

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2315 OF 2003

Sri Srinivasa Bhat (D) by L.Rs. & Ors. ...Appellants

Versus

Sri A. Sarvothama Kini (D) by L.Rs. & Ors. ...Respondents

JUDGEMENT

R.M. Lodha, J.

This appeal, by special leave, is from Karnataka High Court. The Division Bench vide its order dated November 21, 2001 set aside the order of the Single Judge dated June 1, 2001 and also the order of the Land Tribunal dated March 29, 1994 and directed the Land Tribunal to pass fresh order concerning the subject land.

2. On March 29, 1994, the appellants were conferred occupancy rights by the Land Tribunal in respect of Survey No. 108/17 (delineated as R.S. No. 108/17 C) admeasuring 27

cents situate at Shivalli village, Udupi Taluk, Karnataka. The controversy relates to the aforesaid land to the extent of 7 cents. The present respondent nos. 1 to 5 (hereinafter referred to as 'writ petitioners') filed a writ petition before Karnataka High Court on January 4, 1999 challenging the order of Land Tribunal dated March 29, 1994. The writ petitioners set up the case that the extent of property admeasuring 7 cents being the portion of Survey No. 108/17 originally belonged to one Sri Krishna Kini who transferred the said land to Sri Rangannaiah (father of 5th writ petitioner) in 1949 and the purchaser came into possession. Sri Rangannaiah mainly used the said land for non-residential purposes as the property is situate in the heart of Udupi city in a prime business locality and no agricultural operations were ever carried out in the said land by Sri Rangannaiah. After the death of Sri Rangannaiah, the said land came to the share of 5th writ petitioner who transferred it to writ petitioner nos. 1 to 4 and they came in actual possession and enjoyment of the same. It was averred that in the beginning of 1998, Smt. Krishnaveniamma (Appellant No. 2 herein) tried to interfere with their possession and hence a suit (O.S. No. 74/1998) was filed by them in the Court of IInd Additional Civil

Judge (Jr. Division), Udupi wherein it transpired that the present appellants were asserting their rights in the said land on the basis of occupancy rights conferred upon them by the Land Tribunal. The writ petitioner nos. 1 to 4 then made enquiries from the Land Tribunal, got the copy of the order dated March 29, 1994 and approached the High Court.

3. The present appellants who were respondents in the writ petition filed their reply and raised diverse objections viz; that the writ petitioners have no *locus standi* to maintain the writ petition as they were not parties to the proceedings before the Land Tribunal; that the challenge to the order dated March 29, 1994 passed by the Land Tribunal suffered from delay and laches; that the writ petitioners concealed material facts with regard to rejection of their prayer for temporary injunction in the suit filed by them; and that in the suit, for consideration of the application for temporary injunction, the court appointed Assistant Director of Land Records as Commissioner, who after factual assessment of the subject land submitted a sketch stating therein that the claim of the writ petitioners was not correct and they were not in possession and that they have no right or interest in the subject land.

4. The Single Judge, after hearing the parties and on consideration of the material placed on record, held that the writ petitioners were not able to show that they have any interest in the land in respect of which occupancy rights have been conferred in favour of the present appellants. The Single Judge also observed that the writ petitioners did not disclose the complete facts about the suit and approached the court in challenging the order dated March 29, 1994 belatedly and, accordingly, dismissed the writ petition by his order dated June 1, 2001.

5. As noticed above, the Division Bench in writ appeal interfered with the order of the Single Judge giving rise to this appeal by special leave.

6. We find it curious that the Division Bench though recorded the finding that writ petition was hopelessly belated and there were other factors which would disentitle the writ petitioners from any relief, yet it interfered with the order of the Single Judge. What is more astonishing is that the Division Bench even did not consider the findings recorded by the Single Judge, particularly that for want of documentary evidence, the version of the writ petitioner nos. 1 to 4 that the

said land has been conveyed to them by 5th writ petitioner and they were in possession of that land cannot be believed. As a matter of fact, the Single Judge recorded a positive finding that the material produced by the writ petitioners do not show that they have got any right or interest in Survey No. 108/17 to the extent of 7 cents and, accordingly, they cannot be said to have any *locus standi* to challenge the order dated March 29, 1994 passed by the Land Tribunal. On the face of the findings recorded by the Single Judge which have not been disturbed, there was no justification for the Division Bench to hold that the overwhelming interest of justice would require that writ petitioners be afforded an opportunity and thereby upset the order of the Single Judge as well as that of the Land Tribunal. The Division Bench without consideration of the reasons recorded by the Single Judge interfered with that order which, in our opinion, cannot be justified.

7. Moreover, the writ petitioners concealed vital facts from the Court viz., rejection of their application for temporary injunction by the trial court and the appointment of Court Commissioner by the trial court and his report. The report submitted by the Assistant Director of Land Records (Court

Commissioner) did not support the claim of writ petitioner nos. 1 to 4 in respect of 7 cents of land in Survey No.108/17. The remedy under Article 226 of the Constitution is discretionary and relief may be refused if it is found that the party invoking such jurisdiction has not disclosed true, correct and complete facts. Relief may also be refused in extraordinary jurisdiction where writ petition suffers from laches and unexplained delay. Insofar as instant case is concerned, the order of the Land Tribunal dated March 29, 1994 was challenged in the writ petition almost after five years. The explanation of writ petitioner nos. 1 to 4 that they came to know of that order in 1998 hardly merits acceptance as it transpires that in 1994 itself they made an application before the Tahsildar for effecting changes in the mutation and other revenue record contending that they have interest in 7 cents of land in Survey No. 108/17C and after inquiry, the Tahsildar rejected their application. The writ petitioners are guilty of suppression of material facts as well. In the circumstances, there was hardly any justification for the Division Bench to interfere with the discretion exercised by the Single Judge.

8. There is one more illegality in the order of the Division Bench. Although, the writ petitioner nos. 1 to 4 claimed their right to the extent of 7 cents only in Survey No. 108/17 but the Division Bench set aside the entire order of the Land Tribunal dated March 29, 1994 that pertained to 27 cents of land. Admittedly, the writ petitioners did not claim any right or interest beyond 7 cents.

9. The result is, that appeal is allowed and impugned order dated November 21, 2001 passed by the Division Bench in writ appeal No. 3473 of 2001 is set aside. No order as to costs.

...J

.....
(Aftab Alam)

New Delhi
April 27, 2010.

.....J
(R. M. Lodha)