

(1981) 12 KAR CK 0021
In the Karnataka High Court
Case No : W.P. 19894/81

Rudregowda K.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-12-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1982) 2 KarLJ 11

Hon'ble Judges : S. G. Doddakale Gowda, J

Judgement

1. The petitioner has sought for the issue of a writ in the nature of mandamus directing the Addl. Land Tribunal Belur to for bear from proceeding with the case No. LRF (T) 1470/74-75 and case No. LRF(T) 215/79-80 and to direct the State to transfer the above cases to any other Tribunal for disposal in accordance with law.

2. Petitioner's application in Form No. 7 for conferment of occupancy right, under S. 45 of the Karnataka Land Reforms Act (hereinafter referred to as the "Act") in respect of S. No. 154 of Halebeed village and S. No. 39/P of Hoovanahalli village of Belur Taluk, of which the respondents 3 and 6 are the owners, is required to be adjudicated by the Second Land Tribunal, Belur. On 29-8-81 the petitioner presented an application to restrain the seventh respondent from participating in the proceeding setting out several facts which according to him. justify an inference of bias against him, Briefly stated the allegation is that respondent-7 has been politically and personally biased against the petitioner and as a good friend of respondent-3 has influenced respondents 8 and 9 the other members of the Tribunal to support him. Apprehending that he will not get justice at the hands of the Tribunal and his application is likely to be rejected, he has filed this petition for the above reliefs.

3. Respondent-3 has denied theallegations. Respondents 7 to 9 members of the Tribunal against whom allegations are made have denied the allegations in their statement of objections and characterised those averments as reckless and

frivolous ones without any basis. Certified copy of the order sheet produced as Annexure R-3 discloses that on receipt of the application respondent-3 has refrained himself from participating in the proceedings from that day onward itself.

4. Preliminary objection of respondents is that the petitioner cannot be permitted to invoke extraordinary jurisdiction of this court without exhausting the remedy provided under the Act. On behalf of the petitioner it is submitted that no power is conferred on the Deputy Commissioner to transfer a case from one Tribunal to another exercising power under proviso to S. 48 of the Act. The assertion and denial of alternative remedy depends upon the scope and ambit of the words "distribute the work among the Tribunals in any taluk" found in the proviso to S. 43 of the Act.

5. So, the question that requires to be considered is whether by virtue of power conferred under proviso to S. 48 the Deputy Commissioner is competent to transfer a case from one Tribunal to another.

6. In order to appreciate the rival contentions, it is necessary to refer to some salient provisions of the Act dealing with this aspect of the matter. Chapter III deals with conferment of ownership on tenants. Ss. 44 to 47 deal with vesting, registration as occupants of land on certain conditions, premium payable thereof etc. Under S. 48 the State shall, by notification, constitute for each Taluk a Tribunal for purposes of this Act consisting of the Assistant Commissioner of the Revenue Sub-Division as Chairman and four others nominated by the State Government of whom at least one shall be a person belonging to scheduled caste or scheduled tribe. The Tribunal thus constituted acts as a machinery to adjudicate the rights and liabilities of tenants and land owners. The relevant proviso to sub-section (1) of S. 48 reads thus:

"Provided that it in its opinion it is necessary so to do, the State Government may constitute additional Tribunals for any taluk and the Deputy Commissioner may, subject to any general or special orders of the State Government, distribute the work among the Tribunal in any Taluk."

S. 48A deals with enquiry by the Tribunal. Under Rule 16 of the it fixes the quorum for meeting of the Tribunal at least should be three members including the Chairman.

7. It is admitted that in Belur Taluk two tribunals are functioning. In the instant case, assuming the allegations of malafides to be true if respondents 7 to 9 are restrained from participating in the proceedings, the remaining two cannot decide because it falls short of quorum.

8. The competency to transfer has to be examined from diverse aspects. As and when Additional Tribunal or Tribunals are constituted, the Deputy Commissioner has necessarily to withdraw some cases pending before the existing Tribunal and entrust it to newly constituted Tribunals. Instances where more than one

Tribunals are functioning are not wanting. In the alternative it is submitted that the existence of alternative remedy is no bar for invoking extraordinary jurisdiction of this Court. Counsel for the petitioner submits that in the absence of guidelines for exercise of that power it is impossible for him to approach the Deputy Commissioner for redress. Filing of fresh claim petitions do not arise as the time has expired. Sri Gangadharappa, learned counsel for the petitioner fairly concedes this position. But he disputes the proposition that after distribution of cases to Tribunals functioning within the Taluk, the Deputy Commissioner has no power to withdraw a case from one Tribunal and transfer it to another Tribunal. To illustrate, where equal number of cases are entrusted for disposal, one Tribunal may dispose of cases faster than the other for various reasons. Is or is not the Deputy Commissioner competent to withdraw cases remained undisposed of from the latter Tribunal and entrust it to the former Tribunal? The main purpose of constituting additional tribunals is for the speedy disposal of cases.

9. If a piquant situation were to arise where opinion having been equally divided, one restraining from participation, can it be said, even in such circumstances, that the Deputy Commissioner has no power to withdraw and entrust the case from one Tribunal to another? Sri Gangadharappa, learned counsel for the petitioner, by referring to S. 120 of the Principal Act submitted that an Appellate Authority was competent to transfer any proceeding under this Act pending before a Tribunal in its jurisdiction to any other Tribunal in the same jurisdiction. On its deletion, no power is conferred on any authority to transfer a case from one Tribunal to another Tribunal and it is only this court in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution that can transfer a case from one Tribunal to the other, under such circumstances. It is true that by Act No. 1 of 1974 S. 120 stood repealed. By Act 13 of 1976 a proviso extracted above was inserted with effect from 11-9-75.

10. The word "distribute" necessarily involves the iota of division of work amongst the Tribunals.

11. The contention of the respondents is that the word "distribute" from the very nature of power conferred includes power to withdraw a case from one Tribunal and entrust it to the other and that power must be extended to all amplitude.

12. It must be kept in view that an express grant of a statutory power carries with it by necessary implication, the authority to use all reasonable means to make such grant effective.

13. The Supreme Court in *Income Tax Officer v. M.K. Mohammed Kunhi*, AIR 1965 SC 430, while dealing with the power of the Income-tax Appellate Tribunal to grant stay has held:

"It is a firmly established rule that a grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, 3rd Ed, Articles 5491 and 5402). The powers which have been conferred by section 254 on the Appellate

Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and, necessary to make the exercise; of those powers fully effective. In Domat's Civil Law, Cushing's Edi. Vol. 1 at page 88, it is observed:

It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express depositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it."

In Sub-divisional officer, Sadar, Faizabad v. Shamhoo Narain Singh, AIR 1970 SC 140, the Supreme Court held thus:

"It is well recognised that where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such as are essentially necessary to its execution. But before implying the existence of such a power, the court must be satisfied that power is absolutely essential for the discharge of the power conferred and not merely that it is convenient to have such a power."

In Assistant Collector of Central Excise v. National Tobacco Co. of India, Ltd., AIR 1972 SC 2563, the Supreme Court held thus:

"It is well established rule, of construction that a power to do something essential for the proper and effective performance of the work which the statute has in contemplation may be implied."

14. The word "distribute" implies withdrawal of any case pending before a Tribunal and entrustment of the same to the other Tribunal exercising the concurrent jurisdiction within the same taluk. The proviso encompasses the power to transfer a case on the ground of mala fides. Withdrawal and entrustment is essential in the process of distribution of work. This provision appears to have been incorporated with a view to remove any hardship or inconvenience that is likely to be caused to a party or to witness to go from one taluk to another if the cases were to be transferred from one taluk to another taluk. When more than one Tribunals are functioning then it is for him to decide to which Tribunal it must be entrusted.

15. This takes me to the next limb of argument as to whether any opportunity of hearing should be given to the parties before exercise of power. The question whether the power exercisable under the proviso is administrative or quasi-judicial so as to attract the principles of natural justice was debated at length. It is true that the litigant has no right to insist that his case should be heard by a particular court or a Tribunal. But, when a case is sought to be transferred from one Tribunal to another on the ground of mala fides, it takes a different complexion.

16. In A.K. Kaipak's case, AIR 1970 SC 150, the Supreme Court has held:

"Often times, it is not easy to draw a line that demarcates administrative

enquiries from quasi-judicial enquiries. Enquiries which considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries."

In fact, S. 120 of the Principal Act contemplated due notice to parties before ordering transfer. A statutory power whether it be administrative or quasi-judicial although conferred in wide terms has certain limitations. The authority on whom the power is conferred must exercise it in good faith and for the purpose of achieving the object with which such power is conferred. So when a case is sought to be withdrawn on the ground that a member or certain members are biassed or bear ill-will, the authority exercising such power must necessarily provide an opportunity of hearing before taking a decision.

17. As mentioned earlier, R-7 has already refrained from participating in the proceedings. The apprehension of the petitioner as against R-8 and R-9 alone is required to be established. If the Deputy Commissioner is satisfied about the material placed before him if approached it is for him to take a decision according to law, on which aspect, I refrain from expressing any view.

18. For the reasons stated above, the preliminary objection is upheld, and the writ petition is dismissed. No costs.