

(2013) 04 KAR CK 0149

In the Karnataka High Court

Case No : Writ Petition No. 26426 of 2012 (KVOA)

Smt. L. Geetha and Others

APPELLANT

Vs

The Tahsildar and Another

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Karnataka Village Officers Abolition Act, 1961 — Section 3(2)

Citation : (2013) 3 KarLJ 360

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M.B. Chandra Chooda, for the Appellant; Sriyuths Vijayakumar A. Patil, High Court Government Pleader and K.V. Narasimhan, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—First petitioner along with one K.M. Sriramaiah jointly filed M.A. (VOA) No. 6 of 2007 before the Principal District and Sessions Judge, Tumkur, invoking Section 3(2) of the Karnataka Village Offices Abolition Act, 1961, calling in question the order in VOA.CR. 19/84-85, dated 28-10-2006 of the Tahsildar-respondent 1 herein directing re-grant of land measuring 3 Acres in Sy. No. 82 of Kodlahalli Village, Koratagere Taluk, in favour of the second respondent, treating the land as Shanbhog inam. It is useful to mention the relationship of the parties. The father of the first petitioner by name K.L. Narayana Rao and the father of the second respondent by name K. Shamarao, were brothers while petitioners 2 to 8 are the children of one KM. Sriramaiah, the purchaser of the said land under a sale deed dated 24-4-1992 executed by Padmavathamma, widow of K.L. Narayana Rao.

2. M.A. (VOA) No. 6 of 2007 on the file of the District and Sessions Judge was made over for further hearing to the Fast Track Court-V, Madhugiri. During the pendency of that appeal, KM. Sriramaiah was reported to have died on 19-2-2008 following which, I.A. Nos. IV to VI to bring on record the legal representatives of the deceased, to condone the delay and to set aside the

abatement were filed on 5-9-2008. The proceeding sheet maintained by the Fast Track Court discloses that time was extended for filing objections to the said applications by the respondents, none other than the respondents in this petition. However, on 30-10-2009, the Fast Track Court without noticing the pendency of I.A. Nos. IV to VI, dismissed the appeal for default i.e., for not taking the steps pursuant to the death of appellant 2 i.e., KM. Sriramaiah.

3. According to the learned Counsel, Miscellaneous No. 100 of 2009 was filed before the District Judge at Tumkur, which was made over to the Fast Track Court and was dismissed by order dated 6-2-2010 on the premise that it was filed beyond the period of limitation. Thereafterwards, MFA No. 3339 of 2010 filed before this Court, was dismissed by order dated 17-7-2012, as not maintainable, reserving liberty to pursue any other remedy as is available under law. Hence this petition.

4. Although learned Counsel for respondent 2, the re-grantee vehemently contends that KM. Sriramaiah is not a necessary party in the first place and therefore, his legal representatives did not succeed to any right, title or interest to the property purchased during the period of non-alienation, I am not impressed by that submission. The lower Appellate Court did not go into the merit of the case to find out whether or not K.M. Sriramaiah, the second appellant is a necessary or a proper party or whether any rights had flown in his favour in respect of the property in question.

5. The only question for consideration is:

Whether the lower Appellate Court was justified in dismissing the appeal for not having taken steps to bring on record the legal representatives of the deceased second appellant i.e., KM. Sriramaiah reported to have died on 19-2-2008?

In the face of the admitted fact consequent upon the death of second appellant on 19-2-2008, Applications to bring L.Rs. on record; to set aside abatement and; to condone the delay, I.A. Nos. IV to VI when filed on 5-9-2008 as recorded in the order sheet maintained by the Fast Track Court, the dismissal of the appeal has caused serious prejudice to the parties. Had the Fast Track Court noticed the order sheet or looked into the files perhaps, the order impugned would not have been made. It is elsewhere said that an act of the Court shall prejudice no man (*actus curiae neminem gravabit*) and that it is the duty of the Court to rectify, revise and recall its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of facts and that implementation of those orders would have a serious consequence. In that view of the matter, the order dated 30-10-2009 has no legs to stand.

In the result, this petition is allowed. The order dated 6-2-2010 on I.A. No. I. In Misc. No. 100 of 2009 of the Fast Track Court-V, Madhugiri, is quashed. I.A. No. I and Misc. No. 100 of 2009 are allowed. Sequentially, the order dated 30-10-2009 in M.A. (VOA) No. 6 of 2007 of the Fast Track Court-V, Madhugiri, is also quashed. The proceeding is remitted for fresh consideration of I.A. Nos. IV to VI

and thereafter, on the merits of the appeal.

Since parties are represented by learned Counsel, they are directed to be present before the Fast Track Court-V, Madhugiri on 27-5-2013 without further notice.