

(2014) 11 KAR CK 0043
In the Karnataka High Court
Case No : Writ Appeal No. 2940 of 2013(CS-RES)

Rangappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0043

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : G. Balakrishna Shastry, Advocate for the Appellant; D. Ashwathappa, AGA for K. Nageshwarappa, Advocate for M.V. Chandrashekara, Advocate for the Respondent

Judgement

Ravi V. Malimath, J.—Aggrieved by the order dated 7-3-2010 passed by the learned Single Judge in writ petition No. 1567/2010 allowing the writ petition and remanding the matter to the arbitrator to pass a fresh award the respondent No. 6 before the learned Single Judge has filed this appeal.

2. The case made out is that one Venkataramanachari was the owner of the schedule lands. He had borrowed a loan of Rs. 3,000/- from the respondent Primary Co-operative Agricultural Rural Development Bank by mortgaging the schedule land. On 25-10-1976 he sold the land in favour of the writ petitioner and his brother namely, respondent No. 4. Since the original owner who is also the purchaser failed to discharge the loan, a dispute was raised to recover the amounts. On 28-2-1978 the award was passed. Recovery proceedings was initiated. In the recovery proceedings the land was brought to sale. Respondent No. 6 in the writ petition was the highest bidder for a sum of Rs. 9,850/-. The sale was confirmed in his favour on 25-6-1987. The petitioner questioned the award and the execution proceedings before the Karnataka Appellate tribunal which dismissed his appeal on the ground of delay. Hence, he filed writ petition No. 28240/2003 before the Hon'ble High court of Karnataka wherein by the order dated 29-10-2004, the writ petition was allowed. The order of the tribunal

was set aside and the matter was remanded for a fresh consideration. Aggrieved by the said order, writ appeal No. 5412/2004 was filed. The Division Bench modified the order and directed the tribunal to firstly consider the question of delay and thereafter to decide the appeal on merits. Thereafter the tribunal condoned the delay in filing the appeal and passed the impugned order dismissing the appeal thereby confirming the award and the execution proceedings. Aggrieved by the same, the instant writ petition was filed. The learned Single Judge was of the view that the writ petitioner was not granted an adequate opportunity to participate before the arbitrator. That there was no notice on him with regard to the proceedings initiated for recovery and the consequent sale of the properties. In view of the ignorance of the writ petitioner with regard to the proceedings in question, the learned Single Judge allowed the writ petition, set aside the orders passed by the appellate tribunal as well as the award passed by the Arbitrator. The matter was remanded to the arbitrator to pass a fresh award in accordance with law after serving notice to all the concerned parties. Aggrieved by the same, respondent No. 6 has filed this appeal.

3. The primary contention of the appellant is that when the tribunal on remand condoned the delay in filing the appeal, writ petition No. 1395/2008 was filed challenging the same. While disposing off the writ petition it was observed that it is open for the writ petitioner to urge the question of delay if ultimately, the impugned order to be passed by the tribunal goes against him. Therefore he raised the question of improper condonation of delay by the tribunal before the learned Single Judge. That the learned Single Judge failed to consider the said question. Hence, he pleads that the impugned orders are bad in law.

4. The learned Single Judge held that while passing the order condoning the delay the tribunal held that no notice was served on the petitioner in the auction sale proceedings. Hence, the delay was condoned. However, in the final order passed by the tribunal it took a contradictory view that the notice was served in the award proceedings. Therefore, the learned Single Judge held that the order passed by the tribunal is contradictory and hence, the writ petition was allowed. The appellant contends that by the order dated 13-4-2009 passed in writ petition No. 14932/2008 it was held that it was open for him to urge all the grounds as and when it becomes necessary. Hence, he pleads that the same requires to be considered.

5. The material on record shows that there was no notice served on the respondent herein with regard to the proceedings before the arbitrator. The arbitrator was duty bound to issue notice to the respondents to hear them before passing any award. It has failed to do so. Having examined the material and evidence on record we are of the considered view that the finding of the tribunal in condoning the delay is just and proper. No order could be passed without hearing the affected person. When the lands of the respondent were put up for auction and award proceedings were initiated failure to hear him before passing any award violates the principles of natural justice. It is for this reason alone that

the tribunal condoned the delay. The legal right of the respondent having been violated, he requires to be granted an adequate opportunity to defend himself. It is only after hearing the necessary parties that an appropriate order could be passed by any authority. Failure to do so, has therefore led to miscarriage of justice. Even otherwise at the stage of condoning the delay in filing the appeal the tribunal has specifically stated that there is no material to show that the notice was served on the respondents and hence he was not aware of the proceedings. We do not find any error committed by the tribunal in condoning the delay in filing the appeal. The order passed by the tribunal is just and proper. The condonation of delay how much ever it may be has been condoned, only in view of sufficient cause being made out. We do not find any ground to interfere with the said order. Consequently, the contention of the appellant on non-consideration of the question of delay by the learned Single Judge is accordingly answered. This contention is rejected.

6. The learned Single Judge took note of the fact that a memo was filed before the tribunal to the effect that the original records relating to the passing of the award were misplaced. Therefore, the writ petitioner was not aware of the award proceedings. That Venkataramanachari who was a party to the award proceedings had died. Respondent No. 4 before the learned Single Judge who was a party to the award proceedings is none other than the brother of the writ petitioner. Therefore, it cannot be said that the notice was served on the respondents. Moreover, the appellant would have to show by cogent material that there was no substantial material to show that the notice was served on the respondent. No such material is forthcoming. Except the mere contention of the appellant, there is nothing on record to justify the claim of the appellant. That the respondents were duly aware of the proceedings. However, so far as merits are concerned the tribunal without considering this aspect of the matter committed an illegality in passing the impugned order. The reasoning of the tribunal that the original borrower had participated in the award proceedings is not supported by any material on record. The tribunal has passed the order based on surmises and conjectures especially in view of the memo filed before it that the original records pertaining to passing of award are misplaced.

7. However, the error committed by the tribunal is in holding that when the writ petitioner has pleaded discharge of the loan, which has not been proved, his appeal is liable to be dismissed. We are of the considered view that such a reasoning is unacceptable. Even assuming that the writ petitioner failed to prove that he discharged the loan, the question for consideration is with regard to the service of notice. Whether he has discharged the loan or not the proceedings could not have been initiated or continued behind his back. The inference therefore drawn by the tribunal is not based on any material on record. On the contrary, the same is opposed to the records.

8. The further error committed by the tribunal is one of a glaring proportion. The tribunal while condoning the delay in filing the appeal categorically held that no

notice was served in the auction sale proceedings. Hence, the delay was condoned. However, while considering the merits of the appeal the tribunal takes a "U" turn and holds that notice was served on the appellant before it. The reasoning assigned while condoning the delay and the reasoning assigned while allowing the appeal are contradictory to one another. The same is therefore unsustainable in law. As held earlier the finding of the tribunal even on merits is opposed to the material on record.

9. The other glaring aspect of the case would be so far as the cost of the lands are concerned. The case made out is that the writ petitioner and his brother purchased the lands in question by virtue of a registered sale deed dated 25-10-1976 for Rs. 10,000/-. The land was sold on 23-5-1987 in an auction sale after 11 years for a sum of Rs. 9,850/-. When the value of the land in the year 1976 is Rs. 10,000/- it could not have been sold 11 years thereafter for Rs. 9,850/-. This itself would show that the entire proceedings borders on fraud and intended to deprive the respondents of his lands.

10. Furthermore, it is only respondent Nos. 4, 6 and the wife of respondent No. 4 and the close relatives who participated in the auction proceedings. This also shows the manner in which the proceedings were conducted and would even lead to the conclusion that the entire proceedings were intended only to defraud the respondents. That the notice of the proceedings were not deliberately brought to the notice of the respondents. Only the close relatives participated in the auction. The cost of the land after a period of 11 years fell from Rs. 10,000/- to Rs. 9,850/-. As has been held, fraud vitiates everything. On this ground itself all the proceedings require to be quashed. Notwithstanding the same, the entire matter has been considered on merits while passing the impugned orders. Hence, on this ground also we are of the considered view that the matter requires re-consideration on facts, law and equity by the arbitrator.

11. For all these reasons, the order passed by the appellate tribunal therefore suffers from a gross illegality. The material on record would show that no notice was served on the respondents. When no notice is served on the respondents the proceedings before the arbitrator are unsustainable. It is for these reasons that the order of the appellate tribunal as well as that of the arbitrator was set aside. We find no error committed by the learned Single Judge in passing the impugned order. The impugned order is based on facts and material on record. The impugned order has been passed in the backdrop of the facts of the case that the respondents were not served with any notice while passing the impugned order. Failure to hear the affected person would render the impugned order bad in law. No person can be condemned unheard. It is a glaring case of the legal rights of the respondent being trampled upon in the absence of giving him an opportunity to defend himself. It is under these circumstances that the impugned order has been passed. Since the matter has been remitted to the arbitrator each one of the parties are always at liberty to defend himself. Under these circumstances, we do not find any error committed by the learned Single Judge that calls for

interference.

Consequently, the appeal being devoid of merit, is dismissed.