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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated :This the 7th day of January , 1999

PRESENT

THE HON'BLE MR. JUSTICE A.J. SADASHIVA

AND

THE HON'BLE MR. JUSTICE S.R. BANBURMATH

WRIT APPEAL No. 31 of 1998

BEFORE:

1. Nagu,
s/o Ganpathi,
died by L.Rs.,
- (a) Nanjula Bai,
w/o late Nagu,
major, Occ:Agri.
- (b) Gajarabai,
w/o late Nagu,
major, Occ:Agri.
- (c) Dhanraj,
s/o late Nagu,
major, Occ:Agri.
- (d) Shivraj,
s/o late Nagu,
major, Occ:Agri.
- (e) Keval Bai,
d/o late Nagu,
major, Occ:Agri.
- (f) Shivaji,
s/o late Nagu,
major, Occ:Agri.
- (g) Saraswathi,
d/o Nagu,
major, Occ:Agri.
- (h) Kusum,
d/o Nagu,
minor U/g of Nanjula Bai(i.e)

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All are residents of Bijalgaon (B),
Taluk: Aured.

2. Arjun,
s/o Rama,
aged about 80 years,
Occ:Agri.
3. Sripathi,
s/o Mareppa,
aged about 53 years,
Occ:Agri.
4. Manadu
s/o Rama,
aged 85 years.
5. Bhira,
s/o Rama,
aged about 75 years,
Occ:Agri.
6. Kashiram,
s/o Balu,
major. Occ:Agri.
7. Lakshman,
s/o Hanmanth,
aged about 70 years,
Occ:Agri.

All residents of Bijalgaon(B)
Taluk: Aured, Dist.Bidar. ... APPELLANTS.

(By Sri Manikappa Patil &
Sri Chandrashekar Patil, Advcs)

AND:

1. The State of Karnataka,
by its Secretary,
Revenue Dept.
M.S.Building,
Bangalore.
2. The Deputy Commissioner,
Bidar Dist.
Bidar.

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- 3. Assistant Commissioner,
Bidar Sub Division,
Bidar.
- 4. Tehsildar,
Aurad Taluk,
Aurad, Bidar Dist.
- 5. Sangram,
s/o Shamrao Majkari,
aged about 68 years,
Occ:Agri.
r/o Bhevani Bijalgaon,
Taluk:Aurad, Dist.Bidar. ... RESPONDENTS.

(By Sri Vigneshwar S.Shastri. Adv. for R-5
Sri S.N. Hatti, WA for R-1 to 4)

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This writ appeal is filed under Section 4
of the Karnataka High Court Act praying to set
aside the order dated 6-11-1997 in W.P.No.21128/96.

This writ appeal coming on for Preliminary
Hearing this day, SADASHIVA J., delivered the
following:-

J U D G E M E N T

It is true that even after the application
filed by the 5th respondent, the ~~land~~ was regranted
by the Assistant Commissioner by his order dated
26th March, 1969, he appeared before the Tehsildar
in the enquiry in relation to the application filed
by the predecessor in title of the petitioners-
appellants and filed an affidavit for an order of

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regtant in respect of 6 acres. It is for this reason, the appellants contend that the petition filed by the 5th respondent under Articles 226 and 227 of the Constitution of India was not maintainable in view of his submission to the jurisdiction of the Tahsildar.

In order to substantiate the jurisdiction of an authority, in our considered view, there shall be a proceeding in respect of the application filed by or against the person concerned. In the instant case, neither the application filed by the 5th respondent was pending before the Tahsildar nor ~~he~~ was ^{he} made as a respondent in the application filed by the appellant. If respondent No.5 by ignorance of law as to the consequences of an order made by an competent authority under the provisions of the Karnataka Village Officers Abolition Act, 1961 (for short the Act) files an affidavit, it should not be held against him in the absence of any ^{order setting aside the} order

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made in his favour by the competent authority.

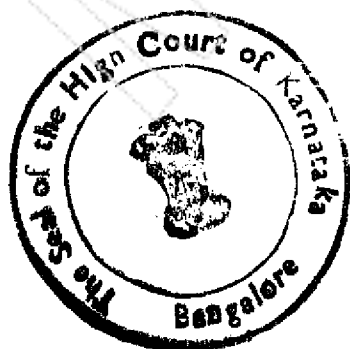
In the instant case, it is admitted that the Assistant Commissioner by order dated 26th of March, 1969 regranted an extent of 8 acres 6 guntas in favour of the 5th respondent.

The said order even to this date has not been challenged by the appellants before any authority.

In the absence of any order either setting aside or declaring or modifying the order made in favour of respondent No.5 by any competent authority, the learned Single Judge has rightly held that the Tansildar had no authority of law to make an order of regrant in respect of 8 acres 6 guntas of land which had already been regranted in favour of respondent No.5.

For the reasons aforesaid, we find no legal infirmity in the order under appeal. We accordingly, dismiss the appeal. No orders as to costs.

Sd/-
Judge



NSU/-

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