

**SUPREME COURT OF INDIA**

Shivappa Mallappa Pujar

Vs.

Guddappa

C.A.Nos.2186 of 2002

(Tarun Chatterjee and Aftab Alam JJ.)

17.07.2008

**ORDER**

1. Heard learned counsel for the parties.

2. This is an appeal arising out of judgment and order dated 26th June, 2000 passed by the High Court of Karnataka at Bangalore in L.R.R.P. No.2339/1990. An application was filed in the year 1977 by Hanumappa - the predecessor-in-interest of the contesting respondents, before the Land Tribunal Ranebennur for conferment of occupancy rights, which was disposed of in the following manner:

“Applicant present in Court. Amongst the opponent, 1<sup>st</sup> opponent and the mother are present. Matter was enquired and the statements were recorded. The relevant records were perused. The Applicant was earlier cultivating the land on Koru lavani and thereafter i.e. 4 to 5 years back the said land was given to the landlords.

The Opponent who were present have admitted the position.

Village Reg.Sy.No. Area Revenue

Mastur 69 9-21 20.68

Since the applicant has stated before the tribunal that he has given up the cultivation of the land the application of the Applicant is rejected.”

3. About seven years thereafter, a writ petition was filed by him before the High Court challenging this order of the Land Tribunal Ranebennur. The Appellate Authority allowed the appeal mainly on the ground that since the respondent was in possession, his name should be recorded. In revision, the High Court has affirmed the said finding. This appeal/special leave petition was filed against the aforesaid order of the High Court in revision and has been heard by us in presence of the learned counsel for the parties.

4. In our view, the impugned order of the High Court cannot be sustained simply for two reasons. First, the admission made by the respondent before the Tribunal on the basis of which the application was rejected by the Tribunal was not considered in proper manner. Secondly, after the order was passed by the Land Tribunal, a writ petition was filed challenging the aforesaid order of the Tribunal about seven to eight years thereafter.

5. Appellate Authority while deciding the appeal in favour of the respondent did not at all consider the aforesaid admission from the respondent and also did not consider whether sufficient explanation was given for delay in filing the writ petition. That being the position, we have no other alternative but to set aside impugned order of the High Court and the matter be sent back for rehearing of the same. The writ petition shall be heard and disposed of within a period of three months from the date of receipt of a copy of this order by the High Court.

6. The Civil Appeal is accordingly allowed to the extent indicated above, with no order as to costs. Interim order, if any, stands vacated.