

Pushpavathi Bai Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-12-1994

Reported in : ILR1994KAR524; 1994(1)KarLJ542

Judge : S. Rajendra Babu and ;N.D.V. Bhat, JJ.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 64 and 63(2)

Appeal No. : W.P. No. 4825 of 1988

Appellant : Pushpavathi Bai

Respondent : State of Karnataka

Advocate for Def. : K. Vishwanath, HCGP

Advocate for Pet/Ap. : F.S. Dabali, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Rajendra Babu, J

1. This Petition is directed against an order made by the Land Tribunal on 5.2.1987 by which the petitioner has been declared to have 3 acres 27 guntas of 'D' class land in excess of the ceiling limit and directed the petitioner to surrender

the same in terms of Section 67(2) of the [Karnataka Land Reforms Act, 1961](#) (hereinafter referred to as the Act).

2. The case of the petitioner is that as on 1.3.1974 she did not have any land in excess of the ceiling limit as she possessed only 19 acres 5 guntas of land coming under 'D' class. It is only subsequently under the will of Smt Neelawa, her grandmother, she having got certain lands as a legatee and the said Neelavva having died on 21.2.1976, the petitioner in terms of Section 66(1)(b) of the Act filed a declaration on 20th July 1977. The Tribunal enquired into the matter and taking into consideration that the family consisted of only two children as on 1.3.1974 and thus including the petitioner and her husband it held that there were only four members and that the other members are born subsequently and prior to 21.2.1976 could not be taken note of. It is of the view that the petitioner has excess of lands and called upon the petitioner to surrender the same. The Tribunal based its view on the Decision of this Court in ABDUL KHADAR v. LAND TRIBUNAL. This order is called in question in this Petition.

3. From the findings of the Tribunal and the contentions advanced before this Court, the Question that arises for Consideration is:

In cases falling under Section 64 of the Act, whether benefit of Proviso to Section 63(2) of the Act is applicable to a family consisting of more than five members including children born subsequent to 1.3.1974 but before acquisition of land contemplated under Section 64 of the Act

4. In order to appreciate the question posed by us, it is necessary to examine the scheme of the Act. Chapter IV of the Act provides for ceiling on land holdings. Section 63 thereof is made applicable not only to lands which are holdings as on 1.3.1974 but also to lands which are acquired subsequently under Section 64 of the Act and in case of a land provided with any irrigation from source constructed by the State Government subsequent to 1.3.1974, the classification of land will get altered and the extent held by the family will have to be redetermined as provided under Section 65A of the Act. Section 66 thereof provides for filing of declaration of holdings, while sub-section (1)(a) thereto provides for persons who are required to file the declarations with reference to the extents of land held by them as on the

date of commencement of the Act, i.e., 1.3.1974 and such declarations have to be filed on or before 31st December 1974. In case of every person who acquires lands in excess of the lands specified in Section 64 and every person whose land is deemed to be in excess of the ceiling area under Section 65A, shall within the prescribed period furnish a declaration and that period is 90 days as provided under Rule 23(2)(ii) of the Rules. The declaration will have to be filed in Form No. 11 which shall contain the particulars of the lands, members in the family and such other particulars as may be prescribed. Form No. 11 will have to be filed in particular with reference to the date on which they acquired right or the land becomes irrigable and falls into a better classification and therefore is deemed to be a surplus land from the date of the construction of irrigation and thus the relevant date in either of these two cases becomes the date of acquisition or the date on which the land is converted into better class the date of completion of irrigation work referable to Section 3 of the Karnataka Irrigation (Levy of Betterment Contribution & Water Rate) Act, 1957.

5. Section 64 of the Act is applicable to cases of acquisition of land subsequent to 1.3.1974. If that extent of land is added to the land already held by a family prior to 1.3.1974, it becomes surplus in terms of Section 63 of the Act. In computing the surplus lands the holding will have to be reckoned with reference to the number of members in the family and the extent of land as held on 1.3.1974 in cases not relating to Section 64 of the Act. Section 64 is attracted to cases of future acquisition of land rendering the holding surplus. In such cases the crucial date is the date of acquisition of land for it is only on that date the holding becomes surplus and not before and therefore the number of members in the family as on the date of acquisition when the holding becomes surplus will have to be taken note of and not 1.3.1974 when the holding was not in surplus.

6. Proviso to Section 63(2) of the Act does not fall outside Section 64 for that Section itself provides that the ceiling area the family can hold will have to be computed in terms of Section 63 of the Act and therefore the Legislature itself has contemplated the extension of additional benefits to family consisting of more than five members. The fiction created as to the surplus holding in Section 64 does not exclude the applicability of Proviso to Section 63(2) of the Act in finding out the

number of members in the family. The relevant date in cases to which Section 64 of the Act is applicable is the date of acquisition of land subsequent to 1.3.1974. We think any other view will lead to absurd results. In support of this conclusion we may usefully refer to the Explanation added to Section 65A which refers for the purposes of Section 65A the land shall be deemed to have been converted from the date of completion of the irrigation work. It therefore means that it is only from that date it falls into a different class and thus becomes surplus holding. Again under the Rule referable to filing of declaration of holding the date within which the declaration has to be filed is referable to the date of acquisition of land in excess of the ceiling limit and from the date of completion of irrigation work. This position makes it clear that even the Legislature had not thought any other date for the purpose of reckoning surplus. There cannot be one date for purpose of finding out the extent of land held by the family and another date for finding out the number of members in the family. If such process is adopted, it would lead to double standards - one for finding out the extent of land and another for finding out the number of members in the family. The process of calculating the surplus land is an integrated whole and neither the element of extent of land nor the element of number of members of the family could be separately considered since both components have to be taken note of in computing the extent of holding and deciding whether it is surplus or not.

7.1 Between the date, of Amendment Act coming into force, that is, 1.3.1974, and the time when Section 64 becomes attracted, there, can be many fluctuations in the family of the holder of the land which attracts provisions of Section 64 of the Act. There could be diminution of holding pursuant to births or marriages in the family or enlargement of the holding by reason of deaths or divorces in the family. Therefore, it cannot be stated that the view that we have taken will always be advantageous to the declarant who has to make a declaration under Section 64(1)(b) or (c) of the Act. There will be many fluctuations within the family between the amendment Act coming into force and the date with reference to which the actual computation has to be made depending upon the circumstances referred to by us just now.

8. A situation may be visualised where a person born after 1.3.1974 acquires land which is in excess of ceiling area to whom Section 64 is attracted. Could it be said that his holding also should be reckoned with reference to 1.3.1974 The answer is obvious and in the negative as any other view would be plainly illogical and opposed to common sense, as on 1.3.1974 he was not born and therefore the provisions of the Act could not be applied to him as on that date. Thus the view taken by us harmonises all the provisions of the Act.

9. Learned Counsel for the petitioner submitted that Section 128 of the Act is attracted to the present case inasmuch as the extent of land declared as surplus is only 3 acres 27 guntas. Question whether the petitioner can take advantage of Section 128 of the Act or not would arise for determination on declaration of the surplus by the Land Tribunal. Therefore, we do not express any view on that aspect at this stage.

10. The Tribunal has not considered the matter in the light in which we have considered the matter, Therefore the order made by the Tribunal will have to be quashed and remitted to it for fresh consideration in accordance with law. In doing so the Tribunal shall find out as to what is the date of acquisition of land by the petitioner's family and the number of members who are born prior to that date or existing as on that date and thereafter determine the surplus if any in terms of Section 63 of the Act. Petition allowed. Rule made absolute accordingly.