

**(2008) 07 KAR CK 0055**  
**In the Karnataka High Court**  
**Case No : Writ Appeal No. 5049 of 2004**

Baptist Mascarenhas and Others

APPELLANT

Vs

Noel F.C. Pinto and Others

RESPONDENT

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**Date of Decision :** 01-07-2008

**Acts Referred:**

Karnataka Land Reforms (Amendment) Act, 1990 — Section 17, 70

**Citation :** (2008) ILR (Kar) 4313 : (2009) 1 KarLJ 341 : (2008) 5 KCCR 3517

**Hon'ble Judges :** V.G. Sabhahit, J;S.N. Sathyanarayana, J

**Bench :** Division Bench

**Advocate :** O. Shivarama Bhat, for the Appellant; K. Sachindra Karanth, for R1 and R. Sharathchandra, GP for R3-4, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.G. Sabhahit, J.—This appeal by the respondents 1(a) to (e) in the Writ petition is filed being aggrieved by the order dated 21.9.2004 wherein the learned Single Judge of this Court has allowed the writ petition and quashed the order passed by the Land Tribunal, Mangalore dated 6.10.1981 and remitted the matter to the Land Tribunal for fresh disposal in accordance with law after due notice to all the parties concerned.

2. The writ petition was filed by the first respondent herein challenging the order passed by the Land Tribunal. Initially Writ Petition No. 5113/95 had been filed challenging the order passed by the Tribunal, after the establishment of the Land Reforms Appellate Authority the matter was transferred to Land Reforms Appellate Authority on 17.8.99 and thereafter, after the abolition of the Land Reforms Appellate Authority, CP was filed before this Court which came to be numbered as C.P. No. 7764/91 which was disposed of along with connected CPs by order dated 9.10.97. The CP was allowed and an order was passed to transfer the proceedings before the Land Reforms Appellate Authority and the same came to be numbered as W.P. No. 5113/95. The learned Single Judge of this Court after hearing the learned Counsel appearing for the parties negatived the

contention of the appellants herein that appeal was not pending before the Land Reforms appellate Authority and wherefore, CP filed u/s 17 of the Land Reforms Amendment Act was not maintainable and remedy of the writ petitioner was to file a revision petition and the learned Single Judge further held that writ petition was maintainable and having found that the order passed by the Tribunal is not a speaking order as evidence adduced by the parties has not been considered by the Land Tribunal, quashed the order passed by the Land Tribunal and remitted the matter to the Land Tribunal for fresh disposal, in accordance with law by order dated 21.9.2004. Being aggrieved by the said order, respondents 1(a) to (e) have preferred this appeal.

3. We have heard the learned Counsel appearing for the appellants, learned Counsel appearing for the first respondent-writ petitioner and the learned HCGP appearing for respondents 3 and 4.

4. The learned Counsel appearing for the appellant vehemently argued that the sole appellant before the Land Reforms Appellate Tribunal died and LRs of the appellant were brought on record and wherefore, the proceeding abated and thereafter application had been filed for condoning the delay in filing the application to set aside abatement and to bring in record the LRs of the appellant before the appellate authority and as the appeal before the appellate authority had abated, question of transferring the proceedings before the appellate authority in CP and consequently treating it as writ petition was erroneous. The learned Counsel submitted that when the appeal had abated and application was pending for setting aside abatement by condoning the delay and to set aside abatement, no matter was pending before the appellate authority and wherefore, the order passed in CP which was merged in the W.P. No. 5113/95 was not maintainable. The learned Counsel in support of his contention has relied upon the Division Bench decision of this Court in W.P. No. 34430/92 dated 4.3.94 and decision of this Court in W.P. No. 19863/91 dated 3.2.94 in support of his contention that when the appeal was not binding before the appellate authority, CP was not maintainable u/s 70 of the Land Reforms Amendment Act, 1990 and consequently, writ petition was not maintainable and wherefore, the order passed by the learned Single Judge of this Court negating the contention raised before him regarding maintainability of CP and writ petition is liable to be set aside.

5. On the other hand, learned Counsel appearing for the first respondent-writ petitioner submitted that the writ petition which was transferred to appellate Authority was pending before the appellate Authority and abatement is not dismissal of the appeal on merits and in view of the order passed on C.P., dated 9.10.97, writ petition was registered and order passed on CP is not challenged and wherefore, the writ petition is maintainable and the order passed by the learned Single Judge negating the contention of the appellants counsel is justified and does not warrant interference in this appeal. In support of his contention that abatement does not amount to dismissal of the appeal, he has relied upon the decision in Badri Nath and Another Vs. Raja Ram and Others

wherein the Division Bench of the Allahabad High Court has held that abatement would only amount to suspension of the proceedings before the court as court cannot proceed with the appeal and if a cause is shown by the party for setting aside abatement and condoning the delay, the LRs can be brought on record and proceedings can be taken in the said proceeding and abatement would not amount to dismissal of the proceeding.

6. We have given anxious consideration to the contention of the learned Counsel appearing for the parties, scrutinized the averments made in the writ petition and contents of the documents annexed to the writ petition and order passed in C.P. No. 7704/91 dated 9.10.97 and the order passed by the learned Single Judge.

7. There is force in the contention of the learned Counsel appearing for the appellants that if the appeal before the appellate Authority was not pending on the date of abolition of the appellate Authority, question of transferring a proceeding before this Court by filing a CP does not arise. C.P. 7764/91 was filed before this Court and this Court having assigned valid reasons for not issuing notice to the respondents in CP has allowed the CP and directed that the proceedings be transferred to this Court and numbered as Writ Petition 5113/95. The said order passed by this Court dated 9.10.97 has become final. The contention of the learned Counsel appearing for the appellants that the order passed in CP dated 9.10.97 has emerged with the order passed in the writ petition does not arise as CP was an application to transfer the proceedings pending before the appellate authority to the file of this Court and that has been allowed by a separate order and that order has become final.

8. In any view of the matter, it is clear that the proceeding before the appellate authority had not been dismissed. The appellant before the authority had died and application for condoning the delay in filing to set aside abatement and to bring on record legal representatives of the deceased-appellant were pending consideration. The learned Single Judge of this Court after considering the contention which were raised before him has rightly held that abatement literally means lessening or shortening and when a court is unable to proceed with the case pending before it for the reason that proper parties are not before it, proceedings can be abated. When an application is made to bring necessary parties before the court and brings proper party before it and proceeds with the hearing and wherefore, abatement would not amount to dismissal. The decisions relied upon by the learned Counsel appearing for the appellants is not helpful to him in the present case as in the said cases, the appeal pending before the appellate authority had been dismissed by separate order as in W.P. No. 19863/91 disposed of on 3.2.94 relied upon by the learned Counsel for the appellants, the appeal had been dismissed for non-prosecution and in the other W.P. No. 5113/95, the appeal before the appellate authority had been disposed of and wherefore, the said decision is also not helpful to the appellants in the present case to contend that the matter was not pending before the appellate

authority and wherefore, we do not find any reason to interfere with the finding of the learned Single Judge that proceeding before the appellate authority was pending and has been duly transferred to this Court, in view of the order passed in C.P. No. 7764/91 dated 9.10.97. When once it is held that the proceeding was pending before the appellate authority and the same has been transferred to this Court and LRs of the original first respondent have been brought on record by filing necessary application to set aside abatement by condoning the delay in filing the application to set aside abatement and to bring on record the LRs, the learned Single Judge having found that the order passed by the Tribunal cannot be sustained as the same is not passed on consideration of the material adduced by the parties before the Land Tribunal has quashed the order passed by the Land Tribunal and remitted the matter to the Land Tribunal for fresh disposal, in accordance with law.

9. On perusal of the order passed by the Land Tribunal dated 6.10.91, it is clear that apart from stating the facts the Land Tribunal has not at all considered the material adduced by the parties to find out as to whether the claim of the applicant has been substantiated and wherefore, the order passed by the Land Tribunal has been rightly quashed by the learned Single Judge of this Court and remitted to the Tribunal for fresh disposal, in accordance with law.

10. Accordingly, we hold that the order passed by the learned Single Judge is justified and does not warrant interference in this intra court appeal. Accordingly, we hold that there is no merit in this appeal and pass the following order:

The writ appeal is dismissed.