

(1978) 01 KAR CK 0023
In the Karnataka High Court
Case No : WP. 7782 of 1977

Meenakshamma

APPELLANT

Vs

Land Tribunal, Raichur and Others

RESPONDENT

Date of Decision : 10-01-1978

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 66

Citation : (1978) 1 KarLJ 220

Hon'ble Judges : Puttaswamy, J

Judgement

1. Under Sec. 66 of the Karnataka Land Reforms Act of 1961 (hereinafter referred to as "The 1961 Act"), respondent No. 2 filed a declaration in Form 11 before the Land Tribunal, Raichur, inter alia indicating the extent of lands owned by him and the persons interested in the said lands. In Form 11 Annexure-F- under the heading "particulars of land included in Annexure-A which have been disposed of on or after 18-11-1961" of the said declaration, respondent No. 2 stated that an extent of 19 acres 6 guntas and 7 acres 10 guntas in S. Nos. 87/2 and 30 of Bevinabenchhi and Srinivasapur Villages respectively had been disposed of or delivered to the petitioner at the time of her marriage by his father in 1963 by way of a gift. In the check report submitted by the Deputy Tahsildar, he did not examine the above assertion of the land-holder except stating that the said lands stand in the name of respondent No. 2. On examining respondent No. 2 and conducting an enquiry and without notice to the petitioner, the Land Tribunal by its order No. LRM/130/76-77 dated 11-4-1977 (Exhibit "C") declared that respondent No. 2 was entitled to retain an extent of 54 acres and there was a surplus of 22 acres 25 guntas in S. No. 20/3 of Thimmapur village, S. No. 30 of Shrinivasapur village and S. No. 99 of Bevinbenchi village and therefore directed its surrender to the Government. In this writ position, the petitioner who claims to be the owner or has an interest in S. No. 30 Srinivasapur village has challenged the said order of the Land Tribunal in so far as it relates to that S.No. 30 to an extent of 7 acres 10 guntas only.

2. Shri B.S. Raikote, learned Counsel for the petitioner, contended that the order

of the Land Tribunal in so far as it relates to S. No. 30 the ownership of which has vested in the petitioner without notice and with-out providing an opportunity of hearing to her is violative of the principles of natural justice and is vitiated.

3. From the records of the Land Tribunal, it is seen that no notice of the declaration had been issued to the petitioner before passing an order in respect of S. No. 30 the ownership of which is claimed by her. Shri C. Shivappa, learned High Court Government Pleader appearing for respondent Nos. 1 and 3 did not dispute the above assertion of the petitioner. But he contended that the petitioner was not the owner of S. No. 30 and therefore her name is not found in the revenue records for which reason she was not entitled for a notice or an opportunity of hearing. In this writ petition I cannot decide whether the petitioner is the owner of S. No. 30 or not and that is a matter for the Land Tribunal to decide.

4. Secs. 66 and 67 of the 1961 Act or Rule 24 of the Karnataka Land Reforms Rules of 1974 do not expressly provide or prohibit for a notice and an opportunity of hearing to other persons who claim ownership rights or an interest in the lands in respect of which a declaration is filed by a landholder. When the declarant himself has specifically stated that another person like the petitioner is the owner or has an interest in respect of certain lands mentioned by him as ruled by the Supreme Court in *Government of Mysore v. J.V. Bhat* it would be proper for the Courts to read that the provisions of "the 1961 Act" and the Rules framed thereunder provide for an opportunity of hearing particularly when the action to be taken thereunder would undoubtedly affect the property rights of another person. In *Government of Mysore v. J.V. Bhat*, AIR. 1973 SC. 506, at page 599 the Supreme Court stated the principle as under:

"It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but, on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding that the "audi alteram partem" rule could be imported. The nature of the hearing would, of course, vary according to the nature of the function and what is just and fair exercise required in the context of rights affected."

Maxwell on the interpretation of Statutes at page 358 of Eleventh Edition states as under:

"Implied Duty to Act judicially:

In giving judicial powers to affect prejudicially the rights of person or property, a statute is understood as silently implying, when it does not expressly provide, the condition or qualification that the power is to be exercised in accordance with the fundamental rules of judicial procedure, such, for instance, as that which requires that, before its exercise, the person sought to be prejudicially affected shall have an opportunity of defending himself".

In my view, the above principles are applicable in construing the provisions

regarding declarations under "the 1961 Act", the determination of excess lands and their surrender and therefore the petitioner was entitled to a notice and an opportunity of hearing from the Land Tribunal and by its failure to provide the same, it has committed a manifest illegality resulting in failure of justice to the petitioner. I, therefore, hold that the order of the Land Tribunal, (Exhibit C) in so far as it relates to S. No. 30 of Srinivasapur village to an extent of 7 acres 10 guntas only is liable to be quashed by issue of a writ of certiorari and the Land Tribunal directed "to determine the matter in so far as the said extern"; of land afresh in accordance with law and in the light of the observations made in this order. Ordered accordingly.

5. Rule made absolute.

6. In the circumstances of the case, I direct the parties to bear their own costs.