
(1999) 09 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 27634 of 1996

Smt. Geeta Satish Kulkarni and Others	APPELLANT
Vs	
The Cantonment Board	RESPONDENT

Date of Decision : 17-09-1999

Acts Referred:

Cantonments Act, 1924 — Section 185, 256, 258, 274, 278
Constitution of India, 1950 — Article 226

Citation : (2000) 3 KCCR 1662

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Ananth Mandgi, for the Appellant; K. Anantharaman, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—It is strange but true that in a petition filed in the year 1996, Petitioners are calling in question the correctness or otherwise of the orders made by the Respondent-Cantonment Board, Belgaum, dated 7.7.1972, the orders made by the appellate authority under the Act dated 7.12.1972, the consequential notice dated 19.2.1973 and further directions issued in the notice dated 20.9.1996.

2. Facts in extenso requires to be noticed, They are as under:

Petitioners are legal representatives of one late Sri Kulkarni, who was the owner of the house property bearing No. 170, situate within the cantonment limits of the camp area, Belgaum City. The subject matter of the dispute is the construction of the outhouse in property bearing No. 170 within the cantonment limits of the camp area. It is the Petitioners case that the previous owners of the property had applied and had obtained permission from the Board to effect repairs to the outhouse from the Cantonment Board as required under the Cantonment Act, 1924. It is their case that inspite of such permission, the Board had issued a notice dated 8.5.1972, directing the Petitioners to show cause by

filing representation, in writing, why action should not be taken for carrying out the unauthorised construction in the property in question, in exercise of their powers u/s 185 of the Act. Petitioners had filed their detailed explanation, denying the allegations made in the show-cause notice and had also informed them that they have not put up any new construction, but only have effected repairs to the out house after obtaining prior permission of the Board. Taking into consideration the objection so filed, the Board has passed an order dated 7.7.1972, directing the Petitioners father to stop further construction in property bearing No. 170, Belgaum City, and further to demolish the unauthorised construction already put up by them. An appeal filed against the said order was also rejected by the appellate authority of the Board by its order dated 7.12.1972 and thereafter, a notice dated 16.2.1973, had been issued by the Board, reiterating their earlier decision and directions. Aggrieved by these events and orders, Petitioners father, for the reasons best known to him, had approached the Principal Munsiff, Belgaum, in O.S. No. 78 of 1973 interalia seeking an order of permanent injunction restraining the Board from demolishing or in any way interfering with the Petitioners right in the outhouse situate in property bearing No. 170, within the Cantonment limits. The learned Principal Munsiff by his judgment and decree dated 25.6.1979 has dismissed the suit on the ground it has no jurisdiction to try the suit in view of the specific bar contained u/s 278 of the Cantonment Act. An appeal filed in R.A. No. 114 of 1979 against the said judgment and decree before I Additional Civil Judge by the Petitioners was dismissed by the learned Judge by his order dated 26.9.1981. Aggrieved by these judgments and decrees, Petitioners were before this Court in Regular Second Appeal No. 200 of 1982. This Court by its order dated 5.12.1994 was pleased to affirm the orders made by the trial Court and was further pleased to dismiss the appeal. However, taking into consideration the pendency of lis between the parties for a very long time and also keeping in view that the unauthorised construction is only to the out house of the main building and the calamities that had taken place in the family of the Petitioners, had permitted these Petitioners to approach the Board to regularise the unauthorised construction by making appropriate representation and was further pleased to express its desire that the Board would receive a reasonable compensation instead of insisting demolition of the building. Pursuant to the liberty that was granted, Petitioners had approached the Respondents to regularise the unauthorised construction of the out house by accepting reasonable amount by way of compounding fee. The Board inturn has taken a firm stand and a stiff attitude and by its resolution No. 34 dated 26.7.1996 has rejected the request of the Petitioners and has further informed the Petitioners by their notice dated 20.9.1996 to remove the unauthorised construction. It is at this stage, Petitioners are before this Court for the reliefs indicated by me earlier.

3. This Court while entertaining the petition, by its order dated 30.9.1996 had granted an interim prayer, interalia directing the Respondents not to insist on the demolition of the construction put up by the Petitioners father pending disposal

of the writ petition. That interim order is still operating against the Respondent-Board.

4. Sri Anant Mandagi, learned Counsel for Petitioners submits that the impugned orders framed by the Board without affording an opportunity of hearing to the Petitioners is not only contrary to the provisions of the Act and also is in violation of the principles of natural justice and further submits since it is well established proposition of law that an order passed in utter violation of principles of natural justice is null and void, the impugned orders requires to be set aside.

5. Secondly, it is asserted that the impugned orders are contrary to the documentary and oral evidence available on record. Therefore, they are arbitrary, invalid and illegal.

6. Lastly, submits that there is no delay or laches on the part of the Petitioners in approaching this Court against the orders made by the Respondent-Board on 7.7.1972 and 7.12.1972, since Petitioners were bonafidely prosecuting their remedies in the wrong forum by filing a suit and further appeals before this Court and also in view of the directions issued by the Civil Court and this Court, the Petitioners were under the impression that the Board will not compel them to demolish the unauthorised construction put up by them on the property in question.

7. Per contra, Sri Anantaraman, learned Counsel for the Respondent-Board submits that this Court in this writ petition need not go into the correctness or otherwise of the impugned orders made by the Board, in view of the finding of this Court in second appeal disposed off by this Court on 5.12.1994. In support of this contention, the learned Counsel takes me through the judgment of this Court, in particular, paragraph 21 of the judgment. Secondly, he states that the petition deserves to be dismissed on the ground of delay and laches on the part of the Petitioners in approaching this Court nearly after 24 years from the date of the impugned order. Lastly, the learned Counsel would submit that the writ petition is barred by principles of constructive resjudicata.

8. After consideration of the points urged by the respective learned Counsels for the parties to the lis, the following issues requires to be considered and decided by this Court. They are:

I) Whether there is inordinate delay in making a motion for a writ and if so, whether the delay is satisfactorily and properly explained to condone the same?

II) Whether the grounds suggested to condone the delay of 24 years in approaching this Court could be accepted and whether pursuing in a wrong forum for a remedy and the delay caused therefore is excusable?

III) The findings of this Court in Regular Second Appeal No. 200 of 1982 as to the procedure adopted by the Board while framing the impugned orders having remained unaltered, whether the claim of the Petitioners once again on the procedure adopted is barred by principles of resjudicata?

IV) Whether any relief can be granted to the Petitioners?

V) What Order?

9. Let me take the third issue for consideration and decision, since I was always of the view that denial of the relief on mere delay is denial of justice.

10. The appeal filed by the Petitioners before this Court was against the judgment and decree dated 26.9.1981 passed in RA No. 114 of 1979 on the file of the I Additional Civil Judge, Belgaum, confirming the judgment and decree dated 25.6.1979 passed in OS No. 78 of 1973 on the file of the Principal Munsiff, Belgaum. In the suit filed, Petitioners had sought for permanent injunction against Respondent-Board from demolishing or in any way interfering with the Petitioners property right in the out house built in property bearing No. 170, situate within the cantonment limits of Camp Area, Belgaum City. The trial Court dismissed the suit, primarily on the ground that it has no jurisdiction as the order passed by the appellate authority of the Board has become final and in view of the bar contained u/s 278 of Cantonments Act, 1924. On merits of the case, the learned trial Judge was pleased to hold that the construction put up by the Petitioners is neither unauthorised nor illegal. The appeal filed by the Petitioners was also dismissed by the I Additional Civil Judge, Belgaum, but on the merits of the case, was pleased to observe that the action of the Respondent-Board is in accordance with the procedure prescribed under the Act and is neither arbitrary, nor unfair or unjust. The second appeal filed before this Court was also dismissed and while doing so, certain observations are made on the merits of the case and that order has become final, since the observations made therein is not altered by any other superior forum. The observations made by the Court both on question of law and the factual situation requires to be noticed and therefore, they are extracted. In paragraph 9 of the order, the Court notices the admission of the appeal made by this Court on 27.5.1982, to decide the question of law.

Whether in the absence of a finding of the Defendant in its order for demolition that the non-demolition of the building of the Plaintiffs would adversely affect the interest of the public, the lower Courts were justified in dismissing the suit of the Plaintiffs?

11. To answer this precise question of law raised in the appeal, the learned Judge held that they should address themselves first, whether the findings of the trial Court on the issues and affirmed by the first appellate Court is correct. To arrive at a proper and irresistible conclusion, they scan through not only the pleadings but also the oral and documentary evidence. They did not find fault with the notice issued by the Board either u/s 185 of the Act nor u/s 256 of the Act. In so far as the orders in the appeal by the appellate authority, the learned Judges were pleased to hold:

18. In the appeal before the appellate authority, the Plaintiff had engaged a Counsel of his choice, who argued the appeal on his behalf. The appeal was heard by the Deputy Director, Military Lands and Cantonment, Belgaum. It

appears from the record that during the course of hearing of the appeal, the appellate authority inspected the house in the presence of the son of the Plaintiff examined as P.W. 1. The appellate authority inspected the out house on 28.9.1972. There is no grievance by Sri Anant Mandagi against the appellate authority in the matter of affording opportunity to the Plaintiff to substantiate the grievance against the notice issued by the Cantonment Board pursuant to the resolution of its Standing Committee. In other words, the Plaintiff had full, adequate and sufficient opportunity before the appellate authority to convince it that he was entitled to succeed in the appeal. The Plaintiff did avail of that opportunity and prosecuted the appeal, though unsuccessfully. It is not the case of Mr. Ananth Mandgi before us that the appellate authority while disposing of the appeal did not act in conformity with the fundamental principles of judicial procedure. It was after hearing both sides that the appellate authority proceeded to dismiss the appeal.

12. The learned Judges in so far as the finality of the orders made by the appellate authority under the Act, keeping in view the law declared by Apex Court in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , was pleased to hold that combined reading of the provisions contained in Sections 274 to 278 of the Act would indicate that the legislature by implication intended to exclude the jurisdiction of the Civil Court with regard to orders falling within the purview of Schedule v. of the Act. They did not stop there and they have further observed on the merits of the orders made by the appellate authority dated 7.12.1972 and in that they state as under:

Suffice it to say for the purpose of this appeal that the order made by the appellate authority by no stretch of imagination can be considered to be a nullity. The order has been made in complete obedience to the principles of natural justice and strictly in accordance with the established judicial procedure. We may say without hesitation that the order made by the appellate authority is one arrived at in the exercise of its exclusive jurisdiction conferred by the Act. We have examined the order made by the appellate authority in the light of the propositions laid down by the Hon'ble Supreme Court in the case of Dhulabhai referred to supra. Having done so, we cannot avoid or escape the impression that finality given to an order made by the appellate authority u/s 278A of the Act excludes the jurisdiction of the Civil Court to go into its correctness.

(Emphasis supplied by me)

13. Nextly, on the question whether the trial Court and first appellate Court having come to the conclusion that on the subject matter, the jurisdiction of the Civil Court was barred, could have decided the case on merits, the learned Judges taking the assistance from the observations made by the Apex Court in the case of Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar, , was pleased to hold that it was not necessary for both the Courts to go into the merits of the matter when they come to the conclusion that the jurisdiction of the Court was barred u/s 278 of the Act. However, on the question of law raised

in the appeal to hear, decide and determine they did not express their opinion one way or the other. As I have already pointed out that the question of law for determination was not with regard to procedure adopted by the Board while directing the Petitioners not to put up further construction and further to demolish the unauthorised construction behind the main bungalow in property bearing No. 170 situate within the cantonment limits of the camp area, Belgaum City, but with regard to general principles, whether the lower Courts were justified in dismissing the suit in the absence of a finding of the Board in its order for demolition, that the non-demolition of the building put up unauthorisedly by the Petitioners would adversely affect the interest of the public. In my opinion, in so far as the procedure adopted by the Board while directing the Petitioners to demolish the unauthorised construction, there is a positive finding by this Court that the order made by the appellate authority is in complete obedience to the principles of natural justice and strictly in accordance with the established judicial procedure. The findings of this Court on the correctness or otherwise of the procedure adopted by the Board while framing the impugned orders dated 7.7.1972 and 7.12.1972 remains unaltered, the claim of the Petitioners in this writ petition is barred by principles of resjudicata. Therefore, Petitioners cannot be permitted to reagitate the issue which has already been decided by this Court in second appeal No. 200 of 1982 decided on 5.12.1994. Therefore, I answer the third issue raised for decision in the affirmative and against the Petitioners.

14. In view of my findings on the third issue, the first two issues raised by me for a decision pale into insignificance. But since it is raised by learned Counsel for Respondents, an answer requires to be furnished. The well settled principles are (1) the writ remedy being discretionary, the Court will refuse it on the ground of gross laches even if the relief claimed relates to the property rights, which is one of the fundamental right of the Petitioners. (2) pursuing a wrong remedy and the delay caused therefore is excusable and time taken in pursuing that legal remedy should not be construed to be delay or laches. (3) a writ Court will not entertain a petition and grant relief if there is inordinate delay on the part of the Petitioners and such delay is not satisfactorily explained. There are many more such well established principles. All of them need not be noticed.

15. Keeping in view these well established principles, let me find out whether there is any delay and if so, whether such delay in approaching this Court is properly and satisfactorily explained by the Petitioners in this writ petition.

16. Petitioners in this writ petition filed under Article 226 of the Constitution in the year 1996, question the correctness or otherwise of the orders made by the Respondent-Board dated 7.7.1972 and the orders made by the appellate authority dated 7.12.1972. The only explanation offered by the Petitioners in approaching this Court for the relief against the aforesaid orders nearly after 24 years from the date of the orders, as stated in the petition is as under:

7. All along the Petitioners were prosecuting their remedy in the wrong forum by filing a suit in the Civil Court, appeal by the lower appellate Court and RSA before

this Hon''ble Court. In view of the fact that Petitioners were prosecuting in the wrong forum, they have not approached this Hon''ble Court to quash the orders impugned in this writ petition. Also in view of the directions issued by the Civil Court and by this Hon''ble Court, the Petitioners were under the impression that the construction put up by them would be regularised by the Respondent-Board and that they would not compel them to demolish the said illegal construction. Hence, there are no laches on the part of the Petitioners in approaching this Hon''ble Court and the delay if any is due to the reasons mentioned above.

17. Keeping in view the explanation offered for delay in approaching this Court for the reliefs in the writ petition, let me briefly notice the fact situation once again. The appeal filed by the Petitioners against the orders made by the Board u/s 185 of the Act came to be rejected by the appellate authority by its order dated 7.12.1972. After dismissal of the appeal, the Board had issued a notice dated 16.2.1973 directing the Petitioners to demolish the unauthorised construction. Aggrieved by this notice issued u/s 256 of the Act, Petitioners had filed a civil suit in OS No. 78 of 1973 seeking permanent injunction against Respondent-Board not to demolish the unauthorised construction. The trial Court had dismissed the suit on the ground it has no jurisdiction in view of the bar contained in Section 258 of the Act. The first appellate authority by its judgment and decree dated 26.9.1981 confirmed the judgment and decree of the trial Court. However, both the Courts had said something on the merits of the case also. In the second appeal filed, the main grounds urged in the appeal and the contention of the learned Counsel for the Appellant was that it was unnecessary for both the Courts to have gone into merits of the matter when they came to the conclusion that the jurisdiction of the Civil court was barred. It was not their case before this Court that the procedure adopted by the Board while framing the impugned orders as arbitrary and in violation of the principles of natural justice. In view of that, in my opinion, they could have certainly approached this Court atleast in the year 1982 itself. Where there is appearance of avoidable delay and this delay affects the merits of the claim and the Petitioners are disentitled to the extraordinary relief. The delay if caused by pursuing appropriate legal remedies can be excused but not when both the trial Courts had told them in unequivocal terms that the suit is not maintainable before the Civil Court against the orders made by the appellate authority under the Act in view of the specific provisions provided in the Act itself. As the writ remedy is not one of right but discretionary, the discretion cannot be exercised in favour of non-diligent person, who has approached this Court nearly after 24 years from the date of the impugned orders. Even on this count, petition requires to be rejected.

18. In the result, petition fails. Accordingly, it is dismissed. Rule discharged. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.