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Court : Karnataka

Decided On : Jan-16-1998

Reported in : ILR1998KAR1928; 1998(3)KarLJ132

Judge : G.C. Bharuka, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 47, 48-B(2) and 118-A

Appeal No. : Writ Petition No. 23563 of 1992

Appellant : Gowri and Others

Respondent : The Divisional Commissioner, Mysore Division, Mysore and Others

Advocate for Def. : Sri S.V. Jagannath, Additional Government Adv. and; Sri A. Keshava Bhat, Adv.

Advocate for Pet/Ap. : Sri P. Ganapathy Bhat, Adv.

Judgement :

ORDER

1. The petitioners seek quashing of the order dated 24-3-1992 (Annexure-A) passed by the respondent-Divisional Commissioner under Section 118A of the [Karnataka Land Reforms Act, 1961](#) (in short the 'Act'), whereunder the

respondent-Divisional Commissioner has held that instead of the 1st petitioner herein, respondents 4 to 9 are entitled to receive compensation payable under Section 47 of the Act in respect of the properties owned by one Mr. Muguli Ramakrishna Bhat, since deceased.

2. Admittedly, the said Ramakrishna Bhat was in possession of certain immoveable properties in Karopadi village of Bantwal Taluk. He had no issues of his own. According to the petitioners, late Ramakrishna Bhat had taken the 2nd petitioner in adoption. The 3rd and 1st petitioners are his daughter-in-law and minor granddaughter respectively. Admittedly, the properties in respect of which compensation was payable were tenanted properties and on applications being filed by the tenants, occupancy was granted to them under Section 48A of the Act. In the proceedings initiated under Section 48B of the Act for determining compensation, late Ramakrishna Bhat had written a letter dated 18-6-1979 claiming that he was still in enjoyment of the properties in question and subsequently he executed a Will dated 25-9-1982 in favour of the 1st petitioner bequeathing the right to receive compensation amount in her favour. On the basis of the said document, the Tahsildar, under his order dated-23-6-1987 (Annexure-B), after determining the amount of compensation payable at Rs. 13,381/- ordered for payment thereof in favour of the 1st petitioner through her mother Saraswathi Amma (petitioner 2).

3. The aforesaid order of the Tahsildar at Annexure-B was challenged by respondents 4 to 9 before the respondent Assistant Commissioner in an appeal filed under Section 118(2-B) of the Act. The ground taken was that late Ramakrishna Bhat had executed a registered settlement deed on 6-6-1964 and subsequently registered release deed dated 19-12-1975 (Annexures-R1 and R2 to the statement of Objections) in favour of one late M. Narayana Bhat and his children being respondents 4 to 9. But, the learned Assistant Commissioner did not feel persuaded by the pleas of the respondents/appellants and dismissed the appeal by his order dated 28-3-1989 (Annexure-C). Against the aforesaid order of the Assistant Commissioner at Annexure-C, respondent 4 to 9 went in revision before the Divisional Commissioner, who passed the impugned order at Annexure-A. The Divisional Commissioner, on weighing the rival contentions and the

documents placed before him, concluded that keeping in view the registered deeds of settlement and release in favour of late Narayana Bhat and his children respondents 4 to 9, they were the rightful owners of the property in question and are entitled to receive the compensation.

4. Sri Ganapathi Bhat, learned Counsel appearing for the petitioners, has assailed the order of the learned Divisional Commissioner primarily on the ground that of his jurisdiction to enter into the disputed question of title in view of Section 48-B(2) of the Act by raising the plea that if there appears to be disagreement among the persons claiming compensation regarding the right to or apportionment of the amount, then the said question can be decided only by the Civil Court and not by any authority constituted under the Act.

5. For appropriately answering the question raised herein, I would do better by first reproducing Section 48-B(2) of the Act in its entirety which reads thus.--

48-B. Tahsildar to determine the amount payable.--

(1) XXX XXXX XXX.(2) Notwithstanding anything contained in sub-section (1), where there is no agreement among the persons entitled for the amount regarding the right to or apportionment of the amount, the Tahsildar shall refer the question to the Court. On receipt of such reference the Court shall after giving notice to the parties concerned, try the question referred to it and record findings thereon and send the same to the Tahsildar. The Tahsildar shall then prepare the statement referred to in sub-section (1) in accordance with the said findings.

6. On reading of sub-section (2) of Section 48-B of the Act as noticed above, it is quite clear that if the Tahsildar finds that there are bona fide disputes among the claimants for compensation payable under Section 47 of the Act and the dispute relates either to the right to receive the compensation or apportionment thereof, then he has to necessarily refer the said dispute for adjudication by the Civil Court and on receiving the findings of the Court, has to prepare the statement regarding the payment of compensation to the persons having interest in the land.

7. In the present case, admittedly, for one or the other reason, the contesting respondents had not laid any claim before the Tahsildar claiming their right to receive compensation either in whole or in any part thereof. Therefore, since there was no dispute or disagreement before the Tahsildar regarding entitlement to receive compensation by rival claimants, he rightly passed the order at Annexure-B by paying over the compensation to the 1st petitioner through her mother guardian (2nd petitioner).

8. The contesting respondents, for the first time raised a dispute regarding their right to receive compensation based on the registered deed of settlement and release deed executed by the original owner late Ramakrishna Bhat and could succeed in getting a favourable order at the revisional stage by the impugned order at Annexure-A.

9. The short question that arises for consideration is as to whether keeping in view the express and unambiguous legislative intentment contained in sub-section (2) of Section 48B of the Act can the authorities constituted under the Act may be original, appellate or revisional, embark upon any enquiry regarding the disputed title and come to a conclusion upholding one or other claim pertaining to compensation?

10. Sri Keshava Bhat, learned Counsel appearing for the contesting respondents has invited my attention to Sections 118(2-B) and 118A of the Act. Section 118(2-B) of the Act provides for an appeal against every order passed by the Tahsildar which shall be to the Assistant Commissioner. Similarly, Section 118A of the Act authorises the Divisional Commissioner to exercise revisional powers against the order of the Assistant Commissioner against which no appeal lies. According to the Counsel for the respondents, since an appeal and revision have been provided against the order of Tahsildar, therefore the said superior authorities had every competence to enter into the question of title of the rival claimants as to the right to receive compensation payable under Section 47 of the Act.

11. On hearing the rival contentions and having examined the scheme of remedies provided under the Act particularly with reference to the sub-section (2) of Section 48B of the Act, it appears without any spell of doubt to me that under the

legislative mandate, in case of any disagreement among the persons claiming to be entitled for compensation which may pertain either to the very right to receive the same or apportionment of the amount, the dispute can be resolved only by a civil Court of competent jurisdiction and not by the authorities under the Act. In this view of the matter, if the Tahsildar fails to refer the said question to the Civil Court either because of legal or factual misconception on his part or because of inadequacy of materials placed before him or because of non-raising of dispute before him because of some bona fide mistake or ignorance of the proceedings pending under Section 48B of the Act and the same having been raised at the appellate or revisional stage, the only course left open to the higher authorities is to direct the Tahsildar to refer the dispute to the Civil Court. The appellate or revisional authorities acting otherwise by taking upon themselves to decide the disputed question of title will be acting beyond the powers conferred on them under the Act.

12. In the above view of the matter, the impugned order at Annexure-A passed by the Divisional Commissioner is quashed with a direction to the respondent-Tahsildar to refer the question pertaining to the respective title and their right to receive the compensation to the Civil Court of competent jurisdiction and on receiving its finding take appropriate steps to ensure payment of compensation to the rightful claimant.

13. It is also directed that if the Civil Court finds that the petitioners were not entitled to compensation or any part thereof, then they should remit the amounts held by them to the said extent to the Tahsildar within two months from the date of the final order passed by the Civil Court in the said regard.

14. Subject to aforesaid observations and directions, the writ petition is disallowed. Anyhow, there will be no order as to costs.