

(1998) 08 KAR CK 0010

In the Karnataka High Court

Case No : Civil Petition No's. 455 and 456 of 1998 in Writ Petition No. 23113 of 1996 connected with Writ Petition No. 23114 of 1996

T.T. Narayana and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-08-1998

Acts Referred:

Citation : (1999) 5 KarLJ 335

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Sri Gode Nagaraja, for the Appellant; Smt. M.R. Shanthakumari, High Court Government Pleader, for the Respondent

Judgement

1. These civil petitions are directed against a final judgment and order in W.P. Nos. 23113 of 1996 and 23114 of 1996 delivered by me on 10-6-1998. There is a class of litigants who are assisted by professionals who subscribe to such mischief, who, after a final order is passed change the lawyer and file review petitions, recalling petitions and another class of petitions filed under the heading of "for being spoken to". This is only a ruse to engage another lawyer and reargue the case that has been finally disposed off. This has become almost a regular practice in certain quarters and it is necessary that this Court puts a stop to these malpractices. I do concede that there is a small category of cases where a review application may be maintainable and the law is very well-defined insofar as if material of crucial importance has escaped the attention of the Court for whatever reason and if an important aspect of fact or law that would alter the decision in the case has escaped the attention of the Court, it is in these few instances only that the law permits a review petition. The law is well-defined that in all other instances a party who is aggrieved by a decision has to get it set aside by a superior Court. The devious device of changing the lawyer and filing one of these petitions is regularly resorted to and the new lawyer comes before the Court and starts rearguing the case on the ground that he did not know what happened earlier. Not only does the law permit it but this involves waste of

judicial time and it is a heavy burden on the Judge who is required to not only review the record, read his own earlier order and then try to find out the justification for the subsequent petition. Despite this being pointed out, there are still a small category of Advocates who insist on filing petitions of this type and I think the time has come when this Court, in no uncertain terms, will have to firmly remind them that this cannot be done.

2. The present petitions provide a classic instant of such mischief. The State of Karnataka has challenged the grant of the occupancy rights and the ground on which the challenge is based is very substantial. It is pointed out that the lands were privileged jagir bane inam lands which were unassessed and uncultivated. They were given in recognition of services of the math and the petition clearly mentions that the lands were uncultivable. After the abolition of the Inams, the lands are vested in the Government despite which applications were made and occupancy rights have been granted. Having regard to this position, after hearing the learned Advocates the order passed by the Tribunal was set aside and the cases were remanded to the Tribunal. In the circumstances of the case, I would have been justified in directing the Government to resume the lands and not to permit the party to continue in occupation until the Tribunal re-decides the case. However, since it was pointed out that the respondents were in occupation for a long time I specifically directed that this position is not to be disturbed and that the Tribunal must issue notice, hear the parties and re-decide the case. The additional reason for doing this is because I desired to keep the matter absolutely open and not to prejudice the original applicants. That direction was issued on 10th June, 1998 and the petitions were disposed off. The respondents 2, 3 and 4 were represented by their learned Advocates at that time.

3. Despite this position, on 16-7-1998 a detailed civil petition has been filed in both cases and the learned Advocate has insisted on rearguing the case on merits despite my pointing out to him several times that it should not be done and it cannot be done. He still insisted that the Court must hear him on facts and on law which I have done. Considerable amount of the Court's time has been used up on this worthless exercise and it is most unfortunate because the only forum to assess the record and decide the issues is the Tribunal and it is well settled law that in this class of cases, this Court in exercise of its extraordinary jurisdiction cannot and will not undertake such an exercise.

4. I do not propose to recount the various submissions that have been canvassed because it is not permissible to agitate these points here. The order of remand is fully and perfectly justified. The civil petitions are devoid of substance and therefore stand dismissed.

5. This Court needs to deprecate this sort of practices in the strongest terms and it is only hoped that such tactics will not continue in future. I have also pointed out to the petitioners' learned Advocate that if these sort of things are done that the Court will be left with no option except to award exemplary costs. This did not make any difference because he still continued to argue the petition both in

the morning and in the afternoon. Under these circumstances, the two civil petitions are dismissed with exemplary costs quantified at Rs. 1,00/- in each petition. The costs shall be paid to the Advocates' Welfare Fund within an outer limit of four weeks from today. The earlier order passed on 10th June, 1998 is maintained.