

(2018) 02 KAR CK 0025
In the Karnataka High Court
Case No : 271 of 2017

THE STATE OF KARNATAKA & ANR

APPELLANT

Vs

MR.S.N.SINHA

RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

Citation : (2018) 02 KAR CK 0025

Hon'ble Judges : Ravi Malimath, K.Somashekar

Bench : Division Bench

Advocate : VASANTH V.FERNANDES, AJESH KUMAR S.

Final Decision : Allowed

Judgement

1. This Review Petition is filed by the appellants in Writ Appeal No.4916 of 2015 seeking to review the order dated 8th August, 2016. In terms of

the said order, the Division Bench held that the learned Single Judge did not act illegally or without any jurisdiction in allowing the Writ Petition.

Hence, the present Review Petition.

2. The learned High Court Government Pleader has filed a memo along with various documents. Objections are also filed by the respondents. The

plea of the respondents herein namely, the writ petitioners before the learned Single Judge, was to quash the Endorsement issued by the Deputy

Commissioner and to declare that the conversion of his land is deemed to have been granted. The learned Single Judge on considering the

provisions of the applicable law, quashed the said Endorsement and declared that the permission sought for by the writ petitioner is deemed to

have been granted, under Section 95 of the Karnataka Land Revenue Act and on appeal being filed by the respondents-State, the Division Bench

held that there is no illegality committed by the learned Single Judge or that his order is without jurisdiction.

3. The Review petitioner contends that the specific case made out by them before the learned Single Judge was not considered. Since there is no reference at all, to the case of the respondent-State, therefore there is an error in the order under review in holding that there is no illegality.

4. (a) The same is being objected to by the respondents to contend that the case of the respondents was considered by the learned Single Judge

and the learned Single Judge on interpreting the law, has rightly held that the Endorsement was without jurisdiction. In support of his contentions he

relies on the Judgment of the learned Single Judge of this Court in writ petition No.64990 of 2009 in the case of NAGANGOUDA PATIL vs.

THE DEPUTY COMMISSIONER, TOWN PLANNING AUTHORITY, REPRESENTED BY ITS ASSISTANT DIRECTOR AND THE

SECRETARY, GRAM PANCHAYATH disposed off on 5-12-2013 to contend that the said conditions therein could not be imposed by the

respondents. On considering the said Judgment, we are of the view that the same is not applicable to the case on hand. Therein a condition was

imposed beyond what was stipulated under the concerned Karnataka Town and Country Planning Act. Therefore, the said condition was

quashed, as being imposed beyond Statute.

(b) Further reliance is placed on the Judgment dated 25-9-2014 in writ petition No.42743 of 2012 and connected cases (Smt.SHANTHA

MARY AND OTHERS vs. STATE OF KARNATAKA AND OTHERS) with reference to para-35 to contend that a review petition cannot be

ground to argue the matter on merits. That the error must be apparent on the face of the record. We apply the said Judgment while considering this

Review Petition.

(c) The next Judgment relied upon is in the case of MOHINDER SINGH GILL AND ANOTHER vs. THE CHIEF ELECTION

COMMISSIONER, NEW DELHI AND OTHERS reported in (1978) 1 SCC 405 with reference to para-8 wherein it is enunciated that the

validity of the impugned order must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an

affidavit or otherwise. We respectfully, agree and apply the principles to this case.

(d) While considering the objections, we are of the considered view that none of the contentions urged by the Review petitioners before the

learned Single Judge was considered by him. The reference made therein, is only to the plea of the petitioners and the position in law. It is on this

ground that the State thought it fit to file a writ appeal. In the writ appeal it was pleaded that particulars sought for was not furnished by the writ

petitioners and therefore the conversion was not granted. However, the order was affirmed by the Division Bench holding that the learned Single

Judge did not act illegally or without jurisdiction.

5. We are of the considered view, that nonconsideration of the case of the review petitioner by the Division Bench, is an error apparent on the face

of the record. The specific plea by the State is that particulars are required by it, in order to decide whether the conversion can be granted or not

or is within the framework of law. Even the learned Single Judge did not refer to the contentions of the State. Following Shantha Mary's case we

do not intend to go into the merits of the case. The scope of a review petition is well defined. Nonconsideration of a plea, is an error apparent on

the face of the record. Therefore, in our considered view, there is an error apparent on the face of the record.

6. For the aforesaid reasons, the petition is allowed. The order dated 8-8-2016 passed in writ appeal No.4916 of 2015 is reviewed and recalled.

Writ appeal is restored to file.