

(2002) 09 KAR CK 0037
In the Karnataka High Court
Case No : Writ Appeal No. 7447 of 1999

Krishnoji Gundu Kulkarni

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Citation : (2002) 6 KarLJ 280 : (2002) 4 KCCR 393 SN

Hon'ble Judges : M.F. Saldanha, J;K. Ramanna, J

Bench : Division Bench

Advocate : Shanta W. Joshi, for the Appellant; Chandrashekar Rodannavar, High Court Government Pleader for Respondent-1 to 3 and I.G. Gachchinamath, for Respondents-4 to 6, for the Respondent

Judgement

M.F. Saldanha, J.—We have heard the learned Advocates for both contesting parties and the learned Government Advocate on merits.

2. Though the cause list shows that the learned Government Advocate is not on record, because of some confusion, a copy of the proceedings were handed over to the learned Government Advocate and he has been heard on merits.

3. The appellant claims to be an ex-serviceman and he had filed an application for resumption of the lands on this ground. That application was rejected on 8-12-1976 for certain reasons against which an appeal was filed to the Assistant Commissioner, who strangely enough returned the papers on the ground that he has no jurisdiction. This was on 15-1-1977. On 17-1-1977 itself the appellant filed an application to the Tribunal pointing out that he desires to file an appeal to the Assistant Commissioner and that the Tribunal should wait until the resumption issue is decided. It appears that even though the appeal was filed to the Special Assistant Commissioner, for some strange reason he did not hear it and dispose it of and the record shows that ultimately, the appeal papers went to the Tribunal. In the meanwhile, the Tribunal after waiting for a considerable period of time, had passed an order dated 13-6-1977 granting occupancy rights and the Tribunal by its order dated 18-5-1993 has disposed of the appeal on the

ground that since the occupancy rights are granted, that nothing survives in the appeal. To add to the state of mess, the appellant has preferred W.P. No. 19114 of 1993 in which both the orders namely, the Tribunal's order granting occupancy rights dated 13-6-1977 and the order rejecting the appeal dated 18-5-1983 have been challenged in the same writ petition. It is unfortunate that this is the manner in which cases are conducted and on this ground alone, the Court ought to have normally dismissed the writ petition but, the end result is that for the fault of the lawyers the client will be put into great difficulty. The learned Single Judge ultimately heard the parties and confirmed the Tribunal's order granting occupancy rights against which the present appeal has been filed.

4. The only submission canvassed before us by the appellant's learned Advocate is that the appellant claims to be an ex-serviceman since he was working for the Air Force and the contention is that in this capacity, the law makes special provision for persons of this category to resume the lands and such an order is competent even against a valid tenant. It is true that the application for resumption was rejected in the first instance, but, the submission put forward is that on a mere perusal of that order it will be seen that it is highly vulnerable and that the appellant had every right to get the order corrected by the Appellate Forum in which case the lands would have been resumed even assuming the respondents' answer to the description of a tenant. The error seems to have been committed by the Government Authorities who not only did not entertain and dispose of the appeal in time but committed the further blunder of sending it to the Land Reforms Tribunal which clearly had no jurisdiction to entertain an appeal of this type. The only fair order therefore, would be to set aside the order dated 18-5-1993 and to direct the Tribunal to separate the appeal papers from the record and to forward them to the Assistant Commissioner who has jurisdiction to hear the appeal and the Assistant Commissioner to issue notice to the parties or their L.Rs as the case may be, to hear them and to dispose of the appeal in an outer limit of four months from today. The appellant was within his rights when he applied to the Tribunal on 17-1-1977 pointing out that he intends appealing against the rejection of his resumption application and that the Tribunal should wait until that appeal is decided. Obviously, after waiting for a period of six months, the Tribunal assumed that the appeal had been disposed of and it appears from the Tribunal's order that the appellant was absent when the Tribunal disposed off the application for grant of occupancy rights. Though the appellant would be at fault to some extent, the position that arises is that the order for grant of occupancy rights could only survive or could only be granted provided the application for resumption was rejected and finally disposed off. If that application had succeeded then there could be no question of granting occupancy rights. As of now, we have no option except to pass a conditional order which is to the effect that if the present appellant succeeds in the appeal before the Assistant Commissioner, then that order shall be filed before the Tribunal. In the event of the appellant succeeding then even if it is on technical grounds the order dated 13-6-1977 would have to be set aside and the Tribunal

would have to then issue fresh notice to the parties or their L.Rs as the case may be and re-decide the case in the light of the changed circumstances. Since the outcome of the appeal is uncertain, we have passed a conditional order because if for any reason, the appellant is unsuccessful in the resumption proceedings then we see no ground on which the Tribunal's earlier order should be disturbed.

5. The appeal succeeds to this extent and stands disposed off. No order as to costs.