
(1979) 07 KAR CK 0027
In the Karnataka High Court
Case No : WP 11647/79

Vittal

APPELLANT

Vs

Land Tribunal, Supa, and Others

RESPONDENT

Date of Decision : 31-07-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) 2 KarLJ 382

Hon'ble Judges : Venkatachaliah, J

Judgement

The point which arises for my consideration and decision relates to payment of court fee on a petition filed under Article 226 of the Constitution of India It arises thus:

Respondents-3, 4 and 5 had made three applications under Section 48-A (1) of the Karnataka Land Reforms Act, 1961 (to be hereinafter referred to as the Land Reforms Act), to the Land Tribunal, Supa a Tribunal constituted under the Act, each of them seeking that he may be registered as occupant in respect of the three parcels of lands in the ownership of the petitioner. The three applications filed by respite. 3 4 and 5, though has been numbered separately, were clubbed together by the Tribunal for being disposed of on a common enquiry as the applications contained rival claims for grant of occupancy of the same parcels of lands in the ownership of the petitioner. In the course of the common enquiry held by the Tribunal in respect of the said three applications, respondents-3, 4 and 5 made statements restricting the claim made by each one of them for grant of occupancy to one of the three parcels of lands referred to above. The Land Tribunal concluded the common enquiry by making a common order dated 17.1.1979 determining that each of respondents-3, 4 and 5 was entitled to be registered as an occupant of one of the said three parcels of lands. The owner of the lands has filed the petition under Article 226 of the Constitution, and has sought the quashing of the said order of the Land Tribunal by issue of a writ of certiorari. According to him, the proceedings of the Land Tribunal-a statutory Tribunal-culminating in the order, the quashing of which is sought in the petition,

are since vitiated by illegalities resulting in substantial failure of justice, he has become entitled to redressal of the injury suffered by him by invoking the powers of this Court under Article 226(1) (c) of the Constitution.

As the office of the High Court has refused to register the petition of the petitioner filed under Article 226 of the Constitution on the ground of objection that sufficient court fee payable under the Karnataka Court Fees and Suits Valuation Act, 1958, (to be referred to hereinafter as the Court Fees Act), has not been paid, the petition is posted before me for deciding the point as to whether the court fee of Rs. 100/- already paid by the petitioner is sufficient or insufficient.

I shall now consider the said point bearing in mind the arguments advanced by the learned High Court Government Pleader in support of the ground of objection raised by the office of the High Court and by the learned counsel for the petitioner against the ground of objection.

The note of the High Court Office reads thus:

"This W.P. was returned to the Advocate for the petitioner to pay deficit court fee of Rs. 200/- as the petitioner has sought relief against three orders passed by the Land Tribunal.

Advocate for the petitioner has re-presented the papers stating that court fee paid is sufficient. Therefore, the matter may be posted before the Court for orders regarding office objections.

It is respectfully submitted that it is apparent from the records that though a common order was passed by the Land Tribunal, the cases were filed separately by different applicants, though against the same respondent. The petitioner is challenging the said common order. The order pertains to three applications filed by three different applicants before the Land Tribunal. Even three different numbers are given to the applications filed by the persons. Hence, the petitioner has got separate and distinct interest in the subject matter.

In W.P. 5209/79 this Court has upheld office objection regarding deficit court fee under similar circumstances.

Post this case before Court for orders regarding deficit court fee of Rs. 200/-."

From the said note it becomes obvious that two reasons which have mode the High Court office demand payment of deficit court fee. of Rs. 200/- are the following: (i) that the common order of the Land Tribunal which is challenged in the writ petition by the petitioner since pertains to three applications made before the Land Tribunal by three different persons the petitioner must be considered to have three separate and distinct interests in the lands-the subject matter of the common order challenged in the writ petition, and (ii) that in W.P. 5209/79 this Court has taken the view that when such common order is challenged, court fee is payable having regard to the number of applications on

which the Land Tribunal has made the common order. I may at the outset state that I got the file relating to W.P. 5209/79 from the office of the High Court to examine whether the point that is raised by the High Court office relating to court fee is concluded by the order said to have been made therein. But, from the order made therein, I found that only time is granted for payment of additional court fee as the learned counsel for the petitioner had requested for such time. Thus, the order made in W.P. 5209/79 merely relates to grant of time for payment of deficit court fee volunteered to be paid by the learned Counsel for the petitioner therein and is not a decision of this Court on merit with regard to liability of a person to pay court fee on a writ petition wherein a common order of the Land Tribunal is challenged in the circumstances similar to those found in the present case, Thus, the second reason put forward by the office of the High Court for demanding payment of additional court fee cannot, in my view, be sustained.

Hence, what remains for consideration is the merit of the aforementioned first reason put forward by the office of the High Court as the ground for claiming payment of additional court fee on the petition.

That the common order which is under challenge in this writ petition constitutes culminating part of the proceeding of a statutory Tribunal and as such, it is open to a person who is aggrieved by such order, to seek redressal under Art. 226(1) (c) of the Constitution, is not disputed. The contention put forward by the learned High Court Government Pleader in sustaining the first objection raised by the High Court office is that when three separate applications made by three different persons claiming reliefs before the Land Tribunal are the subject matter of the common order challenged in the writ petition, it must be held that the petitioner is challenging three orders made on three applications, the causes of action for each such application being separate and distinct. He explained that the three applicants in the three applications must be considered to have three different causes of action for the claims made by them before the Land Tribunal in respect of three parcels of lands, though the ownership of the three parcels of lands was that of the petitioner. According to him, when a common order is made in a common proceeding before the L.T. on such applications, it is not the injury suffered by a petr. in relation to the subject matter of the common order or the common proceeding the legality of which is challenged in the writ petition, that furnishes the cause of action for the writ petition, but the causes of action which gave we applicants cause for the applications made before the Land Tribunal and as such court fee was payable on the writ petition filed against the common order having regard to the, causes of action in the applications which formed the basis for the common proceeding or the common order of the Land Tribunal. In other words, though the petitioner alone is aggrieved in relation to the subject-matter of the common order made by the Land tribunal in respect of several applications made before it for purposes of court fee, the single writ petition filed by the petitioner has to be treated as three petitions filed in one because, the common order relates to three applications containing three different causes of

action made by three persons. I do not consider that there is any merit in the arguments advanced by the learned High Court Government Pleader in his endeavour to sustain the objection of the High Court Office, for reasons to be stated hereinafter. The provision of the Court Fee Act which requires payment of court fee on a petition under Article 226 of the Constitution is in Schedule II thereto and reads as follows: Article Particulars Proper fee

11(s) Petition to the High, Court under Art. 226 of the Constitution for a writ other than the writ of Habeas Corpus or a petition under Art. 227 of the Constitution. one hundred rupees

A plain reading of the said provision, in my view, makes it obvious that a writ petition filed under Art. 226 of the Constitution seeking issue of a writ of certiorari is chargeable with a court fee of Rs. 100/-. It cannot be and it is not disputed that a person who is aggrieved in relation to the subject-matter of a proceeding including the order made, therein, of a statutory Tribunal, can approach the High Court with a petition under Art. 226(1)(c) of the Constitution for issue of a writ of certiorari to quash such proceeding including the order made therein. The contention of the, learned High Court Government Pleader that a petition filed by persons aggrieved by an illegal proceeding including the order therein of a Tribunal for quashing it by issue of a writ, would be chargeable with court fee payable according to the number of applications which formed the basis for the proceeding or order of the Tribunal, cannot be countenanced, particularly when the aforesaid provision of the Court Fees Act, when read, does not admit the sustenance of such contention. No doubt, the learned High Court Government Pleader made an attempt to derive support for his contention from the provisions contained in sub-sections (3) and (4) of S. 6 of the Court Fees Act, the relevant portions of which read thus,

"6. (3) Where a suit embraces two or more distinct and different causes of action and separate reliefs are sought based on them, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees with which plaints would be chargeable under this Act if separate suits were instituted in respect of the several causes of action.

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(4) The provisions of this section shall apply mutatis mutandi. to memoranda of appeals applications, petitions and written statements."

According to him, a petition filed under Art. 226 of the Constitution, by reason of the provision contained in sub-section (4) is chargeable as a plaint under sub-section (3). He submitted that when for separate suits filed in respect of several causes of action, aggregate of the fees is payable in respect of the plaints in all suits, the fee payable on a writ petition by the petitioner also must be computed according to the number of applications filed before the Tribunal resulting in the order under challenge, because, those applications constituted independent causes of action for the reliefs sought against the petitioner. I consider that

considerations governing payment of court fee on separate plaints as contained in the said provisions can have no application to court fee chargeable for a writ petition under sub-article (s) of Article 11 in Schedule II to the Court Fees Act. When the plain language of the provision in the Court Fees Act relating to payment of court fee on a petition filed under Art. 226 of the Constitution seeking issue of certain writs does not give any scope whatsoever for applying the considerations contained in sub-sections (3) and (4) of S. 6 of the Court Fees Act as required to be applied by the learned High Court Govt. Pleader, I do not think that it would be either just or reasonable to do so. When it is settled law that the Court Fees Act, being a taxing statute, its provisions have to be construed strictly in favour of the subject-litigant and further when in a taxing statute the determinative factor for tax liability depends upon the form and not the substance of the transaction, I consider it difficult to accept the contention of the learned High Court Government Pleader put forth by invoking the application of the provisions contained in sub-sections (3) and (4) of Section 6 of the Court Fees Act.

This apart, when I questioned the learned High Court Government Pleader specifically as to whether the cause of action for the writ petition of the petitioner is the injury suffered by him in relation to the subject-matter of the common order under challenge or the causes of action in the applications made before the Land Tribunal which have formed the basis for the impugned order, he had to concede and he rightly conceded, that it is only the injury suffered by the petitioner in respect of the subject matter of the common order which is the cause of action for the petition and not the causes of action for the applications forming the basis for making the common order by the Tribunal. Thus, when the cause of action for the writ petition is the injury suffered by the petitioner in relation to the subject matter of the proceeding or the order complained of by the petitioner, the learned High Court Government Pleader's arguments based on the provisions contained in sub-sections (3) & (4) of Section 6 of the Court Fees Act, cannot in my view, be of any assistance to him.

The objection of the office of the High Court raised in the instant case appears to have emanated by reason of not clearly understanding the distinction between individual right of a person in the subject matter of the common order under challenge in the writ petition, namely, the lands, and the rights, of several persons having separate and distinct rights in relation to the same subject-matter-the lands concerned in the common order when it is challenged by them-as becomes apparent from the aforesaid note of the office of the High Court. It is settled law that the writ jurisdiction of the High Court under the Constitution is a special jurisdiction which can be invoked for the enforcement of individual rights or redressal of any injury caused to a person in respect of his individual right. It is for this very reason that one writ petition cannot be maintained against a common proceeding or order when filed by number of persons having separate and distinct interests in the subject matter of the common proceeding or order of a statutory Tribunal. In fact, but for the provision contained in Rule 7 of the Writ

Proceedings Rules, 1977, it would not have been possible for several persons having separate and distinct interests in the subject matter of controversy involving common questions of law and facts, to file a common writ petition even before this Court. As filing of such common petition by persons having separate, and distinct interests in the subject matter of controversy is permitted under the said rule, it is made clear in the said rule itself that such a common petition shall be treated as equivalent to such number of writ petitions as there are number of petitioners having separate and distinct interests and the court fee payable on such petition shall be the same as payable on the number of such writ petitions when filed separately.

When two or more persons file a writ petition questioning the validity of a common proceeding or order of a statutory Tribunal, whether their interests are separate and distinct in the subject-matter of the proceeding or order, may have to be looked into because, a single writ petition filed by them by payment of court fee payable on one writ petition would be maintainable by reason of the fact the petitioner's complaint is that in the subject-matter of the common proceeding or order questioned and not otherwise. On the other hand, when a single writ petition would be maintainable by reason of the fact the petitioner's complaint is that his individual interest, in the subject matter of the common proceeding or common order under challenge is adversely affected, the question of treating such petition as a common petition can never arise. Therefore, while examining the question whether a single writ petition is maintainable or not, what the Court is concerned with is whether the interest of the writ petitioners (where there are more than one) is common and joint so as to enable them to maintain a single writ petition or whether their interest in the subject matter of the proceeding or order under challenge are separate and distinct as would require them to file separate writ petitions. If it is found, to be a case where they are required to file separate writ petitions, but have filed a single writ petition, then a single writ petition itself can be treated as one in many depending upon the "number of petitioners and their separate and distinct interests in the subject matter of the common proceeding or common order under challenge. The mere fact that filing of several applications for grant of occupancy in respect of several lands of the writ petitioner, necessitating the holding of a common proceeding or the making of the common order by the Tribunal, cannot in my view, have the effect of depriving such writ petitioner the right to seek redressal against such common proceeding or order by a petition filed under Art. 226 (1) (c) of the Constitution urging that his individual rights in the lands, the subject matter of the common proceeding or order under challenge, is adversely affected.

Let me now take up the common order which is the subject matter of the present writ petition as the basis to illustrate the point. Respts. 3, 4 and 5 in their applications filed under S. 48-A (1) of the Land Reforms Act before the Land Tribunal, had prayed that each one of them may be determined as the person entitled to be registered as an occupant in respect of all the three parcels of lands in the ownership of the petitioner. The Tribunal by making the common

order has determined that each one of the said three respondents is entitled to be registered as occupant in respect of one parcel of land only out of the three parcels of lands and not the other two lands. If the respondents had sought for the quashing of the entire common order by a writ petition, then it would have become necessary to hold that though all of them might have been aggrieved by the common order, the interest of each one of them in relation to the subject matter of the common order in so far as it held against each one of them being separate and distinct, each one of them has to file a separate writ petition. It would be so, for the reason that each one of them has to seek the quashing of the common order in so far as the separate and distinct interest claimed by him in the lands concerned in the common order is negated. Again, if the claims in the applications of all the three of them had been rejected by the common order of the Tribunal, as one person cannot be considered to be aggrieved against the rejection of the claim for separate and distinct interest claimed in respect of the lands concerned in the common order, each one of them has to file separate writ petitions for quashing the common order in so far as it adversely affects his separate and distinct interest. For instance, if all the three of them had sought for registering them as occupants jointly alleging that they are jointly interested in the land as tenants and if their applications had been rejected, their interest in the land, being common and joint, it would be open to them to challenge the common order of the Tribunal by one petition. But when it comes to the question of the owner of all the three parcels of lands, it is his individual right or interest in respect of all the lands that is involved and as such when the common order adversely affects his individual right in all the lands, it will be open to him to maintain a single writ petition.

From the foregoing discussion, the points which emerge are:

- (i) When a writ petition is filed against a common proceeding or a common order of the Land Tribunal by a person who complains that his individual right in respect of the lands concerned in the proceeding or order has been adversely affected, he would be entitled to file a single writ petition, even though such common order or common proceeding is based on applications of several persons.
- (ii) When two or more persons file writ petitions challenging a common proceeding or common order of the Land Tribunal alleging that their common and joint interests are, adversely affected, it would be open to them to file one single writ petition, even though they had filed separate applications claiming registration of occupancy in their joint names for the particular lands and all the applications have been rejected by the common order.
- (iii) When two or more persons file writ petitions challenging a common proceeding or common order of the L.T. held or made on the applications of such persons claiming grant of occupancy in respect of lands passing the claim in each application on the applicant's separate and distinct interest in the land or lands, then each one of them has to file a separate writ petition to the extent his separate and distinct interest claimed in the land or lands is adversely affected

by the common order.

In the writ petition on hand, the petitioner has since challenged the validity of the common order of the Land Tribunal complaining that his individual right in the lands concerned in the common order is adversely affected, it is open to him to maintain a single writ petition.

Thus, when a single writ petition is maintainable by the petitioner the office objection that court fee is payable treating the writ petitions as three writ petitions in one cannot be upheld Consequently, I direct the office to register the writ petition and post the same for preliminary hearing.