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Court : Karnataka

Decided On : Jun-16-2004

Reported in : ILR2004KAR4353

Judge : N. Kumar, J.

Acts : [Constitution of India](#) - Articles 226 and 227; [Karnataka Land Reforms Act, 1961](#) - Sections 79A, 79B and 80; Urban Land Ceiling Act; Indian Penal Code

Appeal No. : W.P. Nos. 24204 and 27343/2000

Appellant : B. Bennari

Respondent : State of Karnataka by Its Secretary to Revenue Department and ors.

Advocate for Def. : Rosa Paramel, GP for R1 to R3, 11 and 12 and ;O. Shivaram Bhat and ;N. Channakrishnappa, Advs. for R1 to 10

Advocate for Pet/Ap. : M.P. Eswarappa, Sr. Counsel for ;N. Surendra Kumar, Adv.

Judgement :

ORDER

N. Kumar, J.

1. In W.P. No. 24204/2000 an application is filed by the impleading applicants who are the purchasers of the land in question. As they are the persons who are likely to be affected by any orders passed by this Court in the Writ Petition and in fact their sale deed is sought to be quashed, I.A.I/04 is allowed. Petitioner to amend the cause title.

2. The brief facts giving raise to the Writ Petitions are as hereunder :-

3. The subject matter of dispute is land bearing Sy. No. 108/3 situated at Mysore Village, Mysore Taluk, measuring 3 acres 10 guntas. In respect of this land two applications were filed in Form No. VII for grant of occupancy rights under Section 48A of the Karnataka Land Reforms Act (hereinafter for short, called as 'the Act'). One application was filed by one Perumal and the said case was numbered as LRF No. 2977/74-75. Yet another application is filed by K.M. Jayaram Mudaliar. Both the applications were clubbed. Perumal did not press his application and, therefore, his application came to be rejected. Whereas, Jayaram Mudaliar's claim was accepted by the Tribunal and occupancy rights were granted in his favour by an order dated 7.11.1978. In the said Form No. 7, one Smt. Ponnamma, w/o late Ponnuswamy was shown as the owner of the land. Smt. Ponnumal challenged the said order of the Land Tribunal before this Court by filing a Writ Petition in W.P. No. 19565/83. In fact before the order came to be passed by the Land Tribunal, Jayaram Mudaliar died and his wife Sundari was brought on record along with yet another lady by name Bagyammal. Therefore, in the Writ Petition filed by Ponnumal, Smt. Sundari wife of Jayaram Mudaliar was made a party. In the Writ Petition Smt. Sundari, wife of Jayaram Mudaliar filed an affidavit stating that her husband was not a tenant but a mortgagee in possession and the application in Form No. 7 was filed under a mistaken notion and she asserted that there is no relationship of landlord and tenant. Acting on the said affidavit, this Court allowed the Writ Petition, set aside the order of the Land Tribunal granting occupancy rights in favour of Jayaram Mudaliar and dismissed Form No. 7 by its order dated 25.3.1985.

4. Petitioner-Bennari claims that his father and one Ponnuswamy, i.e. the husband of Ponnumal were brothers, they constituted a Hindu family, there was no partition in their family and the land in question belongs to the joint family. As he had also interest in the property he should have been made a party before the Land Tribunal and, therefore, the order passed by the Land Tribunal granting occupancy rights is in violation of principles of natural justice. So contending he filed WP. No. 16760/1984 before this Court challenging the said order of the Tribunal granting occupancy rights in favour of Jayaram Mudaliar. However, he made Bagyammal and Sundari as persons claiming under Jayaram Mudaliar. He did not make Ponnumal a party. During the pendency of the said Writ Petition, the Act came to be amended creating an Appellate Authority. Consequently, the High Court sent the Writ Petition pending to the Appellate Authority and directed both the parties to appear before the Authority on 30.10.1986 and the Appellate Authority was directed to issue notice to the parties and to hear the appeal on merits i.e., the validity of the order of Tribunal granting occupancy rights in favour of Jayaram Mudaliar. It appears from the records the petitioner and his brothers filed an affidavit withdrawing the appeal in view of the fact that their paternal aunt has sold the property in question in favour of respondents 4 to 8. In the said affidavit it was stated that the said property exclusively belongs to Ponnuswamy and, therefore, to Ponnumal and the petitioner or his brothers have no interest in the property. It also further states that they have received a sum of Rs. 32,500.00 as consideration under separate agreement relinquishing their interest in favour of the purchasers. They also acknowledged the possession of the property with that of the purchasers. Thereafter, an application for early hearing of the said appeal was filed supported by an affidavit of the petitioner where he has sworn to the fact that they have entered into a compromise. In fact in the said appeal Ponnumal was made a party, fourth respondent. Acting on the said affidavit filed by the petitioner and his brothers and also taking note of the fact that this Court has already passed an order in W.P.No. 19565/1983 rejecting the Form No. 7 filed by Jayaram Mudaliar, the Appeal came to be dismissed as withdrawn. In the course of the order it was observed that the parties to the proceedings in W.P.No. 19565/1983 misrepresented the facts to this Court and got an order in their favour but the Tribunal cannot sit in judgment over the said order and if the State is aggrieved

they are advised to challenge the said order before the High Court. The said Appeal before the Appellate Authority was numbered as LRF.MYS.Appeal.367/1986 and the order dismissing the appeal came to be passed on 18.2.1987. It appears from the record acting on the observations made by the Appellate Authority. The State preferred Writ Appeal No, 1530/1997 which also came to be dismissed on 3.9.1987. Thus, the order passed by this Court on 25.3.1985 in W.P.No. 19565/1983 has become final after contest.

5. Thereafter, the petitioner filed an application before the jurisdictional Tahsildar for mutating his name in revenue records on the ground that in the Appeal No. LRF.MYS.Appeal. 367/1986 the order was passed in his favour and he has become the owner of the property. When no orders were passed on the said application he filed a Writ Petition before this Court in W.P. No. 15909/1999 seeking a writ of mandamus to the Tahsildar to consider and dispose of his application on merits expeditiously. This Court by an order dated 6.5.1999 directed the Tahsildar to dispose of the application filed by the petitioner for mutation entry within three months from the date of communication of the order. Thereafter, the Tahsildar considered the said application and found that the property is alienated, katha stands in the name of third persons and, therefore, he rejected the application for change of mutation entry by his order dated 14.7.1999. It is not disputed that the said order is not challenged by the petitioner and it has become final.

6. The petitioner filed yet another Writ Petition in W.P.No. 20055/ 1999 before this Court complaining to the Court that the Land Tribunal, Mysore, is not disposing of the case No. LREMY.S.Appeal.367/1986 though this Court has remanded the case to the Land Tribunal and the Land Tribunal is not taking up the matter and disposing it of. Acting on the said application of the petitioner, this Court allowed the Writ Petition by its order dated 30.6.1999 and directed the Land Tribunal, Mysore, to dispose of the aforesaid case within three months from the date of receipt of the order. The record discloses that even before the said direction was issued to the Land Tribunal, the Tribunal has rejected the request of the petitioner for consideration of his Form No. 7 by an order dated 19.3.1999 saying that no such application is pending. Under these circumstances, respondents 4 to 6 filed a

Review Petition in R.P.No. 583/2000 bringing to the notice of the Court the false representation made by the petitioner while obtaining the permission. This Court after hearing the parties clarified it by saying that if the Tribunal had already disposed of the application filed by the petitioner, the Tribunal shall not pass any orders on the application filed by the petitioner. Only if no order was passed, the Tribunal was directed to dispose of the application in accordance with law. This order in Review Petition came to be made on 13.6.2001.

7. The material on record also discloses that proceedings were initiated against the purchasers for cancellation of the sale deed dated 7.2.1986 on the ground that the purchasers are not agriculturists and the said sale deed is in contravention of Section 79A and B of the Act. In the said proceedings initiated under Section 80 of the Act, the Assistant Commissioner passed an order on 23.7.1987 holding that the sale is in contravention of the aforesaid provisions and ordered for forfeiting of the land to the Government. Aggrieved by the said order the purchasers-respondents 4 to 10 preferred an appeal in Appeal No. 203/1987 before the Karnataka Appellate Tribunal, Bangalore. After contest the Appeal came to be allowed. The order passed by the Assistant Commissioner on 23.7.1987 setting aside the sale deed was set aside and the said order has become final.

8. The records also discloses after purchase of the agricultural land, respondents 4 to 10 have got the land converted for industrial purpose and they have set up an industry and they are carrying on business.

9. The petitioner has filed W.P.No. 24204/2000 for a writ of mandamus for constitution of the Land Tribunal to hear and consider his case which is pending before the Land Tribunal in LRF.MYS.APPEAL.367/1986. The said Writ Petition was allowed on 11.10.2000. On coming to know of the said order respondents 4 to 6 filed Review Petition in R.P.No. 1033/2000. The said Review Petition was allowed and the order passed in the Writ Petition was recalled. Now, the said Writ Petition is listed before me for hearing.

10. It is thereafter the petitioner has filed this Writ Petition No. 27343/2000 for a writ of mandamus directing the second respondent to cancel the sale deed dated 7.2.1986 registered as document No. 1338/85-86 and also for a declaration that

the order passed by the Government under the provisions of the Urban Land Ceiling Regulations Act, 1976 is null and void. Subsequently, applications for amendment are filed seeking amendment of the prayer column to direct the sub-registrar to expunge the registration which he has done and for initiating action against the purchasers in view of the Karnataka Land Reforms Act and for other reliefs.

11. Respondents 4 to 10 have entered appearance. They have filed detailed statement of objections traversing all the allegations made by the petitioner and setting out the facts narrated supra and contending that these petitions are liable to be dismissed on the ground that the petitioner has not come to the Court with clean hands. He has suppressed the true facts. He has forged the High Court order and the relief sought for by him cannot be granted in writ proceedings.

12. Sri. M.P. Eshwarappa, the learned Senior Counsel appearing for the petitioner, contended after grant of occupancy rights in favour of Sri. Jayaram Mudaliar, Smt. Ponnamma was paid the compensation under the provisions of the Land Reform Act. Having received the said compensation suppressing the said fact she filed a Writ Petition challenging the order granting occupancy rights showing one Sundari as the wife of deceased Jayaram Mudaliar and the compromise entered into before this Court in the said proceedings is nothing but a fraud and, therefore, the order passed by this Court in the writ proceedings in W.P.No. 19565/1983 is void, non-est as it is obtained by fraud. Similarly, he contends even before the Appellate Authority by practicing fraud the affidavit of the petitioner along with his brothers was taken and in fact according to him it was done without notice to the petitioner and, therefore, the order passed by the Appellate Authority is also void, non-est because it is vitiated by fraud. The order passed by the Karnataka Appellate Tribunal setting aside the order of the Assistant Commissioner is also vitiated because it has taken into consideration the conversion of the land which was subsequent to the Assistant Commissioners order and, therefore, that order is also the result of fraud, as such the said order is also void and non-est. The petitioner who is the owner of the property under a settlement deed, has not been notified before passing of the order by the Land Tribunal which is a mandatory requirement under law and, therefore, the order of the Land Tribunal is also

vitiated being violative of principles of natural justice. Therefore, he contends all the orders on the basis of which respondents 3 to 10 are putting forth their claim are vitiated by fraud and, therefore, no right vests with them in so far as the land in dispute is concerned. Therefore, the sale deed executed in their favour by Smt. Ponnammal is vitiated and requires to be set aside and the Sub-Registrar is bound to erase from the registers the registration of the said document as according to him fraud vitiates everything. In support of his contention he relied on a judgment in the case of UNITED INDIA INSURANCE COMPANY LIMITED vs RAJENDRA SINGH AND ORS., : [2000]2SCR264 where the Supreme Court held that, the High Court in its writ jurisdiction under Articles 226 and 227 can recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

13. Per contra, the learned Counsel appearing for the respondents submitted in the first place Ponnammal who did not know Kannada was made to sign the mahazar showing receipt of compensation. But, her subsequent conduct of challenging the order by filing a Writ Petition clearly shows her intention and after notice to the other side this Court has passed an order rejecting Form No. 7 and holding that the land in question was not a tenanted land. Therefore, the said order having become final any submission contrary to the same cannot be countenanced. Petitioner has not taken any steps to recall the said order till today either on the ground of fraud or on any other ground. But, on the contrary he challenged the order of the Land Tribunal by preferring a Writ Petition before this Court. With the change in law it was transmitted to the Appellate Authority. Before the Appellate Authority after receiving the consideration they gave up their claim. Thus, the order of the Land Tribunal became final. But, that order had already been set aside by this Court in the Writ Petition filed by Smt. Ponnammal. Once the order of the Land Tribunal is set aside and the effect of it is it is not a tenanted land and Ponnammal as owner has executed the registered sale deed in favour of respondents 4 to 10 for valuable consideration. If the case of the petitioner is either she had no right to execute the sale deed or being a family member without his consent the sale deed has been executed and his right to the property has not been affected, then the remedy open to him is to approach a competent Civil Court for appropriate relief and not to file a Writ Petition. In that view of the matter, the

Writ Petition is not maintainable. It was also pointed out by the learned Counsel that in W.P.No. 16760/1984 preferred by the petitioner this Court while transferring the matter to the Appellate Authority issued directions to the parties to appear before the Appellate Authority on 30.10.1986 and the Appellate Authority was called upon to decide the case on merits. The petitioner has tampered the said order to read it as a direction to appear before the Land Tribunal. On that basis he has sought a writ of mandamus from this Court subsequently. There is no order passed by this Court in W.P.No. 16760/1984 directing the Land Tribunal to consider the case of the petitioner. It is a clear case of interpolation of an order passed by this Court as is clear from the application which he has filed before the Land Tribunal. In that view of the matter, his hands are not clean, not only his Writ Petition is liable to be rejected on ground, proper action should be initiated against the petitioner for interpolating the solemn order passed by this Court.

14. From the aforesaid facts and the rival contentions it is clear that for grant of occupancy rights in respect of the land in question two applications were filed within the time stipulated under law. Perumal, one of the applicant did not prosecute the matter. Accordingly, it came to be rejected. The application filed by Jayaram Mudaliar was granted. The said order was challenged before this Court by Smt. Ponnammal. This Court set aside the order of the Land Tribunal acting on the submission of the wife of Jayaram Mudaliar that the property was taken by him as a mortgagee in possession and not as a tenant. The said order has become final. Till today the petitioner or anybody else has not filed an application before this Court to recall the said order on the ground that it is obtained by practicing fraud. The petitioner herein also challenged the order of the Land Tribunal granting occupancy rights in favour of Jayaram Mudaliar on the ground that he also being the owner of the property he had not been notified at all. During the pendency of the Writ Petition before this Court, the Land Reforms Act was amended creating an appellate forum. It is in pursuance of the said subsequent event this Court transferred the pending Writ Petition to the Land Reforms Appellate Authority for adjudication. Before the Appellate Authority the petitioner and his other members of the family filed an affidavit to the effect as the order of the Land Tribunal has already been set aside by this Court in W.P.No. 19565/83 coupled with the fact in the meanwhile the properties have been purchased by respondents 4 to 10 have

paid them a sum of Rs. 32,500.00 they are not interested in prosecuting the appeal. Accordingly, the Appeal before the Appellate Authority came to be dismissed. The purchasers got the land converted, got exemption from the purview of the Urban Land Ceiling Act. They have set up their industry. When proceedings were initiated by the Assistant Commissioner under Sections 79A and B of the Land Reforms Act and set aside the sale deed in their favour they preferred appeal to the Karnataka Appellate Tribunal and got the said orders set aside. It is after all this the petitioner gives an application on 26.6.1988 to the Land Tribunal contending that in W.P.No. 16760/84 which was disposed of on 1.8.1986 this Court has directed the Land Tribunal, Mysore Taluk, to decide the dispute regarding Sy. No. 108/3 measuring 3 acres 10 guntas at Nanjangud Road, Kasaba Hobli, Mysore Taluk, and enclosed a copy of this Court's order. The Xerox copy of this Court's order which is enclosed along with the said application in paragraph 3 reads that 'The parties are directed to appear before the Land Tribunal on 30.10.1986. If they fail to appear on the said date the Land Tribunal should issue notice to them and after service of notice on them they should proceed with the matter'. Complaining that no orders are passed in spite of such an application being given the petitioner preferred a Writ Petition before this Court in W.P.No. 20055/1999 for a writ of mandamus directing the Land Tribunal, Mysore, to dispose of case No. LRF.MYS.367/86. In the said Writ Petition the copy which was produced at Annexure-A is an order of this Court passed in W.P.No. 16760/1984 on 1.8.1986. Paragraph 3 of the said order reads as under:- 'The parties are directed to appear before the Appellate Authority on 30.10.1986. If they fail to appear on the said date the Appellate Authority should issue notice on them and after service on them they should proceed with the matter'. In paragraph 2 of the said Writ Petition it is stated that the Appellate Authority came to be abolished and the case is pending before the Land Tribunal, Mysore, and as the Tribunal declined to consider this application and issue an endorsement asking the petitioner to obtain fresh orders from this Court he is constrained to approach this Court. Acting on such representation this Court passed an order on 30.6.1999 directing the Tribunal to dispose of the case No. LRF.MYS.367/86 within three months. It is clear that in the first place, the Appellate Authority did not transmit the papers to the Land Tribunal. Appellate Authority dismissed the Appeal acting on

the affidavits filed by the petitioner and his relatives who did not want to press the appeal. After such direction was issued by this Court the Tribunal passed an order stating that no such proceedings are pending before the Tribunal awaiting disposal as per Annexure-R8. It is after all this the connected Writ Petition is filed again by the petitioner for a direction to the State Government to constitute Land Tribunal and the present Writ Petition is filed for cancellation of the sale deed in favour of respondents 4 to 10 and by way of an amended plea they want a direction to be issued to the Sub-Registrar to cancel the registration of the aforesaid sale deed. The learned Senior Counsel contends the order passed by this Court in W.P.No. 19565/83 and the order passed by the Appellate Authority dismissing the Appeal are both vitiated by fraud and no rights have accrued under the said two orders to Ponnammal and in turn to respondents 4 to 10. Therefore, the sale deeds executed in favour of respondents 4 to 10 by Ponnammal is vitiated and the Sub Registrar without properly verifying has registered the document. According to the learned Counsel fraud unravels everything and, therefore, this Court should not give effect to those orders of the Appellate Court and cancel the sale deed and issue appropriate direction to the Sub Registrar to cancel the registration and it is in that connection he referred to the judgment of the Supreme Court reported in : [2000]2SCR264 . In the aforesaid judgment the Insurance Company which was a party to the proceedings was not aware of the true facts. They contested the matter on legal grounds, they lost. However, after the orders became final they discovered the fraud played and they requested the Court to recall the award passed which is obtained by practicing fraud. The said request was rejected holding that the Courts have no power to reopen a concluded matter. In that context, the Supreme Court said, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim and accordingly quashed the orders passed by the Tribunal and an opportunity was given to put forth respective claims afresh. In the instant case in so far as the order passed in WP No. 19565/83 is concerned petitioner is not a party to the same. Even otherwise he has not made any

application to recall the said order on the ground of fraud. In so far as the order passed by the Appellate Authority is concerned, he is a party. Till today he has not made an application for recalling the said order or has taken any steps to set aside the order. Even in the present proceedings those orders are not challenged, in the sense no relief is sought for quashing of those orders by this Court. Therefore, the aforesaid judgment has no application to the facts of this case.

15. In so far as the contention fraud vitiates all judicial acts, ecclesiastical or temporal, a judgment or decree by obtaining fraud on a Court is nullity or non-est in the eye of law, it can be challenged in any Court even in collateral proceedings is concerned, the said orders have to be challenged in a manner known to law. Till today, those orders are not challenged in the manner known to law. Therefore, an order lawfully passed by this Court that too by consent of parties which in fact is in favour of the petitioner, cannot be found fault with. If the said order is set aside and the order of the Land Tribunal is restored the land vests with the Government. All the right, title and interest of the petitioner which he is claiming stands extinguished. Therefore, it is not open to the petitioner to contend that the said order passed by this Court setting aside the order of the Land Reforms Appellate Authority and holding that the land in question is not a tenanted land cannot be taken note of by this Court. Similarly, a party to the proceedings after receiving a sum of Rs. 32,500.00 and who has sworn to an affidavit along with his family members requesting the Court to dismiss the Appeal as the impugned order has already been set aside and in other words the Appeal has become infructuous cannot be permitted to contend in these proceedings that the said order is vitiated by fraud. As could be seen from the undisputed facts of this case both the aforesaid two orders which the petitioner accuses of being vitiated are the orders which come to the rescue of the petitioner and prevents the land being vested with the Government. Therefore, I do not find any substance in the said contention.

16. The petitioner who has been accusing the respondents of playing fraud and who wants a solemn register sale deed to be set aside and registration entries in the said registers to be cancelled on the ground of fraud is in fact has played fraud in the Court. After receiving the money, getting the appeal disposed of, he tampers with the copy of the order of this Court, interpolates the document, makes it

appear that the matter is for adjudication, files an application in the tribunal to take up the matter and decide it on merits. He also files a Writ Petition before this Court for a writ of mandamus complaining to this Court that the Land Tribunal is not considering his application for grant of occupancy rights and obtains a writ of mandamus. I called upon the learned Counsel for the petitioner to produce the certified copy of the order as they have produced a Xerox copy of the order along with the application requesting the Land Tribunal to take up the matter. Till today no such copy is produced and the learned Counsel pleads his inability to produce the certified copy of the order. Therefore, it is obvious there is no such copy issued by this Court. It is the petitioner who has tampered with the certified copy and tried to get a nonexistent matter reviewed before the Land Tribunal and in fact on that basis secures a writ of mandamus from this Court by making false statements which are to his knowledge. This conduct of the petitioner not only disentitles him to any relief but it also exposes him to appropriate action being taken against him under the relevant provisions of the Indian Penal Code.

17. The other contention of the petitioner is that this property was exclusively given to him under a settlement deed and, therefore, he is the absolute owner of the property. His brother's wife who has no right in the property has executed a sale deed in favour of respondents 4 to 10. If there is any semblance of truth in the said allegation and it is on that ground he wants to challenge the sale deeds, this is not the forum where he could agitate the matter. Therefore, seen from any angle I do not find any substance in any of the contentions urged on behalf of the petitioner. Accordingly, the Writ Petition is rejected with exemplary costs of Rs. 10,000.00.

18. As in the course of the proceedings it is brought to my notice from the records secured by the Land Tribunal, the petitioner has produced a Xerox copy of this Court's order which purports to contain a direction to the Land Tribunal to consider the case of the petitioner which is not found in the certified copy. It is obvious that the petitioner or at his instance the certified copy of the order of this Court passed in W.P. No. 19565/83 is tampered. This Court cannot be a silent spectator. This conduct of the petitioner has to be dealt with properly. Under these circumstances, I direct the Registrar General to take custody of the entire records forth with the in particular look to the application dated 26.6.1988 filed by the petitioner to the

Chairman of the Land Tribunal as well as Xerox copy and the certified copy annexed to the said application in W.P. No. 16760/84 and also look to the records in WP No. 16768/1984 and the orders passed thereon and to initiate appropriate action against the petitioner in accordance with law.

19. Office is directed to keep the entire records in a sealed cover and in safe custody and hand over the same to the Registrar General for further action.

20. In view of what is stated above, WP No. 24204/2000 which is filed for a direction to the Government to constitute Land Tribunal does not survive for consideration. Accordingly, it is dismissed.

All order I.A.s are ordered to be filed.

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