

(1995) 01 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition No. 678 of 1995

Sri. R. Patrigowda

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 11-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Reforms Act, 1961 — Section 66, 76

Citation : AIR 1995 Kar 372 : (1995) ILR (Kar) 910 : (1995) 2 KarLJ 602

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri. K. Ravi, for the Appellant; Sri. H.H. Kaladgio, HCGP, for the Respondent

Judgement

1. Heard the learned Counsel for the petitioner and learned Government Advocate.

2. The facts of the case in brief are that, according to the petitioner a total holding of 250 acres and 17 guntas situated in Eshapur and Arakanal villages in Harappanahalh Taluk in the district of Bellary belonged to the petitioner's deceased father that is on the coming into force of Karnataka Land Reforms Act. Smt. Kamma R., filed a declaration under S. 66 of the Act and thereafter by order dated 20-10-1981 Annexure-A to the writ petition the Tribunal respondent No. 2 declared and held that declarant and his family was possessed of 29 acres 42 guntas of excess land. In pursuance of order dated 20-10-1981, the Tahsildar on 2-8-1982 passed an ...order issued a notice calling upon the tenure-holder to surrender the land to an extent of 29 acres 42 guntas out of certain plots specified therein. The petitioner's case is that on a writ petition, i.e., W.P. No. 29249/82 being filed therefrom, i.e., order dated 2-8-1982, this Court vide in order dated 11-7-1991 allowed the aforesaid writ petition. That on 30-4-1994 and 2-11-1994 petitioners have been called upon to surrender 29 acres 42 guntas of land as excess land within 30 days from the receipt of the notice. The

notice dated 30-4-1994 has been annexure as Annexure-J to writ petition. The petition has alleged that the petitioners have moved an application for review or reconsideration but according to the petitioner the second respondent indicated that they would not review order dated 21-10-1981 so the petitioner's have come up again before . this Court by this petition of Art. 226 of the Constitution of India again. The petitioners has sought the quashing of order dated 20-10-1981 and notice dated 30-4-1991 and has prayed for dropping further proceedings under order dated 21-10-1981 and notice dated 30-4-1994 issued under S. 67(s) of the Act.

3. The learned counsel for the petitioner submitted before me that, there are four major persons and three minors on the relevant date in the family of the declarant and they are entitled to hold 216 acres and for the minor daughters and two others are entitled to two units each. That an area of 24 acres 24 cents had been alienated prior to " 1-3-1974 under sale deed dated, 11-2-1972 " which should have been included and they are entitled to exemption but it has not been allowed. Therefore, the order is illegal.

4. The learned Government Advocate submitted that, the order dated 21-10-1981 not having been challenged earlier it has become final and now it would not be justifiable to allow the petitioner after more than 12 years to challenge that order. The learned Government Counsel contended that, this petition suffers from delay and laches as regards challenge to order dated 21-10-1981. The learned Government Advocate contended that petitioner has filed writ petition earlier against earlier notice dated 2-8-1982 issued under S.67 which was allowed setting aside notice dated 2-8-1982 only as appears from Annexure-A to writ petition as well as the fresh notice on 30-4-1994. The learned Government Counsel submitted in view of Section 63(10) of the Land Reforms Act, the transaction of sale dated 11-2-1972 has rightly been ignored and that land, i.e., 24 acres and 24 cents has rightly been clubbed and taken as land held by declarant and her family while determining ceiling area and excess area.

5. That as regards the ceiling area and the excess area that has already been determined vide order dated 20-10-1981 passed by the Tribunal in Case No. 304/74 and the declarant was found to be holding excess land to the extent of 24 acres 42 guntas. That order appears to have become final as it has not been challenged earlier. After that order, it appears a notice was issued under S. 67(2) of the Land Reforms Act. and as per Annexure-A this Hon"ble Court in Writ Petition No. 29249/82 vide its order dated 11-7-1991 quashed the notice issued by the Tahsildar on the ground that the notice under S. 67(2) was not in accordance with and with due compliance of requirements with the Act, therefore, in pursuance thereof this Hon"ble Court directed the authority to issue a fresh notice under S. 67(2). The petitioner filed this petition challenging that notice.

6. That as has been mentioned above, the determination of the ceiling area, i.e., the area which the petitioners are entitled to hold and the excess area, the

proceedings had become final. Further, a perusal of S. 63 (sub-sec. 10) of the Land Reforms Act will per se show that the land covered by the sale deed dated 1 1-2-1971 cannot be taken to have illegally been deemed to have been held by the declarant and it cannot be held that the authority illegally declared the excess area after taking into account the land that had been transferred by the sale deed dated 1 1-2-1972, as this transfer in this case has been made after 24-1 -1971. Sub-section (10) of S. 63 of the Act reads as under :--

"(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 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 Ss. 66 to 76 shall, as far as may be, apply to the surrender to and vesting in the State Government of such excess land".

7. A reading of this section, per se, reveals that, any transfer that has been made after 24-1-1971 of the land except by way of partition or by way of donation to Karnataka Bhoodan Yagna or by sale to the tenant of such land in conformity of law, clause (ii) of sub-section (10) of Section 63 provides that the lands subject matter of such transfer that has been made after 24-1-1971 shall be taken into account in course of determining and deciding of the ceiling area and the excess area. This section further says that 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. So this later portion of clause (ii) of sub-section (10) of Section 63 of the Act clearly provides a deeming clause and very clearly states that, even if the land actually held by tenure-holder, after the transfer is less than ceiling area but land or area so transferred after 24-1-1971 is to be taken into account while calculating ceiling area and the land is in excess of the ceiling area. The section does so provide that the land which has been transferred after the specified date, that land has to be taken into account and it should be taken into consideration as land holding of the tenure-holder, while considering and

determining the ceiling area of tenure-holder (transferor) and the land or area in excess of ceiling area.

8. Then, in the matter of calculating ceiling area and excess area, such person shall be deemed in the eye of law to be possessed of excess area that is the area in excess of ceiling area. Therefore, in my opinion, there is no substance in the contention of the learned counsel for the petitioner in this regard. The contention of the learned counsel for the petitioner that in calculating the ceiling area and the excess area, the land that had already been transferred in 1972 should have been ignored and should not be taken into account is without force and as such it is rejected.

9. That as regards the notice issued under S.67(2) of the Act, no illegality has been pointed out.

Thus considered, petition has got no merits and is hereby dismissed.

10. Petition dismissed.