

Basavanappa Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Aug-21-2002

Reported in : ILR2003KAR2930; 2003(4)KarLJ109

Judge : R. Gururajan, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 55(1); Karnataka Land Reforms Rules, 1974 - Rule 21

Appeal No. : Writ Petition No. 23890 of 1993

Appellant : Basavanappa

Respondent : State of Karnataka and ors.

Advocate for Def. : V. Bychappa, High Court Government Pleader for Respondents-1 and 2 and ;M. Rama Bhat, Adv. for Respondent-3

Advocate for Pet/Ap. : Shantesh Gureddy, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

R. Gururajan, J.

1. The petitioner in this petition is challenging Annexure-A, Form 10 issued in favour of respondent 3 under the Karnataka Land Reforms Act and the rules framed thereunder.

2. The facts are as under:

The petitioner is the owner of lands in Sy. Nos. 208/2+3/A1 and 209/28 situated at Chabbi Village in Hubli Taluk, Dharwad District. The lands are cultivated by the petitioner's family right from the days of his forefathers. Till recently, the petitioner's father was cultivating the lands and thereafter, the petitioner's mother was managing the lands. However, the petitioner and his brother were helping his mother in the matter of cultivation of lands. The third respondent in collusion with the office of the 2nd respondent-Land Tribunal, Hubli, obtained Form 10 in respect of these lands in terms of Annexure-A. The petitioner was not aware of this order. Only in the year 1990, he came to know of this order when the respondent started interfering with the possession of the petitioner. He filed a complaint regarding interference by respondent 3. He also filed a suit in O.S. No. 57 of 1991 with regard to injunction.

3. The petitioner, thereafter filed an application before the land revenue authorities to change the entries and sought for deletion of entries in favour of respondent 3. Matter was taken up in appeal before the Assistant Commissioner and thereafter, the Assistant Commissioner has cancelled the entry and ordered continuance of the petitioner's name. The Assistant Commissioner has ruled that there was no Land Tribunal order granting occupancy rights in respect of these lands to the third respondent. He also ruled that Form 10 is obtained by fraudulent means. The third respondent filed a writ petition in this Court. Writ petition seems to be pending. He also filed a review of the order of the Assistant Commissioner and the said review petition was dismissed in terms of Annexure-B. It is stated that the Tahsildar has sent a report stating that Form 7 was never filed by the third respondent and Form 10 was obtained fraudulently. A criminal case is pending. With these facts, the petitioner is before me.

4. Notice was issued and the respondents have not chosen to file any counter, whatsoever. This Court passed an order on 4-10-1999 in the matter of obtaining

records. An affidavit by the Tahsildar, Hubli, is filed in this Court in the light of the order of this Court. In the affidavit, it is stated that the Land Tribunal, Hubli, has maintained separate registers for having received Form 7 in respect of each and every village of Hubli Taluk. Entries are also made in Column 8. Entry at Sl. No. 44 refers to Chabbi Village. There is a reference in respect of receipt of Form 7 from one Sri Jinnappa Thavanappa Basapur. But, the said entry is not certified by the then Special Tahsildar. Applicant's name is overwritten in Column 3. Disposed records were transferred to the regular Tahsildar, Hubli. In the list of records, the record pertaining to LRF Case No. 44 was not handed over to the regular Tahsildar, Hubli. The Tahsildar concludes that except an entry in Form 7, no records are available.

5. Matter is heard for final disposal.

6. Learned Counsel for the petitioner states that a fraud has been played in the case on hand and he states that the matter requires consideration by this Court. Insofar as delay is concerned, he refers to the pending proceedings before the Civil Court and the Criminal Court. He further says that in the matter of fraud, this Court has to consider the case and pass appropriate orders.

7. Per contra, learned Counsel for the respondents states that the petitioner cannot challenge this order and he states that there is an enormous delay in the matter. Original records are also made available to me.

8. A short question that is required to be considered by this Court is as to whether Form 10 issued in terms of Annexure-A is valid and legal.

9. The Karnataka Land Reforms Act provides for occupancy rights in terms of the provisions of the Act. Form 7 requires to be filed in the matter of occupancy rights. In the event of a successful Form 7, Form 10 is issued by way of a follow up measure in terms of the Act. Form 10 is nothing but a certificate of registration of a tenant as an occupant under Section 55(1) of the Act. A preamble to the said Form provides for a reference of an order in terms of Section 48-A of the Act. In the case on hand, the third respondent has obtained Form 10 and there is a reference to an order dated 11-8-1975 in case No. KLRSR No. (C) 44. It may not be out of place

to mention here that in the light of this order, proceedings were initiated before the Assistant Commissioner. The Assistant Commissioner has chosen to hold that this Form 10 is not acceptable and it has been obtained by fraudulent means in terms of an order at Annexure-B. When the petitioner filed an application, an endorsement has been issued that details are not furnished. To find out as to whether the application was filed or not, this Court directed the respondent to produce the records. Records are not filed. An affidavit is filed by one Sri Abdul Aziz, Tahsildar, Hubli. He states in para 2 reading as under:

'I submit that in the Land Tribunal, Hubli, separate registers for having received Form 7 were maintained in respect of each and every village of Hubli Taluk. In respect of each and every entry, the date of disposal of Form 7 made by the Land Tribunal is also entered in Column 8 of the said register. There is an entry in Sl. No. 44 of Form 7 register in respect of Chabbi Village, Hubli Taluk, in respect of receipt of Form 7 from one Sri Jinnappa Thavanappa Basapur pertaining to Sy. Nos. 208/2+3A and 209/2 and also disposal of the said application. But, that entry is not certified by the then Special Tahsildar of the Land Tribunal as is done in respect of other entries in the same register. The name of the applicant in the said entry is overwritten in Column 3 of the said register. Further, after the disposal of the cases in respect of Form 7 in the Land Tribunal, Hubli, the records of the disposed of cases were transferred to the office of the regular Tahsildar, Hubli on the abolition of the office of the Special Tahsildar, Hubli attached to the Land Tribunal, Hubli on 6-2-1982 and the records pertaining to the cases of Chabbi Village were also handed over to the regular Tahsildar, Hubli by the Special Tahsildar, Land Reforms, Hubli as per the list dated 6-2-1982. In the said list, the records pertaining to LRF Case No. 44 are not handed over to the regular Tahsildar, Hubli by the Special Tahsildar, Land Reforms, Hubli'.

10. A reading of para 2 would show that an entry is seen with regard to receipt of Form 7. But, the said entry is not signed by the Special Tahsildar. There is no order as such available in the records. Records are also not handed over to the regular Tahsildar. It is also of interest to observe that the contesting respondent has not chosen to file any documents to convince this Court with regard to his having filed an application and with regard to an order in his favour. No counter-

statement is also filed. The Government Pleader also made available the original file with regard to the submission of their forms. It is seen at Sl. No. 44 that an entry is made and in the said entry, it is stated that one Jinnappa Thavanappa Basapur has filed an application and the said application was received on 22-8-1994. In the last column with regard to a decision on 11-8-1975, the same is not certified by the Special Tahsildar whereas in respect of other tenants, there is a reference with regard to the date and the details of the case. Original records are also not available and the concerned Tahsildar has retired.

11. In the absence of any counter-affidavit in this Court and in the absence of production of the order, either certified or Xerox copy, an adverse interference has to be drawn against the third respondent. Even otherwise, the material facts support the petitioner. Except the receipt of the application, there are no other records available as on date evidencing an order in favour of respondent 3. Even the basis on which Form 10 has been issued is not forthcoming and the records are not made over to the Tahsildar in terms of the affidavit. Even in the register, it has not been countersigned by the Special Tahsildar. Entries are also doubtful in character. It is seen that at Sl. Nos. 1 and 3 there are overwritings. It is not in the same page. In these circumstances, this Court can definitely come to a conclusion that in the absence of any acceptable evidence available on record, Form 10 issued to the respondent 3 has to be set aside as otherwise, the third respondent would be having a certificate without there being an order of the Land Tribunal. As mentioned earlier, Form 10 is nothing but an implementation by way of a certificate of an order passed under Section 45-A of the Act. Respondent 3 cannot have the benefit of Form 10 in the absence of any order passed in the light of Form 7 filed by him. Therefore, Form 10 has to be set aside on the facts of this case.

12. Learned Counsel for the respondent however places an argument of delay. Delay always depends on the facts of each case. In the case on hand, it is seen from the material on record that no order is available as on today by the Land Tribunal, Therefore, Form 10 is not a certificate in accordance with law. Such certificate cannot be allowed to stand in the eye of law. Though the order is of the year 1975, on the peculiar facts of this case, this Court cannot allow Form 10 to continue in the light of the various facts referred to above. Any continuance of

Form 10 would send wrong signals to the parties to obtain Form 10 by fraudulent means. This Court cannot shut its eyes to a fraud that too in the light of the material facts made available to this Court. It cannot be forgotten that the petitioner has also chosen to initiate proceedings, both civil and criminal, as I see to safeguard his interest. Taking an overall view of the matter, I do not think that I should refuse to exercise my discretion in a case of fraudulent transactions. The argument of delay is rejected.

13. Learned Counsel for the respondent also says that the Tahsildar cannot issue a finding with regard to an application filed under Section 48-A. He strongly contends that this Court cannot rely on the affidavit submitted by the respondent. He also relies on two judgments in *Chanabasappa v. State of Karnataka and Ors.*, : ILR 1993 KAR1785 and *Shankrappa and Ors. v. State of Karnataka and Ors.*, : ILR 1995 KAR897 . At the outset, it is to be stated that the Tahsildar has not given any findings with regard to an application under Section 48-A. The Tahsildar in the case on hand in terms of the order of this Court has chosen to file an affidavit. While filing the affidavit with regard to non-availability of the record, the Tahsildar has only given the facts available on record. Submitting an information to the High Court is different from giving findings with regard to the submission of filing of an application. The judgment in *Chanabasappa's case*, *supra*, stands on a different footing. That was a case in which the Court notices that the Tahsildar is only performing his execution function and he is not expected to give any findings with regard to an application. That case stands on a different footing.

14. Similarly, the second judgment in the case of *Shankrappa's case*, *supra*, is also distinguishable on facts. That was also a case as to whether the application filed under Section 48-A is made or not. That question according to the judgment is to be decided by the Tahsildar. In the case on hand, this Court has not decided as to whether any application is made or not. This Court is only required to find out as to whether any decision as such has been passed providing for a certification in terms of Form 10. This makes all the difference between the decided case and in the case on hand. Therefore, these two judgments are not available to the respondent.

15. In these circumstances, I deem it proper to allow this petition and set aside Annexure-A, a certificate issued by the Tahsildar. I also deem it proper to observe that the authorities, while issuing Form 10 are to be fully satisfied with regard to the orders passed by the Land Tribunal and then issue Form 10. This satisfaction is to be based on the material facts and the material orders in the file. A mechanical issue of Form 10 would affect the rights of the parties. It is hoped that the authorities would not repeat such instances in the interest of proper application of the Land Reforms Act as otherwise the object of the Act would be defeated and mischief litigants would be the beneficiaries.

16. In the result, this petition is allowed. Costs of Rs. 2,000/- is awarded payable by the third respondent to the petitioner on the facts of this case.

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