DATTATREYA AND ORS. A

v.

MAHAVEER AND ORS.

MAY 31, 2004

B

[BRIJESH KUMAR AND ARUN KUMAR, JJ.]

Karnataka Land Reforms Act, 1961; Section 45/Karnataka Certain Inams Abolition Act, 1977; Section 5 :

Rights of occupancy tenancy over disputed land—Claim of—Land Tribunal granted rights in favour of applicant/respondents—However, on the application of another person/appellant, Tribunal also granted him the rights on the same land—Challenged by the respondents—Remanded to the Tribunal by Single Judge of the High Court for consideration of the Applications of both appellants and respondents afresh—Challenged by both the parties—Division Bench of the High Court allowed the appeal of the respondents and rejected the other—On appeal, Held : since tenancy rights were acquired and granted in favour of respondents under the provisions of the Karnataka Land Reforms Act, in terms of the earlier order of the Tribunal, the same land was not available any more for registration of occupancy under the provisions of the 1977 Act—Since earlier Order of the Tribunal was neither void nor challenged by the appellants, it cannot be ignored in a collateral proceeding—Hence Division Bench of the High Court rightly set aside the order of the Single Judge.

C D E F

Respondents filed an application before the Land Tribunal claiming occupancy tenancy rights in respect of the land in dispute belonging to a temple. The Tribunal granted them rights in terms of provisions of the Karnataka Land Reforms Act. Later, some other persons, appellants moved applications under the provisions of the Karnataka Certain Inams Abolition Act for registering them as occupants over the same land and subsequently, they also filed a writ petition challenging the Tribunal's Order. The writ petition was dismissed by the High Court. Appellants filed another writ petition, and the High Court directing the Tribunal to dispose of the pending application on merits.

G H

A Tribunal granted the occupancy rights in favour of the appellants, but observed that in view of its earlier order, occupancy rights which were granted in favour of the respondents stood confirmed as not challenged. Respondents challenged the order of the Tribunal. Single Judge of the High Court remanded the matter to the Tribunal for reconsideration
B of the applications moved earlier by both the parties. Both the parties challenged the order by filing cross appeals. Division Bench of the High Court allowed the appeal of the respondents and dismissed the other. Hence the present appeal.

Dismissing the appeal, the Court

C

HELD : 1. The appellants cannot be allowed to claim any *bonafides* in not impleading the respondents as parties in the writ petition or about non-disclosure of the earlier order of the Tribunal before High Court in respect of the same land knowingly on the ground
D that it was not necessary to disclose it. They knew well that if any order is passed in their favour the respondents would be the affected persons. The respondents were deprived from raising this point before the Single Judge. The conduct of the appellants had been far from being fair if not fraudulent. It was a deliberate suppression of material fact which caused prejudice to the respondents. Fair play is the basic rule
E to seek relief under Article 226 of the Constitution. [821-E-F-G]

2.1. The appellants claimed their rights as pujari by filing an application under Section 5(2)(i) of the Karnataka Central Inams Abolition Act, 1977 which plea could have been taken by them while
F the matter was before the Tribunal and before the order was finally passed. Nothing has been indicated as to why it could not be done. As a matter of fact the tenancy rights of the respondents were admitted before the Tribunal. The Tribunal and the Single Judge of the High Court have rightly observed that once the matter was finalized and the High Court had declined to interfere in the position as existed in terms
G of the orders of the Tribunal, there was no occasion to reopen the matter and decide the same on merits. As a matter of fact the earlier order was also on merits. It was passed on the basis of the revenue records and the statements on the record of the case and the admission made by one of the parties, and the matter was allowed to attain
H finality. [822-A-B-C-D]

2.2. The Courts below felt compelled to consider the application of the appellants moved in the year 1985 under the provisions of the Karnataka Certain Inams Abolition Act on merits in view of the order passed by the High Court in the writ petition but this order could not be construed so narrowly. The fact of the matter is that by Tribunal's order dated 3.7.1979 rights of the occupancy tenancy had been granted in favour of the respondents and certificate to the same effect had also been issued in their favour. The order was passed in the presence of the appellants. The result was that the tenancy rights were acquired and granted in favour of the respondents under Section 45 of the Karnataka Land Reforms Act and the land was not available any more for registration of occupancy under Section 5(2)(i) of Karnataka Certain Inams Abolition Act, 1977, more so when the Tribunal's order dated 3.7.1979 was not challenged much less before or up to the time of appellants moving application in the year 1985. Thus, it attained finality. For the first time it was challenged after a lapse of about 11 years by the appellants by filing a writ petition. The writ petition was dismissed ultimately on the ground of laches which order was again not challenged. Moreover, the order dated 3.7.1979 is not a void order so as to be ignored in any collateral proceedings nor it was put in question in the proceedings initiated by the appellants in 1985. Merely filing a writ petition does not mean that it automatically by itself reopens the whole matter to be examined in any other collateral proceedings and the finality attained by the order is lost. Therefore, it is not a question of bar of *res judicata* as well. [822-F-G-H; 823-A-B, C-D-E]

Basappa Gurusangappa v. *Land Tribunal,* (1979) 2 KLJ 370, distinguished.

2.3. The order passed by the Single Judge in the writ petition behind the back of the respondents and obtained by suppressing the material facts does not compel the Tribunal or the Single Judge to allow the claim of the appellants in the facts and circumstances of the case. The Division Bench has rightly held that the question of validity of Tribunal's order dated 3.7.1979 was not in question before the Tribunal in the petition moved by the appellants in the year 1985 nor it was a matter for consideration before the Single Judge of the High

Court. Hence, the order of Single Judge has rightly been set aside by the Division Bench in appeal. The merits of the Tribunal's order dated 3.7.1979 is not a matter to be considered in these proceedings. No good reason has been found to interfere in the order passed by the Division Bench except to delete some of the observations which are a bit harsh and were not necessary to be made for disposal of the case. [823-F-G-H; 824-A-B-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 35 of 1999.

From the Judgment and Order dated 31.3.1998 of the Karnataka High Court in W.A. Nos. 9706 and 6915 of 1996.

Rajinder Sachar, Sudarsh Menon, Mahesh Singh and G.S. Sharma for the Appellants.

P.A. Kulkarni, Khwairakpam Nobin Singh and Sanjay R. Hegde for the Respondents.

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. : The dispute in the present appeal relates to Sy. No. 1033/1 + 2 situate in Belgaum belonging to the temple Shri Chandramouleshwara Dev of Belgaum which is a registered public trust. The respondents in this appeal claimed occupancy tenancy rights under the provisions of Section 45 of the Karnataka Land Reforms Act, 1961 by moving an application dated 23.8.1974. The aforesaid claim of the respondents was considered by the Land Tribunal, Belgaum and by order dated 3.7.1979 it declared the respondents as tenants and granted occupancy tenancy rights under Section 45 of the Karnataka Land Reforms Act (for short 'the Act') with effect from 1.3.1974. While passing the aforesaid order, the Tribunal made a reference to the relevant records and the statements of the parties and it also noted the fact that the tenancy of the respondents, who were applicants, was admitted by Madhukar Adhyapak, one of the appellants in this appeal. The relevant date for accrual of rights of occupancy tenancy is 1.3.1974, on which date the Tribunal came to the conclusion, on the basis of the evidence on the record, that the respondents were in possession over the land in dispute as tenants. The order dated

3.7.1979 was not challenged by any party by filing any appeal, revision or any other proceedings in any court whatsoever except for the first time in 1990 by filing a writ petition. In the meantime in 1981 the occupancy tenancy certificate was also issued in favour of the respondents.

The appellants, however, on 22.6.1985 moved an application under Section 5 of the Karnataka Certain Inams Abolition Act, 1977 (Karnataka Act No. 10 of 1978) in Form I for registration as occupants over the same land namely, Sy. No. 1033/1+2 claiming possession over the land for a very long time and having been rendering service to the temple by performing religious worship. The appellants claimed to be the wahivatdars of Shri Chandramouleshwar Devasthanam, Belgaum. After five years of filing of the aforesaid application the appellants filed a writ peition No. 14033 of 1990 challenging the order dated 3.7.1979 granting occupancy tenancy rights in favour of the respondents. The aforesaid writ petition was dismissed by order dated June 3, 1991. The order dated 3.7.1979 appears to have been challenged on the ground of lack of individual notice and that it was urban land, therefore, the Karnataka Land Reforms Act would not be applicable. The court also discussed the point relating to service of notice and found that the parties were represented. In any case, ultimately it was held that the writ petition was filed nearly 11 years next after the impugned order of the Tribunal hence the petition was dismissed on the ground of laches. The matter rested at that and the order of the High Court dated 3.6.1991 was not challenged any more and was allowed to become final.

After the dismissal of the writ petition No. 14033 of 1990 the appellant filed another writ petition No. 5495 of 1992. The grievance raised in the above noted writ petition seemed to be that no orders have been passed on the application filed by the appellant in Form No. 1 dated 22.6.1985 under the provisions of the Karnataka Certain Inams Abolition Act, 1977. The court allowed the writ petition directing the Tribunal to dispose of the application on merits in accordance with law within a period of four months from the date of receipt of the order. It would be worth noticing that the private respondents in whose favour occupancy tenancy was granted by order dated 3.7.1979 were not impleaded as the respondents in the writ petition and the order was passed in their absence. However, in view of the direction issued by the High Court the Tribunal took up the

matter for decision on merits.

The Tribunal by order dated 21.9.1993 granted occupancy rights to the appellants under Section 12(2) of the Karnatka Certain Inams Abolition Act. While disposing of the application the Tribunal took note of the fact that by order dated 3.7.1979 occupancy rights were granted in favour of the respondents under Section 45 of the Karnataka Land Reforms Act, 1961 and further the fact that the writ petition preferred about 11 years after the aforesaid order was dismissed on the ground of laches. The Tribunal further observed that in view of the above position the occupancy rights granted to the respondents stood confirmed by reason of non-interference by the High Court. Therefore, the Tribunal observed that the question of reconsideration of the case by the Tribunal did not arise. Despite the above observation the Tribunal felt that since there was a direction by the High Court given in writ petition No. 5495 of 1992 to consider and dispose of form No. 1 filed by the appellants, it was necessarily to be considered on merits. Interestingly the Tribunal mentions the fact that the Chairman of the Tribunal opined that the order dated 3.7.1979 was not to be reopened. But the two Members without considering the effect of the order dated 3.7.1979 passed an order for granting occupancy tenancy rights in favour of the appellant on the ground that they had been performing pooja in the temple since long.

The aforesaid order of the Tribunal dated 21.9.1993 was challenged by the respondents by filing a writ petition No. 35394 of 1993. The learned single Judge while considering the effect of the order dated 3.7.1979 passed in favour of the respondents observed •that earlier the writ petition (No. 14033 of 1990) was filed by "R3- to R-8" as wahivatdars of the temple but the later petition has been filed though by the same person "R-3 To R-8" but in capacity of poojaris and trustees. Thereafter the learned single Judge referred to a decision of this Court reported in AIR (1989) SC P. 1764, *Pujaribai v. Madan Gopal*, to observe that a writ petition dismissed on the ground of laches does not operate as *res judicata*. In so far as the non-impleadment of the respondents in the writ petition No. 5495 of 1992 is concerned, the learned single Judge observed that they failed to move any review or modification application to modify the order dated 16.4.1993 *viz.* the direction given to consider the application of the appellants dated 26.6.1985, under the Karnataka Certain Inams Abolition Act. It was further

observed that there was no occasion to say that the present appellant acted fraudulently in not impleading the respondents as parties in the writ petition. The single Judge was rather emphatic on the point that it was for the respondents to have got the earlier order reviewed. Surprisingly it refrained from observing anything in respect of the conduct of the appellants in not impleading the respondents as parties in the writ petition. Thereafter the learned single Judge placed reliance upon a decision of the Karnataka High Court reported in 1979(2) KLJ P. 370, *Basappa Gurusangappa v. Land Tribunal* and quoted the following paragraph from the said judgment which is reproduced below :

> "Even if one of the rival applicants has filed his application earlier and the Tribunal had granted him occupancy right in respect of the land and subsequently another applicant makes an application within the time limit provided by S.48A in respect of the same land, the Tribunal is bound to consider the later application by setting aside its earlier order and consider both the rival applications".

We, however, find that the learned single Judge totally failed to give due weight to the observation made in the case of *Basappa* (supra) that if the subsequent application is made "within the time limit provided under Section 48A in respect of the same land". The decision of the Division Bench seems to have been rendered in a different fact situation where it appears that *within the time* allowed for making on application for grant of tenancy rights, the subsequent application had been moved under the provisions of the same Act, therefore, rightly it could not be thrown out on the ground that earlier an order had already been passed in favour of another party. Claim of both the applicants who approached the Tribunal within time shall have to be considered on merits. But we find that the position in the case in hand is different. The application for grant of occupancy rights had been moved by the respondents some time in 1974 under the provisions of the Karnataka Land Reforms Act, 1961. The order on the said application was passed in favour of the respondents on 3.7.1979 after the appellants were heard. Yet the application for grant of tenancy rights on the basis of Karnataka Certain Inams Abolition Act, 1977 was moved by the appellants in the year 1985. It is nowhere to be found that the application moved subsequently under a different Act was within the

time allowed under the law for the purpose, though we feel that "within the time allowed" should be under the one and the same provision. The learned single Judge thereafter came to the conclusion as follows :

> ".....The Tribunal has got powers to set aside its earlier order, even if that order has been confirmed by the High Court, if it is required to be considered along with another application filed by other person for the occupancy rights in the same land. The proper course to be followed in this respect would be to set aside the order of the land Tribunal whether it is confirmed by the High Court or not and then consider both the forms together and pass orders in accordance with law."

The decision in the case of *Basappa* (supra) has been totally misapplied by the learned single Judge. The other question for application of *Basappa's* case (supra) was as to whether the subsequent application was filed by the same or other persons. In the present case the learned single Judge has found that the same persons who were before the Tribunal in the proceedings in 1974 in which the order was passed in 1979 had moved the application of 1985 but they were claiming right in a different capacity. Such a distinction is immaterial as they are the same persons in any case. It is not that the appellants could not resist the claim of respondent or claim those rights as claimed by means of an application moved in 1985, when the matter was earlier considered by the Tribunal in respect of the same land and an order was passed by it on 3.7.1997. However, the learned single Judge passed an order remanding the matter to the Tribunal for considering both the applications as moved by the appellants and respondents in the year 1985 and 1974 respectively. It is worthwhile to note that the validity of the order dated 3.7.1979 passed by the Tribunal was not in question before the learned single Judge, yet the matter was reopened in a collateral proceedings.

Both parties challenged the order passed by the learned single Judge before the Division Bench. The Division Bench allowed the appeal preferred by the respondents and dismissed the appeal filed by the appellants. The Division Bench while dealing with the appeal, observed that the tenants namely the respondents were not made parties to the writ petition No. 5495 of 1992. The Court, it is observed, while issuing an order

to consider the application of appellants under the Karnataka Certain Inams Abolition Act, 1977, was not aware of the earlier writ petition, which was filed by the appellants and was dismissed, namely writ petition No. 14033 of 1990. The Division Bench took the view that by refusing to interfere with the order passed by the Tribunal dated 3.7.1979, the High Court while dismissing the writ petition No. 14033 of 1990 on the ground of laches, in effect confirmed the order of the Tribunal. The Division Bench was also of the view that the appellant played fraud by not disclosing the earlier order dated 3.7.1979 passed by the Tribunal, and further by not impleading the respondents as parties in the aforesaid writ petition. The respondents had been granted the occupancy certificate as well on 28.2.1981. The writ petition was filed after a lapse of 11 years. It was also observed that the matter had already been closed and could not be reopened nor there was any such prayer to that effect. The Division Bench also held that the decision of the Karnataka High Court in the case of *Basappa* (supra) would not be applicable as the objections cannot be said to have been filed within the stipulated time. The Division Bench came to the conclusion that there has been suppression of facts, and fraud has been played by the appellants, resulting in abuse of process of law in unsettling the settled position which had attained finality by order dated 3.7.1979 passed by the Tribunal and by refusal of the High Court to interfere in the matter though on the ground of laches.

Our attention has also been drawn by the learned counsel for the appellants to certain strong observations made by the Division Bench saying that there was apparent collusion with the members of the Land Tribunal and the wahivatdars and so on and so forth.

On behalf of the appellants it has been vehemently urged that refusal of the High Court to interfere with the order on the ground of laches, does not mean that the order passed by the Tribunal was confirmed, nor the order of the High Court operates as *res judicata* in respect of the rights accrued to the appellants under the provisions of the Karnataka Certain Inams Abolition Act, 1977 which question in any case, had to be considered on merits but it has not been considered by any court. It is strongly submitted that there was no occasion for the Division Bench of the High Court to have made disparaging remarks against the members of the Tribunal and to record findings of fraud played by the appellants.

A Viewing the facts in the light of the submissions made on behalf of the appellants the sequence of the events which becomes important is that in the year 1979, the order of grant of occupancy tenancy under Section 45 of the Karnataka Land Reforms Act was passed by the Tribunal in the presence of the appellants. The tenancy rights of the respondents had also B been admitted as observed in the order of the Tribunal. For a long time thereafter nothing happened i.e. no appeal or revision was filed and the order was allowed to become final. A period of eleven years were allowed to lapse before the order dated 3.7.1979 was challenged by means of a writ petition No. 14033 of 1990 which was ultimately rejected on the ground of laches after discussing some of the points also. The effect of such an C order would obviously be that the High Court has been of the view that the position as has been coming down unchallenged since 1979 for about 11 years must be allowed to be continued and it was too late a stage to entertain the matter. Again we find that the above order of the High Court has been allowed to become final and no appeal or any other proceeding D was even preferred against the said order. Thus the challenge made to the order dated 3.7.1979 rested at that and its validity was not in question anywhere not even in proceedings sought to be initiated by the appellants in the application moved in 1985.

E In the meantime, in the year 1985 an application in Form I was given by the appellants for registration of occupancy under the provisions of the Karnataka Certain Inams Abolition Act, 1977. Since it remained pending and was not decided, another writ petition was filed, namely, writ petition No. 5495 of 1992 but the respondents were not impleaded as parties to the F said petition. It is true a direction was sought for the Tribunal to dispose of the application moved by the appellants in the year 1985 and the learned single Judge being uninformed about the earlier order passed by the Tribunal in 1979 in respect of the same land on an application in which both parties were represented, passed the order for disposal of the application on merits. We, however, feel that the learned single Judge went G wrong one-sidedly in saying that it was incumbent upon the respondents to have got the order reviewed or modified. By not impleading the present respondents as parties in writ petition No. 5495 of 1992 the appellants deprived the respondents of an opportunity to challenge that order, rather they were kept in dark about the whole proceeding. Any order to consider H the application of the appellants moved in 1985 was likely to affect the

order dated 3.7.1979 passed in favour of respondents. The appellants knew it, being parties in the earlier proceedings of 1974. The fact thus remains that the material facts were not brought to the notice of the court and the persons who were ultimately to be effected were avoided to be impleaded as parties. It was merely not a question of non-impleadment of necessary parties technically and strictly in accordance with the provision of the Code of Civil Procedure rather was very much a question of proper parties being there before the court particularly in proceedings under Article 226 of the Constitution. The argument tried to be raised otherwise is not tenable. The Tribunal and the High Court also felt the question of rights of the parties in that land stood decided in 1979 and there was no occasion to reopen that matter still, it was reopened in view of the direction to dispose of the application on merits given by the learned single Judge in absence of the respondents as parties in the writ petition. The direction never meant that the application moved in 1985 could not be disposed of saying that the matter had already been decided in respect of the same land in presence of the same parties or the land was no more available for passing an order to register occupancy. Perhaps the direction of the learned single Judge was misunderstood that such a view was not open to be taken and that the matter must be considered on merits ignoring the earlier order dated 3.7.1979 or that to reopen the order not even in question. It was certainly a very relevant fact which was suppressed in writ petition No. 5495 of 1992 while making a prayer for disposal of the application moved in 1985. The appellants cannot be allowed to claim any *bonafides* in not impleading the respondents as parties in that writ petition or about non-disclosure of the earlier order dated 3.7.1979 in respect of the same land and within their knowledge on the ground that it was not necessary to disclose it. As observed earlier, they knew well that if any order is passed in their favour the respondents would be the affected persons. The respondents were deprived from raising this point before the learned single Judge regarding a pre-existing order relating to the same land and non-disclosure of the same. The conduct of the appellants had been far from being fair if not fraudulent. It was a deliberate suppression of material fact which caused prejudice to the respondents. Fair play is the basic rule to seek relief under Article 226 of the Constitution.

The next question is about the decision of the Karnataka High Court in the case of *Basappa* (supra) on the basis of which the learned single Judge reopened the order dated 3.7.1979 and in respect of which we have

A already made our observations in the earlier part of the judgment. On the face of it, the above noted decision is not applicable to this case. At this juncture we may also like to observe that the order was passed by the Tribunal on 3.7.1979. The appellants had claim their rights as pujari under Section 5(2)(i) of the Karnataka Certain Inams Abolition Act, 1977 which B plea could be taken by them while the matter was before the Tribunal and the order was finally passed on 3.7.1979. Nothing has been indicated as to why it could not be done. As a matter of fact the tenancy rights of the respondents were admitted before the Tribunal. The application moved in 1985 was between the same persons and in respect of the same land. What C was claimed in the application moved in 1985 could well be claimed or put forward while the order was passed in 1979. The Tribunal and the learned single Judge cannot be said to have gone wrong in observing that once the matter was finalized and the High Court had declined to interfere in the position as existed as per orders of the Tribunal dated 3.7.1979, there was no occasion to reopen the matter and decide the same on merits. As D a matter of fact the earlier order was also on merits. It was passed on the basis of the revenue records and the statements on the record of the case and the admission made by one of the parties. That matter was allowed to attain finality.

E We may now deal with the next submission made on behalf of the appellants that the order passed by the High Court in writ petition No. 14033 of 1990 dismissing it on the ground of laches would not be *res judicata* so as to bar consideration of the claim of the appellants on merits in subsequent proceedings namely, the application moved in 1985 under F the provisions of the Karnataka Certain Inams Abolition Act, 1977. As a matter of fact question of bar of *res judicata* is not relevant in the present case. The matter is to be considered in a slightly different perspective. The Tribunal and the learned single Judge felt compelled to consider the application of the appellants under the provisions of the Karnataka Certain Inams Abolition Act, 1977 "on merits" in view of the order passed by the G High Court in writ petition No. 5495 of 1992 but this order could not be construed so narrowly as done by the Tribunal and the learned single Judge. The fact of the matter is that by order dated 3.7.1979 rights of the occupancy tenancy had been granted in favour of the respondents and certificate to the same effect had also been issued in their favour in the year H 1981. As indicated earlier also the order was passed in the presence of the

appellants. The result was that the tenancy rights were acquired and granted in favour of the respondents under Section 45 of the Karnataka Land Reforms Act hence the land was not available any more for registration of occupancy under Section 5(2)(i) of Karnataka Certain Inams Abolition Act, 1977, more so when the order dated 3.7.1979 was not challenged much less before or up to the time of moving application dated 22.6.1985. It had attained finality. For the first time it was challenged after a lapse of about 11 years by filing a writ petition, namely, writ petition No. 14033 of 1990. We have already noticed that the said writ petition was dismissed ultimately on the ground of laches which order was again not challenged by filing any appeal before the Division Bench or otherwise.

Merely by filing a writ petition, impugning an order passed 11 years ago, which petition is dismissed on the ground of laches, does not mean that it automatically by itself reopens the whole matter to be examined in any other collateral proceedings and the finality attained by the order is lost. Therefore, it is not a question of bar of *res judicata* but the point is that in the year 1985 when the application was moved by the appellants under the provisions of the Karnataka Certain Inams Abolition Act, 1977 for registration of occupancy over the land in dispute by virtue of provisions contained in Section 5(2)(i) of the aforesaid Act, the land was not available for the purpose, as in the year 1979 itself the respondents were granted rights of occupancy tenancy by a forum of competent jurisdiction. The order dated 3.7.1979 is not a void order so as to be ignored in any collateral proceedings nor it was put in question in the proceedings initiated by the appellants in 1985. The order passed by the learned single Judge in writ petition No. 5495 of 1992 behind the back of the respondents and obtained by suppressing the material facts does not compel the Tribunal or the learned single Judge to allow the claim of the appellants despite the facts and circumstances as enumerated above. It is not understandable that how the single Judge could order for fresh consideration of the application which was moved by the respondents in 1974 for rights of occupancy tenancy under Section 45 of the Karnataka Land Reforms Act reopening the whole matter, except on the basis of the decision in the case of *Basappa* (supra) which has been totally misapplied to the present case. The Division Bench has rightly held that the question of validity of order dated 3.7.1979 was not in question before the Tribunal in the petition moved by the appellants in the year 1985 nor it was a matter for consideration before the

A learned single Judge. The order of Single Judge has been rightly set aside by the Division Bench in appeal.

On the close of the arguments learned counsel for the appellants requested and was allowed to file written arguments within a few days. But B they seem to have been filed after more than two weeks and that too, as indicated by the forwarding note of the registry, without serving a copy on the counsel for the respondents. This fact alone disentitles the appellants for considering the written submissions which otherwise also, we find, only deal with the merit of the matter that right of occupancy tenancy would not accrue to the respondents under the provisions of the Karnataka Land C Reforms Act. The merits of the order dated 3.7.1979 is not a matter to be considered in these proceedings. All factual questions are sought to be raked which cannot be gone into in these proceedings.

In view of the discussion held above, we find no good reason to D interfere in the order passed by the Division Bench except to delete some of the observations which are a bit harsh and were not necessary to be made for disposal of the case, *viz.* part of the order where it is observed that "the appellant had played fraud and there was collusion between the wahivatdars and members of the Land Tribunal and the Members had gone ahead E unashamedly to grant occupancy tenancy to the appellants", further the observation that the appellants were otherwise liable to be prosecuted.

In the result, the appeal is dismissed subject to the observations made above. There would, however, be no order as to costs.

F S.K.S. Appeal dismissed.