

CASE NO.:
Appeal (civil) 853 of 2005

PETITIONER:
Nagesh Datta Shetti & Ors.

RESPONDENT:
The State of Karnataka & Ors.

DATE OF JUDGMENT: 02/02/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising Out of S.L.P. (Civil) No. 14059 of 2003)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is the judgment of a Division Bench of the Karnataka High Court refusing to interfere with the order passed by learned Single Judge in view of the fact that the Ankola Taluk Land Tribunal (in short the 'Tribunal') had disposed of the matter pursuant to the direction given by learned Single Judge.

The appellants had filed the writ appeal before the Division Bench of the Karnataka High Court aggrieved primarily by that part of the order of learned Single Judge who had remanded the matter to the Tribunal, with a specific direction to grant occupancy rights in favour of the respondents, who were the petitioners in the writ petition. The appeal was admitted but there was no order of stay passed in the appeal either directing stay of further proceedings before the Tribunal or staying operation of the order of learned Single Judge, as no application had been filed for grant of any interim relief. In the absence of any order of stay, pursuant to the directions given by learned Single Judge the proceedings came to be heard by the Tribunal which hold that the respondents were to be granted occupancy rights in line with the mandate given by learned Single Judge.

By the impugned judgment the High Court came to hold that though the learned Single Judge had directed grant of occupancy rights and the Tribunal had followed the directions, it was open to the present appellants to question the correctness of the decision of the Tribunal before the learned Single Judge. Accordingly the writ appeal was dismissed.

In support of the appeal, learned counsel for the appellants submitted that the Division Bench was not justified in holding that the order of the Tribunal could be assailed before learned Single Judge. In view of the fact that learned Single Judge had already directed that occupancy rights were to be conferred on the respondents, no relief could be granted to the appellants. It is pointed out that though the Tribunal was requested to keep the matter pending in view of the fact that the Writ Appeal had been admitted, the Tribunal did not do so.

Per contra learned counsel appearing for the respondents supported the impugned judgment and submitted that the view expressed by the High Court in the impugned judgment does not suffer from any infirmity.

As the factual scenario noted above goes to show specific

challenge in the writ appeal was in respect of the direction given by learned Single Judge to grant occupancy rights to the respondents. That was the basic issue which was to be adjudicated by the Division Bench in the writ appeal. The basic issue, as noted above was whether the direction given by learned Single Judge could be maintained, when the matter was being remitted by learned Single Judge to the Tribunal for fresh adjudication. In a given case there can be limited remand and giving finality to an issue, may be permissible. In the present case the High Court had admitted the writ appeal to examine legality of such direction. Unfortunately, the Tribunal did not keep the proceedings pending though it was brought to its notice that the Writ Appeal had been admitted. Appellants have also contributed to the confusion to a great measure by not seeking stay of direction. In given cases the Court/Forum to which the matter is remitted can await decision in the appeal where the directions given are impugned. A copy of the order passed by the Tribunal pursuant to the direction given by learned Single Judge has been placed on record. It clearly shows that the Tribunal acted only on the basis of the direction given and on that ground alone granted occupancy rights.

The High Court was not justified in holding that the writ appeal had been rendered infructuous because of the subsequent decision of the Tribunal. Correctness of the order passed by learned Single Judge was being challenged in the writ appeal. Any decision taken by the Tribunal has to be per force subject to the decision in the writ appeal. Therefore, the Division Bench should have considered the matter on merits without concluding that the writ appeal had become infructuous.

In the peculiar circumstances we remit the matter to the High Court for fresh consideration. Writ Appeal No. 8208/1999 shall be restored to file and shall be dealt with in accordance with law. As the matter is pending since long, High Court is requested to explore the possibility of early disposal of the Writ Appeal. We make it clear that we have not expressed any opinion on the merits of the case.

The appeal is accordingly disposed of without any order as to costs.