

(1980) 10 KAR CK 0007
In the Karnataka High Court
Case No : WP. 15531/79

Huchusab Janglisab

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-10-1980

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2A(18)

Citation : (1981) 1 KarLJ 118

Hon'ble Judges : G. N. Sabhahit, J

Judgement

1. This writ petition is directed against the order dt. 20-6-1977 passed by the Land Tribunal, Ron, in KLR. ASR. 2278 on its file, dismissing the petition of the present writ-petitioner for granting occupancy right in his favour with regard to the suit land.

2. The learned Counsel appearing for the writ petitioner vehemently contends that the order is not a speaking order, that no evidence was recorded by the Tribunal and that even "well waste" is also land as defined under S. 2(18) of the Karnataka Land Reforms Act, 1961, and hence, according to him, the impugned order should be set aside.

3. As against that the learned counsel appearing for the respondents argued supporting the order of the Tribunal.

4. The record of Rights produced by the writ-petitioner along with the petition shows that the area is 7 guntas and in the Pahani Extract it is clearly mentioned as "Bavipada" which means the well and the area around the well.

5. The Tribunal, in its order, has very clearly stated thus:

"As the land is "well waste" the LR Act is not applicable in this case as the land is not cultivable land. The application is rejected."

6. Thus, the order mentions the reason why the application is rejected. The Tribunal has opined that the area in which the well is situated and the area

around the well would not fall within the purview of the definition of "land" as described under S. 2(18) of the Karnataka Land Reforms Act, 1961, and it is for that reason that the application of the present writ-petitioner is rejected. I fail to understand why it is not a speaking order. It gives the reason, quotes the law and decides the case. Therefore, in my considered view, the order is a speaking order.

7. So far as the law aspect is concerned, the term "land" is defined under S. 2(18) of the Karnataka Land Reforms Act, 1961, which reads:

""land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and include horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non-agricultural purposes."

8. The learned Counsel appearing for the writ-petitioner invited my attention to the fact that even land used for purposes subservient to agriculture falls within the definition of the term "land". It cannot be disputed that for the purpose of agriculture water is necessary and well would be in a field mainly for the purpose of drawing water for the purpose. of agriculture. Therefore, prima facie, it cannot be said that the well and the area around the well do not fall within the definition of the term "land" as the well is there for the purpose of irrigating the land and it is a purpose subservient to agriculture. Therefore, in my considered view, the Tribunal was not justified in summarily rejecting the prayer of the present writ-petitioner without even giving, him an opportunity to adduce evidence on the preliminary point as noted above. It is for that reason that I hold that the Tribunal has failed to follow the procedure and hold an enquiry as contemplated under R. 17 of the Karnataka Land Reforms Rules, 1974, read with S. 34 of the Karnataka Land Revenue Act, 1964.

9. In the result, therefore, the writ petition is allowed. The rule is made absolute. The impugned order is set aside and the matter is sent back to the Tribunal. The Tribunal shall hold an enquiry as contemplated under R. 17 of the Karnataka Land Reforms Rules, 1974, read with S. 34 of the Karnataka Land Revenue Act, 1964, as the area in question clearly falls within the definition of "land" as pointed out above. The Tribunal shall issue notices to the parties concerned, give them further opportunity and then dispose of the case in accordance with law.