

(2013) 09 KAR CK 0402

In the Karnataka High Court

Case No : Writ Petition No. 4687 of 2008 (LR-RES-PIL)

Bharath Samrakshana Samithi

APPELLANT

Vs

The Principal Secretary, Government of Karnataka, Revenue
Department and Others

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2013) 6 KarLJ 644

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Shivasharanappa Vali, Party in Person and Sri Arvind Wali, for the Appellant; R. Devdas, Additional Government Advocate and Smt. Saritha Kulkarni, for the Respondent

Judgement

D.H. Waghela, C.J.—Upon the present petition filed as public interest litigation coming up for hearing today, along with the connected matters, no one is present for the petitioner. However, a memo in the name of one Shivasharanappa Vali, President of the petitioner-association of persons, is tendered in the Court by a person who identifies himself as Arvind Vali and as the son of Shivasharanappa Vali. According to the memo for adjournment, the President of the writ petitioner appears as party-in-person, but since he has crossed the age of 81 years and suffering from dysentery since yesterday, he is unable to appear in person by undertaking a long journey. Thus, an adjournment is sought on that ground. The petition is listed for hearing today upon an interim application being filed by respondent 7, whose Advocate is present and presses the application for early hearing. According to the application, the petitioner has challenged the order dated 6-10-1994 of respondent 6, which is the Land Tribunal and it is the order by which occupancy rights in favour of the respondents in respect of the land in question were granted. It is seen from the record that the aforesaid order dated 6-10-1994 was set aside by order dated 24-7-1998 in W.P. No. 37585 of 1995 by this Court with the direction as under:

Occupancy rights have come to be conferred in favour of the third respondent in respect of a Wakf property without notice of the proceeding to the petitioner-Wakf Board. The impugned order is therefore quashed by allowing the writ petition, and the matter is remitted to the first respondent-Land Tribunal, Bidar, for fresh consideration of the claim for conferment of occupancy rights after due notice to the petitioner-Wakf Board.

The party described as respondent 3 in the above order is respondent 7 in the present proceeding and as stated in her application for early hearing, she is a widow aged about 90 years and she is suffering from heart disease and has recently been admitted in Care Hospital at Hyderabad.

2. Earlier, by filing Interim Application No. 1 of 2012, it is already submitted by respondent 7 that the petitioner is now seeking to challenge the order of the Land Tribunal, which has already been affirmed by this Court in W.P. No. 37585 of 1995 and C.P. No. 632 of 1998. It is further submitted that the petitioner virtually seeks to assail the judgment of this Court, which has become final as early as in the years 1998 and 2001. It is further alleged that the petitioner herein, who claims to be the President of the petitioner-society, is a land grabber and several cases have been booked against him by the District Authority and the Police under the provisions of Indian Penal Code, 1860, for land grabbing, trespassing on Government lands and lands belonging to innocent persons residing in Bidar Town. Respondent 7 has relied upon Annexure-R1 produced along with her objection statement. It is also stated that the Commissioner, City Municipal Council, Bidar has lodged a complaint with Sub-Inspector of Police against the petitioner for encroaching upon the Government lands meant for archaeological museum, temple, park etc.

3. Learned Counsel Smt. Saritha Kulkarni, appearing for respondent 7, pointed out that after the aforesaid order in W.P. No. 37585 of 1995, Civil Petition No. 632 of 1998 was made and by virtue of the order made therein on 15-6-2001, a decision in respect of the land in question has become final in the following terms.-- In view of the above, this petition is allowed. Order dated 24-7-1998 in W.P. No. 37585 of 1995 is modified, and in its place, i.e. in place of the above extracted portion, the following shall be taken as the order in W.P. No. 37585 of 1995:

The petition is allowed so far as 7 acres is concerned, which is the Wakf property. The impugned order of the Land Tribunal, Bidar dated 6-10-1994 insofar as it concerns 7 acres of Wakf property, is hereby quashed. The said order of the Land Tribunal insofar as it directs conferring of occupancy rights in favour of the third respondent-Smt. Sayyeda Khatoon in respect of the remaining portion out of 31 acres 37 guntas, i.e. 24 acres 37 guntas in Sy. No. 59 of Aliabad Village, shall remain undisturbed. Writ petition disposed of accordingly.

The third respondent mentioned in the above order is the respondent 7 herein. In these facts and circumstances, it is clear from the record that the petition is

filed with an ulterior motive and it is unnecessarily surviving and being repeatedly listed, but not finally heard and disposed. In fact, on 22-3-2010, when the petition was admitted, preliminary objection of the respondent was recorded and kept open with the direction to expedite the hearing and posting of the matter for final hearing. Thereafter, more than three years have passed and the parties are unlikely to have the result of this litigation within their lifetime, if the hearing were to be adjourned from time to time without any reasonable cause and any sincere effort on the part of the petitioner to pursue the matter with proper legal assistance to the Court. As seen earlier, the petition in the nature of public interest litigation is expressly made with the prayer to quash the order dated 6-10-1994 and hence the petition could be dismissed only on the ground of delay and laches. In these circumstances, the petition is dismissed along with the interim applications made therein and rule is discharged, with no order as to costs.