

Mr. Narayanappa Vs. The Assistant Commissioner

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Court : Karnataka

Decided On : Oct-04-2016

Judge : A.N.Venugopala Gowda

Appeal No. : WP 43754/2016

Appellant : Mr. Narayanappa

Respondent : The Assistant Commissioner

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE4H DAY OF OCTOBER, 2016 B E F O R E THE HONBLE MR. JUSTICE A.N. VENUGOPALA GOWDA WRIT PETITION NOS.43754-43755/2016 (SC/ST) BETWEEN:

1. Mr. NARAYANAPPA AGE:

60. YEARS S/O. LATE VYKUNTA BOYE.

2. Mr. MOHANBABU AGE:

27. YEARS S/O. Mr. NARAYANAPPA. BOTH ARE R/O. SADAHALLI VILLAGE, KUNDANA HOBLI, DEVANAHALLI TALUK, BANGALORE RURAL DISTRICT-562 110. ... PETITIONERS (BY SRI C.V. MANJUNATHA, ADV.) AND:

1. THE ASSISTANT COMMISSIONER DODDABALLAPURA SUB-DIVISION, DODDABALLAPURA TALUK, BANGALORE RURAL DISTRICT-561 203. 2 Mrs. ASHA J.

COLACO AGE:

48. YEARS W/O. Mr. JOHN R. COLACO. Mr. F.B.L.COLACO SINCE DECEASED, BY HIS LEGAL HEIR Mr. RONALD COLACO, AGE:

59. YEARS, S/O. LATE F.B.L. COLACO. Mr. JOHN ROBERT COLACO AGE:

54. YEARS, S/O. LATE F.B.L. COLACO. Mrs. JUDITH L. COLACO AGE:

53. YEARS, W/O. Mr. RONALD COLACO.

2. 3.

4.

5. RESPONDENT NOS.2 TO5ARE R/O. HOLLYWOOD TOWN, SADAHALLI POST, DEVANAHALLI TALUK, BANGALORE RURAL DISTRICT - 562 110 ... RESPONDENTS (BY SRI D. ASWATHAPPA, AGA FOR R1; SRI RAVI RAJ B.A., ADV.FOR C/R2-5) THESE PETITIONS ARE FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE

ORDER

DATED1507.2016 PASSED BY THE ASSISTANT COMMISSIONER, SUB-DIVISION, DODDABALLAPUR, BANGALORE RURAL DISTRICT, VIDE ANNEXURE-M. DODDABALLAPURA THESE PETITIONS COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

3.

ORDER

These writ petitions were filed to quash an order dated 15.07.2016 passed by the 1st respondent rejecting the claim of the petitioners for declaring the alienation of

the property in dispute as null and void and for its consequential resumption and restoration to them under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short, 'the Act').

2. According to the petitioners the land in dispute was acquired by their predecessors by way of a grant on 20.12.1971 and the saguvali chit was issued in favour of their father and his brother on 28.12.1971. The property having been subsequently alienated and the grantees being members belonging to scheduled caste community, an Application was filed before the 1st respondent to declare the sale transaction as invalid, because it was against the non-alienation clause and also the provisions of 4 the Act. The 1st respondent having passed an order of rejection vide Annexure- M, these petitions were filed.

3. Though an appeal has been provided under S.5-A (1-A) of the Act, without availing the said remedy, these writ petitions were filed on account of the decision in the case of MUNISWAMY Vs. STATE OF KARNATAKA AND OTHERS, reported in (1998) 1 Kar. L.J.

607 : AIR 1998 KANT281 wherein, it was held that only alienee can be aggrieved person if he is ordered to handover possession of the granted land purchased by him and only such alienee has been given right to appeal to the Deputy Commissioner and that the remedy available to grantee whose claim for restoration has been rejected is to prefer a petition under Article 226 of the Constitution.

4. S.5-A of the Act was amended as per Karnataka Act No.8 of 1992. By that amendment, sub- Section (1-A) was inserted by the Legislature. Taking note of the said amendment, the Division Bench in the case of THULUVANUR VENKATARAMANNA Vs. ASSISTANT5COMMISSIONER, CHIKKABALLAPUR AND ANOTHER, reported in 1994 (3) Kar.L.J.

76 (DB), has held that any order passed under S.5(1-A) by the Asst. Commissioner after enquiry holding that the transfer of the granted is not null and void is now appealable under S.5-A (1-A) to the Deputy Commissioner. It was

clarified that whatever, therefore, was the former position, now after the amendment Act No.8 of 1992, Legislature has clearly provided the right of appeal against the orders of the original authority - Assistant Commissioner.

5. The said amendment having not been noticed and perhaps, the Judgment of the Division Bench in THULUVANUR VENKATARAMANNAs case having also not been brought to the notice of the learned Single Judge, MUNISWAMYs case has been decided.

6. It is trite that where a case or statute had not been brought to the Courts attention and the Court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered per incuriam.

7. In the case of GOVT. OF A.P. Vs. B. SATYANRAYANA RAO, reported in (2000) 4 SCC262 Apex Court has held as follows: 8 The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. 8. In the case of SUBHASH CHANDRA Vs. DELHI SUBORDINATE SERVICES SELECTION BOARD, (2009) 15 SCC458 Apex Court has held as follows: 98. It is also well known that a decision rendered in ignorance of a binding precedent and / or in ignorance of a constitutional provision, would be held to have been rendered per incuriam. 9. The decision in THULUVANUR VENKATARAMANNAs case would therefore be clearly applicable to the facts of the present case. Though the said decision is earlier to the decision in MUNISWAMYs case, but the decision in THULUVANUR VENKATARAMANNAs case is of the Division Bench, which this Bench must follow in view of the Full Bench decision in GOVINDANAIAK G. KALAGHATIGI Vs. WEST PATENT PRESS CO. LTD., AIR 1980 KAR92(FB), where, it has been held, that if two decisions of a Court on a question of law cannot be reconciled and one of them is by a Larger Bench while the other is by a smaller Bench, decision of the Larger Bench whether it is earlier or later in point of time should be followed by the High Court and other Courts. Since the decision in the case of MUNISWAMY is by a Single Judge Bench and the decision in the case of THULUVANUR VENKATARAMANNA is by a Division Bench, this Bench has to follow the decision

of the Division Bench. As statutory remedy of appeal as against the impugned order as at Annexure-M is available to the petitioners, these writ petitions are disposed of, permitting the petitioners to avail the statutory remedy which is also efficacious, as the Appellate Authority can decide the case both on questions of facts and law. The certified copies produced in these writ petitions be returned to the learned advocate for the petitioners. If the Appellate Authority is approached for relief on or before 02.11.2016, the appeal shall be decided on merit without going into the question of limitation, as the petitioners have approached this Court bona fide i.e., with reference to the decision rendered in MUNISWAMYs case, which is per incuriam and not good law in view of the decision in THULUVANUR VENKATARAMANNAs case. sac* Sd/- JUDGE

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