

**(1991) 09 KAR CK 0041**  
**In the Karnataka High Court**  
**Case No : W.P. No. 9046/1989**

Vijaya Kumar

APPELLANT

Vs

Land Tribunal, Afzalpur and Others

RESPONDENT

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**Date of Decision :** 03-09-1991

**Acts Referred:**

Karnataka Land Reforms Act, 1961 — Section 63(1)

**Citation :** (1991) 4 KarLJ 21

**Hon'ble Judges :** N. D. V. Bhat, J

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**Judgement**

1. This writ petition is directed against the order dated 26-2-1988. The matter has come up for preliminary hearing. With the consent of the learned counsel for the petitioner and the learned High Court Government Pleader, Sri Thimmegowda, the matter is taken up for final disposal.

2. Sri Raikote, counsel for the petitioner has raised two points. The first point raised by him is that the phut kharab area should have been excluded. The second point raised by him is that the divorced sister ought to have been counted as a person constituting a separate family. In support of his first submission, the learned counsel has relied on the decision in P. Bhimachar v State of Mysore & Others, reported in 1966(2) Mys. L.J. 184. Learned Government Pleader, on the other hand contended that the order passed by the Tribunal cannot be found fault with.

3. I have given my consideration to the submissions made on either side. In the decision in P. Bhimachar's case, the word "phut kharab" is explained as meaning and refer to the land which is included in an assessed survey number, but which is unfit for cultivation. It is pointed out that every phut kharab land does not belong to Government but for the purpose of assessment, uncultivable portion of the land or phut kharab portion of the land is excluded from consideration on the ground that it is uncultivable. However, it is pointed out that it does not cease to belong to the owner of the survey number. Section 63(1) of the Karnataka Land Reforms Act, 1961 (for short "Act") reads as under:

Section 63(1).-"No person who is not a member of a family or who has no family and no family shall, except as otherwise provided in this Act, be entitled to hold, whether as land owner, landlord or tenant or as a mortgagee with possession or otherwise or partly in one capacity and partly in another, land in excess of the ceiling area." It is, therefore, clear that the ceiling is on the land. The expression "land" is defined in the Act in Section 2(18), which reads as under:

"land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non-agricultural purposes;"

Having regard to the fact that the phut kharab portion of a land is uncultivable, it means that the same does not fall within the definition of "land", that is to say, agricultural land. In this view of the matter, it appears to me that the phut kharab portion of the land, if any, will have to be excluded from the total extent of holding of the declarant. This view gains further support from Rule No. 24(3) of the Karnataka Land Reforms Rules. The said Rule reads as under:

"24. Enquiry by Tahsildar.- (1) xx xx xx.

(2) xx xx xx.

(3) The Tribunal may pass an order rejecting land proposed to be surrendered on the following grounds also, namely- (i) that it is uncultivable phut kharab;

(ii) xx xx xx;

(iii) xx xx xx;

(iv) xx xx xx."

4. It is significant to note here that the aforesaid Rule is in furtherance of the legislative intentment reflected in Section 67(3-A) of the Act. Under these circumstances, I have no hesitation whatsoever, in holding that the phut kharab portion cannot be taken into consideration for the purpose of calculating the total extent of holding. If the Tribunal can reject the uncultivable portion, that is to say, the phut kharab, if it is proposed to be surrendered, it should mean that the same also cannot be taken into consideration for the purpose of calculating the total extent of holding. It appears that this aspect has not been considered by the Land Tribunal while passing the order which it did and which is now challenged before this Court.

5. Further, Sri Raikote also raised a contention that the divorced sister of the instant petitioner also will constitute "family" by herself in the context of the definition of that expression under Section 2-A(12)(C) of the Act which reads as under:

Section 2-A(12)(C). "In the case of an individual who is a divorced person and

who has not remarried, such individual and his minor sons and unmarried daughters, whether in his custody or not;"

It is not necessary to go into that aspect, having regard to the fact that it is not clarified by the petitioner as regards as to when the father of the instant petitioner died. It is necessary to mention here that the question of the sister of the petitioner getting a share in the property would arise, only in the context of the death of the father next after 1956, that is to say, after the advent of the Hindu Succession Act, 1956. Since this aspect highlighted by Sri Raikote is a mixed question of fact and law and since there are no adequate material before this Court to reach a conclusion with reference to the question touching upon the fact, I do not think it proper for this Court to express any opinion. However, it is open for the petitioner to highlight and to press into service this submission before the Tribunal for its consideration after placing proper material before the Tribunal, now that this Court has taken the view that the matter is required to be remitted back to the Tribunal with reference to the first point raised by the petitioner.

6. For the reasons stated herein above, the order dated 26-2-1988 passed by the Land Tribunal, Afzalpur, Gulbarga District in No.: DEC: 6: 11: LRA 90-88 is set aside. The matter is remitted back to the Land Tribunal for fresh disposal according to law in the light of the observations made herein above, after giving an opportunity to the petitioner to produce such evidence which he may like to adduce and press in to service such points which he would like to press before the Tribunal.

7. In view of the aforesaid order, it would follow that the order dated 18-11-1988 passed by the Assistant Commissioner, Gulbarga in No.: 80:25:88-89 does not survive.

8. Sri Thimmegowda, Government Pleader is permitted to file his memo of appearance within three weeks.