
(2003) 02 KAR CK 0055

In the Karnataka High Court

Case No : Review Petition No"s. 1489-96 of 2001

Darga Estate Committee

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Karnataka Land Reforms Act, 1961 — Section 107

Citation : (2003) ILR (Kar) 1589 : (2004) 3 KarLJ 363 : (2003) 4 KCCR 280 SN

Hon'ble Judges : M.F. Saldanha, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Ramanna, for M.H. Datar, for the Appellant; Basava Prabhu S. Patil, for R3 to R37 and Chandrashekar Rodnavar, HCGP for R1 and R2, for the Respondent

Judgement

Saldanha, J.—We have heard the petitioner"s learned Counsel in this group of review petitions which are effectively directed against the earlier Division Bench order dated 8.10.2001 allowing the entire set of writ appeals and setting aside the order passed by the learned Single Judge whereby he had in turn interfered with the order of the Tribunal granting occupancy rights. The present petitioners who are before us are effectively the various Dharga Estate Committees and they were the third respondent to the earlier set of writ appeals. They were duly served and were represented by their learned Advocate and the earlier Division Bench order records the fact that they had failed to respond to any communications and consequently. The learned Advocate representing them were left with no option except to place this position before the Court. We shall presently point out however that this did not make any difference because the Division Bench has disposed off the appeals strictly on merits and it was not a default order that came to be passed. In our considered view though the original respondent No. 3 who was the present review petitioner, did not effectively participate in the hearing before the appeal bench, it does not cause any prejudice whatsoever to them.

2. At this juncture, we need to record that I.A.I has been filed for condonation of delay of 44 days in filing these review petitions and without going into the reasons set out, though a very substantial objection has been raised to the condonation of delay on the ground that if the main review petitions themselves did not deserve to be considered, that the Court should not condone the delay, we have still condoned the delay and allowed I.A.I for the entirely different reason namely the fact that there are over-riding considerations of judicial fairness and we shall presently elaborate on this.

3. In situations such as this, it is characterise to contend that even if the party was at fault in not having appeared before the High Court or in not having duly instructed their learned Counsel, that in sum total, since the party had not been heard, that the review petition be allowed, the original proceeding be restored and the party be given a hearing. We do not consider the old system of mechanically restoring each of the proceedings to be really acceptable because it is open to the Court hearing the review petitions, to hear the learned Counsel who represents the petitioners, to consider the case on merits and only if a sufficiently strong case is made out which would effectively require the original judgment to be drastically modified or set aside, should the review petition be allowed and the original proceedings be reopened. The additional reason for this is because, by merely holding that a prima facie situation has arisen for granting a hearing, allowing the review petition and reopening the original proceedings, the Courts often commit the avoidable error of setting aside the earlier judgment and after hearing the party if it emerges that the original judgment was in fact perfectly valid and did not require to be altered, a considerable amount of judicial time and energy is required to be expended for re-deciding the case. Judicial time apart, the position in which the respondents are placed, is some thing of consequence.

4. It is for this reason that we have virtually bypassed the lengthy procedure and effectively heard the petitioner's learned Counsel on merits and we will briefly record what has transpired. The first contention that was raised before us was that a perusal of the record will indicate the undisputed position that all the lands in question were taken over by the State through an order passed u/s 145 Cr.P.C. the reason being that because of the continuous law and order problem, because of the continuous breach of peace and because of the very serious disputes that were going on, the authorities had no option except to take over the lands in question. A take over u/s 145 Cr.P.C. is a situation wherein the authorities assumed temporary custody or jurisdiction over the property be it movable or immovable and this is a transitory situation which is required to be totally distinguished from a situation in which the lands may be acquired or the Government takes over lands after cancelling the grant or allotment or the like. We have referred to these aspects of the law because the petitioner's learned Counsel vehemently submitted that the claimants before the Tribunal had stated that they had been cultivating the lands on a "one year basis" over a long period of time because the authorities used to auction the tenure every year.

Petitioner's learned Counsel submitted that irrespective of how many times the same person may have been allotted the lands on a "one year basis" that this Court has never constituted it as tenancy and secondly that the Tribunal was in error in having accepted the status of tenancy and granted occupancy rights. The learned Counsel who represents the contesting respondents and the learned Government Advocate were quick to point out to us that this take over continued for an abnormally long time until 15.9.1973 and admittedly, after that, the Dharga Committee came into the picture. The evidence led before the Tribunal is consistently to the effect that the claimants before the Tribunal who were admittedly in occupation and cultivation, continued on the land and as on the appointed day, they were in occupation and cultivation. What is more important is that it is their case to which there is really no effective challenge, that they were paying the "Lavani" or in other words, the rent on "Crop-share" to the Dharga Committee and that they had done this on and from the date of restoration, which meant that as on the appointed date, all the ingredients of tenancy were effectively satisfied. Though we are not bound to have gone into all these aspects while hearing the review petitions, we have done so in order to make it abundantly clear to the petitioners that even though they did not submit all of this when the appeals were heard, that all the contentions, both factual and legal, have in fact been taken into consideration.

5. The petitioner's learned Counsel relied on two decisions the first reported in *Basavanneppa Shivappa Haveri Vs. State of Karnataka and Another*, and the second one *Huvappa Mahadev Mense Vs. Land Tribunal*, in both of which the position was more or less the same. In the first case, the applicants before the Tribunal contended that they had been conferred with tenancy rights by the Court receiver and in the second case the contention was that they had been inducted by the Court of Wards, who had conferred tenancy rights on them. In both the cases, the Division Benches of our High Court held that the applicants would be disqualified from claiming the status of "agricultural tenancy". The petitioner's learned Counsel submitted that the present case is on all fours with the earlier two cases and that consequently, if the applicants before the Tribunal were wrongly granted occupancy rights, that this is a fit case in which the appeals will have to be dismissed and the order passed by the learned Single Judge will have to be restored. We need to record here that there is a clear distinction between the earlier two cases and the present case, both factually and legally and as we have already elicited above, that in the present case the persons who are in occupation and cultivation had in fact tendered the rent to the Dharga Committee which was not the position as far as the earlier cases are concerned. Furthermore, on a strict construction of the law, the present applicants would have certainly qualified for the alternative plea of deemed tenancy, in which case also their applications would have been allowed.

6. The two grounds on which the learned Single Judge had interfered with the well considered order of the Tribunal have been dealt with by the Division Bench on the earlier occasions. Briefly stated, the Division Bench had held that it was

only the administrative control that had been taken over by the State and that the learned Single Judge was certainly in error in having wrongly held that the lands in question were Government lands and that consequently no occupancy rights could have been granted. The Division Bench had clarified the position that the lands had not vested in the State but that it was only the administrative control which had been taken over.

7. The Division Bench had also dealt with the position u/s 107 of the Land Reforms Act because the learned Single Judge had erroneously recorded the finding that the lands in question come within the exempted category and that consequently no occupancy rights could have been granted and the earlier Division Bench clarified the position by pointing out that the lands had been restored to the Dharga Committee well before the appointed date and consequently found this finding was erroneous.

8. Having virtually reheard the appeals on merits, for reasons that we have indicated earlier, we find that there is absolutely no ground on which the earlier judgment is liable to be either modified or set aside. Consequently the review petitions fail and stand dismissed. In the circumstances of the case, there shall be no order as to costs.

9. In the course of the submissions, references were made to the fact that against the same order of the learned Single Judge W.A. Nos. 1763-1774 of 2002 have been filed and that those appeals are pending and this was one of the grounds on which it was contended that the present set of Review Petitions should be allowed and that all the appeals be heard together. In the view that we have taken, we would necessarily have to examine as to how and under what circumstances the same parties could prefer another set of appeals before the High Court against the same order. The Office shall accordingly re-list the W.A.Nos. 1763 - 1774 of 2001 before us at 2.30. P.M. on 27.3.2003.