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**Court :** Karnataka

**Decided On :** Nov-28-1977

**Reported in :** AIR1978Kant44; ILR1978KAR12

**Judge :** G.K. Govinda Bhat, C.J. and ;N.D. Venkatesh, J.

**Acts :** [Karnataka Land Reforms Act, 1961](#) - Sections 45, 48A and 48A(8)

**Appeal No. :** Writ Appeal No. 411 of 1976

**Appellant :** Basappa

**Respondent :** The Land Tribunal, Bagalkote Taluk and ors.

**Advocate for Def. :** Umashankar, Adv. for ;B.V. Deshpande, Adv.

**Advocate for Pet/Ap. :** I.S. Antin, Adv.

**Judgement :**

G.K. Govinda Bhat, C.J.

1. This writ appeal brought on behalf of a landholder arises out of proceedings under Section 48-A of the Kamataka Land Reforms Act, 1961, hereinafter called 'the Act', initiated on the application of Umalappa, the third respondent, for grant of occupancy right in respect of 4 acres 1 gunta of agricultural land comprised in Survey No. 66/B of Hiregulbal village of Bagalkot Taluk in the District of Bijapur.

2. Before the Tribunal, the third respondent admitted that he was not personally cultivating the land since about four years before the date of his examination before the Tribunal. The Tribunal held that the second respondent Sagarappa was cultivating the land personally after the applicant Umalappa had ceased to cultivate and, therefore, it conferred occupancy right on Sagarappa. It is relevant to state that the second respondent Sagarappa was not an applicant before the Tribunal for registration of occupancy under Section 48-A of the Act. Exhi-bit-B, the certified copy of the order of the Land Tribunal, does not show that Sagarappa had made any application and that he was a party to the proceedings.

3. The order of the Tribunal was challenged before this Court by the landholder Basappa in W. P. No. 6539 of 1976 which came up before Bhimiah, J., for preliminary hearing. The learned single Judge rejected the petition at that stage itself without dealing with the main ground urged in the writ petition. The main ground urged in the writ petition was that the Tribunal had no jurisdiction to grant occupancy right to a person who had not made an application to the Tribunal. Grounds 1 and 2 in the writ petition read thus:--

'(1) That the impugned order dated 22-4-76 passed by the first respondent is without jurisdiction inasmuch as the person, who has been registered as occupant of the land in question is not a party to the proceedings before the Land Tribunal.

(2) That the impugned order is ex facie illegal inasmuch as the occupancy rights have been granted in favour of the third party who has not made an application at any point of time for occupancy rights, in respect of the land in question.'

The order of the learned single Judge rejecting the writ petition reads thus:--

'Heard. The Tribunal relied upon the instalment, and patta while making the order that respondent 2 is entitled to be registered as occupant of the land in question. The contentions that the order in question is an order passed without jurisdiction is devoid of merit. Hence W. P. is dismissed.'

Aggrieved by the said order, the landholder has preferred this appeal.

4. The short question for decision in this appeal is whether the Tribunal has jurisdiction to grant occupancy right to a person who has made no application within the time allowed by Sub-section (1) of Section 48-A of the Act. The relevant provisions on this question are Sub-section (1) and (8) of Section 48-A of the Act and it is necessary to set out the same. They read:--

'48-A. Enquiry by the Tribunal etc.--(1) Every person entitled to be registered as an occupant under Section 45 may make an application to the Tribunal in this behalf. Every such application shall, save as provided in this Act, be made on or before the 31st day of December 1974 provided that the Tribunal may, for sufficient cause shown, admit an application made beyond that date but on or before 30th day of June 1976.

(2) to (7) (omitted as unnecessary).

(8) Where no application is made within the time allowed under Sub-section (1), the right of any person to be registered as an occupant shall have no effect.'

Assuming that the second respondent is a person entitled to be registered as an occupant under Section 45 of the Act, the above cited provisions require that he should have made an application within the time allowed by Sub-section (1) of Section 48-A. When he has not made such an application as stated in Sub-section (8) of Section 48-A, the right under Section 45 claimed by him cannot be conferred on him. In other words, where the person, who would otherwise be entitled to claim occupancy right under Section 45 read with Section 48-A, had made no application in the manner provided to the Land Tribunal having jurisdiction, such person loses the right to claim occupancy right. The Tribunal has ignored the provisions of Sub-section (8) of Section 48-A of the Act and the learned Single Judge has also ignored the said provisions. The Tribunal, therefore, had no jurisdiction to grant occupancy right in favour of the second respondent in view of the provisions of Section 48-A(8) of the Act.

5. We, therefore, allow this appeal and, reversing the order of the learned single Judge, quash the impugned order of the Land Tribunal granting occupancy right in favour of Sagarappa, the second respondent.

6. Shri Umashankar, learned counsel for the second respondent, submitted that in order to ascertain whether Sagarappa had made any application before the Land Tribunal within the period of time allowed under Section 48-A(1), he has written three letters but has received no response. The appellant has clearly stated in his writ petition that the second respondent has not made any such application. If the second respondent is able to show that he had made an application before the land Tribunal, then he may move this Court for review of this order.

7. In the circumstances, the parties are directed to bear their own costs. Ordered.

8. Appeal allowed.

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