
(2002) 04 KAR CK 0047
In the Karnataka High Court
Case No : Writ Appeal No. 7938 of 1996

Smt. Nanjamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Reforms Act, 1961 — Section 15, 48 A

Citation : (2002) ILR (Kar) 2795 : (2002) 4 KarLJ 6 : (2002) 2 KCCR 1212

Hon'ble Judges : K. Sreedhar Rao, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : B.M. Krishna Bhat, for the Appellant; N.K. Ramesh, A.G.A. for Respondents-1 and 2 and Krishnappa, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The appellants in this intra-Court appeal are the legal heirs of one late Channappa. The controversy concerns claim of occupancy rights made by late Channappa u/s 48-A of the Karnataka Land Reforms Act, 1961 (in short the "Act"), in respect of land measuring 5 acres 20 guntas in Sy. No. 126 and 5 acres in Sy. No. 130/1 of Holakallu Village, Gulur Hobli, Tumkur Taluk, Tumkur District.

2. The relevant facts to the extent of those are not in controversy may be noticed in brief The land in question originally belonged to one B.R. Banappa. He died on 13-10-1971. He under a Will dated 10-3-1961 bequeathed the aforesaid lands to D. Ramaiah (respondent 3), who happens to be late Banappa's son's (respondent 4) son-in-law. Thereafter, the 3rd respondent filed a petition in P. and S.C. No. 55 of 1976 for grant of letters of administration with a copy of the above Will annexed thereto before the 2nd Additional District Judge, Bangalore, who after due enquiry granted letters of administration to the 3rd respondent under his order dated 31-1-1978. Therefore, respondent 3 became the owner of the lands in question since 13-10-1971 immediately on the death of Banappa.

3. At the time of the death of Banappa, respondent 3, being legatee, was serving as soldier in the Indian Army. According to him, after the death of Banappa the land in question were being looked after by the 4th respondent, B. Nagaraj, who happens to be the son of Banappa and father-in-law of the 3rd respondent. It is not in dispute that the said 3rd respondent retired from service on 1-1-1976 and started cultivating the lands himself.

4. On 31-7-1975, late Channappa filed an application in Form 7 claiming occupancy rights in respect of the lands in question. The Land Tribunal by its order dated 6-7-1976 granted occupancy rights in favour of late Channappa. This order was assailed by the 3rd respondent by filing a writ petition in W.P. No. 6049 of 1976 before this Court. This Court by its order dated 7-8-1979, quashed the order of the Land Tribunal and remanded the matter for fresh enquiry since the order was passed in absence of the 3rd respondent, who has succeeded to the property of late Banappa under the Will.

5. On remand, the Tribunal passed fresh order on 25-6-1982 once again granting occupancy rights in favour of the present appellants, being the L.Rs of Channappa, who by that time had died. For doing so, the Land Tribunal relied on two circumstances. The first being that the 3rd respondent had issued legal notice dated 7-12-1976 and the second being that the entries made in aphanites or the revenue records in favour of late Channappa for the years 1970-71 to 1972-73. This order was again challenged by the 3rd respondent by filing writ petition in W.P. No. 23137 of 1982, which was allowed by this Court on 19-2-1985, and the matter was again remanded to the Land Tribunal for fresh decision.

6. So far as the first ground is concerned, this Court has found that Sri D.V. Balaji, Advocate, had issued legal notice dated 7-12-1976 on behalf of the 3rd respondent, clearly stating that the 3rd respondent does not admit that late Channappa was in possession of the land at any time as tenant or otherwise and alternatively even if he is treated to be a tenant the same is resumed by his client exercising his option provided u/s 15 of the Act. Accordingly, this Court has held that:-

"Therefore, this notice will not be of much assistance to decide the question of possession nor can it be said, placing reliance on that notice, that Ramaiah has conceded that Channappa was his tenant or that he was in possession".

7. So far as the second ground is concerned, it was pleaded before this Court that entries were made in the revenue records or pahani in the name of late Channappa without any notice to the 3rd respondent and therefore he had filed application before the revenue authorities for making necessary correction which had been allowed and the name of late Channappa had been deleted from the revenue records after due notice to him. In view of these facts, this Court once again quashed the order of the Land Tribunal on 19-2-1985 and remanded the matter to the Land Tribunal for fresh enquiry after giving further opportunities to

the parties for placing their case and permitting them to adduce evidence, if they so desire.

8. On remand, the Tribunal, again by relying on the uncorrected entries made in the revenue records and purported spot inspection, granted occupancy rights in favour of the appellants by its order dated 25-7-1992. This order was again assailed by the 3rd respondent before this Court in W.P. No. 23923 of 1992 which has been allowed by the learned Single Judge by holding that since the entries in the revenue records made in the name of late Channappa had already been removed by the revenue authorities, the same could not have been relied upon for grant of occupancy rights. He has also held that except the said entries there was no other material before the Tribunal for grant of occupancy rights in favour of the appellants. It is also found that making of spot inspection was of no consequence inasmuch as admittedly since 1976, 3rd respondent, who had succeeded to the land on the death of the original owner Banappa, has been in possession of the land in question.

9. Under the aforesaid circumstances, legal heirs of late Channappa have preferred the present writ appeal. We have heard Sri B.M. Krishna Bhat, learned Counsel for the appellants, Sri Krishnappa, learned Counsel for respondent 3 and Sri N.K. Ramesh, Additional Government Advocate for respondents 1 and 2, who has produced before us the original records of the Land Tribunal and revenue authorities.

10. According to Sri B.M. Krishna Bhat, learned Counsel for appellants, it was impermissible on the part of the learned Single Judge to quash the order of the Land Tribunal by holding that there was no acceptable material before the Land Tribunal to hold that late Channappa was not in possession of the land as a tenant on the material date being 1-3-1974. According to him, this Court exercising the powers of judicial review under Article 226 of the Constitution of India cannot sit in appeal over the order of the Tribunal. According to him, the jurisdiction of this Court extends only to review of the decision making process and not the decision itself. In support of his this proposition, he has relied on the decision of the Supreme Court in the case of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, , wherein it has been held that.-

"However, judicial review under Article 226 cannot be converted into appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision making process".

11. We are unable to appreciate the application of the above principle on the facts of the present case. For the present case, more apt are the principles of judicial review laid down in the case of Parry and Co. Ltd. Vs. P.C. Pal and Others, , wherein it has been held that.-

". . . a mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but a manifest error

apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction, when shown, can be so corrected. In *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, , this Court once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226 unless it could be shown to be wholly unwarranted by the evidence. Likewise, in *State of Andhra Pradesh Vs. Sree Rama Rao*, , this Court observed that where the Tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person can ever have arrived at that conclusion interference under Article 226 would be justified".

12. Admittedly, this is a third round of litigation before this Court under writ jurisdiction between the parties. Despite repeated directions by this Court, the Tribunal has sought to rely on irrelevant materials to favour the appellants.

13. It is well-settled that if the order impugned before this Court under writ jurisdiction is found to be based on an irrelevant or non est materials then the same cannot be allowed to stand. Admittedly, the appellants except placing reliance on the entries in the revenue records which had been found to be wrongly made showing name of Channappa as tenant, no other material was placed to show his possession as on 1-3-1974. Therefore, there was nothing further to be enquired into by the Tribunal and on the material placed by the 3rd respondent, the only irresistible conclusion which could have been drawn is that late Channappa and through him his legal heirs, being the appellants in the present appeal, had failed to establish that they are entitled to occupancy rights over the land in question.

14. For the aforesaid reasons, we find no ground to interfere with the order of the learned Single Judge. The writ appeal is dismissed with costs. Advocate's fees assessed at Rs. 2,500/-.