

PETITIONER:
D.M.NANJJAPPA (DEAD) BY LRS.

Vs.

RESPONDENT:
S.A.RAMAPPA AND ORS.

DATE OF JUDGMENT: 20/09/2000

BENCH:
S.N.Phukan, S.S.M.Quadri

JUDGMENT:

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PmJKAN, J.

Leave granted.

This appeal is directed against the judgment of the Division Bench of Karnataka High Court in the Writ Appeal. The Division Bench allowed the Writ Petition by setting aside the judgment of the learned Single Judge.

Briefly stated, the land in dispute was granted to the appellant by the revenue authority' under sub-rule (2) of rule 4 of the Karnataka Land Grant Rules, 1969 (for short 'the Rules') framed under Section 197 of the Karnataka Land Revenue Act, 1964, for better cultivation of the land as the land of the appellant was adjacent to the disputed land. The grant was confirmed both by the Deputy Commissioner and the Appellate Tribunal. Being aggrieved, respondent filed the Writ Petition before the High Court which was dismissed by the learned Single Judge but allowed by the Division Bench. The Division Bench directed the Tehsildar to grant the disputed land after taking into consideration the priorities under rule 5 read with rule 6 of the Rules. The Division Bench also held that as the appellant was already having 4 acres of land he could not be said to be poor or a landless person.

To decide the dispute, it will be pertinent to extract relevant provisions of the Rules viz. clauses (8) and (15) of rule 2, rules 4, 5 and 6 of the Rules.

"2(8) "insufficient holder" means a person who is not sufficient holder."

"2(15) "Sufficient holder" means a person who owns not less than four hectares of garden or wet land possessing facilities for assured irrigation or 8 hectares of dry or rained wet land."

*'4. Persons eligible for grant of land for agricultural purposes :- (1) Lands available for disposal may be granted for agricultural purposes under these rules to a person, -

(i) who has attained the age of eighteen.; and (ii) whose gross annual income does not exceed rupees eight

thousand; and,

(in) who is either a bona fide agriculturist cultivating the land personally or has bona fide intention to take up personal cultivation; and (iv) who is not a sufficient holder:

Provided that in the case of ex-servicemen and soldiers, lands may be granted, if the gross income of the applicant exceed Rupees eight thousand but less than rupees twelve thousand.

Provided further that the extent of land granted to any person shall not together with the land already held by such person exceed the limits prescribed for a sufficient holder in rule 2(15).

(2) Notwithstanding anything contained in sub-rule (1) by any person may be granted the land adjacent or close to the land already held by him on collection of market value as on the date of grant to be determined by the authority granting the land, if such land is. in the opinion of such authority required for better enjoyment or better cultivation of the land so held: (emphasis supplied)

Provided that no such grant shall be made of an extent exceeding in the case of wet or garden land half hectare and in the case of dry land one hectare and that the total extent of land held after such grant. does not exceed the ceiling area according to the Kamataka Land Reform Act 1961."

"5. Reservations:- (I) The land available for disposal in any village shall be granted observing the reservation indicated below:-

(i) Ex-servicemen and Soldiers 10 per cent

(ii) Persons belonging to Scheduled Castes and Scheduled Tribes , 50 percent

(ii-a) Backward Tribes (iii) Political sufferers (iv) Others

5 per cent 10 per cent 25 per cent

(2) Where the extent reserved under (ii) and (iii) is in excess of the extent that can be granted to the person belonging to those categories, the excess land shall be with the approval of the Deputy Commissioner be disposed of among persons in category (iv).

(3) Notwithstanding anything in sub-rule (1). where the land available for disposal in village is less than four hectares, the whole of such land shall be disposed of to persons belonging to the Scheduled Castes and Scheduled Tribes who are ordinarily residents of such village or who reside in the neighbouring village and where no persons belonging to Scheduled Castes and Scheduled Tribes apply, it shall be disposed to others."

"6. Order of Priority:- In disposing of land among persons belonging to Category (iv) of sub-rule (1) of rule 5, the following order of priority shall be observed:-

(i) landless persons residing in the village (ii) insufficient holders residing in the village; (iii) landless persons residing in other villages in the same or adjacent taluk: (iv) others:

Provided that when Government directs under Section 71 of the Act that in any particular area Government land shall be reserved for grant to displaced persons and tenants affected by any Government Project, provisions of rule 5 and 6 will not apply."

Rule 4 defines the persons who would be eligible for grant of land for agricultural purposes. Rule 5 fixes the percentage of reservation to be maintained while granting land to the categories mentioned in sub-rule (1) of this rule. For disposal of land among persons belonging to category IV i.e. 'others' in sub-rule (1) of rule 5, the priority mentioned in rule 6 has to be followed.

Though the Division Bench of High Court has directed the Tehsildar to grant land 'taking priority under rule 5 read with rule 6, first to

landless poor persons. Scheduled Caste, Scheduled Tribes: and backward class persons and thereafter to others', this direction is not in conformity with rules 4, 5 and 6. The said direction, therefore, is not sustainable in law.

The appellant herein prayed for grant of land only under sub-rule (2) of rule 4. Under this sub-rule any person may be granted the land adjacent or close to the land already held by him subject to fulfillment of others conditions of the said sub-rule and on the payment of market value of land if in the opinion of the authority such land is required for better enjoyment or better cultivation of the land. In case of grant of other land for agricultural purposes, the grantee has to pay price at a concessional rate to be fixed under sub-rule (1) of rule 12 but market value of the land has to be paid under sub-rule (2) of rule 4. For grant of land under sub-rule (2) of rule 4, what is necessary to be determined is whether the person is eligible for grant of land under sub-rule (1) of rule 4, whether he has land adjacent or close to land to be allotted and whether the land is required for better enjoyment or better cultivation. If these conditions are fulfilled, land can be allotted on collection of market value of the land by the revenue authority'. Reading the above rules viz. 4, 5 and 6, we have no hesitation to hold that

while granting land to this special class of persons under sub-rule (2) of rule 4, the provisions of rules 5 and 6 viz. percentage of reservation and order of priority would not be applicable.

'though the Division Bench was of the view that the appellants could not be said to be poor or a landless person, we are of the opinion that this consideration, is irrelevant for the present purpose as we have to ascertain whether the appellant is eligible for grant of land under sub-rule (2) of rule 4. The revenue authority on facts held that the appellant has got land adjacent to the disputed land and in fact it was found that the appellant was cultivating disputed land for about 10 years prior to date of grant of land. The appellant also paid market price as fixed by

the revenue authority for the disputed land. No dispute has been raised regarding eligibility of the appellant under clause (i) to (iii) of sub-rule (1) of rule 4. In view of the observations of the Division Bench of the High Court that the appellant could not be said to be poor or landless person, we have to consider whether appellant is a sufficient holder of land or not for being eligible under clause (iv) of sub-rule (2) of rule 4. As per the record and as noticed by the Division Bench of High Court, appellant holds 4 acres of land, therefore, he

would not come under definition of "sufficient holder" vide clause (15) of rule 2 as his holding is less than four hectares. Therefore, the appellant has fulfilled all the conditions of sub-rule (2) including the eligibility criterion No. (iv) of sub-rule (1) of rule 4. According to the revenue authorities the land of the appellant is adjacent to the disputed land and he would require the disputed land for better cultivation. Therefore, we hold that grant of land to the appellant was in accordance with sub-rule (2) of rule 4 and the land was rightly granted to the appellant.

For the reasons stated above we find merit in the present appeal and accordingly it is allowed by setting aside the impugned judgment. Cost on the parties.