

(1998) 06 KAR CK 0051
In the Karnataka High Court
Case No : Writ Petition No. 860 of 1998

Moulasab (Deceased) By L.Rs and Others	APPELLANT
Vs	
Moulasab and Others	RESPONDENT

Date of Decision : 29-06-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1998) ILR (Kar) 2870 : (1998) 5 KarLJ 676

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Sri G.F. Hunasikatti Math, for the Appellant; M/s. Patil and Patil and Sri S.V. Jagannath, Additional Government, for the Respondent

Judgement

1. The petitioners" learned Advocate contended that the revenue records consistently support the petitioners" contention that respondents 1 and 2 are entitled to only 1 acre 32 guntas in Sy. No. 84/5 and that as far as the extent of 6 acres is concerned that the occupancy rights have wrongly been granted. He referred to several documents which I refrain from reproducing here because even though, after three remands the Tribunal has gone into an elaborate narration with regard to the material produced and the contentions raised by the two sides, there is no proper reasoning nor is there any proper basis for the conclusion arrived at.

2. The learned Advocate who represents respondents 1 and 2 submitted that his clients have produced a host of documents in support of their plea that they are entitled to occupancy rights in respect of the whole of the Survey Numbers and his contention was that no interference is called for. The learned Government Advocate also submitted that despite the fact that the Tribunal does not seem to have recorded any reasoning and short justification for the conclusion that from the order taken as a whole, this Court could uphold the same on the ground that there was sufficient material on record for the conclusion.

3. When confronted with the submission that if the Tribunal's order lacks the

requisite ingredients to justify the conclusion, that it would be difficult to sustain it, Mr. Patil, submitted that if that is the position, the only option is to re-direct the Tribunal to pass a proper speaking order justifying the conclusion. His submission that in a hotly contested proceeding of this type, that it would be outside the ambit and scope of this Court to record any conclusions as this would constitute an appreciation of evidence which cannot be done in a writ petition. Mr. Patil, has placed reliance on a decision of this Court in the case of Radhakrishna Setty Vs. Land Tribunal and Another, , wherein this Court has while expressing serious displeasure with regard to the manner in which the Tribunals are constituted and the way in which they were found functioning, still held that it would not be permissible for the High Court to take over the Tribunal's function by passing orders in which effectively occupancy rights are granted, or for that matter, directing the Tribunals to do so. This precisely was the situation in a case that went up in appeal to the Division Bench, in the case of R. Venkatarao Vs. Munivenkatappa and Others, wherein the Division Bench went a step further to point out that the High Court could not exercise any of the powers that were exclusively vested in the Tribunal and that it would be acting beyond its jurisdiction to issue a specific direction to grant occupancy rights. The view taken was that the Tribunal is the competent forum to independently evaluate the material before it, consider the law and confer or refuse occupancy rights and that while exercising the powers of judicial review, the High Court could only confirm or set aside the order and in the latter case, the only option left would be to direct the Tribunal to reconsider the matter de novo if the necessity arose. The third situation wherein the High Court could pass an order conferring occupancy rights, was held to be beyond the scope of this Court.

4. Having regard to the aforesaid position in law, I see no option except to set aside the order of the Tribunal and remand the case for a fresh decision. It is very unfortunate that this is the fourth time that the case is going back to the Tribunal and it is necessary for this Court to issue a clear warning to the Tribunal that it shall take special care to ensure that the record is properly evaluated and that a speaking order that conforms to legal requirements is passed by the Tribunal. The parties are directed to appear before the Tribunal on 10-8-1998 and if the Tribunal is not working on that date, it shall assign the next available date. The Tribunal shall do its best, since this is a very old case, to dispose of the matter with utmost expediency. The petition succeeds to this extent and stands disposed of. No order as to costs. I have heard the learned Government Advocate on merits.

5. The aforesaid order of remand has been passed by me because this is old case and having regard to the law as it now stands, this Court has no option except to remand the proceeding. The decisions that have been relied on relate to the years 1977 and 1981. This Court has been following the law as laid down by the Division Bench in the year 1981 for the last 17 years. I have found that there still exists a class of cases wherein the technical view that has been taken viz., that in no case should the High Court modify the order because it may have the effect

of granting occupancy rights does require a reconsideration. While I do concede that the High Court while exercising writ jurisdiction is not to be equated with a Court of appeal and that therefore the High Court while exercising powers under Article 226 or 227 of the Constitution will not embark upon and adjudicate on disputed questions of facts, there still exist a good percentage of cases particularly under the Land Reforms Act where a minor error has been committed and where there is no necessity to go into the aforesaid investigation or evaluation and where through a correction of the order the need to remand proceedings to the lower Court is obviated. The caliber of the Tribunals being what it is, my brother Govind Bhat, J., in 1977 had rather strong things to say about their constitution and performance. In my considered view in the following 21 years all these factors have radically deteriorated to the extent that with Tribunals of this type, the whole purpose of the Land Reforms Act will be frustrated as they will continue passing the type of dishonest orders virtually inviting remands and keeping the litigation alive for another century. To my mind, the Government must be directed to ensure that persons who possess the competency and skills to decide these cases and above all, persons who possess the requisite proven integrity are appointed on these Tribunals. As corrective, the Government must evaluate their performance from month to month and in my considered view those of the members who are errant or who lack integrity must be forthwith dismissed from office. At the same time, it is very necessary that the High Court reconsider the decision in R. Venkata Rao's case, supra, for which purpose, the Registrar-General shall place a copy of this order before the Hon''ble Chief Justice who shall decide whether this is a fit case in which the Full Bench of this Court should finally settle the law. Irrespective of that reference however, it would not be fair to hold up the present proceeding and hence the order of remand shall take effect.

The Registrar-General to forward a copy of this order to the Secretary to Government, Revenue Department, Government of Karnataka as also to the Chief Secretary with a request that the officers concerned to kindly read the order and take necessary steps vis-a-vis the Tribunals.