

B. Halappa Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Oct-08-2001

Reported in : 2002(1)KarLJ198

Judge : M.F. Saldanha and ;D.V. Shylendra Kumar, JJ.

Acts : [Constitution of India](#) - Articles 226 and 227; [Karnataka Land Reforms Act, 1961](#) - Sections 48-A

Appeal No. : Writ Appeal Nos. 738 and 739 of 2001

Appellant : B. Halappa

Respondent : State of Karnataka and ors.

Advocate for Def. : C.S. Ramadas, Adv. and ;G. Nagarajulu Naidu, Additional Government Adv.

Advocate for Pet/Ap. : S.V. Prakash, Adv.

Disposition : Appeal dismissed

Judgement :

M.F. Saldanha, J.

1. We have heard the appellant's learned Advocate as also the learned Advocate for the contesting respondents and the learned Government Advocate for the

respondents 1 and 2 on merits. The appellant has seriously assailed the validity of the order passed by the learned Single Judge whereby the learned Single Judge has not only confirmed the order of the Tribunal rejecting the appellant's claim in respect of an area of 3 acres but the learned Single Judge has also interfered with the order passed by the Tribunal which had granted occupancy rights in respect of 20 guntas. In effect, the learned Single Judge has totally rejected the claim of the appellant.

2. Various submissions were canvassed before us, the principal one being that the learned Single Judge has effectively reappraised the record or reappreciated the material on record in the same manner in which an appeal Court would do. The position is that it is well-settled law that the power of judicial review which is invested in the High Court is not to be confused with the ordinary powers of appeal. Our attention was invited to two decisions of the Supreme Court, the first in *State of Uttar Pradesh and Ors. v. Maharaja Dharmander Prasad Singh*, and the second one being a decision in *Khimji Vidhu v. Premier High School*. In the second of these decisions the Supreme Court has reiterated the legal maxim that as far as aspects of finding of facts are concerned, that it is really the domain of an Appellate Authority and not of the High Court while exercising the powers of judicial review. While we are in respectful agreement with these principles, we have carefully reappraised the order passed by the learned Single Judge and we do not find that the learned Single Judge has gone out of the ambit and scope of the writ jurisdiction. One needs to take cognisance of the fact that particularly in cases under the Land Reforms Act where a proceeding is carried upto the High Court, that for purposes of ascertaining the correctness or otherwise of the order passed by the Tribunal that it is implicit that a review of the record is required to be done. This is not to be confused with the manner in which the appeal Court will dissect the evidence and reappreciate it. The distinction is a fine one and what we find is that the learned Single Judge has done a review for the purposes of supporting the order which the High Court was required to pass. In so doing the learned Single Judge has referred to certain undisputed areas such as the fact that the appellant had in fact sold the lands in question which is not disputed, well-before the appointed date and furthermore the learned Single Judge has corrected the factual error which has crept into that order, namely that the purchasers had

admitted that the appellant was in possession and cultivation of 20 guntas of land. This in our considered view was well-within the jurisdiction of the learned Single Judge. Furthermore, what we need to record is that the appellant himself had filed a suit in respect of the aspect of possession and this suit was dismissed by the Civil Court as early as in the year 1976. That decision has become final and we take cognisance of the fact that even though the dispute pertains to the earlier order and decided in the year 1976 that this decision of a competent Court would go heavily against the appellant even with regard to the aspect of possession. We record in passing that the submission canvassed before us is to the effect that despite having sold the land that the purchasers have continued the same in the possession of the appellant and that he was in the position of a tenant as on the appointed date. The record of the case indicates otherwise.

3. The last submission that was canvassed before us is based on the Division Bench decision in Radhakrishna Setty v. Land Tribunal, Somwarpet and Anr., wherein the Division Bench had occasion to observe that where the Tribunals summarily dismiss the application that it is not open to the High Court to go behind the orders of the Tribunal and to do a total assessment and decide the case in the first instance. Effectively that decision refers to situations in which a non-speaking order has been passed. In the case before us the Tribunal has passed a speaking order and in addition to that we need to take note of the fact that the learned Single Judge has given very cogent and very adequate reasons for having decided as he has done. Under these circumstances, we do not see how the decision in question can avail the appellant.

4. Having regard to the aforesaid position the appeal fails on merits and stands dismissed. No order as to costs.