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Court : Karnataka

Decided On : Nov-08-1978

Reported in : AIR1979Kant67

Judge : N. Venkatachala, J.

Acts : [Land Reforms Act, 1961](#)

Appeal No. : Writ Petn, No. 6049 of 1976

Appellant : B. Nagaraj and anr.

Respondent : State of Karnataka and ors.

Judgement :

ORDER

1. In this writ petition, the writ petitioners have questioned the proceedings of the Land Tribunal, Tumkur Taluk, culminating in its order D/- 6-7-1976 (Vide Exhibit 'A') emanated from the application in Form No. 7 made by respondent No. 4 pursuant to the provisions of the [Land Reforms Act, 1961](#) (to be referred to as the 'Act') seeking registration occupancy in respect of lands comprised in Sl. Nos. 126 and 130/1 of Holkal village, Gulur hobli, Tumkur Taluk. It has to be mentioned at the outset that respondent 4 when made the application in Form No.7 before the Land Tribunal, he also filed an application supported by an affidavit, seeking condonation of delay in filing the application in Form No. 7. The Land Tribunal, having held the enquiry on the basis of Form No. 7, has made the order dated 6-7-

76 which order is impugned in this writ petition by the writ petitioners, the first of whom was arrayed as a landlord by respondent No. 4 in Form No. 7 itself. Though in the writ petition several grounds were taken up by the writ petitioners in support of the claim for quashing the impugned order, the learned counsel for the petitioners had confined himself to the ground that the entire proceedings of the Land Tribunal, starting from issue of notice in Form No. 9 under the Act to petitioner No. 1 are without jurisdiction for they have taken place on the basis of time-barred application. In support of the ground so urged, reliance is placed by the learned counsel for the petitioners on the decision of Venkatappa v. L. N. Dattari : AIR1978 Kant51 rendered by a Division Bench of this Court. The observations in the said judgment to which my attention is invited reads thus (at p. 53):

'In our judgment, the notice issued by the Tribunal in Form No. 9 was one without jurisdiction as the application of the applicant made beyond the time allowed by law and he had not shown any cause for condonation of delay. The commencement of the proceedings for grant of occupancy right was, therefore, clearly illegal and without jurisdiction. The learned single Judge could have quashed the entire proceedings commencing with the issue of notice in Form No. 9 including the order of the Tribunal and it is unnecessary to go into the other grounds urged in the writ petition.'

2. The learned counsel for the petitioners elaborating his contention, submitted that in the instant case, though Form 7 application filed by respondent No. 4 before the Land Tribunal was accompanied by application for condonation of delay, the Tribunal had proceeded to enquiry into application filed in Form 7 without, at the first instance, considering the application for condonation of delay in filing the application in Form 7 and admitting it. According to the learned counsel, the procedure that ought to have been adopted by the Tribunal in the matter of considering the application for condonation of delay, should have been similar to the procedure which has been adopted by Civil Courts or other Tribunals when they consider applications for condoning the delay in filing the appeals. As such, according to him, it was also necessary for the Tribunal to hear the opponent or respondent as the case may be, who was interested, in opposing the application

for condonation of delay before disposing of such application for condonation of delay on merits. In the instant case, he stated that when admittedly such procedure is not adopted and when the delay in filing the application is not condoned by the Tribunal, all the proceedings taken up by the Tribunal on the basis of the application in form No. 7 are liable to be quashed.

3. I am of the view that there is sufficient force in the contention raised by the learned counsel for the petitioners. The Division Bench of this Court, in the judgment referred to above, has put it beyond doubt that proceeding on the basis of Form 7 application filed under the Act, when filed beyond time, cannot be commenced unless the delay in filing such application is condoned, for according to it the proceedings taken without condoning the delay would be without jurisdiction. In view of the clear enunciation made by the Division Bench of this Court in the said judgment, the contention of the learned counsel for respondent No. 4 that in the final order made by the Tribunal, it is stated by the Tribunal that they have condoned the delay, cannot be of any assistance to his client. What is required is not except facto decision on the question of delay but a decision which had to precede the commencement of the proceedings in Form 7 application. As for instance, if the Tribunal refuses to condone the delay and entertain the Form 7 application, question of commencing any proceedings on the basis of Form 7 application will not arise.

4. In the said context, I consider it necessary to make it clear that when an application for condonation of delay is considered by the Tribunal for rendering an order thereon, the principles of natural justice of fair hearing require that the party to be adversely affected by reason of the order to be made by the Tribunal, has to be necessarily heard before such order is made. In the instant case, when such procedure is not adopted, I am inclined to the view that the proceedings of the Tribunal in Case No. GLRM. 65/75-76 which have taken place from the stage of issue of notice in Form 9 are clearly illegal and without jurisdiction, Hence, the proceedings commencing from the stage of issue of notice in Form 9 are quashed by making the rule issued absolute. It will be now open to the Tribunal to hear the contesting parties, at the first instance, on the question of condonation of delay sought for in the application of respondent No. 4, accompanying Form 7

application and to take proceedings on Form 7 application only in the event it condones the delay in filing the application in Form 7. The parties shall be at liberty to urge all the contentions that are open to them before the Tribunal with regard to Form 7 application if it is taken up for consideration after condoning the delay in filing it. In the circumstances of the case, there will be no order as to costs.

5. Rule made absolute.

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