

Basamma and ors. Vs. State of Karnataka and ors.

Basamma and ors. Vs. State of Karnataka and ors.

SooperKanoon Citation : sooperkanoon.com/378429

Court : Karnataka

Decided On : Mar-04-2003

Reported in : 2003(4)KarLJ129

Judge : N.K. Patil, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 44 and 48A; BTALR Act - Sections 14; Karnataka Village Offices Abolition Act

Appeal No. : Writ Petition No. 1324 of 2001

Appellant : Basamma and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : M.E. Prabhu, Additional Government Adv.

Advocate for Pet/Ap. : S.S. Koti, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

N.K. Patil, J.

1. These petitioners are the owners and in peaceful possession of the land bearing Sy. No. 63 measuring 1 acre 11 guntas situated at Noo-lagere Village, Hirekerur

Taluk. The land in question is a service inam land. The father of the petitioners was the inamdar of the land in question. When things stood thus, one Shanthaveerappa alleged to have (claiming as a tenant) filed Form 7 for grant of occupancy rights in respect of the land in question. The said application had come up for consideration on 25-9-1975. On that day, the Tribunal passed the impugned order in No. KLR SR 95. In pursuance of that order, the 3rd respondent has issued notice to the petitioners on 20-8-1985 to give possession of land in question. These petitioners have challenged the impugned order dated 25-9-1975 and the notice dated 20-8-1985 before this Court in W.P. No. 13563 of 1985. When the matter was pending for hearing, in view of the amendment to the Land Reforms Act, the said petition filed by the petitioners has been transferred to the Land Reforms Appellate Authority (for short the 'Appellate Authority'). The Appellate Authority has assigned No. LRA 300 of 1987. When the matter was pending for consideration before the Appellate Authority in view of the amendment to the Land Reforms Act, 1990, the Appellate Authority was abolished and the parties were permitted to file civil petition under Section 17 of the Amendment Act. Accordingly, the petitioners have filed Civil Petition No. 2041 of 1991. After notice, the civil petition was converted into the present petition.

2. Heard the learned Counsel for the petitioners and the learned Government Advocate for the respondents.

3. The learned Counsel for the petitioners submitted that the impugned order passed by the Tribunal dated 25-9-1975 and the notice issued by 3rd respondent on 20-8-1985 are illegal and liable to be set aside. Further, he has submitted that the impugned order was passed contrary to the oral and documentary evidence available on file. He has pointed out that the land in question is a service inam land. The said land was regranted in favour of the petitioners' father by the Competent Authority on 10-3-1981. Further, he has vehemently submitted that Form 7 filed by one Sri Shanthaveerappa is not at all maintainable on the ground that Shanthaveerappa himself has given a statement before the Tribunal that he has handed over the possession of the land to the father of the petitioners on 31-3-1973. In the statement, he has further stated that due to ill-advice of the villagers, he has filed Form 7. Hence, he prayed that the application may be

dismissed. The said statement is dated 2-6-1975 (Annexure-E). The learned Counsel has pointed out that these petitioners have filed the original suit in RLC No. 1622 of 1966 for declaration. The said suit was decreed. After judgment and decree, the petitioners have filed execution petition in No. 16 of 1972. The said judgment and decree was executed and the land in question was resumed in favour of these petitioners under Section 14 of the BTALR Act. The so-called Sri Shanthaveerappa has failed to establish that he was the tenant of the land in question. These facts are not at all taken into consideration by the Tribunal while passing the impugned order. However, the Tribunal after considering the material on record, oral and documentary, has rejected the application filed by Shanthaveerappa and resumed the land to the Government without any basis. Further, the learned Counsel has taken me through the order passed by the Competent Authority in regrating the land in question in favour of these petitioners by order dated 10-3-1981. In pursuance of the said regrant, mutation has been sanctioned in No. 1862 by the Competent Authority on 29-3-1981. Further, he has placed reliance on the entries found in the Record of Rights for the years 1972-73 and 1973-74 in cultivator's column and also kabjedar's column. The names of these petitioners are shown in the relevant columns. When these material documentary evidence is available on file, the Tribunal ought not to have vested the lands in the Government. Therefore, the learned Counsel has submitted that the impugned order is liable to be rejected.

4. The short question for consideration in this petition is, whether, the impugned order passed by the Land Tribunal is in accordance with law?

5. I have perused the impugned order passed by the Tribunal carefully and reassessed the entire material with the assistance of the learned Counsel for the petitioners and the learned Additional Government Advocate. After thorough scanning of the entire original record, it emerges from the record that the land in question is a service mam land. There was a dispute between the petitioner and Shanthaveerappa and others. These petitioners have filed original suit in RLC No. 1622 of 1966 for declaration. That suit was decreed declaring that the land Sy. No. 63 measuring 1 acre 11 guntas of Noolagere Village has been resumed on 2-6-1965 in favour of these petitioners under Section 14 of the BTALR Act. In

pursuance of the judgment and decree, these petitioners have filed execution petition. The said judgment and decree has been executed and the land has been resumed to these petitioners by order dated 16-11-1972. Further it reveals from the record that the names of these petitioners are found in Record of Rights in the relevant columns for the agricultural years 1972-73 and 1973-74. The mode of cultivation is shown as 'one' i.e., self-cultivation. It emerges from the record that Sri Shanthaveerappa has appeared before the Tribunal on 2-6-1975 and has stated in unequivocal terms that he has handed over the possession of the land in favour of the father of the petitioners. By mistake, he has filed Form 7 for grant of occupancy rights and has stated that the same may be dismissed. Further, it reveals from the record, thereafter these petitioners have filed Form 1 under the Karnataka Village Offices Abolition Act, for regrant of land in question. Pursuant to the request made by the petitioners, the Competent Authority has regranted the land in favour of these petitioners by order dated 10-3-1981. After regrant, the petitioners submitted varadi to the Competent Authority and accordingly, mutation has been certified by the authority in No. 1862 on 29-3-1981 after following the procedure prescribed under the relevant provisions of the Act. In pursuance of the mutation certificate, their names have been continued and they are in possession and enjoyment of the land in question. It is significant to note that the Tribunal has failed to consider the relevant material on record and has proceeded to accept the statement given by Shanthaveerappa and resumed the land to the Government. The Tribunal has committed grave error in vesting the land to the Government. In my considered view, on the basis of the record the impugned order passed by the Tribunal is not sustainable and it is liable to be set aside.

6. Having regard to the facts and circumstances of the case and having regard to the factual and legal aspect of the matter as enumerated above, the petition is entitled to succeed.

Accordingly, writ petition is allowed. The impugned order dated 25-9-1975 in No. KLR SR 95 and the notice dated 20-8-1985 are set aside.

The learned Additional Government Advocate is permitted to file memo of appearance within four weeks from today.

