

Thippeswamy and ors. Vs. the State of Karnataka and ors.

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Court : Karnataka

Decided On : Jun-24-1974

Reported in : ILR1974KAR1333; 1974(2)KarLJ518

Judge : E.S. Venkataramiah, J.

Acts : Mysore Land Reforms Act, 1961 - Sections 2, 5, 48(8), 63, 63(3), 67-(1-A) and 113; ;Mysore Land Reforms (Amendment) Act, 1962; [Constitution of India](#) - Articles 14, 15, 31, 31-A, 31-A(1), 31(2), 39 and 201; Karnataka Land Reforms Act, 1974

Appeal No. : Writ Petn. Nos. 1993 to 1996 of 1974

Appellant : Thippeswamy and ors.

Respondent : The State of Karnataka and ors.

Advocate for Pet/Ap. : T. Venkanna, Adv.

Judgement :

ORDER

1. The petitioners in these writ petitions have questioned the validity of some of the provisions of the Mysore Land Reforms Act (hereinafter referred to as the Act), as amended by Act 1 of 1974 in so far as it reduces the extent of land which a family can possess from what it was under Section 63 of the Act as it was originally enacted. It is also contended that the compensation fixed by the Legislature in

respect of the surplus Land which would be taken away from the family is illusory.

In support of these writ petitions, Sri T. Venkanna, learned counsel for the petitioners, raised the following contentions.

(1) Section 63 of the Act read with the definition of the expression 'family' to the extent it affects the right of a woman in respect of agricultural land is violative of Article 15 of the Constitution. It is contended that the Legislature has discriminated against her on the ground of sex.

(2) The President having withheld his assent to the Bill which was submitted for his assent, had no power to give his assent to the Bill again and hence Act 1 of 1974 is an invalid one.

(3) The declaration made in Section 2 of Act 1 of 1974 that the Act had been passed by the Legislature in order to secure the principles underlying Clauses (b) and (c) of Article 39 of the Constitution, is inefficacious as the Act does not subserve the said principles.

(4) The definition of the expression 'family' being arbitrary, the provisions of Section 63 of the Act which fixes the ceiling limit have become violative of the second proviso to Article 31-A(1) of the Constitution.

(5) The compensation fixed in respect of the surplus lands is illusory and hence the said provision in the Act is violative of Article 31(2) of the Constitution.

(6) Section 5 of the Act which prohibits the leasing out of properties, does not subserve agrarian reform which the statute intends to achieve.

(7) The Rules which are framed under the Act which bear the date 19-4-1974 are invalid because they are published in the gazette in the second week of May 1974.

(8) Section 48 (8) of the Act which prohibits Advocates from appearing before the Tribunals, is a provision which has nothing to do with agrarian reform and hence is liable to be struck down on the ground that it imposes an unreasonable restriction on the right of the holder of the land.

2. Two of the petitioners in these petitions are women. The definition of the expression 'family' includes the husband, the wife and minor sons and unmarried daughters. Section 63 treats the family as a unit for purposes of determining the ceiling. It is no doubt true that under Sub-section (3) of Section 63, the extent of land owned by a woman as stridhana property has to be taken into account in order to determine the maximum extent of land which a family can hold. Merely because the land belonging to a woman has also to be taken into consideration in order to determine the total extent of land which a family can possess, it cannot be said that the provisions are opposed to Article 15 of the Constitution. It is seen that the other members of the family who may also own lands are also dealt with in the same way in which the woman whose stridhana property is taken into consideration. Hence, it cannot be said that there has been any discrimination against woman on the ground of sex because both males and females who constitute a family are dealt with alike. It is also seen that in so far as woman is concerned, presumably having in view Clause (3) of Article 15 of the Constitution, the Legislature has stated that in so far as the stridhana land is concerned that the extent of stridhana to be surrendered should in no case be more than the proportion which the extent of stridhana land bears to the extent of the other land held by the family, in Section 67 (1-A) of the Act. Instead of discriminating against woman on the ground of sex, it has to be observed that the Legislature has tried to show a favour in favour of a woman in the instant case because a similar concession which is available in the case of stridhana of a woman, is not available in the case of a property owned by a minor son who also happens to be a member of the family.

3. The next contention relates to the absence of the assent of the President to the Act. It is argued that since the President had withheld his assent at one stage, he could not have given assent to the Bill at a later stage. When a similar contention was raised on an earlier occasion in *Shama Rao v. State of Karnataka*, Writ Petn. No. 1713 of 1974 decided on 27-5-1974 (Mys.), I rejected it on the ground that the material placed before the Court is not sufficient to come to the conclusion that the President had withheld his assent to the Bill. The allegations made in these petitions are in no way different from the allegations which were made in *Shama Rao's* case. Hence, there is no merit in this contention.

4. It is unnecessary to examine the attack against Section 2 of Act 1 of 1974 in which the Legislature has made a declaration that the Act was being passed in order to secure the principles adumbrated in Clauses (b) and (c) of Article 39 of the Constitution, because as already held in *Shama Rao's case* and in *V. Shivaramiah v. State of Karnataka*. Writ Petn. Nos. 2433 and 2434 of 1974 decided on 21-6-1974 (Mys.), the Act as amended by Act 1 of 1974 is protected by Article 31-A of the Constitution. Hence, there is no necessity to investigate into this question any further.

5. Even though the definition of the expression 'family' appears to be arbitrary and violative of Article 14 of the Constitution, since the Act is one which falls within the purview of Article 31-A(1) of the Constitution, no relief can be given to the petitioners on that ground- vide paras 3 and 8 in *Inder Singh v. State of Punjab*, : [1967]3SCR603 . It cannot also be said that by adopting an arbitrary definition of the expression 'family' the Legislature has tried to circumvent the provisions of the second proviso to Article 31-A(1) of the Constitution. The said proviso provides that whenever any land in the personal cultivation of a family which is within the ceiling limit prescribed by law in force is acquired, the family should be paid compensation at a rate not less than the market value of the property. It is, therefore, clear that the said provision has nothing to do with what the ceiling limit should be. It comes into operation only after the ceiling limit is fixed by the appropriate legislation. Hence, I do not see any merit in the contention that by reducing the ceiling limit from what it was when the Act was enacted to the limit now fixed by the new Section 63, the Legislature had tried to circumvent the said proviso. The power of the State Legislature to reduce the ceiling limit from time to time is undoubted and the said power has been recognised by the Supreme Court in *Kunjukutty v. State of Kerala*, : [1973]1SCR326 . Hence, this contention is also rejected.

6. The contention that the amount fixed by way of compensation in respect of the surplus lands is illusory can be disposed of by observing that Article 31 on which the above argument is founded, is not available to the petitioners in view of Article 31-A of the Constitution. At this stage it should be mentioned that it has been held by the Supreme Court in *Golak Nath v. State of Punjab*. : [1967]2SCR762 and by

this Court in Babu Rao v State of Mysore, (1970) 1 Mys LJ 1, that the Act is fully protected by Article 31-A of the Constitution.

7. Section 5 of the Act which prohibits leasing out of the property after the coming into force of Act I of 1974 has been enacted purely with the object of encouraging self-cultivation. It cannot be said that such a provision cannot be introduced in the context of agrarian reform.

8. The contention raised with regard to the validity of the Rules framed under the Act has become academic. It is no doubt true that the Rules bear the date 19-4-1974. According to Sri Venkanna the Gazette Extraordinary in which the Rules were published was issued by the Government Press on a subsequent date. Since the Rules have been published there can be no impediment for applying them after they are published. The petitioners cannot, therefore, contend that the Rules are not in force today.

9. It was lastly argued that the provision in the Act which prohibits Advocates from appearing before the Tribunals has nothing to do with the agrarian reform and hence the said provision has to be quashed. The procedure to be followed before the Tribunals and the question whether parties who appear before Tribunals should be represented by a counsel or not, are matters which are incidental to the main purpose of the Act, namely, agrarian reform. So it cannot be said that the said provision has nothing to do with the agrarian reform.

10. I do not find, therefore, any substance in any of the contentions urged before me. No other contention is urged. These writ petitions fail and they are rejected. Petitions dismissed.