

Smt. Devaki and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jun-20-2008

Reported in : 2008(5)KarLJ514; 2008(3)KCCR2070

Judge : N.K. Patil, J.

Acts : [Karnataka Land Reforms Act, 1961](#); [Karnataka Land Revenue Act, 1964](#) - Sections 34; Karnataka Land Reforms Rules, 1974 - Rule 17

Appeal No. : Writ Petition No. 34705 of 2002

Appellant : Smt. Devaki and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : Nadiga Shivanandappa, High Court Government Pleader for Respondents 1 and 2 and ;K.M. Nataraj, Adv. for Respondent 4

Advocate for Pet/Ap. : N. Bayya Reddy, Adv.

Judgement :

ORDER

N.K. Patil, J.

1. The petitioners, being aggrieved by the impugned order dated 8-8-2002 passed by the Land Tribunal, Bantwal, in proceeding No. TNC:8253:74-75 vide Annexure-

J, have presented this writ petition. Further, petitioners have sought to direct the Land Tribunal, Bantwal, to grant occupancy rights in favour of the petitioners in respect of Survey No. 473/1D measuring 0.84 cents of Punacha Village, Bantwal Taluk.

2. One Sri Late Aithu Naika, husband of the first petitioner and father of petitioners 2 to 4 claiming that he is the tenant in respect of the land in question has filed Form 7 for registration of occupancy rights before the 2nd respondent-Land Tribunal, Bantwal. The Land Tribunal, Bantwal, by its order dated 9-9-1981 has registered the occupancy rights in his favour. Assailing the correctness of the order passed by the Land Tribunal, Bantwal, respondents 3 and 4 herein have filed a writ petition before this Court in No. 31114 of 1981. This Court has allowed the said writ petition and set aside the order passed by the Land Tribunal, Bantwal and remitted the matter for reconsideration afresh. After the remand, the matter is taken up for consideration by the Land Tribunal, Bantwal and without conducting the proper enquiry as envisaged under the relevant provisions of the Act and Rules and without reference to the report submitted by the Surveyor wherein he has specifically stated that Sy. No. 473/1D measuring 0.84 acres is cultivated by petitioners and they are in possession of the same, has rejected the claim of the petitioners holding that as on 1-3-1974, they are not cultivating the said land inspite of giving evidence by the petitioners that they are cultivating the said land as tenants. The said reasoning given by the Land Tribunal, Bantwal, is contrary to the relevant materials available on file and the same is liable to be set aside. Having regard to these backgrounds, petitioners herein felt necessitated to present this writ petition seeking appropriate relief as stated supra.

3. I have heard learned Counsel appearing for petitioners, learned Government Pleader appearing for respondents 1 and 2 and learned Counsel appearing for 4th respondent.

4. After careful perusal of the impugned order passed by the Land Tribunal, Bantwal, vide Annexure-J alleged dated 8-8-2002, it is manifest on the face of the order that, the Land Tribunal, Bantwal, has committed a grave error, much less material irregularity in proceeding to pass the order, without conducting proper

enquiry as envisaged under the relevant provisions of the [Karnataka Land Reforms Act, 1961](#) and Karnataka Land Reforms Rules, 1974 and without complying the directions issued by this Court. It is significant to note from the proceeding-sheet maintained by the Land Tribunal, Bantwal, that, the matter has been posted for consideration on 14-3-2002 and adjourned to 16-3-2002. On 16-3-2002, it is specifically referred that, the matter has been reserved for orders, and posted the matter for final disposal on 23-3-2002, the same is available at ink page No. 30, and that has been duly signed by two members on right side and other three persons on the left side of the proceeding sheet. Further it is found at red ink page No. 530, where the order passed by the Land Tribunal, Bantwal is available that, the date of the order has been shown as dated 23-3-2002 and the same has been struck off and written as 8-8-2002 in green ink by the Chairman. Further, another grave error found at red ink page No. 528 is that, the word 'Goshisalayithu' (Kannada word) is struck off and written in black ink as 'dated 8-8-2002 randu Goshiside' (Kannada words) and the order has been signed in black ink by the Chairman of the Land Tribunal, Bantwal, and this is clear manipulation by way of insertion. It is crystal clear from red ink page No. 532 that, on 16-3-2002 the matter was adjourned for orders on 22-8-2002 and the order has been pronounced on 22-8-2002. But, in the order, it has been shown dated '8-8-2002'. These are the grave errors committed by the Land Tribunal, Bantwal, in passing the order, by way of using three types of inks, i.e. green, blue and black. These glaring errors committed by the Land Tribunal is not at all appreciable nor it is sustainable. What it emerges is that, the Land Tribunal, Bantwal, has not conducted the enquiry in strict compliance with Rule 17 of the Land Reforms Rules and decided the matter behind the back of the petitioners, without affording opportunity and in total gross violation of principles of natural justice. Therefore, I am of the considered view that, the impugned order passed by the Land Tribunal, Bantwal, cannot be sustained and it is liable to be set aside at threshold.

5. Having regard to the facts and circumstances of the case as stated above, the writ petition filed by petitioners is allowed in part.

The impugned order dated 8-8-2002 passed by the Land Tribunal, Bantwal in proceeding No. TNC:8253:74-75 in respect of the land in question is hereby set

aside.

6. Matter stands remitted back to the Land Tribunal, Bantwal, for reconsideration of the matter afresh and to take appropriate decision in accordance with law, after affording opportunity to the petitioners and respondents 3 and 4 and in strict compliance with Rule 17 of the Land Reforms Rules with Section 34 of the [Karnataka Land Revenue Act, 1964](#) and dispose of the same, as expeditiously as possible.

7. Registry is directed to return the original record to the Land(Tribunal, Bantwal, immediately.

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