Karnataka High Court Syed Bhasheer Ahamed And Others vs State Of Karnataka And Others on 20 December, 1993 Equivalent citations: AIR 1994 Kant 227, ILR 1994 KAR 159, 1994 (1) KarLJ 385 Author: Raveendran Bench: S Majmudar, K Navadgi, R Raveendran ORDER Raveendran, J. 1. A Division Bench of this Court consisting of, the Acting Chief Justice and N. D. V. Bhat, J. while considering W. A. 89/1991 arising out of the Karna-taka Village Offices Abolition Act, 1961 (hereinafter referred to as 'the Act') entertained a doubt whether the two Division Bench Decisions of this Court in Hanumaiah v. State of Karnataka and Chikkanarasaiah v. Tirupathaiah lay down the law correctly in view of the decision of the Supreme Court in State of Karnataka v. G.Seenappa and G. M. Harkuni v. Tahsildar . The Division Bench also felt that it was necessary to determine whether there was any conflict between the decisions in the cases of Hanumaiah and Chikkanarasaiah on the one hand and the two decisions of another Division Bench of this Court in Adivappa Shivappa Mattur v. Tahsildar and G. M. Harkuni v. Tahsildar . As the said four decisions of this Court were being interpreted in different ways, the Division Bench was of the view that the matter required consideration by a larger bench. That is how the matter is placed before us. 2. The Karnataka Village Offices Abolition Act, 1961 was enacted to abolish the Village Offices which were held hereditarily before the commencement of the Constitution and the emoluments appertaining thereto in the State and to provide for matters consequential and incidental thereto. The appointed date on which the said Act came into force is 1-2-1963. The Act was amended by the Karnataka Village Offices Abolition (Amendment) Act, 1978. The Amendment Act came into force on 7-8-1978. For convenience the Act as originally enacted will hereinafter be referred to as the 'Principal Act' and Karnataka Act No. 13 of 1978 by which it was amended extensively will be referred to as the 'Amendment Act'. The Act was also amended by Acts 8 of 1968, 27 of 1984 and 47 of 1986. The historical background leading to the said enactment can be found in the exhaustive Division Bench Decision of this Court in Lakshmana Gowda v. State of Karnataka (1981) 1 Kant LJ 1. 3. Reference to a few of the relevant provisions of the said Act will be necessary and useful. Section 2(n): "Village Office" means every village office to which emoluments have been attached and which was held hereditarily before the commencement of the Constitution under an existing law relating to a village office, for the performance of duties connected with the administration or collection of the revenue with the maintenance of order or with the settlement of boundaries or other matter of civil administration of a village, whether the services originally appertaining to the office continue or have ceased to be performed or demanded and by whatsoever designation the office may be locally known. Section 2(h): 'Inferior village office means every village office of lower degree than that of a Patel or Village Accountant; Section 2(e): "emoluments" means (i) lands, (ii) assignments of revenue payable in respect of lands, (iii) fees in money or agricultural produce; (iv) money, salaries and all other kinds of remuneration, granted or continued in respect of, or annexed to, any village office, by the State: Section 2(f) "existing law relating to a village office" includes any enactment, ordinance, rule, bye-law, regulation, order, notification, firman, hukum, vat hukum or any

other instrument or any custom or usage having the force of law, relating to a village office, which may be in force immediately before the appointed date; Section 2(c): “Code” means the Karnataka Land Revenue Act“, 1964; Section 2(q):”holder of a village office" or 'holder' means a person having an interest in a village office under an existing law relating to such office: Provided that where any village office has been entered in a register or record under an existing law relating to such village office, as held by the whole body of persons having interest in the village office, the whole of such body shall be deemed to be the holder; Section 2(b): “authorised holder” means a person in whose favour a land granted or continued in respect of, or annexed to, a village office by the State or a part thereof has been validly alienated permanently, whether by sale, gift partition or otherwise, under the existing law relating to such village office; Section 2(m): “unauthorised holder” means a person in possession of a land granted or continued in respect of or annexed to a village office by the State without any right, or under any lease mortgage, sale, gift or any other kind of alienation thereof which is null and void under the existing law, relatinng to such village office. While referring to the definition of ‘unauthorised holder’, it should be remembered that the enactments relating to village offices which were in force in different areas of Karnataka prior to 1-2-1963, namely, Mysore village Offices Abolition Act, 1908, the Bombay Hereditary Offices Act, 1874 and Madras Hereditary Village Offices Act, 1895 contained provisions prohibiting alienation of lands granted or annexed to any Village Office, except to the extent and in the manner provided for in the respective Statutes. 4. Section 4(1) abolished Village Offices with effect from 1-2-1963. Section 4(2) extinguished all incidents appertaining to the village offices. Section 4(3) resumed all lands granted or continued in respect of or annexed to a village office by the State, subject to the provisions of Sections 5,6 and 7 and provided that the lands resumed shall be subject to the payment of land Revenue under the provisions of the Karnataka Land Revenue Act, 1964, as if they were unalienated land or ryotwari land. For convenience and brevity, the expression, ‘a land granted or continued in respect of or annexed to a village office by the State’ occurring in Sections 2(b), 2(m) and 4(3) will hereinafter be referred to as a ‘service Inam Land’. 5. Section 5(3) provides for regrant of land resumed under Section 4(3) to the holder of the village office and it is extracted below: “(1) A land resumed under clause (3) of Section 4, shall, in cases not falling under Section 6 and Section 7, be granted to the person who was the holder of the village office immediately prior to the appointed date (hereinafter referred to as the holder) on payment, by or on behalf of such holder to the State Government, of the occupancy price equal to three times in the case of holders of inferior village office and six times in the case of holders of other village offices, the amount of the full assessment of such land within the prescribed period and in the prescribed manner and the holder shall be deemed to be in occupant or holder of a ryotwari patta within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the Slate Government from the appointed date in accordance with the provisions of the Code and the rules and orders made thereunder; and all the provisions of the Code and the rules and orders relating to unalienated land

or ryptwari land shall, subject to the provisions of this Act, apply to the said land: Provided that in respect of land which was not assigned under an existing law relating to the village office as the remuneration of the village office, an occupancy price equal to the amount of the full assessment of such land in the case of holders of inferior village office and three times such amount in case of holders of other village offices, shall be paid by or on behalf of the holder for its regrant. Section 6 provides for regrant of lands resumed under Section 4(3) to 'authorised holders' and it is extracted below:"Where any land resumed under clause (3) of Section 4 is held by an authorised holder, it shall be regranted to the authorised holder, on the payment by him to the State Government of the occupancy price equal to six times the full assessment of the land and subject to the conditions and consequences mentioned in Section 5; and all the provisions of Section 5 shall mutatis mutandis apply in relation to the regrant of the land under this section to the authorised holder as if he were the holder of the village office." Before amendment: 5(3) The occupancy or the ryotwari patta of the land as the case may be, regranted under sub-section(1) shall not be transferable otherwise than by partition among members of Hindu joint family without the previous sanction of the Deputy Commissioner and such sanction shall be granted only on payment of an amount equal to fifteen times the amount of full assessment of the land. Section 5(2) relating to the consequences of non-payment of occupancy price is extracted below: "If there is a failure to pay the occupancy price under sub-section (1) within the prescribed period and in the prescribed manner, the holder shall be deemed to- be un-authorisedly occupying the land and shall be liable to be summarily evicted therefrom by the Deputy Commissioner, in accordance with the provisions of the Code." Section 5(3) barring alienation of re-granted land under the Principal Act and as substituted under the Amendment Act, with effect from 7-8-1978, it extracted below: Section 5 (4) declaring that any transfer in contravention of section 5(3) as null and void, inserted by the Amendment reads as follows: "(4) Any transfer of land in contravention of sub-section (3) shall be null and void and the land so transferred shall, as penalty, be forfeited to and vest in the State Government free from all encumbrances and any person in possesion thereof shall be summarily evicted therefrom by the Deputy Commissioner and the land shall be disposed of in accordance with the law applicable to the disposal of unoccupied unalienated lands; Provided that if the person who has transferred the land in contravention of subsection (3) is not alive, while disposing of such land preference shall be given to the heirs of such person. Explanation: For removal of doubts it is hereby declared that in sub-section (3), and After amendment 5(3) The occupancy or ryotwari patta of the land, as the case may be regranted under subsection (1) shall not be transferable otherwise than by partition amoung members of Hindu Joint Family for a period of 15 years from the date of commencement of Section 1 of the Karnataka Village Offices Abolition (Amendment) Act, 1978. in this sub-section transfer includes creation of a lease." Section 5(6) declaring that any agreement for transfer of land, as null and void inserted by the Amendment Act is extracted below: "(6) Notwithstanding anything contained in any law for the time being in force, any agreement for transfer of land resumed under Before

amendment 7. Eviction of unauthorised holder and re-grant to him in certain circumstances of land resumed under Sec. 4: (1) Where any land resumed under C!. (3) of Sec. 4 is in possession of an unauthorised holder, such unauthorised holder shall be summarily evicted therefrom by the Deputy Commissioner, in accordance with the provisions of the Code: Provided that where in the case of any unauthorised holder, the Deputy Commissioner after enquiry is of the opinion that in view of the investment made by such holder in the development of the land or in the non-agricultural use of the land or for any other reason, the eviction of such holder from the land will involve undue hardship on him, he shall rcgrant the land to such holder on payment of such amount and subject to sub-section (3) of Sec. 5 on such terms and conditions as the State Government may determine. (2) A land which is not re-granted under sub-seclion(1) shall be disposed of in accordance with the provisions of the Code and the rules and orders made thereunder applicable to the disposal of unoccupied unalienat-ed land. Section 5 of the Amendment Act provided that all pending applications and proceedings relating to regrant of land to unauthorised clause (3) of Section 4, entered into prior to regrant thereof under sub-section (1), shall be null and void and any person in possession thereof in furtherance of such agreement shall be summarily evicted therefrom by the Deputy Commissioner." 6. Section 7 providing for eviction of unauthorised holders as originally contained in the principal Act and as substituted by the Amendment Act, with effect from 24-12-1975 is extracted below: After amendment 7. Eviction of unauthorised holders, etc. (1) Where any land resumed under Cl. (3) of Sec. 4 in the possession of an unauthorised holder shall be summarily evicted therefrom and the land shall be taken possession of by the Deputy Commissioner in accordance with law: Provided that no such summary eviction shall be made except after giving the person affected a reasonable opportunity of making representation. (2) Any order of eviction passed under subsection (1) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by the Deputy Commissioner in pursuance of the power conferred by sub-section (1). (3) The land from which an unauthorised holder is evicted under sub-section (1) shall,– (a) if it was granted or continued in respect of or annexed to an inferior village office be re-granted to the holder of such village office; (b) in other cases be disposed of in accordance to the disposal of unoccupied unalienal-ed lands." holders under the proviso to sub-section (1) of Section 7 of the Principal Act, as it stood prior to the commencement of the Amend- mem Act, shall not have effect and shall abate. Section 5 of the Amendment Act was given effect from 24-12-1975 itself. Section 7A relating to restriction on transfers, introduced by Amendment Act with effect from 7-8-1978, is extracted below: "7A. Restriction on Transfer etc.– (1) No person shall transfer or acquire by transfer for a period of fifteen years from the date of commencement of this section any land disposed or re-granted under sub-section (4) of Section 5 or sub-section (3) of Sec. 7 and any transfer of such land in contravention thereof shall be null and void. The land so transferred shall vest in the State Government free from all encumbrances. The provisions of subsection (5) of Section 5 shall mutatis mutandis apply to

transfer of such land. (2) Any person who acquires by transfer such land in contravention of sub-section (1) QUESTIONS (i) Did an alienee of a Service Inam land from its holder or the authorised holder, acquire any title to or interest in, such land, if the alienation had taken place prior to the corning in to force of the Principal Act? If not did he acquire such title or interest subsequently by his alienor obtaining its regrant under S. 5 or 6, as the case may be, of the Principal Act? (ii) Did the holder or the authorised holder of a Service Inam Land get title to it when that land stood resumed to the Government under sub-sec. (3) of S. 4 of the Principai Act or did he get such title to that land only when it was re-granted to him under S. 5 or 6 as the case may be of the Principal Act? (iii) Did an alienee of a Service Inam Land from its holder or the authorised holder, ac-quira title to such land, if the alienation had taken place between the date of the coming into force of the Principal Act and the date of the regrant, after its regrant to its holder or the authorised holder under S. 5 or 6, as the case may be, of the Principal Act? (iv) Did an intending alienee of a Service shall on conviction be punished with imprisonment which may extend to six months." 7. Section 12(1) repealed the several existing laws relating to Village Offices in force in any area of the Karnataka listed in Schedule I. Section 12(2) made consequential amendments in other enactments as detailed in Schedule II. 8. The validity of the Principal Act was upheld by the Supreme Court in B. R. Shankaranarayana v. State of Mysore . The validity of the Amendment Act was upheld by a Division Bench of this Court in Bakshmana Gowda v. State of Karnataka ((1981) 1 Kant LJ I) (supra). In Lakshmana Gowda's case, the Division Bench also examined the rights of alienees of service inam lands in great detail and to focus attention to the several fads of alienation, formulated ten questions for decision. The questions and the decisions thereon are extracted below for ready reference: DECISION (i) The alienee of a service Inam Land from its holder, or the authorised holder did not acquire any title to such land if the alienation had taken place prior to the coming into force of the Principal Act and he did not also acquire any title to such land subsequently by his alienor'obtaining its re-grant under S. 5 or 6 as the case may be of the Principal Act; (ii) The holder or the authorised holder of a Service Inam Land did not get any title to it when that land stood resumed to the Government under sub-sec. (3) of S. 4 of the Principal Act but he got title to it only when it was re-granted to him under S. 5 or 6, as the case may be, of the Principal Act. (iii) If the holder or the authorised holder of a Service Inam Land had alienated it after the Principal Act came into force and before it was re-granted to him under Section 5 or 6, as the case may be, of the Principal Act, the alienee acquires title to that land after such re-grant to his alienor. (iv) The alienee, who had entered into an Inam Land from its holder or the authorised holder, who was put in possession of that land pursuant to an agreement to purchase obtained from the latter prior to the coming into force of the Principal Act, get a right to continue in possession of that land after the Principal Act came into force- (a) if such land had not been regranted to the alienor under S. 5 or 6 of the Principal Act, (b) after such land was so regranted to the alienor? (v) Did an alienee or an intending alienee of a Service Inam Land, who was,

prior to the coming into force of the Principal Act, put in possession under a deed of alienation or pursuant to an agreement to purchase, become disentitled to regrant of such land subsequent to 7-8-1978 even though he had made an application for regrant under original S. 7 of the Principal Act? If so, was such person liable to be evicted? (vi) Did a transferee of a Service Inam Land from its holder or authorised holder after its regrant under S. 5 or 6 of the Principal Act, get title to or interest in, such land, if such transfer had taken place without the previous sanction of the Deputy Commissioner under the unamended sub-sec. (3) of S. 5 of the Principal Act? (vii) Is sub-section (4) of S. 5 of the Principal Act attracted to- (a) a transfer of Service Inam Land in contravention of unamended sub-sec. (3) of that Section; or (b) a transfer of such land in contravention agreement for purchasing a Service Inam Land and was put in possession thereof in pursuance of such agreement prior to the coming into force of the Principal Act, did not, under such agreement, get any right to continue in possession of such land by reason of the Principal Act coming into force. Even by his alienor subsequently obtaining regrant of such land under Section 5 or 6, as the case may be, of the principal Act, the alienee got neither any title to such land nor the right to protect his possession of such land under Section 53A of the Transfer of Property Act. However, the State cannot evict such alienee or intending alienee, in possession of a Service Inam Land, if such land had been subsequently regranted to the holder or the authorised holder under Section 5 or 6 of the Principal Act; (v) Unless new Section 7 of the Principal Act and Sec. 5 of the Amendment Act are held to be unconstitutional, an alienee or an intending alienee of a Service Inam Land, who was put in possesion of such land pursuant to an agreement to purchase, prior to the coming into force of the Principal Act, did not get any title to such land nor was he entitled to regrant of such land subsequent to 7-8-1978 even though he had made an application for such regrant under the proviso to sub-section (1) or Sec. 7 of the Principal Act and he is liable to be evicted from such land; (vi)The omission to obtain the previous sanction of the Deputy Commissioner under original sub-section (3) of Sec. 5 of the Principal Act, did not render void a transfer of a land regranted under Sec. 5 or 6 or 7 of the Principal Act prior to 7-8-1978, but such transfer can be regularised by paying to the Government an amount equal to 15 times the full assessment of that land. (vii) Sub-section (4) of Section 5 of the Principal Act should be construed as being applicable only to transfers made subsequent to 7-8-1978 and not to transfers which had taken place prior to that date and that sub-sec. (3) occurring in that Section has reference to amended sub-section (3) and not to original sub-section (3) of that Section; of amended sub-section (3) of that section; or (c) both of them? (viii) Is substituted S. 7 of the Principal Act violative of Art. 31 of the Constitution? (ix) Is S. 5 of the Amendment Act which provides that all pending applications and proceedings relating to regrant of service Inam Lands to unauthorised holder under the proviso to sub-section (1) of unamended Section 7 of the Principal Act, shall not have effect and shall abate, violative of Art. 14 of the Constitution? (x) Is the opportunity provided under the proviso to sub-section (1) of Substituted S. 7 of the Principal Act to an affected person to make a representation, sufficient

to satisfy the requirement of fair hearing a principle if natural justice? 9. The correctness of the decision in Lakshmana Gowda's case ((1981) 1 Kant LJ 1) came up for consideration before the Supreme Court in State of Karnataka v. G. Seenappa, . Though what was considered by the Supreme Court in detail was the correctness of the decision on question No. (vi) in Lakshmana Gowda, the entire judgment in Lakshmana Gowda was upheld, as is evident from the following observations of the Supreme Court (at p. 1531): ''Learned counsel for the petitioners, the State of Karnataka and others, has sought 16 challenge the correctness of the decision of a Division Bench of the Karnataka High Court in Lakshmana Gowda v. State of Karnataka (1981) 1 Kant LJ 1, which has been followed by that High Court in the impugned Judgments. As we are of the view, that the Judgment in Lakshmana Gowda's case deserves to be upheld, it is not necessary for us to set out the facts except the barest minimum necessary." 10. The decision in Lakshmana Gowda (1981) 1 Kant LJ 1) has been followed in (viii) Substitution of new Section 7 for original Sec. 7 of the Principal Act by Section 4 of the Amending Act, could not be regarded as being void on the ground of violation o' Article 14 or 31 of the Constitution; (ix) Section 5 of the Amendment Act can-not be held to be violative of Article 14 of the Constitution; and (x)The proviso to sub-section (1) of substituted Section 7 of the Principal Act is not void as being violative of principles of natural justice. several decisions. Relying on the decision on Question No. (iii) in Lakshmana Gowda based on the doctrine of feeding the grant by estoppel, it was consistently held in several decisions that alienations of service I am Lands which took place between the date of commencement of the Principal Act (1-2-1963) and the date of coming into force of the Amendment Act (7-8-1978) were not void and that the alienees will perfect their title, on subsequent re-grant to their alienors, even thqugh there was no re-grant as on the date of alienations. 11. Then came two Division Bench decisions of this Court in the case of Hanumaiah and Chikkanarasiah (1LR 1989 Kant 1520). In those cases, the alienations by the holders were after 1 -2-1963, but prior to 7-8-1978. There were no recants under S. 5 or 6 in favour of the alienors either prior to 7-8-1978 or after 7-8-1978. After the Amendment Act came into force, orders were passed under S. 7 of the Act, directing summary eviction of the alienees under S. 7(1) and thereafter re-grantirg the lands to the alienors under S. 7(3). It was held (a) alienees between 1-2-1963 and 7-8-1978 were 'unauthorised holders' unless the alienation was preceded by regrant; (b) until re-grant was made the holder will have no title to the land and consequently the alienee/purchaser would acquire no title to the land purchased by him; and (c) the alienees between 1-2-1963 and 7-8-1978 were liable to be summarily evicted under S. 7, if re-grant had not been made in favour of their alinors before 7-8-1978. It was also held that the subsequent re-grant to the alienor, under S. 7(3) of the Act, that is re-grant made after summary eviction of the alienee will not enure for the benefit of the alinee. In other words, it was held that in regard to alienations between 1-2-1963 and 7-8-1978, the alinees would get title, only if the re-grant was also made prior to 7-8-1978; and where the alienations were between 1-2-1963 and 7-8-1978, but re-grants were not made before 7-8-1978, the alienees will not

acquire any title and were liable to be summarily evicted. These two decisions had the effect of restricting the applicability of the decision on question (iii) in Lakshmana Gowda's case ((1981) 1 Kant LJ 1), only to cases where both alienation and re-grant were between 1-2-1963 and 7-8-1978. It should be noticed that the question whether an alienee between 1-2-1963 and 7-8-1978 could be evicted, if there was a re-grant under Section 5 or Section 6 after 7-8-1978 did not really arise for consideration in the cases of Hanumaiah and Chikkanarasaiah, as in those cases, there was no re-grant under Section 5 or 6, after 7-8-1978. 12. However, another Division Bench of this Court struck a different note in Adiv-eppa's case . In that case, the alienation took place between 1-2-1963 and 7-8-1978. The application of the holder for regrant was pending on 7-8-1978. The Tahsildar ordered eviction under amended S. 7(1). Learned single Judge refused to interfere with such order of eviction, on the ground that mere pendency of an application for re-grant did not justify interference. However, in appeal, the Division Bench held that the lienees who purchased the service inam land between 1-2-1963 and 7-8-1978 acquired a valid right in regard to the land, that is the right to get their title perfected on re-grant under the doctrine of feeding the grant by estoppel and that right cannot be defeated by the Authorities by resorting to proceeding for eviction under S. 7 even before deciding the applications for re-grant. This Court, therefore, held that in regard to alienation between 1-2-1963 and 7-8-1978, the Authorities should consider the application for re-grant first and only thereafter should take up the eviction proeedings. This Court directed that if the order of re-grant was made under S. 5(1) or 6, then the authorities wilt have to regularise the sale in favour of the alienee by collecting the amount equal to 15 times the assessment; and if the application for re-grant was not successful under S. 5 or 6, then the Authorities may proceed with the eviction proceedings. Two earlier Division Bench decisions of this Court in Amruth v. Assst. Commr. (W.P. No. 4791 of 1979 decided on 16-7-1985) and N. H. Ramachandraiah v. State of Karnataka (W.A. No. 2020 of 1985 decided on 2-8-1988) have also taken a similar view. It was held that an alienee is entitled to continue in possession until an order is made on the application of the alienor for re-grant and there can be no eviction of the alinee until the disposal of such application for re-grant; and that the proper course for the Authority is to deal with the application for re-grant in the first instance, as any re-grant would enure to the benefit of the petitioner. 13. It would thus be seen that the view taken in Adiveppa , Amruth and Ramachandraiah run counter to the view taken in Hanumiah and Chikkanaraiah . The decision in Hanumiah and Chikkanarasiah proceed on the basis that, if the re-grant was not made before 7-8-1978, then the alienation even though between 1-2-1963 and 7-8-1978 will be null and void and the alinee can summarily be evicted; on the other hand the decisions in Adiveppa, Amruth and Ramachandraiah proceeded on the basis that as there was no bar or prohibition in regard to alienation of re-granted land between 1-2-1963 and 7-8-1978, an alienee of Service Inam Land between 1-2-1963 and 7-8-1978 even before grant would acquire a valuable right which will fructify into absolute title and ownership, on the re-grant being made on the doctrine of feeding the grant by estoppel and therefore it mattered not,

whether re-grant was prior to or after 7-8-1978. It is this obvious inconsistency between Hanumaiah and Chikkanarasiah on the one hand and Adiveppa, Amruth and Ramachandraiah on the other, that requires to be considered by us. 14. At this juncture, we may also refer to the decision of the Division Bench of this Court affirmed by the Supreme Court in the case of G. M. Harkuni referred to in the order of reference. In Harkuni's case, the re-grant was on 15-1-1968. T.he Deputy Commissioner had also granted sanction for the sale on 28-8-1968. However, the alienation on the strength of such sanction was not done before 7-8-1978 but was done subsequently on 4-12-1982. It was contended that as the re-grant and sanction for sale were prior to 7-8-1978, alienation after 7-8-1978 could not attract the penal provision of S. 5(4). The Division Bench held, following Lakshmana Gowda ((1981) 1 Kant LJ 1), that all transfers made after 7-8-1978, irrespective of the fact that re-grant and sanction were prior to 7-8-1978, were invalid. This decision was affirmed by the Supreme Court, while so doing the Supreme Court reiteraled its approval (to the) decision in Lakshmana Gowda. The decisions in Harkuni will not however throw any light in resolving the inconsistency between Hanumaiah and Chikkanarasiah on the one hand and Adiveppa , Amruth and Ramachandraiah on the other hand as Harkuni dealt with a sale subsequent to 7-8-1978. 15. To clear the deck, we may also briefly refer to categories of alienees who are not entitled to any protection or relief under the Act, as a consequence of abolition of Village Offices and Emoluments attracted thereto: (a) The alinees in possession of service inam lands under alienations prior to 1-2-1963, which were null and void under the existing laws relating to a 'village office' which were in force prior to 1-2-1963, and persons in pos- session of service inam land without any right (that is rank trespassers or agreement holders put in possession prior to 1-2-1963), who are defined as 'unauthorised holders' under S. 2(m) of the Act, are liable to be evicted summarily under S. 7 of the Act. Note: Under S. 7 as originally enacted such unauthorised holders were given an opportunity to apply to the Deputy Commissioner for regrant of the land on the ground of hardship, if he had made investments for development of-the land or put the land for non-agricultural use or for other reasons. This right was taken away by the newly substituted Section 7 with effect from 24-12-1975 and all applications which were pending, for re-grant under old Section 7(1) abated on 24-12-1975 having regard to Section 5 of the Amendment Act. In Lakshmanagowda's case (1981) 1 Kant LJ 1) the position of such unauthorised holders is covered by questions Nos. (i) and (v) and it has been held that alienee under an alienation prior to 1-2-1963 or an agreement holder put in possession prior to 1-2-1963 did not acquire any title to such Service Inam Land, and any subsequent re-grant in favour of the alienor will not enure to his benefit. (b) The alieneees of service inam lands under alienations between 7-8-1978 and 6-8-1993 are liable to be evicted summarily under S. 5(4). S. 5(3) as amended provides that the re-granted land shall not be transferred for a period of 15 years from 7-8-1978 and under Section 5(4) any transfer in contravention of S. 5(3) shall be null and void and the lands so transferred shall be forfeited and vest in the State Government free from all encumbrances and any person in possession shall be liable to be summarily evicted. Even if the

re-grant or sanction for sale is prior to 7-8-1978 that would not in any way affect the invalidity of the sale (vide decision in Lakshmana Gowda on question No. (vii) and the decisions in Harkun's case) Note: the only exception to the 15 year bar being re-grants to the holders of a village office in an enfranchised inam (that is an inam of which there is proof of enfranchisement as required under the Madras Enfranchised Inams Act, 1862) which could be transferred in the manner provided in the proviso to S. 5(3) of the Act. 16. But what is the position of the alienees between 1-2-1963 and 7-8-1978? In regard to alienations between 1-2-1963 and 7-8-1978, if the re-grant is also made between 1-2-1963 and 7-8-1978, there is unanimity in the view that the alienee would acquire title, and even if sanction of the Deputy Commissioner was not obtained, the transfer could be regularised, by paying an amount equal to fifteen times the assessment. However, if the alienation is between 1-2-1963 and 7-8-1978 and no re-grant has been made as on 7-8-1978, what would be the position in regard to such alienation and whether the decision on question No. (iii) in Lakshmana Gowda would cover such a case? If Lakshmana Gowda has decided the question in cntro-versy, then the decision therein would bind us as the same has been fully approved by the Supreme Court in Seenappa's case . 17. In this background, the questions that arise for our decision can be formulated thus: (i) Whether the alinee from a 'holder of Village Office' of authorised Holder' under an alienation which took place after the appointed date on which the Principal Act came Into force (1-2-1963) and before the Amendment Act came into force (7-8-1978), would acquire title even if the re-grant under Section 5 or 6, as the case may be, is after 7-8-1978? (ii) Alternatively, whether the alienation of a service inam land by the Holder or authoris- ed holder, in favour of an alienee, pxarfe between 1-2-1963 and 7-8-1978, would become null and void, if the re-grant under S. 5 or 6 was not made in favour of the alienor before 7-8-1978? (iii) Whether the above questions are decided in Lakshmana Gowda's case? 18. The definitions of the terms 'holder', authorised holder' and 'unauthorised holder' in the Act have one thing in common. They are all with reference to the appointed date, namely, 1-2-1963. While 'holder' refers to holder of a village office, the terms 'authorised holder' and 'unauthorised holder' do not refer to holders of Village Office, but alienees from holders of Village Office or persons in possession of Service Inam Land. A 'holder'is a person having an interest in a Village Office, under an existing law relating to such village office. An 'authorised holder' is a person in whose favour, a land granted or continued in respect of or annexed to a village office had been validly and permanently alienated, under the existing law relating to such Village Office. An 'unauthorised holder' is a person in possession of a land granted or continued in respect of or annexed to a Village Office, without any right, or under an alienation, which is null and void under the existing law, relating to such village office. The term 'existing law relating to a village office refers to a law, Rule, Notification etc., which may be in force immediately before the appointed date, that is immediately prior to 1-2-1963 or up to the expiry of 31-1-1963. A holder has a right to re-grant of his service inam land in his holding or possession as at the end of 31-1-1963 (under subsection (1) of S. 5). This is evident from the words 'land resumed under S..4(3),

not falling under Ss. 6 and 7', An authorised holder is a person having the right to re-grant of the Service Inam Land validly alienated to him before 1-2-1963 (under SEC. 6). An alienee in possession of a service inam land, in pursuance of an alienation between 1-2-1963 and 7-8-1978, is not a person without any right, but a person, who gets an imperfect title with possession on the date of alienation and whose title gets perfected on re-grant in favour of the alienor. Further an alieantion of a service inam land between 1-2-1963 and 7-8-1978, is not an alienation which is null and void under the existing law relating to the village office, that is, laws in force immediately before 1-2-1963. It therefore follows that a person in whose favour, a service inam land is alienated during the period 1-2-1963 to 7-8-1978 by a 'holder' or an 'authorised holder', before re-grant to such holder or authorised holder under S. 5(1) or 6, will neither be a 'holder' or an 'authorised holder' or an unauthorised holder'. Such a person will be an 'alienee from a holder/authorised holder with imperfect title (hereinafter referred to as 'Alienee with Imperfect Title' or 'Alienee between 1-2-1963 and 7-8-1978). 19. The Act contemplates eviction by the State only in the following four situations: (a) Where a holder or an authorised holder to whom the land is re-granted under S. 5(1) fails to pay the occupancy price (vide Ss. 5(2) and 6 of the Act); (b) Where a holder or an authorised holder to whom the land is re-granted under S. 5(1) or 6 transfers the land within 15 years from 7-8-1978 (vide Ss. 5(3) and 6 read with S. 5(4) of the Act); (c) Where an unauthorised holder is in possession of a land resumed under S. 4(3) - (vide S. 7(1) of the Act); (d) Where a grantee of a land re-granted under S. 5(4) or S. 7(3) of the Act after summary eviction of the unauthorised holder or occupant under S. 5(4) or 7(1) transfers the land within 15 years from 7-8-1978 (vide S.7A of the Act). There is no provision in the Act for summary eviction of an alienee with imperfect title that is an alienee between 1-2-1963 and 7-8-1978. In the cases of Hanurnaiah and Chikkanarasiah, , it has been assumed, without basis, that an alienee with imperfect title (that is alienee during the period 1-2-1963 to 7-8-1978) is an 'unauthorised holder' who could be evicted Under S. 7. We have already seen that under S. 7, only an 'unauthorised holder' could be evicted and not an alienee between 1-2-1963 and 7-8-1978 as he is not an 'unauthorised holder'. At this juncture, the relevant portions from the judgment in Lakshmana Gowda's case ((1981) I Kant LJ 1) may conveniently be referred. The following are the observations relating to question No. (iii): "65. We have already held that though the holder or the authorised holder of a Service Inam Land got title to such land only when it was actually regranted to him under S. 5 or 6 of the Principal Act, such title related back to the date of coming into force of that Act. From this, it would follow that if he purported to alienate such laud before it was, re-granted to him, but after the Principal. Act 'came into force, the doctrine of feeding in grant by estoppel embodied in S. 43 of the Transfer of Property Act, would apply and the title he subsequently acquired on such re-grant of that land would enure to the benefit of his alienee who would get a good title to such land after such re-grant to his alienor. There is also no good reason why the bcnefit of, 43 should be denied to such an alienee when the Principal Act did not prd-the holder or the authorised service inam. land from

transferring his. interest or right therein after it was resumed and before it was regranted to him. 66. Hence our answer to the question is that if the holder or the authorised holder of a service inam land had alieanted it after the principal Act came into force and before it was re-granted to him under S. 5 or 6 of the Principal Act, the alienee acquired a title to that land after such re-grant to his alienor." 20. The discussion in regard to question No. (vi) runs as follows : "76. Original sub-section (3) of S. 5 of the Principal Act provided, inter alia, that a Service Inam Land re-granted under subsection (1) of that Section was not transferable without the previous sanction of the Deputy Commissioner and that such sanction should be granted only on payment of an amount equal to 15 times the amount of full assessment of the land. The position was the same in regard to lands regranted under Section 6 of the Principal Act. As to what is the consequence of a transfer of a land regranted under S. 5 or 6 of the Principal Act without obtaining the previous sanction of the Deputy Commissioner was the subject of considerable debate. The learned Advocate General contended that such transfer was void because the condition precedent for such transfer, namely, obtaining the previous sanction of the Deputy Commissioner, had not been satisfied. On the other hand, learned Counsel for the petitioners contended that the requirement of such previous sanction was not mandatory but was only directory, that a transfer made in contravention of such requirement was not void and that on payment of 15 times the full assessment, the defect due to not obtaining such previous sanction would be cured. 77. To decide which of the above rival contentions should be accepted, we have to examine the object of original sub-section (3) of S. 5 of the Principal Act. Once village offices were abolished, lands attached thereto ceased to be emoluments of such offices. No public policy was involved, in our opinion, in prohibiting transfer of such land after abolition of village Offices. Under original subsection (3) of Sec. 5 of the Principal Act, the Deputy Commissioner had no option but to grant such previous sanction to the regrantee of a land under S. 5 or 6 of that Act, if he had paid an amount equal to 15 times the full assessment of that land. The provisions in Ss. 5,6 and 7 of the Act envisaged conferment of title to Service Inam Lands upon re-grantees, i.e., holders, authorised holders or unauthorised holders at concessional price if they wanted to retain those lands for themselves without the right to alienate them and at higher price if such regrantees desired to have those lands together with the right to alienate them. Thus in imposing a restriction on alienation of lands by the grantees under the said provisions the Legislature did not intend to prohibit totally regrantees from alienating the regranted lands. The only abject of sub-section (3) of S. 5 of that Act which was made applicable to subsequent alienations by all types of regrantees was to collect higher prices for the lands regranted if the regrantees wanted to have the right of alienating such lands. Hence the omission to obtain the previous sanction of the Deputy Commissioner under original sub-section (3) of S. 5 of the Principal Act did not, in our opinion, render void a transfer of a land re-granted under S. 5 or 6 or 7 of the Principal Act prior to 7-8-1978, but such transfer can be regularised by paying to the Government an amount equal to 15 times of full assessment of that land." 21. On the question whether S. 5(4) affect-

ed alienations prior to 7-8-1978, that is alienations contemplated under the unamended Section 5(3), it was held: "87. In the light of the above principles of statutory construction, we hold that sub-sec. (4) of S. 5 of the Principal Act should be construed as being applicable only to transfers made subsequent to 7-8-1978 and not to transfers which had taken place prior to that date and that sub-sec. (3) occurring in the Section should be construed as having reference to amended sub-sec. (3) and not to original sub-sec. (3) of that Section." 22. Section 5 (1) and Section 6 which entitle the holder of the village office or an authorised holder for regrant of the land on fulfilment of conditions stated therein have not been amended by the Amendment Act. Under Section 5(1) and (6), what is relevant for regrant is the position, immediately prior to the appointed date (1-2-1963) and not the position as on the date of regrant. As Section 5(1) and S. 6 remain unaltered and unaffected by the Amendment Act, we do not see how the amendment of S. 5(3) or substitution of Section 7 or introduction of S. 5(4) to 5(6) and S. 7A by the Amendment Act, will affect the right of the alienor to obtain regrant or the right of the alienee to have the benefit of such re-grant obtained by the alienor enuring to the alienee, if the alienation is after 1-2-1963 and prior to 7-8-1978. Neither the Principal Act, nor the Act as amended provides that if the service inam land had been alienated prior to 7-8-1978 without obtaining re-grant, (he alienor will not thereafter be entitled to regrant. 23. Though the application for re-grant may be considered after 7-8-1978, (he consideration of entitlement to re-grant will be with reference to 31-1-1963, that is the date immediately prior to the appointed date (1-2-1963). That is why, while dealing with point (iii) in Lakshmana Gowda, this Court held that an alienee of service inam land, under an alienation after 1-2-1963 will not be entitled to apply for or obtain regrant in his own name, but will be entitled to perfect his title to such land on re-grant to the alienor, by applying the doctrine of feeding the giant by estoppel. There is no restriction or rider in the said decision linking title to the date of re-grant. The only restriction is contained in Sections 5(3) and 5(4) which bar alienations after 7-8-1978 for a period of 15 years. If this court had intended that re-grant also should have taken place before 7-8-1978, to enable the alienee to acquire title, that would have been made clear while answering Point (iii). A careful reading of the discussion regarding Point (iii) will show that this court did not consider the date of re-grant to be relevant, to determine the validity of alienations between. 1-2-1963 and 7-8-1978. 24. Apart from the fact that the said decision on point (iii) in Lakshmana Gowda applying the doctrine of feeding the grant by estoppel is a just and proper interpretation of the relevant provisions of the Act, the rule of stare decisis is a compelling reason to follow it. Lakshmana Gowda has held the field for more than a decade and has been followed consistently and also confirmed repeatedly by the Supreme Court. Even Hanumiah and Chikkanarasiah purported to follow it. In such a situation to use the words of Supreme Court in Raj Narain Pandey v. Sant Prasad Tewari : "In the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view would not only introduce an element of uncertainty and confusion, it would also have the

effect of unsettling transactions which might have been entered into on the faith of those decisions. The doctrine of stare decisis can be aptly invoked in such a situation." Thus any doubt or debate about the applicability of the doctrine of feeding the grant by estoppel to transactions between 1-2-1963 and 7-8-1978 will have to be set at rest by accepting and following the decision in Lakshmana Gowda. The following passage from Salmond on Jurisprudence (12th Edition) at page 157 is worth referring: "Where the decision has stood for some length of time and been regarded as establishing the law, people will have acted in reliance on it, dealt with property and made contracts on the strength of it, and in general made it a basis of expectation and a ground of mutual dealings. In such circumsianccs, it is better that the decision, though founded in error, should stand." Stare decisis, that is, the rule of abiding by decisions is a sound and well settled policy, based on the principle that definiteness and finality, consistency and security, require that an accepted and established decision, on the basis of which, several contracts/dealings/ transactions/settlements would have taken place, should not be disturbed, even if it is subsequently found to be not legally sound. We hasten to add that Lakshmana Gowda is neither founded in error nor legally unsound. We have referred to the rule of stare decisis at some length only to underline that, even if a different view is possible, it is not prudent or advisable to change the settled position, at this stage. It may be noted that the decision on Point (iii) in Lakshmanagowda is relevant only to alienations between 1-2-1963 and 7-8-1978. Thereafter there was an absolute bar for 15 years and again from 7-8-1993 there is no bar. 25. We therefore hold that alienations between 1-2-1963 and 7-8-1978 cannot be invalidated on the ground that there was no regrant prior to 7-8-1978. It now becomes necessary to examine whether Hanumaiah and Chikkanarasiah can co-exist with Lakshmana Gowda. 26. In Hanumaiah's case the alienations were in the years 1967, 1968 and 1969, that is, after 1-2-1963 and before 7-8-1978. There were no re-grants in favour of the alienors. After the Amendment Act came into force, the Tahsildar initiated proceedings under Section 7 and by order dated 14-6-1982, directed summary eviction of the alienees treating them as unauthorised holders, and re-granted the lands in favour of the alienors. One of the contentions urged by the alienees was that when the lands were regranted to their respective alienors under S. 7(3), the benefit thereof would enure to them, by applying the doctrine of feeding the grant by estoppel. The learned single Judge referred the matter to a Division Bench for consideration on the following question: "Whether he regrant order made under S. 7 of the Act stands on the footing as that of regrant order made under Sections 5 and 6 of the Act?" At the time of hearing before the Division Bench, the alienees conceded that they were 'unauthorised holders' of the land and that no re-grant had been made in favour of their alienors before their dispossession. The Division Bench held that the alienees between 1-2-1963 and 7-8-1978 will not be entitled to any relief on the following reasoning : (a) the lands had already vested in the State Government and as there was no re-grant, the alienors had no subsisting title that could be transferred to the alienees; (b) therefore the sales in favour of the alienees were null and void; (c) consequently the alienees were rank trespassers and will be 'unauthorised holders' under the

Act; (d) amended S. 7 took away the right of 'unauthorised holders' to claim re-grant under any circumstance; (e) alienees with full knowledge of the legal position that the transfers made in their favour is in contravention of any law cannot put forth or have a grievance in law or in equity; and (f) re-grants made under S.7(3) did not stand on the same footing as that of a re-grant made under S. 5 or 6 of the Act. 26.1. We fully agree with the conclusions at (d) to (f). It is no doubt true that if any alienation is prohibited and declared as void and if the alienee being aware of such a position, enters into a transaction, he cannot thereafter plead equity or claim the benefit of the doctrine of feeding the grant by estoppel. Similarly conclusion (d) that amended Section? takes away the right of 'unauthorised holder' to claim re-grant, and conclusion (0 that re-grant under section 7(3) is basically different from re-grants under Sections 5 and 6 cannot be doubled as they arc fully in consonance with the respective sections. 26.2 But we are unable to agree with the reasoning at (a) to (c). An alienee between 1-2-1963 and 7-8-1978 is neither an 'unauthorised holder' nor a rank trespasser. The holder/authorised holder, has a valid and vested right to get re-grant in regard to his service inam land, which was resumed under S. 4(3). Though the holder/authorised holder does not get title till re-grant, in the absence of any prohibition regarding alienation and in view of the express provision for permission for alienation, on payment of a specified amount, which existed in the Statute Book tilt 7-8-1978, the holder/authorised holder had a definite right in regard to such land, that is a vested right to get regrant under S. 5(1) or 6; and as held in Lakshmana Gowda, any alienation by him will not be void. Therefore, an alienee between 1-2-1963 and 7-8-1978, cannot be termed as a person in possession without any manner of right, nor can be considered a rank trespasser. S. 7, either as originally enacted or as substituted, has no application to an alienee between 1-2-1963 and 7-8-1978. In Hanumaiah these aspects were not considered, as the alienees erroneously conceded that they were unauthorised holders. 26.3 Paras 55 and 75 of Lakshmana Gowda were relied on in Hanumaiah to reach the conclusions enumerated as (a) to (c) above, that such an alienee will be a rank trespasser and he cannot claim the benefit of the doctrine of feeding the grant by estoppel. But the observations in paras 55 and 75 of Lakshmana Gowda were made with reference to questions (i) and (v) therein, relating to alienations prior to 1-2-1963 and not with reference to alienations after 1-2-1963. In fact, paras 65, 66, 76 and 77 extracted above deal with alienations after 1-2-1963. While in Lakshmana Gowda, the distinction between alienation prior to 1-2-1963 and the alienations after 1-2-1963 has clearly been demarcated, in Hanumaiah, they are treated on the same footing. In Lakshmana Gowda, in regard to alienations prior to 1-2-1963 which were null and void, it was held that the doctrine of feeding the grant by estoppel will not apply; but alienations between 1-2-1963 and 7-8-1978 were held to transfer a definite right, which amounted to an imperfect title, which would attract the doctrine of feeding the grant by estoppel, on re-grant to the alienor. Hanumaiah holds that the said doctrine of feeding the estoppel will not apply even to alienations after 1-2-1963. Thus even though Hanumaiah purports to follow Lakshmana Gowda, in effect it is inconsistent with Lakshmana Gowda. Hence

Hanumaiah, to the extent it holds that S. 7 is applicable to alienees between 1-2-1963 and 7-8-1978 and that alienations between 1-2-1963 and 7-8-1978 are null and void, if there is no re-grant before 7-8-1978, does not lay down the correct law. 27. Let us now turn to Chikkanarasiah . In that case, the service inam land was sold by the holder on 18-3-1971, that is between 1-2-1963 and 7-8-1978. There was no regrant in favour of the alienor. By orders dated 15-12-1980 and 16-3-1981, the sale was held to be void. Thereafter, the Tahsildar made an order on 10-6-1983 ordering eviction of the alienee and granting the land to the alienor. Thus the facts in Chikkanarasaiah are similar to the facts in Hanumaiah. The learned single Judge, following Lakshmana Gowda, held that a person who purchased the property after 1-2-1963 and before 7-8-1978 would get title to the property, if subsequently the land is regranted in favour of the alienor and such alienee cannot be treated as an unauthorised occupant, and he cannot be evicted under S. 7. On appeal by the alienor, the Division Bench reversed the decision of the learned single Judge by following Hanumaiah and also by adopting a slightly different reasoning. Though paras 76 and 77 of Lakshmana Gowda were referred, the Court held that the reasoning therein would not apply. It was held that in regard to alienations between 1 -2-1963 and 7-8-1978, not followed by re-grants before 7-8-1978, amended S. 5(3) and S. 5(4) would be applicable, thus rendering the alienations null and void. Lakshmana Gowda held that Ss. 5(3) as amended and S. 5(4) were only prospective in operation and S. 5{4) applied only to transfers made subsequent 10 7-8-1978 and not to transfers which had taken place prior to that date and that sub-sec. (3) referred in S. 5(4), referred to amended S. 5(3) and not to original S. 5(3); on the other hand, the effect of Chikkanarasaiah is that S. 5(4) applies even to unamended S. 5(3) which was in force prior to 7-8-1978; it held that as there was a total bar in regard to alienations for a period of 15 years from 7-8-1978, even if any regrant is made under S. 5 or S. 6 after 7-8-1978, the bar regarding alienation would be attracled to such re-grant forthwith and a reading down of Ss. 5(3) and 5(4) as done in Lakshmana Gowda would in no way benefit the alienee. 27.1. Chikkanarasaiah starts by recognising the position that S. 7(1) applies only to 'unauthorised holders' as defined in the Act and not to others, in para 10 which is extracted below;"Section 7(1) governs the situation where the resumed land 'is in the possession of an unauthorised holder'. If the land is in the possession of an 'unauthorised holder' - - (a term defined under clause (m) of S. 2(1)) - S.7(1) is attracted. Other cases are to be governed by S.5. Thus, if the office holder had validly alienated the land prior to 1-2-1963, and the land is held by the said alienee, S. 6 applies to the fact-situation. If land is in possession of an unauthorised holder, i.e.. a person, to whom there was an illegal attena tion., S. 7(1) is attracted. The case of the office holder himself being in possession is covered by S. 5 and he gels the grant of the land under S. 5 subject to the condilions stated therein". But thereafter it proceeded to hold that an alienee with imperfect title, that is an alienee between 1-2-1963 and 7-8-1978 was an unauthorised holder liable to be evicted under S. 7, on the following reasoning:"When a person purports to transfer a property without title, the transferee gets title only when the alienor acquires a valid title; in such

a case, the moment the alienor gets a good title, the estate would pass on to the transferee by the application of the doctrine of feeding the estoppel. But here, that is not possible because at the very instant of the grant, the bar against alienation imposed by the statute operates." 27.2. We are not in agreement with the said view. What has been overlooked in Chikkanarasaiah (1LR (1989) Kant 1520) is that where the sale is prior to 7-8-1978, and a re-grant is after 7-8-1978, the benefit of re-grant relates back to the date of commencement of the Principal Act and thereby enures to the benefit of the alienee in whose favour, alienation has been made prior to 7-8-1978. The bar against alienation affected only alienations after 7-8-1978 and not alienations prior to 7-8-1978. Section 2(m) makes it clear that only a person who is an alienee under an alienation which is nuil and void under the laws relating to village office which were in force immediately prior to 1-2-1963 (that is the Mysore Village. Offices Act, (he Madras Hereditary Villages'Offices Act, 1895 and the Bombay Hereditary Offices Act, 1874) or a person in possession without any manner of right (that is a rank trespasser or an alienee from a person who was neither a holder nor an authorised holder nor having any manner of right) is an 'unauthorised holder'. Under Ss. 5(1) and 6 of the Act, a 'holder' or an 'authorised holder' has a vested right to obtain re-grant. Once the person is held to be a 'holder' or 'unauthorised (sic) (authorised) holder', there is no discretion in the Authority to refuse re-grant. As noticed earlier, it cannot be said that the 'holder' or 'authorised holder' has no right at all in regard to the service inam land, till it is re-granted. No doubt he would get title, only when there is re-grant and not before, as has been held in Lakshmana Gowda's case while answering Question No. (ii). But nevertheless he has a vested right to get re-grant and that is why it was further held that he could validly transfer the land with the imperfect title, till 7-8-1978. When the re-grant is made, the re-grant will relate back to 1-2-1963 and perfect his title and the benefit thereof will automatically accrue to the alienee by application of the doctrine of feeding the grant by estoppel embodied in S. 43 of the Transfer of Property Act. The bar against alienation contained in S. 5(4) which operates prospectively from 7-8-1978 will not therefore in any way affect any alienation made prior to 7-8-1978, nor affect the title that will enure to the alienor by reason of the re-grant. When the alienation is prior to 7-8- 1978, and the re-grant resulting in feeding the grant by estoppel is after 7-8-1978, there is no transfer or alienation after 7-8-1978. Thus, S.5(4) will not invalidate the alienation. Hence even if the bar against alienation imposed by the Statute will operate from the very instant of the grant, it will not in any way come in the way of re-grant relating back to the date of commencement of the Act and consequently enuring to the benefit of the alienee. We, therefore, hold that Chikka-narasiah also does not lay down the correct law. 28. The decision on question No. (iii) in Lakshmana Gowda's case applies to all alienations between 1-2-1963 and 7-8-1978, irrespective of whether the re-grant is prior to 7-8-1978 or after 7-8-1978. The decisions in Hanumaiah and Chikkanarasaiah which proceed on the basis that re-grant should also be prior to 7-8-1978, to validate alienation made between 1-2-1963 and 7-8-1978, do not lay down the correct law. The decisions in Adiveppa, Amruth and Ramachandraiah are fully

consistent with the decision in Lakshmana Gowda and correctly lay down the law. We accordingly answer the first and third questions formuiated in para 17 in the affirmative and the second question in the negative. 29. We are conscious of the fact that the Amended Act intends to preserve the benefits given to the holders of village office by prohibiting alienation. But the clear effect of the Statute as it existed prior to 7-8-1978 cannot be ignored and if parties had acted on the position of law as it existed up to 7-8-1978 and alienations had taken place on that basis, their validity cannot be challenged on the ground that the subsequent amendment introduced a different state of things. The amendment was not with retrospective effect. 30. What emerges from the above discussion may be summarised thus, in continuation and clarification of the ten answers given in Lakshmana Gowda ((1981) 1 Kant LJ I): (a) Alienation of re-granted 'service inam land'during the period 1-2-1963 to 7-8-1978 is valid and permission for sale is only a formality as the Deputy Commissioner was bound to give permission on mere payment of an amount equal to 15 times of land assessment. (b) Under Ss. 5(1) and 6 of the Act, any holder of a village office or any authorised holder has a vested right to obtain re-grant of the service inam land, which was held by him immediately before 1-2-1963 (that is as at the end of 31-1-1963) subject to payment of occupancy price in terms of the Act and the Rules; the fact that the holder or authorised holder had alienated the land and divested himself of possession of the land after 1-2-1963 and before 7-8-1978 will not disentitle him, to re-grant under S. 5(1) or 6 of the Act, as what is relevant for re-grant is holding of such land as the end of 31-1-1963. (c) Alienation of service Inam land between 1-2-1963 and 7-8-1978, by a holder or an authorised holder before re-grant, is not invalid, as he had a vested right to get re-grant and as there was no bar regarding alienation during that period; but the alienee will be a person with imperfect title entitled to continue in possession and when the land is re-granted to the alienor, the title obtained by the alienor will enure to the benefit of the alienee; (d) The date of re-grant, whether before or after 7-8-1978, will not be relevant to determine the validity of the alienation between 1-2-1963 and 7-8-1978, as what is prohibited after 7-8-1978 prospectively for a period of 15 years is alienation and not re-grant. (e) The alienee between 1-2-1963 and 7-8-1978 has no right to seek re-grant in his own name and his right is only to claim the benefit of doctrine of feeding the grant by estoppel as and when re-grant is made to his alienor under S. 5(1) or 6; and for this purpose he may support or pursue any application for re-grant in favour of his alienor; (f) There is no provision in the Act authorising the State Government on its authorities to evict an alienee under an alienation made between 1-2-1963 and 7-8-1978. Section 7 is not applicable, as such an alienee is not an 'unauthorised holder'. If the land alienated between 1-2-1963 and 7-8-1978, is subsequently regranted to the alienor, the benefit of such re-grant, namely, title will enure to the benefit of the alienee. If the land is not regranted to the alienor, but to some one else on the ground that the alienor is not a 'holder' or 'authorised holder', then the alienee will be in the position of a transferee from a person without any title; and the grantee to whom the re-grant is made, will be entitled to obtain possession from the alienee and the limitation for such grantee

to dispossess the alienee will commence from the date of re-grant. 31. Learned counsel for the parties submitted that we may dispose of the appeal itself on merits. Accordingly, we proceed to consider the appeal on merits. 32. The appellants contend that they are the legal heirs of late Syed Abdul Sattar; that respondents 3 to 5 and their family members were the holders of an inferior village office and Sy. No. 41 in Tayalur Village was a land annexed to the said village office; the said Abdul Sattar purchased an extent of 2 acres 17 guntas in Sy. No. 41 from respondents 3 to 5 under a sale deed dated 22-8-1963 after the Principal Act came into force. 33. The said Abdul Sattar is also stated to have purchased another extent of 1 acre 381/2 guntas in Sy. No. 41 from one Sakamma under a sale deed dated 24-12-1964. The said Sakamma had sold the extent from out of two portions of Sy. No. 41 (measuring 2 acres 37 guntas and 20 guntas) purchased by her from Thoti Pillappa, father of respondents 3 to 5 under sale deeds dated 12-10-1962 and 24-11-1962. Thus the extent of 1 acre 381/2 guntas relates to an alienation made by a holder prior to 1-2-1963 when the Act came into force. 34. It is stated that respondents 3 to 5 and/or their family members had applied for re-grant and the matter is still pending. Annc-xure 'C' to the petition, discloses that one of the members of the holder family namely Thoti Chinnappa had applied on 20-12-1966, for re-grant of Sy. No. 41 and other lands and the second respondent ordered the resumption of the lands and eviction of the alienees on the ground that the lands had been alienated. In pursuance of it, the Second respondent had initiated action for eviction of Syed Abdul Sattar in regard to an extent of 1 acre 1214 guntas in Sy. No. 41 as per Annexure-D dated 19-5-1984. The said notice discloses that the said Abdui Sattar was declared to be ah unauthorised holder by an order dated 9-7-1982. That order is not produced. The sale deeds under which Abdul Sattar purchased the lands are not produced. From the facts stated and the documents produced, it is not possible to determine whether the notice dated 19-5-1984, relates to the land purchased by Abdul Sattar under sale deed dated 22-8-1963 from respondents 3 to 5 or to land purchased by Abdul Sattar from Sakamraa from out of land purchased by her from Thoti Pillappa prior to 1-2-1963. It may also be noticed that the Appellants contended that the land had been regranted to Thoti Chinnappa representing the holder's family and as per the understanding among the members of the holder of the village office, respondents 3 to 5 have a fifty per cent share and interest in the service inam lands. However these are not borne out by the documents produced. No counter appears to have filed by any of the respondents. 35. The Appellants filed W. P. 16164 of 1984 for quashing Annexure 'C' and for striking down the Amendment Act (Act No. 13 of 1978) or in the alternative for a direction that the provisions of the Amendment Act should not be applied to them, as their (ransactions were outside the scope of the Amendment Act. The appellants did not seek quashing of Annexure-D presumably as their prayer that Act 13/1978 should be held to be inapplicable to their lands covered, such relief. The writ petition was dismissed by the learned Single Judge on the ground that the matter was covered by the decisions in Hanumaiah and Chikkanarasaiah. Feeling aggrieved, the Appellants have filed this appeal. Before us the learned counsel

for appellants did not press the contention regarding the constitutional validity of the Amendment Act (Act 13/1978) as the Supreme Court has affirmed the decision in Lakshmana Gowda ((1981) 1 Kant LJ 1) upholding the validity of the said Act. She submitted that in so far as purchase of land by Abdu! Sattar subsequent to 1-2-1963, Adiveppa's case should be applied. It is evident from our discussion above, Anne-xures 'C' and 'D' are liable to be quashed as they are erroneous. 36. In the result, we allow the appeal in part on the following terms: (a) The order dated 9-11-1990 passed by the learned Single Judge in W. P. 16164/1984 is hereby set aside and W. P. 16164/1984 is allowed to the extent of quashing Annexures-'C' and 'D'. (b) The Writ Petition is rejected in regard to prayers (b) and (c). (c) The matter is remitted to the second respondent for fresh enquiry and disposal in accordance with law and in accordance with our decision, in the following manner : he shall: (i) determine the extent of service inam land alienated prior to 1-2-1963 and after 1-2-1963. (ii) In regard to the land alienated prior to 1-2-1963 if such alienations are null and void under the Mysore Village Office Act, 1908 then consider the prayer for re-grant by the holders under S. 7(3); (iii) In regard to land alienated after 1-2-1963, consider the prayer of the holders for re-grant under S. 5(1); (iv) determine whether the appellant's land forms part of the land alienated prior to 1-2-1963 or after 1-2-1963, and if it is part of land alienated after 1-2-1963 and if re-grant is made in respect of such land, then regularise the sale in accordance with law; (v) if the re-grant is not made to the ah'enor or his family but to any one else on the ground that the alienor was not the holder of the village office, then such grantee will be entitled to take possession from the alienee in accordance with law. There will be no order as to costs throughout. 37. Order accordingly.