

(2013) 08 KAR CK 0132

In the Karnataka High Court

Case No : Writ Petition No. 28287 of 2013 (SC/ST)

Smt. M.P. Indravathi

APPELLANT

Vs

Deputy Commissioner, Assistant Commissioner and Sri H.R.
Parashuram

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer or Certain Lands) Rules, 1979 — Rule 3(2), 3(5)

Citation : (2013) 08 KAR CK 0132

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : M.M. Ashoka, for the Appellant; M.G. Anjanamurthy, HCGP for R1 and 2 and Sri H.M. Manjunath, for R-3, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—With consent of learned counsel on both sides, petition is taken up for final disposal. An application in Form-I under Rule-3(2) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Rules, 1979 having been filed by the third respondent before the second respondent and a notice of the case having been issued to the petitioner, she entered appearance and filed statement of objections, disputing the material aspects of the case. The first respondent without holding an enquiry in the manner provided under Sub-Rule (5) of Rule 3 allowed the application on 04.12.2012, vide Annexure-B and declared the sale transaction of the property in dispute in favour of the petitioner as null and void, ordered for its resumption free from all encumbrance and for restoration to the legal heirs of H. Ranga. When the said order was questioned in an appeal filed u/s 5-A of the Act, the first respondent having dismissed the appeal, this writ petition has been filed.

2. Heard learned counsel for the parties and perused the writ petition record. Point for consideration is, "whether the impugned orders are arbitrary?"

3. Undeniably, the second respondent has not conducted enquiry in the manner

provided under Sub-Rule (5) of Rule 3. While deciding the claim, the second respondent ought to have conducted enquiry and decided the claim of the third respondent vide Annexure-C. The order, as at Annexure-B, suffer from legal infirmity, in that, without an enquiry being held, findings having been recorded, which in the circumstances, are perverse. The first respondent-Appellate Authority has not examined the record to find out whether the order impugned in the appeal has been passed in accordance with law or not. There is non-application of mind by the first respondent-Appellate Authority and the order passed, as at Annexure-A, in the circumstances is unsustainable.

In the result, writ petition is allowed and the impugned orders, as at Annexures-A and B, passed by the first respondent and second respondent are quashed. The case vide application, as at Annexure-C, stands remanded to the second respondent for consideration and decision, keeping in view the observations made supra and in accordance with law. Both parties are directed to appear before the second respondent on 24.08.2013 and receive further orders. The second respondent shall decide the case before 31.12.2013.

No costs.

IA. No. 1/2013 does not survive for consideration.