

(2011) 11 KAR CK 0213
In the Karnataka High Court
Case No : Writ Petition No. 18345 of 2006 (LR)

Sri Sundara Bhandari

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 38
Karnataka Land Reforms Rules, 1974 — Rule 17

Citation : (2011) 11 KAR CK 0213

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : Prasanna VR, for the Appellant; R. Kumar, HCGP for R-1 and 2 Sri Kukkaje Ramakrishna Bhat, for R-3 to 5 Sri P.P. Hegde, for R-4 and 5 R-6 Served, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J. Gunjal

1. The petitioner claims to be an agricultural labourer and used to pay the house tax to the local authority since 1972-73. Suffice it to note that he made an application in Form No. 2-A u/s 38 of the Karnataka Land Reforms Act for grant of occupancy rights in respect of the premises which is in occupation. Incidentally it is to be noticed that the petitioner claims that he is in occupation of the same in respect of 5 cents in Sy. No. 81/3C. The Land Tribunal initially rejected the said application on the ground that Section 38 of the Act is not at all attracted in as much as the petitioner is not occupying the land in question as an agricultural labourer. The said order was questioned by the petitioner before this Court. The said order was set aside by this Court in W.P. No. 2208/2001 and the matter was remanded to the Land Tribunal for fresh disposal on the premise that the impugned order is not in conformity with Rule 17 of the Karnataka Land Reforms Rules. The petitioner is questioning the order passed by the Land Tribunal granting occupancy rights in respect of 5 cents in Sy. No. 81/3C to respondent

No. 5.

2. Sri V.R. Prasanna, Learned Counsel appearing for petitioner submits that in the given set of circumstances, the impugned order granting occupancy rights in favour of respondent No. 5 is liable to be set aside in as much as there is a claim made by the petitioner in respect of the same item. He further submits that both the applications filed by petitioner as well as respondent No. 5 is required to be heard together.

3. The Learned Counsel appearing for respondent No.5 submits that the petitioner is not an agricultural labourer but in occupying the premises as a tenant on a monthly rent of Rs. 15/- . He would refer to Annexure "R-6", a reply notice.

4. I have perused the impugned order passed, by the Land Tribunal and also the reply notice. In the normal circumstances, this Court would have set aside the order and remanded the matter to the Land Tribunal for fresh disposal more so, having regard to the fact that there are two applications filed in respect of the same property. But however, in the case on hand, the petitioner is not occupying the premises as an agricultural labourer so as to attract the provisions of Section 38 of the Act. Indeed Annexure "R-6" is a reply given by the Advocate of the petitioner way back in the year 1982 indicating that he has been occupying the premises on a monthly rental of Rs. 15/- It is useful to extract the reply given by the Learned Counsel appearing for petitioner to the notice issued by respondent No. 5 which would read as under:

Instructed by Sri. Sunder Bhandary, I am replying to your notice dated 25.6.1982 sent by you to him on behalf of your client Lalita as hereunder;

1. That my client & occupying the premises on a monthly rental of Rs. 15/- is admitted.

2. My client does not accept either your client or Kamala as his landlady. My client was paying the rental to Akku till she died and after that there have been rival claims for the rental. Both your client and one Kamala are demanding the rent.

Indeed a perusal of the said reply would clearly indicate that the provisions of Section 38 are not at all attracted. Section 38 would refer to the making an application in Form No. 2-A in respect of dwelling house of agricultural labourer.

5. In the case on hand, there is nothing on record to show that the petitioner is an agricultural Labourer. More so, with reference to the reply given by him to the notice issued by respondent No. 5. Hence, I am of the view that the question of interfering with the impugned order in the circumstances does not arise in as much as the petitions cannot be construed as an agricultural labourer.

6. Having said so, I am of the view that the impugned order does not warrant Interference, Petition stands rejected. Rule is discharged.

Sri R. Kumar, learned HCGP is permitted to file memo of appearance within four weeks from today.