

(1996) 04 KAR CK 0045
In the Karnataka High Court
Case No : Writ Petition No. 8943 of 1996

Smt. Gowramma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) ILR (Kar) 2348 : (1996) 5 KarLJ 507

Hon'ble Judges : M.M. Mirdhe, J

Bench : Single Bench

Advocate : V.S. Gunjal, for the Appellant; V.S. Jagannath, for R-3 and M.N.R. Gowda, HCGP for R-1 and 3, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Mirdhe J.

1. This writ petition is filed by the petitioners praying to quash the order passed by the Land Tribunal, Bangalore, on 21.5.1986 which is produced at Annexure-A.1.

2. I have heard the learned Counsel for petitioner No. 1, Sri Gunjal and Sri Subbanna, learned Counsel for petitioners 2 to 6 and the learned Additional Government Pleader for respondents 1 and 2 and the learned counsel for respondent No. 3 and perused the records of the case.

3. It is not disputed in this case that the land in question belonged originally to one Pilla Reddy and Gurappa Reddy purchased it from him. It is also not in dispute that petitioner No. 1 is the wife of Gurappa Reddy and petitioner Nos. 2 to 6 are the sons of Gurappa Reddy. Respondent No. 3 filed Form No. 7 claiming occupancy rights in the land in question to the extent of one acre and one gunta and the Tribunal by its impugned order which came to be passed as far back as on 21.5.1986 granted occupancy rights in favour of respondent No. 3 in respect of that land. This Writ Petition is filed in the year 1996 i.e., after a lapse of a

decade after the impugned order is passed. The delay in filing in this Writ Petition is inordinate. The learned counsel for the petitioners submits that mere delay in filing the Writ Petition cannot be a ground to reject that Writ Petition as there are instances and cases where the Court has admitted and allowed the Writ Petitions even after a considerable delay of more than a decade. No doubt the condonation of delay will depend upon the facts of each case. The learned Counsel for the petitioners also relied on two rulings wherein the Courts condoned the delay of a decade. I have gone through those rulings. In one ruling the Court has no jurisdiction. Therefore, the High Court held that merely delay cannot be a ground to sustain the order in such a case. In the second case no notice was issued. Therefore, the High Court held that since the petitioner in that Writ Petition had no knowledge delay cannot be a ground to reject his Writ Petition. But in this case it is not the case of the petitioners that petitioner No. 1 was not impleaded. On the other hand, the impugned order discloses that petitioner No. 1 was impleaded. Counsel for respondents submits that though a notice was issued to petitioner No. 1 she has refused it. I have seen that notice in the original records. Its perusal discloses that there is a shara by the person serving the notice that petitioner and her children have refused to accept that notice. The argument of the Counsel for the petitioners is that this is a concocted record. Then there is also a document to show that as far back as in 1986 itself the petitioner No. 1 had applied for the certified copy of the impugned order and she did receive that certified copy. The learned Counsel for the petitioners submits that this is also a concocted record. He submits that all these records are concocted by respondent No. 3 to suit his case. The Counsel for the petitioners requests the Court to compare some signatures of petitioner No. 1 with some other signatures. This Court is acting under Article 226 of the Constitution and it cannot go into such disputed questions while it is exercising its power under Article 226 of the Constitution. There are two documents which prima facie go to show that petitioner No. 1 has refused to accept this document and she also applied for certified copy of the same. I do not think that these documents could not have been concocted as far back as in the year 1986 itself. There is great force in the argument of the learned Counsel for respondent No. 3 that wherever the documents are not suited to the case of the petitioners they brand those documents as concocted. The delay is inordinate in this case and petitioner No. 1 had refused to accept the notice. No doubt petitioners Nos. 2 to 6 were not impleaded. The Counsel for petitioners 2 to 6 submits that they were majors. When petitioner No. 1 who is the mother of petitioner Nos. 2 to 6 is impleaded, it is difficult to accept the contention of the petitioners 2 to 6 that they were unaware of the order. Moreover, the petitioners 1 to 6 reside in the very place where the land is situated. When the respondent No. 3 got an order in his favour by the Land Tribunal as far back as a decade ago it is unnatural and improbable that he would have kept quiet without exercising his rights under that order and such exercise of right must have brought the knowledge of this order to the notice of the petitioners 1 to 6. Therefore, it is difficult to accept the contention of the petitioners that they were unaware of the orders till 22.2.1996.

The learned Counsel for the petitioners raised many objections that the boundaries of the land were not given, the land is not an agricultural land, that they are in possession of the land and that a fraud is committed by the Chairman in passing the order. Since they have the knowledge of the order in question they should have challenged this order well within time. Now it is too late to challenge this order on these grounds.

4. It is also the case of the petitioners that a fraud has been committed by the Chairman and two Members have given their affidavits to the effect that they have not signed the impugned order. I perused those affidavits. In the affidavits it is mentioned that they have seen the xerox copy of the impugned order and not the original. The very fact that they handed over their affidavits to the petitioners for filing in the Court goes to show that they are trying to support the petitioners as against their own order which they passed as far back as in 1986. If really they have come to know about the forgery of their signatures in the impugned order they should have taken some action by filing some protest petitions to the Chairman or to the authorities concerned or even filing criminal complaints against the persons who are responsible for the alleged forgery. Except handing over their affidavits to these petitioners the Members had not done anything. If the orders are set aside on such affidavits the Courts will be surrendering their power to pass judgments to such unscrupulous members. Therefore, I do not find any grounds to entertain this Writ Petition. Hence, I proceed to pass the following order:

The Writ Petition is not admitted. Dismissed, Consequently the impleading application I.A.I. is also dismissed.