

(2002) 08 KAR CK 0071
In the Karnataka High Court
Case No : Writ Petition No. 30048 of 2001

Parappa

APPELLANT

Vs

The Karnataka Appellate Tribunal and Others

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 49 (b)

Citation : (2003) 3 KarLJ 313 : (2003) 1 KCCR 17

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : K.B. Adhyapak, for the Appellant; Chandrashekhar Rodannavar, High Court Government Pleader for Respondents-1 to 3 and Shivaraj P. Mudhol, for Respondents-5 and 6, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—With the consent of the learned Counsel for the petitioner and the learned Counsels for the respondents, the matter is taken up for final hearing.

2. The petitioner is assailing the legality and validity of the impugned order passed by the 1st respondent in Appeal No. 224 of 2000, dated 22-5-2001 (Annexure-H) confirming the order passed by the 2nd and 3rd respondents, dated 14-3-2000 and 28-12-1999 respectively.

3. The petitioner has purchased one acre five guntas of land in Sy. No. 633/1E of Jamkhandi town under registered sale deed dated 25-3-1991 from 4th respondent for valuable consideration. After the purchase, the petitioner filed application for grant of conversion of the land in question into non-agricultural purpose before the 3rd respondent. The 3rd respondent has rejected the request of the petitioner solely on the ground that there was a suit pending for consideration before the competent Civil Court. Assailing the correctness of the order passed by the 2nd respondent, the petitioner filed an appeal before the Deputy Commissioner, 2nd respondent. The appeal was not entertained by the

2nd respondent. He has issued endorsement to the effect that the appeal is not maintainable before him against the order passed by the Assistant Commissioner. Feeling aggrieved by the endorsement issued by the 2nd respondent, the petitioner has filed appeal before the 1st respondent. The 1st respondent has rejected the said appeal on the sole ground that the 2nd respondent has delegated power to the 3rd respondent for consideration of the request of the petitioner and similarly situated persons. Therefore, the endorsement issued is in accordance with law. Feeling aggrieved by the order passed by the 1st respondent, the petitioner has presented this writ petition.

4. The principal submission of the learned Counsel for the petitioner is that the impugned order passed by the 1st respondent is contrary to Section 49(b) of the Karnataka Land Revenue Act (for short, "the Act"). As per the said provision, the appeal lies to the 2nd respondent alone. Therefore, the impugned order passed by the 1st respondent is contrary to the relevant provision of the Act and it is not sustainable at all. Further, he vehemently contended that the Deputy Commissioner being the Competent Authority, it is duty cast on him to entertain the appeal as per the relevant provisions of the Act and pass appropriate order in accordance with the provisions of the Act. Instead of that, he has issued endorsement which is contrary to the relevant provisions of the Act. Therefore, he prayed that the petition may be allowed and the impugned order passed by the 1st respondent is liable to be quashed.

5. Per contra, the learned Government Pleader inter alia contended that the impugned order passed by the 1st respondent is strictly in accordance with the Act, and in pursuance of the power delegated by the 2nd respondent to the 3rd respondent. The said endorsement issued by the Deputy Commissioner has been affirmed by the 1st respondent.

6. The short question for consideration is whether the impugned order passed by the 1st respondent is in accordance with the relevant provisions of the Act?

7. As rightly pointed out by the learned Counsel for the petitioner as per Section 49(b) of the Act the appeal lies to the Deputy Commissioner. For the purpose of convenience, the relevant provisions of the Karnataka Land Revenue Act, 1961 reads as follows:

"49 xxx xxx xxx 49(a) xxx xxx xxx (b) if such an order is passed by the Assistant Commissioner whether or not invested (or delegated) with the powers of the Deputy Commissioner, to the Deputy Commissioner".

8. It is stated in unequivocal terms in the relevant section of the Act, the order passed by the Assistant Commissioner is appealable to the Deputy Commissioner. The Deputy Commissioner shall entertain the said appeal filed by the aggrieved party. Further, it is clear from the said provision that even the power has been delegated by the Deputy Commissioner and he alone has got power to entertain the appeal. When the Act is clear, it is duty cast on the 2nd respondent to entertain the appeal filed by the petitioner and to pass appropriate

order strictly in accordance with the Act, after considering the case put forth by the contesting respondent. This aspect of the matter has not at all been taken into consideration by the 1st respondent. The ground on which the appeal filed by the petitioner before the 2nd respondent was rejected is, that he is not the Appellate Authority to consider the order passed by the Assistant Commissioner. Hence, he directed the petitioner to approach the Appellate Tribunal. The 1st respondent-Tribunal observed that the said view expressed by way of issuing endorsement to the petitioner is correct on the ground that as per the powers delegated to the 3rd respondent by the 2nd respondent, he cannot sit over the judgment and decide the matter. Therefore, the finding and reasons assigned by the 1st respondent are contrary to the relevant provisions of the Act. Therefore, in my considered view, the reasoning assigned by the 1st respondent is not sustainable on the ground that the said reasoning given by the 1st respondent is contrary to the relevant provisions of the Act. On this ground alone, the impugned order passed by the 1st respondent is liable to be set aside.

9. For the foregoing reasons, writ petition is allowed. The impugned order passed by the 1st respondent dated 22-5-2001 in Appeal No. 224 of 2000 (Annexure-H) is hereby set aside. The matter stands remitted to the Deputy Commissioner with a direction to entertain the appeal filed by the petitioner as per Section 49(b) of the Act and pass appropriate order strictly in accordance with the relevant provisions of the Act, as expeditiously as possible, but not later than six months from the date of receipt of this order.

The learned Government Pleader is permitted to file memo of appearance within four weeks from today.