

(1991) 07 KAR CK 0043
In the Karnataka High Court
Case No : Writ Petition No. 23617 of 1990

S. Billigowda

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

Date of Decision : 18-07-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 17
Karnataka Scheduled Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Rules, 1985 — Rule 5, 5 (2)
Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4, 5

Citation : (1991) ILR (Kar) 4369

Hon'ble Judges : M. Ramakrishna, J

Bench : Single Bench

Advocate : T.V. Anantha Murthy, for the Appellant; M. Siddagangaiah, HCGP for R-1 and R-2 and M. Shivappa, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramakrishna, J.—In this Writ Petition under Articles 226 and 227 of the Constitution of India Sri. Ananthamurthy, learned Counsel for the petitioner who took me through the impugned order Annexure-A and B urged two points:-

(1) The Deputy Commissioner/Appellate Authority disposed of the appeal without hearing the appellant and it is therefore vitiated.

(2) According to Rule 5, the Deputy Commissioner could have dismissed the Appeal for default of the appellant under Sub-rule (2) of Rule 5. There was no reason why the Deputy Commissioner should dispose of the appeal on merits.

2. The learned Counsel placed reliance upon a Decision rendered by this Court in Boregowda Vs. Special Deputy Commissioner, and submitted that if the appellant was absent when the case was called, the Deputy Commissioner may dismiss the appeal for default as per Sub-rule (2) of Rule 5. In the instant case, the Deputy Commissioner instead of doing so, dismissed the appeal on merits. Hence, his

order, Annexure-B was liable to be quashed.

3. Sri Shivappa, learned Counsel for R-3 however, argued that Sub-rule (4) of Rule 5 provided an opportunity to an aggrieved person to make an application for recalling the order dismissing for default. But, here the petitioner cannot have any grievance because such a course of action was not taken by him.

4. With a view to appreciate the rival contentions on this point, it is better to extract Rule 5 which reads as follows:-

"Manner of disposal of appeal by the Deputy Commissioner;

(1) The Deputy Commissioner shall issue a notice, to the parties informing them that the appeal shall be heard on such date and at such time and place as specified therein.

(2) If the appellant does not appear on the date fixed for hearing or any other date to which the hearing may be adjourned, the Deputy Commissioner may make an order that the appeal be dismissed,

(3) Where the appellant appears and the respondent does not appear on such date as specified in the notice, the appeal may be heard exparte.

(4) The appellant or respondent as the case may be aggrieved by an order passed under Sub-rule (2) or Sub-rule (3) may prefer an application along with an affidavit within thirty days from the date of said order to set aside the same. If the Deputy Commissioner is satisfied that the appellant or the respondent as the case may be, was prevented by sufficient cause from appearing before him on the said date, he shall as the case may be re-admit the appeal or set aside the exparte order on such term as to costs as he thinks fit.

(5) The Deputy Commissioner may call for and obtain records of the case in which appeal is preferred from the Assistant Commissioner;

(6) On the date fixed or to any other date to which the appeal may be adjourned, the Deputy Commissioner shall after hearing the parties or their agents, pass such orders on the appeal, as he deems fit."

What is provided in Rule 5 is the procedure to be followed while entertaining, an appeal u/s 5A of the Act. It also provides for a remedy, in the event of any aggrieved person seeking relief at the hands of the Appellate Authority if dismissed an appeal for default.

4. At the outset, it is seen that Sub-rule (2) clearly confers power upon the Deputy Commissioner make an order dismissing the Appeal if the appellant does not appear on the date fixed for hearing, or any other date to which the hearing may be adjourned. It is better to refer to the order-sheet maintained by the Deputy Commissioner in Appeal. The learned Deputy Commissioner extracted the order sheet maintained in the instant case at paras 3 and 4 which reads as follows:-

Thus, by a perusal of the proceedings before the Deputy Commissioner it is seen that the appeal was pending right from 8-1-1988 and the Deputy Commissioner granted 14 adjournments. Besides, at the request of the learned Counsel for the appellant, twice a specific date was fixed "saying finally" so as to enable the appellant's Counsel to argue the matter. Even then, according to him, neither the appellant nor his Counsel was present and argued the appeal. Thus the laxity is on the part of the appellant and not on the part of the Deputy Commissioner/ the Appellant Authority. On the other hand, he had showed enough indulgence in granting as many as 14 adjournments.

5. Sri Anantha Murthy, learned Counsel for the petitioner argued that in the event of the Deputy Commissioner disposing of the appeal under Sub-rule (2) of Rule 5, the appellant would not have been prejudiced, because he could have filed an application as provided under Sub-rule (4) of Rule 5 so as to enable the Deputy Commissioner to recall the order made *ex parte* and thus an opportunity would have been available to him to urge the case on merit. It is true Sub-rule (4) extracted above clearly provides that in the event of the Deputy Commissioner dismissing the appeal for default of the appellant or his Counsel, such an aggrieved person may avail Sub-rule (4) and file an application requesting the Deputy Commissioner to recall the order made *ex parte* and to hear the appeal on merits. In the instant case, it is not pointed out nor is it the case of the petitioner that he (Petitioner) filed an application under Sub-rule (4) of Rule 5 enabling the Deputy Commissioner to recall the order so made at Annexure-B and to provide him an opportunity to urge his appeal on merits and that such an application came to be rejected by the Deputy Commissioner. This is nobody's case.

6. On the other hand, having regard to Sub-rule (2) of Rule 5 referred to above, though the language employed therein makes it clear that the Appellate Authority may dismiss the appeal if the appellant or his Counsel does not appear on the date fixed for hearing, that does not mean that the language employed therein should be construed to understand that it prohibits the Deputy Commissioner to dispose of the appeal on merits. There is a good deal of difference between the language employed in Rule 17 Order 41 of the CPC where such a provision is provided enabling the Civil Court to dispose of the Appeal for default under Sub-rule (2) of Rule 5. Sub-rule (2) does not prevent the Deputy Commissioner from considering the appeal on merits in the absence of the appellant. This aspect had not been considered by the learned brother Justice Balakrishna in the Decision rendered in Boregowda's case. Therefore, it is not possible to accede to the contention urged by Sri Anantha Murthy in this behalf. The observations made by this Court in Boregowda's case would not come to the rescue of the petitioner.

7. Dealing with the second contention that the Deputy Commissioner failed to apply his mind to the conclusion reached by the Assistant Commissioner while confirming the order of the Assistant Commissioner etc., I carefully went through

the order of the Assistant Commissioner who recorded a specific finding that a small piece of land came to be granted on 7-11-1959, that a saguvali chit came to be issued on 4-1-1971, that the granted land came to be sold in favour of the petitioner on 2-8-1971. Since there was a contravention of the condition of the grant, while the granted land came to be alienated, the Assistant Commissioner has rightly held that Section 4 of the Act is attracted. He accordingly declared the said sale as invalid. This conclusion of the Assistant Commissioner came to be approved rightly by the Deputy Commissioner, in the impugned order Annexure-B. Therefore, viewed from the circumstance on merits, the findings recorded by the fact finding authorities that Sections 4 and 5 of the Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act 1978 were attracted, being just and proper, the impugned order do not call for interference of this Court.

In the result, the Writ Petition fails and is dismissed but without any order as to costs.