

CASE NO.:
Appeal (civil) 685 of 2008

PETITIONER:
ASHOK & ANR.

RESPONDENT:
ALBUQUERQUE HOTELS (P) LTD. & ORS.

DATE OF JUDGMENT: 25/01/2008

BENCH:
P.P. Naolekar & Lokeshwar Singh Panta

JUDGMENT:
JUDGMENT

O R D E R
[ARISING OUT OF SLP (CIVIL) NO.12516 OF 2005]

1. Leave granted.

2. On 24.12.1974, the predecessor of the appellants applied for occupancy right under Section 48A of the Karnataka Land Reforms Act, 1961 (in short 'the Act') in respect of Survey No.147/1A. When the matter came before the Land Tribunal, it was submitted by the predecessor of the appellants that in fact he had moved an application for occupancy right with regard to Khasra No.139/6-D. The Land Tribunal accepted the oral prayer made by the predecessor of the appellants and by its order dated 26.9.1981 granted occupancy rights to the predecessor of the appellants in respect of Survey No.139/6D.

3. Aggrieved by the said order, Respondent No.1 filed a Writ Petition before the High Court of Karnataka challenging the said order of the Land Tribunal dated 26.9.1981. The learned Single Judge by his order dated 13.3.2002 allowed the said writ petition and set aside the order of the Land Tribunal. The learned Single Judge proceeded on the basis that there was no application for correction of the mistake in respect of survey number in the application and therefore the Land Tribunal had no jurisdiction to grant occupancy rights in respect of a survey number other than the one prayed for. The High Court held that the application moved by the predecessor of the appellants on 24.12.1974 was not amended and the occupancy right claimed by the appellant remained for Survey No.147/1A and not for 139/6D and thus the Land Tribunal committed an error in giving the occupancy right over the land which was not the subject matter of an application moved by the predecessor of the appellants.

4. The Division Bench has confirmed the order of the learned Single Judge. The Division Bench has held that there was no application for amendment and there was no order allowing any such application and therefore the order of the learned Single Judge was correct.

5. The learned counsel for the appellants could not show us any application moved for amendment of the form claiming occupancy right wherein Survey No.147/1A was substituted by Survey No.139/6D. The Land Tribunal was not right in giving the occupancy right in respect of the land which was not the subject matter of an application moved by the predecessor of the appellants. The Land Tribunal had no authority to give occupancy right of a land which was not applied for. If the Land Tribunal confers occupancy rights for a land which was not mentioned in the form, the owner of that land who has a right to oppose the conferral of the occupancy right in that land has no such opportunity.

6. For the aforesaid reasons, we do not find any infirmity in the order passed by the Division Bench of the High Court. The appeal is, accordingly, dismissed.