

Mahadevappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-04-1995

Reported in : ILR1995KAR902; 1995(3)KarLJ162

Judge : Hari Nath Tilhari, J.

Appeal No. : W.P. No. 44537 of 1993

Appellant : Mahadevappa

Respondent : State of Karnataka

Advocate for Def. : H.H. Kaladgi, H.C.G.P. for R-1 to R-3 and ;P.A. Kulkarni, Adv. for R-4

Advocate for Pet/Ap. : P.C. Mogali, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Hari Nath Tilhari, J.

1. This is a Writ Petition under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari quashing the order dated 23.12.93 passed by respondent No. 2, i.e., the Assistant Commissioner, Dharwad District, Dharwad in

KLR:AP:4:93-94 Dharwad, a copy of that order has been annexed as Annexure 'C' to the Writ Petition. The petitioner has also sought quashing of the order dated 27.7.93 passed by respondent No. 3, that is the Tahsildar, Hubli Taluk, District Dharwad, in No. KLR.CR. 1/93-94 Hubli, a copy of which order has been annexed as Annexure 'A' to the Writ Petition.

2. This Writ Petition along with the application for vacation of the interim order had been listed before me for orders. I have perused the order sheet which persistently indicate, that this Petition was listed before the Hon'ble CS J on 13.1.94. The learned Single Judge passed the following order-

'Having regard to the facts and circumstances of the case, once a soldier, he has to earn his bread and is seeking for delivery of possession and the authorities have held that he is entitled for possession. There is no point in keeping the matter pending.

Post this case for hearing next week.'

On 7.2.94 the learned Government Pleader was directed to take notice for respondents 1 to 3, and the petitioner was directed to make available the necessary case papers. On 6th October, 1994 Hon'ble KHNK J wanted to hear and dispose of the matter on merits and it is mentioned that respondent No. 4 was ready on that day. Petitioner's Counsel submitted that he was not ready to argue the case on merits and insisted for adjournment and the case was adjourned. Thereafter on 7.12.94 Hon'ble Mr. Justice K.H.N. Kuranga ordered that this case may be posted before the appropriate Bench, in view of the order passed on 6.10.94 by Brother Kuranga and thus the case has been listed before me. In view of the orders dated 13.1.94 and 6.10.94 it was the duty of the Registry of this Court to have listed this case as for hearing and orders and not only for disposal of interim relief application, so as to expedite the disposal of the matter and decision of matters. Interim orders may be important but expeditious final disposal of the matter has got its own importance. The delay in their disposal is tantamount to denial of Justice. Taking into consideration the earlier orders passed by the Hon'ble Single Judges to expedite the hearing of the case irrespective of the fact that the case has been listed under the head orders I called upon the petitioner's

Counsel to argue the matter, though he was earlier insisting on the matter being adjourned. It is expected that in future the Registry will take note of the orders while listing the matters. I heard the learned Counsels for parties on merits.

3. The brief facts of the case relevant for the purpose of final disposal of the Writ Petition are that respondent No. 4 moved an application under Section 15 of the Karnataka Land Reforms Act. After disposal of the earlier Writ Petitions arising out of the same order (viz., WP.Nos. 26939/1991 and Writ Appeal No. 2430/1992) the Tahsildar-respondent No. 3 passed an order on 27.7.93 which has been annexed as Annexure 'A' to the Writ Petition, allowing the application of respondent No. 4 under Section 15 of the Karnataka Land Reforms Act. Having felt aggrieved from the order of 27.7.93 the petitioner filed an appeal before the Assistant Commissioner, Dharwad District, Dharwad, (respondent No. 2). Respondent No. 2, vide order dated 23.12.93, a copy of which is annexed as Annexure 'C', disposed off and decided the appeal by dismissing the same and by affirming the order passed by the Tahsildar respondent No. 3. Feeling aggrieved from the order dated 23.12.93, the present petitioner has filed this Petition under Article 226 of the Constitution of India. No counter affidavit has been filed on behalf of respondents 1 to 3. Learned Counsel for respondent No. 4 has filed a counter statement along with the application for vacation of interim order.

4. I have heard learned Counsel for the petitioner, viz., Sri P.G. Mogali, and Sri P.A. Kulkarni, learned Counsel for respondent No. 4 as well as the learned Government Pleader. The learned Counsel for the petitioner Sri Mogali, raised many contentions before me, but, I think that the Petition can be disposed off and decided at this stage on the consideration of one of his contentions and therefore for the present other contentions are not being referred to. Sri Mogali, contended that the Appellate order has been passed without hearing the petitioner by the learned Assistant Commissioner. He had further submitted that the order was passed without hearing him. He contended that a pre-prepared order had been brought on 23.12.93 and was delivered. He submitted that principles of Justice and Natural justice require that no person should be made to suffer by an order which has been passed without he being given an opportunity of hearing. He further submitted that no authority exercising judicial or quasi-judicial powers

should sit and hear with a made-up mind or deliver a pre-prepared order. He submitted that in that case an order in the present case has been brought to the Court pre-prepared. The Assistant Commissioner delivered the same on 23.12.93 irrespective of the fact that this Hon'ble Court had stayed the proceedings pending before the Assistant Commissioner. The learned Counsel for the petitioner invited my attention to the allegations made in paragraph 4 of the Writ Petition. The allegations of paragraph 4 of the Writ Petition reads as under :-

'4) That on 16.12.1993, appeal No. 4/1993 was posted for arguments. On that day, as the learned Assistant Commissioner was engaged otherwise, the appeal was adjourned to 23.12.1993. On 23.12.1993 it was brought to the notice of the respondent No. 2 through memo that, the further proceedings were stayed by this Honourable Court. Though the appeal was posted for arguments, without adjourning the matter in view of the stay and without even hearing any arguments, the respondent No. 2 straightaway pronounced the ready made order passed by respondent No. 2. The very day of passing the order under Annexure-C, the respondent No. 3 issued the notice stating that the possession of the land would be taken on 1.1.1994. The said notice has been served to the petitioner on 29.12.1993. The way in which the steps are being taken by the authorities concerned, shows that, there is something fishy in the matter. The impugned order and the notice are in disregard of this Hon'ble Court's order and the relevant provisions of the Land Reforms Act. The orders impugned are contrary to law and the documents on record.'

I called upon the Government Counsel as well as the learned Counsel for respondent No. 4 to explain the conduct of the Commissioner. The learned Government Pleader indicated that no counter has been filed. He submitted that the Appellate order indicates that the arguments of both the sides were heard. When the learned Counsel for respondent No. 4 was called upon to explain the allegations of paragraph 4 whether those allegations were denied he invited my attention to the allegations made in paragraph 7 of his counter affidavit. Learned Counsel for respondent No. 4 very fairly contended that apart from what has been stated in paragraph 7 of the counter affidavit there is nothing in rebuttal of allegations of paragraph 4 of the Writ Petition. Learned Counsel for respondent

No. 4 submitted that no doubt in the counter affidavit it has been stated from information that on the date of passing of the final order the Assistant Commissioner was not aware of the interim orders, but, no doubt, the counter affidavit does not disclose the source of information.

5. Having taken into consideration the contentions of the learned Counsel for the parties and the allegations made in paragraph 4 of the Writ Petition and Paragraph 7 of the counter affidavit of respondent No. 4 as well as taking into consideration the circumstances arising from failure of the opposite parties 1 to 3 to deny the allegations of the petitioner which have been made in paragraph 4 of the Writ Petition I am of the opinion that it should be presumed that the allegations made in paragraph 4 of the Writ Petition are correct. A perusal of paragraph 7 will disclose that allegations made in paragraph 4 have not been denied nor has it been alleged or asserted in any manner in the counter affidavit that the appeal was heard on earlier date, i.e., on 16.12.93. The petitioner has asserted on an affidavit on 16.12.93 that the case had been adjourned as the Assistant Commissioner was engaged otherwise. When it was so asserted that the appeal was posted and adjourned from 16/12.93 to 23.12.93 there is no question of its being heard. On 23.12.93 the interim order of the Court was brought to the notice of respondent No. 2 through a memo with a prayer for staying the proceedings of the appeal. Respondent No.2 without hearing the arguments pronounced the readymade order which was brought from Dharwad. Such allegations definitely required to be countered by respondents particularly by or on behalf of respondent No. 2. I feel sorry to mention that these allegations have not been countered nor any affidavit has been filed on behalf of respondents 1 to 3 particularly from respondent No. 2 there is no denial of those allegations. That if the allegations have been made on oath and there is a duty to challenge or controvert those statement or allegation made on affidavits, by filing counter affidavit, but those statements are not challenged or shown to be incorrect nor are denied by filing counter affidavit. The allegations made on affidavit have got to be presumed to be correct. When I so observe I find support from the Decision of the Division Bench of Allahabad High Courts, in the. case of JUGGI LAL KAMLA PAT v. RAM JANKI GUPTA AND ANR. : AIR1962 All407 , wherein relying on the verdict of Their Lordships of the Supreme Court in the case of MEHTA PARIKH AND CO. v. COMMISSIONER OF

INCOME-TAX : [1956]30ITR181b(SC) , the Division Bench has observed as under: -

'It is not open to a party to brush aside the averments

Their Lordships further observed as follows:-

'Here also the Court below had before it a duly sworn affidavit of the plaintiff in support of his allegation and there is no counter affidavit in traverse of the allegation contained in that affidavit. Under the circumstances it is not open to the Court to disbelieve the version of the plaintiff that he had brought his witnesses to the Court on 25.5.56, i.e., particularly after the dismissal of the adjournment of the application.'

In another case SURENDRA TIWARI v. STATE OF UP. AND ORS.1994 Allahabad Law Journal 547, the Division Bench of the Allahabad High Court in para 6 of the Report has observed as under:-

'6. It may be mentioned here that no affidavit has been filed indicating the time when the petitioner was produced before the Magistrate nor was any affidavit filed indicating the time at which the petitioner was produced before the Magistrate. It is no where clear in this affidavit as to who had taken the petitioner before the Magistrate and at what time was the petitioner produced before the Magistrate in spite of our directing the opposite-parties to file such an affidavit. There remains no course open except to presume adversely against the State authorities that had the petitioner been produced within 24 hours of his arrest before the Magistrate the opposite-parties would have filed the affidavit of the person producing the petitioner before the Magistrate indicating the time at which the petitioner was produced before the Magistrate on 14.4.92.'

The said view has been again re-affirmed by Their Lordships of the Supreme Court in the case of SMT. NASEEM BANO v. STATE OF UP. AND ORS. : (1994)ILLJ84SC . Their Lordships of the Supreme Court have been pleased to lay down as under:-

'Since no dispute was raised on behalf of respondents Nos. 1 to 4 in their reply to the averments made by the appellant in the writ petition that 40% of the total number of posts had not been filled by promotion inasmuch as the said averments had not been controverted the High Court should have proceeded on the basis that the said averments had been admitted by respondents.'

Keeping the above principles of law laid down by the Supreme Court as well as by Their Lordships of the Allahabad High Court to the effect that if the allegations made on the affidavit are not countered and denied and are not shown to be incorrect by filing a counter affidavit, the Court has to presume those allegations to be correct, it appears to me that allegations made in paragraph 4 of the Writ Petition quoted above are correct and really they present a very sad picture and history which deserves to be condemned. Officers performing Judicial functions are not expected to sit with a made-up mind or to decide the case without giving due opportunity or due hearing. Such Officers are not expected to come with a pre-prepared or pre-drafted order and then sit in Court for hearing a matter or to deliver a pre-planned order without hearing the parties. It is a well settled principle of law that a person exercising Judicial authority must act with fairness and without a pre-decision on the matter at the time of hearing. The Justice should not only be done but should also appear to have been done.

6. In view of the above consideration and the facts and circumstances I am of the opinion that this Writ Petition deserves to be allowed in part, that is the petitioner is entitled to grant of the relief to the extent of quashing of the order passed by the Appellate Authority, i.e., the Assistant Commissioner, Dharwad, in appeal No:KLR:AP:4:93-94 dated 23.12.1993 a copy of which is annexed as Annexure 'C' to the Writ Petition. Thus considered I allow the Writ Petition by issuing Writ of Certiorari and by quashing the order dated 23.12.93 passed by the Assistant Commissioner, in No.KLR:AP:4:93-94 a copy of which is marked as Annexure 'C' to the Writ Petition. Once this order has been set aside the appeal remains undisposed of. As the matter involves the question relating to a soldier earning his bread I think the matter may not be delayed. Therefore, a further direction is issued to the Assistant Commissioner, Dharwad, to decide the above mentioned appeal afresh after hearing the parties on a date to be fixed by him. The parties

are directed to appear before him on 31st January, 1995.

7. In every case the copy of the operative portion of the order should be issued to the parties immediately on their making an application within a period of seven days from the date of their moving the application so that they may appear on the date atleast with the copy of the operative portion, in case the complete Judgment is not available. I may clarify that the Assistant Commissioner may fix some date in the presence of parties on 31.1.95. It is further directed that the appeal should be finally disposed of within a period of three months from the date of first appearance of the parties under the orders of this Court and date of production of copy of this order whichever is later. I may clarify that Annexure 'A' is not being quashed as Appellate Authority has to decide the matter on merit. Thus the Writ Petition is being allowed herewith as above. Costs to be borne by by parties respectively.