
(1996) 03 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 39085 of 1993

Manjunatha Rao (by LRs.)

APPELLANT

Vs

Land Tribunal, Bhadravathi and Others

RESPONDENT

Date of Decision : 15-03-1996

Acts Referred:

Citation : (1997) ILR (Kar) 100 : (1997) 2 KarLJ 22

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

Bench : Single Bench

Advocate : Ravivarma Kumar, for the Appellant; S.S. Guttal, HCGP for R-1 to 3, for the Respondent

Final Decision : Allowed

Judgement

M.M. Mirdhe, J.

1.This Writ Petition is filed by the petitioners challenging the order passed by the Land Tribunal rejecting Form No. 7 filed by Manjunatha Rao, who is the husband of petitioner No. 1 and father of petitioner No. 2.

2. I have heard the learned counsel for the petitioners and the learned Government Pleader for the respondents 1 to 3 and perused the records of the case.

3. Manjunatha Rao - the husband of petitioner No. 1 and father of petitioner No. 2 filed Form No. 7 in respect of Sy.No.84 of Chandankere village, Holehonnur Hobli, Bhadravathi Taluk. In the first round, Form No. 7 filed by Manjunatha Rao came to be granted. Respondent No. 4 challenged that order in a Writ Petition and that petition was dismissed. He preferred a Writ Appeal. In the Writ Appeal, the Order of the Land Tribunal was set aside and the matter was remanded to the Tribunal. After remand Manjunatha Rao died and petitioner Nos.1 and 2 were came on record and thereafter the impugned order came to be passed.

4. The impugned order is attacked by the petitioners on the ground that the

Chairman Mr. Venkatesh conducted the case in a hurry to oblige respondent No. 4 even when he was under orders of transfer and that the Tribunal did not hold local inspection though it came to the spot to avoid coming across facts which would have come in the way of Tribunal in rejecting the Form No. 7 filed by Manjunatha Rao and Tribunal did not consider the evidence led on behalf of the petitioners and the Tribunal prevented the petitioners from leading further evidence in the case.

5. The Chairman of the Tribunal was one P. Venkatesh, and he is impleaded as respondent No. 2 in this case. He has been served and has remained absent. The petitioners made a very specific allegation that he had a bias against the petitioner and with a view to oblige respondent No. 4 he passed an order even though when he was under orders of transfer. Though such serious allegations are made against Mr. Venkatesh - the then Chairman of the Tribunal and he has been served with the notice of this proceedings, he has not cared to appear in this proceedings before this Court.

6. No counter is filed by respondent No. 2 denying the serious allegations made against him. In *Y. Kichappa Setty Vs. V. Somanna Naika and Another*, such a situation arose where serious allegations were made against the Member of the Land Tribunal there. The said member did not file any counter to the allegations made against him. In that context this Court has held as follows:

"Challenging the order of the Tribunal, the petitioner has made serious accusation against Shri P.M. Khan, the then Member of the Land Tribunal, alleging that the petitioner was threatened with dire consequences and imprisonment of six months and a fine of Rs. 500 and made to sign the statement. No counter affidavit of Shri P.M. Khan or that of the then Chairman of the Tribunal has been filed before the High Court denying the serious accusation made by the petitioner charging threat of imprisonment by Sri P.M. Khan. It is settled law that where serious accusations are made against any authority or member of a Tribunal in Writ Proceedings, if the charges are not denied by proper counter-affidavit it shall be deemed to have been admitted."

In the light of this law laid down by this Court quoted above, it will have to be held that when respondent No. 2 did not appear in the case and file any counter to the allegations made against him, the allegations made against him are proved. Hence, it is proved that respondent No. 2 had bias against the petitioner when he was presiding over the Tribunal.

7. The second ground on which the order is attacked is that the Chairman, who was such a prejudicial and bias against the petitioners did not complete the local inspection even though he visited the land. The records of the case disclose that the Chairman along with Members visited the land, but he did not complete the local inspection on the ground that respondent No. 4 was not present. The allegation of the petitioners is that the witnesses of the petitioners were present. The explanation of respondent No. 4 was that he was kidnapped by the power of

attorney holder of the petitioners. We need not go into the question of this allegation of kidnapping of respondent No. 4, as they are the subject matter of the complaint said to have been filed by respondent No. 4. Even if respondent No. 4 had not turned up for any reason for the local inspection and if the Tribunal were to feel that his presence was a necessary, nothing prevented the Tribunal from again fixing a date to make a local inspection of the land. But the Tribunal did not hold local inspection on any other subsequent date. The contention of the petitioners that the Chairman avoided to do the local inspection lest facts supporting the petitioners would come to the notice at Rule 2 does not appear to be without substance.

8. The third ground on which the impugned order is attacked is that the Tribunal has not considered the evidence led on behalf of the petitioners. Petitioners witnesses are examined as c, d, e and respondent No. 4's evidence is at SI.No.1. There is some reference to the evidence of the petitioners though not of their witnesses in the impugned order. The Tribunal has considered the evidence on record but not as thoroughly as it was expected of it. The fourth ground on which the Tribunal's order is attacked is that the Tribunal shut out the evidence placed before it. This ground seems to be well founded in view of the fact that after returning from the spot by the Tribunal without doing local inspection the petitioners filed an application on 21.7.93 for permission to examine an additional witness. That came to be rejected. This amounts to shutting of the evidence.

9. The learned counsel for the respondent submitted that the Tribunal granted as many as 32 adjournments and therefore it cannot be said that the Tribunal was in a hurry to dispose of the matter. The attitude of a Court or Tribunal cannot be assessed by the number of adjournments. The impugned order of any Authority or Court will have to be assessed on the basis of the evidence on record and also other surrounding circumstances like the bias attitude of Rule 2 in this case in not considering the evidence of the petitioner fully and in shutting out of the evidence of the petitioners. Taking into consideration all these facts it is obvious that the Tribunal has not acted fairly and justly in this case. Its order cannot be permitted to stand in law. Hence, I proceed to pass the following order:

Writ Petition is allowed. The impugned order is set aside. The matter is remanded to the Tribunal with a direction to issue notices to the petitioners and respondent No. 4 and permit them to lead further evidence, if any, and thereafter to dispose of the case in accordance with law. It is made dear that if any party or parties do not appear after the service of notice on them, the Tribunal is at liberty to place them *ex parte* and proceed further. The Addl. Government Pleader is permitted to file his memo of appearance for respondents 1 and 3 within a period of two weeks from today.