

(2000) 09 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 846 of 1999

Kanteppa and Another

APPELLANT

Vs

Land Tribunal, Bidar and Another

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Karnataka Land Reforms Act, 1961 — Section 16, 17 (2)

Citation : (2001) ILR (Kar) 426 : (2001) 4 KarLJ 208 : (2001) 4 KCCR 383 SN

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sri Praveen Kumar Raikote, for the Appellant; Sri Vigneswar S. Shastri and Sri B.N. Prasad, High Court Government Pleader, for the Respondent

Judgement

Chidananda Ullal, J.—In this petition, the petitioners herein had challenged the order dated 21-1-1976 in case No. LRM/66/75-76-11071-75 passed by the respondent 1-Land Tribunal. In passing the said order, the Land Tribunal in consideration of the claim of the original respondent 2-Adavappa had granted occupancy right to him.

2. The learned Counsel for the petitioners Sri Raikote had taken me through the petition averments, the grounds urged in the writ petition and also the impugned order. His argument was that Land Tribunal had granted the occupancy right to one of the L.Rs as the legal successor of the protected tenant in consideration of the Form No. 7 filed by the original respondent 2 in his own name.

3. While taking me through the impugned order, produced by the petitioners, copy as at Annexure-A to writ petition, Sri Raikote pointed out that the grant was made to the original respondent 2 as a legal heir of the protected tenant. He further submitted that the petitioners 1 and 2 herein are the brothers of the original respondent 2 and as such, the grant made in the name of one of the L.Rs i.e., respondent 2 has to be corrected. He therefore prayed that the impugned order passed by the Land Tribunal be quashed and the matter be remitted to it

for fresh consideration of the claim and to examine the claim made by the original respondent 2 by treating the same as the one made for and on his behalf and also on behalf of the petitioners 1 and 2 herein. He further prayed that the instant writ petition be allowed.

4. The learned Counsel appearing for the respondent 2 Sri Devaraj appearing for Sri Vigneswar S. Shastry on the other side, supported the impugned order. According to him, the petitioners herein came up before this Court to challenge the impugned order passed as long back as in 1976. Therefore, on that short ground alone, according to him, the instant writ petition is liable to be dismissed. Sri Devaraj had also placed reliance on the decision of the Supreme Court in *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, .

5. The learned Government Pleader, on the other side, supported the impugned order passed by the Land Tribunal. He had also argued that in an unreported decision in RFA No. 189 of 1996, DD: 9-8-1996, the Division Bench of this Court, while considering the Supreme Court decision in *Mudakappa Vs. Rudrappa and others*, , very well relied upon by the learned Counsel for the petitioner, held that the matter has to be settled by the Civil Court. Therefore, he submitted that the instant writ petition is liable to be rejected.

6. I have carefully considered the arguments advanced by the learned Counsel for the petitioners, on the one side and the learned Counsel for the respondent 2 as well as the learned Government Pleader, on the other. In view of the unreported decision in RFA No. 189 of 1996, DD: 9-8-1996 relied upon by the learned Government Pleader, it appears to me that in following the Division Bench decision of this Court, this writ petition has to be rejected. Yet another reason for me to reject the instant petition is on the ground of delay and laches, for admittedly, in filing the instant writ petition, the petitioner herein had challenged the order after 23 long years.

7. In filing the instant writ petition, the delay had been explained by the petitioners in para 10 of the writ petition. The petitioner herein had averred as follows:

"10. It is submitted that though the order of the Land Tribunal at Annexure-A is passed in the year 1976 the original 2nd respondent did not disclose the same to be petitioners even during the partition in the year 1980 and further it was only when a notice was issued for payment of the amount for issue of Form No. 10 that the petitioners came to know that such an order was passed. Even otherwise at the same time, the L.R. of the 2nd respondent had started asserting that the order of the Land Tribunal is only in favour of his father and therefore, these petitioners have no right in the same. The petitioners were not made parties to the said order. Therefore, there is some delay on the part of the petitioners in approaching this Hon"ble Court. The said delay is bona fide and accidental and therefore this Hon"ble Court may be pleased to condone the same".

8. I am not satisfied with the reasons as assigned for the delay as above.

9. In the decision in Municipal Corporation of Greater Bombay, supra, relied upon by the learned Counsel for the respondent 2, the Supreme Court had held as hereunder:

"D. Constitution of India, Articles 226 and 136 -- Delay and laches -- A void order need not be set at naught if the party does not approach the Court within a reasonable time --Administrative law judicial review -- Delay/laches -- Effect -- Void order -- Relief against -- Administrative Law -- Ultra vires -- Delay/laches in impugning a void order -- Effect.

Under the Scheme of the Act, after the possession of the land was taken either u/s 17(2) or Section 16, the land stands vested in the State free from all encumbrances. Thereafter, there is no provision under the Act to divest the title which was validly vested in the State, (para 7)

When there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference", (para 9)

10. Therefore, it appears to me, that the instant writ petition is liable to be rejected both on the grounds that the same is not permissible in law, firstly for the reason that the petitioners had to approach the Civil Court, if it is so permissible for them to recourse to suit at this late stage and secondly, that in filing the instant petition, the petitioners had come up before this Court after 23 long years.

11. The instant writ petition therefore fails and accordingly stands dismissed. No cost.