(1990) 02 KAR CK 0023

In the Karnataka High Court

Case No : W.P. No. 15808/1983

B. Sheshappa Shetty APPELLANT

Vs

Karnataka Appellate Tribunal (Revenue) and Others RESPONDENT

Date of Decision : 01-02-1990

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 103(2)

Citation : (1990) 34 KarLJ 52

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-A revision petition was filed under Section 56 of the Karnataka Land Revenue Act against the order of the Tahsildar, Virajpet dated 30-8-1982 passed under Section 103(2) of the Karnataka Land Revenue Act, 1964 (the Act) ordering restoration of the right of way and holding that the appellant-petitioner had encroached upon the way passing through Sy. Nos. 191/2, 191/22 and 191/23 of Arvathvokkalu village in Virajpet Taluk, thus causing obstruction to respondents 3 and 4 herein. Before the Tribunal the question of maintainability of the revision petition was raised. The Tribunal held that a revision lies to the Tribunal against the order of the Tahsildar under Section 103(2) of the Act. Hence, the petitioner is aggrieved.

The only question which arises for consideration is whether or not a revision lies against the order passed by the Tahsildar under Section 103(2) of the Act, before the Karnataka Appellate Tribunal, Bangalore in the circumstances of the case.

It is necessary to refer to the relevant provisions of the Act in order to decide the above question of law. According to Section 103(2) of the Act:

"If any right of way to a land used for the purpose of agriculture and duly entered in any map or land record maintained under this Act, is wrongly obstructed or interfered with, any person aggrieved thereby, may apply to the Deputy Commissioner for removal of such obstruction or interference. The Deputy Commissioner may after summary enquiry, order the obstruction to be removed or the interference to be stopped and may for enforcing such order take such action as may be necessary."

Section 103(3) of the Act reads:

"The order of the Deputy Commissioner under sub-section (2) shall, subject to the decision in a Civil Suit, be final."

According to sub-section (2) of Section 103 if there is wrongful obstruction or interference with any right of way to a land used for purpose of agriculture and duly entered in any map or land record maintained under this Act, it is open to the aggrieved person to apply to the Deputy Commissioner for removal of such wrongful obstruction or interference and the power of granting relief is vested in the Deputy Commissioner. According to sub-section (3) of Section 103 of the Act an order passed under sub-section (2) of Section 103 is final subject to the decision in a Civil Suit.

However, by Government Notification issued under Section 195 of the Act, on 30-8-1969, the power vested in the Deputy Commissioner under sub-section (2) of Section 103 of the Act came to be delegated to the Tahsildar. Thus the Tahsildar stepped into the shoes of the Deputy Commissioner for the purpose of exercising the power conferred by the statute on the Deputy Commissioner under sub-section (2) of Section 103 and for this limited purpose only. In other words, the power exercised by the Tahsildar by virtue of the said Notification amounted to the exercise of power by the Deputy Commissioner himself under sub-section (2) of Section 103 of the Act. What was delegated by the Deputy Commissioner by virtue of Notification to the Tahsildar was the power to pass an order which the Deputy Commissioner himself enjoyed before delegation of the power under sub-section (2) of Section 103 of the Act. The delegation of power has to be construed strictly and nothing more than what is actually delegated can has be included. The power of an appellate authority can be exercised only by such authority which is invested with such power, expressly by the statute itself. In respect of an order passed by the Tahsildar, by virtue of delegation of power under the Notification under sub-section (2) of Section 103 of the Act, no appeal is provided to the Deputy Commissioner either expressly or impliedly by the statute. Sub-section (3) of Section 103 of the Act, shall be final subject to the decision in a Civil Suit. Now it is necessary to refer to Section 57 of the Act which reads:

"Whenever in this Act it is declared that an order of a Revenue Officer shall be final, such expression shall be deemed to mean that no appeal lies from such order. The Tribunal alone shall be competent to modify, annual or reverse any such order under provisions of Section 56".

Reading sub-section (3) of Section 103 together with Section 57 of the Act, it necessarily follows that any order passed under sub-section (2) of Section 103 having become final by virtue of sub-section (3) of Section 103, the Tribunal alone shall be competent to modify or annual or reverse such an order under the provisions of Section 56. This Section clearly excludes even the slightest possibility of an assumption that an appeal lies to the Deputy Commissioner against an order passed by the Tahsildar in exercise of power under sub-section (2) of Section 103 of the Act by virtue of delegability of power under the aforesaid Notification.

Section 56 of the Act deals with power of revision and it provides that the Tribunal, any Revenue Officer not inferior in rank to an Assistant Commissioner and any Survey Officer not inferior in rank to a Superintendent of Land Records or an Assistant Settlement Officer in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate officer under this Act or under Section 54 of the Code of Civil Procedure, 1908 for the purpose of satisfying himself, as to the legality or propriety of the proceedings of such officer.

In Explanation to Section 56(ii) it is provided that all revenue officers shall be deemed to be subordinate to the Tribunal.

In the instant case, undoubtedly, the Tahsildar is subordinate to the Tribunal being a Revenue Officer and thus the power of revision vested in the Tribunal is intended to be exercised against the orders passed by the Tahsildar under delegated power acting under sub-section (2) of Section 103 of the Act.

Looking from any angle there is absolutely no scope for giving a different interpretation. In these circumstances, I am of the opinion, that the impugned order of Karnataka Appellate Tribunal, Bangalore is fully justifiable and does not call for interference. I hold that a revision lies to the Karnataka Appellate Tribunal, Bangalore against the order passed by the Tahsildar in the circumstances of the case under sub-section (2) of Section 103 of the Act. The writ petition fails and therefore is dismissed.

Sri M. Siddagangaiah, the learned Government pleader is permitted to file memo of appearance within two weeks from to-day.

Writ Petition dismissed.

