

(1999) 07 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No. 34238 of 1996

Linganagouda Gurulingappagouda Patil (Deceased) By L.Rs
and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Karnataka Land Reforms Act, 1961 — Section 122 A, 67 (1)

Citation : (2000) 2 KarLJ 176

Hon'ble Judges : S.R. Venkatesha Murthy, J

Bench : Single Bench

Advocate : Kum. Soumy, for Sri R.B. Deshpande, for the Appellant; Sri M.A. Khan, A.G.A., for the Respondent

Judgement

1. The petitioners are the legal representatives of one Linganagouda Gurulingappagouda Patil and they challenged the order Annexure-D, dated 20-11-1996 whereunder the Land Tribunal held that the deceased petitioner held 20 acres of land in excess of the ceiling limit and as per Annexure-E demanded that the extent of land be surrendered in accordance with law.

2. Deceased Linganagouda Gurulingappagouda Patil filed Form No. 11 on 30-12-1974. The Land Tribunal after an enquiry held by its order dated 16-8-1979 that the deceased Linganagouda Gurulingappagouda Patil did not possess land in excess of the ceiling limit. The matter rested there till Annexure-C, dated 5-4-1996 was issued to Linganagouda Gurulingappagouda Patil, calling upon him to appear before the Land Tribunal on 18-9-1996 for an enquiry regarding the declaration filed by him in Form No. 11. Since Gurulingappagouda Patil did not enter appearance before the Land Tribunal, the order Annexure-D came to be made by the Land Tribunal declaring that he was in possession of 20 acres of land above the ceiling limit. The petitioners being aggrieved by the order Annexure-D and E have filed this writ petition. It is their case that the Land Tribunal did not have jurisdiction to review the order made in Annexure-A and

the Land Tribunal could never have sought to review the order dated 16-3-1979.

3. The power of review of a declaration is given u/s 122-A of the Act. Section 122-A of the Act reads as follows:

"122-A. Review by the Tribunal.-Where the Tribunal, either suo motu or otherwise, after such enquiry as it considers necessary is satisfied that an order under sub-section (1) of Section 67 has been obtained by fraud, misrepresentation, or suppression of facts or by furnishing false, incorrect or incomplete declaration, it may, within a period of two years from the date of such order or within 31st day of December, 1995 whichever is later, reopen the case and pass such order with respect thereto as it thinks fit:

Provided that no such order shall be made except after giving the person likely to be affected thereby a reasonable opportunity of being heard".

A reading of Section 122-A of the Act would show that the land Tribunal either suo motu or otherwise is empowered to review an order made u/s 67(1) only in the circumstances enumerated therein. The circumstances are fraud, misrepresentation, suppression of fact, furnishing false, incorrect or incomplete declaration. Limitation for such a review is two years from the date of the order or within 31st day of December, 1995 whichever chronological event occurs later, provided the circumstances enumerated in Section 122-A of the Act are shown to have existed. In cases of orders made u/s 67(1) of the Act the two year period expires after 31-12-1995, the period of limitation would be only two years from the date of order. After the expiry of the period of limitation specified in Section 122-A of the Act, the Tribunal's power to review expires and cannot be exercised at all. This power of review is subject to another condition, as laid down, in Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another, , viz., res judicata. In this, case Hope Plantations Limited did not at the first instance raise a contention that specified portion of land under four different heads were entitled to exemption under different provisions of Kerala Land Reforms Act, 1963. The Taluk Land Board disallowed substantial claims under two of the heads as well as under another Head. The High Court of Kerala, restored the two disallowed heads and remanded the other two heads for fresh decision. The State appealed to the Supreme Court against the order of the High Court. The Supreme Court allowed the State appeal and restored the order of the Taluk Land Board and after remand the company raised a new plea that under the head "Other Agricultural Lands Interspersed" a Pre-1964 cardamom plantation was to be exempted. In the Supreme Court, it was held that the plea regarding Pre-1964 cardamom plantation being barred by the res judicata. In this background the Supreme Court observed thus:

"26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination

from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice".

Thus, if the matter is adjudicated in a higher forum and the order has become final, the power of review u/s 122-A, cannot be exercised.

4. In the instant case, all that the Land Tribunal sought to do was to issue a notice on 5-4-1996 calling upon the deceased Lingnagouda Gurulingappagouda Patil to produce documents and to give a statement failing which the matter would be decided ex parte. What is significant to note in the notice Annexure-C is that it does not state as to what were the circumstances enumerated in Section 122-A of the Act which enabled the Land Tribunal to review the order Annexure-D. The only reference that is cited in the notice is a Government circular dated 21-4-1992 providing for a review of declarations filed relating to surplus lands. It is needless to state that the Land Tribunal gets the power to review an order made under sub-section (1) of Section 67 of the Act when it is satisfied prima facie that there has been fraud, misrepresentation, or suppression of facts or furnishing false, incorrect or incomplete declaration and not under the circular dated 21-4-1992. None of these circumstances is recited in Annexure-C empowering the Land Tribunal to review the order Annexure-D.

5. In order to invoke the power of review u/s 122-A of the Act, the Land Tribunal, would have to suo motu or otherwise, on such enquiry as found necessary must be satisfied that the order u/s 67(1) of the Act has been obtained in the circumstances enumerated therein. Only on such satisfaction the Land Tribunal could reopen the case, hear the party who is likely to be adversely affected and pass such order as it thinks fit. In this case, certainly there is no satisfaction recorded by the Land Tribunal for reopening the case. A mere Government circular cannot be the foundation for reopening a case decided u/s 67(1) of the Act.

6. If the Land Tribunal did not till 31-12-1995 seek to exercise or initiate action

for a review of the order made u/s 67 of the Act, it cannot after 31-12-1995 exercise the power of review u/s 122-A of the Act. In the instant case, the notice itself was issued on 5-4-1996 long after 31-12-1995 the upper limit of limitation in this case, u/s 122-A of the Act. The order Annexure-D passed by the Land Tribunal is clearly without jurisdiction and cannot be sustained. The petitioners have sought to contend that they had, in any event, no notice of the order of the proceedings initiated u/s 122-A of the Act since the deceased Lingnagouda Gurulingappagouda Patil had died nearly 15 years prior to the date of the order. Even on this ground, the order made by the Land Tribunal is liable to be struck down as being in violation of principles of natural justice. Annexure-D is quashed as being without jurisdiction. Consequently Annexure-E also stands quashed. Rule made absolute.