

(2006) 06 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No. 25114 of 2000

Laxman Basappa @ Basawantappa Alebasappanavar,
Yallawwa Alebasappanavar and Kusuma Savadatti

APPELLANT

Vs

The State of Karnataka, Siddappa Kalappa Gadadnavar and
Bhimavva Morab

RESPONDENT

Date of Decision : 01-06-2006

Acts Referred:

Citation : (2006) 4 KarLJ 672 : (2006) 3 KCCR 1697

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : B.T. Koller, for F.V. Patil, for the Appellant; Ramesh B. Aneppanavar, HCGA for R1, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Petitioners are before me challenging the order of the Land Tribunal, Dharwad dtd 30-5-1988.

2. The impugned lands situated in Navalur village, Dharwad Taluk belong to the petitioners. Respondent No. 2 filed form No. 7 seeking occupancy rights before the land tribunal. Respondent No.3 did not file any application at all. The land tribunal rejected the same by its order dtd 5-9-1980 and ordered forfeiture of the lands to the Government. Aggrieved by the same, petitioners filed a writ petition in this Court. This Court set aside the impugned order and remanded the matter to the land tribunal. According to the petitioners, the land tribunal without issuing any notice, has passed the impugned order. There is divergent opinion between the members of the tribunal. In the light of constitution of the appellate authority, petitioners filed an appeal before the appellate authority. Later the appellate authority stood abolished. Civil Petition was filed in this Court and the same was allowed. Proceedings were converted as writ petition. This is how the present writ petition is listed before me.

3. Matter was posted from time to time. Petitioners were to take steps in respect of deceased respondents 2 and 3. Despite time being granted on several occasions, no steps were taken. On 17-1-2006, this Court ordered that the writ petition has abated as against Respondents 2 and 3. Now the writ petition is posted before this Court. At the time of arguments, learned Counsel for the petitioner would say that even without the legal representatives of deceased respondents 2 and 3, this Court can consider the case on merits. He would rely on a judgment of this Court in ILR 1999 KAR 2920.

3. After hearing the learned Counsel for the petitioner, I have carefully perused the material on record.

4. Admittedly, respondents 2 and 3 are the parties before the tribunal. The grant is in their favour. Their presence is very much necessary for considering the case on merits. Unfortunately they are no more. Their legal representatives are not brought on record. In these circumstances, no useful purpose would be served in retaining this petition any longer on the file of this Court. At this stage, I must notice the argument with regard to consideration of the case on merits despite non-presence of the legal representatives of the deceased respondents 2 and 3. This Court in ILR 1999 Kar. 2920 has chosen to hold that in cases where error is manifest and where the remand is absolute necessity, the service of notice, bringing LR's of the deceased parties on record becomes not only academic but becomes redundant because the High Court will not be considering the case on merits.

5. A reading of the said order would show that there was no specific order of abatement as in the case on hand. This judgment is distinguishable. Even otherwise, according to me, the parties are to be heard and procedure has to be followed as otherwise, opportunity is denied to the contesting parties. In fact in an identical circumstance a Division Bench of this Court in WA No. 5315/1998 DD 7-6-1999 has considered a same or similar question and has ruled as under;

4. It is evident from the order of the learned single Judge that the appellants herein who were respondents 3 and 4 in the writ petition were not served. The appellants have stated that they were unaware of the pendency of the proceedings in WP No. 23523/1998 when it was heard and disposed of. Interest of Justice and principles of natural justice require that they should be given an opportunity to contest the writ petition.

Division Bench judgment is binding on me. I deem it proper to follow the law laid down therein.

6. In the absence of any steps, and in the light of abatement, petition cannot be considered on merits and it is rejected in its entirety.

7. Sri Ramesh Anneppannavar, learned HCGA says that the land tribunal is permitted to file his memo of appearance within four weeks.