

(2014) 11 KAR CK 0312

In the Karnataka High Court

Case No : Writ Petition No. 101516/2014 (LB-RES)

Sangamma

APPELLANT

Vs

The President

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 237, 269

Citation : (2014) 11 KAR CK 0312

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Girish A. Yadwad, Advocate for the Appellant; Jagadish Patil and Gode Nagaraj, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. The petition is filed in the following background:

One Sangappa Nadahalli was the deceased husband of petitioner No. 1 and father of petitioner No. 2 who had filed a suit in Original Suit No. 271/2001 for partition and separate possession and also a suit for permanent injunction in Original Suit No. 326/2001 on the file of the Principal Civil Judge, Hungund, in respect of the property No. 81/B of Gorabal village and other properties against his sisters. The said suit along with the counter claim filed by the defendants in Original Suit No. 271/2001 came to be dismissed on merits. It appears that Sangappa Nadahalli died on 06/04/2013 and the names of the petitioners, who are his legal representatives, were shown in the record of rights in respect of the said properties. Subsequently, the fourth respondent is stated to have made an application to the Gram Panchayat to enter his name, deleting the name of the petitioners from the record of rights in respect of the property No. 81/B. The Gram Panchayat is stated to have ignored the objections filed by the petitioners and disregarded the fact that appeals were pending against the judgment and decree in Original Suit No. 271/2001 but there was a resolution passed by the

Gram Panchayat to enter the name of the 4th respondent. Therefore, aggrieved by the same, the petitioners have preferred an appeal before the Executive Officer of the Taluka Panchayat. The President, Taluka Panchayat, Hungund has taken up the appeal for consideration and has dismissed the appeal by the impugned order which according to the petitioners is a non-speaking and erroneous order passed without jurisdiction. The petitioners draw attention to Section 269 of the Karnataka Panchayat Raj Act, 1993 (hereinafter referred to as the "Act" for brevity) to point out that it is the Executive Officer who would have the jurisdiction to deal with the appeal and not the respondent. It is on this short ground, the present writ petition is filed.

3. The Learned counsel appearing for the Taluk Panchayat however, would seek to sustain the order and would draw attention to Section 237 of the Act to claim that the Adhyaksha of the Taluk Panchayat gets jurisdiction to deal with any improper or unjust order of the Panchayat and therefore, there is no impropriety in the Adhyaksha having passed an order on the appeal. While it is pointed out by the learned counsel for the petitioners, by way of reply, that Section 237 is in respect of any unlawful order or resolution of a Panchayat, which runs counter to public interest or that would cause public injury that is contemplated under the said provision and does not relate to a decision of disputed private rights of parties. It is Section 269 of the Act which is appropriate and there is no power conferred on any other officer other than the Chief Executive Officer to deal with an appeal with regard to the order of the Panchayat.

4. Sri Gode Nagaraj, learned counsel, on the other hand would insist that the regular appeals filed against the judgment and decree of dismissal in Original Suit No. 271/2001 has been dismissed and therefore the judgment and decree has attained finality and hence no purpose would be served in the matter being remanded for fresh consideration by any other authority and the appeal itself would not be, maintainable in view of the dismissal of the appeal filed by the petitioners against the judgment and decree in the said suit.

5. The question as to whether the appeal has been appropriately disposed of, would have to be answered straightaway on noticing that the impugned order is not a speaking order and since the appeal has to be appropriately disposed of by the Chief Executive Officer as contemplated under Section 269 of the Act, reference to Section 237 of the Act is misleading. The appeal ought to be heard and disposed of by the Taluka Executive Officer and not the President of the Taluka Panchayat.

6. Therefore, the petition is summarily allowed. The impugned order is set aside. The matter is remanded for fresh consideration by The Taluka Executive Officer, in accordance with law.

Since much time has elapsed, the authority is directed to consider and dispose of the appeal expeditiously in any event within a period of two months from the date of receipt of a certified copy of this order.