

Karnataka High Court Mohammed Jaffar And Anr. vs State Of Karnataka And Ors. on 8 October, 2002 Equivalent citations: ILR 2002 KAR 4693, 2003 (1) KarLJ 337 Author: N Jain Bench: N Jain, H Rangavittalachar, V Sabhahit ORDER N.K. Jain, C.J. 1. This reference has been placed before the Full Bench as per the order of the Chief Justice, dated 22-7-2002 and has come up before us. 2. A learned Single Judge was considering a writ petition wherein the order dated 8-12-1998 passed by the Assistant Commissioner declaring the sale of the land in Sy. No. 415/1 measuring 7.25 guntas out of the total extent of 1 acre 19 guntas of Susugadi Village in Bhatkal Taluk was challenged. The learned Single Judge, vide his order dated 9-3-2001, having disagreed with the view of another learned Single Judge in the case of Narayan Parameshwar Naik and Ors.v. Deputy Commissioner, Karwar, Uttara Kannada District and Ors., 1999(6) Kar. L.J. 244 and as the issue was a question of law of general importance, thought it to be a fit case for reference to the Division Bench and referred the same to decide the following question: "Whether the land in respect of which occupancy rights have been conferred in favour of a tenant under the provisions of the Kar-nataka Land Reforms Act, 1974, can be construed as "granted land" as defined under Section 3(b) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, wherever the tenant belongs to Scheduled Caste or Scheduled Tribe and thus is amenable to the jurisdiction and operation of the PTCL Act or only restricted meaning to be given in this regard?" By the order of the Chief Justice, dated 27-3-2002, the matter was placed before the Division Bench. The Division Bench, while considering the order of reference on 10-7-2002, found that the decision in Narayan Parameshwar Naik's case, supra, was affirmed by a Division Bench in an appeal Smt. Lalitha Nagappa Naik v. The Deputy Commissioner, Karwar, Uttara Kannada District and Ors., 2000(6) Kar. L.J. 635 and that unreported judgment was not brought to the notice of the learned Single Judges. On consideration, the Division Bench was of the view that the matter required consideration by a larger Bench and referred the same to a Full Bench, and directed the Registry to place the records before the Hon'ble Chief Justice for appropriate orders. 3. W.P. No. 2290 of 2000 was referred on 5-12-2001, W.P. No. 31815 of 2000 was referred on 7-12-2001 and W.P. Nos. 4809 to 4814 of 2001 was referred on 11-3-2002 by the respective learned Single Judges to the Division Bench. Thereafter, the said references along with W.P. No. 8757 of 1999 have been placed before us on 3-10-2002, as already stated. As agreed, by the respective Counsels for the parties all the writ petitions are disposed of by this common order. For the sake of convenience, we take up the necessary facts of W.P. No. 8757 of 1999 as the question of law in all these writ petitions is common. 4. The brief facts are that the entire land in Sy. No. 415/1, a tenanted land, originally belonged to one Smt. Ramabai. After coming into force of the Karnataka Land Reforms Act as amended by Karnataka Act No. 1 of 1974 (for short 'the KLR Act'), one Rama Govinda Mogera, since deceased and now represented by his legal representatives, respondents 4 and 5, filed an application in Form 7 for conferring occupancy rights. The Land Tribunal by the order dated 25-3-1976 conferred occupancy rights to an extent of 30 guntas. A certificate of registration of oc-

cupancy under Section 55 was also issued on 5-5-1978 with certain conditions prohibiting the occupant or his successor from alienating or transferring the land within the period of 15 years from the date of conferment of right. After the limitation period, respondents 4 and 5 applied for deleting the condition, of non-alienation, which was accordingly done by the Deputy Commissioner by his order dated 20-5-1995. The petitioner, in the instant case, purchased the land to an extent of 7.25 guntas out of the 30 guntas on 9-12-1997 for a valuable consideration of Rs. 1.3 lakhs. Thereafter, under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short 'the PTCL Act'), suo motu proceedings were initiated. The Assistant Commissioner found that the land belonged to a person of Scheduled Caste/Scheduled Tribe and as the alienation was in contravention of the provisions of the grant, declared the sale as null and void, vide order dated 9-12-1998. It is this order, which is challenged in this writ petition and, as already stated, has been referred to this larger Bench to decide the question as to whether the conferment of occupancy right under Section 48A of the Karnataka Land Reforms Act constitutes "granted land" within the meaning of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. 5. The main contention of the learned Counsels for the petitioner Mr. K. Subba Rao (Senior Counsel) and B.V. Gangi Reddy, is that once the occupancy rights have been granted in accordance with law and the sale of the land has taken place after 15 years period of prohibition, the sale transaction cannot be declared as null and void. Learned Counsels submit that the learned Single Judge in the case of Mohammed Jaffar and Anr. v. State of Karnataka and Ors., ILR 2001 Kar. 1931 has rightly considered the provisions of Sections 44, 45 and 77 of the KLR Act, whereas in Narayan Parameshwar Naik's case, supra, the learned Single Judge only on the basis of the definition of 'granted land' under Section 3(b) of the PTCL Act and applying the provisions of Section 44, has held that the land vested in the State Government, which is not correct and so also the decision of the Division Bench in Smt. Lalitha Nagappa Naik's case, supra, which has approved the Narayan Parameshwar Naik's case, supra. Learned Counsels submit that the Division Bench has given a wider meaning of the definition 'granted land' and further erred in relying on the residuary provisions of Section 2(B) of the KLR Act, and thereon referring to Sections 99, 100 and 101 of the Karnataka Land Revenue Act for assigning the meaning to the word 'occupant' or 'occupancy'. Learned Counsels submit that the Division Bench erred in invoking the overriding clause under Section 11 of the PTCL Act and the approach of the Division Bench in relying on the above provisions of the above referred Acts and holding that no fault can be found either with the initiation of resumption proceedings under Section 5 of the Act or the passing of the impugned orders by the Assistant Commissioner, Deputy Commissioner and the learned Single Judge. Learned Counsels submit that the learned Single Judge in Narayan Parameshwar Naik's case, supra and the Division Bench in Lalitha Nagappa Naik's case, supra, erred in relying on Section 44 of the KLR Act and provisions of Section 11 of the PTCL Act. They submit, though Section 44 of the KLR Act deals with vesting of lands in the State Gov-

ernment, in view of Section 77 of the KLR Act only the surplus lands vested in the State Government can be disposed of under certain conditions. They also submit that occupancy right granted under Section 45, after due enquiry by the Tribunal, cannot be said to be a grant by the Government but only recognition of a statutory right and therefore Sections 44 and 45 will not be applicable so as to hold the transactions null and void and in the absence of consideration of these aspects the reference has to be answered in negative. 6. M/s. Sivan and Siva Associates, Sri S.R. Hegde Hudlamane and Sri Padmanabha, Senior Advocate with M.J. Yogendra Vikram, Smt. Roopa Vikram and M/s. Janardhan and Janardhan, learned Counsels for the petitioners in the respective petitions while reiterating the argument of Mr. K. Subba Rao and B.V. Gangi Reddy, submit that as the non-alienation condition has been deleted by the Government, respondents 4 and 5 have no right to argue and the reference has to be answered in consonance with the reasons given by the learned Single Judge in Mohammed Jaffar's case, supra and in favour of the purchasers. 7. Learned Government Advocate reiterating the reasons given by the Division Bench in Smt. Lalitha Nagappa Naik's case, supra, submits that in view of Section 44 the land vests in the Government and even if the occupancy right has been granted that will be subject to certain conditions under provisions of the PTCL Act and the sale of land will automatically become void, if sold within the prohibitory period. Hence, the question has to be answered in the affirmative. 8. We have heard the learned Counsels for the parties and perused the materials on record, relevant provisions and the case-law cited on the point. 9. Admittedly, the point in issue i.e., provisions of Sections 45 and 48 of the KLR Act has not been considered by the learned Single Judge in Narayan Parameshwar Naik's case, supra, as well as by the Division Bench in Smt. Lalitha Nagappa Naik's case, supra in holding that conferment of occupancy right would also be grant within the meaning of 'granted land' under the PTCL Act. 10. To consider the point in issue, it will be appropriate to refer the definition of words 'granted land' i.e., Section 3(1)(b) of the PTCL Act and Sections 44, 45, 48A, 55, 77 and 77A of the KLR Act: "3. Definitions.—(1) In this Act, unless the context otherwise requires- (b)"Granted land" means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such person under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word "granted" shall be construed accordingly"."44. Vesting of lands in the State Government.—All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under Section 5, shall with effect on and from the said date, stand transferred to and vest in the State Government"."45. Tenants to be registered as occupants of land on certain conditions.—Subject to the provisions of the succeeding sections of this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sublet, sub-tenant shall with effect on and from the date of vesting, be

entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally.”48-A. Enquiry by the Tribunal, etc.—(1) Every person entitled to be registered as an occupant under Section 45 may make an application to the Tribunal in this behalf. Every such application shall, save as provided in the Act, be made before the expiry of a period of six months from the date of the commencement of Section 1 of the Karnataka Land Reforms (Amendment) Act, 1978. (2) On receipt of the application, the Tribunal shall publish or cause to be published a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it on the date specified in the notice. The Tribunal shall also issue individual notices to the persons mentioned in the application and also to such others as may appear to it to be interested in the land. (3)xxx xxx xxx

- (4) Where no objection is filed, the Tribunal may, after such verification as it considers necessary, by order either grant or reject the application.
- (5) Where an objection is filed disputing the validity of the applicant’s claim or setting up a rival claim, the Tribunal shall, after enquiry, determine, by order, the person entitled to be registered as occupant and pass orders accordingly’.

“55. Issue of certificate of registration.—(1) On receipt of the final orders passed under Sub-section (4) or (5) of Section 48A, subject to such rules as may be prescribed, the Tahsildar shall issue a certificate that the tenant has been registered as an occupant. The certificate shall be conclusive evidence of such registration”. “77, Disposal of surplus land.—(1) Surplus land vesting in the State Government under this Act, land directed to be disposed of under Sub-section (3) of Sections 45, 58 and 60, land vesting in the State Government under Sections 79A and 79B or under any other provision of this Act, may, subject to reservation of seventy-five per cent thereof for grant to persons belonging to the Scheduled Castes and the Scheduled Tribes and subject to such restrictions and conditions as may be prescribed in this behalf, be granted by the Deputy Commissioner or any other officer authorised by the State Government in this behalf to the following persons to the extent and in the manner as may be prescribed: (i) Dispossessed tenants Who are not registered as occupants; (ii) Displaced tenants having no land; (iii) Landless agricultural labourers; (iv) xxx xxx xxx (v) xxx xxx xxx (vi) xxx xxx xxx”.

“77-A. Grant of land in certain cases,—(1) Notwithstanding anything contained in this Act, if the Deputy Commissioner or any other officer authorised by the State Government in this behalf is satisfied after holding such enquiry as he deems fit. that a person.-

- (i) was, immediately before the first day of March, 1974 in actual possession and cultivation of any land not exceeding one unit, which has vested in the State Government under Section 44; and
- (ii) xxx xxx xxx,

he may within one year from the date of commencement of the Karnataka Land Reforms (Amendment) Act, 1997 grant the land to such person subject to such restrictions and conditions and in the manner, as may be prescribed“.

11. The main question while considering the legal position is whether after coming into force of the KLR Act as amended by Karnataka Act No. 1 of 1974, the land will automatically vest in the Government or only surplus land or the land for which no application has been made or if an application is made and the same is rejected, the sale of land granted therein will attract the provisions of the PTCL Act.
12. A bare reading of Section 3(1)(b) of the PTCL Act makes it clear that the land should be granted by the Government and such land is to be granted to a person belonging to Scheduled Castes or the Scheduled Tribes under the relevant law including agrarian reforms. Once the land is held to be a granted land, the restriction contained in Section 4 regarding the apprehension of transfer of land would apply, meaning thereby such land should be granted by the Government. Section 77 of the KLR Act deals with disposal of surplus land and Section 77A, which has been inserted by Act No. 23 of 1998 with effect from 1-11-1998, deals with grant of land in certain cases wherein the tenant was cultivating the land on 1-3-1974 has failed to apply for occupancy right and the land has vested with the Government under Section 44 of the Act.
13. Section 44 of the KLR Act, as stated above, deals with vesting of the land in the Government. As per the argument of the learned Government Advocate, the entire land vests in the Government. It is clear from the above said provisions of the Act that the Act is an agrarian reforms Act and wherefore the grant made by the Government under Sections 77 and 77A of the KLR Act would come within the ambit of “granted land” as the land is granted by the Government under the said sections of the Act. Therefore, the land, which is not granted by the State Government, cannot prima facie be hit by the provisions of the PTCL Act. It is also clear that all the lands held by or in possession of the tenants vest with the State Government free from all encumbrances and the State Government is entitled to take possession of the said properties. However, as per Section 44(e) the Government is not entitled to take possession of the tenanted land and the permanent tenants, protected tenants and other tenants holding the land are entitled to such right or privileges and subject to such conditions provided under Act. In view of Section 44 of the KLR Act, it is clear that conferment of occupancy right by the Land Tribunal, and not

by the Government, is only a declaration of pre-existing right which has been conferred on the tenant under Section 45 and vesting of the land is subject to right that is conferred on the tenant for conferment of occupancy right. Section 45 of the KLR Act gives a right to a person who is a tenant on the land to get the occupancy right conferred in his favour and Sections 48 and 48A deals with the Constitution of the Tribunals and enquiry by the Tribunal. The occupancy right will be conferred by the Land Tribunal and not by the Government under Section 48A of the KLR Act on a tenant who was cultivating the land personally on 1-3-1974. Therefore, what is conferred on the tenant who was personally cultivating the land on 1-3-1974 is the declaration of his occupancy right of land on 1-3-1974, by the Tribunal. The preamble to the KLR Act clearly shows that the Act is enacted to confer ownership on the tenants and wherefore, it is clear that the conferment of occupancy right on the tenant who was personally cultivating the land on 1-3-1974 is conferment of ownership on the tenant as per the preamble to the Act and the same is subject to certain restrictions which are imposed in the certificate of registration issued under Section 55 of the Act in Form 10. It is also seen that conferment of occupancy right is only declaration of the fact that the tenant who was personally cultivating the land on 1-3-1974 and the land which has vested with the Government, the tenant is declared as the occupant of the said land subject to the restrictions contained in the certificate of registration and if the tenant proves that he has been personally cultivating the land on 1-3- 1974 he cannot be denied conferment of occupancy right.

14. Under the circumstances, it is clear that occupancy right cannot at all fall within the ambit of 'granted land' as defined under the PTCL Act. Considering the argument of the learned Government Advocate with regard to automatic vesting of land in the Government, it is seen that the vesting of land in the Government is subject to vested right of a tenant to get occupancy right and for determination of right and conferment of occupancy Land Tribunal, a Statutory Authority established under the Land Reforms Act, is the Competent Authority to determine the same on a tenant who was personally cultivating the land on 1-3-1974. In view of this, the occupancy right, which has been granted by the Land Tribunal, cannot be construed as "granted land" as defined under the PTCL Act. The learned Single Judge in Narayan Parameshwar Naik's case, *supra* and the Division Bench in Smt. Lalitha Nagappa Naik's case, *supra* have not considered these aspects and have wrongly come to the conclusion that the KLR Act is an agrarian reforms Act by itself would not give the tenant to get occupancy right and the argument of the learned Government Advocate on the reasoning of the said decisions, is not acceptable. Certainly, the decisions in Narayan Parameshwar Naik's case, *supra* and Smt. Lalitha Nagappa Naik's case, *supra*, are not applicable and cannot be said to be a correct law to decide the controversy in the facts of the present case, and the said decisions are liable to be reversed. On the other hand, the learned Single Judge in Mohammed Jaffar's, *supra*, by an elaborate

order, while considering the provisions of Sections 77 and 77A of the KLR Act and has rightly interpreted them with valid reasons. Accordingly, we are satisfied with the reasons of the learned Single Judge in Mohammed Jaffar's case, *supra*, approve the same. On overall consideration and as discussed above, we are of the view that the land in respect of which the occupancy right has conferred under Section 48A of the KLR Act would not fall within the ambit of 'granted land' as defined under Section 3(1)(b) of the PTCL Act and answer the referred question in negative. The writ petitions shall be posted before the appropriate Bench according to roster for disposal on merits in accordance with law.