

(2007) 02 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 19466 of 2005

Veerayya Saraganachari

APPELLANT

Vs

The Asst Commissioner Bagalkot Sub Division and Others

RESPONDENT

Date of Decision : 26-02-2007

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 45, 77, 77 A

Citation : (2007) ILR (Kar) 1140 : (2007) 3 KCCR 1620

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : D S Hosmath, for the Appellant; Suresh P. Hudedagaddi, for R3 and R4, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This writ petition is by a person who had filed an application u/s 77A of the Karnataka Land Reforms Act, 1961 [for short the Act"] before the Assistant Commissioner and was successful in that effort in respect of 5 acres of land in Sy. No. 111/2 of Sulibhavi Village, Hungund Taluk, but was deprived of this benefit by the Karnataka Appellate Tribunal in terms of its order dated 7-3-2005 passed in Appeal No. 683/2002 at the instance of respondents 2 to 5 who had claimed to be landlords of the land in question and who had contended that the petitioner was not a tenant at all.

2. The Tribunal in coming to such conclusion relied upon earlier proceedings before the Munsiff court, Hungund, in OS No. 6/1975 which though was a suit inter se amongst the respondents 2 to 5 and their predecessors, the petitioner was, nevertheless, a party as a defendant to the suit and one of the issues in the suit was as to whether the petitioner was a tenant in respect of the subject land. The civil court had referred this issue for determination to the Land Tribunal in terms of Section 133 of the Act and the Land Tribunal had opined that the petitioner was not a tenant

3. The civil court took note of this finding of the land tribunal and concluded the proceeding in OS No. 6/1975 in terms of its Judgment
4. It appears an appeal had been preferred as against this Judgment and Decree in R.A. No. 22/1981 before the Additional Civil Judge, Bagalkol and on the dismissal of the appeal, a further appeal to this Court in RSA No. 714/1990.
5. The second appeal also came to be dismissed, the effect of which in so far as petitioner is concerned is that his claim as a tenant which was negated by the tribunal and which was taken note of by the civil court got concluded.
6. It is because of this position, the appellate tribunal was of the view that if the petitioner was not a tenant prior to the appointed day and could not have filed an application in Form No. 7 for conferment of occupancy rights; such a person cannot file an application u/s 77A of the Act also as this provision is for the benefit of such persons who were tenants who had not filed an application in Form No. 7 within the permitted time but had continued to be in possession and cultivation of the land in question.
7. One of the respondents having died, the matter had come up for orders regarding not taking steps.
8. Though Sri. Hosmath, learned Counsel for the petitioner had requested some more time for necessary steps, having regard to the nature of the matter, instead, the matter is taken up for disposal as I find taking further steps appear to be an exercise in futility for the petitioner only to incur some additional costs and postpone the inevitable.
9. I am of this view for the reason that the order passed by the appellate tribunal is valid in law, as a person who was not a tenant prior to the appointed day, cannot also claim the land in question to be granted in his favour by filing an application u/s 77A of the Act as Section 77A is only for the benefit of such persons who were in fact and law tenants of the land and had for some reason missed the opportunity of filing an application in Form No. 7.
10. However, Sri. Hosmath, learned Counsel for the petitioner has contended that assuming there was a finding by the land tribunal that the petitioner was not a tenant, that by itself cannot conclude the proceedings against the petitioner for the purpose of making an application u/s 77A of the Act; that In terms of the language of Section 77A of the Act, if the land had vested in the State, an application can be filed by a person who seeks grant of that land to him who had continued to be in possession and cultivation and the petitioner being in possession and cultivation, even if the land tribunal had held that he was not a tenant, he can still maintain an application for grant in terms of Section 77A of the Act.
11. Submission is that Section 77A of the Act enables even such a person who had continued to be in possession and cultivation in respect of the land in question on the date of the application and if the land is one which had already

vested in the State; that as there is no finding that the land had not vested in the State, there is still scope for examining this aspect of the matter and therefore the tribunal is not correct in concluding the matter against the petitioner even without such an enquiry and for such purpose the matter is required to be remanded to either the original authority or the appellate authority.

12. Section 77A of the Act reads as under:

77A. Grant of land in certain case -

(1) Notwithstanding anything contained in this Act, if the Deputy Commissioner, or the [or any other officer authorised 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 u/s 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 [within one year from the date of commencement of the Karnataka Land Reforms [Amendment] Act, 1997] grant the land to such person subject to such restrictions and conditions and in the manner, as may be prescribed.

(2) The provisions of Sub-sections (2A) and (2B) of Section 77 and the provisions of Section 78 shall apply mutatis mutandis in respect of the grant of land made under Sub-section (1).

[Provided that the land so granted together with the land already held by such person shall not exceed 2 hectares or D Class of land or its equivalent thereto.]

13. This argument of the learned Counsel for the petitioner is countered by Sri. Suresh P. Hudedagaddi, learned Counsel for the respondents 3 and 4.

14. Learned Counsel for respondents 3 and 4 submits that Section 77A applies only to a person who was actually a tenant prior to the appointed date i.e., prior to 1-3-1974 and who for any reason had not filed an application in Form No. 7 but continues to be in possession and cultivation of the land thereafter also; that such person can file such an application u/s 77A of the Act for grant of that very land as he was a tenant who had not made an application and such land which had vested in the State can be re-granted in favour of a person in cultivation and possession.

15. Sri. Nadiga Shivanandappa, learned Government Pleader appearing for respondent No. 1 also submits to the same effect.

16. I find force in the submission on behalf of the respondents. The language of Section 77A of the Act is quite clear that an application under this section can only be by a person who was a tenant and who had not availed of the benefit of filing Form No. 7 application. This inference is inevitable in view of Clause (ii) of Sub-section (1) of Section 77A as it is only a tenant or a sub-tenant who can be registered as an occupant u/s 45 and Section 49 respectively. Unfortunately for the petitioner, there was a specific finding by the very land tribunal that he was not a tenant. That finding has not been questioned. But, on the other hand, the civil court has taken note of this finding and has concluded the proceedings and therefore there is no escape from this finding that the petitioner was not a tenant in respect of the subject land. If the petitioner was not a tenant, there is no question of the petitioner maintaining the application u/s 77A of the Act.

17. Though learned Counsel for the petitioner would submit that if the land had vested in the State Government and there being no contrary finding, nothing comes in the way of the land being granted in favour of the petitioner as under the provisions of Section 77A of the Act, it is not a case of conferment of occupancy rights on the tenant but only a grant or re-grant of the land to such person, I find this argument also not productive for the petitioner for the reason that it is not even the case of the petitioner that the land had vested in the State Government because someone else was a tenant in the land in which event alone the land could have been vested in the State Government. It was the specific case of the petitioner that he was the tenant earlier. That claim having been negated, the petitioner cannot avail of the benefits of Section 77A of the Act.

18. It is no doubt true that a person in possession and cultivation as a tenant if had been dispossessed on being not registered as an occupant can always claim priority u/s 77 of the Act when the land had vested in the State Government and is available for disposal as surplus land. But, such an enquiry is not germane to an application u/s 77A of the Act and when the petitioner's application was not u/s 77 of the Act, there is no question of this Court examining such contention in this writ petition.

19. It is for this reason, I have to dismiss the writ petition. But, the dismissal does not mean that this order amounts to any finding either way with regard to the claim of the petitioner that he is in possession and cultivation of the land in question. The impugned order is not varied or interfered.

20. It is open to the petitioner to make good such claim before any other forum in any other manner as permitted in law.

21. Reserving such liberty, this writ petition is dismissed.