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Court : Karnataka

Decided On : Jun-16-2006

Reported in : 2006(5)KarLJ425

Judge : V. Jagannathan, J.

Acts : Land Acquisition Act

Appeal No. : Writ Petition No. 33857/1998

Appellant : Sri S. Shivalingaiah S/O Late Sidde Gowda

Respondent : The State of Karnataka, by Its Secretary, Department of Revenue, ;The Land Tribunal and Abdul Sattar

Advocate for Def. : M.C. Akkamahadevi, HCGP for R1 and R2 and ;G.S. Vishweshwara, Adv. for R3

Advocate for Pet/Ap. : H.T. Narayan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

V. Jagannathan, J.

1. The petitioner seeks relief at the hands of this Court and his grievance is that R-2 Land Tribunal has passed the order dated 29.8.1979 rejecting the claim of his father for occupancy rights in respect of 1.09 acres of land in S. No. 116 and 5 acres of land in S. No. 113 of Jeegenahalli Village, Kasaba Hobli, Ramanagara Taluk.

2. Heard the learned Counsel for the petitioner and the contesting R-3.

3. It is the submission of the petitioner's counsel that the Land Tribunal was divided in its opinion as to the relationship between the petitioner's father and the landlord. It is submitted that the Chairman of the Land Tribunal did come to the conclusion that there was tenant-landlord relationship between the petitioner's father and the respondents before it, whereas all other members of the Tribunal were of the opinion that the petitioner's father was not a tenant. Ultimately, the Land Tribunal held that the decision of the majority prevails and as such, the application filed by the petitioner's father came to be rejected. It is this order that is assailed in this writ petition.

4. It is the submission of the petitioner's counsel that there is no word whispered in the entire order of the Land Tribunal as to what were the reasons that led the members of the Tribunal to come to the conclusion that the petitioner's father was not a tenant But, on the other hand, the Chairman had given exhaustive

reasons for coming to the conclusion that the contesting respondent was not cultivating the land in question, but he was only using the usufructs from the trees. Therefore, when the Chairman could give reasons for his conclusion, it was also imperative on the part of the other members of the Tribunal to have given their reasons for holding that the petitioner's father was not a tenant. In the absence of reasons being given by the members of the Tribunal, which was very essential for the ultimate conclusion of the case before the Tribunal, the impugned order cannot be sustained in law. Therefore, the learned Counsel submitted that the writ petition requires to be allowed and the impugned order at Annexure-A needs to be quashed.

5. On the other hand, the learned Counsel for the contesting respondent, at the outset, submitted that the writ petition itself is not maintainable as it is barred by time inasmuch as the impugned order was passed on 29.8.1979, but the writ petition came to be filed in the year 1998 and the enormous delay in filing the writ petition has not been properly explained by the petitioner. It was further submitted that, even assuming that the impugned order is a void order, still, because of the delay on the part of the petitioner, no interference is called for in respect of the impugned order and to support this contention, my attention was drawn to a decision of the Apex Court in the case of State of Rajasthan v. D.R. Laxmi reported in : (1996)6SCC445 . It was farther submitted that the petitioner's father, though was alive when the impugned order was passed, made no efforts to file writ petition till the year 1992 when he died and, therefore, the petitioner's son now cannot be permitted to question the validity of the impugned order and hence, the writ petition is liable to be dismissed for the above reasons.

6. Having heard the submissions made by the respective sides, the question for consideration is whether, at the first instance, the petitioner has explained the delay in preferring the writ petition and, secondly, whether the impugned order is sustainable in law.

7. So far as the question of delay in filing the writ petition is concerned, the petitioner has explained the reasons for approaching this Court after long period. His explanation is to be found in paragraphs-3, 4 and 5 to the writ petition. It is stated that even during his life time, the petitioner's father tried to secure the certified copies of the impugned order, but the same could be got only on 15.10.1998 and, thereafter, the writ petition was filed on 26.10.1998. No counter has been filed by the contesting R-3 to traverse the averments made in the above paragraphs of the writ petition.

8. I have carefully perused the Apex Court's judgment referred to by the learned Counsel for R-3. At paragraph-9 of the said judgment, the Apex Court has observed that in the matter of land acquisition and particularly where all steps have been taken and the acquisition proceedings have become final, the court should be slow on quashing the notification. The case before us is not one under the Land Acquisition Act, but it is a case of grant of occupancy rights in favour of the petitioner's father.

9. That apart, it is a settled law that refusal to entertain belated cases is only a rule of discretion and not of law as has been observed by the Apex Court in a case reported in A.I.R. 1974 S.C. 259. It is also a settled position in law as has been observed by the Apex Court in a case reported in A.I.R. 1993 S.C. 802 that the test is not physical running of time and where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. It may also be worthwhile to mention that the question of delay or aches depends upon the peculiar circumstances of the individual cases and no hard and fast rule of universal application can be laid down and since the relief is not necessarily barred on account of delay or laches, ultimately, it is the facts and circumstances that has to guide the decision of the court in deciding to condone the delay or not

10. In the light of the above position in law, in the instant case, the petitioner has explained the reasons for the delay in paragraphs-3, 4 and 5 of the writ petition and, at the cost of repetition, it is to be stated that these averments have not been countered by the contesting respondent by way of filing any counter objections. furthermore, it is also a settled position in law that refusal to condone the delay in a matter where grave injustice is likely to occur, it would be travesty of justice not to condone the delay in such cases.

11. In the instant case, the impugned order does not spell out the reasons given by the members of the Tribunal for disagreeing with the view expressed by the Chairman and, therefore, the impugned order cannot be sustained in law and, moreover, when the Chairman has categorically arrived at a finding supported by reasons that the contesting respondent was never in cultivation of the land in question, it was all the more necessary on the part of the other members of the Tribunal to have given their reasons for holding that the petitioner's father was not a tenant.

12. In the light of the foregoing reasons, the delay in filing the writ petition requires to be condoned and the impugned order is liable to be set aside as it is erroneous and contrary to law. Hence, I proceed to pass the following order:

The writ petition is allowed and the impugned order at Annexure-A is set aside. The matter is remanded to the Land Tribunal for fresh consideration alter affording the parties concerned opportunity to place their respective cases. Since the matter has already taken long years, it is needless to say that the Tribunal will bestow its attention for this case and dispose it of within a period of three months from the date of receipt of this order.