
(2002) 12 KAR CK 0025
In the Karnataka High Court
Case No : Writ Appeal No. 7534 of 2000

Mahalinga Madiwala, since deceased by LR	APPELLANT
Vs	
Padmanabha Khadilkar since deceased by L.Rs. and Others	RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:

Citation : (2003) 3 KCCR 1681

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

Bench : Division Bench

Advocate : K. Giridhar, for the Appellant; A. Keshava Bhat, for Respondent 1 (A-C) and Tajuddin, High Court Government Pleader for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—The Appellant before us has assailed the correctness of the order passed by the learned Single Judge on 25th September, 2000 in W.P. No. 31979 of 1994.

2. Briefly stated, what had happened was that the present Appellant, had filed Form No. 7 claiming occupancy rights in respect of four pieces of land located in Kalmanje village one of which was Sy. No. 515 ad measuring 4.32 acres. We clarify that as far as this Survey number is concerned that it was a separate application from the other three lands though it does not make any difference because the tribunal ultimately granted occupancy rights in respect of all the four lands through a common order. As sometimes happens, the claim is conceded and in this case it appears that the land owner did not resist the grant of occupancy rights in respect of the other survey numbers but the letter filed by him indicates that by implication he had not accorded his consent to Sy. No. 515 because he has referred to this in the application which was numbered as 5/d75-78 and stated clearly that other than the lands to which he has granted consent no other lands were leased to the Appellant. By implication therefore, there was no consent as far as this land is concerned but the Tribunal passed an

order granting occupancy rights. The aforesaid order came to be passed on 14.4.1977 after which, as late as on 7.10.1983 the present Appellant filed a very trickily worded application in which he has stated that the tribunal in the earlier order had granted him occupancy rights in respect of Sy. No. 515 measuring 4.32 acres and that since it was not mentioned that these lands are situate in Ujjare village that the Appellant is put to serious difficulty. He requested that the appropriate correction should be carried out.

3. It has become necessary for us to make a special note in this judgment that we are faced with extreme difficulty both at the stage of arguments as also while dictating this order in coping with the learned Advocate Sri Giridhar. Despite several hints and warnings of the Court we find his conduct absolutely incorrigible and we need to make a note of this in this judgment in the hope that the learned Advocate will mend his ways.

4. The application filed by the present Appellant for a variety of reasons was not allowed and the matter went all the way upto the Division Bench on the earlier occasion and the Division Bench took a view that since the Appellant had only contended that it was a bonafide error in so far as the survey number and the area were correct but that a mistake had been made in Form No. 7 by mentioning Kalmanje village that the Appellant should be permitted to correct the mistake, The earlier Division Bench accepted the submission canvassed by the Appellant to the effect that it was an error and by its order dated 13.7.1993 effectively permitted the amendment and directed the tribunal thereafter to dispose of the case expeditiously.

5. The record indicates that thereafter the tribunal heard the parties and passed a fresh order dated 30.8.1994 granting the Appellant occupancy rights in respect of Sy. No. 515 admeasuring 4.32 acres in Ujjare village. This order came to be challenged by the land owner through W.P. No. 31979 of 1994 and the learned Single Judge for the reasons set out in the order in question allowed the petition and set aside the grant of occupancy rights as far as this survey number is concerned. The present appeal assails the correctness of the order of the learned Single Judge.

6. The Appellant's learned Advocate has in the first instance submitted that he filed a memo dated 20.9.2000 before the learned Single Judge pointing out that Respondent No. 1 had died on 17.6.1999 and no steps had been taken to bring the L. Rs of Respondent No. 1 on record and that the writ petition is abated against the Respondent. He also pointed out that the Petitioner had also died about two years ago. The contention was that the petition was liable to be dismissed on this ground. We are informed by the Respondents' learned Advocate that the writ petition had been heard on 13.9.2000 and adjourned for orders and that the memo filed on 20.9.2000 was obviously filed with the office and may have gone into the case papers but there is nothing to indicate that it came to the notice of the learned Judge because there is no reference in the order of the learned Single Judge.

7. Mr. Giridhar, Appellant's learned Advocate informs us that he had already brought these to the notice of the learned Single Judge when the order was pronounced on 25th September, 2000 and that the Court did not take any cognizance of it on the ground that the order had already been dictated and was ready and was required to be pronounced. The first submission canvassed before us is that the order of the learned Single Judge would, in the traditional sense be an order passed against a dead person and that therefore, on this ground alone the order would have to be set aside. In our considered view, at this point of time this argument is rendered totally academic for two reasons, the first being that it appears, that the deaths in question had not been brought to the notice of the Court in time. But that apart, the real issue is that as of now the parties are before the appeal Court. The appeal is taken up for hearing. The L.Rs. of both sides have been brought on record and in this back ground, the technicalities relating to the order passed by the learned Single Judge would really assume academic dimensions because we have had to independently appraise the record and decide the issue in controversy dehors the order passed by the learned Single Judge. Under these circumstances we do not attach any significance to this objection.

8. The Appellant's learned Advocate has advanced an interesting submission on the ground that the issue relating to grant of occupancy rights of Sy. No. 515 has become final and there is a bar of resjudicata in the matter of reopening that issue at any subsequent point of time and the reason put forward by him is that the tribunal on the earlier occasion had granted to the Appellant the occupancy rights in respect of this Survey number on 14.4.1977 and that at no point of time did the Respondent challenge that decision. The submission is that the order has assumed finality and that this prescribes an insurmountable bar in the way of the Respondent as far as a challenge on merits to that grant is concerned. In our considered view, his argument is totally misconceived because the grant made by the tribunal was in relation to a survey number in Kalmanje village which survey number was not in existence. To that extent the earlier order of the tribunal in respect of a non-existing survey number would have to be regarded as non est in law as far as this survey number is concerned. The amazing aspect of the case is that it is the Appellant's own case that there is no such survey number which is why he made the application for amendment or correction and consequently, the contention that there is a bar or resjudicata is totally and completely misconceived. The Appellant's learned Advocate then submitted that the tribunal has on the present occasion granted occupancy rights to his clients despite a contest from the Respondent and it is his submission that the interference by the learned Single Judge with that order is misconceived. Normally, the Appeal Court would have set aside the learned Single Judge's order and remanded the proceeding to the tribunal for a reconsideration as far as this survey number is concerned. We refrain from doing this principally because the Appellant's learned Advocate objected to it on the ground that there is a bar of resjudicata and that therefore there can be no question of reconsideration.

One of the other reasons was because, assuming on strict technicalities the order of the learned Single Judge was vulnerable for the reasons mentioned by us earlier it would have been a correct procedure to direct reconsideration. However, since the case was argued on merits and since certain other serious aspects have now surfaced we see absolutely no justification in ordering a remand.

9. The third question is as to whether the present order passed by the Tribunal which is dated 30.8.1994 is at all sustainable as far as Sy. No. 515 of Ujjare Village is concerned. The Respondent's learned Advocate submitted that the land owner has never consented to the grant of occupancy rights as far as this survey number is concerned. Secondly, he contended that the Appellant had nothing to do with this survey number. Thirdly, he has contended that it was not an agricultural land until very recently and fourthly, his submission is that the R.T.C. conclusively indicates that this land belongs to the Respondent and was never an agricultural land nor was it tenanted by the Appellant. In the light of this submission which is borne out from the record we repeatedly requested the Appellant's learned Advocate to demonstrate to us from the record as to how the Appellant justifies the claim as far as this piece of land is concerned and whether there is even a single scrap or iota of evidence on the record to justify any claim for the grant of occupancy rights by the present Appellant. We find that there is absolutely zero material in support of this claim and that even from the R.T.C. it will be very clear that the Appellant was never either in occupation or cultivation of this particular survey number nor was he ever a tenant thereof. The present exercise is a classic instance of the land grab efforts that were made under the guise of the Land Reforms Act and it is very clear to us that even assuming that the Appellant was entitled within the frame work of the Law to grant of occupancy rights in respect of the remaining pieces of land which was conceded, that he has made a false and illegal effort to lay his hands on this piece of land which admeasures as much as 4.32 acres. We take a serious view of the case because in the first instance the so called amendment application was made six years after the tribunal had disposed of the original proceeding and the Appellant persisted with this false application all the way upto the Division Bench under the false plea that it was a mistake or an error. It is true that the earlier Division Bench accepted the submission at face value and that the learned Judges at that time did not go into the question as to whether there was even the slightest justification for claiming this piece of land and that this was the reason why the amendment application was granted in retrospect. It would really mean that a false claim was made and that too in writing when the amendment was carried out before the tribunal and that his was persisted with all the way right up to this Court. The whole series of litigation, before each of the forums from the tribunal upto the Division Bench on the earlier occasion and from the tribunal upto the Division Bench once again on this occasion have emanated on the basis of the totally false and untenable claim. The situation gets aggravated because in the course of the arguments the Respondent's learned Advocate seems to indicate to us that it is a relatively big piece of land admeasuring 4.32 acres and that it

abuts the State highway and we therefore assume that it must be a relatively valuable piece of land and the attempt was made to grab this property through this proceeding. We refuse to accept the position that this was inadvertent but it is very clear that it was a calculated deliberate move. This is the reason why, we have no option except to direct stringent steps against the Appellant because this is very much necessary, more so in the public interest as otherwise instances of this type will go absolutely unchecked.

10. After a very careful reappraisal of the record before us we find that the present Appellant has virtually no case as far as the claim to Survey Number 515 of Ujjare village admeasuring 4.32 acres is concerned. The Appeal consequently fails and stands dismissed with costs.

11. It is also necessary for us having regard to the observation that had been made earlier and in view of the number of unnecessary judicial proceedings that this case has been dragged through to quantify the costs at Rs. 5,000/-.

12. It is rather unfortunate but in the light of our findings that the filing of the amendment application itself in the year 1983 was totally unjustified and in the light of the fact that the false claim was persisted with through all the proceedings even to the extent of filing an amended claim before the tribunal on this second occasion in respect of this survey number, it is very necessary in the interest of justice that we direct a prosecution against the present Appellant for having made false claims and false statements in the course of judicial proceedings. The tribunal to take necessary steps according to law in keeping with the decision of this Court.