(2016) 02 KAR CK 0104

In the Karnataka High Court

Case No : Writ Petition No. 43440 of 2015 (KLR-RES)

Shivamma and Others APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Citation : (2016) 02 KAR CK 0104

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Uday Holla, Senior Advocate for S.Y. Shivalli, Advocate, for the Appellant; A.G. Shivanna, Additional Advocate General-I for H. Venkatesh Dodderi, Additional Government Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Anand Byrareddy, J.—1. Heard the learned Senior Advocate Shri Udaya Holla appearing for the Counsel for the petitioner and Shri Jayakumar S Patil, appearing for the proposed impleading respondent and the Additional Advocate General Shri A.G. Shivanna appearing for Respondent Nos. 1 and 2.

2. The petitioner claims that the land bearing Survey No. 191/1 measuring 4 acres of Kyatamaranahalli, Kasaba Hobli, Mysore Taluk, is agricultural land, which belonged to the petitioners'' family and that they are the absolute owners by virtue of succession. The properties stood in the name of one Puttamma and Rajanna. The petitioners claim to have been in actual physical possession cultivating the land personally and have been paying revenue in respect of the same. The names of the family members of the petitioners were said to have been continued in the RTC till the year 1996-97. However, one M.N. Ramakrishna and others, who, according to the petitioners, did not have any right over the land, had contended that Puttamma and her sons had formed a revenue layout in the land measuring 4 acre and 26 guntas and had formed 59 sites, which were sold to various persons between the year 1964 and 1969. Based on the alleged sale deeds, the Assistant Director of Land Records, (ADLR) Mysore Taluk had

prepared phodi durasti vide memo bearing No. AS/CR No. 37/1970-71 and on the basis of the said phodi durasthi, the so-called purchasers had submitted a report before the authorities during the year 1996-97, seeking that their names be entered in the revenue records for the respective portions of sites, which were claimed in the sale deeds.

Based on the said report, during the year 1996-97, the names of 33 purchasers in the form of guntas like 0.02 1/2 guntas and 0.03 1/2 guntas were entered and the remaining land measuring 2 acre 6 guntas in Survey No. 191/1 continued in the name of Puttamma and her family members.

It is contended that one Malini, daughter of M.V. Nagappa is said to have filed an appeal under Section 49(A) of the Karnataka Land Revenue Act, 1974 (Hereinafter referred to as the ''KLR Act'', for brevity) before the Deputy Director of Land Records (DDLR), challenging the subdivisions made in the year 1970-71 by the Assistant Director of Land Records (ADLR). The DDLR, by his order dated 23.7.2012 had set aside the sub-divisions and directed the authority to show the name of Smt. Malini to the extent of 25 1/2 guntas in the said land on the basis of a judgment and decree of a civil court and further directed that the purchasers may approach the competent court to obtain a declaration in respect of their sale deeds.

One of the purchasers, namely, M.N. Ramakrishna had, after the order was passed by the DDLR as aforesaid, instead of approaching the competent civil court, on the basis of the sale deed, approached the Assistant Commissioner seeking that his name be mutated in the revenue records. At the instance of the said Ramakrishna, without issuing notice to the petitioners, the ADLR had ordered by order dated 1.8.2012 that the name of Smt. Malini be entered in respect of the extent of 25 1/2 guntas based on the decree passed in O.S. No. 138/1976 and FDP 34/1994 and the remaining extent of 4 acre and 1/2 guntas was to be mutated in the name of the purchasers, as per their sale deeds.

Pursuant to the order dated 1.8.2010, the Assistant Commissioner has registered the mutation entries as per M.R. No. H2/2012-13 and M.R. No. T1 and T3 in the name of the purchasers and Smt. Malini and entered the names of the purchasers to the entire extent of 4 acres of land in the revenue records.

The petitioners had filed an appeal before the Assistant Commissioner challenging the said order dated 4.8.2012 effecting mutation entries. The Assistant Commissioner held that it was improper to have entered the names of the purchasers unless they had obtained a decree from a competent civil court. Accordingly, by order dated 20.5.2013 had set aside the mutation entries effected in favour of the said purchasers.

The petitioners had challenged the order dated 1.8.2012 before the Deputy Commissioner and the Deputy Commissioner, by his order dated 28.8.2014, had dismissed the revision petition. As against which, the petitioners had approached this court by way of a writ petition in WP 48883-85/2014, which was disposed of by an order dated 10.2.2015, wherein this court had, after recounting the above sequence of events, held that the controversy stemmed from the order dated 23.7.2012 in Appeal No. 44/2011-12 by the Technical Assistant and the DDLR in a proceeding filed by Smt. Malini. As far as that order was concerned, the Counsel had stated that they had no grievance with regard to the relief granted to Smt. Malini. That order also was set aside and sub-phodies were made in respect of survey No. 191/1 and liberty was reserved to the parties therein to establish their rights before the appropriate authority. It was also held that the correctness of the orders passed by the Revenue authorities subsequent to the order dated 23.7.2012 was being considered and that all contentions were left open. The impugned orders as at Annexures - N and R were quashed and the order dated 28.8.2014 was upheld in part. The parties were relegated to the Assistant Commissioner for the purpose of considering the claim made by the sixth respondent therein namely, M.N. Ramakrishna and the parties were directed to appear before the Assistant Commissioner on 16.3.2015 and the Assistant Commissioner was also directed to implead the present petitioners, who were the petitioners in the earlier petition as well and dispose of the matter in accordance with law. It was further observed that the Tahsildar would appear before the Assistant Commissioner and place all relevant records before that authority and that the second respondent would consider the case of the parties similarly situated as the sixth respondent therein and would pass a fresh speaking order in accordance with law. There was a further direction to dispose of the matter within a period of four months.

However, it transpires that the petitioner thereafter having approached the Tahsildar to restore the revenue entries as they stood before the passing of the impugned order by the Assistant Commissioner, the Tahsildar has refused to do so on the ground that there is overlapping of the entries in respect of the lands in question and unless the appeal is decided by the Assistant Commissioner, the question of effecting any changes would not arise. It is that which is sought to be challenged in the present petition.

3. The learned Senior Advocate Shri Udaya Holla would contend that once the order of the Assistant Commissioner is set at naught, any changes effected pursuant to the order ought to be deleted and the possession, as it stood earlier, before passing the impugned order, ought to have been restored. There is no jurisdiction or authority in the Tahsildar to contend otherwise, which is clearly contempt of court and negation of the order of this court and would seek to place reliance on a decision of the Supreme Court in the case of Lal Bhagwant Singh v. Sri Kishen Das, , AIR 1953 SC 136, particularly the observation that the doctrine of restitution is that on the reversal of a judgment, the law raises an obligation on the party to the record, who received the benefit of the erroneous judgment to make restitution to the other party for what he had lost and it is the duty of the court to enforce that obligation unless it is shown that restitution would be clearly contrary to the interest of justice.

On that token of reasoning, the learned Senior Advocate would submit that the Tahsildar cannot in the guise of seeking to reconcile the entries, claim that unless the appeal before the Assistant Commissioner is set aside, he would not be in a position to effect any changes, which is exceeding his jurisdiction and therefore would seek that appropriate directions be issued to the Tahsildar to restore the entries as it stood before the order passed by the Assistant Commissioner dated 1.8.2012.

4. While the learned Additional Advocate General Shri A.G. Shivanna would submit that the action of the Tahsildar cannot be faulted as there are two sets of proceedings. The proceedings pending before the Assistant Commissioner on remand by this court is one proceeding whereas there is a survey report carried out and would submit that the Tahsildar has acted with prudence in holding that unless the appeal is decided there is no warrant to effect any changes. Since the Tahsildar is said to have received a notice issued by the purchaser of one of the sites from respondent No. 6 in the earlier proceedings, requesting that no change be effected in view of the petitioner herein, whereas the petitioner has also claimed that in view of the earlier order of this court, the Tahsildar was bound to carry out the entries. In order to avoid any further controversy, he has only expressed that the entries may not be effected after the disposal of the appeal before the Assistant Commissioner, which according to the learned Additional Advocate General is perfectly justified.

5. Whereas the learned Senior Advocate Shri Jayakumar S Patil would vehemently canvass that even though the order of the Assistant Commissioner has been set at naught and the matter has been remanded to the Assistant Commissioner for fresh disposal, any changes to be effected by the Tahsildar could only be after affording an opportunity of hearing to the impleading respondent and there is no injustice caused if such right of hearing is afforded.

6. Whereas the learned Senior Advocate Shri Holla would contend that there is no question of affording an opportunity of hearing to the respondent and even he is to be heard, it is only after complying with the efficacy of the order passed by this court, in that, the order of the Assistant Commissioner having been set at naught, the entries as they originally stood would have to be restored. Hence, the question of hearing the impleading respondent, who was not a party in the earlier proceedings and who has only now been impleaded before the Assistant Commissioner would have no say in the matter. Whether the proposed respondent is impleaded or not, since there is already a direction to consider his application for impleading, he would be heard in due course before the Assistant Commissioner insofar as the application for impleading is concerned.

7. However, in the above facts and circumstances, the Tahsildar could not have taken an independent stand of not effecting entries in the revenue record if once the order of the Assistant Commissioner has been set at naught. The Tahsildar shall revert the entries to the stage as it stood before the order passed by the Assistant Commissioner and that would be subject to the result of the appeal

now pending before the Assistant Commissioner.

With that direction, the petition stands disposed of.

