

Seethadevi Vs. Narayana Kamath

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Court : Karnataka

Decided On : Mar-26-1987

Reported in : ILR1987KAR1779; 1987(2)KarLJ89

Judge : Rama Jois and Ramakrishna, JJ.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 48A, 48A(1) and 48A(3)

Appeal No. : W.A. No. 2198 of 1984

Appellant : Seethadevi

Respondent : Narayana Kamath

Advocate for Def. : Padubidri Raghavendra Rao, Adv. for R-1 and ;S.V. Jagannath, Government Adv. fro R-2 and 3

Advocate for Pet/Ap. : V.V. Upadhyaya, Adv.

Disposition : Appeal allowed

Judgement :

Rama Jois, J.

1. In this appeal, the following important question of law arises for consideration :

Whether an application seeking an amendment to an application made before a Land Tribunal under Section 48A of the [Karnataka Land Reforms Act, 1961](#) ('the Act' in short) after the period fixed in the Section to make an application, which has the effect of claiming occupancy rights in respect of a land belonging to a landlord not included in the original application, is maintainable?

2. The facts of the case, in brief, are as follow : Section 48A of the Act provides that every person entitled to be registered as an occupant under Section 45 may make an application to the Land Tribunal in this behalf. The last date for making the application was originally fixed as 31-3-1974. The Section has been amended from time to time and, after the last amendment, the second part of the Section, which is relevant for decision in this case, reads :

'48A. ENQUIRY BY THE TRIBUNAL etc, (1) Every such application shall, save as provided in this Act, be made within six months from the date of commencement of the Amendment Act, provided that the Tribunal may, within one year from that date for the sufficient cause shown admit an application made beyond six months.'

There is no dispute that the Amendment Act came into force on 1-1-1979. Consequently, last date fixed for making the application under Section 48A read with Section 45 of the Act was 30th June, 1979. Respondent-1 had made an application in Form-7, which is the prescribed form for making an application under Section 48A of the Act, on 10-8-1974. The said application, as per Annexure-B, reads :

'FORM No 7.

(See Rule 19(1))

Application under Section 48A(1) for registering as an occupant under Section 45, to the Tribunal, Karkala Taluk.

Name of the applicant : Sri B. Narayana Kamath.Age : 59 years.Profession : Agriculture.Place of residence : Hiriangady, Karkala.am the tenant of the following lands :

Taluk

Village

Sl. No.

Hissa

No.

Area A.Cs.

Assessment.Rs. P.

Sri Venkataramana

159--84

Wet I

1--19

8--00

Devaru, Karkala

159--8B

Since

15years

Sri Mariamma

167

Wet I

0--81

6--00

Temple, Karkala

16years

2 - 00

I have been cultivating the land as a permanent tenant/protected tenant/sub-tenant for over 15/16 years. Sri..... is the landlord of the said lands. The extracts of the record of rights concerning the lands are enclosed. Following documents are enclosed in support of my claim as a tenant. I am interested in purchasing the land on the terms and conditions laid down in M.L.R. Act, 1961. I had the following lands other than those described above as owner/tenant/or in any other capacity :

-Nil-

The Tahsildar should check-up the above information with reference to the original records and keep ready for enquiry by tie Tribunal.

NOTE : The information, given above is found to be incompleted or incorrect the petitioner is liable to conviction and levy of penalty as provided under Section 125 of the Act.

Sd/- Special Tahsildar,

Land Tribunal, Karkala.

The extracts of records of rights concerning these lands are enclosed: Place : Karkala Sd/- Narayana Kamath Date : 10-8-1974. Signature of the applicant,...'

As can be seen from the said application respondent-1 had claimed to be a tenant of the land specified in the above form, belonging to Sree Venkataramana Temple and Sree Mariamma Temple of Karkala. For the first time an application, which bears the date 30-6 1979 was sent to the Land Tribunal at Karkal by registered post and was received by the Tribunal on 31-8-1979. The said application, Annexure-C, reads :

Form No. 7

(See Rule 19(1))

Application under Section 48A(1) for registering as an occupant under Section 45, to the Tribunal, Karkala Taluk.

Name of the applicant : B. Narayana Kamath

B. Annappa Kamath.

Age : 64 years

Profession : Agriculturist

Place of residence : Anekere Bali,

Karkala Kasba post

Karkala.

'I am the tenant of the following lands:

Taluk

Village

Sy.No.

HissaNo.

Area

A-Cs

Seeta Devi, w/o Rathnaraja,

Karkala,

Karkala

197/5

Bagaytu

0-67

Padivalata,

Kasaba

197/18

Naja

(since 20 years)

1-91

r/o No. B-3, Jignesh Flats,

Near Police Chowky,

Rambawady, AHMADBAD

I have been cultivating the land as a permanent tenant/protected tenant/sub-tenant for over 20 years, Sri.....is the landlord of the said lands. The extracts of the record of rights concerning the lands are enclosed. Following documents are also enclosed in support of my claim as a tenant. I am interested in purchasing the land

on the terms and conditions laid down in the M.L.R. Act, 1961. I have the following lands other than those described above as owner/tenant in any other capacity.

Taluk

Village

Sy. No.

Pot hissa

Area Assessment

Karkala

Karkala

167-1 159-8B

Nanja Nanja

0-81

1-10

The extract of record of rights concerning these lands are enclosed.

Place : Karkala

Sd/- B. Narayana Kamath,

Date: 30-6-1979.

Signature of the applicant.....'

After making the above application the 1st respondent made an application before the Land Tribunal to treat the above application as an amendment to the earlier application (Annexure-B). The said application, Annexure-D, reads :

The Tribunal, by the impugned order, rejected the said application on the ground that it was time barred. Aggrieved by the said order the petitioner presented the Writ Petition.

The contention of the petitioner in the Writ Petition was that the Tribunal had grossly erred in holding that the application was time barred even though the petitioner had made a written representation requesting the Tribunal to treat the said application as an application for amendment.

The learned Judge set aside the order of the Tribunal, and remitted the matter to the Tribunal to consider the question as to whether the second application filed by the petitioner was, in substance, an application for amendment or a fresh application. Aggrieved by the said order the appellant has presented this appeal

3. Sri. V.V. Upadhyaya, learned Counsel for the appellant contends that the Tribunal has no jurisdiction to consider the application, as per Annexure-C, filed by the petitioner-1st respondent claiming occupancy rights in respect of lands belonging to the appellant as the application was, admittedly, received by the Land Tribunal on 31-8-1979, i.e.,.. after the expiry of the period fixed under Section 8A of the Act, and that the request made by the 1st respondent before the Tribunal to treat the said application as an application for amendment was also untenable and not maintainable as, in the guise of seeking an amendment he was trying to make a fresh application.

4. Learned Counsel for respondent-1, however, strenuously contended that, by mistake, respondent-1 had omitted to claim occupancy rights in respect of the lands belonging to the appellant specified in the application, Annexure-C, and, therefore, the 1st respondent was entitled to make an application for amendment and the Tribunal was entitled to allow the amendment if the Tribunal was satisfied that the amendment sought for should be allowed. In support of this contention he relied on Sub-section (3) of Section 48A which provides that the Tribunal may, for

valid and sufficient reasons, permit to amend the application.

5. There can be no doubt that, in view of Sub-section (3) of Section 48A, if any mistake has been committed in the application filed in Form No. 7 filed within time, the application for amendment can be made by the party concerned before the Tribunal, and the Tribunal has the jurisdiction to allow the amendment application if it is satisfied that in not allowing the amendment, it would result in miscarriage of justice.

But, as far as this case is concerned, we confine our consideration to the question whether the application in question, read with the subsequent application made by respondent-1 could be regarded as an application for amendment at all. As stated earlier, Form-7 was filed by respondent-1 as early as 10-8-1974. The lands in respect of which he claimed to be a tenant and landlords from whom respondent 1 has secured tenancy were set-out. There was no statement in the said application that respondent-1 was a tenant of the present appellant. It is for the first time, in the amendment application which was received by the Tribunal on 31-8-1979, respondent-1 claimed to be a tenant of the appellant in respect of the lands specified in the said application. By no stretch of imagination the said application can be regarded as an amendment to the application made earlier as it is entirely a new claim made against a person who was not at all a party to the application filed earlier. It is clear from the application that respondent-1, who was a resident of a small town like Karkala, sent the said application by registered post and even so, respondent-1 has put the date on the application as 30-6-1979 so as to make it appear that the application was filed on the last date fixed by the Act. When the 1st respondent realised that the application was time barred, he came with a subsequent application as an amendment to the earlier application. The facts and circumstances clearly establish that the application made by the 1st respondent was entirely a new application and against the appellant who was not a party to the original Form No. 7 and, therefore, was an application filed beyond the period fixed by Section 48A of the Act. The Tribunal had no jurisdiction to entertain such an application. This is also the view taken by this Court in *Virupaxappa Basappa - v. Land Tribunal, Dharwar & Ors.*, 1980(2) KLJ 428. We entirely agree with the view taken by Kudoor, J. in the said decision.

6. Learned Counsel for the 1st respondent, however, maintained that the first application read with the subsequent application made before the Tribunal would show that what the 1st respondent was seeking was only an amendment, to the earlier application. We are of the view that as the 1st respondent had not claimed that he was a tenant of any item of lands under the appellant he was at liberty to make a fresh application only before the expiry of 30-6-1979. Not having done so, he is now trying to contend that the fresh application was in the nature of an amendment to the first application. It cannot be regarded as an application for amendment of the original Form No. 7. In the result, we answer the question set-out first as follows: No person can make an application in Form No. 7 or an application in the nature of an amendment after the expiry of the period fixed under Section 48A(1) of the Act seeking occupancy right in respect of new item of land not included in the application filed within time.

7. In the result, we make the following;

ORDER

The Writ Appeal is allowed. In reversal of the order made by the learned Single Judge in Writ Petition No. 26554 of 1981, we dismiss the Writ Petition. No costs.

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