

SUPREME COURT OF INDIA

Thammaiah Gowda

Vs.

Shekar

C.A.No.2899 of 2002

(Aftab Alam and K.S.Radhakrishnan JJ.)

20.04.2010

ORDER

1. The High Court's Order against which this appeal is preferred directed for the appellant's ejection from the land forming the subject-matter of the writ petition. The appellant came to this Court making the grievance that the order was passed in a public interest litigation and it went beyond the relief claimed in the writ petition. Though leave was granted for filing appeal, this Court did not pass any interim order in the appellant's favour. On notice being issued, a counter affidavit has been filed on behalf of the State stating that, in pursuance of the High Court's direction, the appellant was dispossessed from the disputed land (which happens to be a forest land) and the State has resumed its possession.

2. When the case was called out, Mr. Rajesh Mahale, who is the Advocate-on-record, filed an interlocutory application for his discharge from this case. In the discharge application it is stated that on receipt of a copy of the counter affidavit filed on behalf of the State, he sought further instructions from the appellant or his son, but he never received any response from them. The relevant extract from the application for discharge is reproduced below:

“Although the Advocates for the Appellant have informed him of the listing of the case and the developments, there has been no communication, information or instructions from the Appellant to his Advocates. The Applicant has tried to obtain instructions from the Appellant as to the developments in the case. No instructions are forthcoming from the Appellant or his son. The Applicant's colleague Mr. Raghavendra S. Srivatsa, Advocate who is handling this case has contacted the Appellant and his son on several occasions and has also written letters. Finally, under cover of the letter dated January 16, 2010, the Advocates for the Appellant have informed him that they will withdraw from the case and that.....”

3. In these circumstances, we allow the prayer for discharge and direct that the vakalatnama filed on behalf of the appellant be cancelled and he be discharged from this case.

“This is not the end of the matter. The discharge application clearly indicates that the appellant has lost interest in the matter and he is no longer interested in prosecuting the appeal. In that circumstance, the civil appeal is dismissed for non-prosecution.”