

Chanabasappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Apr-21-1993

Reported in : ILR1993KAR1785; 1993(2)KarLJ381

Judge : Shivashankar Bhat and ;Raveendran, JJ.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 48A and 112A; Karnataka Land Reforms Rules - Rule 44(1)

Appeal No. : W.A. No. 2367 of 1991

Appellant : Chanabasappa

Respondent : State of Karnataka

Advocate for Def. : A.M. Farooq, Govt. Adv. for R-1 and R-2 and ;H. Thipperudrappa, Adv. for R-3

Advocate for Pet/Ap. : V.T. Raya Reddy, Adv.

Disposition : Writ Appeal Dismissed

Judgement :

Shivashankar Bhat, J.

1. The third respondent in the Writ Petition is the appellant before us. The Writ Petition was filed by the third respondent before us. The Writ Petitioner asserted

that he filed an application in Form No. VII under Section 48-A of the Karnataka Land Reforms Act, 1964 ('the Act' for short) claiming occupancy rights in respect of certain lands and the said application was filed in the year 1975. According to the Writ Petitioner, the said application was sent by registered post. A xerox copy of the postal acknowledgment purporting to be the acknowledgment of the receipt of a registered article sent by the addressee was filed as Annexure-B to the Writ Petition. A postal receipt issued by the postal authority also was produced. This indicates that on 23rd June 1975, a letter was sent by Registered Post to the Tahsildar, Land Tribunal, Dharwad. The Postal Acknowledgment (Annexure-B) also indicates that the Tahsildar received the same. According to the petitioner, the landlord is a retired Revenue official and the petitioner trusted the landlord and was under the impression that his case would be posted before the Land Tribunal. Only in the year 1987 he realised that his application was not considered. On enquiry, he came to know that the application sent by him was removed from the records. This, according to the Writ petitioner, was done on the influence of the 3rd respondent (Appellant-Landlord). When the Writ petitioner approached the Tribunal to consider his application, an endorsement was issued by the Special Tahsildar on 7th November 1987 stating that no application in Form No. VII was filed in respect of the lands in question. According to the petitioner, he also approached the Special Deputy Commissioner but did not receive any reply. Thereafter he filed the present Writ Petition on 19th November 1987. Before the Writ petitioner approached the Tahsildar regarding the application filed in Form No. VII, he had filed a suit against the landlord for an order of injunction.

2. The learned Single Judge has allowed the Writ Petition and directed the Land Tribunal to hold an enquiry as to whether the petitioner had in fact filed an application in Form No. VII. The learned Judge followed the Decision reported in VENKAPPA SHETTIGAR V. THE SPECIAL TAHSILDAR, 1989(1) KAR.L.J. 14. Aggrieved by the said order, the appellant preferred this Writ appeal.

3. Mr. V.T. Raya Reddy, learned Counsel for the appellant, contended that the Decision in Venkappa Shettigar's case is immaterial to the facts of the present case because the writ petitioner has not at all proved that he has received the acknowledgment for having filed Form No. VII application unlike in Venkatappa

Shettigar's case. In the reported Decision, the petitioner had produced the copy of the application with an endorsement made on it by the Special Tahsildar for having received the application on 24.4.1979. It is in these circumstances, it was contended, that the learned Judge in the said case directed the Land Tribunal to hold enquiry as to whether actually the application had been filed.

4. The learned Counsel further pointed out that if the application has been filed in the year 1975, it is unconceivable that the applicant could have kept quiet for over 12 years without enquiring about the stage of the application. The conduct of the applicant itself is sufficient to reject his claim that he had filed any such application. It is further pointed out that time for filing Form VII application was extended on several occasions starting with 30th June 1975 to 30th July 1979. Statutory extensions were granted at least on five occasions. This could not have been omitted to be noted by the applicant, According to the learned Counsel, the Tahsildar was competent to decide the question whether proper application had been filed. For this purpose, the learned Counsel brought to our notice Section 112A(u) of the Act read with Rule 44(1)(c) and Form IX(AA). Under Section 112-A(u) the duties of the Tahsildar include the duties to perform such other duties and functions as are imposed on the Tahsildar by any other provisions of the Act or Rules made thereunder. Under Rule 44(1)(c), the Tahsildar shall maintain village-war Register of the applications under Section 48-A in Form No. IX (AA). Form IX(AA) prescribes format of the register to be maintained by the Tahsildar regarding the applications filed under Section 48-A. Several details have to be filled up in the register as and when application was received. If actually the application has been received, the same would have found a place in the Village-war register. It is for the Tahsildar to find out as to whether the application has been received in his office by reference to this register and other relevant facts. The Tahsildar has held in the instant case, that no such application has been received from the Writ petitioner. If so, according to the learned Counsel for the appellant, there was nothing left for the Land Tribunal to enquire.

5. Nowhere the Act vests the power in the Tahsildar to give a finding as to whether an application has been filed under Section 48-A of the Act. The functions of the Tahsildar are mainly that of the functions as Secretary to the Land Tribunal. No

doubt on receipt of the application, he has to gather some information and to make certain entries in the Register. But this function of the Tahsildar is only an executive function. If actually the application is filed and same is omitted to be noted in the register and the applicant is prevented from approaching the Land Tribunal to establish that he had in fact filed the application, the entire statutory relief granted to the applicant will be lost. It is for the Land Tribunal constituted under the Act to consider the rights of the parties. If the Tahsildar has to decide as to whether the application has been filed before the Land Tribunal or not, it will result in vesting the power in the Tahsildar to prevent an applicant from getting his right decided by the Tribunal, in case the Tahsildar decides that there is no application at all. The finding that there is no application filed under Section 48-A results in the denial of right of the applicant to seek registration as tenant. This could be done only by the Land Tribunal under the provisions of the Act. Therefore, in a case, where the applicant asserts that he had filed an application, it is for the Land Tribunal to examine the said claim and give a finding. It is for the Land Tribunal to consider all the relevant facts such as the conduct of the parties, the delay involved in making the claim, the reason for the delay and such other matters that may be brought to the notice of the Tribunal. The Tribunal shall also examine the effect of non-entry in the Register maintained in Form 9AA and it is for the Tribunal to arrive at the decision whether non-entry in the said register was due to any mistake, fraud or negligence or due to the non-filing of the application by the claimant.

6. We are in respectful agreement with the observations made in Venkappa Shettigar's case. At page 15, it was held thus:

'Whenever a question arises as to whether an application in form No. 7 is filed or not, it is for the Tribunal to enquire into the matter and decide the issue after affording an opportunity to the person claiming to have filed an application and the land owner. It is necessary at that stage to give opportunity to the owner of the lands in respect of which an application in form No. 7 is claimed to have been filed. This Court is coming across the endorsement similar to Annexure-A issued by the Special Tahsildar of Land Reforms intimating the parties that the application in form No. 7 claim to have been filed by them are not entered in the register. The

fact that the application/s is/are not entered in the register is not a deciding factor. It may be one of the circumstances to be taken into account. It all depends upon the evidence Which the applicant will be able to place before the Tribunal to prove that he had filed an application in Form No. 7'.

In MAHADEV v. STATE OF KARNATAKA, : ILR 1987 KAR139 the Decision rendered rested on the fact that there was no application sent by registered post. It was a case where the application was sent by Certificate of Posting and therefore, the learned Judge of this Court held that that question did not arise and it cannot be considered as to whether the application was filed in accordance with law.

7. It is not necessary for us to go into the ratio of the said Decision because it will in no way help the appellant.

8. It was further contended by Mr. Raya Reddy that the petitioner filed, only an alleged copy of the acknowledgement as well as the alleged copy of the postal receipt and the explanation of the petitioner that he had filed the originals before the Civil Court is not correct.

9. Sri Thipperudrappa, learned Counsel for the respondents on the other hand, filed a Memo along with the certified copy of the list of documents filed by his client in the Civil Court on 4.12.1987, stating that the postal receipt and the postal acknowledgment were filed in O.S. 528/87. It is sufficient for our purpose to direct the Land Tribunal to consider the claim or counter claim, in this regard.

10. Mr. Raya Reddy contended that this Court should not issue any Writ of Mandamus to the Land Tribunal to consider the claim of the petitioner because there was no prior demand. This argument also has no factual basis because the cause of action for the petitioner arose by virtue of the endorsement made by the Special Tahsildar stating that there was no application filed by the petitioner. It is for the Land Tribunal ultimately to infer whether there was actually any Form VII application and whether non-entry in the relevant register about the application allegedly filed by the Writ Petitioner is a direct evidence or a circumstance against his claim.

11. For the reasons stated above, the Writ Appeal is dismissed without any order as to costs. The Land Tribunal shall hold an enquiry and pass appropriate order in terms of the order of the learned Single Judge made in the Writ Petition, before the end of October, 1993.

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