

(1990) 03 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 27918 of 1982

Mahantappa (Dead) by L.R.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 12-03-1990

Acts Referred:

Karnataka Land Revenue Rules, 1966 — Rule 21(2)

Citation : (1992) 4 KarLJ 80

Hon'ble Judges : H. G. Balakrishna, J

Judgement

1. Sri Patel D. Karegowda, learned Government Pleader, is directed to take notice for the respondents.

2. In the declaration furnished under Section 66 of the Karnataka Land Reforms Act, 1961, by the petitioner, though the petitioner had described an extent of 6 acres 3 guntas of land as belonging to the classification of pot kharab (unarable land), the tribunal has not applied its mind or given due consideration to the assertion of the petitioner and has declared an extent of 6 acres 3 guntas of land as an extent held in excess of the ceiling area. Therefore, the petitioner is aggrieved.

3. According to Rule 21(2) of the Karnataka Land Revenue Rules, 1966, it is provided "during the process of classification, land included as Unarable shall be treated as "pot kharab". Pot kharab lands may be classified as follows:

(a) That which is classified as unfit for agriculture at the time of survey including the farm buildings or threshing floors of the holder, (b) That which is not assessed because, (i) it is reserved or assigned for public-purpose; (ii) it is occupied by a road or recognised footpath or by a tank or stream used by persons other than the holders for irrigation, drinking or domestic purposes; (iii) used as burial ground or cremation ground; (iv) assigned for village potteries."

4. According to sub-section (18) of Section 2 of the Karnataka Land Reforms Act, 1961, the definition of land is as follows:

"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 includes 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."

5. There is neither application of mind or discussion or finding on the question whether 6 acres 3 guntas of land belong to the category of pot kharab. I, therefore, accept the argument of the learned counsel appearing for the petitioner that the impugned order suffers from arbitrariness and non-consideration of a relevant fact. In these circumstances, it is not possible to sustain the impugned order of the tribunal.

6. For the above reasons, the writ petition is allowed and the impugned order of the tribunal so far as the petitioner is concerned in respect of 6 acres 3 guntas only is quashed. However, it is open to the tribunal to hold a fresh enquiry and re-examine the question and after affording a reasonable opportunity of hearing to the petitioner with liberty to adduce such evidence as he deems fit determine whether or not 6 acres 3 guntas of land belong to the category of unarable land or pot kharab land expeditiously.

7. The learned Government Pleader is permitted to file his memo of appearance within two weeks from today.