
(2001) 01 KAR CK 0086
In the Karnataka High Court
Case No : Writ Petition No. 37953 of 1997

E. Mallanagowda

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-01-2001

Acts Referred:

Citation : (2001) ILR (Kar) 718 : (2001) 6 KarLJ 106 : (2001) 1 KCCR 448

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : B. Chidananda and S.P. Kulkarni, for the Appellant; V.K. Narayanaswamy, High Court Government Pleader, V.T. Rayaraddi and P.H. Gotkhindal, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner being aggrieved by the order dated 9-12-1997 passed by the Karnataka Appellate Tribunal, Bangalore (3rd respondent herein) has approached this Court in this writ petition.

2. The brief facts are as follows.--The petitioner claims to be in possession of the lands bearing Survey Nos. 66/3 and 69 measuring 4 acres 11 guntas and 19 acres 30 guntas respectively of Itagi Village in Hospet Taluk. According to the petitioner, Itagi Village is an Ex- Inam Estate village and as per the notification dated 28-6-1988 issued by the Government of Karnataka exercising its power conferred under sub-section (4) of Section 1 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as the "Madras Act") and he applied for grant of Ryotwari Patta. Similarly, the 4th respondent as well as her father-in-law G. Sanna Thimmanagouda also filed similar applications. By the order dated 30-12-1995 the Settlement Officer appointed under the Madras Act, allowed the application of the petitioner and ordered for issue of Ryotwari Patta in respect of the lands in question to the petitioner. It appears that the fourth respondent feeling aggrieved by the same preferred an appeal before the Karnataka Appellate Tribunal, Bangalore, in Appeal No. 107 of 1996. Before the

Appellate Tribunal/the 3rd respondent the petitioner challenged the jurisdiction of the Appellate Tribunal itself inter alia contending that any appeal u/s 15 of the Madras Act has to be filed before a Tribunal constituted under the Madras Act as per Section 8 and as such the Karnataka Appellate Tribunal constituted under the provisions of the Karnataka Appellate Tribunal Act, 1976 (hereinafter referred to as the "1976 Act") has no jurisdiction. The Karnataka Appellate Tribunal by the impugned order dated 9-12-1997 (Annexure-G) rejecting the contention of the petitioner held that it has got jurisdiction to decide the question in issue and accordingly set aside the order of the Settlement Officer and in turn cancelled the Ryotwari Patta granted to the petitioner. Hence, the present writ petition.

3. Learned Counsel for the petitioner contended that the 3rd respondent/Karnataka Appellate Tribunal which is constituted under the 1976 Act has no jurisdiction to entertain and decide an appeal filed u/s 15(2) of the Madras Act. Inviting my attention to the provisions of the Madras Act the learned Counsel contended that, as per Section 15(2) of the Madras Act, "any person deeming himself aggrieved by a decision of the Settlement Officer under sub-section (1) may (...) appeal to the Tribunal; (...)".

"Tribunal" has been defined u/s 2(14) of the Madras Act thus:

" Tribunal" means a Tribunal constituted u/s 8 and having jurisdiction".

Section 8(2) of the Madras Act states thus:

"Each Tribunal shall consist of three members; one of them (who shall be its Chairman shall be a District Judge or an Officer eligible to be appointed as a District Judge, another shall be a Subordinate Judge or an officer eligible to be appointed as a Subordinate Judge, and the third shall be a Revenue Divisional Officer or an officer eligible to be appointed as a Revenue Divisional Officer".

4. Prima facie, on going through the provisions of the Madras Act as well as the 1976 Act, it is seen that the Tribunals constituted under both the Acts are totally different and separate entities. They are not one and the same, so also their power and jurisdiction. As stated earlier, the Tribunal u/s 8 of the Madras Act which consists of three members is empowered only to consider the cases/appeals u/s 15 of the Madras Act. Whereas, the Karnataka Appellate Tribunal under the 1976 Act has other functions, as is clear from Section 5 of the 1976 Act. The 3rd respondent/Appellate Tribunal which is constituted under the 1976 Act is vested with all the powers which the Karnataka Sales Tax Appellate Tribunal, the Karnataka Co-operative Appellate Tribunal and the Karnataka Revenue Appellate Tribunal had immediately before the commencement of the 1976 Act. Thus, this Appellate Tribunal has not been specifically vested with the power and jurisdiction of the Tribunal constituted u/s 8 of the Madras Act as well as the powers u/s 15(2) of the Madras Act. Further, it is seen that the composition of the Tribunal u/s 8 of the Madras Act and the 1976 Act are also totally different. Since they are separate entities and there is no provision to transfer the matter inter se between them, the Karnataka Appellate Tribunal

could not have assumed the jurisdiction u/s 15 of the Madras Act. In this view of the matter, the impugned exercise of power by the Karnataka Appellate Tribunal assuming the appellate jurisdiction u/s 15(2) of the Madras Act is totally illegal.

5. It is to be noted that in spite of such question being raised at the initial stage itself, except observing that--

"16. It was contended for the R-2 that this Tribunal had no jurisdiction. He relied upon Section 8 of the Madras Act and submitted that the Tribunal constituted u/s 8 was consisted of 3 members, but, the Tribunal under the Karnataka Appellate Tribunal Act is consisted of 2 members. But, the KAT is exercising powers of all erstwhile Tribunal then existed under the different Acts of different States prior to reorganisation of the Karnataka. Further, R-2 actuated R-1 to act u/s 15(1) of the Madras Act. Thus, he cannot blow hot and cold and contended that appellant could not prefer appeal to this Tribunal u/s 15(2) of the same Act".

In my view, this finding of the Karnataka Appellate Tribunal assuming jurisdiction is illegal and unsustainable. In this view of the matter, the impugned order passed by the Karnataka Appellate Tribunal is liable to be quashed as the one having been passed without any jurisdiction.

6. Hence, for the reasons stated above, the rule is made absolute. The impugned order dated 9-12-1997 passed by the Karnataka Appellate Tribunal, Bangalore, in Appeal No. 107 of 1996 under Annexure-G is quashed.

7. It is however made clear that it is open for the aggrieved party to approach the Tribunal constituted under the Madras Act as is demonstrated to be in existence to file an appeal if permissible and subject to the Limitation Act as prescribed therein to get her grievance settled.

8. Before closing the matter it is observed that the 5th respondent has filed an application to implead himself as the legal representative of the deceased, 4th respondent on the basis of a Will, Without going into the merits of the same, it is made clear that even if he has any right he has to agitate the same before the Tribunal constituted u/s 8 of the Madras Act if permissible under law.

9. In the circumstances and the facts of the case there shall be no order as to costs.