

(2005) 01 KAR CK 0065
In the Karnataka High Court
Case No : Writ Petition No. 26329 of 2002

Guthyappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-01-2005

Acts Referred:

Citation : (2005) ILR (Kar) 1268 : (2005) 2 KarLJ 100 : (2005) 2 KCCR 1109

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : T.P. Rajendra Kumar Sungay, for the Appellant; Ratna N. Shivayogimath, High Court Government Pleader for Respondents-1 and 2 and R. Gopal, for Respondent-3, for the Respondent

Judgement

R. Gururajan, J.—Guthyappa S/o. Late Kolla is challenging the order of the Land Tribunal, dated 28-12-2001 passed in KLR (TGP) AHD 22 of 1976-77 (Annexure-F) in the following circumstances.

2. Petitioner-tenant belongs to poor ST community. His father late Kolla was a tenant in respect of the suit land under the 3rd respondent. 3rd respondent was the landlord. Petitioner's father filed Form 7 seeking occupancy rights in respect of the suit lands. An order was passed rejecting the application filed by the father of the petitioner. Writ petition was filed in this Court in W.P. No. 19329 of 1985. This Court in the light of the constitution of the Appellate Authority transferred the same to the Appellate Authority. The Appellate Authority was abolished and the matter was re-transferred to this Court. Again, the matter was converted as writ petition and the converted proceedings are numbered as W.P. No. 15013 of 1993. This Court after hearing, allowed the writ petition in terms of an order dated 30-9-1996. This Court also issued directions to the parties to lead evidence in the matter. After remand, 2nd respondent issued notices in the matter. Petitioner was examined in support of his application. He produced certain documents. After the death of the father of the petitioner, petitioner continued in possession of the land. However, the 3rd respondent took possession of the land

in question. Petitioner examined one Sheshagiriappa before the Tribunal. 3rd respondent examined himself and denied the documents filed by the petitioner. Case was posted on 19-11-2001 for cross-examination of the 3rd respondent. 3rd respondent was cross-examined by the petitioner's Counsel. 4th respondent being the President of the Tribunal posted the case for orders on 7-12-2001. Petitioner on 7-12-2001 filed an application seeking permission to further cross-examine the 3rd respondent. There was no sitting on the said date. Petitioner was told to file the same in the office. Matter was adjourned to 7-1-2002. Petitioner filed an application on 10-12-2001. Respondent 3 in collusion with respondent 4, got the order sheet dated 7-12-2001 tampered and preponed the date of hearing as 28-12-2001 from 7-1-2002. Therefore, the matter was called on 28-12-2001 and an order was passed dismissing the application filed by the petitioner. With these facts, petitioner is before me.

3. Statement of objections are filed by the State Government. The Counsel for the respondent submits that the contention of the petitioner alleging that the case was posted for orders on 7-1-2002 and that the date was tampered is not at all correct and absolutely baseless. The Counsel for the petitioner was present in the Court on 28-12-2001, on which date, the order was pronounced in the open Court. Proceedings in the record would substantiate the act of the respondent. The petitioner's Counsel Mr. Goudar, was present on 28-12-2001 when the respondent dismissed the application.

4. The contesting respondent has filed a detailed affidavit in the case on hand. It refers to various facts and merits in the matter. It is also stated that the Counsel for the petitioner fully cross-examined the 3rd respondent and closed the same on 19-11-2001. On that day, the arguments of both sides were in fact heard by the 3rd respondent and thereafter, case was posted for 28-12-2001. Counsel for petitioner was present on 19-11-2001. Order sheet was written in his presence. He was aware that the case was posted on 7-1-2002. Chairman was not in the Headquarters on 7-12-2001 and the matter was posted to 28-12-2001. Order was pronounced in the open Court in the presence of an Advocate of the petitioner. It is false that the petitioner wanted to file an application (Annexure-D) seeking further cross-examination before the Tribunal on 7-12-2001. It is false to say that the office clerk informed him to file the same in the office and that the matter was adjourned to 7-1-2002. It is further false that the Advocate for the petitioner was not present before the Court on 28-12-2001. It is further denied of various allegations made in the petition. They want the petition to be dismissed.

5. Heard Sri T.P. Rajendra Kumar, learned Counsel for the petitioner. He would reiterate the facts and grounds raised in the petition.

6. Per contra, Sri C.B. Srinivas, learned Senior Counsel would say that the petitioner is fully cross-examined the witness. There is nothing to further cross-examine the witness. He refers to various material facts to say that the order does not require any interference. He supports the order.

7. Admitted facts would reveal that the matter was remanded to the Tribunal by this Court for reconsideration. Parties have led their evidence as mentioned above. It is seen from the material on record that on 19-7-2001, parties were examined and case was adjourned to 26-7-2001. On that day, examination of the witnesses were completed and it was adjourned to 17-8-2001 and from there, the matter was adjourned from time to time and on 19-11-2001, the matter was adjourned to 7-12-2001. 3rd respondent was cross-examined. On 7-12-2001, the President was not sitting. It was adjourned to 7-1-2002 according to the petitioner. He wanted to file an application seeking for recalling 3rd respondent for further cross-examination. According to the petitioner he has filed the same in the office. However, without passing any orders, it was preponed and the order was pronounced on 28-12-2001, the same is stoutly denied by the respondent. In these circumstances, I have called for the original to satisfy myself with regard to the allegations/counter-allegations made by the parties. Original file is placed before me.

8. From the original file, it is seen that the case was adjourned from 19-11-2001 to 7-12-2001. I see the order sheet dated 7-12-2001. It gives me an impression that the case is adjourned to 7-1-2002. Thereafter, I see 7 has been changed into 8 and 2 is added behind 8, and another 2 is added after 1 i.e., month 12 instead of 1 and at the end 2002 is rewritten as 2001. I am satisfied that there is some mischief played by somebody in the case on hand. Moreover, notwithstanding an application filed on 7-12-2001 available on record, no orders are passed on the said application and orders have been pronounced on 28-12-2001. In the given circumstances, I am satisfied that the order of the Tribunal pronounced on 28-12-2001 requires to be recalled in the light of the rewriting of the order sheet and in the absence of non-consideration of the application dated 7-12-2001.

9. Though one Mr. Goudar has filed an affidavit, I do not want to go into that aspect, in the light of the original file and in the light of the other materials.

10. However, learned Counsel for the respondent would say that the application filed for further cross-examination has no merit. I do not want to express any opinion on that contention. It is for the Tribunal to consider the same in accordance with law. In the result, this petition is accepted. The impugned order is set aside. Matter is remitted back for rededecision. Parties are to appear on 17-1-2005 before the Tribunal. The Tribunal is directed to consider the application dated 7-12-2001 on its merits and pass orders in accordance with law within two weeks thereafter.

11. In the event of the Tribunal considering the application, 3rd respondent is to present for further cross-examination in terms of the order of the Tribunal. The Tribunal is directed to hear the parties and consider the material and thereafter pass a reasoned order in accordance with law within 6 months from 17-5-2005.

Ordered accordingly. No costs.

Office is directed to send the records forthwith.