
(2012) 11 KAR CK 0138
In the Karnataka High Court
Case No : Writ Appeal No. 1617 of 2008 (ULC)

Smt. Kokila and Another

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3)

Citation : (2013) 1 KCCR 145

Hon'ble Judges : V. Suri Appa Rao, J;N. Kumar, J

Bench : Division Bench

Advocate : H.C. Shivaramu, for the Appellant; K. Krishna, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is preferred against the order of the learned single Judge, who has declined to entertain the writ petition on the ground of delay as well as on the ground of disputed question of land being involved. It is not in dispute that the petitioner was the owner of the land in question. According to the petitioner, it was an agricultural land. The provisions of Urban Land (Ceiling and Regulation) Act, 1976 (for short, 1976 Act) was not attracted. But still, by way of abundant caution, petitioner filed an application under the 1976 Act claiming exemption from the provisions of the Act. After enquiry, the Authorities held, the petitioners are in possession of 1.249.34 sq.mtrs of excess land. The request to exempt the said land was also rejected. The petitioner has been making representations to the Authorities to retain the said land. In the meanwhile, the Act was repealed with effect from 27.06.1999. It is made clear, if possession of the land has not been taken on the date of repeal, all proceedings under the Act would lapse and the person in possession, have been in excess of the ceiling limit is entitled to retain possession. Therefore, the petitioner preferred a writ petition, firstly, challenging the very initiation of the proceedings on the ground that the land in question is an agricultural land. Secondly, on the

ground that they have not parted with the possession on the date of the repeal. Therefore, they are entitled to retain the land.

2. The learned single Judge held, as the order passed u/s 10(3) was not challenged immediately after the passing of the order, there is inordinate delay in preferring the writ petition. The challenge to the said finding cannot be entertained. In so far as the second contention that, they are in possession of the land and therefore, they can continue to retain their land as the Act was repealed in the year 1999, is concerned, he held that the disputed fact regarding possession has to be decided before competent Civil Court after recording of evidence, which cannot be done in writ proceedings. Therefore, reserving liberty to the petitioners to work out their rights and remedies, he dismissed the writ petition. It is against the said order, the present appeal is filed.

3. Learned Counsel for the appellant has reiterated the very same grounds, which he has urged before the learned single Judge. The order u/s 10(3) of the Act was passed in the year 1987. Therefore, even if representations are made under the Act and they were kept pending by the Authorities, that would not extend the period of limitation or would be a sufficient cause for entertaining the writ petition or appeal merely after five years. Therefore, we do not see any justification to interfere with the said finding recorded by the learned single Judge. So far as possession is concerned, the appellant contends that possession is not taken in accordance with law. The respondents contend that possession is taken and Notification is issued and the petitioners themselves made it clear that the Authorities can take possession of the excess lands. Whether the possession is taken or not in accordance with law under the Act, is a disputed question of fact, when it is disputed by the respondents, as rightly pointed out by the learned single Judge, it is a question to be gone into by the Civil Court in an appropriate proceeding. On that count also, the order of the learned single Judge cannot be found fault with. In those circumstances, the appeal is rejected, reserving liberty to the petitioner to work out his remedy as directed by the learned single Judge.