

(2015) 07 KAR CK 0156
In the Karnataka High Court
Case No : Writ Petition No. 30411/2008 (LR)

S. Jyothi Kumari	Vs	APPELLANT
The State of Karnataka and Others		RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 63, 63(10), 66, 67

Citation : (2015) 07 KAR CK 0156

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : J.M. Anil Kumar, for the Appellant; Ravi V. Hosamani, AGA,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

B. Veerappa, J—The petitioner has filed the above writ petition challenging the order dated 19.10.2012 passed by the Land Tribunal as per Annexures B and C holding that the declarants i.e. D. Ramabrahmam and Venu were holding excess lands to an extent of 13.83 acres and 33.07 acres and directed them to hand over the said lands to the State Government under Section 67 of the Karnataka Land Reforms Act (for short "the Act").

2. It is the case of the petitioner that the petitioner, respondent Nos. 4 and 5 are the children of late Ramabrahmam and the 4th respondent was allotted several items of land to his share in the partition in the year 1970. The 5th respondent was married as on 01.03.1974 and the petitioner was unmarried as on that date and she was living with her father late Ramabrahmam as a family member and she got married subsequent to 01.03.1974. It is their further case that the father of the 4th and 5th respondents has filed a declaration in Form No. 11 as provided under Section 66 of the Karnataka Land Reforms Act declaring the lands held by him. The Land Tribunal after considering the entire material on record, by its order dated 29.08.1980 made in case Nos. 116/75-76 and 120/75-76 declared that father of the petitioner was holding 100 acres 52 cents.

3. Aggrieved by the said order of the land Tribunal, the father of the petitioner has filed writ petition No. 1212/1981 and after hearing, this Court by its order dated 28.03.1983 has allowed and remitted the matter for fresh consideration.

4. During the pendency of the matter before the Tribunal the said Ramabrahmam-the father of the petitioner expired on 10.04.1991. Pursuant to the order passed by this Court in W.P. No. 1212/1981, the Tribunal without conducting proper inquiry, by order dated 20.05.1983 passed an order again the declaring that there was an excess land of 100 acres 90 cents. Aggrieved by the said order of the land Tribunal, the petitioner and respondent Nos. 4 and 5 preferred W.P. Nos. 28340-42/1993 before this Court. This Court by its order dated 29.07.1999, has allowed the petitions and quashed the order of the Land Tribunal and remitted the case to the Land Tribunal for disposing of the declaration filed by late Ramabrahmam and the 4th respondent afresh in accordance with law after issuing notices to the petitioners and after hearing them.

5. It is the further case of the petitioner that declaration filed by the petitioners father late Ramabrahmam was numbered as 116/75-76 and the declaration filed by the 4th respondent was numbered as 120/75-76 before the Land Tribunal and in pursuance of the order passed by this Court, the Tribunal by impugned order dated 19.10.2002 made in No. 116/75-76 has declared that petitioner's father late Ramabrahmam holds an excess land of 13,83 acres and the 4th respondent holds an excess land of 33.07 acres in case No. 12/75-76 totally 46.90 acres and directed the excess land to be handed over to the Government. Hence, the present writ petition is filed.

6. Respondents have not filed any objection to the writ petition.

7. I have heard the learned Counsel for the parties to the lis.

8. Sri J.M. Anilkumarm learned Counsel for the petitioner has contended that the impugned order passed by the Land Tribunal, without notice and enquiry is contrary to the provisions of Rule 24 and 24A of the Land Reforms Rules, 1974 and the impugned order was passed without giving an opportunity to the petitioner and the same is total violation of principles of natural justice and contrary to the order passed by this Court dated 19.07.1999 made in W.P. No. 2.28340-12/1993 and sought to set aside the impugned orders passed, by allowing the writ petitions.

9. The learned Counsel for the private respondents sought to support the case of case of the petitioner.

10. Per contra Learned AGA for respondent Nos. 1 to 3 has contended that in pursuance of the order passed by this Court, 4th respondent has appeared before the Tribunal and made a statement and after recording the statement of the 4th respondent the impugned orders are passed. The same is in accordance with law. Therefore, sought to dismiss the writ petition.

11. I have given my thoughtful consideration to the arguments advanced by

learned Counsel for the parties and perused the entire material on record.

12. It is an admitted fact that this is a 3rd round of litigation. On earlier two occasions, the matter was remanded to the Land Tribunal for proper enquiry and pass orders order. On first occasion, this Court by an order dated 29.07.1999 made in W.P. Nos. 28340-42/1993 has allowed the writ petitions and remanded the matter on the ground that the Tribunal has not considered the Will executed by Ramabrahmam during his lifetime and no opportunity was given to the petitioner before passing the order and therefore, this Court has quashed the impugned orders made therein and remitted to the Land Tribunal for fresh consideration which reads as under:

Accordingly petitions are allowed.

The orders Annexure-A and D and the notice Annexure-E are quashed.

Case stands remitted to the Land Tribunal for disposing of the declaration filed by Rama Bharamam and petitioner - 1 herein afresh according to law after issuing notices to the petitioners and after hearing them and the Government.

13. After remand from this Court on second occasion, the Tribunal has not issued any notice in an order to give opportunity of being heard as directed by this Court. Only recording the statement of the 4th respondent, has passed the impugned orders. Rule 24 of the Karnataka Land Reforms Rules, 1974 contemplates the enquiry by the Tahsildar after receipt of declaration under the provisions of Section 66 of the Karnataka Land Reforms Rules, which reads as under:

24. Enquiry by Tahsildar - (1) On receipt of the declaration under Section 66, the Tahsildar shall verify the correctness of the particulars furnished therein with reference to the entries in the record of rights, other documents, if any, produced and by making such local enquiry and inspection as he considers necessary, either by himself or through any officer of the Revenue Department not lower in rank than a Revenue Inspector.

14. By a plain reading of Rule 24 makes it clear that before passing any order on the application under Section 66, the Tahsildar make such local enquiry and inspection as he considers necessary, either by himself or through any officer of the Revenue Department not lower in rank than a Revenue Inspector and after such enquiry the Tahsildar has to verify the correctness of the particulars furnished by the declarant and furnish copy of enquiry report to declarant. Admittedly the said mandatory procedure has not been followed in the present case. The impugned order/records does not disclose that the Tahsildar has held any such Prl. Enquiry as contemplated. Hence, the impugned orders passed by the Tribunal vitiated and requires to be set aside.

15. Apart from the said lacuna, this Court has specifically directed to issue notice to all the petitioners and pass orders after hearing them and the Government afresh. The said direction is also not followed in the present impugned orders.

Admittedly, the impugned orders does not depict that the Tribunal has issued notice to all the petitioners as directed by this Court and heard and furnished report to the declarant as contemplated under Rule 24 of the Karnataka Land Reforms Rules, 1974.

16. While considering the provisions of Section 63(10), this Court in the case of S.V. Venkatesha Murthy v. Additional Land Tribunal, Shimoga and others reported in 1991 (4) KLJ 299 has held at under:

3. In any enquiry that is to be held before passing a considered order on the question whether a declarant is holding land in excess of the ceiling area, the Act contemplates that there shall be a fair and proper enquiry in the sense that adequate and reasonable opportunity should be afforded to the declarant to meet the points raised in the preliminary report of the Tahsildar and also to enable the declarant to file his objections to the said report before the Tribunal. Unless a copy of the preliminary report is made available to the declarant, it cannot be said that the declarant has been treated fairly and that the enquiry is proper. There is no material on record to show that copy of the preliminary report was furnished to the petitioner in this case.

4. From a reading of the order of the Tribunal it is seen that there was no survey of the lands in the village, including the lands of the petitioner and yet a measurement has been described besides classification of the land based on the report of the Tahsildar. It is beyond one's own comprehension as to how the speculative method could be a proper substitute to the known methods of arriving at the holding of the declarant and also for the purpose of classification of the land. Certainly the Tribunal was on slippery ground in such a speculative investigation and it is difficult to reconcile such an order with the requirements of law. It is further contended that 32 items of land which do not belong to the declarant have been brought within the sweep of the order and that an extent of 63 acres and 6 guntas of land is in excess of ceiling area.

5. The most questionable finding of the Tribunal is in respect of the plea of partition raised by the declarant. According to the declarants, partition took place in 1967 among the members of the family consisting of minor children, apart from the adults and the partition was reduced into a registered deed on 28.12.1974. The finding of the Tribunal is that since the partition deed was registered subsequent to 1.3.1974, the fact of partition cannot be taken notice of by the Tribunal. This is an assumption which does not bear legal scrutiny and a proposition which is too dubious to be accepted. It may be necessary for me to observe that under Hindu Law the child in the mother's womb (*En Ventre Sa Mere*) is entitled to a share in the ancestral property. Leave alone the minor children, in this case we are concerned with the children who were minors at the time of partition. Minority does not extinguish the rights of the children. But, on the other hand, the view that is consistently taken by this Court is that the minors are entitled to hold property on partition and to the extent of their share under the Act. It has to be presumed that they have independent rights aside

from the rights of the father or karta of the joint family or the manager of the joint family. In Abdul Khadar Vs. Land Tribunal, (1985) ILR (Kar) 3923 , the view taken by a Division Bench of this Court is to be seen in para 23 of the Judgment:-

"In Revanna's case while construing the relevant provisions of the Karnataka Act in particular Section 63 thereof which provides for fixation of the ceiling area, a learned Single Judge of this Court has held that "land transferred on partition is not included in the deemed transfer of land laid down in explanation to Section 63(10)" and has further held that "the authority should calculate the ceiling area of the land, after taking into consideration the partition and the extent of land that fell to the sharers." The learned Judge also observed that where there was a partition between a Hindu father and his minor son, that share of the minor son should not be treated as land held by the family. Undoubtedly, the partition referred to by the learned Single Judge was the partition that had taken place prior to 1.3.1974, the date on which the Karnataka Amendment Act came into force and not partition that had taken place subsequently. We are, therefore, not inclined to hold that the view taken in Revanna's case is not correct. Regard being had to the express provisions in our Act, the decision therein appears to be correct."

17. In view of the aforesaid reasons, the impugned orders passed by the Land Tribunal on 19.10.2002 as per Annexures B and C are hereby quashed. The matter is remanded to the Land Tribunal for fresh enquiry in accordance with law with a direction to hold summary enquiry as contemplated under Rule 24 of the Karnataka Land Reforms Rules 1974, in respect of property declaration filed by the petitioner and dispose of the same.

18. In order to avoid further delay in the proceedings, both the petitioners as well as respondent Nos. 4 and 5 are directed to appear before the Tribunal on 26.08.2015 without awaiting any notice from the Tribunal and the Tribunal shall pass orders after giving sufficient opportunity to both the parties in accordance with law.