

(2002) 07 KAR CK 0049
In the Karnataka High Court
Case No : Writ Petition No. 26208 of 2002

H.N. Chandrashekar and Another

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 54
Karnataka Land Revenue Act, 1964 — Section 50, 56

Citation : (2002) ILR (Kar) 4867 : (2003) 2 KarLJ 635 : (2002) 4 KCCR 2777

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : B. Rudra Gowda, for the Appellant; T.A. Ramachandraiah, High Court Government Pleader for Respondents-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.

1 Petitioners" father Sri Nirvanappa lost the land under Bhadra Reservoir Project and in consideration of the same he was granted land bearing Sy. No. 30 measuring 3 acres in Kenchikoppa Village under the Rehabilitation Scheme. The grant was made at an upset price of Rs. 75.00 per acre. The said grant was in the year 1961-62 and in spite of the payment of upset price saguvali chit was not issued and possession was not given. Therefore, he filed W.P. No. 52 of 1978. The said writ petition was allowed with a direction to consider the case of Nirvanappa and to issue grant certificate within three months. In pursuance of the direction issued by this Court saguvali chit was issued on 31-7-1987, mutation has been made out in the name of the petitioners as by that time their father had expired. The third respondent-Erappa who claims to be in unauthorised occupation of the said land challenged the grant in favour of the petitioners" father and also sought for regularisation of his unauthorised occupation. The Assistant Commissioner is exercise of power u/s 49 rejected the claim of the third respondent on the ground that the said land has been granted

to the petitioner in pursuance of the High Court order. Aggrieved by the same, third respondent preferred a second appeal u/s 50 of the Karnataka Land Revenue Act (for short, called "the Act") to the Deputy Commissioner. The Deputy Commissioner after consideration held that there is no material on record to establish the claim of the third respondent that he is in unauthorised occupation of the said land and also as the said land is granted to Nirvanappa by direction of the High Court, he declined to interfere with the order of the Assistant Commissioner and dismissed the appeal. Aggrieved by the same, Erappa preferred a revision before the Karnataka Appellate Tribunal u/s 56 of the Act. The Karnataka Appellate Tribunal on consideration of the rival contentions came to the conclusion though there was no direction by the High Court for eviction of the third respondent, the authorities by misinterpreting the said order have ordered for eviction of the third respondent which is grossly unfair and illegal and therefore set aside the orders passed both by the Assistant Commissioner and the Deputy Commissioner and remanded the matter back to the Deputy Commissioner for fresh consideration. It is against the said order, the petitioners have preferred this writ petition.

2. Sri B. Rudra Gowda, learned Counsel appearing for the petitioners, submitted when the third respondent has preferred a second appeal against the order of the Assistant Commissioner u/s 50 he was not entitled to invoke Section 56 of the Act and prefer a revision challenging the said order and therefore, the revision petition was not maintainable and consequently the order passed in revision petition is one without jurisdiction and is liable to be set aside. In support of his contention he relied on the judgment of the Supreme Court in the case of Puttahonnamma (Smt) Vs. C. Gangadhara Murthy and Others, and also the judgment of this Court in the case of Madan Kumar and Others Vs. State of Karnataka and Others,

3. Section 56 of the Act reads as under:-

"56. Power of revision.--(1) The Tribunal, any Revenue Officer not inferior in rank to an Assistant Commissioner, and any Survey Officer not inferior in rank to a Superintendent of Land Records or an Assistant Settlement Officer in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate officer under this Act or u/s 54 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908), for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of the proceedings of such officer.

(Explanation.--For the purposes of this sub-section.-

(i) Special Deputy Commissioner shall be deemed to be not subordinate to the Deputy Commissioner; and

(ii) all Revenue Officers shall be deemed to be subordinate to the Tribunal.)

(2) If, in any case, it shall appear to the Tribunal or to such officer aforesaid, that

any decision or order or proceedings so called for should be modified, annulled or reversed, the Tribunal or such officer may pass such order as may be deemed fit:

Provided that no order shall be modified, annulled or reversed unless notice has been served on the parties interested and opportunity given to them of being heard.

(3) No application for revision under this section and no power of revision on such application shall be exercised against any order in respect of which an appeal under this chapter has been preferred and no application for revision shall be entertained unless such application is presented within a period of four months from the date of such order:

Provided that any Revenue Officer or Survey Officer referred to in Sub-section (1) may exercise power under this section in respect of any order against which no appeal has been preferred under this chapter, at any time within three years from the date of the order sought to be revised.

Explanation.--In computing the period of limitation for the purpose of this sub-section, any period during which any proceeding under this section is stayed by an order or an injunction by any Court shall be excluded".

(emphasis supplied)

4. While interpreting this provision the Supreme Court in the aforesaid judgment of Puttahonnamma has held as under:-

"7. It is seen that against the order passed by any of the enumerated officers, the remedy of first appeal has been provided u/s 49. Against the appellate orders u/s 49, Section 50 gives right of second appeal. Section 56 envisages that the Tribunal, any Revenue Officer not inferior in rank to an Assistant Commissioner... may call for and examine the record of any enquiry or the proceedings of any subordinate officer under the Act or u/s 54 of the CPC for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of the proceedings of such officer. Sub-section (3) provides that no application power of revision shall be exercised against any order in respect of which an appeal under this chapter "has been preferred" and no application for revision shall be entertained unless such application is presented within a period of four months from the date of such order. Two limitations have been prescribed for exercising the revisional power u/s 56(1), namely, the application which seeks revision of the appellate order u/s 49 has not preferred any second appeal as provided u/s 50 of the Act; since Section 50 falls under that chapter, the application shall be filed within a period of four months from the date of the appellate order. In other words, if the aggrieved party has availed of the remedy of second appeal u/s 50, he has been precluded to again avail the revisional remedy u/s 56. It does not follow that the party who had not availed the second appellate remedy u/s 50 is also prohibited to file the revision u/s 56. It would be clear under the scheme of the Act that the hierarchy of remedial forums

prescribed are the appeal u/s 49, second appeal u/s 50 and only a revision u/s 56 of the Act and choice to avail of remedy of second appeal or a revision u/s 50 or 56 is left to the aggrieved party. The further scheme is that the Revisional Authority has power to suo motu correct legality or propriety of the proceedings of any subordinate officers specially and obviously when it touches the interest of the State.

8. Filing a second appeal is a statutory remedy available to an aggrieved party. If the party fails to avail of the remedy and seeks the remedy of revisional jurisdiction, the party is not precluded from availing of the revisional jurisdiction merely because the selfsame person failed to avail of the remedy of second appeal u/s 50. It would be one of the alternatives available to an aggrieved party. The phrase "has been preferred" makes the matter manifest that on availing of the remedy u/s 50, the remedy u/s 56 gets exhausted. It would appear that the High Court proceeded on the basis of the language of the unamended Sub-section (3) of Section 56 which existed prior to the Amendment Act 33 of 1975. Therein, the language appears to be that when the party failed to avail of the second appellate remedy, the revisional jurisdiction u/s 56 was prohibited. But after the Amendment Act 33 of 1975 the language is differently worded. Therefore, the party who had availed of the remedy of second appeal u/s 50, is prohibited to avail of the revisional remedy u/s 56. The High Court, therefore, was incorrect in its conclusion that the party who did not file second appeal u/s 50, is prohibited to avail of the remedy of revision u/s 56. The order of the Joint Director, thereby, is not a nullity or without jurisdiction since the remedy u/s 56 is available to the appellant".

(emphasis supplied)

5. From a reading of the aforesaid provision and the judgment of the Supreme Court it becomes clear that against the order of the first Appellate Court passed u/s 49 of the Act, the aggrieved party has two remedies. Either he can prefer a second appeal u/s 50 of the Act, or he can prefer a revision against the order of the first Appellate Court u/s 56 of the Act to the Tribunal. If he exercises one of these options, the other option is barred. The reason for such exclusion of the other remedy is if against the very same order if an aggrieved party is permitted to have two remedies by way of an appeal and revision before two forums it would give rise to conflict in decisions which is to be avoided under any circumstances, i.e., if the aggrieved person were to file a second appeal u/s 50 against the order passed u/s 49 and if the second Appellate Authority dismisses the appeal and if the aggrieved person is permitted to prefer a revision against the order u/s 49 to the Tribunal and if the Tribunal were to set aside the order of the first Appellate Authority there would be two decisions, one by the second Appellate Authority confirming the order of the first Appellate Authority, other by the Tribunal setting aside the order of the first Appellate Authority. Such a situation was never contemplated and therefore the Supreme Court has held the party who had availed of the remedy of second appeal u/s 50 is prohibited to

avail of the revisional remedy under Section. 56. That is precisely what Section 56(3) of the Act declares. Another principle behind this reasoning is when the order of the first Appellate Authority is challenged in second appeal and the second Appellate Authority passes an order on merits either allowing the appeal or dismissing the appeal, the order of the first Appellate Authority merges with the order of the second Appellate Authority. In other words, by application of doctrine of merger there is only one order i.e., of the second Appellate Authority and the order of the first Appellate Authority ceases to exist. Similar is the position even if the Revisional Court either allows the revision or dismisses the revision which is preferred against the order of the first Appellate Authority. Once such a merger takes place there is no order in existence of the first Appellate Authority which could be challenged in another forum. But, it does not mean that against the order of the first Appellate Authority u/s 49 when the aggrieved party prefers a second appeal u/s 50 of the Act, no further revision lies at the instance of the aggrieved person against the order passed by the second Appellate Authority u/s 50. What is prohibited is no revision lies against the order which was impugned in the second appeal. Section 56 of the Act specifically provides that the Tribunal, any Revenue Officer not inferior in rank to an Assistant Commissioner, and any Survey Officer not inferior in rank to a Superintendent of Land Records or an Assistant Settlement Officer in their respective departments may call for and examine the record of any inquiry or the proceedings of any subordinate officer under this Act for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of the proceedings of such officer. It cannot be disputed that the second Appellate Authority u/s 50 of the Act is an officer inferior in rank to that of the Tribunal. Therefore, the Tribunal may call for and examine the record of any enquiry or proceedings of the second Appellate Authority for the purpose of satisfying itself as to the legality or propriety of the proceedings of such authority. This power of the Tribunal is not taken away when the aggrieved person prefers a second appeal against the order of the first Appellate Court, otherwise any other interpretation would render this provision otiose. That was not the intention of the Legislature. In the aforesaid Supreme Court judgment, the Supreme Court has not held that no revision lies against the order of the second Appellate Authority. All that has been said is if the aggrieved person has availed the remedy by way of second appeal u/s 50 of the Act the said aggrieved person is prohibited to avail the revisional remedy u/s 56 of the Act against the order of the first Appellate Authority. Therefore, I have no hesitation in holding that a revision lies u/s 56 of the Act against the order of the second Appellate Authority passed u/s 50 of the Act. In the aforesaid case of Madan Kumar, supra, the learned Single Judge has not properly noticed the law declared by the Supreme Court. Therefore, I do not find any infirmity in the impugned order passed by the Karnataka Appellate Tribunal, as such the petition is dismissed. No costs.