
(2001) 06 KAR CK 0050
In the Karnataka High Court
Case No : Writ Appeal No. 6043 of 1999

Bandi Gopalakrishna

APPELLANT

Vs

Abubakar Beary and Others

RESPONDENT

Date of Decision : 20-06-2001

Acts Referred:

Citation : (2001) 4 KCCR 2842

Hon'ble Judges : M.F. Saldanha, J;K.R. Prasad Rao, J

Bench : Division Bench

Advocate : T.S. Mahantesh, for the Appellant; M. Vishwajith Rai, for Respondent 1 and K. Nagaraj, Additional Government, for Respondents 3 and 4, for the Respondent

Judgement

M.F. Saldanha, J.—We have heard the learned Advocates who represent the contesting parties as also the learned Government Advocate for Respondents 3 and 4 on merits. The appellants have assailed the remand order passed by the learned Single Judge on the writ petition filed by the present Respondent No. 1. His case was that he had applied for grant of occupancy rights in respect of an area of 25 cents of land in Survey No. 379/6 of Perdur village. According to him, the Tribunal has wrongly recorded the statement made by the original Petitioner to the effect that he was resident in a dwelling house with a little land around it and has also wrongly rejected his claim for occupancy rights by holding that his own statement disqualified him from the status of agricultural labourer. The learned Single Judge took note of the fact that the Petitioner had resiled from the earlier statement attributed to him and it was therefore necessary to set aside the order passed on 13.9.1984 and remand the case to the tribunal for a fresh consideration. While doing this, the learned Single Judge has directed that the lands comprised in Form No. 7 filed by Respondent No. 1 to the writ petition in relation to which occupancy rights had been granted as early as 24th June, 1981 and which order had not been challenged by anybody should also be reconsidered. In other words, the learned Single Judge had set aside the order passed in respect of Respondent No. 1 which comprised of several lands in a

proceeding filed by a party who claimed occupancy rights to only a small area of 25 cents. The Respondent No. 1 to the original petition who is the appellant before us has assailed the correctness of this order through the present appeal. The original Petitioner who is Respondent No. 1 to this appeal and the learned Government Advocate have also been heard on merits as they have been served.

2. The first contention raised by the appellant's learned Advocate is that the direction of the learned Single Judge that the two applications should be heard together is misconceived and erroneous. His submission is that the appellant's Form No. 7 application was allowed on 24.6.1981 and inter-alia the appellant was granted occupancy rights in respect of land bearing Survey No. 379/6 measuring 61 cents. The contention is that this order has assumed finality as there was no challenge to the same and that for the first time in the year 1998 after the lapse of 17 years the writ petition has been filed without any explanation whatsoever for the delay. Simultaneously, what is pleaded is that even if one takes the date of disposal of the original Petitioner's application i.e. 13.9.1984, that there is a delay of 14 years in approaching the High Court. The submission canvassed is that on the ground of delay alone the Respondent No. 1 should have been non-suited.

3. Though the learned Single Judge has entertained the petition, we need to record that indiscriminately all sorts of frivolous and untenable pleas are sought to be canvassed most of the time with obvious and mischievous motives through belated petitions filed in the High Court and stereo-type explanations are given that the Petitioner was unaware of the passing of the order. Where there is gross delay, the law is very clear to the effect that unless there is very valid, cogent and absolutely unimpeachable material that gross delay will be fatal principally in a writ proceeding. Secondly, it is very necessary to cull this type of litigation which is obviously motivated and it is therefore necessary for us to record that while in the very small category of cases where the Court is satisfied that the grounds are genuine and valid some allowance may be made, otherwise, the Court will enforce the doctrine of finality and refuse to entertain petitions where the delay is gross. One of the reasons for this is because with the passage of time the complexion of the case changes, new parties come into the picture, alienations take place and it is therefore impossible to reopen the cases after long delays. On a perusal of the writ petition, we are satisfied that the Respondent No. 1 had not made out any case whatsoever for the entertainment of the petition after a delay of 17 years and on this ground alone the writ petition ought to have been summarily dismissed. We need to observe here that it has become customary to resile from statements made before the judicial forums and where such a statement is made it is necessary for the party making the statement to establish beyond any area of doubt that the judicial forum was wrong, failing which, the party will invite stringent action from the Court. Where a so called incorrect statement is attributed to a party and an order is passed on that basis and for several years the party at the receiving end accepts that order without protest that in itself is the strongest proof of the fact that the statement

made in the writ petition is absolutely false. We need to illustrate this because in the present case the Tribunal held the enquiry on 13.9.1984. The Respondent was absent and only the original Petitioner was present and a short statement was recorded. It is inconceivable to believe that the tribunal could have made up any such statement as the tribunal has no knowledge of the personal affairs of the litigant. Also, the further statement in the writ petition that the original Petitioner was unaware of the decision of the tribunal is also unacceptable because the record shows that the Petitioner was present when the statement was recorded and the order was passed on the same day within a few minutes thereafter in his presence and it can never be argued that the original Petitioner was unaware of the decision.

4. Coming to the merits of the case, the Respondents' learned Advocate submitted that the learned Single Judge has only remanded the case for a fresh enquiry and that no prejudice is caused to the Respondent No. 1. It is difficult to accede to the argument that no prejudice would be caused to the opposite party who is dragged through one more round of litigation after several years. A remand order cannot be sustained on the ground that no prejudice would be caused to the other party unless that order is necessary and is legally justified. On the facts of the present case, there is absolutely no justification for the learned Single Judge to have held that the proceeding which was concluded in the year 1984 should be reopened and we have already dealt with the grounds on which the original Petitioner had approached the High Court which apart from delay is also unacceptable on merits. The Respondents' learned Advocate submitted that even if the remand order passed by the learned Single Judge is not very clear, that it may be clarified that the remand may be confined to the area of 25 Cents in Survey No. 379/6 out of the land allotted to the appellant as he has nothing to do with the remaining lands. Even as far as this is concerned, we are not inclined to accede to the request for the simple reason that in our considered view, the remand itself is wholly unjustified. We may mention in passing that the present appellants have produced copies of some sale deeds executed by Respondent No. 1 in or around the year 1997 in support of the contention that Respondent No. 1 is residing at some other place and is not even residing there. This is a subsidiary issue and relates to a latter point of time, so we have not attached any importance to it.

5. On a total consideration of the record before us, we hold that in this particular case the remand was unjustified and consequently, the order of the learned Single Judge is set aside. The appeal succeeds and stands disposed of on merits. In the circumstances of the case, there shall be no order as to costs.