

(1977) 09 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 6932 of 1976

Venkatesh M. Mariyappa Gowda

APPELLANT

Vs

Land Reforms Tribunal, Sringeri and Others

RESPONDENT

Date of Decision : 27-09-1977

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 A (1), 48 A (2)
Karnataka Land Reforms Rules, 1974 — Rule 43, 43D

Citation : AIR 1978 Kar 15

Hon'ble Judges : M.S. Nesargi, J

Bench : Single Bench

Advocate : Mohandas N. Hegde, for the Appellant; D. Ponnurangam, for the Respondent

Judgement

1. This writ petition is directed against the order dated 4-6-1976 passed by the Land Tribunal, Sringeri, in Case No. LRT. 1432/75-76 so far as it pertains to respondent 3, Rukminiyamma, as the case of the petitioner against respondent 2, Mariya Gowda, has been given up at the stage of issuing Rule itself.
2. By the said order, Rukminiyamma, respondent 3, was granted occupancy rights to the extent of 2 acres 26 guntas in Survey No. 53 of Kagodu village, Sringeri Taluk.
3. It is undisputed that the petitioner is an interested person in the land inasmuch as he is the descendant of Kalanna Gowda, the original owner of the land. That fact is available in the statement of objections filed by Rukminiyamma.
4. The main grievance put forth by Sri Mohandas N. Hegde, the learned Advocate appearing for the petitioner, is that the petitioner was entitled to an individual notice u/s 48-A(2) of the Karnataka Land Reforms Act, 1961, but the same was not issued and served on him and as such he was not present before the Tribunal during the enquiry that took place, and hence he had no opportunity to put forth his case.

5. Section 48-A(2) of the Act makes it mandatory for the Tribunal to issue individual notices to persons whose names are mentioned in Form-7 filed by the person claiming to be registered as an occupant and to persons who appear to be interested in the land in question.

6. In order to find out what the legislature meant by the use of the words "persons appear to be interested" in the land in question, it would be, in my opinion, necessary to refer to Rule 19 of the Karnataka Land Reforms Rules, 1974. The said rule reads as follows:--

"19, Form of application and notice,--

(1) The application under sub-section (1) of Section 48-A shall be in Form 7. The application shall furnish particulars of all the lands held under each separate tenancy in one or more than one Taluk in respect of which the applicant claims to be entitled to be registered as an occupant. Where the lands are situated in more than one Taluk, the application shall be filed before the tribunal of the Taluk where the greater part of the lands is situated. On receipt of the application, the Tahsildar shall send extracts of the application to the Tribunals concerned. So far as the lands in his Taluk are concerned, the Tahsildar shall verify the particulars mentioned in the application with reference to the revenue records including the Record of Rights wherever they are prepared and also note the same on the application. The public notice and individual notice referred to in Sub-section (2) of the said section shall be in Form 8 and Form 9 respectively.

(2) Such notice in addition to being served in the manner laid down in Rule 42 shall also be published in the chavadi of the village concerned and in the offices of the village panchayat and the Tahsildar for a period of not less than thirty days."

7. If the materials as required by Rule 19 are provided by the Tahsildar, as is incumbent upon him by the said Rule, the Tribunal would be certainly in a position to know the persons who are interested in the land. But in this case it is not necessary to probe into that question. It is an undisputed fact that Venkateaha Gowda referred to by respondent 3 in her application is none other than the petitioner. When that is so, it is to be seen whether the petitioner was served with individual notice as contemplated by Section 48-A(2) of the Act. The mode of service of notice is provided in Rule 43 of the said Rules. Rule 43 (d) which is relevant for our purpose reads as follows:

"43 (d) in the case of an individual, person be served-

(i) by delivering or tendering the notice or order to the person concerned or his Advocate or authorised agent; or

(ii) by delivering or tendering the notice or order to some adult member of the family; or

(iii) by sending the notice or order to the person concerned by registered post

acknowledgment due; or

(iv) if none of the aforesaid modes of service is practicable, by affixing the notice or order in some conspicuous part of the last known place of residence or business of the person concerned."

8. The records maintained by the Tribunal have been called for. In regard to the individual notice sent to the petitioner, it is seen that an endorsement is made on the obverse of it that the said notice was affixed to the land as the said person was not available. It is evident that the provisions of Rule 43 (d) of the Rules have not been complied with. Therefore, it will have to be held that no service as contemplated by law was made on the petitioner and his contention in this regard is substantiated. When that is so, the principles of natural justice have been violated and the enquiry becomes vitiated.

9. Therefore, the rule is made absolute and the impugned order is quashed. The Tribunal is directed to hold the enquiry afresh according to law and dispose of the case expeditiously.

10. No order as to costs.

11. Rule made absolute.