
(1980) 02 KAR CK 0012
In the Karnataka High Court
Case No : Writ Appeal No. 789 of 1979

Lingamma

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-02-1980

Acts Referred:

Karnataka Appellate Tribunal Act, 1976 — Section 3, 5
Karnataka Land Revenue Act, 1964 — Section 55, 55 (2), 55 (3)

Citation : AIR 1982 Kar 18 : (1981) ILR (Kar) 161 : (1981) 2 KarLJ 177

Hon'ble Judges : V.S. Malimath, J;M. Rama Jois, J;K. Bhimaiah, J

Bench : Full Bench

Judgement

Malimatir, J.—The Division Bench consisting of the Chief Justice and Justice Bopanna has referred the following question to the Full Bench :

"Has the Appellate Tribunal constituted under Karnataka Appellate Tribunal Act, 1976, the power to make interim orders like an order appointing a Receiver for the properties in dispute during the pendency of an appeal before it?"

The petitioner was granted an extent of 20 guntas of land in Sy. No. 100 of Gandalu Village in Mandya Taluk by the Assistant Commissioner, Mandya by his order dated 1st July, 1963. The said order was challenged in appeal by the 6th respondent before the Deputy Commissioner, Mandya. The Deputy Commissioner allowed the appeal and set aside the grant by his order dated 26th Feb, 1964. On a further appeal by the petitioner, the Divisional Commissioner, by his order dated 20th Oct, 1965 set aside the Deputy Commissioner's order and remanded the case with certain directions. After remand the Deputy Commissioner by his order dated 25th Sept, 1978 confirmed the grant in favour of the petitioner. The said order has been challenged by respondents 6 and 7 in appeal before the Karnataka Appellate Tribunal (hereinafter -referred to as the Tribunal). During the pendency of the said appeal an interim order of stay was granted. Subsequently, when an application I. A No. III for vacating the stay order came up for consideration, the Tribunal modified its earlier order of stay and appointed

the Tahsildar of Mandya Taluk as the Receiver of the land in dispute authorising him to take possession of the standing crop and to make immediate arrangement to harvest the crop and to sell the same. It is the said order appointing the Tahsildar as Receiver dated 19th June, 1979 that was challenged by the petitioner in Writ Petition No. 7089 of 1979 in this Court. The said writ petition was dismissed by Justice Puttaswamy on 22nd April 1979 (sic) at the stage of admission holding that the Tribunal had Jurisdiction, to pass an interim order appointing the receiver during the pendency of an appeal filed under the provisions of the Karnataka Land Revenue Act. It is the said order of the learned Judge that is challenged by the petitioner in Writ Appeal No. 789 of 19.

2. The Division Bench, before whom the appeal came up for bearing felt, that the view taken by a Division Bench of this Court in *Molle v. Mysore Revenue Appellate Tribunal* (1960) 38 Mys LJ 1112 that during the pendency of an enquiry u/s 28-A of the Mysore Tenancy Act, 1962 the Tahsildar has no power to issue an interim order of injunction, requires reconsideration in the light of the decision of the Supreme Court in the *Income Tax Officer, Cannanore v. M. K. Mohammed Kunhi* AIR 1969 SC 430. The Tribunal constituted under the Karnataka Appellate Tribunal Act 1976, exercises Appellate and Revisional Powers not only under the provisions of the Karnataka Land Revenue Act, out of which the present proceedings arise but also under various other enactments, such as the Karnataka Co-operative Societies Act, 1959 and the Karnataka Sales Tax Act, 1957. The question referred to us is in general terms in regard to the powers of the Tribunal in the matter of granting interim orders like an order appointing the Receiver in an appeal before it. As the present, proceeding has arisen under the provisions of the Karnataka Land Revenue Act, we consider it appropriate to examine the powers of the Tribunal to make interim orders like an order appointing a receiver during the pendency of an appeal filed only under the provisions of Karnataka Land Revenue Act, 1964.

3. The tribunal is constituted u/s 3 of the Karnataka Appellate Tribunal Act, 1976. Section 5 of the said Act dealing with the powers of the Tribunal provides that it shall have all the powers which the Karnataka Sales Tax Appellate Tribunal, the Karnataka Co-operative Appellate Tribunal and the Karnataka Revenue Appellate Tribunal had immediately before the commencement of this Act under the Karnataka Sales Tax Act, 1957, the Karnataka Co-operative Societies Act, 1959 and the Karnataka Land Revenue Act, 1964 or under any other law. Section 6 of that Act provides for conduct of business -of the Tribunal. Sub-section (1) of Section 6 provides that subject to the provisions of subsections (2) and (3), the powers of the Tribunal in all matters relating, to appeals, revisions and other proceedings shall be exercised by a Bench of two members of whom one shall be a District Judge reconstituted by the Chairman. Sub-section (2) of Section 6 enumerates the powers of the Tribunal which may be exercised by a single member. Granting of stay orders pending disposal of an appeal, revision or other proceedings and passing of orders of interlocutory character in such proceedings are some of the matters in respect of which a single member of the Tribunal can

exercise the powers of the Tribunal. Section 6 obviously is not a source of the powers of the Tribunal. It only provides for regulation of the powers of the Tribunal conferred on it under the various enactments specified in Section 5 of the said Act. There is no express provision under the Karnataka Appellate Tribunal Act conferring the power on the Tribunal to pass interim orders like an order appointing a receiver during the pendency of an appeal before it.

4. We shall, therefore, examine the provisions of the Karnataka Land Revenue Act for ascertaining as to whether the Tribunal has been granted the power of making an interim order like an order appointing a Receiver during the pendency of an appeal before it filed under the said Act. Chapter V of the said Act contains provisions pertaining to appeal and revision. Section 49 of the said Act provides for appeals from original orders passed by different revenue officers. Original orders made by the Deputy Commissioner, the Divisional Commissioner and the Director of Survey, Settlement and Land Records are subject to appeals to the Tribunal. Section 50 of the Act provides, for Second Appeals. Appellate orders made by the Deputy Commissioner, Commissioner of Land Records, Commissioner for Settlement or by the Director of Survey, Settlement and Land Records are subject to a Second Appeal to the Tribunal. Section 54 of the Act providing powers of the appellate authority reads as follows:

"54. Powers of appellate authority:- The appellate authority may for reasons to be recorded in writing either annul, reverse, modify or confirm the order appealed -from, or may direct the officer making the order by himself or by any of his subordinate officers, to make further enquiry or to -take additional evidence on such points as the appellate authority may specify or the appellate authority may itself make such inquiry or take such additional evidence:

Provided that no additional evidence, whether oral or documentary shall be directed to be taken unless-

(a) the Revenue Officer from whose order the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Authority requires any document to be produced or any witness to be examined to enable it to pronounce orders, or

(c) for any substantial cause the appellate authority allows such evidence or document to be produced or witness to be examined :

Provided further that when additional evidence is allowed to be produced, by an appellate authority such authority shall record the reason for its admission."

Section 55 of the Act which provides for stay of execution of orders may be extracted as follows:

"55. Stay of execution of orders: - (1) A Revenue Officer who has passed an order or his successor in office may at any time before the expiry of the period prescribed for appeal, direct the execution of such order to be stayed for such

time as may be requisite for fifth the appeal and obtaining a stay order from the appellate, authority.

(2) The Appellate Authority may, at any time, direct that the execution of the order appealed from be stayed for such time as it may think fit or till the decision of the appeal whichever is earlier and may on sufficient cause being shown, cancel or vary such order made directing stay.

(3) No order directing the stay of execution of any order shall be passed except in accordance with the provisions of this section".

The only provision in the Karnataka Land Revenue Act which deals with the powers of the Tribunal in the matter of granting orders of stay during the pendency of an appeal is Sub-sections (2) of Section 55 of the Act. It only empowers the Tribunal as an appellate authority to direct that the execution of the order appealed from be stayed for such time as it may think fit or till the decision of the appeal whichever is earlier. Sub-section (3) of Section 55 provides that no order directing stay of execution of any order shall be passed except in accordance with the provision of Section 55 of the Act. Section 55(2) of the Karnataka Land Revenue Act is the only provision expressly conferring power on the Tribunal to grant an interim order staying the execution of the order appealed from. The said provision does not expressly confer power on the Tribunal to grant any other type of interim order during the pendency of the appeal such as an order appointing a Receiver or an order of temporary injunction. The Legislature having made a specific provision empowering the appellate authority to grant, stay of execution of orders appealed from could have made a similar express provision conferring powers of granting interim orders like an order appointing a Receiver or granting an interim order of injunction, if the intention of the legislature was that So appellate authority should have such a power. Sub-section (3) of Section 55 which provides that no order directing stay of execution of any order shall be passed except In accordance with the provision of S. 55 also indicates that the only interim, order which the Tribunal can make during the pendency of an appeal under the Karnataka Land Revenue Act is an order of stay of execution of the order appealed from. The scheme of the Land Revenue Act clearly indicates that the Tribunal has only the power of granting interim order of stay of execution of the order appealed from during the pendency of an appeal before it and that it has not been conferred the power of granting interim orders like an order appointing a Receiver.

5. The next question for consideration is as to whether the Tribunal has the power of making an interim order like an order appointing a Receiver during the pendency of an appeal even though there is no express

provision conferring such power on the Tribunal. The argument advanced in this behalf was that as the Tribunal has, as an appellate authority, the power to set aside the order appealed against, it must be deemed that it possesses the power of granting interlocutory orders like an order appointing a Receiver or granting an

order of temporary injunction depending upon the circumstances of each case. In support of this contention, reliance was placed on the decision of the Supreme Court in the Income Tax Officer, Cannanore v. M. K. Mohammed Kunhi AIR 1969 SC 430. That was a case in which the assessee preferred an appeal to the Income-tax Appellate Tribunal u/s 254 of the Income Tax Act, 1961 challenging the orders passed u/s 271(1)(c) read with Section 274(2) of the Act imposing penalties for concealment of particular income and furnishing inaccurate particulars. The assessee made an interim prayer for stay of collection of the penalties imposed during the pendency of the appeals. The Tribunal declined to grant an order of stay holding that it had no power to grant such an order. The assessee then moved the High Court

under Art. 226 of the Constitution. The High Court held that the Tribunal had the power to stay the proceedings as also the collection of the penalties pending disposal of the appeal on the ground that the said power was incidental and ancillary to its appellate jurisdiction. Consequently, the Tribunal was directed to dispose of the stay application in accordance with law. The order of the High Court was challenged in appeal before the Supreme Court. Though there is no express provision conferring power on the Income tax Appellate Tribunal to grant an interim order of stay of execution of the order appealed against, the Supreme Court held that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such order for staying proceedings as will prevent the appeal if successful from being rendered nugatory. It is clear from the decision of the Supreme Court that the appellate authority has the, implied power to grant stay of execution of the order which is the subject matter of appeal before it. The question as to whether the appellate authority has also the implied power to grant other types of interlocutory orders like an order appointing a Receiver or an order granting temporary injunction as not considered by the Supreme Court, as that question did not arise for consideration in that case. The principle laid down by the Supreme Court in the said case is not necessary to be invoked in the present case in as much as the power of granting interim order of stay has been expressly conferred on the appellate authority by sub-section (2) of Section 55 of the Karnataka Land Revenue Act. It was however, maintained that the observation of the Supreme Court "it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory", justifies an inference that the appellate authority can grant other types of interim orders like an order appointing a Receiver if grant of such order is necessary having regard to the facts and circumstances of the case. In our opinion, the aforesaid observations of the Supreme Court make it quite clear that they have a bearing only on the power of granting an interim stay of execution of the order appealed

against. This will become further clear if we examine the subsequent decision of the Supreme Court in *The Sub-divisional Officer, Sadar, Faizabad Vs. Shambhoo Narain Singh*, of the judgment, the, Supreme Court has observed as follows :

"It is well recognised that where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts or employing such means as are essentially necessary .to, its execution. But before implying the existence of such a power the Court must be satisfied that the existence of that power is absolutely essential for the discharge of the power conferred and not merely that it is convenient to have such a power."

It is only if the existence of the power is absolutely essential for the discharge of the power conferred that such a power can be implied and not merely because it is convenient to have such a power. Under the CPC under O. 40, R. 1, the Court can make an interim order appointing a Receiver when it appears to the Court to be just and convenient to make such an order. An order appointing an interim Receiver cannot be regarded as absolutely essential for the discharge of the appellate power. At best, it can be said that it is convenient to have such a power. But as the Supreme Court has pointed out that the power can be implied only if it is absolutely essential for the discharge of the power conferred and not merely because it is convenient to have such a power. So far as granting stay of order appealed against is concerned the same can be regarded as absolutely essential for the - discharge of the power conferred on the appellate authority and so can be implied even in the absence of an express conferment of such a power on the appellate authority. It is not possible to accede to the contention that the Supreme Court has taken the view that conferment of an appellate power implies the power in the appellate authority to make an interim order appointing a Receiver.

6. Sri S. G. Sundaraswamy inviting our attention to the scheme of the C. P. C., contended that the power to pass an interim order of appointing a Receiver or granting an order of temporary injunction are not incidental powers but are really supplementary powers. He further maintained that supplementary powers have to be expressly conferred whereas incidental powers can be implied. He invited our attention to Section 75 of the Civil P. C. which provides that subject to such conditions and limitations as may be prescribed the Court may issue a commission to examine any person, to make a local investigation; to examine or adjust accounts or to make a partition; to hold a scientific, technical or expert investigation; to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit or to perform any ministerial act. Section 75 is included in Part III, which bears the heading "Incidental Proceeding". The power of Court to issue commissions u/s 75 it was pointed out is an incidental power which the Court can exercise subject to such conditions and limitations as may be prescribed by the rules framed under the Code. The provisions regarding supplemental proceedings are contained in Part VI of the C. P. C. Section 94 of the C. P. C. provides that in

order to prevent the ends of justice from being defeated the Court may if it is so prescribed grant a temporary injunction and appoint a Receiver etc. These powers can be exercised by the Court only if it is so prescribed by specific rules made under the C. P. C. In the absence of specific rules made under the C. P. C., the Court cannot exercise power to grant temporary injunction or appoint a Receiver. It is, because rules have been made under Orders 39 and 40 in regard to granting of interim injunction and appointing a Receiver that the Civil Court can exercise the powers of passing such interlocutory orders. In the absence of such provision made under the Rules even the Civil Court cannot exercise such powers as is clear from the provisions of S. 94 of the C. P. C. If that is the position in regard to Civil Courts, it is difficult to accede to the contention that the Tribunal constituted under the Karnataka Land Revenue- Act with limited jurisdiction can exercise such supplemental powers in the absence of express conferment of such powers on the Tribunal. The view we have taken in this behalf receives full support from the decision of Allahabad High Court in *Anand Prakash and Another Vs. Assistant Registrar, Co-operative Societies and Others*,

7. By addition of S. 48C of the Karnataka Land Reforms Act, 1961 express power has now been conferred on the Land Tribunals to grant interlocutory orders like an order appointing a Receiver or granting an interim order of injunction. Before S. 48C was enacted, it was pointed out by Justice Venkataramaiah, as he then was in *Raja Rao v. Land Tribunal Kunigal* (1975) 2 Kant LJ 180 that it is not absolutely necessary for the Tribunal to be clothed with the powers enumerated in S 94 of the C. P. C. in order to enable it to exercise the powers conferred by S. 113 of the Karnataka Land Reforms Act as it then stood. In the absence of express conferment, power to grant -temporary injunction was not implied. It is also clear that wherever the legislature wanted that the authorities or Tribunals constituted under special enactments should have powers of making interlocutory orders like appointing receivers or granting an interim order of injunction, such powers have been conferred by making express provisions in that behalf. That no express provision has been made conferring power on the Tribunal to make interlocutory orders appointing Receivers pending disposal of appeals under the Karnataka Land Revenue Act, clearly indicates that the legislature did not intend that the Tribunal should have such powers.

In the order of reference a doubt has been expressed as to whether the view taken by a Division Bench of this Court in *Molle v. Mysore Revenue Appellate Tribunal* (1955) 38 Mys LJ 1112 requires reconsideration in the light of the decision of the Supreme Court in *Mohammed Kunhi's case* AIR 1969 SC 430. In the case of *Molle*, the Division Bench of this Court held that the Tahsildar in deciding an application under S. 28A of the Mysore Tenancy Act, 1958 has no power of granting an interim order of injunction S. 28 of the Mysore Tenancy Act which Act has since been repealed by the Karnataka, Land Reforms Act, 1961 provided that no landlord either himself or through any person acting on his behalf &hall, save in accordance with any law for the time being in force, interfere with the cultivation of the land leased to a tenant, or deprive him of

possession of such land. It further provided that if any landlord contravened the provisions of S. 28-A (1), the tenant may apply in writing to the Tahsildar complaining of such contravention. On receipt of such an application, the Tahsildar shall, after holding an enquiry, pass such orders as he deems fit including a direction to the landlord for the payment of such compensation to the tenant as the Tahsildar may determine. The Division Bench came to the conclusion that during the pendency of the application under S. 28-A of the Mysore Tenancy Act complaining of interference with the cultivation of the applicant, the Tahsildar has no competence to grant an interim order of injunction. The Division Bench overruled the earlier decision of a single judge of this Court in *Bore Gowda v. Govt. of Mysore* (1958) 36 Mys LJ 442 where a contrary view was taken. The question as to whether the view taken by the Division Bench of this Court in *Molle's* case is right or not has now become academic having regard to the fact that the Mysore Tenancy Act, 1952 has been repealed by the Karnataka Land Reforms Act with effect from 2nd Oct., 1965. Hence we consider it unnecessary to go into the question as to whether the view expressed in that case is inconsistent with the view taken by the Supreme Court in *Mohammed Kunhi's* case AIR 1969 SC 430.

Before concluding, we must express our sincere thanks to Sri. S. G. Sundaraswamy, learned counsel and Sri R. N. Byra Reddy, Advocate General for having rendered valuable assistance to us as *amicus curiae*.

8. For the reasons stated above, we answer the question referred to us as follows:

The Karnataka Appellate Tribunal constituted under the Karnataka Appellate Tribunal Act, 1976 has no power to make interim orders like an order appointing a Receiver or granting an interim order of injunction in respect of properties in dispute during the pendency of an appeal filed under the Karnataka Land Revenue Act.

9. Reference answered accordingly.