

(2005) 12 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 14018 of 1997

Sri. Patel B. Sundara Shetty

APPELLANT

Vs

Jarappa D. Bangera Mooly (since deceased by LRs. Smt. Vanaja and Others)

RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 126, 128

Citation : (2006) 5 KarLJ 285

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : Sakathkumar Shetty K, for the Appellant; V.R. Prasanna, for R1 (A-E and H), R. Kumar, G.P. for R2 and 3 and S.M. Byadagi, for R5, for the Respondent

Final Decision : Allowed

Judgement

K. Ramanna, J.—This writ petition is filed by the petitioner-Patel B. Sundara Shetty, s/o late Patel Venkanna, against the order dated 25.6.1977 passed by respondent No. 2 the Land Tribunal, Mangalore, in case No. LRT(2)2775/76-77 at Annexure-"F" to confer the occupancy rights in respect of several items among the land bearing Sy.No. 40/15B measuring 25 cents and Sy.No. 40/21 measuring 43 cento of Baikampady village of Mangalore Taluk. The main ground urged by the petitioner is that the 2 items of the aforesaid lands situated at Baikampady village in Mangalore Taluk purchased under a registered sale deed on 26.12.1958 from its previous owner. Ever since from the date of purchase, he is in possession of the said 2 items of the land. But the deceased respondent No. 1 had filed form No. 7 claiming several items of the property. But, respondent No. 1 has not filed Form No. 7 before the 2nd respondent for grant of the occupancy rights in respect of the aforesaid 2 items of land. Even then, the Land Tribunal conferred the occupancy rights in respect of these two items of land in question to the deceased respondent No. 1 and the petitioner was not impleaded as a necessary and proper party. Even in Form No. 7 filed by the deceased first

respondent the name of Dr. Smt. B. Shantha mentioned as the owner. Therefore, the impugned order passed by the Tribunal conferring the occupancy rights in respect of these two items of lands in favour of the deceased respondent No. 1 is in clear violation of principles of natural justice and the mandatory provisions which is liable to be quashed. AS far as the delay is concerned, the petitioner contends that in the 3rt week of May, 1997, the officials attached to the office of respondent No. 5- the Special Land Acquisition Officer, K.I.A.D.B., Baikampady, Mangalore Division, visited the lands in question for the purpose of conducting survey. On enquiry, he came to know that the said two items of land are notified for being acquired for the purpose of B.P.C.L., project. Therefore, the petitioner verified the records. The Revenue records reveal that the occupancy rights has been granted in favour of deceased Respondent No. 1. Therefore, immediately he obtained the endorsement at Annexure- "E" from the Land Tribunal and filed this writ petition.

2. Heard the arguments of the learned Counsel for the petitioner, learned Counsel appearing for the respondent No. R-1(A-F and H) and learned HCGP for respondent No. 2 and 3. None represents on behalf of respondent Nos. 4 and 5.

3. It is contended by Learned Counsel for the petitioner that the two items of land in question have been purchased by the petitioner under registered sale deed from its original owner. Some how his mother's name has been entered against column No. 9 in respect of land in Sy.No. 40/15B as Santhamna Hengasu W/o Venkanna Shetty. Even though the name of the deceased respondent No. 1 has not been included in two items of the land in the form No. 7, the Tribunal is totally wrong in granting occupancy rights in respect of the two items and without notice to the petitioner, and therefore the impugned order has been passed. Hence, the same is liable to be quashed. Further, it is contended, even though the impugned order was passed in the year 1977, the said fact came to his knowledge only in the third week of May, 1997 i.e. after 20 years. Immediately, he had approached the Land Tribunal to issue certified copy of the occupancy rights granted in favour of the deceased respondent No. 1. But they have issued an endorsement at Annexure-"E" stating that the entire records in respect of the said case submitted to the Land Reforms Appellate Authority. The petitioner has purchased the two items of the land in the year 1950. The occupancy rights was granted by the Tribunal only on the basis of the alleged survey made by the Surveyor which discloses that the deceased respondent No. 1 was cultivating the land. One Chinnamma filed an appeal, which is came to be dismissed. Therefore, the impugned order is liable to be quashed.

4. Learned HCGP for the respondent NOS. 2 and 3 submits that the impugned order passed by the Tribunal conferring the occupancy rights in respect of two items if the land is based on the surveyor's report and the deceased respondent No. 1 was in possession and enjoyment of the land. The Tribunal is right in granting occupancy rights in his favour and the writ is liable to be dismissed as not maintainable. Even though, the notice was served on the L.Rs. of the

deceased respondent No. 1 through paper publication, neither they appeared in person nor through their counsel. During the course of the arguments, learned Counsel for the petitioner contended that the petitioner has purchased the said land under the registered sale deed dated 26.12.1958 in respect of two items from its original owner Jarappa D. Bangera and the deceased respondent No. 1 who had filed Form No. 7 for grant of occupancy right several items of land but not included two items of land to confer the occupancy rights. In spite of that, the Tribunal has passed the order granting occupancy rights without impleading either the petitioner or his mother as a necessary and proper party. As far as the delay is concerned, the petitioner explained the delay properly and satisfactorily that the impugned order passed by the Land Tribunal came to his knowledge only in the third week of May, 1997. Therefore, he immediately filed the writ petition.

5. I have carefully examined the material placed on record. It is seen that originally, that deceased respondent No. 1 filed Form No. 7 on 16.8.1974 for grant of occupancy rights in respect of 19 items. But, Sy.No. 40/15B or 40/15-20 has not been included. The Tribunal has issued notice to the owners of the said items of the land and on enquiry, it was revealed that the deceased respondent No. 1 was cultivating the land in Sy.No. 40/15B measuring 25 cents and 40/20 for 43 cents. The record of rights in respect of land Sy.No. 40/15B discloses that the deceased respondent No. 1 was cultivating the land as cultivator right from the years 1968-69. The owner's name is shown as one Santhamna w/o Venkanna Shetty. According to the petitioner, Santhamna Hengasu is none other than the petitioner's mother and her name has been entered by the Revenue Authority for the reasons known to them. But he has not produced the record of rights in respect of Sy.No. 40/21. In this connection the contention of the learned Counsel relied the provisions of Section 128 of the Revenue Act and also decision rendered by this Court in the case of *Govindaz Hari Kulkarni v. Land Tribunal, Hukkeri and Anr.* reported in 1977 (2) Kar L.J. 123 wherein it has been held that:

Under the proviso to Section 126 of the Karnataka Land Revenue Act, if rights of the parties are affected by means of a registered deed, such a party is exempted from making a report to the authority about the acquisition of rights. Therefore, it was the duty of the authority to report the matter to the Department for making entry in the record of rights and index of lands. It is too much to contend that in the absence of any entry in the record of rights that title did not pass to the minor. The registered partition deed conveyed title to him and, therefore, he was the owner of the land and he was interested in the lands in question and he was required to be impleaded as a party.

6. Therefore, as soon as the land was registered in the name of the party, as per the procedure laid down in law, it is the duty of the Revenue Authority to enter the name of the party i.e., purchaser in the Revenue records. Therefore, even though, the petitioner has purchased two items of the land, in respect of land Sy.No. 40/158, his mother's name has been shown as the owner in respect of the land in question. He also relied on another decision rendered by Division

Bench of this Court in the case of Botebagalu Henjappa v. State of Karnataka (W.P. No. 5320/79 reverse W.A. No. 714/ 80 Dr. 3-10-80 reported in 1982 (1) KarLJ wherein it is held thus:

though a sale deed had not been executed in favour of petitioner at the time of the proceedings before the Tribunal, he was a parson interested to whom notice should have been issued and where the petitioner obtained a decree for specific performance of the land against R-4 and obtained sale deed from the Court on 24.1.78 and ma an while R-3 applied for grant of occupancy showing R-4 as the owner and obtained occupancy.

7. Therefore, it is seen that even though the petitioner purchased the two items of the land, but his name has not been entered either in the 9th column or in column No. 12(2) of the ROR. But his mother name is shown in Sy.No. 40/21. The petitioner has not produced ROR. Annexure "A" is the registered sale deed, which discloses that in the year 1958, the petitioner has purchased the said land and he being the owner of the land, the Tribunal before conferring the occupancy rights in favour of the deceased respondent No. 1 ought have issued notice to the petitioner or his mother. The Tribunal has not made any such attempts to issue notice. Therefore, the impugned order is liable to be quashed for granting of occupancy rights in respect of two items of the land in favour of the deceased respondent No. 1.

8. Accordingly, the writ petition is allowed and the impugned order under challenge is hereby quashed. Matter is remitted back to the Tribunal with a direction to secure the presence of the petitioner and his mother, if alive by issuing notice and permitting him to adduce oral and documentary evidence and thereafter dispose of the case in accordance with law after making spot inspection.