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Court : Karnataka

Decided On : Nov-04-1986

Reported in : ILR1987KAR139

Judge : Murlidher Rao, J.

Acts : Karnataka Land Reforms Rules, 1974 - Rule 40

Appeal No. : W.P. No. 16800 of 1986

Appellant : Mahadev

Respondent : State of Karnataka

Advocate for Pet/Ap. : I.G. Gachchinamath, Adv.

Disposition : Petition rejected

Judgement :

ORDER

Murlidher Rao, J.

The petitioner claims to be a tenant of S. No. 63/1 and 63/5 of Patgundi village in Gokak Taluk. He has sought a writ in the nature of mandamus directing the Land Tribunal, Gokak, to hear and dispose of his application said to have been filed in Form No. 7. In the Writ Petition, the petitioner has stated that he sent the

application in Form No. 7 under certificate of posting and a true copy of the Certificate of posting is produced as Annexure-A, which shows that the unregistered article has been posted on 23-7-1978. What that articles is any body's guess. The grievance of the petitioner is that inspite of his having sent form No. 7 on 23-7-1978 as per Annexure A, the Tribunal has cot held any enquiry and has not taken any action. Rule 40 of the Karnataka Land Reforms Rules, prescribes the mode of presentation of the application before the Land Tribunal and any other authority under the Act. The said Rule reads thus :-

'40. Appeals and applications (1) Every appeal petition, application or other document presented to any authority stall be presented by the party making such appeal or petition or application or other document or by his recognized agent, his pleader or advocate, in the office during the office hours or be sent by registered post addressed to the authority to whom it is presented by designation :

Provided that an agent, pleader or an advocate shall not be eligible to make any such petition, application or other document to the Tribunal'.

It is manifest from the said rule that the application in Form No. 7 is required to be presented personally or it has got to be sent by registered post. Sending it under certificate of posting is not one of the modes contemplated by Rule 40 of the K.L.R. Rules. Therefore the contention of the petitioner cannot be accepted for the simple reason that it is required to be filed as per Rule 40 of the K.L.R. Rules; as held by the Supreme Court in Kumkum Chand v. Union of India, : [1976]2SCR1060 that when a particular procedure is prescribed by the Rules, the mode that is to be followed is as prescribed by the rules and not in any other mode. Further while sending an article, by registered post, gives rise to a presumption under Section 27 of the General Clauses Act, there is no such presumption, in the case of letters sent by certificate of posting. Certificate of Posting may, at best, give rise to a presumption that the letters are posted, but no presumption can be drawn that they are received by the addressee, : AIR 1975 MP21 . To the same effect is the decision of this Court in Basettanavar Bros v. ITO Hubli, 1982(1) KLJ 44 wherein it is held that 'certificate of Posting is only meant for proving the act of posting and nothing more'. Petitioner has no choice to submit

the application in the manner, he chooses. Having chosen a manner, not prescribed by Rule, he cannot seek a Writ of Mandamus as if he had a vested right for consideration of his application. In this proceedings, the Court cannot embark on the investigation whether the petitioner's application is received or not. Presumption would arise only when an act is done according to prescribed procedure, it cannot be invoked in cases where the act is in contravention of the statutory rules. Moreover one fails to understand, how the petitioner could keep quiet for eight years. If in reality he had sent Form No. 7 one would expect him to pursue the same diligently. After all, he was to get ownership rights in a land, of which he claims to be a tenant. The right to apply is given to him by the statute and it has to be exercised in accordance with the procedure prescribed and not by an alternative procedure, which has not been prescribed. In this view of the matter it is not possible to accept the contention of the petitioner that he has filed Form No. 7, and it needs to be considered. I do not find any justification to issue Rule. Hence, the Writ Petition is rejected.