

Krishne Gowda Vs. M. Sheik Suleman Sab

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Court : Karnataka

Decided On : Apr-21-1977

Reported in : AIR1977Kant191; ILR1977KAR1319; 1977(2)KarLJ459

Judge : G.K. Govinda Bhat, C.J. and ;M.N. Venkatachaliah, J.

Acts : [Constitution of India](#) - Article 226(1)

Appellant : Krishne Gowda

Respondent : M. Sheik Suleman Sab

Advocate for Pet/Ap. : S. Siddappa, Adv.

Judgement :

G.K. Govinda Bhat, C.J.

1. This matter arises out of an application for registration of occupancy in respect of agricultural lands situate in Yeladahalli village under S. 45 of the Karnataka Land Reforms Act, 1961, hereinafter called 'the Act'. The said application was made by the first respondent Sheik Suleman Sab. The Tribunal, by its order in Case No. LRF 47 of 1974-75 made on 21-8-1975 confirmed the right of occupancy on Sheik Suleman in respect of Survey No. 16 measuring 3 acres, 7 guntas of dry land. Some time thereafter, an application was made before the Tribunal by the appellant Krishne Gowda to review the Tribunal's order dated 21-8-1975. On that application the Tribunal did not make any final order; but on 2-1-1976, it made an order expressing the view that it had decided the case in favour of Sheik Suleman on 21-8-1975, that the purchaser of the land, viz., Krishne Gowda (appellant) had filed his objections after the decision and that therefore, the Tribunal was of the unanimous opinion that it was necessary to reconsider the issue. A penalty of Rs. 100 was levied and restoration was ordered. The said order dated 2-1-1976 was challenged before this Court by Sheik Suleman Sab (respondent No, I herein) in W. P. 9994 of 1976.

2. The ground urged by the first respondent Sheik Suleman Sab was that the Tribunal had ceased to have jurisdiction after the disposal of the matter by its order dated 21-8-1975 and the entire subsequent proceedings before the Tribunal inclusive of the order dated 2-1-1976 were without jurisdiction and therefore, null and void. It is relevant to state that the appellant Krishne Gowda was respondent No. 3 in W. P. 9994 of 1976 and he had entered appearance through his lawyer Sri S. Siddappa. Since the Cause List issued by this Court did not show his name, he did not attend the Court on the date of hearing and the case proceeded in his absence. The learned single Judge accepted the ground urged by Sheik Suleman and held that the Tribunal, when it passed its order on 2-1-1976 on the Review Application, had no jurisdiction to

deal with the matter. So far as the 3rd respondent Krishna Gowda was concerned, the learned single Judge stated that if he was aggrieved by the first order, viz., order dated 21-8-1975, it was open to him to challenge the same before this Court. The learned single Judge further observed that even before this Court, the 3rd respondent Krishna Gowda had remained absent, though he was served. In that view, the learned single judge, allowed the Writ Petition and quashed the order of 1974-75 dated 21-8-1975 (sic dated 2-1-1976). It is against this order that the above Writ Appeal has been preferred.

3. The only grievance made by the learned counsel for the appellant before this Court is that the order should have been made after hearing him; that as the cause list issued by this Court did not show his name, he could not be present in Court and that if he had been heard, the learned single Judge could have been persuaded to come to a contrary conclusion. In substance, his argument was that the order made by the learned single Judge (Bhimiah, J.) violates the rules of natural justice and therefore, is liable to be set aside.

4. However attractive the argument of the learned counsel for the appellant appears to be, this appeal is devoid of merit. Article 226(1) of the Constitution as amended by the 42nd Amendment has made substantial changes with regard to the scope of Writ Petitions under Art, 226. Under the said Article as it now stands, the High Court has power to issue any writ or direction only for the enforcement of any rights conferred by the provisions of Part III; or for the redress of any injury of a substantial nature by reason of the contravention of any other provisions of the Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made there under; or for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in subclause (b) where such illegality has resulted in substantial failure of justice. It will thus be seen that for obtaining redress of any injury caused by reason of any illegality in any proceedings by or before any authority, such illegality should have resulted in substantial failure of justice.

5. It is undoubtedly true that any order made in violation of the Rules of Natural justice is void. But the order does not automatically stand vacated. The aggrieved party has to move the Court and obtain a declaration or order of that nature declaring that the order is one made in contravention of the rules of natural justice and therefore void. In the instant case, the learned counsel for the appellant has not been able to show any illegality in the order made by Bhimiah, J. The learned single Judge has stated that the Tribunal had no jurisdiction to review its order passed on 21-8-1975, as it has not been conferred with any power to review its earlier orders. On that short question the Writ Petition was allowed and the order dated 2-1-1976, impugned therein, was quashed.

6. Incidentally, the learned single Judge made certain observations, which, though factually correct, were unnecessary for the purpose of disposal of the Writ Petition. The learned single judge stated that if the third respondent (appellant herein) was aggrieved by the first order, it was open to him to seek legal remedies and he has failed to do so, and even before this, Court, though served with notice, he has remained absent. These observations are of no value; nor do they affect adversely any of the parties. The learned single Judge has made it clear beyond all doubt that the Land Tribunal had no jurisdiction to review the order passed on 21-8-1975, which means that that order has become conclusive and it is that order that stands.

7. Before concluding, we may observe that if the appellant had shown that any injury had been caused to him by reason of any illegality in the proceedings by or before any authority and that such illegality has resulted in substantial failure of justice, we would not have hesitated to entertain this appeal and give relief to the appellant. Since the learned counsel for the appellant has not been able to show as to how by reason of any illegality in the proceedings, substantial failure of justice has ensued, this Writ Appeal is rejected. No costs.

8. Appeal dismissed

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