

Bharamavva and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jan-09-2003

Reported in : 2003(5)KarLJ120

Judge : N.K. Patil, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 48A; [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition No. 46095 of 2002

Appellant : Bharamavva and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : M.E. Prabhu, Government Advocate for Respondents-1 and 2

Advocate for Pet/Ap. : R.S. Hegde, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

N.K. Patil, J.

1. The petitioners assailing the legality and validity of the impugned order dated 27-4-1977 passed by the 2nd respondent-Land Tribunal (Annexure-C) insofar as

grant of occupancy rights in respect of the land in Sy. No. 153/1-A of Billahalli Village in favour of Sri Basappa Angadi, father of the respondents 3 and 4 have filed this writ petition.

2. The case of the petitioners is that they are the owners of land bearing R.S. No. 153/1-A measuring an extent of 1 acre 28 guntas including 2 guntas of Kharab land situated at Billahalli Village, Kuppavara Hobli, Ranebennur Taluk. The father of respondents 3 and 4, one Sri Basappa Angadi has filed Form 7 for grant of occupancy rights in respect of the land in question, which had come up for consideration before the Land Tribunal on 27-4-1977. The Land Tribunal, after hearing, recording the evidence of late Basappa Angadi and considering the material available on record granted the occupancy rights in favour of one Basappa Angadi. Further, the case of the petitioners is that, without issuing any notice to the petitioners, the Land Tribunal has proceeded ex parte and passed the orders unilaterally. No opportunity as such, was given to the petitioners or conducted any enquiry as provided under the relevant provisions of the Land Reforms Rules, 1974. Further, they have stated that there is a delay in filing this writ petition because they came to know about the order of the Tribunal only when respondents 3 and 4 made attempts during November 2002 and in the 1st week of December 2002. Immediately, they obtained the certified copies of necessary papers and engaged the services of learned Counsel and filed this petition. The delay in filing the writ petition is bona fide and not intentional one. Assailing the correctness of the impugned order passed by the 2nd respondent-Land Tribunal, the petitioners have filed this writ petition.

3. Heard the learned Counsel for the petitioners at a considerable length of time. Perused the entire material on record, gone through the impugned order passed by the 2nd respondent carefully and re-evaluated the entire documents furnished by the writ petitioners.

4. The submission canvassed by the learned Counsel for the petitioners is on two-folds. The 1st submission is that, the impugned order passed by the Land Tribunal is liable to be rejected at threshold, in view of non-issuing of any notice to the petitioners. Secondly, he submitted that the father of respondents 3 and 4

Basappa Angadi was never cultivating the land in question as a tenant. To substantiate his first contention, the learned Counsel placed reliance on the notice addressed to one Smt. Gangawa issued on 27-1-1977 which was not served and submitted that the entire proceeding was proceeded unilaterally behind the back of the petitioners and they came to know about the same when respondents 3 and 4 made attempts to interfere with their peaceful possession and enjoyment of the land in question. Immediately, they have obtained certified copies and filed this writ petition. It is submitted that the land in question is an Inam land and Land Tribunal has no jurisdiction to entertain the application filed by one Sri Basappa Angadi for grant of occupancy rights. If 2nd respondent has given an opportunity to the petitioners and served the notice to them they might have substantiated their case and established that they are the absolute owners of the land in question. He has pointed out that the entire case was proceeded unilaterally and there is no reference regarding the opportunity as such, was given to the petitioners. Therefore, the impugned order passed by the Land Tribunal is liable to be rejected.

5. Secondly, he has submitted that at no point of time the father of respondents 3 and 4, one late Basappa Angadi was cultivating the land in question as a tenant, the RTC extract shows the name of the father of respondents 3 and 4. There is no reference regarding the sanction of mutation or any other wardi as such and how and on what circumstances the said entries were made. The said stray entry found in the RTC is contrary to the relevant provisions of the Act. Therefore, the father of respondents 3 and 4 has not established before the Land Tribunal that he was cultivating the land in question as a tenant. If this fact is taken into consideration the Land Tribunal ought not to have granted occupancy rights in favour of father of respondents 3 and 4. Therefore, the impugned order passed by the Land Tribunal is liable to be rejected.

6. In this writ petition the petitioners have challenged the impugned order passed by the Land Tribunal on 27-4-1977 after the lapse of more than 25 years. The writ petition is presented on 7th December, 2002. The inordinate delay in approaching this Court by invoking extraordinary jurisdiction of Articles 226 and 227 of the [Constitution of India](#), the petitioner has not explained the delay by assigning any

convincing reasons. The petitioners have given explanation that they came to know about the impugned order passed by the Land Tribunal in the last week of November 2002 and in the first week of December 2002. Immediately, they obtained relevant copies then only they came to know that the order was passed by the Tribunal behind the back of the petitioners. Therefore, the explanation given by the petitioners for condoning the delay in approaching this Court is not satisfactory. Much credibility cannot be given to the explanation offered by the petitioners for condoning the inordinate delay of more than 25 years in filing this writ petition. At this distance of time, the petitioners are not entitled to seek any relief at the hands of this Court. As per the law laid down by the Apex Court and this Court in series of cases, it is duty cast on the petitioners to explain each day's delay by giving cogent reasons. But in the instance case nothing is forthcoming. In my considered view the explanation given by the petitioners is not satisfactory. Therefore, the writ petition is liable to be rejected at threshold on the ground of delay and laches.

7. Yet another reason the writ petition liable to be rejected is that, the documentary evidence produced by the petitioners (Annexure-E) RTC extract indicates in Col. No. 9 that the land belongs to Government. In Col. No. 12(2) is concerned, the name of one Late Basappa Angadi, the father of respondents 3 and 4 is shown as cultivating the said lands and he has grown different types of crops namely, hurali, jowar, thogari etc. Further, it discloses from Annexure-F, the statement of one late Basappa Angadi that the land in question was cultivating by him since from his father's days i.e. more than from 40 to 50 years on lease basis on paying a lease amount of Rs. 160/- per year on obtaining receipts which are made available before the Land Tribunal. The Land Tribunal after seeing the receipts, same were returned back to the petitioner therein. The said statement of the father of respondents 3 and 4 was recorded by the Chairman on 27-4-1977. Further, it reveals from the records that the notice was issued by the Land Tribunal to the 2nd petitioner. If these facts are taken into consideration it shows that late Basappa Angadi was cultivating the land as a tenant as on 1-3-1974 and the Land Tribunal has also given its finding to that effect. Therefore, on merits also, I do not find any goods grounds to interfere with the impugned order passed by the Land Tribunal.

8. Having regard to the facts and circumstances of the case as stated above and taking into consideration the legal and factual position, I do not find any justification to interfere with the impugned order passed by the 2nd respondent-Land Tribunal.

9. Accordingly, the writ petition is dismissed on the ground of delay and laches as also on merits.

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