

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 31ST DAY OF OCTOBER, 2018

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

WRIT PETITION NO.26318 OF 2010 (SC/ST)

BETWEEN:

SRI V SADANANDA
SON OF VENKATAPPA
RESIDING AT NO 101,
ATM HOUSE,
VISWANATHA NEGENAHALLI,
R T NAGAR,
BENGALURU.

... PETITIONER

(BY SRI S G HEGDE, ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER
BENGALURU DISTRICT,
BENGALURU.
2. THE ASSISTANT COMMISSIONER,
BENGALURU NORTH TALUK,
BENGALURU.
3. SRI M ANJANAPPA
4. SMT M GOWRAMMA
5. SRI M GANGADHARA

FROM 3 TO 5 ARE MAJORS AND
RESIDING AT 26 OF 3,
ASWATHNAGAR,
GURUDWARA DEVALAYA,
SANJAYANAGAR POST
BENGALURU – 94.

6. M/S. V.D.B. PROJECT PRIVATE LIMITED
NO 307, 6TH MAIN
INDIRANAGAR,
BENGALURU - 560 030. ... RESPONDENTS

(BY SMT.SAVITHRAMMA, HIGH COURT
GOVERNMENT PLEADER FOR R1 & R2
SRI R BHADRINATH FOR C/R3 TO R5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226
AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH
THE ORDER DATED 06.07.2010 PASSED IN APPEAL KSC
ST NO. 103 OF 08-09 BY RESPONDENT NO.1, ANNEXURE
G AND CONSEQUENTLY TO ALLOW THE SAID APPEAL BY
SETTING ASIDE THE ORDER PASSED BY THE 2ND
RESPONDENT IN KSC ST 128 OF 07-08 DATED
29.07.2008, ANNEXURE E.

THIS WRIT PETITION COMING ON FOR HEARING
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The case of the petitioner is that the land measuring
2 acres of Kudiregere Village, Jala Hobli, Bengaluru North

Taluk, Bengaluru bearing survey No.59, New No.140 was granted to the father of respondent Nos.3 to 5 in the year 1956. The land was sold on 05.04.1975 to one Krishnappa and K.M.Nagaraja. Thereafter, the lands were sold in favour of the petitioner on 16.09.2004 and 17.09.2004.

2. On 01.01.2008, respondent Nos.3 to 5 filed an application seeking cancellation of the sale deeds and restoration of the lands to them. The Assistant Commissioner by the order dated 29.07.2008 allowed the same, by setting aside the sale deeds and directed restoration of the lands in favor of respondent Nos.3 to 5. Aggrieved by the same, an appeal was filed which was dismissed. Hence, the present petition.

3. Notwithstanding the various merits of this case, the learned counsel for the petitioner contends that the reasons on which the claim was rejected is unsustainable. The question of holding adverse possession or perfecting the title by way of partition or otherwise is a

wrong application of law. The said principle cannot be applied so far as the proceedings under the Act is concerned. He further places reliance on the Judgment of the Hon'ble Supreme Court in the case of NEKKANTI RAMA LAKSHMI vs. STATE OF KARNATAKA AND ANOTHER, reported in 2018 (1) Kar. L.R 5 (SC), wherein the Hon'ble Supreme Court held that even though the Act does not prescribe any period before which an application could be made, the same requires to be done within a reasonable time. Therefore, it was held that an application for restoration of land made after an unreasonably long period of time, is liable to be dismissed on that ground. That the judgments of the Karnataka High Court in case of (i) R. RUDRAPPA vs. DEPUTY COMMISSIONER, reported in 2000 (1) Kr.L.J. 523, (ii) MADDURAPPA vs. STATE OF KARNATAKA, reported in 2006 (4) Kr.L.J., 303 and (iii) G.MAREGOUDA vs. THE DEPUTY COMMISSIONER, CHITRADURGA DISTRICT, CHITRADURGA AND OTHERS,

reported in 2000(2) Kr.L.J.Sh.N.4B, wherein it was held that since there is no limitation provided under Section-5 of the Act and, therefore, an application can be made at any time, were overruled in the aforesaid judgment of the Hon'ble Supreme Court. In the facts of case therein, there was a delay of almost 24 years in initiating the proceedings.

4. In the instant case, the application seeking restoration of the land was made in the year 2008. The Act came into force in the year 1978. Therefore, there is a delay of 30 years. Hence, following of the aforesaid judgment of the Hon'ble Supreme Court the initiation of proceedings for restoration of the land stands vitiated and is bad in law. Consequently, the petition is allowed. The order dated 27.07.2008 passed in case No. KSC/ST 128 of 2007-2008 by the Assistant Commissioner, Bengaluru North Taluk, Bengaluru and the order dated 06.07.2010

passed in No. SC/ST(A) 103 of 2008-2009 by the Deputy Commissioner, Bengaluru District, Bengaluru, are quashed.

Rule made absolute.

SD/-
JUDGE

JJ