

Devaki Vs. U. Soma Gowda and Others

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Court : Karnataka

Decided On : Sep-11-2012

Judge : K.L. Manjunath & V. Suri Appa Rao

Appeal No. : Writ Appeal No.315 of 2009 (LR)

Appellant : Devaki

Respondent : U. Soma Gowda and Others

Judgement :

This WA is filed under Sec. 4 of The Karnataka High Court Act to set aside the order passed in WP No.26309/2005 dated 17.11.2008.

MANJUNATH J.

1. Appellant is questioning the legality and correctness of the order passed by the learned single Judge in WP No.26309/2005 dated 17.11.2008 wherein the learned single Judge has allowed the writ petition filed by R-1 and remanded the matter to the competent authority to consider the application filed by R-1 under Sec.77-A (Form No.7-A) of the Karnataka Land Reforms Act.

2. This case has a chequered career. The parties are knocking the doors of this court by filing writ petitions and writ appeals in three rounds.

3. Facts leading to this appeal are as hereunder: Father of R-1 late Shivappa Gowda was a tenant under the husband of the appellant herein in respect of 8

lands in Sy.Nos.151 and 153 of Koyyuru village of Belthangady Taluk. After the death of father of R-1, R-1's mother Seethu Hengsu filed Form No.7 before the Land Tribunal, Belthangady in Case No.LRY 177/74-75 claiming occupancy rights in respect of 8 items of lands in Sy .No.155 and 151. While filing an application in Form No.7 mother of R-1 did not claim Sy.No.153/3 measuring 9-18 acres and Sy.No.150/5A measuring 94 cents. Land Tribunal granted occupancy rights in respect of entire extent of land including the lands which were not claimed by her as per order dated 15.12.1978 against which landlord filed a writ petition before this court in WP No.4488/1979 and the writ petition was allowed on 19.10.1983 remanding the matter to the tribunal for fresh consideration granting liberty to the mother of r-1 to make an application for amendment of Form No.7 to include two survey numbers which were not claimed by her in Form No.7 (which are now the subject matter in the present appeal).

4. The tribunal while disposing of the matter afresh came to the conclusion that inspite of a direction issued by this court in WP No.4488/1979, R-1's mother did not file an application to amend Form No.7. Accordingly, application filed by the mother of R-1 was rejected in regard to these two survey numbers. Tribunal while rejecting the claim of R-1' s mother in regard to these two lands also held that Sy.No. 153/3 is a punja land and was not cultivated by the mother of R-1.

5. R-1' s mother filed writ petition in WP No.21458/1992 for not granting these two items of lands. Learned single Judge allowed the writ petition and set aside the order of the tribunal only to re-consider the matter afresh by the tribunal in respect of Sy. No.153/3 on the premises that an amendment application had been filed by the mother of R-1 and that the tribunal had not considered the same. Against which appellant filed an appeal before this court in HA No.6566/1999. Appeal filed by the appellant came to be allowed by the Division Bench on 26.3.2001 on the ground that these lands were not claimed in Form No. 7 and an amendment application was also not filed by the mother of R-1 and therefore she was not entitled for grant of occupancy rights. Accordingly, the order of remand was set aside by allowing the writ appeal. While allowing the appeal. Division Bench observed that by that time R-1 herein had filed Form No.7A by invoking Sec.77-A of the Land Reforms Act since the same was pending before the competent

authority it held that it is for the competent authority to consider the case on merits and in accordance with law.

Thereafter competent authority considering the application filed by R-1 in Form No.7A, rejected the application on 27.9.2001 against which an appeal was filed by R-1 before the Karnataka Appellate Authority in Appeal No.189/2002 which appeal came to be allowed and the matter was remanded to the competent authority for fresh consideration by its order dated 30.10.2003. Against which appellant filed writ petition in WP No.5930/2004 which writ petition came to be rejected on 23.2.2004 declining to interfere with the order of remand. Being aggrieved by the order of the learned single Judge, appellant filed an appeal before the Division Bench in WA No.2006/2004 which appeal came to be dismissed granting liberty to the appellant to agitate all her grievances before the competent authority by order dated 1.6.2004.

Thereafter matter was again considered by the competent authority. Competent authority after considering the case of the respondent rejected the application by his order dated 19.10.2004 against which R-1 filed an appeal before the Karnataka Appellate Tribunal, Bangalore in No.1145/2004 which appeal came to be dismissed at the stage of admission on 9.9.2005.

Challenging the orders of the competent authority and the Karnataka Appellate Tribunal, R-1 filed writ petition before this court in WP No.26309/2005. Learned single Judge after hearing the parties came to the conclusion that the application filed by R-1 in Form No.7A in respect of Sy.Nos.153/3 and 154/4 was not considered by the tribunal on an earlier occasion and that R1 was entitled to maintain an application in Form No.7A. Accordingly, he set aside the order of the competent authority and the Karnataka Appellate Tribunal and remanded the matter to the competent authority for fresh consideration in accordance with law. This order is questioned in this appeal.

6. We have heard Mr.A.Keshava Bhat, counsel appearing for appellant, Mr. A.V. Gangadharappa, counsel for R-1 and Smt.M.C.Akkamahadevi, Govt. Advocate for R-2 and 3.

7. Following are the submissions of the counsel appearing for the appellant: Application filed by R-1 in Form No.7A was not maintainable because Form No. 7A can be filed invoking Sec. 77A of the Act subject to satisfying the conditions laid down in Sec.77A. According to him, R-1's father was a tenant. After his death, mother of R-1 had filed Form No.7 without claiming any tenancy rights in respect of two survey numbers which are the subject matter of this appeal without there being an application for grant of occupancy rights, the tribunal at the first instance had granted occupancy rights which order was set aside by this court in WP No.4488/1979 dated 19.10.1983. While setting aside the order of the tribunal, this court has remanded the matter for fresh consideration granting liberty to the mother of R-1 to make an application for amendment. Relying upon the order passed in the writ petition he contends that even if R-1's mother was entitled to make an application, when the very same lands were granted without making an application in Form No.7, when such order was set aside by this court granting liberty to the mother of R-1 to make an application for amendment, either R-1 or his mother cannot contend that they were ignorant of the procedure and out of ignorance they could not file an application in Form No.7.

8. He further contends that when an opportunity was granted to the mother of R-1 to file an amendment and if such amendment application is not filed several years thereafter, R-1 cannot make an application relying upon Sec.77A and Sec.77A cannot come to the aid of R-1 when he has failed to make use of the opportunity granted by this court in the earlier round of litigation. He further submits that while disposing of the matter by the tribunal for rejecting the claim of the mother of R-1 has categorically held that Sy.No.153/3 measuring 9-18 acres was a punja land and the same was never cultivated and punja land in South Canara which was not brought for cultivation cannot be the subject matter of the grant of occupancy rights under Form No.7. He further contends that in Form No.7A no reasons are assigned by R-1 in not making a claim while filing Form No.7 in respect of these two survey numbers and reasons for not inclusion is also not mentioned and the details of the land held by the family of R-1 has also not been given and in the said column it is mentioned as if R-1's family has no holdings which is contrary to the factual aspect because the land tribunal has granted several items of the land of the appellant based on Form No.7 filed by the mother of R-1.

In other words, R-1 without disclosing the true facts filed Form No.7A which is fatal and in such circumstances there was no necessity for the learned single Judge to remand the matter considering that the matter had reached this court on three occasions at different intervals and the matter is remanded from time to time. He further contends that R-1 cannot contend that by oversight his mother did not file an application because of the proceedings before the land tribunal were conducted by R-1 on behalf of his mother. Therefore, without disclosing the family holdings he cannot maintain Form No.7A.

9. He further contends that when mother of R-1 is not alive, after her death, lands which were granted to his mother are inherited by R-1 and as such there was no reason to the learned single Judge to remand the matter considering the background of this case. Relying upon the judgment of this court in PUNKUDA HARIJANA Versus THE STATE OF KARNATAKA AND OTHERS [2002 (1) KCCR 226] contends that provisions of Sec.77A is not applicable in order to permit a person who desire to take their chance to grab additional lands or lands which they never made any claim and the object is also not that various forms and court should be crowded with applications which are totally undesirable. Taking us through the back-ground of this case he contends that the application filed by R-1 is frivolous and liable to be rejected. In the circumstances, he requests the court to allow the appeal.

10. Per contra, Mr. Gangadharappa, learned counsel appearing for R-1 submits that though his father was a tenant in respect of these two lands, by oversight his mother had not made any claim as she was ignorant and that she was cultivating. He further contends that since R-1 was cultivating the land, there is no prohibition under Sec.77A of the Act to file an application by R-1 for grant of land under Sec.77A of the Act. He further contends that when co-ordinate Bench of this court while disposing of the appeal in WA No.6566/1999 dated 26.3.2001 did not express anything on the merits of the application filed by R-1 under Sec.77A of the Act, R-1 was entitled to pursue his application and therefore learned single Judge is justified in holding that the application filed by R-1 was maintainable. In the circumstances, he requests the court to dismiss the appeal.

11. Having heard the counsel for the parties, the only point to be considered in this appeal is:

"Whether the order of the learned single Judge suffers from infirmity and requires to be interfered with by this court."

12. It is an un-disputed fact that R-1's father was a tenant of various survey numbers under the husband of the appellant. Annexure-A to the writ petition is a chalageni chit which discloses the lands granted by the husband of the appellant in favour of R-1's father on lease basis. It is not in dispute that R-1's mother had filed an application before the land tribunal for grant of lands in Form No.7. While doing so, subject matter of the appeal viz., two survey numbers were not claimed by her, however the same was granted to her by the tribunal. The order of the tribunal was set aside by the learned single Judge of this court on the ground that this court in WP No.4488/79 dated 19.10.1983 on the ground that these two survey numbers were not the subject matter of Form No.7 and accordingly the matter was remanded to the tribunal for fresh consideration by granting liberty to R-1's mother to make the claim by making necessary amendment application. It is also not in dispute that pursuant to the direction issued by this court no application was filed by R-1's mother for amendment in Form No.7.

13. Therefore, what is to be considered by us is whether R-1 or his mother are entitled for grant of land as an occupant of such land, even though they had not filed Form No.7 under Sec.48A and continued to be in possession of such lands. Admittedly, R-1 or his mother cannot plead ignorance, because of the order passed by this court in the aforesaid writ petition granting liberty to amend Form No.7, there was an ample opportunity for the mother of R-1 to claim these two lands. Still it was not done, therefore, we are of the view that such a person cannot invoke Sec.77A of the Act in respect of these two lands particularly in the background that the land tribunal while adjudicating the application of R-1's mother has given a finding that Sy.No.1253/3 is a punja land and never cultivated by the mother of R-1.

14. In order to appreciate the case of the parties, it would be useful to quote the provisions of Sec. 77A of The Karnataka Land Reforms Act and Form No.7 A

which are as hereunder:

"Sec.77A - Grant of land in certain cases -(1) Notwithstanding anything contained in this Act, if the Deputy Commissioner, or the [or any other officer authorized by the State Government in this behalf] is satisfied after holding such enquiry as he deems fit, that a person.-

(i) was, immediately before the first day of March, 1974, in actual possession and cultivation of any land not exceeding one unit, which has vested in the State Government under Section 44; and

(ii) being entitled to be registered as an occupant of such land under Section 45 or 49, has failed to apply for registration of occupancy rights in respect of such land under sub-section(1) of Section 48-A within the period specified therein; and

(iii) has continued to be in actual possession and cultivation of such land on the date of commencement of the Karnataka Land Reforms (Amendment) Act,1997.

he may [x x x x] grant the land to such person subject to such restrictions and conditions and in the manner, as may be prescribed.

[provided that the land so granted together with the land already held by such person shall not exceed 2 hectares of 'D' class of land or its equivalent thereto.]

(2) The provisions of sub-section (2-A) and (2-B) of Section 77 and the provisions of Sec.78 shall apply mutatis mutandis in respect of the grant of land made under sub-section(1)."

"Form No.7A

[see Sub-Rule (1) of Rule 26(C)]

Application under Sec.77A for grant of land

To: The Deputy Commissioner.... District

Name of the applicant:.....

Age:..... Profession:.....Place of Residence.....

I am the tenant/sub-tenant of the following land:

Name of Landlord/landlords and his/their addresses	Taluk	Villages	Isl.No.	Plot or Hissa	Area No.A.6.	Assessment Rs.Ps.	Period of which applicant has been cultivating the land as tenant
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

I have been cultivating the land as a tenant for.....years.

I am interested in getting land specified above on the terms and conditions laid down in the Karnataka Land Reforms Act, 1961.

I was a tenant before the first day of March,1974 and in actual possession cultivation of the land sanctioned above.

I am entitled to be registered as an occupant of the above land under Section 45 or 49 and has failed to apply for registered of occupancy rights in respect of this land under sub-section (i) of Section 48A within the period specified therein.

I am in actual possession and cultivation of the above land on the date of commencement of the Karnataka Land Reforms (Amendment Act, 1997).

I, the family of which I am a member, hold the following lands in my name and in the names of my family member other than these described above as owner/tenant or in any other capacity."

15. On perusal of the entire records, we are of the view that R-1 was conducting the case on behalf of the mother as her son. Therefore, R-1 was also aware of the entire proceedings right from the beginning. We have also seen Form No.7 A filed by R-1 which is produced as Annexure-D wherein R-1 has claimed these two

survey numbers as chalageni tenant since 1962 and in the column where he is required to furnish details of the land holdings in his name and in the name of his family members he has not disclosed any of the properties held by him. Admittedly, in the earlier round of litigation except these two survey numbers remaining lands are granted to R-1 and after the death of mother of R-1, R-1 has conducted all the proceedings as the legal representative. Therefore, it is clear that when permission was granted to amend Form No.7 by this court, when he has failed to do so, such persons are not entitled to make an application under Sec.77A of the Act considering the judgment of co-ordinate Bench of this court in Punkuda Harijana's case wherein it is held:

"2. The main point raised by the appellant's learned Advocate centres around the ambit and scope of Sec.7 7-A of the Karnataka Land Reforms Act ('the Act' for short). By the amendment in question, undoubtedly the State Government had granted a concession to those of the persons who would otherwise have been qualified for the grant of occupancy rights, but who have, for some reason or other, had not applied within the prescribed period of time. The proceedings relating to applications under Sec.77A of -the Act have been coming up to this court from time to time and different facets of the law have been thrown up for consideration; recently this court had occasion to examine the nature of enquiry that is contemplated, the ambit and scope etc. In this case, what we need to highlight is that undoubtedly, by the amendment, it is permissible for application to be presented for the grant of the land in question provided the conditions are satisfied, but there are certain angles of the law which we need to very clearly re-state-the first of them is the fact that certain deadlines were prescribed in the year 1974 and thereafter, from time to time the tensions went on until the year 1979 which means that for a full period of effectively five years, it was open to those who have qualified, to approach the tribunal for the grant of occupancy rights. The Land Reforms Act was a special piece of litigation and it is a matter of record that applications not only by the thousand but virtually by the lakh, were presented from every nook and corner of the State. The reason why we refer to this is because the submission is often canvassed that the applicant who has come forward for the first time with a claim under Sec. 77A of the Act was ignorant of the requirements and the like and it is very necessary to point out that the forum

before whom the application is presented, for that matter the Court before which the case ultimately comes up, will have to be totally satisfied that the party in question was validly and genuinely prevented from filing the application in question. This is condition precedent because the object or placing Sec.77A on the statute book is not in order to permit persons who desire to take their chance by making applications for the grant of additional lands or lands to which they have never made any claim and the object is also not that the various forums and the Courts should be crowded with applications which are totally undesirable. It will therefore be necessary for the applicant to demonstrate to the total and complete satisfaction of the authority of the Court that there was genuine and valid ground for the application not having been presented earlier."

In view of the aforesaid discussion, we are of the view that the learned single Judge without considering the back-ground of this case, has remanded the matter. Since no useful purpose would be served in passing an order of remand as the application filed by R-1 in Form No.7A is not maintainable, we reverse the findings of the learned single Judge by allowing this appeal.

16. In the result, the appeal is allowed. Order of the learned single Judge passed in WP No.26309/2005 dated 17.11.2008 is hereby set aside. Writ petition filed by R-1 is dismissed confirming the orders of the competent authority and the Karnataka Appellate Tribunal.

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