

Gangadhara Murthy Vs. State

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Court : Karnataka

Decided On : Apr-21-1994

Reported in : ILR1994KAR1244

Judge : M. Ramakrishna and ;R.V. Raveendran, JJ.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 49, 50, 56, 56(3) and 57

Appeal No. : W.P. No. 1628 of 1992

Appellant : Gangadhara Murthy

Respondent : State

Advocate for Def. : N. Devadas, Government Adv. for R1 to R6, ;U.L. Narayana Rao, Senior Adv. and K. Suman, Adv. for R7

Advocate for Pet/Ap. : B.M. Krishna Bhat, Adv.

Judgement :

M. Ramakrishna, J.

1. The petitioner in this Writ Petition under Articles 226 and 227 of the Constitution of India has sought to quash the order (Annexure K, C and B) dated 1-1-1992, 16-9-1991 and 26-6-1991 passed by respondents 2 to 4 herein respectively, for the reasons stated therein.

2. A few facts that are necessary for the disposal of this Petition are as follows:-

The petitioner is the owner of a part of an agricultural land bearing Sy.No. 47 of Srigandhadakavalu village, Yeshawantapura Hobli, Bangalore North Taluk. There was a partition amongst the members of his family and the ancestors of respondent-7 as disclosed in detail in Revision Petition No. 191 of 1991 presented by the petitioner before the Tribunal, respondent-2 herein. It has come on record that subsequent to the partition, respondent-7 got the land measured and phoded as 47/1A and 47/1B by the Assistant Director of Land Records and Survey Settlement, without notice to the petitioner and while doing so, the land measuring 3 acres 20 guntas in the possession of the petitioner for the last 40 years was included to the portion of respondent-7 and measured. Thereafter, the petitioner filed an appeal before the Deputy Director of Land Records, respondent-5 herein, for cancelling the Durmast of the land made by the Asst. Director of Land Records. Respondent-5, after enquiry, allowed the appeal and directed the Assistant Director of Land Records to hold a detailed enquiry into the matter and to pass an appropriate order after notice to all the parties including the petitioner. That order was challenged by respondent-7 before the Joint Director of Survey Settlement and Land Records, respondent-5 herein, who, by his order (Annexure-B) dated 26th June 1991 in No. J.D.L.R. Revision Petition No. 6 of 1989-90, set aside the order (Annexure-A) made by the Deputy Director of Survey Settlement and Land Records with a direction to the Assistant Director of Survey Settlement and Land Records to give effect to the orders MPR. 33/86-87 and ADL BN. SMPR. 139/86-87 dividing Sy.No. 47 as 47/1A and 47/1B .

3. Aggrieved by the said order of respondent-4, the petitioner took up the matter before the Director of Survey Settlement and Land Records, respondent-3 herein, in Rev.No. 16/91-92, who, by his order (Annexure-C) dated 16-9-1991, dismissed the revision petition of the petitioner and confirmed the order made by the Joint Director of Survey Settlement and Land Records. While doing so, the Director reconsidered the case as if it was a revision petition and then passed the said order. The petitioner being aggrieved by the said order, approached the Karnataka Appellate Tribunal, respondent-2 herein, in Revision Petition No. 191 of 1991. The Tribunal by its order dated 18-11-1991 admitted the revision petition and ordered

status quo till the hearing date i.e., 4-12-1991, as can be seen from the copy of the order sheet, Annexure-F. Subsequently, the petitioner filed an application (I.A.No. 1) for stay of operation of the orders under revision, which came to be dismissed by order dated 5-12-1991 on the ground that the orders under revision were not executable orders and that therefore stay as sought for was unnecessary. Subsequently, the Tribunal took up the aforesaid revision petition of the petitioner along with other number of similar petitions for hearing, heard the learned Counsel on both sides and dismissed them by its common order dated 1-1-1992, as not maintainable. Hence this Petition.

4. We have heard at length learned Counsel on both sides.

5. Sri B.M. Krishna Bhat, learned Counsel for the petitioner, having taken us through the relevant documents and the orders impugned herein, argued that the Division Bench of the Tribunal was in error in having dismissed the revision petition of the petitioner as not maintainable inspite of the decision of the Full Bench of the same Tribunal rendered earlier that more than one revision was maintainable and that regard being had to the provisions of Section 56 of the [Karnataka Land Revenue Act, 1964](#) (the Act for short), the revision petition as brought by the petitioner was maintainable. Therefore, the conclusion reached by the Tribunal in the order impugned herein that the revision petition was not maintainable was illegal and could not be sustained in law.

6. Per contra, Sri U.L. Narayana Rao, learned Senior Counsel appearing for Smt. K. Suman, learned Counsel for respondent-7 and Sri N. Devadas, learned Government Advocate for respondents 1 to 6, argued in support of the orders impugned herein. Their common submission is that in view of the provisions of Section 56 of the Act particularly Sub-section (3) thereof, which bars revision against any order in respect of which an appeal lies under Section 49 of the Act, the Tribunal was right in dismissing the revision petition of the petitioner as not maintainable and that therefore this is not a fit case for interference by this Court.

7. In order to appreciate the legal contentions urged, it is necessary to refer to the provisions of Section 49 of the Act. It reads:

'49. Appeals from original orders- Save as otherwise expressly provided, an appeal shall lie from every original order passed under this Act or the rules made thereunder and from every order made in exercise of the powers conferred by Section 54 of the Code of Civil Procedure 1908 (Central Act 5 of 1908).

xxx xxx xxx(f) if such an order is passed by a Survey Officer of the rank of an Assistant Superintendent of Land Records or Assistant Superintendent for Settlement, to the Deputy Commissioner of Land Records or the Deputy Commissioner for Settlement, as the case may be;

(g) If such an order is passed by the Deputy Commissioner of Lands Records or the Deputy Commissioner for Settlement, to the Director of Survey, Settlement and Records:

(h) If such an order is passed by the Director of Survey, Settlement and Lands Records, to the Tribunal.'

8. From what has been provided under Section 49 it is clear that as against any original order made under the Act or the Rules made thereunder by the authorities named therein, an appeal shall lie to the authorities also mentioned therein. In the instant case, the original order came to be passed by the Assistant Director of Land Records and Survey Settlement. Therefore, an appeal as against his order lies to the Deputy Director of Lands Records and Survey Settlement under Section 49 of the Act. Accordingly, the petitioner filed an appeal before him (respondent-5) who disposed of it by his order, Annexure-A, as stated above. Aggrieved by the order, Annexure-A, respondent-7 Puttahnamma took up the matter in revision before the Joint Director of Land Records and Survey Settlement under Section 56 of the Act. How far that revision petition was maintainable before respondent-4 and whether a second appeal lies against the order made by the Deputy Director of Land Records and if so, before whom, are the questions to be considered.

9. Section 50 of the Act provides for a second appeal. It reads:

'50. Second appeal.- A second appeal shall lie against any order passed in a first appeal under Section 49,-

xx xx(c) If such an order is passed by the Deputy Commissioner of Land Records or Deputy Commissioner for Settlement or by the Director of Survey, Settlement and Land Records to the Tribunal.

(2) An order passed on second appeal shall be final.'

10. The above provisions make it clear that any order passed in a first appeal under Section 49 can be questioned in a second appeal before the authorities provided therein and any order made in a second appeal becomes final. This is the intendment and the scope of Section 50 of the Act. In a case of this kind, if an order under Section 49 is made by the Deputy Director of Lands Records and Survey Settlement, a second appeal as against that order lies to the Tribunal and not to the Joint Director of Land Records and Survey Settlement.

11. Section 51 of the Act provides for limitation of appeals and Section 52 thereof provides for application of the Limitation Act to all appeals under the Act. Section 53 states that every appeal shall be accompanied by a certified copy of the order appealed from, unless production of such a copy is dispensed with. Section 54 provides powers for the Appellate Authority regarding disposal of appeals filed under Section 49. Section 55 deals with power of granting stay of execution of orders by not only a Revenue Officer whose order will be sought to be appealed from but also by the Tribunal, before it an appeal under Section 49 is filed.

12. It is necessary to understand the scope and ambit of right of appeal conferred on a person by a statute, as can be gathered from Sections 49 and 50 of the Act, which are extracted above. We must also know that an appeal is always the creature of statute and the right of appeal is limited by the law which gives that right. An Appellate Court cannot exercise wider powers of correcting the lower Court than are strictly conferred upon it by the law which creates the Appellate Court (please see : (1953)111LLJ334Bom , Prem Narayan v. DTM). Further all appeals exist merely by statute and unless the statutory conditions are fulfilled, no jurisdiction is given to any Court of justice to entertain them (Please see AIR 1935 P.C. 5, Ohena v. Akesseh). Besides, as held in AIR (36)1949 Bombay 125, P.V. Rao v. Ahmed Haji, appeals are creatures of statutes and a Court can never have an inherent right to hear an appeal from another Court unless the law so expressly

provides.

13. With a view to understand the ambit and intention and the scope of Sections 49 50 and also revisional powers under Section 56 of the Act, it is necessary to refer to the Rules of Construction and the legislative intent. The American Jurisprudence 2nd Edn. at page 146 provides that in the interpretation of a statute, the intention of the Legislature is gathered from the provisions enacted, by the application of sound and well-settled canons of construction. However, since all Rules for the interpretation of statutes of doubtful meaning have for their sole object the discovery of the legislative intent. every technical Rule as to the construction of a statute must yield to the expression of the paramount will of the Legislature. It has ever been declared that the intention of the Legislature, when discovered, must prevail, any Rule of construction declared by previous Act to the contrary notwithstanding.

14. Thus, it is clear that the intention of the legislation viz., the Act is to provide a second appeal before the Tribunal as against an order made by the Deputy Director of Lands Records and Survey Settlement. Without approaching that authority so as to enable it to exercise the power conferred upon it under the Act, respondent-7 approached the Joint Director in Revision, who has no jurisdiction to entertain a revision petition that too as against an order made in the first appeal under Section 49 of the Act. Therefore, the order made by the Joint Director of Land Records and Survey Settlement at Annexure-B becomes one without jurisdiction.

15. Coming to the revisional jurisdiction of the authorities in a case like this, Section 56 of the Act deals with it. It reads;

'56. Power of Revision.-(1) The Tribunal, any Revenue Officer not inferior in rank to an Assistant Commissioner and any Survey Officer not inferior in rank to a Superintendent of Land Records or an Assistant Settlement Officer in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate officer under this Act or under Section 54 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) 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,

xxx xxx xxx(2) If, in any case, it shall appear to the Tribunal or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled, or reversed, Tribunal or such Officer may pass such order as may be deemed fit;

xxx xxx xxx(3) No application for revision under this Section and no power of revision on such application shall be exercised against any order in respect of which an appeal under this Chapter has been preferred 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.

Provided that any Revenue Officer or Survey Officer referred to in Sub-section (1) may exercise power under this Section in respect of any order against which no appeal has been preferred under this Chapter, at any time within three years from the date of the order sought to be reviewed.

Explanation:- In computing the period of limitation for the purpose of this sub-section, any period during which any proceedings under this Section is stayed by order or an injunction by any Court shall be excluded.'

16. Section 57 provides for finality of the order made under the Act. It says:

'57. 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.'

17. From the foregoing provisions, it is clear that the Tribunal, any Revenue Officer not inferior in rank to an Assistant Commissioner and any Survey Officer not inferior in rank to a Superintendent of Land Records or an Assistant Settlement Officer in their respective Departments may entertain a revision petition against the order made in any inquiry or the proceedings of any subordinate officer, if no appeal has been filed under Section 49 of the Act as against the order sought to

be revised under Section 56 of the Act. In the instant case, on the application made by respondent-7 for survey and phodi of Sy.No. 47 in terms of the partition effected between the members of the family of the petitioner and the ancestors of respondent-7, the Assistant Director of Survey Settlement and Land Records measured the land and sub-divided it into 47/1A and 47/1B in No. MPR.33/86-87 and ADL.BN.MPR. 139/86-87. This is the original order. As against it, the petitioner filed an appeal before the Deputy Director of Land Records and Survey Settlement, respondent-5, who allowed the appeal, set aside the order made by the Assistant Director of Land Records and directed him to hold a fresh detailed inquiry into the matter after notice to all the parties, by his order Annexure-A dated 7.8.1989. Aggrieved by the said order, respondent-7 took up the matter in revision under Section 56 of the Act before the Joint Director, respondent-4, who, by his order, Annexure-B, set aside the order made by the Deputy Director of Land Records and Survey Settlement at Annexure-A.

18. There is no provision either under the Act or in the Rules framed thereunder providing jurisdiction for the Tribunal to entertain a revision petition for the second time under Section 56 of the Act. Therefore, in the absence of any provision conferring power on the Tribunal to entertain a second revision as against the order made in revision by the Joint Director of Land Records and Survey Settlement under Section 56 of the Act, whether the Tribunal was right in rejecting the revision petition as not maintainable, is the question to be considered. Assuming that the revision was wrongly filed before the Joint Director and therefore it should be treated as an appeal, the question is whether such an appeal is maintainable. That is one aspect of the matter. The other aspect is on whether the revision petition filed before the Tribunal as a second revision petition is maintainable.

19. Sri Krishna Bhat, learned Counsel for the petitioner, argued that as there was no order made by the Tribunal in second appeal under Section 50 of the Act, the revision petition filed by the petitioner before it under Section 56 should have been entertained as maintainable. He submitted that as against the order (Annexure-A) made under Section 49 of the Act by the Deputy Director of Land Records, a second appeal lies to the Tribunal under Section 50 of the Act and instead

respondent-7 filed revision petition before the Joint Director, who, though having no jurisdiction to entertain a revision in a case of this kind, allowed it and set aside the order made by the Deputy Director. Therefore, the order made by the Joint Director at Annexure-B is one without jurisdiction. Consequently, the order made by the Director at Annexure-C, is also liable to be quashed. But, he reiterated that the revision petition as filed before the Tribunal by the petitioner was maintainable even as second revision.

20. The learned Counsel for the respondents opposing the submission of Sri Krishna Bhat argued that the revision petition No. 191 of 1991 as brought by the petitioner before the Tribunal itself was not maintainable as the Revisional power exercisable under Section 56 has already been exercised by the Joint Director under that Section and that therefore one more revision petition before the Tribunal being not maintainable, it was rightly rejected by the Tribunal.

21. To answer the question, we will have to consider the scope of Section 49 of the Act. Looking at the specific language employed in that Section extracted above, it is clear that an appeal lies from every original order made under the Act or the Rules made thereunder and from every order made in exercise of the powers conferred by Section 54 of the C.P.C. No doubt, under Section 54 C.P.C. the Deputy Commissioner has power to effect partition in terms of the decree of the Civil Court and any person aggrieved by the order made by the Deputy Commissioner under that Section may approach the authority by way of an appeal under Section 49 coming under Chapter-V of the Act. In other words, Section 49 confers right of appeal, amongst others, on those persons who are affected by the partition effected by the Deputy Commissioner in terms of the decree. Sri Krishna Bhat did not argue on this point. The appeal filed by the petitioner under Section 49 of the Act before the Deputy Director of Land Records and Survey Settlement, respondent-5 herein, as against the order made by the Assistant Director of Land Records and Survey Settlement is certainly maintainable in the light of the language employed therein. There is no doubt about it. Accordingly, respondent-5 allowed the appeal and directed to hold a fresh enquiry after notice to all the parties.

22. The next question would be whether the revision petition filed by respondent-7 before the Joint Director of Land Records and Survey Settlement was maintainable.

23. The submission of the learned Counsel for respondent-7 is that respondent-7 filed the revision petition in No. JDLR.R.P. 6/89-90 before the Joint Director, instead of filing an appeal, due to confusion and that therefore that revision petition can be treated as second appeal under Section 50 of the Act. It is still worse. Presuming for the purpose of argument that it was an appeal under Section 50 of the Act, yet, it is also not maintainable in view of the fact that the second appeal as against the order made by the Deputy Director lies before the Tribunal and not before the Joint Director. Either way, the order made by the Joint Director cannot be sustained for want of jurisdiction.

24. The Supreme court in SHANKAR RAMACHANDRA ABHYANKAR v. KRISHNAJI DATTATRAYA BAPAT : [1970]1SCR322 , had the occasion to consider the similar question arising under the Bombay Rents Hotel and Lodging House Rates Control Act. It held in paragraph-8 as follows:-

'Further even on the assumption that the order of the appellate Court had not merged in the order which disposed of the revision petition, a writ petition ought not to be entertained, by the High Court when the petitioner had already chosen the remedy under Section 115 of Code of Civil Procedure. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted, it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate Court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the Court to prevent abuse of process as also to respect and accord finality to its own decisions.'

25. Therefore, when there is a specific provision under Section 50 providing for a second appeal before the authority specified therein, it was not open to respondent-7 to file a revision petition before the Joint Director under Section 56 of the Act. In this connection, it is necessary to state the observations made in Halsbury's Laws of England, IV Edition at Page 288.

'Procedure on appeal to county court.

Where by any Act an appeal from any order, decision or award of any Tribunal or person lies to a county court, then, subject to the provisions of that Act, the appeal must be brought in accordance with the general code of procedure prescribed by the county court Rules for those appeals'.

26. This Court in *SIDDESHWAR YUVAK MANDAL v. STATE*, 1981 (1) KLJ 380 considering the inherent power of the Revenue Court under Section 25 of the Act to make such orders as may be necessary for the ends of Justice or to prevent abuse of the process of the Revenue Court; held as follows:-

'Where the appeal against the order of the Tahsildar did not directly lie to the Deputy Commissioner, but to the Assistant Commissioner, the Deputy Commissioner cannot deal with an appeal wrongly filed before him, by invoking inherent powers under Section 25 of the Land Revenue Act.'

To say so, this Court placed reliance upon the Rulings of the Supreme Court in (1) : [1965]2SCR800 , *Raja Scap v. Shantharaj* (2) : [1971]1SCR207 , *Nainsingh v. Koonwarjee*.

27. Section 50 of the Act clearly provides the second appeal for any person aggrieved by the order in the first appeal. Without availing of that remedy, can such a person invoke Section 56 of the Act for maintaining a revision petition against the first appeal? Section 50 specifies the prescribed authority to entertain the second appeal. Therefore, in the light of the Rulings of the Supreme Court and this Court, we are clearly of the opinion that when a specific power has been conferred upon the specified authority named in the Section, it is impermissible to any other authority to exercise that power. That means, when the jurisdiction of the second appeal is conferred upon the Tribunal under Section 50 of the Act, the Joint Director could not have entertained the revision petition as against the first appeal. Any interpretation contrary to this would lead to incongruous situation which we are supposed to avoid, Therefore, it is not possible to concede to the submission of Sri Krishna Bhat about the order made by the Joint Director of Land Records and Survey Settlement at Annexure-B. Therefore, we hold that that order

is a nullity.

28. There is one more significant factor which we will have to consider. Sub-section (3) of Section 56, extracted above, prohibits a revision under Section 56 when an appeal under Section 49 has been preferred. In the present case, the order sought to be revised by the Joint Director was not a original order as stated in Section 49 of the Act so as to enable him to exercise revisional jurisdiction, but it was an order made in the first appeal under Section 49 of the Act, which can be challenged only in a second appeal as provided under Section 50 before the Tribunal and not in a revision as has been done in the present case.

28(a). In YELLAPPA BHIMAPPA DIDDI v. STATE OF MYSORE AND ORS., ILR (Karnataka) 1974, 77, Venkataswami, J., as he then was, dealing with a similar situation, has held in paragraph-6 as follows:-

'..... As observed by me earlier, Sub-section (3) is in a way independent of Sub-sections (1) and (2) thereof and is concerned with the conferment of power to apply for a revision on a party who might be aggrieved by any order made by any of the authorities under the Act. The condition referred to by the learned counsel occurs in Sub-section (3). That being so, it is a condition which would apply only to a case of revision sought for and on behalf of a party and has no reference to the power exercisable by the authorities under Sub-section (1) of their own accord. Hence this contention has also no force....'

29. Therefore, in the face of the amended provisions of Sub-section (3), no application for revision could be entertained of any person when an appeal is provided under the Act to challenge any order. In that view of the matter also, the submission of Sri Krishna Bhat cannot be accepted.

30. The well known principle of interpretation of statutes makes it clear that the Court must give effect to each provision of the Act and shall not interpret in such a way that a part or a portion of the provisions becomes otiose. If we accept the contention of the learned Counsel for respondent-7 and interpret the provisions of Section 56 in the manner in which we wanted, the resultant factor would be that Sub-section (3) of Section 56 becomes otiose. Therefore, we cannot accept his

contention for this reason also.

31. This view of ours is fortified by the Decision of this Court in SRIMANMAHARAJA NIRANJANA JAGADGURU MALLIKARJUNA MURUGARAJENDRA MAHASWAMY v. DEPUTY COMMISSIONER : ILR 1986 KAR1059 . In that Decision, the question that came up before the Division Bench to which one of us was a party was whether the Deputy Commissioner had power under Sub-section (3) of Section 136 of the Act to revise the appellate order under Sub-section (2) thereof. The Division Bench considering the scope and ambit of the said provisions held as follows:-

'When Sub-section (2) of Section 136 uses the expression 'final' as regards the order of the Appellate Authority made under that provision, unless there are express words in any other provision, which affects such finality and constitutes an authority to decide the validity of such an appellate order, it is difficult to hold that any other authority has the power to interfere with such an order.... Any interpretation of Sub-section (3) of Section 136 as conferring power to interfere with an appellate order of the Assistant Commissioner made under Sub-section (2) of Section 136 would render the words 'and his decision shall be final' otiose....'

In paragraph-8 referred to the scope and ambit of the said provision, the Court further observed:

'..... It is a settled rule of construction that no portion of a Section can be rendered otiose. Further the Legislature has expressly referred only to Sections 127 and 129 in Sub-section (3) of Section 136 of the Act. If the intention of the Legislature was that the Deputy Commissioner should also have the power to interfere with an appellate order made under Sub-section (2) of Section 136 of the Act, it would have specified the said provision also in Sub-section (3) of Section 136 of the Act just as Sections 127 and 129 are specified.'

32. Therefore, we will have to interpret the statute regard being had to the object and intendment which, the Legislature had when those provisions were enacted. A Full Bench of this Court had the occasion to deal with this question indirectly in GANAPATRAO ROAJIRAO DESAI v. BALAVANT KRISHNAJI DESAI AND ORS.,

1965(2) KLJ 768. Dealing with the scope and ambit of Section 203 of the Bombay Land Revenue Code, it held in paragraph-21 as follows:-

'The section itself makes it plain that an appeal lies thereunder if the decision or order is passed by a revenue officer whether under the Code or any other law for the time being in force. It was decided in *Sonubai v. Yamuna Bai* (27) that even if the impugned order had been passed under the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, an appeal from that order lies under Section 203 of the Bombay Land Revenue Code, to the immediate superior of the Officer who made the order....'

27. 1962 Mys.LJ. 953

33. Another submission of Sri Krishna Bhat, learned Counsel for the petitioner, is that the Full Bench of the Tribunal in *PRASANNAPPA v. STATE OF KARNATAKA*, 1979 KLJ (Tri) 203 considering the scope and ambit of Section 56 of the Act held:

'A further revision would lie to the next higher authority under Section 56 of the Act against an order passed by an authority while exercising revisional jurisdiction under Section 56. The power of revision is conferred on all revenue authorities including the Tribunal from the level of the Assistant Commissioner. It does not lay down that once the power of revision is exercised by any one of the officers in the revenue hierarchy, another superior officer cannot exercise such power to correct the errors committed by the subordinate revising authority,'

and that therefore in the light of the Ruling of the Full Bench, the subsequent Decision of the Division Bench of the Tribunal holding that the second revision before the Tribunal was not maintainable cannot be sustained and the same is liable to be set aside. His further submission is that later the learned single Judge of this Court has endorsed the view of the Full Bench of the Tribunal in *W.P.No. 2090 of 1992* and connected Petitions disposed of on 25/26.2.1992, *Narayanappa v. State*.

34. We have carefully considered the view taken by the learned single Judge and the reasoning assigned by him to do so. In paragraph-9 of the order, the learned Judge referring to Sub-section (3) of Section 56 observed:

'The said sub-section has been substituted by Act No. 33 of 1975 with effect from 10.7.1975. While under the Sub-section (3), before amendment, if an appeal was provided, further revision was totally barred, under the substituted provision only if an appeal has been preferred (and pending), a revision does not lie to the Tribunal. This is the only possible and harmonious interpretation of the present section. In any event, in view of the express provisions of Section 57, only a further appeal (other than the appeals provided under the Act) is barred; but the Tribunal is expressly vested with the revisional jurisdiction 'to modify, annul or reverse any order including an order in a second appeal under the provisions of Section 56 of the Act.' This is also the view consistently held by this Court, as can be seen from an unreported decision of Rama Jois, J., in W.P.No. 20296 of 1986 (dated 2.12.1986) in which it is observed that Section 56 of the Act provides for a revision to the Tribunal against the order passed in second appeal, and the Tribunal is invested with the powers to go into the legality and propriety of the order passed by any subordinate revenue authority, which includes the Special Deputy Commissioner, in view of the specific explanation given below Section 57 of the Act. Sub-section (3) of Section 56 merely provides for different periods of limitation to invoke the revision powers of the Tribunal. While the period of limitation for presenting a revision against any order is four months, the State could seek revision of the order within three years. In the view I have taken above, the impugned order in so far as the Tribunal has refused to exercise its revisional jurisdiction against an order in an appeal under Section 50, cannot be sustained.'

35. While referring to the scope and ambit of Sub-section (3) of Section 56, we have referred to the Decision of the learned single Judge in Diddi's case supra wherein it has been held:

'Reading Sub-sections (1) and (2) of Section 56 together, it is clear that the topic of the exercise of power by the authorities named therein suo moto is complete. The said power under the said sub-sections is clearly not made dependent on the

provisions of Sub-section (3).

The condition of appeal occurring in Sub-section (3) is one which would apply only to a case of revision sought for and on behalf of a party and has no reference to the power exercisable by the authorities under Section 56(1) of their own accord.'

Unfortunately, the above Ruling of this Court in Diddi's case was not brought to the notice of the learned single Judge. Secondly, we have already noted the Ruling of the Supreme Court in Shankar Ramachandra Abhyankar's case, which is directly on the question of interpretation of statutes and the Decision of the learned single Judge is contrary to it. Again this Ruling of the Supreme Court had not been brought to the notice of the learned single Judge.

36. The learned single Judge in paragraph-10 of the Order referring to the Decision of this Court in *DIWAKAR HEGDE v. KARKALA TALUK AGRICULTURAL PRODUCE MARKETING SOCIETY LTD.*, 1975(2) KLJ 390, held that the view taken by the Court in that case referring to Sub-section (3) of Section 70 of the Co-operative Societies Act, that a decision under that Section was not open either to appeal or revision, was of no assistance to support the Tribunal's view that the second revision before it was not maintainable. In this context, we may notice conveniently the Ruling of this Court in that Judgment Referring to the provisions of Section 107 of the Co-operative Societies Act which provides for revision by the Tribunal either suo moto or on an application of any person aggrieved by the order of the inferior authority, the Division Bench endorsed the view taken by the learned single Judge as :

'it is clear from Section 107 of the Act that the Tribunal can entertain a revision petition only in respect of certain proceedings in which an appeal would lie to it. Section 105 of the Act sets out orders and decisions against which an appeal would lie to the Tribunal. An order passed under Sub-section (3) of Section 70 of the Act is not one of the orders enumerated under Section 105 of the Act. The Tribunal, therefore, could not entertain the revision petition against the order passed by the Deputy Registrar under Sub-section (3) of Section 70 of the Act.'

At page-392, the Division Bench made the statement of law as follows:-

'If the intention of the Act was that the decision of the Registrar under Sub-section (3) of Section 70 of the Act shall be final subject to the power of revision under Section 107, then the Section would have so stated and it should have been worded like Section 188 of the Sea Customs Act. When Section 70(3) says that the decision of the Registrar shall be final, it is not open either to appeal or revision under the Act.

In our opinion, the learned single Judge should have rested his decision on the ground that on a true interpretation of Sub-section (3) of Section 70 of the Act, the decision of the Registrar is final under the Act.'

37. This part of the Judgment in Diwakar Hegde's case also had not been brought to the notice of the learned single Judge. When we take into consideration all these significant factors and the object and intendment of Sections 49 50 56 and 57 of the Act, it is abundantly made clear that once the power of appeal is exercised as is done in the instant case, no revision lies before the Tribunal, in view of Sub-section (3) of Section 56 of the Act.

36. Another Decision of this Court in SANAULLA v. DEPUTY COMMISSIONER, ILR 1988 KAR 3116 is of no assistance to the petitioner as the learned single Judge though referred to the provisions of Section 56 and the authorities referred to therein, has not laid down any statement of law on the interpretation of Section 56 of the Act.

39. Before parting with this case, let us refer to the provisions of the Karnataka Appellate Tribunal Act, 1976. Section 7 of it provides for formation of a Bench of three Judges. It reads:

'7. Reference to Full Bench.- (1) Notwithstanding anything contained in Section 4, the Chairman may, and if a Bench referred to in Sub-section (1) or Sub-section (3) of Section 6 so thinks fit, shall, subject to such rules as may be prescribed, constitute a Full Bench of such number of members as he may specify.

(2) The decision of the Full Bench shall be in accordance with the opinion of the majority.'

The submission made in this behalf is that the view expressed by the Full Bench in Prasannappa's case supra should prevail being the majority opinion over the Decision of the Division Bench. Although Section 7 deals with the formation of a Full Bench, it does not declare that the view of the Full Bench is binding on the Division Bench. No such provisions of law nor any authority thereon is cited before us. Therefore, a Division Bench of the Tribunal subsequently disposed of a number of revision petitions including the one, subject matter of this Writ Petition, holding that a second revision was not maintainable before the Tribunal. Referring to Sections 56 and 57 of the Act, it held:..... Therefore, in order to clarify the same, that is to exercise the power of revision, the revenue officers are deemed to be subordinates to the Tribunal. The explanation referred to above was not enacted with a view to confer power of revision on Tribunal against the orders passed on a second appeal by the Deputy Commissioner. If that were to be the intention, the same could have been clarified by employing specific and un-ambiguous words either in the explanation or section 56(3) of section 57.'

To come to its conclusion that revision does not lie before the Tribunal, the Division Bench of the Tribunal followed the view of this Court in Murugarajendraswamy's case supra. Therefore, we do not see any illegality or error in the order impugned in this Writ Petition. Therefore, we decline to interfere with this Writ Petition.

38. In the result, we make the following.

ORDER

This Writ Petition is partly allowed. The order made by the Tribunal at Annexure-K is upheld.

During the course of the order, we have held that the order made by the Joint Director of Land Records and Survey Settlement, respondent-4 herein, is a nullity for want of jurisdiction. Therefore, it has to be quashed and it is accordingly quashed. Consequently, the order made by the Director, respondent-3, must go. Hence it is also quashed.

However, it is made clear that it is open to the petitioner and respondent-7 to approach the Assistant Director of Survey Settlement and Land Records and to have the matter disposed of in accordance with law in the light of the order made by the Deputy Director of Land Records and Survey Settlement at Annexure-A.

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