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Court : Karnataka

Decided On : Sep-16-2005

Reported in : ILR2005KAR5189; 2006(4)KarLJ121

Judge : N.K. Patil, J.

Acts : [Land Reforms Act, 1961](#); Land Reforms Rules - Rule 17; Land Reforms Appellate Authority Rules - Rule 9(4)

Appeal No. : L.R.P. No. 1686 of 1991

Appellant : Hanmanth

Respondent : The Land Tribunal Joida (Supa) and anr.

Advocate for Def. : A.R. Sharadamba, HCGP for R-1 and ;K.S. Desai, Adv. for R2

Advocate for Pet/Ap. : Sona Vakkund and ;M.B. Nargund, Advs.

Judgement :

ORDER

N.K. Patil, J.

1. This petition is directed against the order dated 2.11.1989 in Appeal No. DAAA/AD/32/89 on the file of the Land Reforms Appellate Authority, Sirsi,

confirming the order passed by the Land Tribunal, Joida (supa), in proceedings No. LRM/SR/47 Joida dated 22.2.1989.

2. Petitioner claiming to be a tenant in respect of Sy. Nos. 27, 28; 29 and 30 measuring 6 acres 7 guntas, 2 acres 4 guntas, 0.35 guntas and 0.36 guntas situated at Pradhani Village, Hobli Supa, Sirsi Taluk, filed Form No. 7 for grant of occupancy rights. The said application filed by the petitioner had come up for consideration before the land tribunal on 3.7.1975. The land tribunal has granted the occupancy rights. Being aggrieved by the order passed by the land tribunal, the 2nd respondent herein has filed the writ petition before this Court. This Court passed an order, remitting back the matter to the tribunal, directing the land tribunal to pass appropriate orders afresh after affording opportunity to the petitioner. After remand, the land tribunal has taken up the matter for fresh consideration. In spite of giving sufficient opportunity to the petitioner, he has not produced any documentary evidence nor has examined any independent witness i.e., adjacent landowners. After considering the materials available on the file and the evidence of the landlord, the land tribunal has passed an order dated 22.2.1989 rejecting the claim of the petitioner holding that the land in question is not at all tenanted and vested in Government as on 1.3.1974. Being aggrieved by the order passed by the land tribunal, the petitioner herein has filed an appeal on the file of the land reforms appellate authority, Sirsi and the same has been numbered as Appeal No. DAAA/AD/32/89. The land reforms appellate authority after critical evaluation of the oral and documentary evidence and . order passed by the land tribunal has passed an order dated 2.11.1989, dismissing the appeal filed by the petitioner holding that the petitioner has failed to establish that the land in question is tenanted land and vested in Government as on 1.3.1974 and he has not produced any documents or adduced any oral evidence to substantiate his statement except taking grounds in the memorandum of appeal. Being aggrieved by the impugned order passed by the land reforms appellate authority, Sirsi, the petitioner felt necessitated to present the instant revision petition.

3. The principal submission canvassed by the learned Counsel appearing for the petitioner Smt. Sona Vakkund is that, both the authorities have committed an error as well as irregularity in not conducting proper enquiry in strict compliance of Rule

17 of the Land Reforms Rules and in not affording sufficient opportunity to the petitioner to put-forth his case. Further she vehemently submitted that the petitioner repeatedly made a request before the land tribunal and the appellate authority to give an opportunity to the petitioner to adduce independent oral evidence on the ground that he does not have any documentary evidence such as entry in RTC or lease deed or any receipts. Therefore., he is purely depending upon the oral evidence such as the evidence of the adjacent land owners and the tribunal has rejected his request and proceeded to pass the order. It is contended that, the said order is illegal and unreasonable. Against the said order an appeal has been filed before the appellate authority. The petitioner has filed an application under Rule 9(4) of the Land Reforms Appellate Authority Rules on 14.9.1989 requesting the appellate authority to permit the petitioner to adduce oral evidence. The said application filed by the petitioner has not been considered properly and the same has been rejected. Therefore, she requests that both the orders passed by the authorities are liable to be set aside.

4. Per contra, learned Counsel appearing for the respondents, inter alia contended and substantiated the impugned order passed by both the authorities. Further he submitted that inspite of giving sufficient opportunity to the petitioner before the land tribunal for adducing his evidence, he has not adduced any oral evidence nor has produced any documentary evidence. Therefore, the land tribunal has passed the order in strict compliance of the mandatory provisions of the Land Reforms Acts and Rules and no error as such has been committed by the Tribunal. The petitioner has not produced any documents to establish that he is cultivating the said land as tenant as on 1.3.1974. The land tribunal has given a specific finding that the land in question has not been vested or declared as tenanted land as on 1.3.1974 and the same has been confirmed by the appellate authority. Since both the authorities have recorded concurrent finding of fact, on appreciation of the oral and documentary evidence, interference may not be justifiable at this stage. Therefore, he submitted that the revision petition filed by the petitioner is liable to be dismissed at the threshold.

5. Having heard the learned Counsel appearing for the petitioner and the learned Government pleader appearing for the respondents and after considering the rival

contentions of both the parties, the only question that arise for consideration in the instant revision petition is,

Whether the impugned order passed by both the authorities are sustainable in law?

6. After careful persual of the impugned order passed by the land tribunal and the land reforms appellate authority, it emerges on the face of the records available on the file that, neither the land tribunal nor the appellate authority has committed any error much less irregularity as such in rejecting the claims of the petitioner. Therefore, both the authorities after critical evaluation of the oral and documentary evidence available on the file have recorded concurrent finding of fact against the petitioner. In view of the concurrent finding of fact recorded by both the authorities having regard to the well settled principles of law laid down by the Apex Court in a canten a of judgments, interference by this Court exercising power under the revision is not justifiable nor the petitioner has made out any good grounds to interfere at this stage.

7. It is not in dispute that the petitioner has filed an application for adducing the oral evidence under Rule 9(4) of the land reforms appellate rules on 14.9.1989. The said application filed by the petitioner lad come up for consideration on 17.10.1989. The appellate authority after hearing both the sides for considerable length of time has passed a detailed order giving reasons for rejecting the said application holding that, inspite of the land tribunal, giving sufficient opportunity to the petitioner to adduce his evidence, he has not made any sincere efforts to adduce the oral evidence and the dates were also given by adjourning the case on various dates from 28.9.1988 to 18.1.1989 and inspite of giving him sufficient opportunity, the petitioner has not made any sincere efforts to adduce his oral evidence. After hearing both the counsel appealing for the parties, the land tribunal has given opportunity to the petitioner but he has not taken advantage of the same. Therefore, I do not find any infirmity or illegality in passing the order rejecting the claim of the petitioner. The petitioner has failed to substantiate his claim before the land tribunal inspite of giving sufficient opportunity. Therefore, he is not entitled for consideration of his request under Rule 9(4) of the Land Reforms

Appellate Authority Rules. The said order dated 17.1.0.1989 has attained finality as the same has not been assailed. Thereafter, after affording opportunity to petitioner and after evaluation of the oral and documentary evidence, the appellate authority has dismissed the appeal confirming the order passed by the land tribunal. Further after evaluation of the original records available on the file of the land tribunal and the appellate authority, the RTC extract copies which are available in the original records at ink page Nos. 59 to 66, for the agricultural year 1964-65 to 1983-1984 it can be seen that, the name of the owner has been notified at the khatedar column i.e., column No. 9 and in column No. 12(3) the mode of cultivation is shown as 1 and 2.1 indicates self cultivation and 2 indicates servant. Nowhere in the relevant period between 1970-1971 to 1973-1974 the name of the petitioner has been shown in the cultivators' column nor the mode of cultivation is shown as tenant. Further, it is rightly submitted by the counsel appearing for the petitioner that, the petitioner has got no documentary evidence such as lease deed executed between the petitioner and the land owner-the 2nd respondent herein nor he has got any receipts. Except his oral submission he has not adduced oral evidence in spite of giving sufficient opportunity. The land tribunal after appreciation of the oral and documentary evidence and on the basis of the records available on its file has dismissed the claim of the petitioner and the same has been confirmed by the appellate authority. Therefore, I do not find any justification or good grounds to interfere with the impugned order passed by both the authorities. The learned Counsel appearing for the petitioner submitted that, instead of rejecting his application or not permitting him to adduce oral evidence, petitioner ought to have been given an opportunity in view of the judgment of the Supreme Court and remained the matter for re-consideration afresh. The said submission made by the learned Counsel appearing for the petitioner has got no substance for the reason that, except making oral submission before this Court he has not produced any documentary evidence. It is not the case of the petitioner that he has got some evidence to establish that he was cultivating the said kind as a tenant. Both the authorities have given specific finding to the effect that the land in question has not been vested as a tenanted land as on 1.3.1974. He has also not produced any document. In view of the concurrent finding of fact given by both the authorities, interference by this Court is not sustainable in view of the well

settled principles of law laid down by the Apex Court and of this Court in host of judgments.

For the foregoing reasons as stated above, the revision petition is dismissed.

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