
(1973) 02 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 2920 of 1970

Ningappa Udachappa Holalapur

APPELLANT

Vs

Tahsildar Shiratti and Another

RESPONDENT

Date of Decision : 02-02-1973

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 94 (1), 94 (2)

Citation : (1973) 02 KAR CK 0001

Hon'ble Judges : Sadanandaswamy, J; Jagannatha Shetty, J

Bench : Division Bench

Advocate : V.H. Ron, for the Appellant; V.C. Brahmarayappa, for the Respondent

Final Decision : Allowed

Judgement

Jagannatha Shetty, J.—The Petitioner was stated to have been unauthorisedly cultivating the deserted goathana area of Battur Village to the extent of 4 acres for a period of two years from 1966-67. The Tahsildar initiated proceedings in exercise of his powers delegated to him u/s 94 of the Land Revenue Act, 1964 for levying penalty. He made an order levying a fine of Rs. 2,000 per year at the rate of Rs. 500 per acre. Against the said order, the Petitioner appealed before the Assistant Commissioner, Savanur, who said that the appeal does not lie before him but lies before the Mysore Revenue Appellate Tribunal. The Petitioner, accordingly, appealed to the Tribunal. The Tribunal, by the order impugned in this writ petition, has held that Section 94(2) of the Mysore Land Revenue Act, is a bar to entertain the appeal. Accordingly, it dismissed the appeal.

2. The sole question for consideration is whether the appeal preferred by the Petitioner to the Tribunal was barred by Sub-section (2) of Section 94 of the Act. The said Sub-section provides:

The decision of the Deputy Commissioner under Sub-section (1) as to the portion of a year shall be counted as for a whole year.

The said Sub-section states that the amount of assessment and fine payable for

the unauthorised occupation of any land shall be final. It does not provide that in all cases falling under Sub-section (1) of Section 94, orders made thereunder would be final. There may be cases where persons dispute the encroachment complained of. There may be other cases where trespassers dispute only their liability to pay fine or the rate of fine proposed to be levied. It is only in the latter cases when an order is made as to the amount of fine payable by a trespasser, that Sub-section (2) of Section 94 operates to make the said order final. But if a case involves a disputed question of encroachment the alleged unauthorised occupant cannot be deprived of his right of appeal.

3. We have perused the appeal memo and also the other records and we are satisfied that the question before the Tribunal was not the question regarding only the amount of compensation and fine payable by the Petitioner. He also disputes his encroachment. In that view, the appeal preferred before the Tribunal was maintainable and it will have to be heard on merits.

4. In the result, we allow the petition, set aside the impugned order of the Tribunal with a direction that it should restore the appeal, of the Petitioner and dispose of the same in accordance with law. No costs.