

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF JANUARY 2020

BEFORE

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

W.P.No.44518 OF 2013(SC-ST)

BETWEEN:

1. Shri. M.Kadriyappa,  
S/o Late. Muniyappa,  
Aged about 60 years,  
R/o Suradenapura Village,  
Hesaraghatta Hobli-560 073.  
Bangalore North (Addl) Taluk.  
Since dead by his LRs.
- 1(a) Muniyamma  
W/o Late. Kadriyappa,  
Aged about 50 years.
- 1(b) Chikkthayamma  
W/o Late. Kadriyappa,  
Aged about 52 years.
- 1(c) Chandrakumar  
S/o Late. Kadriyappa,  
Aged about 25 years.
- 1(d) Munilakshamma  
D/o Late Kadriyappa,  
Aged about 22 years,  
Rep. by the GPA Holder Sri.Bettaiah. ... Petitioners

(By Sri.Nataraj C.D. for  
Sri.Pruthvi Wodeyar, Advocate)

AND:

1. The Deputy Commissioner,  
Bangalore District,  
Bangalore-560 001.
2. The Assistant Commissioner,  
Bangalore North Sub-Division,  
Bangalore-560 001.
3. Smt. Beena John,  
W/o Biju V. John,  
Age Major,  
R/o No.205,2<sup>nd</sup> Floor,  
Surya Apartments,  
Rustom Bagh, Airport Road,  
Bangalore-560 017.  
  
Rep. by his GPA Holder,  
Shri.K.D.Sathyanarayana  
S/o Late. K.Deviprasad,  
No.4, 1<sup>st</sup> Cross, 25 feet Road,  
Saraswathipura Extension,  
Ulsoor, Bangalore-560 008.
4. Shri. Muniyappa,  
S/o Late Munimarappa,  
Aged Major.
5. Shri. Hanumappa,  
Fathers name not known,  
Age Major.
6. Smt. Gangamma,  
W/o Late. Thippaiah,  
Aged Major.
7. Smt. Venkatalakshmamma,  
W/o Late. Rajanna,

Aged Major.

8. Shri. Munikrishnappa,  
S/o Late. Chikkadasappa,

Respondents 4 to 8 are  
R/o Suradenapura Village,  
Hesaraghatta Hobli-560 073,  
Bangalore North (Addl) Taluk.

9. Shri. T.S.Bylappa,  
S/o Late. Siddaramaiah,  
Age Major,  
R/o Chokkanahalli Village,  
Bangalore North Taluk,  
Bangaore-560 073.

10. Shri. C.K. Kariyappa,  
S/o Kushalappa,  
Age:Major,  
R/o Gonikoppa,  
Dakshina Kodagu,  
Kodagu District-571236.

11. Shri. K.Sitharam,  
Father's Name not known,  
Age Major,  
No.47/1, 5<sup>th</sup> Main Road,  
Chamarajpet, Bangalore-560 018.

... Respondents

(By Smt. Savithramma, HCGP for R1 & R2:  
Sri.Ganapathi Hegde, Advocate for R3:  
Notice to R5 to R9 is dispensed with  
v/o dated:25.09.2013:  
R4 & R11 is dismissed  
v/o dated:17.07.2014:  
R10 is abated v/o dated:17.07.2014)

This writ petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the order dated:27.09.2012 passed by the R1 vide Annexure-F and direct the R1 to restore the property in question in favour of the petitioner free from all encumbrances (Schedule Stated vide Annexure-B).

This writ petition, coming on for orders, this day, the Court, made the following:

### **ORDER**

This writ petition is directed against the order dated 27.09.2012 passed by the Deputy Commissioner produced at Annexure-F, whereby the Deputy Commissioner has allowed the appeal filed by the purchasers.

2. Brief facts of the case are that land bearing old Sy. No.31/17, New Sy. No.58 measuring 02 acres situated at Sriramanahalli Village, Hesaraghatta Hobli, Bangalore North Taluk was granted in favour of Munidasa @ Munidasappa under Darkasth Rules on 10.09.1949. The said original grantee has sold the property in question to Sri. H.T. Sitaramarao under two registered Sale Deeds both dated 06.07.1967. He inturn, sold the property to one Baldev Kumar Mohinder by a registered Sale Deed dated 06/07.07.1967. The said Baldev Kumar Mohinder

sold the property in question to C.K. Kariyappa through Sale Deed dated 31.06.1980. The said C.K. Kariyappa inturn has sold the property to one T.S.Bylappa through registered Sale Deed dated 31.12.1992 and he inturn sold the property in favour of Sri. Yusuf Ali and Smt. Sameena Yusuf Ali by the registered Sale deed dated 30.11.1993. They formed the layout and sold the sites to respondents herein by different sale deeds.

3. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as the 'PTCL Act' for short) came into force on 01.01.1979. The legal representative of original grantee has filed the application before the Assistant Commissioner under Sections 4 and 5 of the Act seeking restoration of the land in the year 2006. The Assistant Commissioner, by order dated 01.04.2008 has allowed the application and resumed the land in favour of legal representative of original grantee. Being aggrieved by the same, respondent No.3 herein filed the appeal before the Deputy Commissioner. The Deputy Commissioner, by order dated 27.09.2012 has allowed the appeal. Being aggrieved by the

same, the legal representative of the original grantee has filed the present writ petition.

4. Sri. Nagaraj C.D., appearing for Sri Pruthvi Wodeyar, for the petitioner contended that land was originally granted in favour of one Munidasa @ Munidasappa under Darkasth Rules and Grant Certificate at Annexure-B was issued by the competent authority on 10.09.1949. He further contended that it is very clear from the Grant Certificate that the land in dispute was granted in favour of Munidasa @ Munidasappa, who is grand-father of the petitioner and it is not in dispute that the original grantee belongs to Scheduled Caste. He further contended that the appeal filed by one Xaviour Paul in respect of very same land has been dismissed by the Special Deputy Commissioner vide order dated 28.07.2010 produced at Annexure-D and Deputy Commissioner has given a finding that the land in dispute is a granted land. Now under the impugned order dated 27.09.2012, the Deputy Commissioner held that the land in dispute is not a granted land and the petitioners have not produced any documents to establish the same, is contrary to

the materials available on record. Secondly, he has contended that the land was originally granted in favour of Munidas @ Munidasappa in the year 1949. As on the date of the grant, the conditions prevailing is "non-alienation forever". The original grantee by violating the condition, has sold the land by a registered Sale Deed dated 06.07.1967. Therefore, the Assistant Commissioner has rightly exercised the power under Sections 4 and 5 of the Act and resumed the land. Thirdly, in respect of delay in filing the application under Sections 4 and 5 of the Act is concerned, he submitted that petitioner was not aware of the PTCL Act and when he became aware of the same, he has filed the application. He further submits that if this Court grants permission to file the application under Section 5 of the Limitation Act, petitioner will file the same. Hence, he sought for allowing the petitions.

5. Per contra, Smt.Savitramma, learned Government Pleader appearing for respondent Nos.1 and 2, on the basis of the original records submits that the land in dispute was originally granted in favour of one Munidasa @ Munidasappa,

who belongs to Scheduled Caste and Grant Certificate was issued on 10.09.1949. As on the date of the grant, the condition prevailing was "non-alienation forever". By violating the condition, the original grantee has sold the land on 06.07.1967. Therefore, the Assistant Commissioner has rightly allowed the application and resumed the land. She further contended that in respect of the very same land, one more proceedings has been initiated by one Xaviour Paul before the Deputy Commissioner. The Special Deputy Commissioner, by order dated 28.07.2010 vide Annexure-D has dismissed the appeal and held that land is a granted land. She further submits that there is no dispute with regard to the land granted in favour of Munidasa. Since the said land has been alienated by violating the condition, the Assistant Commissioner has rightly resumed the land. Hence, she sought for allowing the petitions.

6. Sri. C. Ganapathy Hegde, learned counsel appearing for respondent No.3 submitted that there is no dispute in respect of land granted in favour of Munidasa and Grant Certificate vide Annexure-B. The original grantee has sold the land in favour of



one H.T. Seetharamarao by a registered Sale Deed dated 06.07.1967. The Act came into force on 01.01.1979. The application under Sections 4 and 5 of the Act for resumption of land has been filed in the year 2006. There is an inordinate delay of 26 years in filing the application. In support of his contention, he has relied upon the judgment of the Hon'ble Apex Court in the case of **NEKKANTI RAMA LAKSHMI vs. STATE OF KARNATAKA AND ANOTHER** reported in **2018 (1) Kar. LR 5 (SC)** and sought for dismissal of the appeal.

7. Heard the learned counsel for the parties and perused the records.

8. The case of the petitioner is that land in dispute measuring 02 acres situated at Sriramanahalli Village, Hesaraghatta Hobli, Bangalore North Taluk was granted in favour of Munidas by Darkasth Rules as per Annexure-B. The Grant Certificate has been issued by the Competent Authority on 10.09.1949. As on the date of the grant, the condition prevailing was "non-alienation forever". The original grantee has sold the land to Sri. H.T.Sitaramarao under two registered Sale

Deeds both dated 06.07.1967. He inturn, sold the property to one Baldev Kumar Mohinder by a registered Sale Deed dated 06/07.07.1967. The said Baldev Kumar Mohinder sold the property in question to C.K. Kariyappa through Sale Deed dated 31.06.1980. The said C.K. Kariyappa inturn has sold the property to one T.S.Bylappa through registered Sale Deed dated 31.12.1992 and he inturn sold the property in favour of Sri. Yusuf Ali and Smt. Sameena Yusuf Ali by the registered Sale deed dated 30.11.1993. They formed the layout and sold the sites to respondents herein by different sale deeds.

9. I have perused the original documents produced by the learned Government Pleader and considered the submission of the learned counsel for the parties, counsel for the State and also perused the order passed by the Special Deputy Commissioner vide Annexure-D. It is clear that the land in dispute is a granted land. The said land was granted by the Government under Darkasth Rules to one Munidasa and grant certificate has been issued as per Annexure-B on 10.9.1949 with a condition of non-alienation forever. By violating the

condition, the original grantee has sold the said land on 6.7.1967. The Act came into force on 01.01.1979. The legal representative of the original grantee has filed an application under Sections 4 and 5 of the Act for restoration of land in the year 2006. There is a delay of 26 years in filing the application from the date of the Act came into force. The Hon'ble Apex Court in the case of **NEKKANTI RAMA LAKSHMI (supra)** at paragraph No.8 has held as under:

*"However, the question that arises is with regard to terms of Section 5 of the Act which enables any interested person to make an application for having the transfer annulled as void under Section 4 of the Act. This Section does not prescribe any period within which such an application can be made. Neither does it prescribe the period within which suo motu action may be taken. This Court in the case of Chhedi Lal Yadav & Ors. vs. Hari Kishore Yadav (D) Thr. Lrs. & Ors., 2017(6) SCALE 459 and also in the case of Ningappa vs. Dy. Commissioner & Ors. (C.A. No. 3131 of 2007, decided on 14.07.2011) reiterated a settled position in law that whether Statute provided for a period of limitation, provisions of the Statute must be invoked within a reasonable time. It is held that action*

*whether on an application of the parties, or suo motu, must be taken within a reasonable time. That action arose under the provisions of a similar Act which provided for restoration of certain lands to farmers which were sold for arrears of rent or from which they were ejected for arrears of land from 1<sup>st</sup> January, 1939 to 31<sup>st</sup> December, 1950. This relief was granted to the farmers due to flood in the Kosi River which make agricultural operations impossible. An application for restoration was made after 24 years and was allowed. It is in that background that this Court upheld that it was unreasonable to do so. We have no hesitation in upholding that the present application for restoration of land made by respondent-Rajappa was made after an unreasonably long period and was liable to be dismissed on that ground. Accordingly, the judgments of the Karnataka High Court, namely, R. Rudrappa vs. Deputy Commissioner, 2000 (1) Karnataka Law Journal, 523, Maddurappa vs. State of Karnataka, 2006 (4) Karnataka Law Journal, 303 and G. Maregouda vs. The Deputy Commissioner, Chitradurga District, Chitradurga and Ors, 2000(2) Kr. L.J.Sh. N.4B holding that there is no limitation provided by Section 5 of the Act and, therefore, an application can be made at any time, are overruled. Order accordingly.”*

10. The Apex Court in the aforesaid judgment has opined that application for invoking the Sections 4 and 5 of the Act has to be filed within a reasonable time. In the case on hand, the land was granted in the year 1949. Original grantee has sold the land in favour of H.T. Sitaramarao by two registered Sale Deeds in the year 1967. The Act came into force on 01.01.1979. The application for restoration of the land under Sections 4 and 5 of the Act filed in the year 2006. There is an unexplained inordinate delay of 26 years in filing the application. The application itself is not maintainable. In respect of second contention of learned counsel for the petitioner that he was not aware of the provisions of the Act and after he became aware, he filed the application, a Division Bench of this Court in **W.A. No.846/2019** disposed of on **19.06.2019** at paragraph No.5 has held as under:

*"5. The law on the aspect is very clear. There is no specific limitation prescribed in Section 5 of the PTCL Act. The application has to be filed within a reasonable time. By no stretch of imagination, the application made by the appellants, after a lapse of nearly 32 years from the date on*

*which PTCL Act came into force, can be said to be filed within a reasonable time."*

11. In view of the above, the contention of the petitioner is unsustainable. Hence, the writ petition is devoid of merits. Accordingly, writ petition is dismissed.

**Sd/-  
JUDGE**

Cm/-