

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MARCH, 2021

PRESENT

THE HON'BLE MR.JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

W.A.No.186/2021 (SC-ST)

BETWEEN:

Sri Srinivas Murthy,
Since dead by his Lrs

1. Sri Kempegowda,
Son of Late Srinivasa Murthy,
Aged about 41 years
2. Sri.Vinodkumar.B.S.,
Son of Late Srinivasmurthy,
Aged about 35 years
3. Sri Tulasiram.B.S.,
Son of late Srinivasmurthy
Aged about 35 years

Appellants are residing at No.79,
Byatarayanapura Grama,
Yelahanka Hobli,
Bangalore North Taluk-560 092. **... APPELLANTS**

(By Sri Chetan Desai, Advocate)

AND:

1. State of Karnataka,
Represented by the Deputy
Commissioner,
Chikkaballapura District,
Chikkaballapura-562 101.
2. The Assistant Commissioner,
Chikkaballapura Sub-
Division District,
Chikkaballapur-562 101.
3. Smt.Venktanarasamma,
Wife of Late Mugappa
Age: Major,
Residing at Jathavara,
Chikkaballapur-562 101.
4. Sri Siddappa,
Son of Late Mugappa,
Age: Major,
Residing at Jathavara,
Chikkaballapura-562 101.

... RESPONDENTS

**(By Sri S.S.Mahendra, AGA for R1;
Sri N.K.Ramesh & Sri Murali.S.,
Advocates for C/R3 & R4)**

This writ appeal is filed under Section 4 of the Karnataka High Court Act, praying to allow the writ appeal and set aside the order passed by the learned single judge dated 12.01.2021 in W.P.No.5604/2018 (SC/ST) and consequently allow the writ petition in W.P.No.5604/2018 (SC/ST), etc.

This appeal having been heard and reserved for judgment on 26.03.2021, coming on for 'Pronouncement of Judgment', this day, **S.Vishwajith Shetty J.**, delivered the following:

JUDGMENT

1. This writ appeal is filed challenging the order dated 12.01.2021 passed by the learned Single Judge of this Court in W.P.No.5604/2018 (Sri Srinivas Murthy, since dead by his LRs Vs State of Karnataka & others).
2. For the sake of convenience, the parties are referred to as per their rankings in the writ petition.
3. Brief facts of the case are, one Mugappa was granted 3 acres of land in Sy. No.10/P60 situated at Balajigapade village, Nandi Hobli, Chikkaballapura Taluk (hereinafter referred to as 'the land in question'), on 29.10.1977. The saguvali chit in respect of the granted land in question was issued to the original grantee on 18.06.1984. As per the grant condition, there was a non-alienation clause for a period of 15 years in respect of the land in question. In violation of the same, the land in question was sold by the

original grantee under a registered sale deed dated 14.08.1989 in favour of T.Nagabhushana. The said T.Nagabhushana, subsequently under a registered sale deed dated 05.02.1991 sold the land in question in favour of Sri Srinivas Murthy. The respondents 3 & 4 who are the wife and son of the original grantee – Mugappa, in the year 2006 filed an application for resumption and restoration of the land in question in their favour contending that the sale made by the original grantee dated 14.09.1989 was hit by the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short, 'PTCL Act'). Respondent no.2 – Assistant Commissioner allowed the said application filed by respondents 3 & 4 vide order dated 04.03.2011 which was confirmed by respondent no.2 – Deputy Commissioner by his order dated 23.12.2013. Being aggrieved by the same, the legal representatives of the subsequent purchaser – Srinivas Murthy approached this Court by filing W.P.No.5604/2018, which was dismissed by the learned Single Judge by the order impugned herein.

3. Learned Counsel for the petitioner's submits that the learned Single Judge had erred in dismissing the writ petition on the ground of delay. He submits that the delay has been properly explained and inspite of the same, without taking into consideration the delay of 16 years caused by the legal representatives of the original grantee in filing the application for restoration, the learned Single Judge has dismissed the writ petition on the ground of delay which is only four years. He submits that the learned Single Judge has failed to properly appreciate the law laid down by the Hon'ble Apex Court in the case of **NEKKANTI RAMA LAKSHMI VS STATE OF KARNATAKA & ANOTHER – 2017 SCC ONLINE SC 1862**, and in the case of **VIVEK M.HINDUJA & OTHERS VS M.ASHWATHA & OTHERS – 2017 SCC ONLINE SC 1858**.

4. Per contra, learned Counsel appearing for respondents 3 & 4 submits that the judgment of the Apex Court in the case of Nekkanti Rama Lakshmi's case (supra) applies to the petitioners also. He submits that the son of the subsequent purchaser – Srinivas Murthy was present before the Deputy Commissioner on 18.02.2013 which has been noted in the

order sheet, and therefore, he was very much aware of the proceedings. The explanation given by the petitioners is, therefore, not genuine. The learned Single Judge having considered this aspect of the matter has rightly dismissed the writ petition.

5. We have carefully considered the rival arguments and also the material available on record.

6. It is an admitted fact that the land in question was granted to the original grantee – Mugappa on 29.10.1977 and he had sold the said land in violation of the non-alienation clause to one T.Nagabhushana under a registered sale deed dated 14.09.1989. The said T.Nagabhushana has subsequently sold the land in question to Sri Srinivas Murthy under a registered sale deed dated 05.02.1991 and ever since then, he has been in possession and enjoyment of the said land. During the lifetime of Mugappa, he had not filed any application for resumption and restoration of the land in question. After the death of Mugappa, respondents 3 & 4 who are his wife and son, have belatedly filed an application under Section 5 of the PTCL Act, which has admittedly come into

force with effect from 01.01.1979. The Hon'ble Supreme Court in the case of Nekkanti Rama Lakshmi's case (supra), in paragraph 8 has held as under:

"8. 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 rejected for arrears of land from 1st

January, 1939 to 31st 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.”

7. In Vivek M.Hinduja’s case (supra), the Hon’ble Supreme Court at paragraph 10 has held as under:

“10. We are in respectful agreement with the aforesaid observations. It is, however, necessary to add that where limitation is not prescribed, the party ought to approach the competent Court or authority within reasonable time, beyond which no relief can be granted. As decided earlier, this principle would apply even to suo motu actions.”

8. In the present case, the application for resumption and restoration of the land in question has been admittedly filed by the legal representatives of the original grantee in the year 2006 i.e., after a delay of 16 years after the PTCL Act came into force. Since the application for restoration has been filed after inordinate delay, the judgment of the Hon'ble Supreme Court in Nekkanti Rama Lakshmi's case (supra) is applicable to the facts of the present case. However, the learned Single Judge taking into consideration that the writ petition has been filed challenging the order passed by the Deputy Commissioner after a delay of four years, has dismissed the writ petition on the ground of delay without going into the merits of the matter.

9. The restoration application challenging the first sale by the original grantee was filed by his legal representatives with

a delay of 16 years. Sri T.Nagabhushana who was the purchaser of the land in question under the first sale deed was not made as a party to the proceedings by the legal representatives of the original grantee. The order passed by the Assistant Commissioner dated 04.03.2011 was challenged by the subsequent purchaser – Sri Srinivas Murthy before the Deputy Commissioner. The appeal filed by Sri Srinivas Murthy before the Deputy Commissioner was dismissed by order dated 23.12.2013. Srinivas Murthy has died on 31.12.2013 i.e., after a few days from the date of the order passed by the Deputy Commissioner. The writ petition is filed by the legal representatives of the said Srinivas Murthy. The delay in filing the writ petition has been explained by the petitioners in paragraph 6 of the writ petition. They have stated that their father Srinivas Murthy was looking after the litigation who expired immediately after the order was passed by the Deputy Commissioner and the petitioners were not aware of the said order till respondents 3 & 4 tried to interfere with their possession of the land in question. It has come on record that the petitioners have filed an application seeking certified copy of the order passed by the Deputy

Commissioner on 10.07.2017 and the copy was received by them on 26.07.2017. Within a few months thereafter, they have filed the writ petition before this Court. There is nothing on record to show that the petitioners or their father Srinivas Murthy had obtained the certified copy of the order passed by the Deputy Commissioner prior to 26.07.2017.

10. It is not in dispute that the order was passed by the Deputy Commissioner on 23.12.2013 and Srinivas Murthy who was the appellant in the said case has expired on 31.12.2013. Merely for the reason that in the order sheet dated 18.02.2013 the Deputy Commissioner has noted the presence of the son of Srinivas Murthy during the proceedings, it cannot be said that he was aware of the order passed by the Deputy Commissioner on 23.12.2013. The fact remains that Sri Srinivas Murthy alone was the appellant in the case and his children were not parties to the said proceedings.

11. The application for restoration has been filed by the legal representatives of the original grantee after a lapse of 16 years which definitely is an inordinate delay. There is

absolutely no reason offered explaining the said delay. On the other hand, the petitioners have given a plausible explanation for the delay of four years caused in filing the writ petition. The learned Single Judge on the ground that the writ petition is filed after a delay of more than four years has refused to consider the merits of the matter and has dismissed the writ petition only on the ground of delay. In our considered opinion, having regard to the explanation offered by the petitioners, delay of four years caused in filing the writ petition ought to have been condoned which compared to the delay of 16 years caused by respondents 3 & 4 in filing the application for restoration of the land in question, is much reasonable. The learned Single Judge was not justified in refusing to consider the writ petition on its merits and dismissing the same on the ground of delay.

12. The application for restoration having been filed by respondents 3 & 4 after a delay of more than 16 years from the date from which the PTCL Act came into force, the judgment of the Apex Court in Nekkanti Rama Lakshmi's case (supra) and Vivek M.Hinduja's case (supra) are squarely

applicable to the facts of the present case and the order passed by the Assistant Commissioner and the Deputy Commissioner impugned in the writ petition are liable to be quashed solely on the ground that the restoration application has been filed after an inordinate delay of 16 years. Under the circumstances, we are of the considered opinion that the learned Single Judge was not justified in dismissing the writ petition on the ground of delay. Accordingly, we proceed to pass the following order:

Writ appeal is allowed. The order dated 12.01.2021 passed by the learned Single Judge in W.P.No.5604/2018 is set aside and consequently, the orders dated 04.03.2011 and 23.12.2013 passed by the Assistant Commissioner and the Deputy Commissioner, respectively, are also quashed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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