

(2011) 12 KAR CK 0237

In the Karnataka High Court

Case No : Writ Petition No. 12804 of 1996 (KLRA)

Smt. Sundari Bai

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Citation : (2011) 12 KAR CK 0237

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : H.R. Vasudha and Sri. G.S.V. Assts, for the Appellant; Shashidhar S. Karamadi, HCGP for R1 and 3, Sri. H. Jayakumar Shetty, for R2, for the Respondent

Final Decision : Allowed

Judgement

Ajit J. Gunjal

1. The Landlord is before this Court questioning the order passed by the Land Tribunal granting occupancy rights in favour of respondent No. 2. Suffice it to say when the matter was pending adjudication before this Court, the Land Reforms Appellate Authority was formed and the papers were transferred to the Authority. When the Land Reforms Appellate Authority was abolished, a civil petition was filed through post and was converted into a writ petition, which is the present writ petition.

2. Since the petitioner did not enter appearance, a Court notice was issued. When she did not appear, this Court had no option but to dismiss the matter for non-prosecution. After a lapse of about a decade, an application is filed for recalling the order.

3. Smt. H.R. Vasudha, learned counsel appearing for the petitioner submits that the husband of the petitioner, who was the Power of Attorney was looking after the properties and legal proceedings and after his death, the petitioner herself along with her son is looking after the property. She further submits that the

petitioner's son came to know about the dismissal order when a petition W.P. No. 2233/1983 was filed by another owner and the said writ petition was allowed and the matter was remitted. The Tribunal initiated proceedings with reference to W.P. No. 12804/1996. In these circumstances, the petitioners were not aware that the matter was dismissed for default.

4. Mr. H. Jayakumar Shetty, learned counsel appearing for the contesting respondent opposes the said applications for condonation of delay as well as for recalling the order, contending that the petitioner's son was aware of the proceedings before the Land Tribunal and also the dismissal of the writ petition and in the circumstances, the delay not having been properly explained, applications do not merit consideration.

5. I have perused the applications. Apparently, the proceedings it appears were monitored by the husband of the petitioner, who eventually died at the very ripe age of 85. It is no doubt true that a contention is sought to be raised before me that the petitioner and her husband, both having crossed 80 years had become virtually senile and could not manage the affairs. It is only their son came to know about the proceedings when he visited the Tribunal after a notice was issued to them. I am of the view that though the explanation offered cannot be accepted as a gospel truth, but it can be accepted as a probable explanation.

6. Time and again it is stated that the rights of the parties are required to be adjudicated on merits and not on the procedural law of limitation. It is also brought to my notice that the proceedings per se having not come to an end inasmuch as the application filed by the respondent in respect of other land with reference to another landlord, is still pending adjudication which would necessarily mean that the rights of the 2nd respondent has not attained finality. Having said so, I am of the view that if the contesting respondent is suitably compensated, that would meet the ends of justice.

7. Delay is excused. Default order dated 13.12.1999 is recalled with cost. Cost is quantified at Rs. 25,000/- (Rupees Twenty Five thousand). Out of the said cost, a sum of Rs. 12,500/- shall be paid to the 2nd respondent and remaining shall be deposited with the High Court Legal Services Committee, Bangalore. The petitioner is entitled to this order only on payment of cost within a period of four weeks.

8. With consent of parties, the main petition is taken up for hearing. The landlord is before this Court questioning the order passed by the Land Tribunal on 22.12.1981.

9. The petitioner questions the said order on the ground that the impugned order is not a speaking order.

10. Smt. H.R. Vasudha, learned counsel appearing for the petitioner submits that the grant of occupancy rights in respect of some of the lands claimed by respondent No. 2 are being adjudicated by the Land Tribunal.

11. This fact is not disputed by Mr. Shashidhar S. Karamadi, learned HCGP.

12. Having regard to the fact that the impugned order is not a speaking order and no reasons are forthcoming for grant of occupancy rights in favour of the 2nd respondent, I am of the view that the impugned order warrants interference.

13. Another contention raised before me is that the land is not an agricultural land and a poonja land. Indeed that is required to be adjudicated with reference to the vesting date i.e., 01.03.1974. Hence, the following order:

(a) Petition stands allowed.

(b) The impugned order dated 21.12.1981 passed in LRY-100-215-TRI-5290/81-82 stands quashed.

(c) The matter stands remitted to the Land Tribunal for fresh disposal in accordance with law.

(d) Needless to say this order is confined only to Sy. No. 110/8 measuring 1 acre 40 cents.

(e) The remanded proceedings shall be heard along with the other proceedings pending inter se between the parties.

14. Mr. Shashidhar S. Karamadi, learned HCGP appearing for the respondents 1 and 3 is permitted to file memo of appearance within four weeks.