

(2002) 11 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 24164 of 2000

Damodar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:

Karnataka Irrigation Act, 1965 — Section 3 (b)

Citation : (2003) 1 KCCR 491

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

Bench : Single Bench

Advocate : K.B. Adhyapak, for the Appellant; N. Basavarajaiah, High Court Government Pleader for Respondents 1 to 4 and Ravi G. Sabhahit, for Respondent 5, for the Respondent

Judgement

N.K. Patil, J.—The Petitioners assailing the legality and validity of the order passed by the second, third and the fourth Respondent dated 09.04.1994, 25.04.1997 and 29.09.1999 respectively, filed this petition.

2. The facts in brief are that, the Petitioners are the owners of Sy. Nos. 66 and 68 of Huttakhanda Village in Yallapur Taluk in Karwad District. 5th Respondent herein is the owner of Sy. No. 69 of the said Village which Survey Number abuts Sy. No. 66 that belongs to the Petitioners. It is the case of the Petitioners that there are two tanks situated in Forest Sy. No. 116. Of the two tanks, one is smaller in size and the said tank is situate at slightly higher level and the other one which abuts the former is bigger as compared to the first one, which is situated at slightly lower level. Between the said tanks there is an opening in the bund. The water collected during the rainy season in the Tank which is situated at higher level flows towards the other tank and then the water from there goes to Sy. No. 68 belonging to the Petitioners through a channel naturally formed since many years. The said Channel passes at the border of the tank situated at lower level. Both the Petitioners and Respondents are utilising this water for cultivation of their lands.

3. When things stood thus, the 5th Respondent, complained to the 4th Respondent-Assistant Commissioner stating that the Petitioners have dug a trench on the border of the tank situated at lower level and that Sy. No. 69 is not getting water. On receipt of the said complaint, the 4th Respondent conducted a spot inspection before passing the order. Taking into consideration the material on record the 4th Respondent on 09.04.1994 allowed the application filed by the 5th Respondent, directing the Petitioners to fill up the naturally formed channel lying at the border of the lower tank.

4. Being aggrieved by the said order passed by the 4th Respondent, the Petitioners preferred an appeal before the third Respondent-Deputy Commissioner. The Deputy Commissioner confirmed the order passed by the Assistant Commissioner, by his order dated 25.04.1997. Aggrieved, Petitioners filed an appeal before the second Respondent-KAT. The KAT, after hearing both sides, by its order dated 29th September, 1999, dismissed the appeal filed by the Petitioners directing the Petitioners to approach the Civil Court to seek appropriate remedy if so desired. Feeling aggrieved by the orders of the Assistant Commissioner, Deputy Commissioner and the Karnataka Appellate Tribunal, the Petitioners are before this Court in this writ petition.

5. The principal submission canvassed by the learned Counsel for the Petitioners is that, the Assistant Commissioner has no jurisdiction to entertain the complaint filed by the Respondents as per Karnataka Irrigation Act, 1965. To substantiate his contention the learned Counsel relied on the affidavit filed by the Government in pursuance to the direction issued by this Court stating that the Assistant Commissioner has not been delegated with the powers of an Irrigation Officer as per Section 3(b) of the Karnataka Irrigation Act. The affidavit also refers to the U.A. Note dated 27.09.2001 wherein it is clearly stated that the Assistant Commissioner is not appointed as Irrigation Officer. The said Note reads thus:

KANNADA MATTER

6. The contention of the learned Counsel is that, it is crystal clear that as per Section 3(b) of the Karnataka Irrigation Act, the Assistant Commissioner has not been appointed as Irrigation Officer at any point of time. It is vehemently contended that this aspect of the matter has not been considered by the Deputy Commissioner or by the Tribunal. However, it is pointed out that an observation is made by the Tribunal placing reliance on the judgment of this Court reported in Abdul Jabbar Vs. Devarajaiah, which is not at all applicable to the facts of the present case. It is further contended by the learned Counsel that as the orders passed by 4th, 3rd and the 2nd Respondent are not sustainable, he prays that the impugned orders may be set aside and the petition may be allowed.

7. Per contra, the learned Counsel appearing for the 5th Respondent, justified the impugned orders and strongly relied on the judgment reported in Abdul Jabbar Vs. Devarajaiah, . He contended that on the complaint of the 5th Respondent, the Assistant Commissioner has conducted spot inspection and has

pointed out the difficulty faced by the 5th Respondent. It is also contended that the Assistant Commissioner is the competent authority to decide the matter. He vehemently contended that there is no illegality or irregularity in the impugned orders passed by the Respondents. It is also submitted that if at all the Petitioners have any grievance, he can redress the same before the competent Civil Court. On these grounds he prays for dismissal of the writ petition.

8. The learned Government Pleader appearing for Respondents-1 to 4 fairly submitted that in pursuance to the direction issued by this Court, the concerned Assistant Commissioner has filed an affidavit and has produced U.O. Note dated 27.09.2001 to the effect that no notification as such has been issued as provided u/s 3(b) of the K.I. Act, 1965, appointing the Assistant Commissioner as Irrigation Officer.

9. The short question that arises for consideration is, whether the Respondents have passed the impugned orders in accordance with the relevant provisions of the Act?

10. As rightly pointed out by the learned Counsel for the Petitioners in pursuance to the direction issued by this Court, the Assistant Commissioner has filed an affidavit after thorough verification from the concerned Law Department that no notification has been issued authorising the Assistant Commissioner to exercise the powers u/s 3(b) of the Karnataka Irrigation Act, 1965. The said affidavit has been filed by one Naveen who is the Assistant Commissioner, Sirsi. To substantiate the same, U.O. Note dated 27.09.2001 has been produced.

11. As per Section 3(b) of the Karnataka Irrigation Act, "the State Government or subject to such conditions as may be prescribed, any Officer of Government empowered in this behalf may by notification appoint such Officers with such designations and assign them respectively such powers and duties over such areas or such Irrigation works under this Act, as the State Government or such Officer may deem fit." It is clear from the above provisions that the Government has got power to appoint Officers by issuing notifications assigning the powers to the concerned Officers to exercise the same under the said Act.

12. In the instant case, as stated supra, there is no notification assigning the powers to the Assistant Commissioner. This fact is not disputed by the learned Counsel for the Respondents. Therefore, I am of the considered view that without going into the merits of the case, on this sole ground itself, the writ petition has to be allowed.

13. Having regard to the facts and circumstances of the case and to safeguard the interest of both the parties, it is desirable to issue appropriate direction to the Government to issue notification u/s 3(b) of the Karnataka Irrigation Act, to appoint a competent Officer for adjudicating the complaints given by the 5th Respondent or similarly placed persons. But it is unfortunate to observe that in the instant case, the Government has so far not taken any steps to authorise the concerned Officer to exercise power under the Irrigation Act. Therefore, in my

considered view, it is appropriate to issue a direction to the competent Officer to take steps in the matter as expeditiously as possible.

14. Having regard to the facts and circumstances of the case as stated above and taking into consideration the material available on record, I do not find any justification to sustain the impugned orders passed by the Respondents. In the result, the writ petition succeeds and is disposed of with the following observation:

(1) The State Government is directed to take action as provided u/s 3(b) of the Karnataka Irrigation Act, 1965 for appointing a competent Officer with such powers and impose upon him such duties over such areas or such irrigation works under the Act, as expeditiously as possible.

(2) The learned Government pleader is directed to appraise about the matter to the concerned Department to act as per the provisions of the Karnataka Irrigation Act, within four months from the date of receipt of this order.

(3) The impugned orders passed by Respondents-2 to 4 are hereby set aside, directing the Government to consider the observations made by this Court within the stipulated time.

Learned Government Pleader is permitted to file memo of appearance within four weeks from