

(1990) 03 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition No. 31053 of 1982

Smt. Rachamma and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 13-03-1990

Acts Referred:

Citation : (1991) 4 KarLJ 677

Hon'ble Judges : H. G. Balakrishna, J

Judgement

1. The only point for consideration is whether the impugned order of the Tribunal deserves to be set aside for not bringing on record and notifying the legal representatives of the deceased Rachamma who appears to have died in 1976 subsequent to the declaration submitted by her, whereas the impugned order of the Tribunal was passed on 15-10-1981.

2. In order to convince myself, I called upon the learned counsel appearing for the petitioner to produce any document which supports the assertion that Rachamma died in the year 1976. The learned counsel made available a true copy of the extract from the Mutation Register in Form K relating to the land in question to show that an application was made by petitioners 1 and 2 herein to the concerned authority for change of Mutation entry in their favour consequent to the death of their mother. The entries recorded in the Mutation for having received such an application and the order passed thereon confirm the assertion that the petitioners' mother died in the year 1976. Though a Death Certificate would be the best evidence in this regard, in the absence of the same it would be unreasonable to ignore the document which is now made available before this court. The extract of the Mutation Register in Form K shall form a part of the record.

3. Accepting the submissions made by the learned counsel for the petitioners that Rachamma demised in 1976 during the pendency of the proceedings before the Tribunal, it has to be held that the Tribunal was not justified in not bringing on record petitioners 1 and 2. Principle of audi alteram partem demands that the

petitioners should have been duly notified and heard at an enquiry before the Tribunal proceeds to pass an order determining whether or not they hold land in excess of the ceiling area. In the absence of such a notice of hearing, it has to be held that the impugned order cannot be sustained.

4. For the above reasons, the writ petition is allowed and the impugned order is quashed. It is open to the Land Tribunal concerned to notify the petitioners and receive their objections and after due enquiry and a reasonable opportunity of hearing, dispose of the case on merits and in accordance with law expeditiously.