

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT PETITION NO.8766 OF 2015 (GM-RES)

BETWEEN

- 1 . BIRAGANDA SIDDAPPA
SON OF GADAPPA,
AGED ABOUT 75 YEARS,
BANDIHATTI COWLBAZAR,
WARD NO.29,
BELLARY 538102
- 2 . SRI K NALLANNA
SON OF LATE K KODAPPA,
AGED ABOUT 80 YEARS,
RESIDING AT NEAR RAMULLAMMA TEMPLE,
BANDHIHATTI, WARD NO.29,
COWLBAZAR,
BELLARY-538 102
- 3 . HARIJAN NAGARAJU
SON OF LATE HARIJAN RAMANNA,
AGED ABOUT 54 YEARS,
RESIDENT OF DANAPPA STREET,
WARD NO.27, BANDHIHATTI
COWL BAZAR,
BELLARY-583 102.
- 4 . HARIJAN NAGENDRA
SON OF KARE NAGAPPA,
AGED ABOUT 60 YEARS,
RESIDENT OF DANAPPA STREET,
WARD NO.27, BANDHIHATTI
COWL BAZAR,

BELLARY-583 102.

- 5 . HARIJAN SHANKARAIHAH
SON OF LATE HARIJAN VARADAPPA,
AGED ABOUT 40 YEARS,
RESIDENT OF DANAPPA STREET,
WARD NO.27, BANDHIHATTI,
COWL BAZAR,
BELLARY-583 102.
- 6 . SRI LOKESH
SON OF LATE VADDE KALLAPPA,
AGED ABOUT 37 YEARS,
RESIDENT OF VADDERGERI MAIN ROAD,
WARD NO.28, BANDHIHATTI COWL BAZAR,
BELLARY-583 102.
- 7 . ERAMMA
WIFE OF VADDEKEMPAIAH,
AGED ABOUT 65 YEARS,
RESIDENT OF WARD NO.27,
BANDHIHATTI COWL BAZAR,
BELLARY -583 102.
- 8 . MUTHYALAMMA
DAUGHTER OF LATE VADE ERANNA,
AGED ABOUT 54 YEARS,
RESIDENT OF WARD NO.27,
BANDHIHATTI COWL BAZAR,
BELLARY -583 102.
- 9 . MARISIDDAPPA
SON OF KURUBARA TELAGARA RAMAKKA,
AGED ABOUT 40 YEARS,
RESIDENT OF DANAPPA STREET,
WARD NO.27, BANDHIHATTI,
COWL BAZAR,
BELLARY-583 102.
- 10 . K NARASAMMA
WIFE OF PARASAPPA,

AGED ABOUT 65 YEARS,
RESIDENT OF BANDHIHATTI
COWL BAZAR,
BELLARY-583 102

- 11 . HANUMANTHAPPA
SON OF LAKSHMANA,
AGED ABOUT 70 YEARS,
RESIDENT OF BANDHIHATTI,
THAYAMMANA NAGAR,
COWL BAZAR, BELLARY-583 102.
- 12 . UPPAR LAKSHMAMMA
WIFE OF LATE UPPAR MALLAPPA,
AGED ABOUT 55 YEARS,
RESIDENT OF BANDHIHATTI
COWL BAZAR,
BELLARY-583 102.
- 13 . DODDA BASSAPPA
SON OF LATE SANNAPOPANNA,
AGED ABOUT 41 YEARS,
RESIDENT OF BANDHIHATTI,
COWL BAZAR,
BELLARY-583 102
- 14 . TARLE SIDDAPPA
SON OF RAMAPPA,
AGED ABOUT 80 YEARS,
RESIDENT OF BANDHIHATTI
COWL BAZAR,
BELLARY-583 102.
- 15 . BASSAMMA
WIFE OF MURULA KADAPPA,
AGED ABOUT 65 YEARS,
RESIDENT OF BANDHIHATTI,
COWL BAZAR,
BELLARY-583 102.
- 16 . SANNA HULUGANA

SON OF BUJANGAPPA,
AGED ABOUT 50 YEARS,
RESIDENT OF BANDHIHATTI,
COWL BAZAR,
BELLARY-583 102.

- 17 . AYYAPPA
SON OF LATE MUNISWAMAPPA,
AGED ABOUT 80 YEARS,
RESIDENT OF BANDHIHATTI,
COWL BAZAR,
BELLARY-583 102.
- 18 . ABDUL LATEEF,
SON OF SUBAN SAB,
AGED ABOUT 35 YEARS,
RESIDENT OF BANDHIHATTI
COWL BAZAR,
BELLARY-583 102.
- 19 . GADI LINGAPPA
SON OF LAKSHMANNA,
AGED ABOUT 41 YEARS,
RESIDENT OF BANDHIHATTI,
COWL BAZAR,
BELLARY-583 102.
20. HULAGANNA
S/O MARAPPA
AGED ABOUT 55 YEARS
R/AT ABDUL SALAM ROAD
HOUSE NO.71, WARD NO.28
COWL BAZAR, BELLARY
21. SUNKAPPA
S/O MARAPPA
AGED ABOUT 55 YEARS
R/AT ABDUL SALAM ROAD
HOUSE NO.71, WARD NO.28
COWL BAZAR BELLARY
22. DODDABASAPPA

S/O HARIJAN FAKIRAPPA
 AGED ABOUT 44 YEARS
 R/AT KHUNITHANA MASJID
 BANDIHATTI ROAD
 WARD NO.28, COWL BAZAR
 BELLARY

...PETITIONERS

(BY SRI JEEVAN KUMAR B S, ADVOCATE)

AND

1 . KARNATAKA STATE BAR COUNCIL
 OLD KGID BUILDING,
 DR AMBEDKAR VEEDHI,
 BANGALORE-01,
 REPRESENTED BY ITS SECRETARY

2 . K JAGANNATH RAO
 ADVOCATE,
 AGED ABOUT 60 YEARS
 HAVING HIS OFFICE AT
 AMBABHAVANI KRUPA,
 MAIN ROAD, S.N.PET,
 BELLARY-583 102.

...RESPONDENTS

(BY SRI A MADHUSUDHANA RAO, ADVOCATE FOR R2
 SRI G NATARAJ, ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ENDORSEMENT DT.28.10.2014 ISSUED BY R-1 IN RESPECT TO ALL THE PETITIONERS (ANNX-N1 TO 19 AS PER BELOW TABULAR COLUMN) AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.03.2023, COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The present Writ Petition is filed seeking for the following reliefs:

"a. To Set-aside the endorsement dated 28.10.2014 issued by first respondent in respect to all the petitioners (Annexure-N1 to 19 as per below tabular column)

aa. Issue a Writ of Certiorari or any other Writ Order and quash the Impugned Notice dated 28.10.2014 (Annexure N20 to 22)

b. Remand the matter to the first respondent to refer the matter Disciplinary Committee and conduct the proper enquiry in the matter.

c. Pass such other orders as this Hon'ble Court deems fit to pass in the circumstances of the case and in the interest of justice and equity."

Petitioner No.1	Annexure N1	No.KSBC.IC-106/13
Petitioner No.2	Annexure N2	No.KSBC.IC-110/13
Petitioner No.3	Annexure N3	No.KSBC.IC-108/13
Petitioner No.4	Annexure N4	No.KSBC.IC-111/13
Petitioner No.5	Annexure N5	No.KSBC.IC-107/13
Petitioner No.6	Annexure N6	No.KSBC.IC-173/13
Petitioner No.7	Annexure N7	No.KSBC.IC-169/13
Petitioner No.8	Annexure N8	No.KSBC.IC-168/13
Petitioner No.9	Annexure N9	No.KSBC.IC-109/13
Petitioner No.10	Annexure N10	No.KSBC.IC-104/13
Petitioner No.11	Annexure N11	No.KSBC.IC-172/13
Petitioner No.12	Annexure N12	No.KSBC.IC-113/13
Petitioner No.13	Annexure N13	No.KSBC.IC-113-A/13
Petitioner No.14	Annexure N14	No.KSBC.IC-114/13
Petitioner No.15	Annexure N15	No.KSBC.IC-171/13
Petitioner No.16	Annexure N16	No.KSBC.IC-231/13

Petitioner No.17	Annexure N17	No.KSBC.IC-167/13
Petitioner No.18	Annexure N18	No.KSBC.IC-228/13
Petitioner No.19	Annexure N19	No.KSBC.IC-225/13
Petitioner No.20	Annexure N20	No.KSBC.IC-163/13
Petitioner No.21	Annexure N21	No.KSBC.IC-230/13
Petitioner No.22	Annexure N22	No.KSBC.IC-170/13

2. It is the case of the Petitioners that the predecessors of the petitioners were in possession and cultivating the lands which belongs to Sri B.V.L. Narayana Rao who are the residents of Bapatla of Guntur District, Andhra Pradesh State; that he had leased the lands to Shri.Mohanavelu Modiliar vide Lease Deed dated 11.08.1957 who was managing the said land as a Manager. That the dispute in O.S. No.110/1964 between the family members of B.V.L. Narayana Rao was filed without making the predecessors of the Petitioners as a party to the said proceedings. The said suit was decreed and E.P. Nos.166/1973 and 167/1973 were filed. However, delivery of possession could not be taken since the tenants were cultivating and were in possession of the land, which aspect is forthcoming from the record of the other legal proceedings.

3. It is the case of the Petitioners that after coming into force of the Karnataka Land Reforms Act, the predecessors of the Petitioners filed an application under Form No.7 for grant of occupancy rights. When the matter was pending before the Land Tribunal, the Petitioners engaged the services of respondent No.2 - Advocate for conducting the proceedings. It is the contention of the Petitioners that they being illiterate and taking advance of the situation, Respondent No.2 on the guise that, he would get the patta done in favour of the Petitioners filed an application for withdrawal of Form No.7 filed by the predecessors of the Petitioners. Based on the same, the Land Tribunal by order dated 06.08.2002 dismissed the application for grant of occupancy rights and the Respondent No.2 received copy of the said order dated 26.08.2002 and did not inform the Petitioners and that Respondent No.2 was hand in glove with the land owners to defeat the claim of the Petitioners.

4. It is the case of the Petitioners that during the year 2013, they came to know about the illegal act of Respondent No.2 and lodged a complaint with Respondent No.1 - Karnataka State Bar Council, Bengaluru (for short 'Bar Council') against Respondent No.2. That the Bar Council without even referring the complaint of the Petitioners to the Disciplinary Committee dropped the proceedings vide endorsement dated 28.10.2014. Being aggrieved, the present Writ Petition is filed.

5. The Respondents have entered appearance through their respective counsels and contested the case of the Petitioners and have filed the statement of objections.

6. The Respondent No.1 - Bar Council, in its statement of objections has contended that the consequent to receipt of the complaint by the Petitioners, notice was issued to the Advocate calling upon him to submit his explanation which was filed. Thereafter, the matter was placed before a meeting convened on

13.09.2014 and a resolution was passed to drop the complaint which has been communicated to the Petitioners. In the resolution, the gist of the case of the complaint and the explanation submitted by Respondent No.2 - Advocate have been referred to and taking note of the relevant facts, the Committee came to the conclusion that no misconduct can be attributed against the Respondent No.2-Advocate and thus, resolved to drop the complaint against Respondent No.2 - Advocate. It is contended that Bar Council has followed the procedure in accordance with the provisions and Section 35(1) of the Advocates Act, 1961 (for short 'the Act') and the procedure prescribed in para No.7 of the Bar Council of India Rules (for short 'the Rules') of complaint and no illegality or irregularity can be attributed to the procedure followed. That there is no mandatory provision that Council should call for further better particulars from the Petitioners consequent to explanation received from the Advocate.

7. Respondent No.2-Advocate has also filed his detailed statement of objections contesting the case of the Petitioners and has placed on record the various material to demonstrate that the complaint made by the Petitioners alleging profession misconduct is untenable. It is specifically contended by Respondent No.2 that the services of Respondent No.2 were engaged by some of the Petitioners and the predecessors of some of the Petitioners to appear before the Land Tribunal as well as in O.S. No.921/1989 where the Petitioners were arrayed as defendants; that the Petitioners who are the applicants before the Land Tribunal voluntarily came forward for withdrawing the case before the Land Tribunal since they could not furnish any documents to establish that they were the tenants of land in question and in this background, they came forward to withdraw the applications filed by them. When the said applications were filed, the Land Tribunal had raised a doubt as to whether the said applications could be permitted to be withdrawn and in this regard, the Land Tribunal had also sought for

clarification from the Revenue Department, Government of Karnataka. The Secretary of the Revenue Department, Government of Karnataka after considering the entire aspect, directed the Land Tribunal before considering the application filed by the applicants for withdrawing Form No.7, referring a finding as to whether the land is vested with the State and then pass appropriate orders. In this background, the Land Tribunal had passed a detailed order dated 06.08.2002 after recording the statement and also statement of the land owners and came to the conclusion that the lands are not vested with the State and permitted to withdrawal of the Applications.

8. The spot inspection was also conducted by the Land Tribunal and after considering all the material on record, the order was passed by the Land Tribunal; that in the spot inspection conducted by the Land Tribunal consisting of the Chairman and its members came to the conclusion that the land is not a tenanted land and the same is not cultivated. All the proceedings conducted by

the Land Tribunal have been referred to in the order passed by the Land Tribunal dated 06.08.2002;

9. That in addition to the proceedings before the Land Tribunal, the Landlord had also initiated O.S. No.48/1979 which is renumbered as O.S. No.921/1989 seeking for declaration and possession in respect of the very suit property in which some of the Petitioners and predecessors of some of the Petitioners were arrayed as party defendants. That in addition to the Development before the Land Tribunal, some of the Petitioners and the predecessors in title filed a Compromise Petition under order 23 Rule 3 of Code of Civil Procedure, 1908 in the suit filed by the landlord and consequent to which, the suit was dismissed as withdrawn. The details of the Compromise Petition filed have stated in the statement of objections and the relevant records regarding the same have also been produced by Respondent No.2. It is further contended by Respondent No.2 that all the Defendants in O.S. No.921/1989 who had filed the Compromise Petition

before the Trial Court had personally appeared and accepted the compromise after signing the order sheet and on the basis of which, the compromise order has been passed. A copy of the order sheet in O.S. No.921/1989 has also produced along with the statement of objections.

10. That the present complaint has been filed after a lapse of more than 12 years and that the complaint made against the Respondent No.2 is patently untenable. That many of the Petitioners were never the clients of Respondent No.2 and it is only the predecessors in title and during their lifetime they never alleged professional misconduct against Respondent No.2. That Respondent No.2 had furnished all the details to Bar Council when his response was sought and considering the same, the complaint has been dropped.

11. Shri Jeevan Kumar, learned Advocate for the Petitioners vehemently contended that the procedure adopted by Bar Council is arbitrary, especially when the

allegation of fraud is made and Bar Council ought to have called upon the Petitioners to submit any additional documents and referred the matter to the Disciplinary Committee for enquiry and without even affording an opportunity to the Petitioners to prove the allegation, the proceedings against the Respondent No.2 - Advocate has been dropped.

12. In support of his submission, he relies on the judgment in the case of ***A.K. Subbaiah Vs. The Karnataka State Bar Council and Others***¹.

13. Per contra, G. Nataraj, learned Advocate appearing for Respondent No.1 and Sri A. Madhusudhan, appearing for Respondent No.2 contended that there is no error in the proceedings conducted by the Bar Council and the same is in accordance with law. They further reiterated their stand taken in the statement of objections.

¹ ILr 2002 KAR 3918

14. I have considered the submissions raised by learned counsels and perused the material on record. The question that arises for consideration is:

"Whether the resolutions passed by the Respondent No.1- Bar Council is liable to be interfered with in the present Writ Petition?"

15. Before appreciating the factual matrix, it is necessary to notice the relevant statutory provisions. Section 35(1) of the Act provides as follows:

"35. Punishment of advocate^{4s} for misconduct.- (1) Whether on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee."

(emphasis supplied)

16. Part VII of the Rules provides for Disciplinary Proceedings and Review. Chapter I of part No.VII provides for complaints against the Advocates and the procedure to

be followed by the Disciplinary Committees of the Bar Council. Rule 2 in Chapter I states as follows:

"2. Before referring a complaint under section 35(1) of the Act to one of its Disciplinary Committees to be specified by it, the Bar Council may require a complainant to furnish within a time to be fixed by it, further and better particulars and may also call for the comments from the advocates complained against."

(emphasis supplied)

17. In the case of A.K. Subbaiah¹, the Co-ordinate Bench of this Court held as follows:

11. Sub-section (1) of Section 35 of the Act, mandates that on a receipt of the complaint or otherwise, a State Bar Council, if it has reason to believe that any Advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee. The complaint filed under this sub-section must necessarily contain that an Advocate on the roll of the State Bar Council has been guilty of professional misconduct or other misconduct. If this is alleged and ultimately proved by the complainant, then only the disciplinary committee of the State Bar Council can impose any punishment as provided under clauses (b) to (d) of Sub-section (3) of Section 35 of the Act, otherwise, it can dismiss the complaint as provided in Sub-clause (a) to Sub-section (3) of Section 35 of the Act and this exercise can be done only after giving the Advocate concerned and the learned Advocate General an opportunity of being heard in the matter.

(emphasis supplied)

18. In the present case, it is to be noticed that consequent to the complaint received by the Petitioners, Respondent No.1 notified the respondent No.2 who submitted his explanation. All the complaints made by the Petitioners against Respondent No.2 was placed before the Bar Council in its meeting held on 13.09.2014 and similarly worded resolutions have been passed in respect of all the complaints made by the petitioners. The resolution passed in respect of the complaint made by Petitioner No.1 is extracted hereinbelow for ready reference.

Res. No.186/14: Considered the complaint and explanation. The complaint filed alleging that the respondent advocate did not take care to protect the interest of the complainant tenant and so called compromise etc was not entered into by the parties. It is the case of the protect complainant's that they were the tenants of different extents of land in Survey No. 597 of Bellary. It is a litigation for long years inter-ce between the family members of land lords and alleged that in the execution of that decree, the complainant and their predecessors sought to be evicted though they were the tenants. The proceedings are pending from long time, in meanwhile Land Reforms Act is amended by the Act 1 of 1974 (w.e.f. 1.3.1974) The complainant and their predecessors in title filed applications in Form No. 7. These applications were pending before the Land Tribunal for the long time as the land lord has taken up the matter in civil appeal Nos.

10,775-10,776/83 before the Supreme Court. It appears that some interim order was passed and the matter was pending till 12.2.2001. Hence a communication is said to be received in the office of Tasildhar, Bellary intimating that the case filed by the land lord has been dismissed. Thereafter the case has been taken up before the Tribunal for hearing. The complainant's predecessors in title who are the applicants claiming occupancy rights filed applications claiming that Form No. 7 was filed by mistake and their applications may be dismissed as withdrawn. At this point of time the respondent advocate has represented them in the Land Tribunal. As the Tribunal have a doubt whether the application can be permitted to be withdrawn it has sought for clarification from the Revenue Secretary. The Government in turn has pointed out that before the tenant's request was considered, the Tribunal should record finding as to whether the land is vested in the State and other required findings are recorded. Thereafter as could be seen from the order of Land Tribunal, the concerned parties have appeared before the Tribunal. Their statements are recorded wherein complainants and predecessors in title again asserted that they are not the tenants and application was filed under misconception etc., These statements are recorded, signed by the concerned parties and there was a cross-examination by the Thasildhar where the complainant and the predecessors specifically state that they are voluntarily making statements not under any influence of the land lord etc., The land tribunal by its order dated 6/8/2002 has rejected the applications of these complainant and predecessors. After the Land Tribunal dismissed the application by order dated 6/8/2002 the proceedings are reported to Civil Court in OS No.48/79 which has been renumbered as OS No. 921/89. In this suit the order passed by the Land Tribunal is produced and the decree is sought. All these complainant and their representatives have appeared in person and the order sheet discloses

that the court has recorded the contents of the compromise petition and are read over and explained to the parties. The parties stated that they have understood the terms and admitted that the compromise is voluntarily entered. The compromise was recorded and further the proceedings taken in the suit. Now after almost 12 years, the complainant has made allegation that the advocate did not protect their interest and they have not entered into compromise etc. All these are heard by the Land Tribunal and the Civil Court, statements are recorded. Therefore question of making allegation on the respondent advocate does not arise at all. If according to the complainants if they have not entered into compromise, the proceedings before the land tribunal are wrong etc., altogether a different proceedings has to be taken at appropriate forum. This is not a case involving about professional misconduct and therefore IT IS RESOLVED to DROP the same.

19. Pursuant to the said resolution wherein the complaint against Respondent No.2 was resolved to be dropped, the same was communicated to Petitioners by Respondent No.1 by its communications dated 28.10.2014 which have been challenged in the present Writ Petitions.

20. It is forthcoming from the said resolutions that Respondent No.1 has considered in detail the legal proceedings in which Respondent No.2 represented the Petitioners and orders passed in the said proceeding which

are matter of record. The Bar Council has also noticed that Respondent No.2 had not only represented before the Land Tribunal but also represented them in the proceedings before the Civil Court and the fact that the Petitioners have appeared in person before the Civil Court when the Compromise Petition was filed and the compromise was recorded which is forthcoming from the order sheet of the Civil Court. It is also noticed that the complaint is filed making allegations against Respondent No.2 almost 12 years after the compromise has been recorded.

21. The sole contention of the Petitioners is that they have not been notified by Respondent No.1 and a copy of the reply that was given by Respondent No.2 was not furnished to them and an opportunity was not provided to the complainants to respond to the said reply of Respondent No.2 before the complaint of the Petitioners was considered on its merits by Respondent No.1.

22. Section 35(1) of the Act contemplates that State Bar Council is to refer a complaint for disposal to its Disciplinary Committee if it has "*reason to believe*" that any Advocate has been guilty of professional or other misconduct. Hence, there is no requirement under Section 35(1) of the Act, that the complaint was required to be notified before the Bar Council takes a decision on a complaint received by it.

23. Rule 2 of the Rules contained under chapter 1 of Part No.VII of the Rules provides a discretion to the Bar Council to require a complainant to furnish further and better particulars as also call for comments from the advocate. Hence, the Rules also do not mandate the Bar Council to notify the complainants after the response is filed by the Petitioners.

24. It is not the case of the Petitioners that they had made a request to the Bar Council to notify them after the reply from the Advocate is furnished. It is also forthcoming from the grounds urged in the Writ Petition

that Petitioners merely challenged the procedural aspect of not being notified by Respondent No.1 to submit any additional document. The Petitioners have not averred in the Writ Petition as to any particular fact or material in response if any, to the reply submitted by Respondent No.2 to Respondent No.1 on the merits of the matter. It is also not the case of the Petitioners that they have challenged the Compromise Petition presented by them before the Civil Court in O.S. No.921/1989 and the decree passed consequent to the same as not binding on them.

25. Having regard to the fact that Petitioners have not challenged the Compromise Petition recorded in O.S. No.921/1989 nor they having set out in the Writ Petition any response that they might have had to the reply furnished by Respondent No.2 to Respondent No.1 and in the absence of any mandatory stipulation either in the Act or in the Rules requiring Respondent No.1 to notify the Petitioners before any decision is taken on the complaints

made by them, the contentions putforth by the Petitioners in the above Writ Petition cannot be accepted.

26. In view of the aforementioned, no ground is made out by the Petitioners to grant the reliefs as sought for in the Writ Petition. Hence, the above Petition is dismissed as devoid of merits.

No costs.

**Sd/-
JUDGE**

BS