

(1991) 08 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 2593 of 1986

Deepchand

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 05-08-1991

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 112, 66 A, 66 A (1), 66 A (2), 67

Citation : (1991) ILR (Kar) 1937 : (1991) 2 KarLJ 514

Hon'ble Judges : N.D.V. Bhat, J

Bench : Single Bench

Advocate : Naik, for U.L. Narayana Rao, for the Appellant; A. Nimmi Swamy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

N.D.V. Bhat, J.—In this Petition, the petitioner has prayed for a Writ of Certiorari or order or direction quashing the order dated 28-8-1980 in No. 37/242/80/Koppal, a copy of which is produced at Annexure-E; order dated 25-4-1985 in No. SR/LRM/17/80-81, a copy of which is produced at Annexure-F and the order dated 19-11-1985 in No. 18/APL785, a copy of which is produced at Annexure-G.

2. The facts relevant for the disposal of this Petition, briefly stated, are as under;

The petitioner had filed a declaration in Form No. 11 under the Karnataka Land Reforms Act showing therein his holding and number of members of his family. When this was so, it appears that the Tahsildar, Land Reforms, Koppal appears to have noticed that Sy.No. 421 measuring 12 acres 36 guntas; Sy.No. 416 measuring 10 acres 28 guntas; and Sy.No. 406 measuring 4-00 acres though standing in the name of the declarant were not shown in his declaration. In that view of the matter, the Tahsildar appears to have issued a show cause notice as to why a penalty of Rs. 500/- should not be imposed on the petitioner. The petitioner, it appears did not reply to the said show cause notice. Under these circumstances, by an order dated 6-5-1980 the Special Tahsildar passed an order

as under:

The instant petitioner, it appears, did not comply with the direction reflected in the order dated 6-5-1980 culled out hereinabove. In this view of the matter, the Special Tahsildar, Land Reforms, Koppal purporting to act u/s 66-A(2) of the Karnataka Land Reforms Act (for short "the Act") passed an order directing that the right, title and interest of the instant petitioner in the lands held to the extent in excess of the ceiling area are forfeited and vested in the Government. The copy of the said order is seen at Annexure-E. An appeal appears to have been preferred by the instant petitioner before the Assistant Commissioner, Koppal. The Assistant Commissioner by his order dated 25-4-1985 dismissed the appeal. The copy of the said order is seen at Annexure-F. The revision petition which was preferred before the Divisional Commissioner, Gulbarga also met with the same result. Under these circumstances, the petitioner has filed this Petition praying for the reliefs referred to hereinabove.

3. I have heard Sri U.L. Narayana Rao, as also his junior Lawyer Sri Nayak, learned Counsel for the petitioner and Smt. A. Nimmi Swamy, learned High Court Government Pleader, for respondents.

4. It is argued by the learned Counsel for the petitioner that the Tahsildar had no jurisdiction to pass an order dated 28-8-1980 since the jurisdiction to decide the extent of the excess of ceiling area is vested in the Tribunal. Dilating on this aspect, it was contended by the learned Counsel for the petitioner that with effect from the date of the amendment by Act No. 44/1976 on 2-6-1976, the jurisdiction to decide such a question has always been that of the Tribunal and that therefore, the Tahsildar did not have any jurisdiction to pass an order falling within the purview of Section 66-A(2) of the Act. In this connection, the learned Counsel for the petitioner placed reliance on the Decision in CHANNABASAYYA v. STATE OF KARNATAKA 1979 (1) KarLJ 41. In the said case, it is pointed out by this Court that in view of the amendment of Sub-section (1) of Section 67 of the Act by way of substitution, the Tribunal must be deemed to have the authority to deal with the matters u/s 67 from the very inception of the Act and, as such the Tahsildar could not have exercised the same jurisdiction at the same time.

5. It was contended by the learned Counsel for the petitioner that the said observation would apply even to the facts of the instant case and that the same would bring within its sweep even a case falling u/s 66-A(2) of the Act. It was also contended by the learned Counsel for the petitioner that even otherwise Tahsildar's order suffers from infirmity in that he did not give any opportunity of being heard before the order in question was passed.

6. The learned Government Pleader on the other hand submitted that the order passed by the Tahsildar cannot be said to be wrong. It was contended that the jurisdiction to pass an order u/s 66-A(2) of the Act is vested in the Tahsildar himself though it is not stated in so many words in Section 66-A(2) of the Act. It is pointed out by the learned Government Pleader that a reading of Section 66-

A(1) & (2) of the Act in conjunction with each other, would unmistakably go to show that the jurisdiction to pass an order u/s 66-A(2) lies with the Tahsildar only. The learned Government Pleader has invited the attention of this Court to the Decision of this Court in SHAMALA D.S. v. ASSISTANT COMMISSIONER, MYSORE AND ORS 1978 (1) KarLJ 472. It was pointed out by her that the ratio of the said Decision would apply to the facts of the instant case also, it was also argued that the provisions of Section 66-A of the Act are excerpted from the operation of the provision of Section 67, as seen from the language reflected therein. In sum, the learned Government Pleader contended that the order passed by the Tahsildar cannot be found fault with in the facts and circumstances of the case.

7. I have given my consideration to the submissions made on either side.

8. Before considering the various submissions referred to hereinabove, it is indeed necessary to have a clear idea as regards the scope of Section 66-A of the Act, Section 66-A reads as under:

"66A, Penalty for failure to furnish declaration -

(1) Where a person required by Section 66 to furnish declaration, -

(a) fails without reasonable cause so as to do within the time specified in that section, or

(b) furnishes a declaration which he knows or has reason to believe to be false.

The Tahsildar shall issue a notice to such person asking him to show cause within fifteen days of the service thereof why a penalty which may extend to five hundred rupees may not be imposed on him. Where no reply is filed or where a reply is filed the Tahsildar is satisfied that the person has without reasonable cause failed to furnish the declaration within time or has submitted the declaration knowing or having reason to believe it to be false, he may, by order, impose the said penalty and require such person to furnish a true and correct statement complete in all particulars, within a period of one month from the date of service of the order.

(2) If such person fails to comply with the order within the time granted, the right, title and interest of such person in the land held to the extent in excess of the ceiling area shall, by way of penalty, be forfeited to the State Government and shall thereupon vest in the State Government."

9. A perusal of the aforesaid provision would go to show that Section 66-A provides penalty for failure to furnish declaration. It is significant to note here that two types of penalties are contemplated u/s 66-A. An amount of Rs. 500/- is the penalty prescribed with reference to Section 66-A(1). The penalty of forfeiture is the penalty contemplated u/s 66-A(2). It is necessary to notice here that Section 66-A(2) specifically stipulates that the right, title and interest of such person in the land held to the extent in excess of the ceiling area shall, by

way of penalty, be forfeited to the State Government. Under these circumstances, it becomes clear beyond a pale of doubt that even forfeiture u/s 66-A(2) is a penalty.

10. Sri U.L. Narayana Rao, learned Counsel for the petitioner, contended that it is the Tribunal, u/s 67 of the Karnataka Land Reforms Act, which is empowered to determine the extent of the holding and the area by which such extent exceeds the ceiling area. Emphasis is laid by Sri Narayana Rao in Section 67(1)(b) of the Act. Sri Narayana Rao is right in contending that it is the Tribunal which is empowered to determine the extent of holding and the area by which such extent exceeds the ceiling area. However the said logic cannot be extended to contend that it is the Tribunal which is required to enforce the forfeiture by way of penalty u/s 66-A(2) of the Act. The Decision in Channabasayya's case alluded to earlier is not of any assistance to the learned Counsel for the petitioner to contend that it is the Tribunal which is empowered to exercise jurisdiction u/s 66-A(2) of the Act. It is significant to note here that the said Decision was rendered in the context of the provisions reflected in Section 67 of the Act. However, that Decision, as pointed out earlier, cannot be stretched in support of the proposition which is now sought to be canvassed by the learned Counsel for the petitioner. The question as to whether the jurisdiction to enforce the forfeiture u/s 66-A(2) is that of the Tahsildar or is that of the Tribunal can be resolved in the context of the provisions of Section 112 of the Act. It is indeed necessary to notice here that Section 112 of the Act which enumerates the duties of the Tahsildar and the Tribunal stipulates that it is the duty of the Tahsildar to pass an order imposing penalty u/s 66-A. This is clear from Clause (q) under the caption "Duties of Tahsildar" in Section 112. It has been pointed out earlier that forfeiture is effected by way of penalty only, in the context of the language reflected in Section 66-A(2). In that view of the matter, it becomes clear that it is the duty of the Tahsildar to impose penalty of Rs. 500/- u/s 66-A(1) as also the penalty of forfeiture u/s 66-A(2). Further, it is also necessary to note here that under the caption "Duties of Tribunal" in Section 112 of the Act, the Tribunal is not entrusted with the duty of imposing the penalty u/s 66-A(2). Under these circumstances, I have no hesitation, whatsoever, in holding that it is the Tahsildar and Tahsildar only who is empowered to impose the penalty of forfeiture also. Further, the observation of this Court in Shamal's case, alluded to earlier, also by necessary implication applies to a situation like the one in hand. In this view of the matter, the contention raised by Sri U.L. Narayana Rao, learned Counsel for the petitioner, that the Tahsildar has no jurisdiction to impose the penalty of forfeiture u/s 66-A(2) of the Act is devoid of any force.

11. If that be so, it will have to be next seen as to whether the order dated 28-8-1980 passed by the Tahsildar, Koppal as affirmed by the order dated 25-4-1985 by the Assistant Commissioner, Koppal in appeal and the order dated 19-11-1985 passed by the Divisional Commissioner, Gulbarga in revision, suffer from any infirmity.

12. Before considering this aspect, it is necessary to consider as to whether it is the Tahsildar himself who in such a situation is required to determine the extent of the ceiling limit or whether that aspect will have to be considered by the Tribunal. Section 66-A(2) does not directly answer this question. It is also necessary to notice here that u/s 67(1)(a) of the Act, the Tahsildar on receipt of the declaration u/s 68 of the Act shall have to perform the formalities referred to thereunder and thereafter place the declaration and the connected records before the Tribunal and thereupon u/s 67(1)(b) of the Act, the Tribunal after such enquiry as may be prescribed shall have to determine the extent of the holding and the area by which such extent exceeds the ceiling area. However, it is significant to note here that the power of the Tribunal to determine the extent of the holding and the area by which such extent exceeds the ceiling area is circumscribed by the saving provided in Section 67(1)(a) of the Act itself. It is significant to notice here that the mandatory requirement on the part of the Tahsildar to place the declaration and the connected records before the Tribunal is subject to the exception provided in Section 67. The expression "save as provided in Section 86A" employed in Section 67, would indicate that wherever and whenever Section 66-A comes into operation the question of Tahsildar placing the records before the Tribunal does not arise at all. It is true that Section 66-A(2) of the Act does not say in so many words that the Tahsildar has got the power to determine the extent in excess of the ceiling area. However, having regard to the fact that it is the Tahsildar who is empowered to forfeit the land held to the extent in excess of the ceiling area by way of penalty, it is the Tahsildar himself who has to incidentally determine the land held to the extent in excess of the ceiling area. Any other interpretation will lead to anomalous situation and an interpretation to the effect that the Tahsildar even in such a situation will have to refer the matter to the Tribunal and to wait for its order before he takes any action u/s 66-A(2) of the Act will be an interpretation which does not flow from either the provisions reflected in Section 66-A(2) of the Act or from Section 67 of the Act. Further such an interpretation would also render nugatory the meaning flowing from the expression "save as provided in Section 66A" incorporated in Section 67. Under these circumstances, I have no hesitation whatsoever in reaching a conclusion that whenever Section 66A of the Act is attracted to the facts of the case and wherever the Tahsildar is required to take a decision with reference to the forfeiture of the land held in excess of the ceiling area, by way of penalty u/s 66-A(2), he has to incidentally determine the land held to the extent in excess of the ceiling area also.

13. It is seen that the Tahsildar by his order dated 28-8-1980 after narrating the circumstances leading to the order, has chosen to exercise his power u/s 66-A(2) of the Act by holding that the lands referred to therein measuring 81 acres 36 guntas held by the instant petitioner are in excess of the ceiling limit. However, the basis for the same is not forthcoming in the order. The fact that the Tahsildar has got the jurisdiction u/s 66-A(2) of the Act to forfeit the land held in excess of the ceiling area by way of penalty, does not mean that the Tahsildar can without

assigning any reason reach the conclusion with reference to the ceiling limit. The various particulars which are required to enter into the verdict of the Tahsildar are required to be considered by him. In other words, the question as to what is the total area which is held by the instant petitioner, the question as to how many members are there in his family, the question as to what is the total extent of land that the petitioner is entitled to hold, the question as to what is the classification of the lands, are all questions which are required to be considered by the Tahsildar. It is significant to note here that the various aspects which the Tribunal itself is required to consider u/s 67(b) of the Act with reference to the extent of the ceiling limit which a person can hold are also required to be considered by the Tahsildar which are of course incidental to his ultimate power to forfeit the land by way of penalty in excess of the ceiling area. It is needless to say that the conclusion with reference to this aspect by the Tahsildar cannot be arbitrary or laconic. This aspect has not been considered either by the learned Assistant Commissioner in appeal or by the learned Divisional Commissioner in revision. Further, it is also necessary for the Tahsildar to allow the petitioner in such a situation an opportunity of being heard with reference to the aforesaid aspects. It is seen that the Tahsildar does not appear to have afforded any opportunity to the instant petitioner though the Tahsildar undoubtedly has the power to exercise, u/s 66-A(2) of the Act.

14. For the reasons stated hereinabove, the Writ Petition is allowed. The order dated 28-8-1980 passed by the Tahsildar, Koppal in No. 37/242/80/Koppal, order dated 25-4-1985 passed by the Assistant Commissioner, Koppal in No. SR/LRM/17/80-81 and the order dated 19-11-1985 passed by the Divisional Commissioner, Gulbarga in No. 18/APL/85 are hereby set aside. The matter is remitted to the Tahsildar, Koppal for fresh disposal according to law. The Tahsildar, Koppal is directed to consider the extent, if any, of the land held by the instant petitioner in excess of the ceiling limit and thereafter if it is held that any area is held in excess of the ceiling limit he shall proceed to pass the order u/s 66-A(2) of the Act after specifying in the order the lands which are so forfeited. The Tahsildar is also directed to give an opportunity of being heard to the instant petitioner before passing the necessary order.

15. In the facts and circumstances of the case, I direct both the parties to bear their own costs.