

(2010) 10 KAR CK 0031
In the Karnataka High Court
Case No : Writ Appeal No. 3474 of 2009

Sri V. Vasantha Kumar

APPELLANT

Vs

Sri Munivenkatappa dead by L.Rs. (Sri Thimmaiah and Others)

RESPONDENT

Date of Decision : 23-10-2010

Acts Referred:

Citation : (2010) 10 KAR CK 0031

Hon'ble Judges : V.G. Sabhahit, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : N. Shankaranarayana Bhat, for the Appellant; D. Gangadhar, for C/R-1 and D. Vijayakumar, AGA, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—This writ appeal is filed by the 3rd Respondent in W.P. No. 4917/2008 by challenging the order of the learned Single Judge 17/8/2009.

2. For the sake of convenience, the parties shall be referred to in terms of their status in the writ petition.

3. The first Respondent herein represented by his Legal representatives had filed the writ petition in respect of land bearing Sy. No. 3, measuring 5 Acres 14 Guntas situated in Bikasipura Village, Uttarahalli Hobli, Bangalore Taluk, by seeking a direction that the 2nd Respondent - authority namely the Special Deputy Commissioner, Bangalore Urban District, to consider the claim of the Petitioner as a tenant in respect of the said land and to pass orders in accordance with law, by challenging the order dated 14/9/2007 (Annexure "V") passed by the Special Deputy Commissioner.

4. According to the Petitioner in the writ petition, the Petitioner's father enjoyed the said land which was confirmed by the authority and the name of the Petitioner's father was entered in the revenue record in the cultivator's column for the period from 1962-63 to 1967-68; that, earlier, some of the pahani

records were in the name of Hanumanthadevaru and mentioned the name of Smt. Cheluvamma as Archaka. According to the Petitioners Cheluvamma was the mother of Respondent No. 3 i.e., the Appellant herein. According to the Petitioner, the Petitioner's father was cultivating the land with the permission of Archaka and the person who has to perform the pooja at the temple. Since the Archaka was allowed as a tenant to cultivate the said land, that the Petitioners fathers name continued in the pahanies for the period 1969-70 to 1973-74 and even for the subsequent period up to the year 1992-93; that Respondent No. 3 that is the Appellant herein moved an application seeking rectification of the pahani entry and to insert his name in the pahani before the Tahsildar, South Taluk and the Tahsildar gave a finding that the occupancy right had to be confirmed in favour of the Petitioner's father late. Munivenkatappa by his order dated 11/7/1977. The Petitioner thereafter filed one more application for grant of occupancy right under the Land Reforms Act (hereinafter, referred to as the "Act") by contending that he was in possession of the land as on 1/3/1974. The Land Tribunal by its order dated 5/2/1976 referred the matter to Special Deputy Commissioner Inams as the land was coming under the Special Inams Act and the application of the Petitioner for grant of occupancy rights was not decided by the Tribunal,

5. Thereafter, the Petitioner filed a writ petition before this Court in W.P. No. 7810/1980 questioning the order dated 10/1/1980 passed by the Land Tribunal in favour of Respondent No. 3. This Court by order dated 13/12/1983 quashed the orders and remanded the matter for fresh consideration. In the meanwhile, the Petitioner's father's name continued in the R.T.Cs, which according to the Petitioner clearly established his right as a tenant and that the 3rd Respondent had not at all cultivated the said land.

6. After remand, the land Tribunal allowed the claim of the Petitioner's father and awarded tenancy rights in his favour by its order 20/5/1992. Since the 3rd Respondent had claimed the land as a owner and the same was denied by the Petitioner, the order of the Land Tribunal was challenged by the 3rd Respondent in W.P. No. 16636/92 before this Court which by its order dated 23/1/2001 disposed of the matter. The 3rd Respondent being aggrieved by the order passed in W.P. 16636/92 dated 23/1/2001 had filed W.A. No. 1471/2001. According to the Petitioner, during the pendency of the said writ appeal, his father died on 1/3/2002 leaving behind legal representatives as successors. Despite knowing this fact, the 3rd Respondent did not bring on record the L.Rs of the Petitioner. Subsequently, this Court by order 26/9/2002 allowed the writ appeal and directed the Deputy Commissioner to consider the matter afresh. According to the Petitioners, the said order was passed against a dead person; that the original Petitioner had also filed W.A. No. 6264/2002 questioning the order passed in W.P. No. 16636/92, which was disposed of finally by the Division Bench of this Court on 9/3/2005 and the matter was remanded to the Deputy Commissioner to consider the claim of the Petitioner and 3rd Respondent as per the Land Reforms Act as well as the Religious and Charitable Inams Act. The

Petitioner then filed a review petition challenging the order passed in W.A. No. 1471/2001 in R.P. No. 930/2002 and the said review petition was heard and disposed of on 23/7/2004 by remanding the matter and by directing the Special Deputy Commissioner to consider the claim of the Petitioner and 3rd Respondent. After the passing the order in the review petition, the Petitioner filed an application dated 26/7/2004 before the Special Deputy Commissioner, claiming the land in question under the Act and also under the Religious and Charitable Abolition Act.

7. According to the Petitioner, the 3rd Respondent also filed an application before the Deputy Commissioner, Bangalore, without making the Petitioner as party claiming the very same land as if it is his exclusive right and the Special Deputy Commissioner by his order dt. 11/9/2003 allowed the said application. Being aggrieved by the order dated 11/8/2003 the Petitioner tiled a writ petition before the learned Single Judge, challenging the said order in W.P. No. 21798/2005. According to the Petitioner, the said writ petition is still pending.

8. In the meanwhile, in the application filed before the Special Deputy Commissioner, Bangalore, the Petitioner on the strength of the order passed by this Court in the review petition, notice was ordered to the 3rd Respondent and after hearing both sides, the Special Deputy Commissioner, Bangalore, passed an order dated 14/9/2007 dismissing the claim of the Petitioner. It is the said order which was challenged in W.P. No. 4914/2008. The learned Single Judge after hearing Petitioners, the Appellant herein i.e., the 3rd Respondent in the Writ Petition and the State, held that on the day when the Division Bench passed orders in W.A. No. 1471/2001 i.e., on 26/9/2002, the Petitioner was dead and the L.Rs were not brought on record and it is subsequently, when it was brought to the notice of the Division Bench in R.P. No. 920/2002, liberty was reserved to the Petitioner to. approach the Special Deputy Commissioner, in accordance with law and to consider the claims of the Petitioner and the 3rd Respondent. But the Special Deputy Commissioner in the impugned order has only stated that since by order dated 11/9/2003 this Court has conferred occupancy right in respect of the land in question in favour of the 3rd Respondent, the Petitioner could not reopen the matter decided already and on that basis the endorsement was issued and the application of the Petitioner was dismissed. The learned Single Judge however, held that the said reasoning of the Special Deputy Commissioner, Bangalore was not in accordance with the direction issued by this Court and accordingly, remanded the matter to the said authority for fresh disposal in accordance with law after providing an opportunity to the parties. The said order of the learned Single Judge is in challenge in this writ appeal.

9. We have heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the caveator Respondent.

10. It is contended on behalf of the Appellant that when this Court had granted occupancy rights in favour of the 3rd Respondent, who is the Appellant in this appeal, there was nothing further which was required to be done by the Special

Deputy Commissioner and hence the order passed by him dt. 14/9/2007 is just and proper which could not have been interfered with by the learned Single Judge. He submits that the application filed by the Petitioner herein and the writ petition also filed in that regard were not disposed of in favour of the Petitioners and on the other hand, this Court had categorically given a finding that the occupancy rights had to be registered in the name of the 3rd Respondent, who is the Appellant herein and hence, the further remand made by the learned Single Judge to consider afresh the rival claims of the Petitioner and the 3rd Respondent would be futile.. He therefore submits that the order of the learned Single Judge has to be set aside and the order dated 14/9/2007 passed by the Special Deputy Commissioner has to be affirmed.

11. Per contra, it is submitted on behalf of the caveator that when this Court disposed of the writ appeal, the Petitioner i.e., Munivenkatappa was dead and his L.Rs were not brought on record and therefore, an order was passed against a dead person and hence, the review petition was filed and this Court by its order, reserved liberty to the Petitioner to approach the Special Deputy Commissioner, in accordance with law and hence, the Special Deputy Commissioner had to consider the claim of the Petitioner instead of merely relying upon the earlier orders passed. He therefore submits that the order passed by learned Single Judge is just and proper, which does not call for any interference in this appeal.

12. Having heard the learned Counsel on both sides and on perusal of material on record the only point that arises for our consideration is as to whether the order of the learned single judge calls for any interference in this appeal.

13. At the outset it is to be noted that the third Respondent had filed an application for rectification of pahani entries in respect of Sy. No. 3 of Bikasipura Village dated 15.10.1971 before the Tahsildar, Bangalore South Taluk, which was numbered as MSE No. 112/1971-72. The said application for rectification was disposed of by order dated 11.7.1977 by stating that there was nothing on record to indicate that the existing pahani entries from 1962-1963 to 1972-73 were falsified or tampered and that the ex-shanbhog had written the pahanies in the usual course in accordance with the actual situation of the land and that the third Respondent had never cultivated the land right from 1962-63 till date and that the Petitioner had been cultivating the said land and accordingly dismissed the application with a direction that the pahanies shall be continued to be written in the name of the Respondent before the said authority i.e., the Petitioner as long as he is in possession of the land in question. Even prior to this order, the Petitioner had made an application requesting for registration of occupancy right of the land in question in LRF 8(A/74-75) before the Land Tribunal, Bangalore South Taluk and by order dated 5.2.1976 it was held that since the land in question was Devaru Inam Land and had not yet been granted the case had to be kept pending until a decision was taken by the Special D.C. for Inam.

14. Thereafter, the Petitioner had filed INA No. 1 and 2 1979-80 before the Land Tribunal and the said application was rejected by an order dated 10.1.1980.

Being aggrieved by the said order. W.P. No. 7810/80 was filed before this Court by the Petitioner which was allowed by order dated 13.12.1983 and the matter was remitted to the Land tribunal for fresh disposal of the application of the Petitioner and the application filed by Respondent No. 3 after holding a common enquiry in accordance with the KLR Act and Rules, Thereafter by order dated 20.5.1982, the Land Tribunal held that the disputed land was a tenanted land prior to three years from 1.1.1970 and that the applicant was cultivating the land as a tenant and accordingly it confirmed the occupancy right of the land in question in favour of the tenant i.e., the Petitioner. Being aggrieved by the said order, the third Respondent filed W.P. No. 16636/92 before this Court which was disposed of by order dated 23.1.2001 by the learned single judge. Being aggrieved by the said order, the third Respondent filed W.A. No. 1471/2001 and by order dated 26.9.2002, the writ appeal was allowed modifying the order passed by the learned single judge by directing the Special Deputy Commissioner to take note of the order and to grant all consequential relief and accordingly, appeal succeeded to the extent stated in the writ appeal. It is pertinent to note that during the pendency of W.A. No. 1471/2001, on 1.8.2002 the Petitioner died a copy of the death certificate is produced as Annexure-P to the writ petition. Thus it becomes apparent that the Petitioner who was arrayed as third Respondent in the Writ Appeal No. 1471/2001 was dead by the time the said order was passed on 26.9.2002 and his legal representatives were not brought on record.

15. With regard to the order dated 23.1.2001 passed in W.P. No. 16636/92 the Petitioner had filed W.A. No. 6264/2002 before this Court. There was delay of 649 days in filing the appeal. The said appeal was dismissed on the ground of delay by order dated 9.3.2005.

16. Thereafter as against the order passed in W.A. No. 1471/2001 the L.Rs. of the Petitioner had filed Review Petition No. 930/2002 which was disposed of on 23.7.2004 by holding that there was no error apparent on the face of record. However, it was stated that the L.Rs. were free to approach the Special Deputy Commissioner in accordance with law.

17. It is to be noted that by order dated 11.9.2003 in INA.CR. No. 26/2002-03 filed by Respondent No. 3, it was held that the occupancy rights has to be confirmed in favour of Respondent No. 3. Be that as it may, on the strength of the observations made by a Division Bench of this Court in the Review Petition the L.Rs. of the Petitioner approached the Special Deputy Commissioner for grant of occupancy right of the land in question. The Special Deputy Commissioner however, by his order dated 14.9.2007 reasoned that since by order dated 11.9.2003 occupancy rights were conferred in respect of the land in question in favour of Respondent No. 3 the claim of the L.Rs. of the Petitioner did not survive and accordingly, dismissed the same as not maintainable. The said order was challenged before this Hon''ble Court in W.P. No. 4914/2008 in which the learned single judge has remanded the matter to the Special Deputy Commissioner for a

fresh disposal in accordance with law.

18. It is vehemently contended by the learned Counsel for the Appellant that the application, which could have been filed by the Petitioner could have been only in accordance with law and since there was nothing to be considered after the confirmation of the occupancy rights in favour of the third Respondent i.e., the Appellant herein in terms of the directions given by this Court and Land, tribunal, hence, on the basis of the earlier order passed by the pursuant to order of this Court the Special D.C. has rightly rejected the application filed by the Petitioners. However, what is apparent from a detailed narration of the orders passed by the authorities as well as by this Court in various proceedings is that when writ appeal No. 1471/2001 was disposed of by this Court on 26.9.2002, the Petitioner herein who was arrayed as third Respondent in the said writ appeal was not alive and therefore, the order was against a dead person and thus a nullity in the eye of law. It is under those circumstances that in review petition this Court granted liberty to the Petitioners to approach the Special Deputy Commissioner. The fact that such a liberty is given implies that the case of the L.Rs. of the Petitioner and that of the third Respondent i.e., the Appellant herein have to be considered and thereafter fresh orders have to be passed. The Special Deputy Commissioner has not understood the implication of the order passed in the review petition which is subsequent to the grant of occupancy rights in favour of the third Respondent/Appellant herein, and instead, by relying on the earlier orders passed by the Division Bench of this Court has simply concluded that there was no case for a fresh determination. The fact that the Petitioner was dead and his L.Rs. were not brought on record before writ appeal was disposed of by the Division Bench of this Court on 26.9.2002, clearly meant that the L.Rs. were not heard in the matter. It is under those circumstances, that liberty was reserved to the legal representatives to approach the Special Deputy Commissioner so as to make out a case for confirmation of occupancy rights. Under the circumstances, the Special Deputy Commissioner was duty bound to hear the case of the L.Rs. of the Petitioner along with the case of the third Respondent/Appellant herein and thereafter to give a fresh finding with regard to the confirmation of the occupancy rights. Therefore, the learned single judge was justified in holding that the order passed by the Deputy Commissioner dated 14.9.2007 was not in accordance with law and having quashed it rightly remanded the matter for a fresh disposal. The order passed by the learned single judge is in accordance with law and it does not call for any interference in this appeal. Accordingly, the appeal fails and is dismissed. Parties to bear their own costs.