

(2003) 01 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 40257 of 2002

Basappa Ningappa Banakar

APPELLANT

Vs

Land Tribunal and Others

RESPONDENT

Date of Decision : 27-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Land Reforms Act, 1961 — Section 38, 40 C, 48 A, 48 C

Citation : (2003) 2 KCCR 955

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : M. Ram Bhat, for the Appellant; Mohan Shanthanagoudar, for Respondents 4 and 5 and M.E. Prabhu Additional Government Advocate for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—In this writ Petition, the Petitioner has prayed this Court to quash the impugned order dated 4.10.2002 vide Annexure-F passed by the 1st Respondent and also to quash the orders dated 18.10.2002 and 4.10.2002 issued by the 3rd Respondent vide Annexures-J and K respectively.

2. The case of the Petitioner is that the matter was pending consideration before the Land Tribunal. The Land Tribunal has recorded the evidence of the Petitioner and the contesting Respondents and when the matter reached final stage, without any application by any of the parties, on 4.10.2002, it suo motu exercised powers u/s 48-C by appointing the Tahsildar as the Receiver of the suit lands and directed him to auction the standing crop and to dispose it of in the best possible way, and deposit the amount so realised, to the account of the Government. Thereafter, by his order dated 18.10.2002 vide Annexure-J, the Tahsildar issued a direction to the Revenue Inspector and also the Village Accountant to issue notice regarding holding of public auction and also directed that neither the Petitioner nor Respondents 4 and 5 are entitled to participate in

the said auction. The Tahsildar has also directed the Sub-Inspector of Police to see that neither of the parties cut the standing crop, vide order dated 4.10.2002 Annexure-K. Assailing the said orders, the Petitioner has presented this writ Petition.

3. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondents at considerable length of time.

4. The principal submission of the learned Counsel for the Petitioner is that, the impugned orders are passed behind the back of the Petitioner without giving an opportunity to him. It is contended by him that the reason assigned for appointing the Receiver was to maintain peace between the parties and the same is contrary to the material on record. It is further contended by him that the Land Tribunal has acted without jurisdiction. To substantiate his submission, he placed reliance on the Judgment of this Court reported in the case of N.A. Narasimhiah and Ors. v. Gowramma and Ors. 1979 (2) Kar.L.J. 259 wherein this Court has held that the Tribunal has nothing to do with the maintenance of peace and the tribunal also acted without jurisdiction in appointing the receiver only on the basis of the report of the Sub-Inspector of Police without affording opportunity to the parties. Therefore, he submitted that the impugned orders are liable to be set aside.

5. Per contra, learned Counsel for the Respondents, interalia, justified the impugned orders.

6. The learned Government Advocate appearing for Respondents 1 to 3 picked to point out that u/s 48-C of the Land Reforms Act, the Tribunal may, when it considers it just and proper, suo motu appoint a Receiver in respect of the land in question and therefore the writ Petition is liable to be dismissed.

7. The learned Counsel appearing for Respondents 4 and 5 submitted that the writ Petition is liable to be rejected on the ground that the order passed by the tribunal dated 4.10.2002 has been implemented and therefore the prayer sought for by the Petitioner does not survive for consideration. Further, he vehemently submitted that the Land Tribunal has got the power u/s 48-C to appoint a Receiver. To substantiate his submission, he placed reliance on the decision rendered by the Division Bench of this Court reported in case of Shankar v. L.T. Hukeri 1981 (1) Kar. LJ 79 wherein it is held that the Tribunal can make an interlocutory order appointing a receiver in respect of the disputed land, though none of the parties had applied for such an order. Therefore, he submitted that the writ Petition is liable to be rejected having regard to the law laid down the Division Bench of this Court.

8. The Land Tribunal, exercising its powers u/s 48-C, appointed the Tahsildar who is the Secretary to the Land Tribunal, as the Receiver to auction the standing crop in the suit schedule land and also to deposit the amount so realised in the Government. Section 48-C reads as follow:

48C. Interim Orders.-The Tribunal may, when it considers it just and proper and subject to such terms and conditions as it may impose, issue interlocutory orders in the nature of temporary injunction or appointment of Receiver concerning (the dwelling house in respect of which an application is made u/s 38 or) the land in respect of which an application is made u/s 48A.

9. From a reading of Section 48-C, it is clear that the statute has provided powers to the Land Tribunal to appoint a Receiver when it considers it just and proper. This fact has been taken into consideration by the Division Bench of this Court in case of Shankar v. L.T. Hukeri 1981 (1) Kar. LJ 79 while holding that the tribunal can make an interlocutory order appointing a receiver in respect of the disputed land, though none of the parties had applied for such order. In view of the law laid down by the Division Bench of this Court, I do not find any gross error or illegality committed by the Land Tribunal in appointing the receiver. The submission of the learned Counsel for the Petitioner that the impugned order is passed without jurisdiction has no substance and it is liable to be rejected. Further, the decision relied upon by the learned Counsel for the Petitioner in the case of N.A. Narasimhiah and Ors. v. Gowramma and Ors. 1979 (2) Kar. LJ 259 is not at all applicable to the facts and circumstances of this case as the facts and circumstances of that case are entirely different from the facts and circumstances of the instant case. In the instant case, the Tribunal has suo motu exercised powers u/s 40-C and appointed the receiver to auction the standing crop in public to maintain peace and to safeguard the interest of both Petitioner and Respondents 4 and 5. Therefore, I do not find any justification to interfere with the said order. So far as Annexures-J and K are concerned, those are official communications sent by the Tahsildar viz, the receiver, to the Revenue Inspector, Village Accountant and the Sub-Inspector of Police and they cannot be challenged by the Petitioner in this writ Petition under Article 226 of the Constitution of India. In my considered view, the Petitioner has not made out good grounds to interfere with the orders passed by Respondents 1 and 3.

10. Having regard to the facts and circumstances of the case as stated above and having regard to the factual and legal position, I do not find any justification to interfere with the impugned orders.

11. For the foregoing reasons, the writ Petition is dismissed. However, the 1st Respondent-Land Tribunal is directed to pass the final order within two weeks from the date of receipt of a copy of this order. The amount deposited in the Government shall be paid to the successful party.