

(2002) 03 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No. 15474 of 1993 of 1993

Mallappa Mudakappa Machenhalli

APPELLANT

Vs

Basavanneppa Veerappa Machenahalli and Others

RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Karnataka Land Reforms (Amendment) Act, 1990 — Section 17

Citation : (2003) ILR (Kar) 1923 : (2002) 6 KarLJ 473 : (2002) 3 KCCR 173 SN

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : M. Rama Bhat, for the Appellant; D.S. Ramachandra Reddy, for Respondent-1; V. Byachappa, High Court Government Pleader for Respondent 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Bannurmath, J.—The present writ petition which arises from C.P. No. 2828 of 1991 filed by the petitioner for considering the Miscellaneous Appeal No. 33 of 1989 on the file of the then District Land Appellate Revision Authority, Dharwar. In L.R.R.A. No. 12 of 1987 and to consider the same as writ petition, u/s 17 of the Karnataka Land Reforms Amendment Act No. 18 of 1990.

2. At the outset, learned Counsel for contesting respondent has raised the question of maintainability of the civil petition and the writ petition. Since the matter is being disposed of on question of laws regarding maintainability, it is not necessary to mention in detail the facts of the case as to the claim of the petitioner.

3. Suffice it to say that the petitioner herein had filed application in Form 7 claiming occupancy rights in respect of 3 lands and the Land Tribunal by the order dated 6-11-1986 allowed the application and declared the petitioner as the occupant and granted him occupancy rights. Aggrieved by the same, the landowner, respondent 1 herein preferred an appeal u/s 118 of the Land Reforms

Act before the Land Reforms Appellate Authority constituted under Act No. 19 of 1986. The Appellate Authority registered the appeal in L.R.R.A. No. 12 of 1987. The Appellate Authority by the order dated 1-6-1989 allowed the appeal thereby rejecting the claim of the petitioner. Aggrieved by the same the petitioner appears to have filed a miscellaneous application before the Appellate Authority to recall the order dated 1-6-1989 and to consider the case afresh. In the meanwhile, the Appellate Authority itself was abolished by Act No. 18 of 1990. u/s 17 of Act No. 18 of 1990, as it was provided for transfer of the cases from the Appellate Authority to this Court, the petitioner filed C.P. No. 2828 of 1991 which later came to be converted into W.P. No. 15474 of 1993 praying for calling for the records relating to M.A. No. 33 of 1989 on the file of the District Land Reforms Appellate Authority in L.R.R.A. No. 12 of 1987 and to consider the same as writ petition under the provisions of the Act. It is this action of the petitioner which is challenged as not maintainable by the respondent.

4. Relying upon the pronouncement of this Court in the case of Jockim Kordero and Ors. v. Smt. Jayavathamma and Ors., the learned Counsel for the petitioner contended that the writ petition is maintainable.

5. The question of maintainability of such civil petition and writ petition has been already decided by the Division Bench of this Court in the case of Smt. Lalithamma and Ors. v. State of Karnataka and Ors. The Division Bench has held thus:

"This proceedings stands reverted this Court in terms of Section 17 of Act No. 18 of 1990. During pendency of the proceedings before the Appellate Authority constituted under the Karnataka Land Reforms Act ("the Act" for short), the appeal filed by the petitioners came to be dismissed. Thereafter, an application was tiled for restoration of that appeal. No orders were made on that application. Inasmuch as the appeal had been dismissed and no proceeding was pending before the Tribunal, the appropriate course for the petitioners is to file a separate petition challenging both the orders of the Tribunal as well as that of the Appellate Authority before this Court in a separate writ petition. No civil petition can lie on such an order u/s 17 of the Act. If the petitioners were otherwise aggrieved, they could have preferred a revision petition. That course is also not taken. Therefore, the civil petition is not maintainable and that has got to be rejected. If that course is adopted, the writ petition also has to be rejected. The appropriate course for the petitioners is as stated by us. Petition is therefore dismissed. Rule discharged".

6. In the present case also it is to be seen that the appeal filed by the respondent before the Appellate Authority was disposed of by the Appellate Authority on 1-6-1989. It is only the appeals that were pending before the Appellate Forum, by virtue of Section 17 of Act No. 18 of 1990, could be got transferred to this Court as civil petition or writ petition. In the present case, as the appeal itself was disposed of, if really the petitioner was aggrieved, he had to file either revision petition before this Court, as it was permissible then, or

separate writ petition challenging the order dated 1-6-1989 passed by the Appellate Forum, as laid down by the Division Bench in the Smt. Lalithamma's case referred to above. No doubt, a contrary view appears to have been taken by the learned Single Judge in Jockim Kordero's case, supra. But as seen from the order, this was probably because the decision of the Division Bench was not brought to the notice of the learned Single Judge. In the light of the decision of the Division Bench, the pronouncement of the learned Single Judge in Jockim Kordero's case, supra, is per incuriam. As such, following the pronouncement of the Division Bench in Smt. Lalithamtna's case, supra, it is to be held that C.P. No. 2828 of 1991 in turn the present writ petition are not maintainable and are liable to be rejected on that count alone.

7. At this stage, learned Counsel for the petitioner prayed for liberty to file separate writ petition. In the light of the observations made by the Division Bench in Smt. Lalithamma's case, quoted above, it is always open for him to take appropriate steps and no specific liberty needs to be given to him.

8. With this observation, this writ petition is rejected as not maintainable.