

(1981) 09 KAR CK 0018
In the Karnataka High Court
Case No : WA 1471/81

Giriappagowda Mallangowda

APPELLANT

Vs

Land Tribunal, Byadgi and Others

RESPONDENT

Date of Decision : 25-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Reforms Act, 1961 — Section 48a(5)

Citation : (1982) 1 KarLJ 233

Hon'ble Judges : A. K. Lakshmeshwar, J;V. S. Malimath, J

Judgement

V.S. Malimath, J.-The appellant has challenged in this appeal presented under S. 4 of the Karnataka High Court Act, 1961, the order of the learned Single Judge, made on the 17th of September, 1981, in WP No. 12616 of 1981. There is also a prayer for confirming the order dated the 30th of June, 1981.

2. The appellant was an applicant for grant of occupancy rights for which purpose he had made an application under S. 48-A of the Karnataka Land Reforms Act, 1961 before the Land Tribunal, Byadgi. The Tribunal by its order dated the 28th of May, 1981, rejected the application of the appellant for grant of occupancy right?. The Tribunal has recorded a finding that the appellant was not a tenant, but was only cultivating the land in his capacity as a mortgagee. There is no other direction. After rejecting the application of the appellant, the Tribunal has not issued any further directions.

3. The order of the Tribunal rejecting the appellant's application is challenged in WP No. 12616 of 1981. When the writ petition came up before the learned Single Judge on 30th June, 1981, rule was issued and ad interim order staying the operation of the impugned order of the Tribunal dated the 28th of May, 1981 was granted. When the third respondent, the owner of the land, moved for vacation of the said ex parte interim order, the learned Single Judge, after hearing both the parties, made an order on 17-9-1981 vacating the ad interim order of stay granted on the 30th of June, 1981.

4. Aggrieved by the aforesaid order of the learned Single Judge, dated the 17th of September, 1981, the appellant has come up in appeal. The only question that has to be considered in this appeal is:

Whether the learned Single Judge was right in vacating the ad interim order of stay granted on the 30th of June, 1981?

As already stated, by an order dated the 30th of June, 1981, the learned Single Judge, had granted ad interim order staying the operation of the order of the Land Tribunal, dated the 28th of May, 1981, challenged in the writ petition. As the order of the Tribunal is one rejecting the appellant's application, the question of staying the operation of such an order does not at all arise. We say so, because on rejection of the appellant's application, no further direction was given by the Tribunal which could be executed or enforced. As there is no operative direction in the order of the Tribunal, the question of staying the operation of the order of the Tribunal, does not arise. Interim orders are granted in aid of the final relief to be granted in the case. We fail to see how stay of rejection of the application will aid the final relief to be granted in the case. If stay is not granted, the petitioner will not suffer any substantial injury. Possession of the parties is not affected by the rejection of the application. If any party tries to disturb the possession of another, appropriate interim relief in the nature of injunction may be granted. If the circumstances justify and if it is just and convenient, an order appointing a receiver may be granted. If in pursuance of the findings of the Tribunal, any other proceedings are taken, such proceedings may be stayed. If the entries in the Record of Rights are changed on the basis of the findings of the Tribunal, it is open to the aggrieved party to challenge the same before the higher authorities. They will have to be corrected and brought in tune with the final order in the case. The possibility of change in the record of rights does not entitle the party to secure an order of stay. Though the Court may have power to issue different types of interim orders, it should not issue an interim order which is not appropriate to the situation. In our opinion, issuing of stay order in such a case, is not appropriate to the situation. The position is analogous to the dismissal of a suit without any decree for costs. When a suit is dismissed without costs, it is impossible to say that the Appellate Court can grant the stay of the operation of the decree dismissing the suit under the provisions of Or. XLI, R. 5, CPC. We have, therefore, no hesitation in taking the view that in a proceeding under Art. 226 of the Constitution of India, challenging the order of the Land Tribunal, rejecting the application for grant of occupancy rights under S. 48A of the Act, without any further directions, no interim order can be granted staying the operation of the order of the Tribunal. We further make it clear that what we have stated above is confined to the grant of stay of operation of the order of the Tribunal, rejecting the application for grant of occupancy rights. This does not, however, mean that the Court cannot consider the prayers for grant of other appropriate interim orders. Hence we make it clear that the dismissal of this appeal shall not come in the way of the appellant or the third respondent seeking such other appropriate interim orders that they may

deem fit from the Single Judge before whom the matter is pending.

For the reasons stated above, this appeal fails and is dismissed.

Further order on being spoken to:

September 28th, 1981

Malimath, J:

After we dictated the order in this case on the 25th September, 1981, Sri Chandanagoudar, learned counsel for the appellant, came later in the day and submitted that another Division Bench appears to have taken a contrary view and that therefore, the view taken by us requires reconsideration. In view of the submission made by Sri Chandanagoudar, we directed the office to post this matter for being spoken to today. Accordingly we have heard Sri Chandanagoudar who invited our attention to the order by the Division Bench consisting of the Chief Justice and Venkatachala, J., in WA 482 of 1981. In that case, Mahendra, J., while issuing rule had declined to grant stay on the ground that the Tribunal having rejected the application for registration of occupancy rights and the Tribunal not having directed any further action being taken, there was no need to grant any order of stay. The appellate Bench before whom the said order was challenged observed that in the circumstances, the learned Single Judge should have directed maintenance of status quo during the pendency of the Writ Petition, meaning thereby who-

3. WA 482/81. ever was in possession of the land prior to the order of the Tribunal, should continue to be in possession thereof and that the disposal of the application for grant of occupancy rights shall not be understood as bringing about any change as to the respective rights of the parties to the possession of the said land. The judgment of the appellate Bench does not indicate that they disagreed with the view taken by the learned Single Judge that as the Tribunal declined to register occupancy rights in favour of the applicant and did not direct any further action to be taken, there was no question of granting interim order of stay. All that their Lordships have stated is that having regard to the circumstances of that case, the learned Single Judge should have more appropriately made an order directing the party who was in possession shall continue to remain in possession thereof till the disposal of the writ petition. The order made by the appellate Bench cannot at all, therefore, be understood as an order staying the operation of the order made by the Tribunal rejecting the application for registration of occupancy rights. Hence, it is not possible to accede to the contention of Sri Chandanagoudar that the Division Bench has taken a view contrary to the one which we have taken in this case. We have already made it clear that the parties are entitled to seek other appropriate order as circumstances of the case justify. What type of other interim order can or should be granted in a particular case depends upon the facts and circumstances of each case and no hard and fast rule can be laid down in that behalf. But so far as stay is concerned, we have made it abundantly clear that when the application

for registration of occupancy rights is rejected without any further direction, in a writ petition under Art. 226 of the Constitution challenging such an order, no interim order staying the operation of such an order of the Tribunal, can be granted.