

(1995) 06 KAR CK 0031
In the Karnataka High Court
Case No : Civil Petition No. 461 of 1992

M.H. Channabasappa

APPELLANT

Vs

Special Tahsildar for Land Reforms, Sagar and Others

RESPONDENT

Date of Decision : 19-06-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (1995) 3 KarLJ 289

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. This is an application for review of the order dated 13th June, 1991 delivered by Hon''ble Mr. Justice N.D.V. Bhat dismissing the petitioner's writ petition as being without merits.

2. Writ petition had been filed on the ground that the tribunal had conferred occupancy rights in respect of an area of 3 acres but while implementing the order of the tribunal, the Tahsildar has indicated the area in certificate as 2 acres 13 guntas and this could not be done by the implementing authority viz., the Tahsildar. The Hon''ble Single Judge has considered the submissions of the learned counsel for the petitioner and observed thus:

"In fact the order of the tribunal also does not describe the boundaries of the land in respect of which occupancy right is conferred upon the instant petitioner. It is therefore clear that measurement was initiated at a subsequent point of time, having regard to the fact that different persons have been in possession of different parts of land in the same survey number".

The learned Single Judge further observed as under:

"The tribunal as pointed out earlier has not shown the boundaries, and it is therefore clear that the area shown by the tribunal is an approximate area obviously given by the petitioner in Form No. 7. Under these circumstances, I do not find anything wrong on the part of the Tahsildar in indicating the area of the instant petitioner as 2-13 acres which was the area which was actually in his

possession".

3. As pointed out by the learned counsel for the applicant Sri B. Veerabhadrappa very fairly the tribunal while granting the occupancy rights provided that the occupancy rights are granted in respect of four acres of land, approximately, subject to measurement. In this context the learned Single Judge has taken the view that there has been nothing wrong in the order of the tribunal when the Tahsildar after measurement granted the certificate for an area of 2-13 acres, because the subsequent events had to be taken into consideration by the Tahsildar, in the context of the order of the tribunal itself, which expressly provided for grant of certificate of occupancy right with respect to the area subject to measurement. Taking this view of the matter, the learned Single Judge dismissed the writ petition and he opined that the tribunal's order has to be understood in the context of measurement. The learned Single Judge further observed that if the petitioner had any grievance about the measurement made by the survey authorities for that there would be separate forum under the Act and that forum might be under the hierarchy of the Karnataka Land Revenue Act. With these observations the learned Single Judge dismissed the applicant's writ petition by the above mentioned order.

4. Having felt aggrieved by the order of the learned Single Judge, the petitioner has filed this review petition on 26.9.1991 along with an application for condonation of delay. The matter being listed for orders on condonation of delay, the Court felt that it is better to first hear the learned counsel for the petitioner-applicant on merits to examine if there is any substance in the review petition and if there is any substance the question of condonation of delay may be considered to avoid any further delay in the final disposal of the matter. Issuing of notice is not merely a ritual unless there is a case made out for consideration. If the petition had no merits, no purpose would be served by simply issuing notice in respect of condonation of delay and it would delay the matter and nothing else. As such, I have heard the learned counsel for the petitioner. In my opinion, for the reasons which I will state hereinafter, the review application does not merit for admission. As regards the power of review the High Court is a Court of record and it inheres in High Court to pass suitable orders and where it is necessary by reviewing their orders in exercise of their power under Article 226 and Article 227 of the Constitution has been held in a catena of cases reported in-

1) Shivdeo Singh and Others v. State of Punjab and Others, AIR 1963 SC 1909;

2) C.N. Byrappa (Dead) by L.Rs. v. State of Karnataka and Others, 1994(4) Kar. L.J. 485 (DB), as well as by this Court in Smt. Pamma Devadthi v. Land Tribunal, Kundapura, 1995(2) Kar. L.J. 374, that this Court under Article 226 can also review its order. But review is not to be taken as an appeal in disguise. The power of review is very limited and circumscribed as has been laid down in those cases.

5. The Division Bench of this Court in the case of Byrappa v. State of Karnataka

has been pleased to observe as under:

"It becomes therefore obvious that the provisions of the Code of Civil Procedure will apply not only to original writ petitions under Article 226 but also to writ appeals arising therefrom provided no specific provision is made in these rules in connection with any such matter. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of errors committed by the subordinate Court. In the aforesaid decision, the earlier decision of the Supreme Court in *Shivdeo Singh v. State of Punjab* was distinguished".

6. A reading of the above observations of the Division Bench of this Court makes it clear that the above observations have been made after taking into consideration the earlier Supreme Court decisions. It has been very clearly laid down that the power of review is exercisable only-(a) in the case of discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; (b) in the case where some mistake or error apparent on the face of the record is found it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits".

7. For exercising the jurisdiction for review the powers are limited by the condition as laid down in Order 47 C.P.C. and by the Courts including the decision of the Supreme Court as mentioned above.

8. Learned counsel for the petitioner-applicant made his submissions before this Court to the effect that the Tahsildar had acted beyond his jurisdiction in mentioning the lesser area in the certificate. He submitted that when in the tribunal's order the area was mentioned as 3 acres, the Tahsildar could not put the area in the certificate as 2-13 acres. He invited my attention to Section 55 of the Karnataka Land Reforms Act, 1966. The learned Single Judge had applied his mind to this question that has been raised. No doubt Section 55 of the Act provides that on the final orders being passed by the tribunal under sub-section (4) of Section 48-A the Tahsildar shall issue the certificate that the tenant has been registered as an occupant. The tribunal in this case passed the order and observed in the order, as fairly submitted by the learned counsel for the applicant that "this order is subject to measurement" pronouncing in the open Court.

9. In the order of the tribunal, the area has been given approximate and the exact area of the land had not been described either by boundaries or by exact measurement. But it was approximate and rights were granted on approximate area. But the order itself mentions that the order granting the tenancy rights with reference to the area is subject to measurement. It is only after measuring the area that it could be an order finally describing the area and not otherwise. So subsequent steps were taken by the implementing authority while implementing the order after measuring the area. This has been the view

appears to have been taken by the learned single Judge as well, wherein the learned single Judge observes as under:

"What the Tahsildar in substance had done is the same-thing which the tribunal had ordered. The tribunal's order will have to be understood in a correct perspective and subsequent events will have to be taken note of.

In that view of the matter, the learned single Judge came to the conclusion that there is no jurisdictional error in the order of the Tahsildar.

10. Learned counsel for the petitioner relied on a decision of a Division Bench of this Court in the case of Smt. Haladamma v. Assistant Commissioner, Shimoga Division and Others, W.P. No. 2856 of 1991. In my opinion, the decision is not applicable to the facts of present case. In that case, really the tribunal itself appears to have reviewed or rectified its order dated 5-9-1981 by order dated 21-6-1984. The Hon"ble Judges constituting the Division Bench viz., Hon"ble Mr. Justice N.D.V. Bhat and Hon"ble Justice S.R. Nayak had taken the view that the order dated 5-9-1981 had become final and the order that was subsequently being passed on 21-6-1984 whereby earlier order dated 5-9-1981 had been modified by the tribunal suffered from jurisdictional error as, according to the Division Bench, the tribunal could not review or reconsider or modify its order dated 5-9-1981 and as such, allowed the writ petition. It further observed with reference to the order dated 5-9-1981 as under:

"The said order is not challenged before us. It is therefore clear that the said order will have to be implemented as it is. If anybody is aggrieved with reference to the implementation of the first order passed by the tribunal on 5-9-1981, which has become final, it is for aggrieved party to take recourse to such a remedy as is available to him under the law. That however, cannot be a subject matter of agitation once again before the tribunal".

11. The order in that case also was to the effect that the occupancy rights were granted to the petitioner in that case over an area to the extent of four acres approximately subject to measurement. Therefore, before implementation of that required area measurement had to be taken and thereafter the order could be implemented. The Division Bench appears to have expressed the view that the order will have to be implemented as it is and thereafter if anybody is aggrieved, he may have recourse to the remedy as is available to him under the law. In the Division Bench decision the ratio is that it was open to the implementing authority i.e., the Tahsildar to measure actual area and mention the same in the certificate and this is the view appears to have been taken by the learned single Judge in the present case as per the observations made at para 6 of the order.

12. Learned counsel for the petitioner very emphatically contended that Section 55 directs the authority to implement the order as it is and according to his contention the authority has not implemented the order but modified it. The learned single Judge has taken the view contrary to what the learned counsel submitted.

13. In the case of M/s. Tungabhadra Industries Limited v. Government of Andhra Pradesh, AIR 1964 SC 1372, their Lordships have been pleased to observe as under:

"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out".

14. It is on the yardstick of the principle laid down in the above case and the lengthy arguments which have been advanced before me, as well as possibility of two views as appeared from the two judgments which have been cited by the learned counsel for the applicant, I do not find any prima facie case for issuing of notice on review application has been made and no prima facie case appears to be made under Order 47. As such, even if delay is condoned when the petitioner is not going to be benefited at all, the proper remedy for the petitioner could have been to agitate the matter in appeal before a Division Bench and not by a review petition. The review application is misconceived.

With the above observations, the review petition is dismissed. I.A.I. should also be taken as disposed of as allowed but review petition is hereby rejected as misconceived.