

Shankrappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-02-1995

Reported in : ILR1995KAR897; 1995(3)KarLJ422

Judge : Hari Nath Tilhari, J.

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

Appeal No. : W.P. No. 17432 of 1994

Appellant : Shankrappa

Respondent : State of Karnataka

Advocate for Def. : H.H. Kaladgi, HCGP for R-1 to R-3 and ;Suresh P. Hudedaguddi, Adv. for R-7

Advocate for Pet/Ap. : V.T. Rayaraddi, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Hari Nath Tilhari, J.

1. This is a Petition under Article 226 of the Constitution of India. By this Petition the petitioners have sought quashing of the endorsement dated 23.5.94 in No.

KLR:CR:20:94-95 passed by the Tahsildar, Kalghatgi District, Dharwad, as well as the petitioners have further prayed for Writ of Mandamus or a direction in the nature being issued to respondent to consider the application filed in Form No. 7 by the father of the petitioners in respect of the land in dispute, they have prayed for such other relief being granted or being issued as this

Hon'ble Court deems fit.

2. The facts of the case in brief are that after coming into force of the Karnataka Land Reforms Act, according to the petitioners' case, as contained in paragraph 6 of the Writ Petition, petitioners' father moved an application in Form No. 7 on 10.8.1974 claiming occupancy rights in respect of the land in dispute viz., Plot Nos. 150, 154, 8 and 9 village Hullambi. According to the petitioners' case the brother of the petitioners' father had also moved an application claiming occupancy rights in remaining portion of the land. According to the petitioners' case no enquiry was conducted by the Tribunal nor any date of hearing was fixed and the petitioners did not come to know the progress of the case before the Land Tribunal. The petitioners' case is that they made enquiries from the office of the Land Tribunal and was informed by the Secretary of the Tribunal at times that they (petitioners) will be served with notice for hearing by the Tribunal and so the petitioners kept on waiting. According to the petitioners case they were advised not to approach this Court unless any order is passed on the application of the petitioners father filed in Form No. 7. The petitioners case is that ultimately an endorsement was issued to the petitioners on 23.5.94. The copy of which has been annexed as Annexure 'F' to the Writ Petition. The original endorsement is in Kannada. The said endorsement has been translated by the learned Counsel for the petitioners and the learned High Court Government Pleader before me and I had taken note of that English translation which reads as under: -

'That in respect of Sy.Nos. 150, 154, 8 and 9 of Hullambi village you applied for certified copy of Form No. 7 filed by your father. Your prayer was considered and your father had not filed Form No. 7 in respect of the above said land.'

Having felt aggrieved and taking this order to be tantamount to rejection of the claim of his father the petitioners have filed this Writ Petition under Article 226 of

the Constitution of India and have prayed for grant of reliefs as have been mentioned in the relief clause to the Writ Petition. On behalf of respondents 1, 2 and 3 appearance has been put up by learned Government Pleader Sri H.H. Kaladgi. Office report shows that respondents 4 to 6 have been served but are unrepresented. On behalf of respondent No. 7 appearance has been put up by Sri Suresh P. Hudedaguddi, an Advocate of this Court. No counter affidavit has been filed. The learned Counsel for the parties agree that the point involved is a short one and it may be disposed of and on the basis of joint request I have heard the learned Counsel for the petitioners as well as Counsel for respondents 1 to 3 and 7 who are before me.

3. Sri V.T. Rayaraddi, learned Counsel for the petitioners submitted that in accordance with the Division Bench Decision of this Court the Tahsildar has no power to record a finding that no application in Form No. 7, had been filed by the petitioners father. The learned Counsel submitted that an application under Section 48A whether had been filed or not if a party has asserted it had been filed the question has got to be decided by the Tribunal which is competent to deal with the application and to dispose it of. The Tahsildar is merely a Secretary and he is not a Tribunal. Therefore this endorsement is illegal and without jurisdiction. The learned Counsel for the petitioners had made a reference to the following Decisions :-viz., (1) VENKAPPA SHETTIGAR v. THE SPECIAL TAHSILDAR AND ORS. 1989(1) KLJ 14; (2) CHANNABASAPPA v. STATE OF KARNATAKA : ILR 1993 KAR1785 .

4. Learned Government Pleader Sri Kaladgi, who represents respondents 1 to 3 and Suresh P. Hudedaguddi, Counsel for respondent No. 7 submitted that when the endorsement has been made by the Tahsildar it has only been brought to the notice that there appears to be no application in Form No. 7. But no order had been passed finally either rejecting the application for copy or rejecting the claim made by the petitioners' father. The learned Counsel submitted that proper course for the petitioners' or petitioners' father was to have approached the Tribunal for proper finding and appropriate orders in the light of the law laid down by this Court.

5. I have applied my mind to the contentions of the learned Counsel for the parties. Under Section 48A a person gets a right to move an application claiming himself to be entitled to be registered as occupant. Under Section 45 of the [Karnataka Land Reforms Act, 1961](#) when a person moves an application Land Tribunal is fastened with the duty to make enquiries in respect of the claim of the title and the prayer for registration and in respect of the prayer made in the application and if a case is made out then it may pass order granting the application for the reliefs claimed provided the person moving the application in the prescribed Form under Section 48 proves other necessary ingredients. But when the basic question is whether a person has moved an application under Section 48A of the Act particularly when he asserts that he has made an application and other side denies then in that case the power and duties of the Tribunal itself is to pass suitable orders according to law after recording the finding on the question whether such an application as claimed by the applicant has been made or not. If the application had been made whether it has been made within the time prescribed or not has got to be decided by the Tribunal and not by the Tahsildar. The question whether the application has been made and is missing from the office or has been removed from the record or has not been registered or that the assertion that he the petitioner or petitioners father had moved an application in Form No. 7 is correct or false in a case where such copy of the application is not traceable can form the basis of the Tribunals to pass the order either directing the party to file a fresh application and then to proceed after the assertion is correct. In all these matters and the report of the Tahsildar may form part of the evidence to determine those questions. But accepting the question of factum of moving an application under Section 48 is one of the basis on which the authority has to proceed under Section 48A to determine the right, title etc., it is the jurisdiction of the Tribunal to determine that basic question and therefore the contentions of the learned Counsel for the petitioners appears to be sound and it has got much force. This view has also been upheld by the Division Bench Decision of this Court in the case.

6. As regards the present case the Tahsildar could have made an endorsement to the effect that there is no registration of such application in the name of the petitioners' father. But the Tahsildar has stated in his order that the petitioners' father had not filed Form No. 7 in respect of the aforesaid land. As the Tahsildar

made a report to the effect that there appears no application to be filed as there is no registration like that the matter ought to have been placed before the Tribunal for orders and the Tribunal could have passed suitable orders after hearing the petitioners and giving opportunity of showing or proving that any such application has been moved by the father of the petitioners. As mentioned earlier if the petitioners prove that they or their father had filed an application the Tribunal very well could have passed suitable orders. Under Section 48A no relief can be granted to the petitioners, if it is found that there is no such application moved. I read the Tahsildar's report as communicating to him, neither there is an endorsement nor application is available on record nor memo to indicate that the application in Form No. 7 was filed. The registration of the application or omission to register the application or omission to enter that application, that application had been moved or not may be a circumstantial evidence, but this report by itself cannot be said to be in the nature of rejecting the petitioners claim. It is the Tahsildar's report which in my opinion should be placed before the Tribunal and the petitioners should be given an opportunity of filing any rebuttal to the report of the Tahsildar and thereafter it is for the Tribunal to decide whether the petitioners' father had moved an application under Section 48A in Form No. 7 and if the finding is in favour of the petitioners the Tribunal may after considering the other aspects of the matters such as if the applicant continued to be alive or not on 23.5.94 or later on proceed to decide and dispose of the matter according to law. It will be open to the Tribunal to condone any delay on the part of the petitioners in approaching to it. As such I am of the opinion that this Writ Petition be allowed with a direction to the following effect:

That respondents 1 to 3 particularly the Tribunal-respondent No. 2 to take report submitted by the Tahsildar on 23.5.94 to the effect that according to the report of the Tahsildar there is no such endorsement and application is available. But the question whether the petitioners' father had filed any such application as alleged by the petitioners and whether it is yet alive further or not all these questions be decided by the Tribunal.

Before arriving at any decision on the question involved the Tribunal is further directed to allow the petitioners to file objections to the report and if the petitioners

want to file evidence in support of objections that request may also be allowed. Thus, this Writ Petition is allowed. The Writ of Mandamus is issued to the Tribunal to proceed according to law as mentioned above in the order and according to the directions as mentioned above.

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