
(1998) 06 KAR CK 0077
In the Karnataka High Court
Case No : Writ Petition No. 5572 of 1996

Puttaiah

APPELLANT

Vs

Land Tribunal and Others

RESPONDENT

Date of Decision : 11-06-1998

Acts Referred:

Citation : (1999) ILR (Kar) 1825 : (1998) 6 KarLJ 83

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

Bench : Single Bench

Advocate : Sri S. Chennaraya Reddy, for the Appellant; Smt. M.R. Shanthakumari, High Court Government Pleader and Sri Kaleemulla Shariff, for the Respondent

Judgement

1. I have heard the two contesting learned Advocates as also the learned Government Advocate. The law point involved in this case is of some consequence. The original proceedings before the Tribunal culminated in an order dated 20-3-1982 in favour of respondent 2. The respondent 2 claims to be the Archak and he had applied for occupancy rights in respect of the land in question. The petitioner's brother Thimmaiah had also applied for occupancy rights in respect of a part of the land. It appears that during the hearing of the proceedings a statement was placed on record by Thimmaiah that he was not in fact cultivating as a result of which the occupancy rights were granted in favour of respondent 2 in respect of the whole area of 4 acres 3 guntas. According to the petitioner's learned Advocate Thimmaiah had fallen seriously ill and respondent 2 had taken him away to some other place and during this period respondent 2 has heavily influenced Thimmaiah to withdraw his claim. The contention is that the withdrawal of the claim by Thimmaiah has no binding effect in law and that it was done under suspicious circumstances. I need to add here that the learned Advocate who represents respondent 2 has taken strong objection to these allegations because he has demonstrated from the record that the statement of Thimmaiah was not obtained outside but according to him, the same was recorded in the proceedings and has been countersigned by the

Chairman. I do not desire to make any observations with regard to the veracity or otherwise of the statement or any aspect of it because this is an important angle of the case which the Tribunal will have to re-examine.

2. Subsequently, the present petitioner who is the brother of Thimmaiah and who claims that he has rights in respect of a portion of the land filed an application before the Tribunal for the grant of occupancy rights and the Tribunal has dismissed the application principally on the ground that the case has been earlier decided that there is an earlier order in favour of respondent 2 and in the face of that order it is not permissible for the Tribunal to consider any fresh application in respect of the lands in dispute because the same have already been allotted to respondent 2. Petitioner's learned Advocate submits that if a subsequent application is made particularly by another person and if that person is able to demonstrate that the earlier order requires a modification that it is permissible for the Tribunal to reconsider the case by reopening it even at a later point of time. Reliance had been placed on several decisions, the first of them being--.

1. Mahaveer Chambanna Kallimani and Others Vs. State of Karnataka and Others, .

2. Krishna Setty and Others v Land Tribunal, Somwarpet and Others, which is a Division Bench decision and which decision overrules the earlier decision to the contrary in Shingappa Gowda v L.T. Shingeri and Others ,

and a few other cases which it is unnecessary for me to reproduce, wherein this Court has laid down that in given situations it is open to the Tribunal to reconsider the earlier decision. Obviously, the Courts were taking note of several situations the first of them being that the necessary parties may not have been before the Tribunal or a situation where the Tribunal was misled or for that matter, a situation such as the present one in which the order came to be passed because there was virtually no contest and in such cases, the Courts were of the view that if a legal bar is to apply with regard to the aspect of reopening and reconsideration, that valuable rights of other parties would be infringed upon insofar as they would be left with no remedy even though they may not have been parties to the proceedings or have had knowledge of it. The predominant consideration is the dispensation of fair justice and if this is to be achieved, regardless of the other considerations involved, the law will always uphold a situation whereby a party who has rights or claims, will not be deprived from agitating them.

3. I need to add here that the learned Advocate who represents respondent 2 submitted that this case is very different to all the earlier ones insofar as the contention is that assuming without admitting that Thimmaiah had some rights which he tried to agitate that through his statement before the Tribunal he has withdrawn or waived the enforcement of those rights and if he himself had contended that it was under dishonest or suspicious circumstances that the Tribunal may have reopened the matter. The submission is that if some other

person at a later point of time after the death of Thimmaiah raises such contentions that the Court should refuse to accept them. This is a case in which the petitioner's learned Advocate has produced certain records in support of her contention that Thimmaiah was cultivating part of the lands in the year 1970 and she submits that this is the material date. Her contention is that in such a background it is inconceivable that Thimmaiah would withdraw the application for occupancy rights which would have been granted to him for the asking and she submits that this factor alone is sufficient to attract suspicion. Again, I refrain from making any observations because the petitioner will have to satisfy the Tribunal with regard to all these contentions and the respondent 2 would be entitled to contest those charges. This is a proceeding which came up from the Tribunal. It is pointed out by the learned Advocates including the learned Government Advocate that since these lands are Inam lands that the competent authority to decide the dispute would be the Deputy Commissioner and not the Tribunal. Consequently, the earlier order passed by the Tribunal is set aside and the case is remanded to the Special Deputy Commissioner, Inams, Bangalore Rural District for a fresh decision according to law. The parties are directed to appear either in person or through their representatives before the authority at 11 a.m. on 20-7-1998 when the authority shall indicate to them the future date when he proposes to take up the proceeding. The petition succeeds to this extent. No order as to costs.