

(1991) 11 KAR CK 0048
In the Karnataka High Court
Case No : W.A. No. 2555 of 1990

B.H. Honnahalage Gowda

APPELLANT

Vs

Karnataka Appellate Tribunal

RESPONDENT

Date of Decision : 26-11-1991

Acts Referred:

Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 —
Section 5

Citation : (1991) ILR (Kar) 4408 : (1992) 1 KarLJ 522

Hon'ble Judges : S.P. Bharucha, C.J.; S.A. Hakeem, J

Bench : Division Bench

Advocate : B.G. Sridharan, for the Appellant; N.K. Gupta, Government Advocate
for R-1 to R-3 and B. Shantakumar, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Bharucha, C.J.—The Appeal is directed against the Order of the learned Single Judge dismissing the Writ Petition filed by the Appellant.

2. We are concerned with land measuring 5 guntas bearing Survey No. 51/4 of Aremaranahalli Village, Gubbi Taluk. The appellant is the owner of land contiguous thereto. It was his content/on that the owner of the land in petition was obliged by the provisions of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act (hereinafter referred to as "the Act") to offer the land in petition to him and that the sale by her to the 4th respondent was, therefore, void.

3. The appellant made an application to the 2nd respondent Assistant Commissioner to declare the sale in favour of the 4th respondent void and, on 2nd February 1980 the Assistant Commissioner so ordered. The 4th respondent thereupon filed a Revision Petition before the first respondent Karnataka Appellate Tribunal. The Revision was allowed and the Tribunal held that the land in petition was not a "fragment". The order of the Tribunal was impugned in the Writ Petition which, as aforesaid, was dismissed.

4. "Fragment" is defined in Section 2(g) of the Act to mean the holding of land of less extent than the appropriate standard area determined u/s 3 of the Act. Section 3 of the Act provides for the determination of "standard area" and it means the area specified in Column 3 of the Schedule to the Act in respect of the classes of lands specified in the corresponding entry of Column 2 of that Schedule. By reason of Section 4, as soon as may be after the commencement of the Act, all fragments in the village have to be entered as such in the Record of Rights or other appropriate village record and notice of every entry in this behalf has to be given by an entry in the Register of Mutations. Section 5 of the Act debars the owner of a fragment from selling it except as provided in Clause (b) of Section 5. Clause (b) requires the owner to sell the fragment to the owner of a contiguous survey number or recognised sub-division of a survey number and, if it cannot be so sold, the owner is required to intimate the reasons therefore to the Tahsildar.

5. There is no material to show that in respect of the land in petition there was no entry in the Record of Rights or in any other appropriate land record that it was a "fragment". That no notice in that behalf was given to the owner of the land in petition is not disputed.

6. What is contended on behalf of the appellant is that the failure of the authorities under the Act to issue to the owner such notice does not absolve the owner of the obligation to sell the fragment to the contiguous land owner. It is difficult to accept the argument canvassed on behalf of the appellant, having regard to the provisions of the Act, which we have set out above. It seems clear to us that the owner can be debarred from selling the land to any one other than a contiguous land owner only if an entry has been made in the Record of Rights or other appropriate land record that it is a "fragment" and notice in that behalf has been served upon him. Unless this is shown to have been done, the provisions of Section 5 of the Act cannot be enforced against the owner and he cannot be obliged to sell the land to a contiguous land owner.

7. We find that the Division Bench Judgment in Kallanagouda Somanagouda Patil Vs. Rudragouda and Others, proceeds upon this principle.

8. In the result, the appeal is dismissed. Each party shall bear its own costs.