

(1997) 09 KAR CK 0082

In the Karnataka High Court

Case No : Writ Petition No. 26368 of 1991

Yallappa (deceased) by L.Rs and Others

APPELLANT

Vs

Murahari (deceased) by L.Rs and Others

RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Citation : (1997) ILR (Kar) 3207 : (1998) 5 KarLJ 673

Hon'ble Judges : M.B. Vishwanath, J

Bench : Single Bench

Advocate : Sri F.V. Patil, for the Appellant; Smt Shantha W. Joshi and Sri S.V. Jagannath, Government Advocate, for the Respondent

Judgement

1. Heard the learned Counsel for the petitioners, the learned Counsel for the contesting respondents and Mr. S.V. Jagannath, learned High Court Government Advocate, for respondents 4 and 5.

2. In this writ petition the order passed by the Land Tribunal, Haven, dated 24-12-1988 in Case No. TEN. OCP. SR. 32, Sangoor rejecting Form No. 7 filed by the petitioner (since deceased by his L, Rs) claiming occupancy rights in respect of four lands viz.,

Name of village

R.S. No.

Extent

Sangoor village

40

22-31-0

Kulenur village

21/1

10-11-0

Sangoor village

39

24-29

Devihosur village

281/1

14-19-0

has been challenged.

3. Aggrieved by the above order, the petitioner-tenant filed appeal before the Additional Land Reforms Appellate Authority, Haven, in L.R.A. No. 33 of 1989. When the matter was pending before the Additional Land Reforms Appellate Authority, Haveri, the Appellate Authority came to be abolished. Consequently the petitioner filed Civil Petition in No. 75 of 1990 which has been converted into the present writ petition by an order of this Court.

4. Respondent 1-Murahari (since deceased by his L.Rs), respondent 2-Smt. Janakibai (since deceased by her L.Rs) and respondent 3-Smt. Savitribai have claimed that they are the owners of the lands in question and petitioners are not the tenants.

5. The owners were called upon by the Land Tribunal to file written statement (Leki Javab). After the owners filed their written statement, the Land Tribunal directed the petitioner, to cross-examine them. Accordingly the Counsel for the petitioner cross-examined them.

6. The procedure adopted by the Land Tribunal suffers from illegality, in that there could not have been cross-examination on the written statement which can be styled as objections. If at all, the parties should have been examined-in-chief and then there should have been cross-examination.

7. It is vehemently argued by the learned Counsel for the contesting respondents that petitioners cannot now turn round and say that the procedure adopted by the Land Tribunal is wrong. This argument cannot be accepted, because it appears to me that the petitioner has been compelled to cross-examine them. The Land Tribunal should have adopted the correct procedure.

8. Secondly another important aspect that should be noticed here is that the contesting respondents have not been administered oath when they were allowed to be cross-examined. This procedure is also illegal.

9. The learned Counsel for the contesting respondents has relied on a decision of this Court in B.N. Seetharamaiah and Others v Land Tribunal, Virajpet and Others, wherein it has been laid down by this Court that if the Court is satisfied

that no prejudice whatsoever is caused to the parties, even though the summary of the evidence has not been recorded by the Chairman, the Court may decline to interfere, there being no failure of justice. Further, it has been laid down that the question as to whether the High Court should interfere with the order of the Land Tribunal must be guided by considerations of prejudice and likelihood of miscarriage of justice.

10. The authority relied on by the learned Counsel for the petitioner is not applicable to the facts of the present case because the procedure adopted by the Land Tribunal in not administering oath and recording the evidence is prima facie illegal.

11. For the aforesaid reasons the writ petition is allowed and the impugned order dated 24-12-1988 is quashed.

12. The matter is remanded to the Land Tribunal, Haven, with a direction to issue notices to all the parties and proceed to dispose off the matter according to law by holding further enquiry, if necessary.

13. The Land Tribunal is directed to dispose off the matter as expedition sly as possible.

14. Communicate this order along with the records to the Land Tribunal, Haveri.

15. The writ petition is allowed and the matter remanded as stated above. No costs.

Sri S.V. Jagannath, High Court Government Advocate is permitted to file the memo of appearance within eight-weeks.