

(2015) 02 KAR CK 0106

In the Karnataka High Court

Case No : W.A. Nos. 6427/2013 and 1467-71/2014 (LR)

Lakshmi and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0106

Hon'ble Judges : K.L. Manjunath and P.B. Bajanthri, JJ.

Bench : Division Bench

Advocate : T.N. Raghupathy, Adv. for S.V. Bhat, Advocate, for the Appellant; D. Nagaraj, A.G.A., for the Respondent

Final Decision : Disposed Off

Judgement

K.L. Manjunath, J.—The appellants herein are questioning the legality and correctness of the order passed by the learned Single Judge in W.P. No. 50708/2004 dated 6.9.2013.

2. Heard Sri T.N. Raghupathy, learned counsel for Sri S.V. Bhat appearing for the appellants and Sri B.V. Acharya, learned Senior Counsel appearing for respondents 3 and 4 and Sri D. Nagaraj, learned Government Advocate for respondents 1 and 2.

3. The facts leading to this appeal are as under:

The appellants herein have filed W.P. No. 50708/2004 challenging the order passed by the Special Deputy Commissioner dated 12.7.1999 in INA CR No. 13/97-98 and also the order passed by the Karnataka Appellate Tribunal, Bangalore, dated 30.9.2004 passed in Appeal No. 1315/2003. Along with the writ petition of the appellants, some other writ petitions were also clubbed together and a common order has been passed by the learned Single Judge.

4. It is the specific case of the appellants that the Special Deputy Commissioner, Inam Abolition passed an order in favour of respondents 3 and 4 granting

occupancy rights in respect of 3 items of land situated in Sy. Nos. 130, 131 and 134 of K.G. Binnamangala village under Section 4 r/w. Section 3 of the Mysore (Personal and Miscellaneous) Inams Abolition Act (for short "the act"), 1955. The appellants were parties before the Special Deputy Commissioner. According to them, they had purchased bits of land in Sy. No. 134 of Binnamangala village from the different owners. The order of re-grant made in favour of respondents 3 and 4 by the Special Deputy Commissioner, Inams Abolition was challenged by the petitioner earlier by filing W.P. Nos. 7315-30/2000. The writ petition was disposed of granting liberty to the appellants herein to file an appeal under Section 28 of the aforesaid Act before the Karnataka Appellate Tribunal, Bangalore. Therefore, the appeals were filed.

5. An appeal was filed before the Karnataka Appellate Tribunal in appeal No. 1315/2013 seeking liberty to file an appeal, pursuant to the liberty granted by this Court and which appeal came to be dismissed. Therefore, they approached the learned single Judge.

It was contended by them that though they have not filed an application for re-grant, purchase of property by them were protected under Section 12 of the Act since, there was construction prior to vesting of the land, under the aforesaid Act. Therefore, it was contended by the appellants that any order of re-grant made in respect of respondents 3 and 4 does not bind the rights of the appellants herein.

6. Learned single Judge, while hearing the matter, granted liberty to the persons whose buildings were in existence on the date of vesting, holding that such buildings are exempted. While doing so, an observation is also made by the learned single Judge stating that the petitioners being the subsequent purchasers are not entitled to get protection. Therefore, the present appeal is filed.

7. Sri T.N. Raghupathy, learned counsel for the appellants submits that the observations by the learned single Judge is bad in law, because, the learned Single Judge did not consider several documents produced by the appellants to show that they were all protected persons.

8. Per contra, Sri B.V. Acharya, learned senior counsel submits that pursuant to the liberty granted by the learned single Judge, some of them have already filed an appeal before the Karnataka Appellate Tribunal and the same is pending. Therefore, the present appeal does not survive for consideration.

9. Having heard the learned counsel for the parties, the only point to be considered is whether on account of any observations made by the learned single Judge, the appellants have been prevented from filing an appeal before the Karnataka Appellate Tribunal, even though the property purchased by them had buildings which are protected under Section 12 of the Act.

10. So far as this point is concerned, there cannot be any dispute with regard to the legal position. If really the structures were in existence on the date of

vesting, even if the appellants or their predecessors had not filed an application for re-grant, still they can protect their property. Therefore, we are of the view that the learned single Judge without giving a categorical finding, considering several documents produced by both the parties, could not have lightly observed whether the properties were in existence or not.

11. In the circumstances, we are of the view that if liberty is given to the appellants to file an appeal before the Karnataka Appellate Tribunal by directing the Tribunal to dispose of the appeal on merits and in accordance with law and if the appellants are able to show that the property purchased by them had structures even before vesting, in such circumstances, it is for the Tribunal to give a definite finding whether before vesting, the structures were in existence or not and while doing so, any observations made by the learned single Judge shall not influence the Tribunal in deciding the matter.

12. With the above observations, the writ appeal is disposed of granting eight weeks time for the appellants to file an appeal before the Karnataka Appellate Tribunal and if such an appeal is filed, the Tribunal shall dispose of the appeal in accordance with law without raising the question of limitation. Consequently, the order passed by the Tribunal and the order passed by the learned single Judge are set aside and modified.