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Devraj and ors. Vs. the Assistant Commissioner, Revenue Sub-division and anr.

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Court : Karnataka

Decided On : Aug-11-2008

Reported in : 2009(1)KarLJ318

Judge : N.K. Patil, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 77A; [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 9708 of 2008

Appellant : Devraj and ors.

Respondent : The Assistant Commissioner, Revenue Sub-division and anr.

Advocate for Def. : R.B. Venkataramana, High Court Government Pleader for Respondent-1

Advocate for Pet/Ap. : Naveen, Adv. for ;A. Nagarajappa and Associates

Disposition : Petition dismissed

Judgement :

ORDER

N.K. Patil, J.

1. The petitioners, assailing the correctness of the order dated 26-6-2008 in proceeding Nos. LRF(T):JVL:12:99-01; LRF(T):JVL:14: 99-01; LRF(T):JVL: 11:99-01 and LRF(T):JVL:15:99-01 passed by the first respondent-Assistant Commissioner, Revenue Sub-Division, Shimoga vide Annexures-E, F, G and H respectively and the order dated 20th March, 2008 passed by the Karnataka Appellate Tribunal, Bangalore in Appeal Nos. 696 to 699 of 2003 vide Annexure-J, have presented this writ petition. Further, petitioners have sought to direct the first respondent to grant occupancy rights in favour of the petitioners pursuant to their applications filed under Section 77-A of the [Karnataka Land Reforms Act, 1961](#), vide Annexure-A, B, C and D.

2. The brief facts of the case are that: these petitioners claiming that they are cultivating the land bearing No. 91 situated at Javalli Village, Shimoga Taluk to the respective extents as notified in their respective applications filed in Form VII-A for registering occupancy rights under Section 77-A of the Karnataka Land Reforms Amended Act. The said applications have come up for consideration before the first respondent-Authorized Officer-cum-Assistant Commissioner, Revenue Sub-Division, Shimoga on 26th February, 2003 in the proceeding numbers as referred above. The first respondent-Authorized Officer has rejected the applications filed by petitioners holding that, land in question is not a cultivable land and it has not been vested in the Government as on the appointed dated i.e., 1-3-1974 and as per the record of rights which were available on file for the relevant year 1973-74, the name of the petitioners do not find in the cultivators column i.e., in Column No. 12(3) and in Column No. 9 of the record of rights, it is shown as 'Kudli Sringeri Mutt-Banjaru' (not cultivable land) and therefore, petitioners are not entitled for occupancy rights as provided under Section 77-A of the Karnataka Land Reforms Amended Act. Further, the first respondent-Authorized Officer has observed that, the land in question is the inam land as per the Government notification dated 30th August, 1997 and the power has been conferred by the Deputy Commissioner and rejected the applications filed by petitioners. Assailing the correctness of the order passed by the first respondent-Authorized Officer, petitioners have filed the appeals before the Karnataka Appellate Tribunal in Appeal Nos. 696 to 699 of

2003. Those appeals had come up for consideration before the Appellate Tribunal on 20th March, 2008. The Appellate Tribunal after condoning the delay in filing the appeals, heard the matters on merits and after critical evaluation of the oral and documentary evidence available on file and after affording reasonable opportunity to the petitioners and following the decision of this Court and the relevant provisions of the Act and Rules, has rejected the appeals and confirmed the order passed by the first respondent-Authorized Officer. Being aggrieved by the impugned orders vide Annexures-E, F, G and H respectively and Annexure-J, these petitioners felt necessitated to present this writ petition seeking appropriate relief, as stated supra.

3. I have heard learned Counsel appearing for petitioners. After careful perusal of the orders impugned passed by the Authorised Officer-cum-Assistant Commissioner, Revenue Sub-Division, Shimoga and the Karnataka Appellate Tribunal, Bangalore as referred above, the applications filed by these petitioners vide Annexure-A to D and the grounds urged by petitioners in this writ petition, what emerges is that, both the authorities have not committed any error of law, much less material irregularity as such for rejecting the applications filed by these petitioners for granting occupancy rights in respect of the land in question. It is significant to note that, the first respondent-Authorized Officer after critical evaluation of the entire material available on file, has specifically recorded a finding after affording reasonable opportunity to the respective Counsel appearing for the parties that, Sy. No. 91 measuring 114 acres 12 guntas situate at Javalli Village, Shimoga Taluk stands in the name of 'Kudli Sringeri Mutt'. Further it is specifically referred as 'Banjaru (not cultivable)' for the relevant date i.e., as on 1-3-1974. In the record of rights, for the relevant year 1973-74 the name of the petitioners do not find in Col. No. 12(2) and so far as Col. No. 9 is concerned, it is shown as 'Kudli Sringeri Mutt-Banjaru' and therefore, the land in question is not a cultivable land and therefore, as per the Amended Act Section 77-A of the Karnataka Land Reforms Act, there is no provision for the first respondent-Authorized Officer to consider the applications filed by these petitioners and to grant occupancy rights. Further, it is observed that, as per Government Circular dated 30th August, 1997, the only remedy for the parties is to redress their grievance before the jurisdictional Commissioner who has got the power so far as

consideration of the request of the parties for granting occupancy rights in respect of inam lands are concerned. It is pertinent to note that, in view of the latest judgment of the Apex Court, petitioners can redress their grievances before the jurisdictional Land Tribunal by way of filing necessary application in Form I for grant of occupancy rights in respect of the land in question/inam lands. In view of the said reasoning given for rejecting the applications, I do not find any error or illegality as such committed by the Authorised Officer and he has rightly rejected the applications filed by these petitioners strictly as envisaged under Section 77-A of the Karnataka Land Reforms Amended Act. Further, petitioners have assailed the correctness of the order passed by the first respondent-Authorized Officer-cum-Assistant Commissioner, Revenue Sub-Division, Shimoga before the Karnataka Appellate Tribunal. The Appellate Tribunal, after hearing both the sides and after considering the original records made available by the Assistant State Representative and after hearing both sides and by assigning valid reasons in para 8 of the order that, as per Section 77-A of the Karnataka Land Reforms Amended Act, the petitioners have to fulfill three conditions that is, their name should be appearing in the RTC as a cultivators as on the appointed date i.e., 1-3-1974, their name should have continued in the RTC as a tenants and the land in question ought to have vested with the Government. But in the instant case, after having examined the RTC of the land in question, it is noted that the land has not been vested with the Government which is one of the criteria for the grant of land under Section 77-A and it is not fulfilled by the petitioners nor they have produced any authenticated documents to prove the same, as it reveals from the original record available on file. Further, placing reliance on the law laid down by this Court in Hosabayya Nagappa Naik and Ors. v. State of Karnataka and Ors. : ILR 2002 KAR1342 , wherein it is held that, if the applicant/petitioner is not eligible for grant of occupancy rights under Section 77-A of the Karnataka Land Reforms Amended Act, if he has not fulfilled three conditions as referred above. The Appellate Tribunal following the ratio of the law laid down by this Court as referred above and after critical evaluation of the oral and documentary evidence available on file and by assigning cogent and valid reasons, has dismissed the appeals. Both the authorities after critical evaluation of the oral and documentary evidence and other material available on file and after affording opportunity to the parties, have

recorded concurrent finding of fact against the petitioners. In view of the concurrent finding of fact recorded by both the parties, interference by this Court, exercising extraordinary jurisdiction under Article 226 of the [Constitution of India](#), is not justifiable and interference by this Court is uncalled for.

4. Hence, I decline to entertain this writ petition in view of the well-settled law laid down by this Court in hosts of judgment. Taking all these factors into consideration, the writ petition filed by petitioners is dismissed as devoid of merits.

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