

(2000) 07 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No. 5652 of 1994 (KLRA)

Bhimarao Irappa Sutar

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-07-2000

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48A

Citation : (2000) 7 KarLJ 584

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. I have heard the petitioner's learned Advocate, learned Government Advocate who represents respondents 1 and 2 and the learned Advocate who represents the remaining respondents on merits. This writ petition arises out of a CP insofar as the petitioner had earlier preferred W.P. No. 7087 of 1986 before this Court challenging the order of the Tribunal dated 5-12-1975 which writ petition was sent to the Appellate Authority for disposal. The Appellate Authority having been abolished by virtue of the present CP the proceeding has come back to this Court. Normally, in these circumstances this Court would have no option except to set aside the earlier order and remand the case to the Tribunal which is an unfortunate technical requirement by virtue of some of the observations in the Division Bench judgments.

2. At the hearing before me however what was pointed out by Smt. Joshi who represents the contesting respondents is that the petitioner's claim was rejected originally in the year 1975 and that the petitioner filed W.P. No. 30509 of 1981 challenging that order and this Court by order dated 30-6-1983 allowed the petition, set aside the order and remanded the case to the Tribunal for fresh hearing. The Tribunal thereafter took up the case once again and by order dated 20-11-1985 rejected the petitioner's application for the second time. The writ petition in W.P. No. 7087 of 1986 apparently challenged the order dated 20-11-1985, but I find from the record that the writ petition has been amended and at all points in the writ petition including in the prayer clause and interim prayer clause the order challenged is the order dated 5-12-1975 and not the

later order dated 20-11-1985. By virtue of this position, what happens is that if even through a process of error, the petitioner has confined the challenge to the order dated 5-12-1975 that there is no challenge to the order dated 20-11-1985 which by operation of time has assumed finality. This situation is now virtually irreversible.

3. At the hearing, Mr. Hatti, learned Counsel who represents the petitioner submitted that as the learned Advocate now appearing in the case he is under an obvious handicap because he had not conducted the litigation at an earlier stage and that consequently, the best that he can do is make his submissions on the basis of record. He has also sought to contend that since the order of 1975 was set aside by this Court on 30-6-1983 that a second writ petition challenging that order would be an obvious mistake, that it is impossible to understand from the record as to why the writ petition was amended and that the Court should consider the writ petition in its unamended form. This is not possible for the simple reason that when an amendment is carried out in a litigation the effect of the amendment is that the pleading changes complexion and the Court has to proceed as the matter exists and it is a requirement of law, on the basis of the amended pleading and under no circumstances can a Court ignore the amendment carried out and restore the status quo ante. More so, all this has happened in the year 1986 when the present writ petition was filed and it was transferred to the Appellate Authority and it is too late in the day now for any changes to be permitted. Apart from this, it is seen that the petitioner's case has been considered by the Tribunal and rejected on not one but on two occasions and under these circumstances I see no ground for interference. On the state of the record this Court has no option but to dismiss the appeal.

4. In the circumstances there shall be no order as to costs.