

(2001) 07 KAR CK 0100
In the Karnataka High Court
Case No : Writ Appeal No. 3660 of 2001

Sri Marigowda

APPELLANT

Vs

The Deputy Commissioner, Hassan District and Others

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Citation : (2001) 4 KCCR 2512

Hon'ble Judges : M.F. Saldanha, J;K.R. Prasad Rao, J

Bench : Division Bench

Advocate : B. Rudragowda, for the Appellant; K. Nagaraj, A.G.A. for Respondents 1 and 3, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—We have heard the appellant's learned Advocate and the learned Government Advocate on merits. The principal attack

as far as the order passed by the learned Single Judge is on the ground that there is a reference in the said order to the fact that the parties were

represented by their learned Advocates before the Tribunal and that they did not ask for an opportunity to lead evidence and that consequently, at

a belated stage when the case comes to the High Court no grievance can be made because it is the duty of the party to produce evidence in

support of the application and if the party is wrongfully deprived, can the grievance arise. Irrespective of the fact whether the parties were

represented by Advocates or not, the learned Single Judge has very rightly asked the Petitioner's learned Advocate to produce evidence in

support of the plea that the Petitioner qualified for the grant of occupancy rights. This was, in our considered view, a very fair and correct

approach because the appellant's learned Advocate may be right when he points out that very often the Tribunals have short-circuited the

procedure prescribed by law and parties should not be prejudiced because of this. However, where a party contends that injustice has been done

or that a case has gone by default it is incumbent for the party to produce before the High Court enough material on the basis of which the High

Court will be prima facie satisfied that had this material been produced before the Tribunal there was a fair and a good chance of the occupancy

rights being granted to the party. The learned Single Judge has held that the Petitioner has absolutely no material to rely on, that there are no RTC

records in favour of the Petitioner and that consequently, the plea for a remand is wholly academic and has dismissed the petition.

2. The appellant's learned Counsel submitted that this approach is wrong in so far as long as the procedure as enunciated by the Act and the Rules

has not been strictly followed that irrespective of whether there exists evidence or not, a fresh enquiry is contemplated. The appellant's learned

Advocate drew our attention to the manner in which an enquiry is required to be held and contended that in this case no enquiry was held. That

position is factually incorrect in so far as the only grievance that was canvassed was that the parties had no opportunity to lead evidence. The

learned Single Judge has very correctly answered this plea by pointing out that the parties are required to produce the evidence on which they

desire to rely and that if they do not do so, then they have themselves to blame. In the present instance, the argument was carried to ridiculous

limits through the contention that irrespective of whether the parties have any evidence to lead or not, that the enquiry becomes bad if the evidence

has not been led. In our considered view, this argument is nothing short of an utter absurdity. The reason for it is because the evidence is required

to be led by the party who wants to rely on that evidence and it is up to the parties to produce the required evidence in support of their respective

cases. In cases where they decline to do so and in cases where they do not apply for the leading of evidence, there is no question of finding fault

with the Tribunal's order on the ground that no evidence was led.

3. Be that as it may, in the present case the controversy is slightly different in so far as in the interests of justice the learned Single Judge very

correctly asked the Petitioner as to what is the material or what is the evidence in support of the Petitioner's case. The learned Single Judge has recorded the finding that there was no evidence forthcoming. At the stage of reviewing that order in appeal we asked the appellant's learned Advocate the same question and he submitted that there are only two mahazars which the Petitioner relies on. These Mahazars relate to the year 2001 and there is a loose statement to the effect that the Petitioner/appellant has been in cultivation for the last 50 years. First of all, a mahazar drawn in the year 2001 is no supportive material or evidence for the position as it obtained on the appointed date. Secondly, as rightly pointed out by the learned Single Judge if the appellant was in occupation and cultivation for 50 years he must certainly have filed Form No. 7 which has not been done for which there is no explanation. Therefore, we find it impossible to believe that if a party is in occupation and cultivation for 50 years that there would not be a single entry in any of the records in favour of that party. Apart from this, the statements in the mahazar itself are unbelievable because it seems to indicate that the Petitioner was in cultivation for 50 years which would mean that he became a tenant at the age of 15 years. The submission canvassed is that even if the mahazar is drawn in the year 2001 that the Court is required to do a mathematical deduction of 50 years and if the point of time goes prior to 1973-74 that the Court must mechanically grant occupancy rights. This argument is required to be rejected in its totality. It is unfortunate that submissions of this type are even canvassed in serious judicial proceedings.

4. On a total review of the case and the record we see no ground on which the order of the learned Single Judge can be interfered with. The appeal accordingly fails on merits and stands dismissed.