

(1989) 11 KAR CK 0009
In the Karnataka High Court
Case No : W.A. No. 1830 of 1984

Sharanappa Basappa Dindawar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 60 (10) (ii), 66

Citation : (1990) ILR (Kar) 218 : (1990) 1 KarLJ 91

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : Hemalatha Mahishi, for the Appellant; N.K. Gupta, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—This Writ Appeal is presented against the order of the learned Single Judge dismissing the Writ Petition of the appellant, in which, he had challenged the order of the Land Tribunal, Bijapur Taluk.

2. The facts of the case, in brief, are as follow:-

The appellant, was owning 15 acres 6 guntas in Sy.No. 10? and 28 acres 10 guntas in Sy.No. 28/2 of Ankalagi village in Bijapur taluk. The total extent of land held by him was 43 acres 16 guntas. By a registered Exchange Deed dated 18-8-1971 the appellant exchanged 28 acres 10 guntas of land to 30 acres 24 guntas of land in Sy.No. 175 belonging to one Gurappa Bhimaraya Biradar. The resultant position was, the appellant was having 15 acres 6 guntas in Sy.No. 102 and 30 acres 24 guntas in Sy.No. 175 which had been got by exchange, the total being 45 acres 30 guntas.

3. The Land Reforms Act, 1961 was subjected to certain revolutionary amendments with effect from 1-3-1974. According to Section 66 of the Act, ceiling for holding of agricultural lands was fixed. There is no dispute that according to the said provision, having regard to the nature of lands which the

appellant was holding the ceiling limit was 54 acres. The appellant filed a declaration before the Land Tribunal to the effect that the total holding of the appellant was within the ceiling limit. But the Land Tribunal held that in view of Section 63(10)(ii) of the Act, the extent of 28 acres 10 guntas of land which the appellant disposed of by exchange should also be added to 45 acres 30 guntas and thereby the total was notionally arrived at 74 acres and the appellant was asked to surrender 20 acres. Aggrieved by the said order, the appellant presented a Writ Petition. The contention in the Writ Petition was that in computing the actual holding of the appellant either the land which the appellant got in exchange i.e., 30 acres and 24 guntas or the land which the appellant gave in exchange, namely, 28 acres 10 guntas should have been included, but not both and by including both though actually the appellant was having only 45 acres 30 guntas of land as on 1-3-1974 he was asked to surrender 20 acres of land. The Writ Petition was dismissed rejecting the contention of the appellant. Aggrieved by the said order, the appellant has presented this appeal.

4. There is no dispute about the actual extent of land held by the appellant as on 1-3-1974. That was 45 acres 30 guntas, consisting of the original holding of 15 acres 6 guntas in Sy.No. 102 and 30 acres 24 guntas which the appellant got by way of exchange. The said extent of land is undoubtedly within 54 acres, which is the maximum ceiling limit in respect of the categories of lands in question u/s 66 of the Act. But the difficulty in the way of the appellant was the provisions of Section 63(10)(ii) of the Act. The relevant sub-section reads:-

"63(10) Notwithstanding anything in the preceding sub-section, if any person has -

(i) after the 18th November 1961 and before the 24th January 1971 transferred any land the extent of which if added to the other land retained by him could have been deemed to be surplus land before the date of commencement of the Amendment Act; or

(ii) after the 24th January 1971 transferred any land, otherwise than by partition or by donation to the Karnataka Bhoodan Yagna Board established under the Karnataka Bhoodan Yagna Act, 1963 (Karnataka Act 34 of 1963) or by sale to the tenant of such land in conformity with any law for the time being in force, then in calculating the ceiling area which that person is entitled to hold, the area so transferred shall be taken into account and the land exceeding the ceiling area so calculated shall be deemed to be in excess of the ceiling area notwithstanding that the land remaining with him may not in fact be in excess of the ceiling area.

If by reason of such transfer the person's holding is less than the area so calculated to be in excess of the ceiling area, then all his lands shall be deemed to be surplus land and the provisions of Section 66 to 76 shall, as far as may be, apply to the surrender to and vesting in the State Government of such excess land."

5. According to Section 63(10)(ii) of the Act if any person had transferred any

land after 24-1-1971, the extent of the land so transferred has to be added to the actual holding and that the person concerned must be deemed to be holding so much extent of land and out of that, the extent of land fixed for ceiling Should be deducted and the person concerned should be asked to surrender the balance. In the present case, in view of the above mandatory provision, what the Land Tribunal did was, it added 28 acres 10 guntas, transferred by way of exchange after 24-1-1971, to 45 acres 30 guntas and the total extent of land which should be deemed to be held by the appellant in view of Section 63(10)(ii) was arrived at 74 acres and out of that deducting 54 acres which was the ceiling limit prescribed, the appellant was asked to surrender 20 acres, which was found to be the excess. The learned Counsel for the appellant pointed out that even though the appellant was actually holding only 45 acres 30 guntas, he has been compelled to surrender 20 acres of land and he was allowed to retain only 25 acres 30 guntas. It is no doubt true that the appellant is in this unfortunate position. But in view of Section 63(10)(ii) of the Act, there was no other alternative to the Land Tribunal.

6. The learned Counsel for the appellant a strenuously contended that either 28 acres 10 guntas given in exchange should have been added or 30 acres 24 guntas got in exchange should have been added, but both could not have been added. We are unable to agree in view of the mandatory provisions of the Act. According to Section 66 of the Act, the total actual holding of the persons concerned as on 1-3-1974 should be taken into account and to that in view of Section 63(10)(ii) the land disposed of after 24-1-1971 also should be added. Explanation to Sub-section gives no scope for any such interpretation, for the reason that even exchange is considered to be transfer for the purpose of Section 63(10)(ii) of the Act.

7. In the result, we find no substance in this appeal.

8. Accordingly, we make the following order:

The Appeal is dismissed.