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Court : Karnataka

Decided On : Feb-18-2002

Reported in : 2002(3)KarLJ175

Judge : N.K. Patil, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 94A, 94(3); Karnataka Land Revenue Rules, 1966 - Rule 108

Appeal No. : Writ Petition Nos. 14897 and 14898 of 2000

Appellant : Chako and anr.

Respondent : Deputy Commissioner, Shimoga District, Shimoga and ors.

Advocate for Def. : H.B. Mahesh, High Court Govt. Pleader

Advocate for Pet/Ap. : S.V. Prakash, Adv.

Judgement :

ORDER

N.K. Patil, J.

1. With the consent of the learned Counsels appearing for the petitioners and the respondents, the matter is taken up for hearing.
2. Heard the learned Counsels appearing for the petitioners and respondents at a considerable length of time.
3. The petitioners have assailed the legality and validity of the eviction notice issued by the 2nd respondent on 28-3-2000. Further they sought for a mandamus directing the 1st respondent to dispose of the applications filed by the petitioners on 31-12-1998 under Form 52 under Section 94-B of the Karnataka Land Revenue Act for regularisation of their unauthorised occupation in respect of land bearing Sy. Nos. 54 and 55, measuring an extent of 3 acres of Gudihithlu Village, Barangi Hobli, Sagara Taluk, Shimoga District.
4. 1st petitioner is the father of the 2nd petitioner and they constitute a joint family. 1st petitioner is in possession of the land bearing Sy. Nos. 53 and 55 of Gudihithlu Village as an unauthorised occupant for more than 15 to 20 years. Apart from the said land, 2nd petitioner's wife Smt. Saramma is cultivating the land bearing Sy. No. 54 measuring 2 acres 33 guntas as an unauthorised occupant. Therefore, the petitioner and 2nd petitioner's wife have filed applications for regularisation of unauthorised occupation on 31-12-1998, which are pending consideration. The petitioners have developed the said lands by their hard earned money and made it very fertile and growing coconut trees and other trees and they have put up a small shed in the lands and residing therein. When their applications filed for regularisation of unauthorised occupations are pending consideration, it is shock and surprise to come to know that the 2nd respondent herein has issued the eviction notice on 28-3-2000 under Section 94(3) of the Karnataka Land Revenue Act. Feeling aggrieved by the said impugned eviction notice issued by the 2nd respondent, the petitioners have filed these writ petitions.
5. The principal submission of the learned Counsel appearing for the petitioners is that the petitioners have filed their applications for regularisation of unauthorised occupations before the Competent Authority as early as in the year 1998 and those applications are not considered or disposed of till as on the date of filing these petitions. When this is the position, all of a sudden and unfortunately the 2nd

respondent has issued the eviction notice purported to Section 94(3) of the Land Revenue Act is without jurisdiction. Hence, he prayed that the impugned notice may be set aside and a direction may be issued to the Competent Authority to consider their applications in accordance with law and to pass appropriate orders.

6. Per contra, the Government Pleader appearing for the respondents has fairly submitted that the applications filed by the petitioners will be considered by the Competent Authority in accordance with law as expeditiously as possible.

7. The questions that arise for consideration are:

(1) Whether the 2nd respondent is justified in issuing the impugned eviction notice?

(2) Whether the petitioners have made out a case for issuing directions to the respondents to consider their applications for regularisation of unauthorised occupation of the lands in question?

Re. Points (1) and (2):

8. There is no dispute that the petitioners herein have filed their applications for regularisation of unauthorised occupation as early as on 31-12-1998 as per the acknowledgements produced by them. The respondents so far have not considered the same or disposed of them in accordance with law. When the matter was seized by the Competent Authority and pending for consideration, the 2nd respondent has issued the notice on 28-3-2000 without taking into consideration of the said fact. Being a Secretary of the Regularisation Committee, he is well-aware about the applications filed by the petitioners for regularisation of their unauthorised occupation in respect of the lands in question by exercising his powers under Section 94(3) of the Land Revenue Act. In my considered view, the said provisions invoked by the Tahsildar by issuing an eviction notice is one without jurisdiction. Further it is pertinent to note that the respondents so far have not made any attempt to consider the applications filed by these petitioners for regularisation of their unauthorised occupations of the lands in question. Therefore, there is no justification for the 2nd respondent to issue such a notice

just to harass the poor farmers and rustic villagers. Having regard to the aforesaid position both factual and legal, this is one of the cases where I find the impugned notice was totally and completely unwarranted. Hence, the said notice issued by the Tahsildar is accordingly set aside.

9. Taking into consideration of the above facts and circumstances of the case, the writ petitions are disposed of with the following observations:

(i) The eviction notice issued by the 2nd respondent on 28-3-2000 is hereby quashed.

(ii) The 2nd respondent herein is directed to place the applications filed by the petitioners within two months from the date of the receipt of this order before the Regularisation Committee.

(iii) The Regularisation Committee is hereby directed to consider the applications filed by the petitioners in accordance with law and to pass appropriate orders as expeditiously but not later than six months from the date of the receipt of this order.

(iv) Till the disposal of the applications filed by the petitioners by the Regularisation Committee, the respondents herein are restrained not to take any coercive steps in the matter.

The Government Pleader is permitted to file memo of appearance within four weeks from today.

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