

(2011) 12 KAR CK 0363
In the Karnataka High Court
Case No : Writ Petition No. 7390 of 2008 (LR)

Y.K. Ramanjini

APPELLANT

Vs

The Authorized Officer and Asst. Commissioner,
Chikkaballapura Sub-Division, Chikkaballapura, Camp at
Sidlaghatta, Pin-562101 and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 44, 45, 48 A, 77 A

Citation : (2011) 12 KAR CK 0363

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : Sandesh J. Chouta, for the Appellant; Shashidhar S. Karamadi, HCGP for R1, Sri. G. Balakrishna Shastry and Ravishankar Shastry, Advs for R2 and Sri. S.B. Srinivasa and Assts for R4, for the Respondent

Final Decision : Allowed

Judgement

Ajit J. Gunjal

1. Both the petitioner and respondent no. 2 made an application in form no. 7A u/s 77A of the Karnataka Land Reforms Act seeking grant of the land. The competent authority having regard to the material on record granted the application of the petitioner rejected that of the second respondent. Incidentally, it is to be noticed that respondent no. 3 Venkateshappa was shown as landlord but however it is brought to my notice that Venkateshappa had died way back on 03.05.1973. The order passed by the competent authority was questioned by the second respondent before the Tribunal on various grounds. The Tribunal has allowed the appeal and set aside the order passed by the competent authority holding that the petitioner was not cultivating the land as a tenant. The Tribunal has recorded a finding that the land does not vest with the Government. Aggrieved by the said order, the petitioner is before this Court.

2. Mr. Chouta, learned Counsel appearing for the petitioner vehemently submits

that the stand of the second respondent in various proceedings is not consistent inasmuch as in the suit filed by him, he claims to be a owner but makes an application in form no. 7A. He further submits the order passed by the Tribunal is liable to be interfered, since it has stated and appreciated the facts incorrectly.

3. Mr. Shastri, learned Counsel appearing for the respondent no. 2 submits that indeed the second respondent is not the tenant of the land in question and under mistaken impression, the second respondent had made an application in form no. 7A. He further submits that indeed he is the owner of the land.

4. Learned Counsel for the respondents 4 and 5 who got themselves imp leded in the present proceedings since the respondent no. 3 was dead by the time an application form no. 7A was filed submits that the entire proceedings had culminated in the order of the Tribunal without bringing the legal heirs on record. Hence, the entire proceedings stands vitiated.

5. Apparently, there appears to be some serious dispute as to the ownership of the land inter se between the respondents 2, 4 and 5. They are required to have their dispute regarding title sorted out in a Civil Court. For the present, application form no. 7A filed by the petitioner is required to be reconsidered by the competent authority, more so, with reference to the provision of Section 77A of the Act. Indeed Section 77A would contemplate that the land should vest in the Government as on the appointed date that is 1.3.1974 which would necessarily mean that it must be a tenanted land. It also contemplates that the applicant should not have made an application in form no. 7 u/s 45 of the Act. Further, the applicant must be in possession as on date when the amended provision came into force and as on the date when making an application. These three requirements are to be satisfied before the application of the applicant is considered and granted. Indeed, a full bench of this Court has ruled that there cannot be any specific order on vesting u/s 44 but it is required to be gathered from the circumstances and the documents which are produced. It is also to be noticed that the enquiry is required to be conducted u/s 77A of the Act and not u/s 48A of the Karnataka Land Reforms Act. 1 am of the view that the competent authority nor the Tribunal has taken into consideration any of these ingredients before considering the application of the applicants. Hence, no option but to remit the matter for a fresh disposal in accordance with law. Hence, the following order is passed:

ORDER

(i) The petition is allowed.

(ii) The impugned order passed by the Tribunal as well as the competent authority is set aside.

(iii) The matter is remitted to the competent authority for consideration of the application filed only by the petitioner.

The application filed by the second respondent u/s 77A in form no. 7A stands

rejected as he does not press. If there is any dispute between the respondent no. 2 and the respondents 4 and 5, it shall be thrashed out in properly constituted suit. All the parties in the proceedings are permitted to participate before the competent authority. Rule is issued and made absolute.

Shri Shashidhar S. Kararnadi, High Court Government Pleader is permitted to file his memo of appearance within a period of four weeks.