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Shidarayappa and ors. Vs. the Assistant Commissioner and ors.

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Court : Karnataka

Decided On : Jun-03-2008

Reported in : ILR2008KAR3495; 2008(6)KarLJ165; 2008(4)KCCRSN322

Judge : N.K. Patil, J.

Acts : Karnataka Land Reforms Act, 1961 - Sections 44; Karnataka Land Reforms Rules

Appeal No. : Writ Petition No. 24036 of 2005

Appellant : Shidarayappa and ors.

Respondent : The Assistant Commissioner and ors.

Advocate for Def. : Nadiga Shivanandappa, HCGP for R1 and; R.L. Patil, Adv. for R2

Advocate for Pet/Ap. : Ravi S. Balikari, Adv.

Judgement :
ORDER

N.K. Patil, J.

1. Petitioners, assailing the correctness of the impugned judgment passed by the Karnataka Appellate Tribunal, Bangalore dated 17th June 2005 passed in Appeal

Nos. 1161 and 1201, 1202 and 1203 of 2004 and the order passed by first respondent-Assistant Commissioner, Jamkhandi Sub Division, Jamkhandi, dated 13th January 2000 bearing No. BHU.Su.KLR/7A/CR/99-2000 vide Annexures A and B respectively, have presented the instant writ petition. Further, petitioners have sought for a direction, directing the first respondent to grant the occupancy rights in respect of land bearing No. 246 measuring 04 acres 16 guntas situate at Kulhalli Village, Jamkhandi Taluk, Jamkhandi Bagalkot District, in the interest of justice and equity.

2. The grievance of petitioners in the instant writ petition is that, they have filed Form No. 7-A for registration of occupancy rights in. respect of land in question and the said matter had come up for consideration before the first respondent on 13th January 2000 and the first respondent, without considering the claim of petitioners, as provided under the relevant provisions of the Land Reforms Act and Rules, has passed the order in a cyclestyled format stating that, under Section 44 of the Karnataka Land Reforms Act, the land in question is not vested in Government and hence, the application filed by petitioners is rejected. Assailing the correctness of the order passed by first respondent - the Assistant Commissioner, Jamkhandi sub division, Jamkhandi dated 13th January 2000, petitioners herein have filed appeal Nos. 1161 and 1201, 1202 and 1203 of 2004 on the file of the Karnataka Appellate Tribunal at Bangalore and the said appeals filed by petitioners have been dismissed. Being aggrieved by the impugned order passed by first respondent as well as the judgment passed by the Karnataka Appellate Tribunal, Bangalore, vide Annexures A and B respectively, in respect of the land in question, petitioners herein have presented the instant petition, seeking appropriate reliefs, as stated supra.

3. I have heard learned Counsel appearing for petitioners and learned Counsel appearing for respondents.

4. After careful perusal of the original records made available by learned Government Pleader appearing for respondent No. 1, what emerges is that, pursuant to the application filed by petitioners for registration of occupancy rights, the first respondent has called for the report from the Tahsildar and the Tahsildar

in turn has directed the jurisdictional Revenue Inspector, Kulahalli and the Village Accountant, Kulahalli to make spot inspection. The said authorities have in turn made spot inspection and conducted panchanama, wherein it is specifically stated that, Sri. Shidarayappa Virupaxappa Kankanawadi and others are cultivating the land personally and further stated that, occupancy rights can be granted to the said persons. The said panchanama is duly signed by the Village Accountant of Kulahalli Village and the jurisdictional revenue Inspector, Kulahalli and signed by two panchas, viz. Sri. R.L. Naik and another person. Further it emerges that, copy of the record of rights is also available in the original file produced by learned Government Pleader appearing for first respondent and petitioners have also produced the record of rights in respect of the land in question. From the said record of rights, it can be seen that, for the agricultural years 1963-64 to 2003-04, the names of petitioners are entered in column No. 12(2) and the mode of cultivation is shown as '3'which indicates that, they are cultivating the land in question as 'tenants'. When these relevant clinching material was very much available in the original records, the first respondent ought to have looked into the same and passed a speaking order. Instead of that, the said authority has proceeded to pass the impugned order, by committing a grave error in rejecting the application filed by petitioners by passing a one line order. The said order is accepted by the Karnataka Appellate Tribunal holding that, the land in question is not vested in Government as on the appointed date, namely 1st March 1974. The said reasoning given by both the authorities is contrary to the relevant material available on file, as stated above. On going through the impugned judgment passed by the Appellate Tribunal and the order passed by first respondent, what reveals is that, neither the first respondent nor the appellate authority has decided the matter strictly as envisaged under the relevant provisions of the Land Reforms Act and Rules and original records available on their respective files. The Appellate Tribunal has also committed a grave error in not deciding the question as to whether the impugned order passed by first respondent is made after affording reasonable opportunity to petitioners and also as to whether there is compliance of principles of natural justice. Therefore, keeping all these aspects in view, I am of the view that, the impugned orders passed by both the authorities cannot be sustained. Hence, they are liable to be set aside.

4. Having regard to the facts and circumstances of the case, as stated above, the writ petition filed by petitioners is disposed of as follows:

4.1 The writ petition filed by petitioners is allowed in part;

4.2 The impugned judgment passed by the Karnataka Appellate Tribunal, Bangalore, dated 17th June 2005 in Appeal Nos. 1161 & 1201, 1202 and 1203 of 2004 vide Annexure A and the order dated 13th January 2000 passed by first respondent bearing No. Bhu.su./KLR/7-A/C R/99 - 2000 (Terdal-camp), vide Annexure B are hereby set aside;

4.3 Matter stands remitted back to the first respondent-Assistant Commissioner, Jamkhandi Sub Division, Jamkhandi, Bagalkot District for reconsideration of the matter afresh and to take appropriate decision in accordance with law, after affording reasonable opportunity to petitioners and contesting respondents, and dispose of the same as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this order.

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