

Madan Kumar and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Nov-30-1998

Reported in : ILR1999KAR4000; 2000(3)KarLJ321

Judge : S.R. Venkatesha Murthy, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 49, 50, 56 and 57; [Constitution of India](#) - Articles 226 and 227; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 54

Appeal No. : Writ Petition Nos. 14986 to 14988 of 1992

Appellant : Madan Kumar and Others

Respondent : State of Karnataka and Others

Advocate for Def. : Sri R.K. Hatti, High Court Government Pleader and ;Sri P.R. Ramesh, Adv.

Advocate for Pet/Ap. : Sri G.B. Lakshmipathi Reddy, Adv.

Judgement :

ORDER

1. The fourth respondent-Tahsildar allotted to the petitioners, Site Nos. 99, 100 and 101 of Munnekolala Village, Varthur Hobli, Bangalore South Taluk. Pursuant to the grants made in the year 1972, the lands granted came to be entered in the

village panchayat records and the petitioners secured building licences for building on the sites granted to them. Krishna Reddy, the owner of Sy. No. 97 sought to challenge the grant in favour of the petitioners by an appeal filed i.e., R.A. No. 47 of 1986-87. The appeal under Section 49 of the Karnataka Land Revenue Act of 1964 (hereinafter called the 'Act'), after hearing, was dismissed on 30-6-1988 as per Annexure-E. Respondents 5 to 14 were substituted as L.Rs of Krishna Reddy. Respondents 5 to 14 appealed under Section 50 of the Act to the Deputy Commissioner in Appeal No. 8 of 1988-89 which stood dismissed on merits on 15-7-1989 as per Annexure-F.

2. Being aggrieved by the order Annexure-A and F, the petitioner filed Revision No. 156 of 1989. In the revision, respondents 5 to 14 sought to produce additional evidence by way of I.A. No. 3 which despite objections, came to be allowed. The petitioners filed Writ Petition No. 4314 of 1992 challenging the order on I.A. No. 3 and obtained an order of stay. Notwithstanding the stay order being brought to its notice, the Karnataka Appellate Tribunal allowed the revision. In this writ petition, the order of the Karnataka Appellate Tribunal is challenged.

3. Admittedly, respondents 5 to 14 preferred the first appeal under Section 49 of the Act to the Assistant Commissioner and preferred the second appeal to the Deputy Commissioner under Section 50 of the Act and thereafter preferred Revision No. 156 of 1989 to the Karnataka Appellate Tribunal and succeeded in having the appellate orders set aside. The petitioners have challenged the order in Revision No. 156 of 1989 as being without jurisdiction. During the course of the arguments, the petitioners relied upon a decision of the Supreme Court in *Puttahnamma v Gangadhara Murthy*, wherein the decision of this Court in *C. Gangadhara Murthy v State of Karnataka and Others*, was reversed. The Supreme Court examined the scope of Section 56 of the Act and in para 7 of the judgment, has made the following observation:

'It is seen that against the order passed by any of the enumerated officers, the remedy of first appeal has been provided under Section 49. Against the appellate orders under Section 49, Section 50 gives right of second appeal. Section 56 envisages that the Tribunal, any Revenue Officer not inferior in rank to the

Assistant Commissioner. may call for and examine the record of any enquiry or the proceedings of any subordinate officer under the Act or under Section 54 of the CPC for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of the proceedings of such officer. Sub-section (3) provides that no application for revision under this section and no power of revision shall be exercised against any order in respect of which an appeal under this Chapter 'has been preferred' (emphasis supplied) and no application for revision shall be entertained unless such application is presented within a period of four months from the date of such order. Two limitations have been prescribed for exercising the revisional power under Section 56(1), namely the application which seeks revision of the appellate order under Section 49 has not preferred any second appeal as provided under Section 50 of the Act; since Section 50 falls under that Chapter, the application shall be filed within a period of four months from the date of the appellant order. In other words, if the aggrieved party has availed of the remedy of second appeal under Section 50, he has been precluded to again avail the revisional remedy under Section 56. It does not follow that the party who had not availed the second appellate remedy under Section 50 is also prohibited to file the revision under Section 56. It would be clear under the scheme of the Act that the hierarchy of remedial forums prescribed are the appeal under Section 49, second appeal under Section 50 and only a revision under Section 56 of the Act and choice to avail of remedy of second appeal or a revision under Section 50 or 56 is left to the aggrieved party. The further scheme is that the revisional authority has power to suo motu correct legality or propriety of the proceedings of any subordinate officers specially and obviously when it touches the interest of the State'.

4. In this case the respondents invoked the right of appeal under Chapter V, both under Sections 49 and 50 of the Act. By virtue of the decision of the Supreme Court in Puttahnammamma's case, referred to above, it is clear that when respondents 5 to 14 availed opportunity of filing appeals under Sections 49 and 50 of the Act, there was no way by which they could have also invoked the revisional jurisdiction of the Karnataka Appellate Tribunal, the revision being not maintainable.

5. The learned Counsel for respondents 5 to 14 sought to contend that under Section 57 of the Act, whenever an order of a Revenue Officer is declared to be final, no appeal lies on such an order and the Tribunal alone shall be competent to reverse any such order under the provisions of Section 56 of the Act. Therefore, respondents 5 to 14 are entitled to file the revision and the Karnataka Appellate Tribunal had jurisdiction to entertain the revision.

6. This submission, requires examination by reference to Sections 56 and 57 of the Act.

7. Under Section 56 of the Act, the officers specified therein are empowered to call for and examine records of any enquiry or proceedings of subordinate officers under the Act, for satisfying itself as to the legality or propriety of the proceedings of such officer, subject to such limitations stipulated in sub-section (3) thereof. Thus under Section 56 of the Act, including the Tribunal, officers of the rank of Assistant Commissioner and above, Survey Officers of the rank of Superintendent of Land Records or Assistant Settlement Officers in their respective departments, are empowered to exercise revisional powers.

8. Section 57 of the Act reads as follows:

'Order expressly made final under the Act.--Whenever in this Act it is declared that an order of a Revenue Officer shall be final, such expression shall be deemed to mean that no appeal lies from such order. The Tribunal alone shall be competent to modify, annul or reverse any such order under the provisions of Section 56'.

A reading of the section would show that under Section 57 of the Act, the order of the Revenue Officer must have been declared under the Act to be final. Against an order which is declared to be final, no appeal would lie and a revision alone to the Tribunal would lie under Section 56 of the Act. It is clear that the scope of Sections 56 and 57 of the Act are different. As laid down by the Supreme Court in Puttiahonamma's case, supra, a person would be entitled to challenge an order of the Revenue Officer under Section 49 of the Act by also invoking the revisional power of the higher Revenue Officer under Section 56 of the Act; but when the party has also invoked the appellate power under Section 50 of the Act, he would

be precluded from invoking the revisional power under Section 56 of the Act.

9. The field of operation of Section 57 of the Act is totally different from that of Section 56 of the Act. Section 57 of the Act deals with original orders which are declared by law to be final and in such a case, no appeal lies against such an order; whereas the finality of the order contemplated under Section 50 of the Act is of the appellate order.

10. In order to obviate the hardship of challenging such a final order invoking Articles 226 and 227 of the [Constitution of India](#) in this Court, provision for revision to only the Tribunal is provided by Section 57 of the Act. The procedure for invoking, and the scope of exercise of, the revisional power by the Tribunal is regulated by Section 56 of the Act. Orders against which appeals are provided under Sections 49 and 50 of the Act, are obviously out of purview of Section 57 of the Act. In the circumstances, it would not be open to the third respondent to contend that the order of the Deputy Commissioner in an appeal under Section 50 of the Act would still be amenable to revisional jurisdiction of the Tribunal by operation of Section 57 of the Act, especially when sub-section (3) of Section 56 of the Act does not provide for exercise of such revisional power as explained in Puttahonnamma's case, supra. The Revision No. 156 of 1989 to the Karnataka Appellate Tribunal being without jurisdiction, could not have been entertained, much less, allowed, as now done.

11. Having regard to the fact that the respondents 5 to 14 preferred revision to the Karnataka Appellate Tribunal under what was then perceived to be the legal position, I am of the opinion that if the petitioners are aggrieved by the order of the Deputy Commissioner, it could be questioned before this Court by way of a writ petition, by making out a case that the delay was on account of reversal of the decision of this Court in Puttahonnamma's case, supra. The writ petition is, therefore, allowed quashing Annexure-K. Rule made absolute.