

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00264/2019

DATED THIS THE DAY 03RD OF MARCH, 2020

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

Dr C. Somashekara, IAS (R)
S/o late J.V. Chikkaveerappa
Aged about 64 years,
Residing at No.10, 'Basaveshwara Nilaya'
3rd Block, 4th Stage, Basaveshwaranagar,
Bengaluru-560 079.

.....Applicant

(By Advocate M/s M. Nagaprasanna Associates)

Vs.

1. Union of India
Represented by its Secretary,
Ministry of Personnel, Public Grievance & Pensions,
Department of Personnel and Training
South Block,
New Delhi-110 001.

2. State of Karnataka
by its Principal Secretary to Govt.,
Department of Revenue,
M.S. Building,
Dr..Ambedkar Veedhi,
Bengaluru-560 001.

3.Secretary to Government
Department of Personnel &
Administrative Reforms
VidhanaSoudha,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001.

4. Smt Shantha B. Mallur,
1st Additional District Government
Pleader, City Civil Court Complex,
Bangalore Urban District,
Bengaluru-560 002.

....Respondents

(By Shri R.B. Sathyanarayana Singh, Counsel for Respondent No. 2-4 and
Shri N. Amaresh, Counsel for Respondent No.1)

ORDER
(HON'BLE DR. K.B. SURESH, MEMBER (J))

The basic facts of the case are available in the judgment of the Hon'ble High Court of Karnataka in Writ Petition No. 11736/1997 dated 21.07.1999. We quote from it.

ORDER

Heard the learned counsel for the petitioner and the learned Govt. Pleader for the respondents.

2. The impugned order is attacked on the ground that the Government has come to the conclusion that the document is a forged document after a period of 40 years. The Division Bench ruling of this court says that no grant can be granted after a period of three years. Prima facie, cancellation cannot be made beyond three years. The learned Govt. Advocate however contends that only the entry is deleted on the ground that document is bogus document and it has no weight in the eye of law.

3. Though the Govt. Pleader brings to my notice that there are 3000 cases in an around Bangalore where documents are of this nature having produced by forging seals and creating documents for getting the property. If that be the case, either they should take action and declare all those documents invalid in the eye of law by following proper procedure or in individual cases before court, they should sent the document to Handwriting Expert or Forensic Department to find out the genuineness of the document and on getting a report, affording liberty to the petitioners concerned to explain their stand, and then pass orders.

4. In this view, the impugned order is set aside and matter is remitted to the Deputy commissioner to follow the above direction and find out the genuineness of the documents after following proper procedure.

5. Till enquiry is completed statusquo – ante should be maintained.

6. Writ Petition accordingly disposed of.

Office is directed to give copy to the Govt. Pleader within a week."

2. The question in a nutshell is very simple. Some people who have encroached on lakes which are government poramboke area had apparently forged records and seals and retained possession of lakebed. But then, when it was found out, these documents were cancelled by the government. There was also another case which is of credence in the matter. The Regular First Appeal No. 658/2010 dated 01.07.2014 of the Hon'ble High Court of Karnataka wherein the parties are 1) The State of Karnataka, represented by Chief Secretary, 2) The State of Karnataka, represented by Secretary, Government Revenue Department, 3) The Tahsildar, Bangalore South Taluk, 4) The Chief Conservator of Forests, 5) The Deputy Conservator of Forests. The reason for this inclusion is very crucial in this case. Soon after declaring these documents obtained by Smt. Dhanalakshamma as bogus and forged, Government had declared this as vested forest land and handed it over to the care of the Chief Conservator of the Forests and other officers in the forest department.

3. The first contention of the applicant seems to be that these have now become forest land and have nothing to do with the revenue and, therefore, it cannot be agitated at any stage that he has any role to play in the matter. We quote from the judgment of the Hon'ble High Court:

"This RFA is filed under Section 96 of CPC against the judgment and decree dated 06.03.1999 passed in O.S.No.7698/1997 on the file of the II Addl. City Civil Judge, Bangalore, decreeing the suit for declaration and injunction.

This RFA coming on for orders this day, K.L.Manjunath J., delivered the following:-

JUDGMENT

This appeal is filed by the State of Karnataka challenging the legality and correctness of the judgment and decree passed by the Second Additional City Civil Judge, Bangalore, dated 06.03.1999 in O.S.No.7896/1997.

2. One Smt.Dhanalakshamma wife of H.G.Krishnappa filed the suit to declare her as an absolute owner of 6 acres, 20 guntas of land situated in Survey No.43, of Valagerehalli Village, Kengeri, Hubli and to further declare that the change of revenue entries to her name only to an extent of 1 acre of land as illegal and to grant a permanent injunction to restrain the appellants/defendants from interfering with her possession.

3. Though notice was served upon the appellants and Government Pleader was engaged, the case was not contested by the appellants. In the circumstances, the Trial Court considering the evidence let-in by the respondent-plaintiff decreed the suit on 06.03.1999. Eight years thereafter, the present appeal is filed. Along with the appeal an application is also filed to condone the delay of 3965 days. To condone the delay of 3965 days, the appellant has not shown any cause except stating that there were no sufficient staff and on account of the same the appeal could not be filed.

4. A detailed objection is filed to the said application by the contesting respondent. According to them, the cause shown by the appellant to condone the delay of 3965 days cannot be considered as sufficient cause, because the appeal is filed by suppressing the fact of filing a petition under Order-9, Rule-13 of C.P.C., to set-aside the decree granted in favour of the respondent by this court.

5. According to the respondent to set-aside the judgment and decree of the Trial Court dated 06.03.1999 the petitioner had filed a petition in Misc.Cvl.No. No.369/1999 which petition came to be dismissed as abated by an order dated 15.04.2001. Thereafter, one more petition is filed under Misc.Petition No.513/2001 to recall the order of abatement dated 15.04.2001 and the said application is still pending. Without disclosing the filing of application under Order9, Rule-13 of C.P.C. and the dismissal of the same, the present appeal is filed without showing any cause and thus the Affidavit filed by Thasildar is incorrect and liable to be set-aside.

6. It is further stated that the appellants filed an application for obtaining a copy of the judgment and decree on 30.03.2010, copy was received by the appellants on 01.04.2010, the appeal came to be filed on 12.04.2010. The application for condonation of delay was not filed along with the appeal, and it was filed one year after presenting the

appeal. After filing of objections to the condonation of delay, the appellant has filed an application under Order-23, Rule-1(3) of C.P.C. seeking permission to withdraw the appeal with liberty to file a fresh appeal on the same cause of action, under I.A.1/2014.

7. We have heard the learned counsel appearing for both the parties on I.A.1/2014.

8. According to the appellant since the Miscellaneous Petition is pending, the appellants may be directed to withdraw this petition with liberty to file a fresh appeal on the same cause of action. The learned counsel for the respondents submits that such a relief cannot be granted to the appellants because this Court cannot condone the delay of 3965 days. According to him, the appellants are at liberty to withdraw the appeal reserving liberty to pursue the petition under Order-9, Rule-13 of C.P.C. but the appellants cannot be permitted to withdraw the present appeal with liberty to file a fresh appeal on the same cause of action, if the appeal is once withdrawn, the appellants cannot file an appeal afresh after disposal of the application under Order-9, Rule-13 of C.P.C. According to him, it is always open for the appellants to pursue both the remedies available to them either under Order-9, Rule-13 (Section-96 of C.P.C.) or under Order-9, Rule-13 of C.P.C. If they succeed in one of the case, the other matter can be dismissed as withdrawn. But the appellant herein prays for liberty to pursue the petition under Order-9, Rule-13, and to withdraw present appeal with liberty to file a fresh appeal on the same cause of action if the application under Order-9, Rule13 were to be dismissed, the appellants cannot be permitted to withdraw the appeal with liberty to file a fresh appeal on the same cause of action. He further submits even now it is open for the appellant either to withdraw the appeal unconditionally or to pursue both the appeal and the petition filed under Order-9, Rule-13 and subject to the outcome of the result of anyone of the petition which may be disposed off early, he can request this court or the trial court to withdraw the other one. In the circumstances, he requests the court to dismiss the appeal filed.

9. Having heard the counsel for the parties, the facts in this case are not in dispute to the following circumstances:

The respondent's mother Smt.Dhanalakshamma had filed a suit. In the suit the appellants had engaged the service of a Government Pleader, which suit came to be decreed on account of non-production of the appellant. Aggrieved by the same, an application is filed under Order-9, Rule-13 to set-aside the exparte decree. The same is pending consideration. Nine years later, the present appeal is filed.

10. As rightly pointed out by Shri.Ravishankar, the learned counsel for the respondent no cause is shown to condone the delay of nine years by the appellants. Therefore, there are further possibilities for the appellant to loose this appeal on the ground of delay and

latches. When once the appeal is dismissed without condonation of delay, the question of filing an appeal again on the same cause of action does not arise. The only remedy open to the appellant would be to pursue the application filed under Order-9, Rule-13 of C.P.C. The appellants seeking to withdraw the appeal with liberty to file a fresh appeal only to avoid the order which may be passed by this court on the application to condonation of delay of 3965. Therefore, we are of the view that the liberty cannot be granted to file a fresh appeal and it is not the case of the appellant that the appellants are to be permitted to withdraw this appeal to file a fresh appeal since the appellants are going to loose this appeal on account of some technicalities. When there is no technical objections for maintaining the appeal, the question of withdrawing and permitting them to file a fresh appeal on the same cause of action, does not arise.

11. In these circumstances, the appeal is dismissed without granting liberty to file a fresh appeal on the same cause of action.”

4. The Hon’ble High Court has already noted that **“The only remedy open to the appellant would be to pursue the application filed under Order 9, Rule 13 of CPC.”** Therefore the Hon’ble High Court having virtually directed the respondents to pursue the remedy of setting aside the ex-parte decree, then nothing prevented them from pursuing this legally available remedy.

5. Apparently the matter was taken up in appeal to the Hon’ble Apex Court by the State of Karnataka and the Hon’ble Supreme Court in Diary No. 20776/2017 dated 04.08.2017 had passed the following order, which we quote:

“ORDER

We are extremely pained to find that there are huge delays at all stages in this case and prima facie are of the view that this is deliberately done.

We direct than an inquiry will be made by the State of Karnataka against the officers concerned and submit a report in a

sealed cover to this Court within period of two months from today.

The Special Leave Petition otherwise stands dismissed.”

6. We note with regret that the Hon'ble Supreme Court also found that there is a deliberate delay in this part on several officers. Therefore, apparently they have to start at the very moment when the documents were created falsely by Smt. Dhanalakshamma and others and when appropriate action was not taken by the appropriate officer at the appropriate time to file a reply in the Civil Court. We are not aware, at this stage, as to whether the suit filed by Smt. Dhanalakshamma was for a declaratory order or an injunction. Under the provisions of Specific Relief Act, in such cases, only a declaratory suit can be filed because admittedly the title and possession both was to be agitated. If a declaratory suit has to be filed, court fee will have to be paid on the value of the plaint premises and not as if it is a suit for injunction simplicitor. However, none seems to have noticed this deliberate attempt on the part of Smt. Dhanalakshamma but, even otherwise, the court before passing an order in a case which is not maintainable under provisions of Order 7 of CPC must have looked into whether a proper relief which can be granted under Specific Relief Act had been prayed for and, if not, reject it under provisions of Section 39 to 41 of the Specific Relief Act. But, unfortunately, as for more than a year no reply was filed by anybody, a decree was passed. It is not to be deemed as axiomatic or automatic that, whenever in a case the government fails to file a reply, immediately the suit has to be allowed as prayed for. Still, as adjudication is a process by which truth has to be enhanced, the Civil Court

had a duty to look into the matter and pass appropriate order. We do not want to dwell too much on the Civil Court judgment other than to say that the basis of all these issues is the civil court judgment and nothing else. When the Hon'ble High Court in a Writ Petition has granted certain rights and demanded a status quo to be maintained till a suit is filed, as Section 9 is wide enough than the ambit of Article 226 of Constitution of India, the court had a special duty to look into all aspects of the matter even dehors the reply from the State Government. However, it passed an ex-parte decree which had been challenged by an application under Order 9, Rule 13 of the CPC which lies unattended even till this date.

7. We do not know as to who advised the State Government to file a Regular First Appeal as 658/2010 before the Hon'ble High Court whereas they could have easily filed an application to accept the written statement under Order 8, Rule 1 of the CPC and seek that the matter be taken up for re-hearing under Section 151 of CPC.

8. May be that is the reason why the Hon'ble Apex Court held that this must be looked into as it seems to everybody that this lapse is deliberate and intended to help somebody.

9. On this the Government seems to have passed Annexure-A4 order, which we quote:

"Proceedings of the Government of Karnataka

SUB: Identification of officers responsible for the delay in filing RFA No. 658/2010 in the Hon'ble High Court of Karnataka and also SLP (Dairy No. 20776/2017) in the Hon'ble

Supreme Court of India – ordering inquiry – reg.

READ: Order dated: 04.08.2017 of the Hon'ble Supreme Court of India in SLP Dairy No. 20776/2017

PREAMBLE:

As per revenue records 23-35 acres of land in Sy. No. 43 of Valagerehalli village, Kengeri hobli, Bangalore South taluk is known as "Kelaginakere". One Sri Ajjaiah had claimed that 6-20 acres land in the said survey number was granted to him by order dated: 14.12.1951 by the Deputy Commissioner, Bangalore. The said Ajjaiah is purported to have sold the said 6-20 acres of land to one Smt. Dhanalakshamma on 26.08.1974. Neither the original grant order nor the original sale deed were forthcoming and therefore the claim of Smt. Dhanalakshamma for regularization of the land as successor of Sri Ajjaiah who allegedly is in unauthorized cultivation was not considered by the revenue authorities. The said Smt. Dhanalakshamma had filed O.S. No. 3231/1995 for permanent injunction and the I.A for temporary injunction was dismissed on 06.07.1995 on the ground that she had failed to show prima facie title to the property. Later on, the MFA, No. 1339/1995 filed by her was also dismissed whereupon she withdrew the said suit unconditionally.

Further, in RRT;CR;180/1995-96, since the said Smt. Dhanalakshamma had no title, a direction was issued on 28.08.1995 to cancel the revenue records. Against the said order she had filed W.P. No. 11736/1997 on 24.04.1997 in the Hon'ble High Court of Karnataka. Later on, the said Smt. Dhanalakshamma had filed O.S. No. 7698/1997 on 23.10.1997 seeking declaration of her title and consequential permanent injunction. In its order dated: 06.03.1999 of the IIInd Additional City Civil Judge, Bangalore the suit was decreed exparte. Against the said order, R.F.A. No. 658/2010 was filed before the Hon'ble High Court of Karnataka on 12.04.2010. The Division Bench of the Hon'ble High court dismissed the said R.F.A. No. 658/2010 on 01.07.2014.

The State Government, based on the proposal of the Deputy Commissioner, Bangalore Urban district dated: 17.01.2017, after obtaining the opinion of the Hon'ble Advocate General of Karnataka had filed an SLP before the Hon'ble Supreme Court on 04.07.2017. The said SLP was heard in Dairy No. 20776/2017 by the Hon'ble Supreme court on 04.08.2017 and passed orders as follows:-

"We are extremely pained to find that there are huge delays at all stages in this case and prima facie are of the view that this is deliberately done.

We direct than an inquiry will be made by the State of Karnataka against the officers concerned and submit a report in a sealed cover to this Court within period of two months from

today.

The Special Leave Petition otherwise stands dismissed.”

On examination of this matter it is found that there was a delay of 3,965 days in filing RFA No. 658/2010 in the Hon'ble High Court of Karnataka and thereafter about 3 years of delay in filing the SLP before the Hon'ble Supreme Court.

It is considered necessary to order an inquiry regarding delay in filing the RFA as well as SLP before the Hon'ble High Court of Karnataka and Hon'ble Supreme Court of India respectively and fix the responsibility on the officers who are responsible for the same. Therefore, Government have decided to entrust the said inquiry to Sri Munish Moudgil, I.A.S., Commissioner for Survey Settlement and Land Records, Bangalore and submit a report to the Government in this regard within a period of one month,

Hence the order.

Government Order No: RD 32 TRM 2017
Bangalore Dated: 09.08.2017

In the circumstances explained in the preamble, Government are pleased to order inquiry regarding identification of officers responsible for the delay in filing RFA No. 658/2010 in the Hon'ble High Court of Karnataka against the orders dated: 06.03.1999 passed by the IInd Additional City Civil Judge, Bangalore in O.S. No. 7698/1997 filed by Smt. Dhanalakshamma and also in filing SLP (Dairy No. 20776/2017) in the Hon'ble Supreme Court of India against the orders of the Hon'ble High Court of Karnataka dated: 01.07.2014 in RFA No. 658/2010. The terms of inquiry are as follows:-

- (1) To identify the extent of delay in filing RFA No. 658/2010 and SLP (Dairy No. 20776/2017) and the officers who are responsible for the said delay; clearly indicating the extent to which each officer is responsible for the delay.*
- (2) To suggest the course of action to be taken against the officers who would be identified as responsible for the delay in these cases.*

The inquiry officer is directed to submit his report in this regard to the Government within one months.

The Under Secretary to Government, Revenue Department [Land Revenue] and the Under Secretary to Government, Revenue Department [Land Grants-1] shall make available the original files/records, relating to this matter and also assist the inquiry officer whenever required in so far as the files dealt with at the Government level.

The Additional Deputy Commissioner, Bangalore Urban District and also the Tahasildar, Bangalore South Taluk as well as the Assistant Commissioner, Karnataka Public Land Corporation, Bangalore shall make available the original files/records pertaining to this matter and also assist the inquiry officer whenever required in so far as the files dealt with at their offices respectively.

*By order and in the name of the
Governor of Karnataka
Sd/-
Under Secretary to Government
Revenue Department,
[Land Revenue]"*

10. Thereupon an inquiry was conducted but, since the government had directed only an inquiry and not an enquiry, just an examination of records were made by the Inquiry Officer. We do not want to say anything on the findings of the Inquiry Officer. **But then, since the land had already become vested in the forest, the question arises as to what are the responsibilities of the forest officers to protect the land which was given to their custody?**

11. It is to be noted in this connection that the order in Write Petition No. 11736/1997 was passed on 21.07.1999. The applicant was in service at that place as a Special DC and, even though he was not a party to the proceedings, it is not clear from any of the records ever that the file was placed before him ever. Therefore, the crucial period is this 4 months' time. Therefore, we had asked the learned counsel for the Government to explain whether this file has been placed before the applicant in his official capacity at the relevant time. Apparently from the records he is unable to say so, even on instructions from the Government department.

12. Therefore, we had asked the learned counsel for the Government as to why they are not pursuing the application for setting aside the ex-parte order and file a detailed written statement in the Civil Court which is even to this day pending before them. Apparently the Government has not taken any decision on this matter. But then they would now submit by a memo that they had put a value of Rs. 10 crores on the property encroached by Smt. Dhanalakshamma and is now seeking to recover this from government officials even though none of them have been chargesheeted for this and a finding made as to whether it is recoverable from them. It is no wonder that the Hon'ble Supreme Court also felt that there is a deliberate shielding and also creation of scapegoats so that the actual guilty can escape. The word *Satyameva Jayate* has a meaning in the Constitutional process. Therefore, under the relevant rules, before proceeding against a government servant, even though the State can file a suit for recovery of money against anybody, there must be pre-decisional and post-decisional hearings as recorded by the Hon'ble Apex Court in several cases and an opportunity be granted. Therefore, the impugned legal notice and its consequences do not lie against the applicant for the following reasons:

- 1) He was never been heard in the matter.
- 2) The window in which he had been present at the scene, even though in a corollary way, was only for a period of 4 months. No evidence is available with the government to prove that he had been there and had seen the file and dealt with it in any way during this period.

3) Quite obviously, the remedy had been pointed out by the Division Bench of the Hon'ble High Court, i.e., to defend the petition already filed and even now pending for setting aside the ex-parte decree. They could have also filed a petition for dismissing the suit on the ground that is an incorrectly filed suit as only a declaratory suit will lie in such circumstance and court fee ought to have been paid. Such a mention is not made anywhere. Therefore, it is an incomplete suit in any case. But then the government also does not seem to have taken this defence at any stage of the proceedings. Clearly they had been misinformed and misadvised.

13. On a cumulative conspectus, this proposed action against the applicant in its entirety is hereby quashed as arbitrary and illegal. But then we reserve the liberty to the respondent Government to re-agitate the matter as directed by the Hon'ble High Court in the Regular First Appeal and energise the petition for setting aside the ex-parte decree and file a reply and agitate their matter.

14. The OA is allowed as above. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00264/2019

Annexure A1 Copy of the order dated 21.07.1999 in WP No. 11736/1997

Annexure A2 Copy of the judgment dated 01.07.2014 in RFA No. 658/2010

Annexure A3 Copy of the order dated 04.08.2017 in SLP Diary No. 20776/2017

Annexure A4 Copy of the communication dated 09.08.2017

Annexure A5 Copy of the report of the Inquiry Officer dated 18.09.2019

Annexure A6 Copy of the communication dated 19.12.2017

Annexure A7 Copy of the legal notice dated 18.02.2019

Annexure A8 Copy of the representation dated 19.06.2018

Annexure A9 Copy of the interim order granted by the KAT in the case of H.S. Satish Babu

Annexure A10 Copy of the interim order granted by the KAT in the case of B.R. Dayananda

Annexures referred in reply statement

Nil

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