

(1995) 11 KAR CK 0051

In the Karnataka High Court

Case No : Writ Petition Nos. 3688 to 3690 of 1988

Shivanagappa and Others

APPELLANT

Vs

The Land Tribunal, Gangavathi and Others

RESPONDENT

Date of Decision : 02-11-1995

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 66

Citation : (1996) 3 KarLJ 600

Hon'ble Judges : M. M. Mirdhe, J

Judgement

1. These writ petitions are filed by the petitioners praying to quash the order passed by respondent 1 holding that the holding of the land by the petitioners exceeds by 11.8 units.

2. I have heard the Counsel for the petitioners and the Government Pleader for respondents 1 to 3 and perused the records of the case.

3. Since the Land Tribunal has passed a common order, the writ petitioners have filed three separate petitions challenging the same, and as all the three writ petitions are directed against the common order, I have heard them together and passing a common order in all these three writ petitions.

4. Even prior to these writ petitions, the petitioners have challenged the earlier order passed by the Land Tribunal in Writ Petition Nos. 19699 to 19701 of 1981 and this Court by its order dated 14-12-1983 allowed those writ petitions and remitted the matters to the Tribunal for fresh disposal in accordance with law. One of the grounds urged in those writ petitions was that the order challenged in those writ petitions was bad as all the Form Nos. 7 were clubbed together and disposed of by recording common evidence and passing a single order. This time, even after remitting, the Tribunal has clubbed all these three forms together and recorded common evidence and passed a single order. This is an illegality committed by the Tribunal in passing the impugned order. Before the Tribunal comes to a conclusion about the excess land, Rule 24 of the Karnataka Land Reforms Rules has laid down that the Tahsildar shall verify the correctness of the

particulars furnished in the declaration with reference to the entries in the record of rights and other documents if any produced and by making local inspection if he considers necessary. So, this enquiry by the Tahsildar is missed in these cases. This Court in the case of *S.V. Venkatesha Murthy v Additional Land Tribunal, Shimoga and Others*, 1991(4) Kar. L.J. 299, has held as follows:

"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.... 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".

Therefore, the enquiry to be held by the Tahsildar and furnishing of the preliminary report of the Tahsildar to the declarant to enable him to file objections are the mandatory provisions. The record does not disclose that the Tahsildar has held any such preliminary enquiry much less any copy of such enquiry was furnished to the writ petitioners. In view of these lacunae in the order of the Tribunal, the impugned order is vitiated on account of these two reasons and it requires to be set aside.

5. Hence, I proceed to pass the following order:

The writ petitions are allowed. The impugned order is set aside and the matter is remitted to the Tribunal with a direction to hold separate enquiries in respect of separate declarations filed by the petitioners and dispose of the cases in accordance with law.