

(1995) 11 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No's. 2493 to 2495 of 1992

Lalitabai

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 29-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Reforms Act, 1961 — Section 44, 44 (1)

Citation : (1996) ILR (Kar) 1285 : (1995) 6 KarLJ 239

Hon'ble Judges : M.M. Mirdhe, J

Bench : Single Bench

Advocate : Jayavittal Rao Kolar, for the Appellant; S.S. Guttal, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Mirdhe, J.—This Writ Petition is filed by the petitioners praying to quash the order passed by Respondent - 3, Tahsildar, Jamkhandi, which is produced at Annexure "G" and also to quash the mutation entry as per Annexure "H".

2. I have heard the learned Counsel for the petitioners and the learned Additional Government Pleader for R-1 to R-3 and perused the records of the case.

3. The case of the petitioners is as follows; One Lt. Adrushappa Gurusiddappa Desai was watan holder of Konnur village and he was in possession of watan property and he died intestate on 27.01.1973.

4. Petitioners-1 and 2 and two others filed a Civil Suit in O.S. No. 6/76 before the Civil Judge, Bijapur, which came to be transferred to the Civil Judge, Jamkhandi, and that suit came to be numbered as O.S. 32/79. In that suit, O.S. 32/79, agricultural lands shown in schedule "A" of the plaint were under the personal cultivation of Lt. Adrushappa Gurusiddappa Desai and they were never tenanted lands. Schedule "B" of the plaint lands were admittedly in possession of various tenants. There was also "C" schedule of lands and there were several litigations.

The State of Karnataka was the first defendant in O.S, 32/79. A final decree came to be passed in that suit on 06.06.1991 in terms of the compromise petition and the Receiver who was appointed in this proceedings was directed to deliver physical possession of the lands to the respective parties and it is the contention of the petitioners that they are in possession of the respective lands that had fallen to their share from 15.07.1991 till today.

5. The second respondent-Tahsildar, Jamkhandi, passed an order purporting to be u/s 44(1) of the Land Reforms Act and asked the Village Accountant to enter the name of the Government in the relevant records. It is this order that is challenged by the petitioners in this Writ Petition. The order passed by the Tahsildar, Jamkhandi, is produced at Annexure "G". The Tahsildar has referred to Section 44(1) of the Karnataka Land Reforms Act and he has passed the order under the said Section. The contention of the learned Counsel for the petitioners is that the Tahsildar has no jurisdiction to pass the impugned order and since it is an order passed by the Tahsildar without jurisdiction such an order can be challenged by a Writ Petition by the petitioners even though the same order could have been challenged in an appeal before the competent authority. In other words, the existence of an alternate remedy is no ground to deny relief to the petitioners when the impugned order is passed by an authority without jurisdiction. In the case of *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and Another*, , the Supreme Court has held as follows;

"The rule that the party who applies for the issue of a high prerogative Writ should, before he approaches the Court, have exhausted other remedies, open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which courts have laid down for the exercise of their discretion.

The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Article 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or nonest and that in all other cases Courts should not entertain petitions under Article 226 or in any event nor grant any relief to such petitioners cannot be accepted."

Similarly, in *Karnataka State Road Transport Corporation and Another Vs. Karnataka State Transport Authority and Another*, it has been held as follows;

"Even where an equally efficacious alternative remedy exists, where, however, fundamental rights are affected; where rules of natural justice are violated; or where there is a failure on the part of the authority concerned to confine itself within the bounds of its legitimate jurisdiction or where there is a failure to exercise a jurisdiction vested in it or where there is an error of law apparent on

the face of the record, a person aggrieved can invoke the extraordinary jurisdiction of this Court under Article 226 without reference to any remedy however efficacious it be. The existence of an alternative remedy does not oust the jurisdiction of the High Court under Article 226. The rule that the Court does not entertain a petition under Article 226 when there is an equally efficacious alternative remedy is not a rule of law; but is a principle the courts have evolved for the guidance of their own discretion."

6. In this case if it is found that the Tahsildar has no jurisdiction to pass the impugned order then the Court can interfere its jurisdiction notwithstanding the fact that there may be an alternate remedy available to the petitioners.

7. The impugned order is passed by the Tahsildar u/s 44(1) of the Karnataka Land Reforms Act holding that the lands are vested in the State Government. In 1977 (1) KLJ 252, Beerappa Lakkappa Devakatti v. Land Tribunal, Bijapur this Court has held as follows;

"The question whether the land vested in the State Government and the claim of the tenant for registration or occupancy are related questions and hence it is necessary for the Tribunal to adjudicate upon the question whether the land has vested in the State Government u/s 44."

8. This law laid down by this Court makes it clear that it is the Tribunal which is required to adjudicate upon the question whether the land is vested in the State Government u/s 44 and the Tahsildar has no such power. Therefore the impugned order passed by Tahsildar is without jurisdiction and it is a void order and it requires to be quashed. Consequently the entries that have been made pursuant to that order are also liable to be quashed. Hence I proceed to pass the following order;

ORDER

The Petition is allowed. Impugned order is quashed. Consequently the mutation entries in the record of rights pursuant to the impugned order are also quashed.