

Neelappa and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Nov-20-1998

Reported in : ILR1999KAR2822; 1999(2)KarLJ201

Judge : Kumar Rajaratnam, J.

Acts : Urban Land (Ceiling and Regulation) Act, 1976 - Sections 20(1)

Appeal No. : Writ Petition No. 30894 of 1998

Appellant : Neelappa and Others

Respondent : State of Karnataka and Others

Advocate for Def. : Sri P.G.C. Chengappa, Additional Government Advocate

Advocate for Pet/Ap. : Sri Sharma Mallikarjuna, Adv.

Judgement :

ORDER

1. Government Advocate takes notice for the respondents.
2. The writ petition is taken up with the consent of the parties.
3. The petitioners belong to the Scheduled Caste community. One Doddaningappa Bankapur, father of the petitioners died on 29-7-1986. It is stated that the petitioners are eking out their livelihood as agricultural coolies. They are the

residents of Hirepeth, Hale Hubli, Hubli Taluk. The petitioners have a land measuring 1 acre 6 guntas in Sy. No. 75 and 2 acres 3 guntas in Sy. No. 74-A of Krishnapura Village, Hubli Taluk.

4. It is submitted that these are dry lands. It is submitted that on 9-1-1995, second petitioner received a notice from the second respondent that the said lands comes within the Urban Land Ceiling and it was also stated that the authorities intended to measure the land. It was also submitted that the petitioner's father the said Doddaningappa Bankapur died on 29-7-1986 even before the competent authority passed an order. The competent authority passed an order holding that the entire land is excess land except for one unit given in favour of the deceased Doddaningappa Bankapur. Aggrieved by this, the petitioners preferred an appeal to the 3rd respondent.

5. Undoubtedly, in this case, there was a delay of nearly 15 years. The Appellate Authority dismissed the appeal not on merit but on the question of delay. Aggrieved by this, the petitioners have preferred this writ petition.

6. The petitioners submit that they were not aware of any proceedings before the competent authority and therefore they were not able to prefer the appeal on time. The petitioners learnt about the order only on 17-1-1995 and immediately filed an appeal within time.

7. On a perusal of the Appellate Authority's order, it is clear that the deceased had sought for exemption for five units since the deceased and the petitioners 1 to 4 were all majors. It is not known why only one unit was given to the deceased and no units were given to the sons of the petitioners. When there are records to show that a claim for exemption was for five units, it would not have been appropriate for the Appellate Authority to dismiss the appeal on the question of delay.

8. It has to be borne in mind that certain amount of legal discretion has to be shown by the authorities when weaker sections of the society are before the Court although no undue advantage can be shown.

9. However, on the question of delay it would be appropriate for this Court to take note of the fact that very poor people either cannot afford to approach the Courts or are not aware of their rights. In this case the order was passed against a poor illiterate dalit who was not aware of the Court proceedings. Even before the order was passed the declarant had died according to the petitioners. If that be so, the legal heirs of the deceased ought to have been brought on record before the order was passed by the competent authority. That was apparently not done. When the matter came on appeal, the Appellate Authority dismissed the appeal on the question of delay. What the Appellate Authority ought to have done was to find out if there was a prima facie case for condonation of delay and if so, condoned the delay and decided the matter on merits.

10. A perusal of the records show that there was a prima facie case when the matter was before the Appellate Authority. The petitioners were not even aware of the proceedings before the competent authority. In these circumstances it would have been correct and proper for the Appellate Authority to have decided the matter on merits after condoning the delay.

11. Since I find that the petitioners have a prima facie case for further exemption of land under Act, I feel that the ends of justice will be met if the order of the Appellate Authority is set aside. The delay if any, is condoned. The Appellate Authority shall take up the matter and dispose of the appeal in accordance with law. Pending disposal of the appeal there will be no order of dispossession.

12. The writ petition is disposed of accordingly.