

(1993) 10 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 2152 of 1981

State of Karnataka

APPELLANT

Vs

Gowrawwa

RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Reforms Act, 1961 — Section 48 A
Karnataka Village Offices Abolition Act, 1961 — Section 8

Citation : (1993) ILR (Kar) 3469 : (1993) 4 KarLJ 399

Hon'ble Judges : S. Venkataraman, J; M. Ramakrishna, J

Bench : Division Bench

Advocate : Shimoga Subbanna, HCGP, for the Appellant; B.S. Hadimani, for the Respondent

Final Decision : Allowed

Judgement

M. Ramakrishna, J

1. The State of Karnataka by its Secretary to Government, Department of Revenue, has challenged the order (Annexure A) made by the Land Tribunal, in this Writ Petition under Articles 226 and 227 of the Constitution, and it has sought for quashing the same on more than one ground.

2. A few facts that are necessary for the disposal of this Writ Petition are as follows:

Smt. Gowrawwa, wife of Gulappa Agasar - first respondent herein presented an application u/s 48-A of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the Act") seeking for occupancy right in respect of 1 acre 29 guntas in S.No. 157/1+3 situated in Nagavand Village, Hirekerur Taluk, Dharwar District, before the Land Tribunal - second respondent herein. Halappa the third respondent was made a party as he was the holder of the village office in respect of the land in question.

3. It would appear by a perusal of the original records of the Tribunal made available that both the parties have been served with the notice but, the Tribunal without following the Rules framed under the Act for the purpose of holding an enquiry and without recording the evidence of both parties proceeded to pass the order conferring occupancy right in favour of Smt. Gowrawwa.

4. The main contention urged by Sri Subbanna, learned Government Pleader is that in view of the provision of Section 107 of the Act, the land being Maharkinam land, it is a Government land and that therefore Tribunal had no jurisdiction to entertain an application u/s 48-A of that Act and to pass an order in favour of the first respondent.

5. The arguments advanced by Sri Subbanna is that as long as the land continues to be Government land, in as much as no order was passed under Sections 5, 6 or 7 of the Village Offices Abolition Act, 1961 (the Act of 1961 for short) regranteeing the land in favour of the holder of the Village Office, the Tribunal has no jurisdiction to entertain an application u/s 48-A of the Act for grant of occupancy.

6. Sri Hadimani, learned Counsel appearing for the first respondent, however, argued that as on the date of the application presented by Gowrawwa she was enjoying the leasehold rights over the land in question and that therefore Section 8 of the Village Offices Abolition Act would come to her rescue. The argument is that having regard to the scope and ambit of Section 8 of the Act of 1961, even if a land annexed to a village office was found to be lawfully leased in favour of a person, he is entitled to grant of occupancy over such land despite the vesting of such land with the Government.

7. By a careful consideration of the scope of Section 8 it is seen that the Tribunal gets jurisdiction to grant occupancy under the Act in favour of the lessee in respect of the lands governed by the Act of 1981 only if it is established that the land was lawfully leased and the lease was subsisting as on 1.3.1974 in which case only the rights and liabilities of the re-grantee under Sections 5, 6 or 7 are, subject to the provisions of the Act of 1961, governed by the tenancy law and not otherwise. In the instant case, though the first respondent Gowrawwa has produced a copy of the R.T.C. for the year 1974 showing that she was cultivating the land in question for that year (1974), from the documents found in the original records of the Tribunal it is not possible to gather any material to come to the conclusion that Smt Gowrawwa or her husband was enjoying the leasehold rights, being in lawful possession of the land immediately prior to 1.3.1974. Unfortunately, the Tribunal has also not recorded any finding on this point.

8. Sri Hadimani has not been able to show even before this Court whether the applicant possessed any leasehold rights subsisting as on 1.3.1974, However, he submits that there must have been an order either under Sections 5, 6 or 7 of the Act of 1961 regranteeing the land in favour of the holder of the Village Office, which will enure to the benefit of the first respondent - Gowrawwa. But, this

contention is not supported by any material disclosing that there is an order of regrant made by the competent authority under Sections 5, 6 or 7 of the Act of 1961. Thus, the impugned order made without jurisdiction, cannot be sustained. We have to accept the contention of Sri Subbanna, learned Government Pleader.

9. For the reasons stated above, this Writ Petition is allowed. The impugned order Annexure-A is quashed, however, respondent-1, Gowrawwa is at liberty to approach the competent authority for grant of occupancy right in her favour in respect of the land in question, if she is in possession of documentary evidence to show that land was lawfully leased to her, after regrant in favour of the holder of the Village Office, and that the lease was subsisting as on 1.3.1974. No costs.