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Court : Karnataka

Decided On : Dec-02-2011

Judge : Ajit J. Gunjal

Appeal No. : Writ Petition No.16287 of 2009 (LR)

Appellant : Basappa

Respondent : State of Karnataka and Others

Advocate for Def. : Mr. N.S. Bhat

Advocate for Pet/Ap. : For the Petitioner: G.B. Nandish Gowda for R.B. Sadasivappa, Advocates. For the Respondents: Shashidhar S. Karamadi, High Court Government Pleader, N.S. Bhat, Advocate.

Judgement :

1. The proceedings, appears to have a checkered career. The petitioner claiming to be a tenant in respect of 3 items of land makes an application in Form 7 for grant of occupancy rights. Initially, the Land Tribunal grants occupancy rights. The said order was questioned by the landlords before this Court. This Court allowed the writ petition and remitted the matter to the Land Tribunal for fresh disposal in accordance with law. It is not in dispute that the land in question are inam lands inasmuch as they are Shanbog Service Inam Lands and as on the date when the applications were being prosecuted, the Land Tribunal had jurisdiction to deal with the matter.

2. Parallely, the respondents also made an application for regrant of the land under the Karnataka Village Offices Abolition Act, 1961. The said application was granted by the Competent Authority i.e., the Tahsildar. The petitioner questions the said order by way of an appeal before the learned District Judge. The learned District Judge dismissed the appeal on the ground that it is not maintainable inasmuch as the petitioner was not an applicant before the Competent Authority. Incidentally, it is noticed that two appeals were filed. Aggrieved by the said two appeals, the petitioner filed two separate writ petitions i.e., W.P.No.18579 of 2006 and W.P.No.18580 of 2006. The said writ petitions were disposed of by this Court by two separate orders on 14-2-2007 and 19-1-2009.

3. Indeed, insofar as the first of the order of the year 2007 in W.P.No.18579 of 2006 is concerned, this Court has disposed of the said writ petition with the following observations:

“It is not necessary to examine these controversies in this writ petition. If the petitioner has already been conferred with occupancy rights by the Land Tribunal under a valid order and continues to be in possession, it is open to the petitioner to defend that possession irrespective of other subsequent proceedings to which he admittedly is not a party and may not bind him also.”

4. Insofar as W.P.No.18580 of 2009 disposed of on 19-1-2009 is concerned, this Court declined to entertain the writ petition but however, observed in the following terms.-

“It is not in dispute that the petitioner has filed an application in Form 7 for registration of occupancy rights in respect of these two lands in question including Sy.No.201/1 and his application has been rejected by the Land Tribunal, Nelamangala dated 4-4-1987 in No. LRF:HGD:36/1156. If it is so, the petitioner is always at liberty to redress their grievance before the Competent Authority/legal forum as permissible under the relevant provisions of the act and Rules”.

5. W.P.No.18579 of 2006 was the subject-matter of Writ Appeal in this Court in W.A.No.1403 of 2008. The Division Bench of this Court declined to entertain the writ petition and dismissed the appeal on 13-7-2009. The petitioner, having regard

to the observations made by this Court in one of the writ petitions has filed this writ petition questioning the order passed by the Land Tribunal on 4-4-1987.

6. Mr. G.B. Nandish Gowda, learned Counsel for petitioner vehemently submits that the impugned order passed by the Land Tribunal warrants interference inasmuch as the rejection of the application is solely on the ground that the land had vested with the Government after coming into force of Inams Abolition Act. Hence, the question of granting occupancy rights would not arise. He submits that since this Court had permitted the petitioner to question the order dated 4-4-1987, the delay is deemed to have been condoned.

7. Mr. N.S. Bhat, learned Counsel for respondent 4 supports the impugned order. He submits that inordinate delay cannot be condoned. He submits that the petitioner was aware of the order passed in the year 1987. He submits that the petitioner cannot take shelter under an observation made by this Court.

8. It is not in dispute that the petitioner was aware of the order passed by the Tribunal on 4-4-1987, in all, throughout the proceedings. The petitioner had made an application in Form 7 and the Tribunal has rejected the said application. Indeed, several options were open to the petitioner when the impugned order was passed on 4-4-1987. In the first instance, he could have filed an appeal before the Land Reforms Appellant Authority which was in existence as on that date or even he could have filed a writ petition within a reasonable time before this Court. That was not done. The petitioner was prosecuting various proceedings before other Courts. But, however, did not choose to question the order passed by the Tribunal, at any point of time.

9. I am of the view that the said inordinate delay cannot be countenanced. Insofar as the observations made by this Court, reserving liberty to the petitioner to question the order before appropriate forum, it is to be noticed that it is with a caveat and couched in a language wherein, it is observed that petitioner is required to question the order before the Competent Authority/Legal Forum, as permitted under the relevant provisions of the Act and Rules. I am of the view that the said observation cannot be read as condoning of the delay. Indeed, it is said that the Competent Authority is required to go by the Acts and Rules as observed.

I am of the view that the petitioner was indeed aware of the entire proceedings. Having not chosen to question the order of the Tribunal within a reasonable time, the question of interference does not arise.

10. However, it is to be noticed that this Court, while dismissing one of the writ petition has observed that the petitioner is not bound by the orders passed by the Competent Authority. It is noticed that the petitioner is armed with certain observations in his favour regarding his possession. Having said so, I am of the view that the impugned order does not warrant interference. Petition stands rejected.

Mr. Shashidhar S. Karamadi, learned High Court Government Pleader is permitted to file memo of appearance within four weeks from today.

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