

(1998) 05 KAR CK 0009

In the Karnataka High Court

Case No : Writ Appeal No. 7976 of 1996

Naganagouda Gowdappa Gouda Patil (Deceased) by L.Rs and
Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-05-1998

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2 (12), 4 (1), 63 (2), 66

Citation : (1998) 6 KarLJ 176

Hon'ble Judges : Y. Bhaskar Rao, J;C.N. Aswathanarayana Rao, J

Bench : Division Bench

Advocate : Sri V.T. Rayareddi, for the Appellant; Smt. Bharathi Nagesh, High Court Government Advocate, for the Respondent

Judgement

Y. Bhaskar Rao, J.—This is an appeal filed by the writ petitioners assailing the judgment of the Single Judge dismissing the writ petition dated 31-7-1996. The facts of the case are that Gowdappa Gouda was having a wife and two sons. He died earlier to the promulgation of the Karnataka Land Reforms Act. Therefore the two sons and his wife, that is the mother of the two sons, succeeded to the property. The entries were made in the revenue records tentatively, some of the properties being entered in the name of each member. They have filed a declaration u/s 66 of the Karnataka Land Reforms Act (herein afterwards referred to as "the Act" for short) showing that they own 6 acres 32 guntas of land. The Land Reforms Tribunal has ordered that each major son is entitled to retain ten units and held that the mother is entitled to only two units. Ten unit conies to 54 acres or equivalent to that extent. Aggrieved by that, the appellants filed a writ petition. The Single Judge, after hearing both the parties, held that the mother was holding a separate land and she herself stated that some land is allotted to her and therefore she is entitled only for the two units and not more than that. Assailing the said judgment, the present appeal is filed.

2. The learned Counsel for the appellant contended that the mother is an

individual, she cannot be included in the family as per the definition provided u/s 2(12) of the Act: Therefore the Tribunal as well as the learned Single Judge erred in not granting ten total units to her. On the other hand, the Government Advocate contended that the mother herself has given a statement that some lands are allotted to her and at the most she is entitled to the land allotted to her and not more than that.

3. to appreciate the above contentions, it is relevant to extract section 2(12) of the Act which provides the definition of the "family" which reads as follows:

"2(12) "Family" means.--

(a) in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and unmarried daughters, if any;

(b) in the case of an individual who has no spouse, such individual and his or her minor sons and unmarried daughters;

(c) in the case of an individual who is a divorced person and who has not remarried, such individual and his minor sons and unmarried daughters, whether in his custody or not; and

(d) where an individual and his or her spouse are both dead, their minor sons and unmarried daughters".

4. Section 63(2) of the Act provides that the ceiling area of a person who is not a member of the family or who has no family or for a family shall be ten units. This special clause provides that a person who is not a member of the family can hold ten units or who has no family or for a family can hold ten units and family can also hold ten units. Therefore when an individual without a family is there, he is entitled under law to hold ten units. The concept of joint family is quite different from the statutory definition of the "family" provided under the Act. By reading Section 2(12) together with Section 63(2) of the Act, it is manifest that an individual whether male or female without a family is also entitled to hold ten units. The mother in this case is an individual, a person without a family and as per the definition, she is not included in the family of her sons. So she is entitled to hold ten units. It is settled principle of law that the interpretation of statutory legislation must be strictly in accordance with the provisions of the Act. Therefore, we hold that the mother is entitled for ten units.

5. The learned Counsel for the appellants secondly contended that the Tribunal has not included phut kharab portion of the land. In case the appellants produce the revenue records "showing that there is phut kharab land entered in the revenue records, the same may be considered according to law. It is thirdly contended that some of the lands are acquired for formation of road and Section 4(1), notification has already been issued. Therefore, it cannot be said they are owners of the land. In case Section 4(1), notification is issued earlier to the promulgation of the Act, the Tribunal is directed to consider their claim regarding portion of phut kharab. Writ appeal is allowed accordingly modifying the order of

the Tribunal.