in favour of the original applicant who is represented by his legal heir now.
2. I have heard the learned counsel appearing for the petitioner as well as the contesting respondents.
3. Apparently, the Tribunal has granted occupancy rights in favour of the original applicant solely on the basis of the statement made and also the revenue records.
4. The Tribunal has recorded a finding that the name of the original applicant

appears in the revenue records for the relevant year 1973-74 and a presumption is raised u/s 133 of the Karnataka Land Revenue Act.

5. A perusal of the Record of Rights, which are made available in the present proceeding, indicates that neither the name of the original applicant nor the name of the legal heir appears in the Record of Rights.

6. Indeed, for one stray year the name of the original applicant appears. But however, only on that score the Tribunal could not have granted occupancy rights.

7. Indeed, a presumption in respect of the entries in the revenue records could be raised u/s 133 of the Act only if the entry is lawful and not otherwise. The Tribunal is required to consider the same. In the absence of any material to that effect, I am of the view that the Tribunal was not justified in raising a presumption u/s 133 of the Act. What remains thereafter is only the oral statement. Even the oral evidence has not been considered by the Tribunal except stating the assertion made by either of the parties in support of their respective claims. I am of the view that a spot inspection was also required to be conducted before considering the application of the original applicant for grant of occupancy rights. Since there is a serious lacuna in the proceedings; I am of the view that the impugned order is liable to be interfered. Hence, the following order is passed:

(i) Petition is allowed.

(ii) The impugned order is set aside.

(iii) The matter is remitted to the Land Tribunal for fresh disposal in accordance with law.

(iv) All contentions are left open.

(v) Rule is made absolute.

8. Mr. Shashidhar S. Karmadi, learned High Court Government Pleader appearing for respondents 1 & 2 is permitted to file memo of appearance within four weeks.