REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7343 OF 2016

(Arising out of S.L.P.(C) No. 18550 of 2013)

Narayanappa (D) By Lrs. ....Appellants

Versus

B.S. Ramaswamy (D) By Lrs. & Ors. ....Respondents

J U D G M E N T

Madan B. Lokur, J.

1. Leave granted.

2. The question in this appeal is whether the High Court was correct in holding that the appellant Narayanappa (represented by his legal representatives) was not entitled to claim occupancy rights in the land in question under of the provisions of the Karnataka Land Reforms Act, 1961. In our opinion, the question is required to be answered in the affirmative, and we do so.

3. On the enactment of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as 'the Act') all tenanted lands on the appointed date that is 1st March, 1974 vested with the State

Government free of all encumbrances. However, tenants in possession of land on the appointed date were entitled to seek registration of their occupancy rights over the land in their possession. The Land Reforms Tribunal (hereinafter 'the Tribunal') was constituted to look into such claims, the last date for filing the claim being 30th June, 1979.

4. On 31st December, 1974 the appellant Narayanappa (now deceased) claimed occupancy right by filing an application in Form 7 under the Karnataka Land Reforms Rules, 1974 and invoking the provisions of Section 48-A of the Act. In the application, Narayanappa claimed occupancy rights in respect of land bearing Survey No. 93 measuring 4 acres 20 guntas in village Chalamakunte in Devanahalli taluka. In the application/Form the landlords were shown to be H. Kempaiah and B.S. Ramaswamy.

5. When Ramaswamy received notice of the application from the Tribunal with regard to the claim made by Narayanappa, he made an endorsement on the notice that he is not the owner of the land and therefore he has no interest in it.

6. When the application was heard by the Tribunal, Narayanappa's claim was verified and it was held that since he was not a tenant in the land in question but was a kathedar, the

question of granting occupancy rights in his favour did not arise. Accordingly, the Tribunal passed an order on 24th April, 1981 rejecting the application/Form 7 filed by Narayanappa. The impugned judgment and order passed by the High Court records that the order dated 24th April, 1981 was not challenged and has attained finality.

7. On 5th February, 1982 well after the cut-off date for filing the application/Form claiming occupancy rights, Narayanappa moved for an amendment in Form 7. Through the proposed amendment, he now claimed occupancy rights in Survey No. 134 in hamlet Yediyur in village Mahadevakodigehalli in Devanahalli taluka. According to Narayanappa he was illiterate, the Form had been filled up by someone on his behalf and since he was not able to understand its contents, a bona fide error had been made in not making a claim at the appropriate time in respect of Survey No. 134. At this stage, it may be mentioned that the claim made by Narayanappa in respect of Survey No. 93 was for 4 acres 20 guntas of land while the proposed amendment in respect of Survey No. 134 was for 8 acres 01 gunta of land.

8. When Ramaswamy came to know of the proposed amendment sought in Narayanappa's application, he raised an objection but by an order dated 20th August, 1982 the Tribunal accepted the

application and thereby the proposed amendment, while rejecting the objections raised by Ramaswamy.

9. Feeling aggrieved by the order passed by the Tribunal Ramaswamy (Dead) by Lrs. preferred a writ petition in the Karnataka High Court being W.P. No. 30929 of 2001 (KLRA). The learned Single Judge hearing the writ petition dismissed it by a judgment and order dated 18th June, 2009. The learned Single Judge relied primarily on the provisions of sub-Section (3) of Section 48-A of the Act to the effect that the Tribunal was empowered to permit an amendment in the application filed in Form 7. It was held that the Tribunal was not only entitled to permit the amendment but in view of sub-Section (6) it was empowered to suo motu rectify any error in the application.

10. The relevant extract of Section 48-A of the Act reads as follows:-

> "**48-A. Enquiry by the Tribunal, *etc.*** – (1) Every person entitled to be registered as an occupant under Section 45 may make an application to the Tribunal in this behalf. Every such application shall, save as provided in this Act, be made before the expiry of a period of six months from the date of the commencement of Section 1 of the Karnataka Land Reforms (Amendment) Act, 1978.
> (2)xxx xxx xxx
> (3) The form of the application, the form of the notices, the manner of publishing or serving the notices and all other matters connected therewith shall be such as may be prescribed. The Tribunal may for valid and sufficient reasons permit the tenant to amend the application.
> (4) xxx xxx xxx

(5) xxx xxx xxx
(5-A) xxx xxx xxx
(6) The order of the Tribunal under this section shall be final and the Tribunal shall send a copy of every order passed by it to the Tahsildar and the parties concerned:
Provided that the Tribunal may, on the application of any of the parties, for reasons to be recorded in writing, correct any clerical or arithmetical mistakes in any order passed by it:
Provided further that the Tribunal may on its own or on the application of any of the parties, for reasons to be recorded in writing, correct the extent of land in any order passed by it after causing actual measurement and after giving an opportunity of being heard to the concerned parties.
(7) xxx xxx xxx
(8) xxx xxx xxx

11. Feeling aggrieved, Ramaswamy preferred Writ Appeal No. 469 of 2010 (KLRA) before the Division Bench of the Karnataka High Court. By the impugned judgment and order dated 7th November, 2012 the writ appeal was allowed by the High Court. Feeling aggrieved, Narayanappa (now deceased and represented by his legal representatives) has preferred the present appeal.

12. In allowing the writ appeal, the High Court took into consideration the provisions of Section 48-A of the Act as well as the second proviso inserted in sub-Section (6) of Section 48-A of the Act which came into force on 20th October, 1995 and which was apparently relied upon by the learned Single Judge without any specific reference to it.

13. Be that as it may, the High Court considered several decisions cited before it and held that an amendment application

has necessarily to be filed before the Tribunal adjudicates on the application. It was held that once the application in Form 7 is disposed of by the Tribunal, the question of its amendment would not arise since there was no application before the Tribunal. It was further held, on a reading of Section 48-A of the Act, that the Tribunal could rectify clerical or arithmetical mistakes in its order but that thereafter it could not make any corrections in the application in Form 7.

14. With reference to the various decisions cited before it, the High Court concluded that they relied on a proposed amendment to the application during the pendency of the proceedings before the Tribunal. As such the cited decisions were not applicable to the facts of the case. Consequently, the Division Bench of the High Court allowed the writ appeal and set aside the order passed by the learned Single Judge as well as the order passed by the Land Reforms Tribunal.

15. Learned counsel for Narayanappa was not able to cite any decision before us to the effect that an application for amendment of the application in Form7 could be moved by a claimant after the disposal of the application by the Tribunal. However, reference was made to ***Hanumappa (Dead) by Lrs. v.***

Seethabai & Ors.[1] wherein an amendment in the order passed by the Tribunal was permitted by this Court even though there was a lapse of about 11 years in moving the application for amendment.

16. In that decision, instead of granting occupancy rights in respect of Survey No. 45, the Tribunal had granted occupancy rights in respect of Survey No. 54. This Court held that this was an obvious clerical error that needed to be corrected. Clearly, that decision has no application to the facts of the present appeal.

17. Reference was also made by learned counsel for Narayanappa to ***Honnamma & Ors. v. Nanjundaiah & Ors.***[2] to contend that an application for amendment of Form 7 was permissible. With the assistance of learned counsel we have gone through the decision and find that the question that arose was whether the Tribunal could permit an amendment of Form 7 after the cut-off date of 30th June, 1979 the last date for filing the application under Form 7. This Court held that it was permissible to amend the application in Form 7 even after the cut-off date. The issue whether an amendment could be carried out in the application after the decision of the Tribunal was not

[1] Civil Appeal No.1737 of 1999 decided on 28th July, 2004.
[2] (2008) 12 SCC 338

under consideration in this Court. The cited decision therefore does not render any assistance to Narayanappa.

18. Reference was also made to ***Syed Beary (Dead) By Lrs. v. Dennis Lewis (Dead) by Lrs. & Ors.***[3] where the same issue had arisen namely whether an application for amendment of Form 7 could be entertained after 30th June, 1979. This Court answered the issue in the affirmative but again the question whether an amendment could be made in the application in Form 7 after the decision of the Tribunal was not the subject matter of discussion.

19. In our opinion, the Tribunal having adjudicated upon the application, it could only correct clerical or arithmetical errors as permitted by Section 48-A of the Act. The amendment sought by Narayanappa was not in the nature of a clerical or arithmetical error. What he sought was not only a change in the survey number but also a change in the village and also a change in the area of the land for which occupancy rights were claimed. This was clearly beyond the ambit of a clerical or arithmetical error. That apart, the order of the Tribunal passed on 24th April, 1981 had attained finality since Narayanappa did not challenge its correctness before any forum. Therefore, the proposed

[3] (2007) 15 SCC 629

amendment sought by Narayanappa was not in the nature of an amendment to the original application in Form 7 but a fresh claim made by him for a different parcel of land after the cut-off date of 30th June, 1979. In other words Narayanappa sought to circumvent the provisions of the Act by making a fresh claim after the cut-off date by styling it as an amendment to the original application in Form 7. This was clearly impermissible and was an attempt to do so something in an indirect manner which could not have been done by him directly.

20. In view of the above, we find no reason to interfere with the judgment and order passed by the Division Bench of the High Court and accordingly dismiss the appeal.

.....J
(Madan B. Lokur)

.....J
(R.K. Agrawal)

New Delhi;
August 8, 2016