

(2011) 12 KAR CK 0413
In the Karnataka High Court
Case No : Writ Petition No. 35805 of 2011 (LR)

Supriya Rajesh

APPELLANT

Vs

State of karnataka and Others

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Citation : (2011) 12 KAR CK 0413

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : O. Shivarama Bhat, for the Appellant; Shashidhar S. Karamadi, HCGP for R1 and 2 and Sri M.J. Alva and CO. for R-3 to 7), for the Respondent

Final Decision : Dismissed

Judgement

Ajit J. Gunjal

1. A litigant who comes to Court and invokes writ jurisdiction must come with clean hands, He cannot prevaricate and take inconsistent position. Courts have, over the centuries frowned upon litigants who, with intent to deceive and mislead the Courts initiated proceedings without full disclosure of facts. Courts held that such litigants haws come with "unclean hands" and are not entitled to be heard on merits of their case.

2. Matter arises in the following manner: This writ petition is filed by the daughter of one Ratnakar Bhavani Rao, claiming to be the legal heir. One Vasudeva Rao, the original applicant makes an application in Form No.7 for grant of occupancy rights The Tribunal initially granted occupancy rights which was the subject matter of writ petition before this Court in W.P.No.44304/2001 dacided on 30,11,2004, a copy of which is produced along with statement of objections at Annexure "R-1". Undoubtedly, the said writ petition was filed by Ratnakar Bhavani Rao Sashital, father of the petitioner. The said writ petition was allowed and the matter was remitted to the Land Tribunal for fresh disposal in accordance with law with the following directions:

Parties are directed to appear before the Tribunal without waiting for any notice on 20.12.2004, The learned Counsel are requested to inform their respective clients with regard to the postings of the of the case

3. It appears when the writ petition was pending, Rathnakar Bhavani Rao died. But, however the legal heirs were not brought on record, In their absence, the writ petition was disposed of, I do not propose to go into the question as to whether the order stands vitiated for not bringing the lagged heirs on record in as much as, it is open for the legal representatives to take advantage of the order, which is passed by this Court. Even otherwise, it is brought to my notice that another cotenant had filed a writ petition before this Court and this Court allowed the writ petition and set aside the entire order, remitted the matter to the Land Tribunal for fresh disposal In view of this, the Land Tribunal was seized of the matter. On remand, the Land Tribunal has issued notice to the contesting parties i.e., the landlords as well as the tenant, notwithstanding the directions issued by this Court. Indeed, the petitioner, who is the legal heir of the deceased Ratnakar Bhavani Rao, did not participate in the proceedings, The Land. Tribunal, having regard to the material placed by the original applicant and by the legal heirs, after remand granted occupancy rights pursuant to the impugned order. The Tribunal has further relied on a statement made by the original landlord. The said order is questioned in this writ petition.

4. I have heard Mr. O.Shivarama Bhat, learned Counsel appearing for the petitioner and Mr. M.J. Alva learned Counsel for the legal representatives of the original tenant

5. Mr. O. Shivarama Bhat, learned Counsel submits that the petitioner was not at all served with a notice. Hence, the impugned order is passed in violation of the principles of natural justice. On merits, he submits that there is no material on record to show that the original applicant was cultivating the land as a, tenant

6. Mr. Alva, learned Counsel submits that indeed the petitioner was served with a notice and she has signed the notice with an endorsement that her father is residing elsewhere giving an address. He submits that if the contention of the petitioner is accepted, the endorsement itself is incorrect and false in as much as, by that time, her father had died. Hence, he submits that the said fact is withheld by the petitioner. Hence, it amounts to misrepresentation as well as fraud. On merits he submit that a statement was made by the petitioner father before the Land Reforms Appellate Authority wherein additional evidence was adduced indicating that the original applicant was cultivating the land as a tenant.

7. I have perused the papers as well as the original recorded Apparently, the order sheet discloses that notices were issued to all the parties and they were represented by their advocate. It is no doubt true that some imp leading application were filed by some persons indicating that they are required to be heard in the matter but however, their applications have been rejected. Nevertheless, the petitioner has been issued with a notice which is signed by bar

indicating that her lather has been residing elsewhere. The endorsement is dated 2005 and if the petitioner"s say is to be accepted, he was not alive by then.

8. Hence I am of the view that knowing fully well that her father had died she tried to mislead and misrepresent the proceedings before the Tribunal indicating that he was residing elsewhere. Indeed, the cause title of the Tribunal would clearly indicate that Ratnakar Bhavani Rao, having died, he is represented by has legal heir. Incidentally, it happens to be the petitioner. Hence, I am of the view that the petitioner was served with a notice, but however has chosen not to participate in the proceeding. On merits, it is to be noticed that the petitioner father had appeared before the Land Reforms Appellate Authority and during cross examination, he has admitted tenancy which would read as under:

9. A perusal of the statement made by the father of petitioner before the Appellate Authority clearly indicates that the original applicant Vasudeva Rao was cultivating the land as a tenant The Tribunal has also bestowed its attention on the statements as well mm the documents I am of the view that the impugned order does not warrant interference, both on the question of violation of principles of natural justice as well as on merits. Having said so, writ petition does not merit consideration, stands rejected. Costs are quantified at Rs.5,000/-.

Mr. Shashidhar S. Karamadi, learned HCGP is permitted to file memo of appearance within four weeks from today.