SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sachindra vs State of Karnataka

Sachindra vs State of Karnataka

SooperKanoon Citation : sooperkanoon.com/1650923

Court : Karnataka

Decided On : Feb-28-2025

Judge : Sachin Shankar Magadum

Appeal No. : WP/17923/2016

Appellant : Sachindra

Respondent : State of Karnataka

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2025 BEFORE THE HONBLE MR. JUSTICE SACHIN SHANKAR MAGADUM WRIT PETITION NO. 17923 OF 2016 (KLR-REG) BETWEEN:

1. SACHINDRA

S/O KRISHNAPPA POOJARY NARIMOGRU VILALGE & POST PUTTUR TALUK, D.K. DISTRICT-574 201. REPRESENTED BY HIS GPA HOLDER N. NARAYANA S/O KRISHNAPPA POOJARY AGED ABOUT 59 YEARS ...PETITIONER (BY SRI. K. SRIHARI, ADVOCATE) AND:

1. STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY TO REVENUE DEPARTMENT VIDHANA SOUDHA, AMBEDKAR VEEDHI BENGALURU-560 001.

2. THE TAHSILDAR PUTTUR, D.K. DISTRICT-574 201.

3. THE ASSISTANT COMMISSIONER PUTTUR, D.K.-574 201.

4. THE DEPUTY COMMISSIONER D.K. DISTRICT, MANGALORE-575 001.

5. SHESHAPPA GOWDA S/O PAKEERA GOWDA MAJOR

6. DEVA KUMAR SHETTY S/O DHOOMANNA SHETTY SINCE DEAD BY LRS 6(A) SANDHYARANI D/O DEVAKUMAR SHETTY MAJOR 6(B) VEERENDRA S/O DEVAKUMAR SHETTY MAJOR R5, R6(A) AND R(B) ARE RESIDING AT ARIPETE HOUSE NARIMOGRU VILLAGE & POST PUTTUR TALUK, D.K. DISTRICT-574 201. RESPONDENTS (BY SMT. B.P.RADHA, AGA FOR R1 TO R4; SRI. P.P. HEGDE, SENIOR ADVOCATE FOR SRI. GAURAV .G.K, ADVOCATE FOR R5, R6(A AND B)) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE

ORDER DATED 18.12.2015 IN R.P.NO.81/2006 ON THE FILE OF

THE KARNATAKA APPELLATE TRIBUNAL AT MS BUILDING, BENGALURU, VIDE ANNEXURE-A. THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.02.2025, THIS DAY ORDER WAS PRONOUNCED THEREIN, AS UNDER: CORAM: HONBLE MR. JUSTICE SACHIN SHANKAR MAGADUM

C.A.V. ORDER

Petitioner an ex-serviceman is assailing the order of the Karnataka Appellate Tribunal (KAT) dated 18.12.2015 passed in Revision Petition No.81/2006.

2. The facts leading to the case are as under: The subject-matter of the petition is the land bearing

Survey No.299-1AP totally measuring 1.10 acres. Petitioner contends that initially his mother Tungamma was in unauthorized occupation and later somewhere in 1970, petitioner started cultivating land unauthorisedly and has made vast agricultural developments in the said land.

3. Petitioner contends that he tendered an application seeking grant of lands. Since the authorities declined to consider his application, he again moved an application seeking assignment of lands under Karnataka

Land Grant Rules, 1969. Petitioner claims that Tahsildar rejected the application, which was challenged before the Assistant Commissioner, who remitted back the matter to Tahsildar for fresh consideration. After remand, Tahsildar passed an order of eviction vide order dated 1.2.1989. The said order was challenged before the Assistant Commissioner and Special Deputy Commissioner who declined to entertain petitioner's claim and therefore, petitioner preferred a revision before the KAT in Revision Petition No.77/1993.

4. Petitioner claims that in view of introduction of Section 94(A) under Karnataka Land Revenue Act, 1964, petitioner moved one more application seeking regularisation of his occupation of the petition land. Petitioner asserts that after securing spot inspection, the Committee recommended for grant in favour of the petitioner. Respondents 5 and 6 challenged the said

recommendation before the Assistant Commissioner contending that the petition land forms Kumki to their warga land. The Assistant Commissioner allowed the appeal and rejected petitioner's claim.

5. Petitioner challenged the order of the Assistant

Commissioner before respondent No.4/Deputy Commissioner by specifically contending that the Assistant Commissioner without issuing notice to the petitioner has reversed the recommendations made by the competent authority. Deputy Commissioner allowed the appeal and

order of the Assistant Commissioner was set aside.

6. Respondents 5 and 6 preferred a revision before the KAT in R.P.No.81/2006. The KAT has allowed the revision and now the matter is remitted back to respondent No.3/Assistant Commissioner.

7. Learned counsel for the petitioner reiterating the grounds would vehemently argue and contend that the

order impugned is not a speaking order and therefore, is

not sustainable. He would contend that a well considered

order passed by the Deputy Commissioner by adverting to

all revenue records is set aside under a misconceived notion that respondents 5 and 6 were not heard by respondent No.3/Assistant Commissioner. The KAT based on this

misconceived notion has set aside a well considered order

passed by the Deputy Commissioner and the matter is now

remitted to respondent No.3/Assistant Commissioner. Referring to the order of the Deputy Commissioner, he would contend that petitioner's possession is substantiated from the reports secured by the revenue authorities and respondents 5 and 6 are not in a position to substantiate their kumki rights over the petition lands.

8. Per contra, learned Senior Counsel appearing for respondents 5 and 6 would strongly dispute petitioner's claim. He would vehemently argue and contend that the petitioner's application seeking grant under Ex-serviceman

quota is rejected and therefore, he could not have maintained an application along with his mother asserting his unauthorized occupation when he was still serving in the Army. He would also point out that petitioner and his mother cannot

simultaneously maintain independent applications seeking regularization of same lands. Citing the

judgment and decree rendered in O.S.No.93/1987, he

would contend that petitioner's mother has suffered a decree and it is not only petitioner's mother who was injuncted from interfering with respondents' possession but even her sons were also injuncted. Reliance is placed on the decree. Therefore, he would contend that petitioner and his mother cannot assert any possessory rights over the petition lands in the light of the decree passed in O.S.No.93/87.

9. By way of a reply, learned counsel appearing for

the petitioner has now placed reliance on the judgment

rendered by the appellate Court in R.A.No.16/94. Citing appellate Court's judgment, he would contend that private

respondents cannot place reliance on the judgment

rendered in O.S.No.93/87.

10. Heard the learned counsel for the petitioner, learned Senior Counsel appearing for respondents. Perused the records.

11. The following point would arise for consideration:

"Whether the KAT erred in remitting the matter to respondent No.3/Assistant Commissioner on the ground that respondents 5 and 6 were not heard by Assistant Commissioner while deciding the appeal?"

12. Upon a careful examination of the order passed by the Karnataka Administrative Tribunal (KAT), it is evident that the Tribunal has failed to scrutinize the records

before arriving at its conclusion. The KAT has erroneously proceeded on the premise that respondents No.5 and 6 were not given an opportunity to be heard in an appeal that was pending before respondent No.3, the Assistant Commissioner. However, the records categorically establish that it was, in fact, respondents No.5 and 6 who had filed the appeal before the Assistant Commissioner, challenging the grant order that had been made in favour of the petitioner. The Assistant Commissioner, after initially issuing notices to the petitioner, later recalled the same and proceeded to adjudicate the appeal without affording the petitioner an opportunity of hearing. Consequently, the Assistant Commissioner allowed the appeal filed by respondents No.5 and 6 and set aside the grant made in favour of the petitioner, thereby acting in gross violation of the principles of natural justice. Aggrieved by this order, the petitioner preferred an appeal before respondent No.4, the Deputy Commissioner.

13. The Deputy Commissioner, after conducting an

independent and detailed examination of the records, found that the order passed by the Assistant Commissioner was unsustainable in law. The Deputy Commissioner noted that the Assistant Commissioner had recalled the notices issued to the petitioner, thereby depriving the petitioner of an opportunity to present his case. Taking into consideration the principles of natural justice, the Deputy Commissioner set aside the order of the Assistant Commissioner and restored the original grant order in favour of the petitioner. This order was based on a thorough assessment of the merits of the case and was passed in adherence to the legal framework governing such matters.

14. However, the KAT, while adjudicating the

challenge to the Deputy Commissioners order, failed to properly appreciate the records and the sequence of events. The Tribunal proceeded on an erroneous assumption that respondents No.5 and 6 were not heard before the

Assistant Commissioner, while in reality, it was the petitioner who was denied a fair hearing. The Tribunal also overlooked the fact that respondents No.5 and 6 were, in fact, the appellants before the Assistant Commissioner and that their

appeal had been allowed without affording the petitioner an opportunity to defend his grant. Instead of examining the correctness of the Deputy Commissioner's

order on its merits, the Tribunal chose to set aside the

same solely on the incorrect presumption that respondents No.5 and 6 had not been given a hearing. This approach adopted by the Tribunal is contrary to the factual records and demonstrates a lack of due consideration of the material on record.

15. In view of these glaring errors, it is apparent

that the KAT has not conducted a proper and comprehensive inquiry into the matter. The Tribunal was expected to evaluate the order of the Deputy Commissioner within the parameters of a revisional jurisdiction. Instead,

the Tribunal set aside the order of the Deputy Commissioner on an entirely flawed premise, without appreciating that the Deputy Commissioner had, in fact, rectified the violation of natural justice that had been committed by the Assistant Commissioner. The Tribunal failed to take into account that a revisional authority is required to examine the impugned order in the context of its legality and propriety, rather than substituting its own views without a proper appraisal of the records. The finding recorded by the Tribunal that respondents No.5 and 6 were not heard before the Assistant Commissioner is contrary to the factual position reflected in the records.

16. Further, it is noted that both the petitioner and respondents No.5 and 6 have sought to rely on various

orders and judgments rendered by civil courts to substantiate their respective claims. However, they have extensively argued their case before this Court in a manner that attempts to expand the scope of inquiry under Article 227 of the Constitution of India. It must be borne in mind that the scope of judicial review under Article 227 of Constitution of India is limited and does not permit a re-appreciation of facts as though it were an appellate proceeding. The attempt to introduce contentions beyond the permissible scope of inquiry is, therefore,

unwarranted.

17. In light of the foregoing discussion, this Court is

of the view that the order passed by the KAT is legally unsustainable. The KAT has failed to conduct a proper and factually accurate inquiry into the matter before setting aside the order of the Deputy Commissioner. Given the procedural irregularities and the misappreciation of facts by the KAT, it is necessary to remit the matter back to the KAT for a fresh consideration in accordance with law. The KAT must re-examine the order of the Deputy Commissioner and adjudicate the matter after a proper appreciation of the records and in adherence to the principles of natural justice.

Accordingly, the point formulated for consideration is answered in the affirmative.

18. Accordingly, this Court proceeds to pass the following:

ORDER

(i) The writ petition is allowed.

(ii) The impugned order 18.12.2015 passed in Revision Petition No.81/2006 by the Karnataka Appellate Tribunal is hereby set aside.

(iii) The matter stands remitted back to the KAT to hold proper enquiry and pass appropriate orders . SD/- (SACHIN SHANKAR MAGADUM) JUDGE *alb/-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com