Karnataka High Court A.C. Anantha Swamy And Another vs State Of Karnataka And Others on 30 July, 1998 Equivalent citations: ILR 1998 KAR 3089, 1998 (5) KarLJ 480 Bench: M Saldanha ORDER 1. This group of writ petitions raises just one point namely the question as to whether the Land Tribunal at Bangalore which is hearing the cases was justified in passing the order dated 30-6-1998 refusing to transfer the pending applications to the Special Deputy Commissioner and insisting on going on with the cases. The reason why there are about 20 writ petitions is because there are that many applicants. A contention was raised before the Tribunal by the petitioners to the effect that since the lands in question were originally inam lands that the designated authority under law who is empowered to hear and decide the applications is the Special Deputy Commissioner and not the Land Tribunal. The respondents who are the applicants and the land owner etc. pointed out to the Tribunal that this litigation has had a long history and that even on the last occasion when the case came up to the High Court by way of W.P. No. 26983 of 1997 that my brother Vishwanath, J., through order dated 23-10-1997 refused to interfere with the interim order passed by tbe Tribunal whereby the present petitioners had desired that the validity of the Form No. 7 should be decided as a preliminary issue. The case was remanded to the Tribunal with a direction that it should proceed with the hearing. It was therefore contended before the Tribunal by the respondents' learned advocates that even as late as last year the petitioners had not raised any objection to the Tribunal's jurisdiction that after the remand order from the High Court as many as 17 witnesses have been examined and the next witnesse's evidence is incomplete, that the case has made substantial progress and is close to being decided and that in this background, the application is an afterthought, that it is belated and that it should not be entertained. The Tribunal refused to transfer the cases, one of the obvious reasons being that both on this occasion as also on an earlier occasion in March 1994, the High Court had remanded the cases to the Tribunal and at no time had any objection been raised with regard to the correctness of that authority hearing the disputes. 2. Appearing in support of the petitioners, the learned Advocate Mr. Srinivasan pointed out to me that Act No. 26 of 1979 which was really an amendment to the Inams Abolition Act whereby the cases of the present type were sought to be entrusted to the Tribunal for decision has been struck down by this Court and that the Act itself has been declared to be ultra vires and the State Government accepted the verdict of the High Court pursuant to which the Circular dated 30-8-1997 was issued whereby it was very clearly pointed out that the Special Deputy Commissioners were required to hear and decide all pending cases of this type including those which would have otherwise gone to the Tribunal. Mr. Srinivasan pointed out that there can be no dispute about the fact that the lands which are the subject-matter of this litigation are inam lands and he contended that consequently the statutorily designated authority is the Special Deputy Commissioner which position has been clarified by the State Government in its circular and he therefore maintained that if the Tribunal insists on proceeding with the case that it would be acting without jurisdiction and that ultimately whatever orders the Tribunal passes would be stillborn. On

this ground, he justifies the petitioners having moved the Tribunal for transfer of the cases to the Special Deputy Commissioner. One of the problems in the way of the Tribunal apparently was that normally, the power to transfer is not a power which would have vested with that forum and consequently, it does appear that the Tribunal felt handicapped in the face of this position. More importantly however, since the case had been remanded to the Tribunal and since it was a substantially part heard matter, the Tribunal expressed the view that it was competent to hear and decide the dispute. Mr. Srinivasan's contention is that in the face of the legal position the Tribunal's order is unjustified and that therefore the same ought to be quashed. 3. On behalf of the respondents, I have heard the different Counsels. The first submission canvassed by them is that the application has been made very late, that the proceeding is substantially part heard, that even if the applications were to be granted for any reason that it would only elongate and dilate the litigation and the learned Counsel brought it to my notice that unlike the petitioners, the respondents are people of ordinary means and effectively small persons who are fighting for their rights and that in this background any restarting of the litigation would be disastrous to them. The reason why the learned Counsel highlighted this aspect of the case was because they wanted to demonstrate to this Court that real prejudice would be caused to the respondents if the applications were to be granted and they submit that on the ground of delay alone, these writ petitions should be dismissed. 4. As far as this aspect of case goes, I am in full agreement with the respondents' learned Counsel, because this litigation has been raging for very long time and the length of the litigation works very adversely as far as the respondents are concerned. Also, it is well-settled law that even valid contentions must be raised in good time and if they are raised at a very late stage that a Court would normally refuse to consider them. I need to record without hesitation that in any other situation I would have straightaway upheld this ground and dismissed the writ petitions. I am setting out the reason why I am not doing so. It is the very considerations that I have referred to above that stops me from dismissing the writ petitions because if that is done, the Tribunal will have to proceed with the hearing of the cases which means that the recording of the evidence will have to be completed. These being hotly contested cases, the arguments will take some time and the Tribunal will have to dispose of the case through a detailed speaking order and if at the end of that process the petitioners challenge the validity of the order purely on the ground of want of jurisdiction, it would totally and completely frustrate the entire effort that has gone into the operation. Though it is undoubtedly very late in the day, I am not willing to uphold the objection because I feel that such a course of action would not be even in the interest of the respondents concerned. I however do not propose to allow the petitioner to get away with the fact that this objection has been canvassed at a very late stage and that too when the cases are substantially part heard and I therefore propose to issue certain directions whereby I propose to save everything that has happened upto the present point of time and in addition to that, for having raised objection at a very late stage to my mind, the petitioners even if they succeed will have to

compensate the respondents through the payment of reasonably heavy costs. 5. It was pointed out to me on behalf of the respondents, particularly on the basis of Section 126 of the Land Reforms Act that there is very clear mention to inam lands not only in this section but in other parts of the Act and the submission canvassed was that the jurisdiction of the Tribunal is therefore not totally excluded in such cases. Among other things, what the learned Counsel pointed out to me was that these are not only more than administrative distinctions and that therefore the Tribunal proceeding with the case and deciding it would not really vitiate the legality of the proceeding. As far as this argument goes, what needs to be pointed out is that where under a statute and by notification the jurisdiction is restricted to a particular forum namely the Special Deputy Commissioner, by necessary implication the jurisdiction would be excluded from other forums. The law is very clear with regard to the implications of orders passed by the authority devoid of jurisdiction and even if the order is 100% correct on merits, a Court will still strike it down because the order is non est in law. That would be the consequence of the Tribunal proceeding to pass orders in these cases because the position that emerges is that there is no dispute about the fact that after the High Court decision striking down Act No. 26 of 1979 and the circu- lar of the State Government dated 30-8-1997 that no authority other than the Special Deputy Commissioner can hear and decide these cases. 6. I need to point out that on the basis of several decisions, the respondents' learned Counsel submitted that it is still permissible for the Tribunal to hear these cases. The most important of the decisions relied upon was the case in Muniyallappa v B.M. Krishnamurthy and Others, wherein the applicant had approached the Tribunal after the rejection of the claim for occupancy rights under the Inams Abolition Act was denied. This High Court took the view that such an application was not competent but the Supreme Court pointed out that the rejection of the application by the authority under the Inams Abolition Act did not preclude the applicant from moving the Tribunal. The learned Counsel submitted to me that the spirit of this decision implies that even after the land was categorised as inam land even if the applicant has filed Form No. 7 and has moved the Tribunal that the Tribunal is empowered to decide that case. To my mind, this would be doing violence to the legal position. It would also constitute a misreading of the Supreme Court decision. What the Supreme Court had held was that if the authority under the Inams Abolition Act rejected the application that it was not the end of the road for the applicant who may have still have been able to agitate the rights under the Land Reforms Act. One needs to consider the fact that once the application has been rejected by the other authority that by implication it is quite clear that the authority was not the right one and that therefore, it is permissible to approach the Tribunal. 7. I need to deal with the submissions canvassed by the learned Counsel in this regard because they did point out another aspect of the law which emerges from this decision. Their contention was that even if in Muniyallappa's case, supra, he had first approached the authority under the Inams Abolition Act, the fact that his application was rejected leaves one with the position that the applicant had got no order and the Supreme Court still upheld the position that he was entitled to

approach the Tribunal and they therefore submitted that hypothetically if the respondents had applied to the authority under the Inams Abolition Act and failed there that they could have still agitated their rights before the Tribunal and under these circumstances they contended that it is not necessary that they should first go there and then come here because the Supreme Court decision indicated that the Tribunal was not wholly without jurisdiction. Though the argument is rather involved, I need to point out that the position requires a little bit of clarification. What the Supreme Court has held is that even if a party has exhausted the previous remedy that it would not act as a legal bar or res judicata against the party but that decision can never be construed to mean that it would justify the respondents bypassing the authority and coming to the Tribunal directly. That to my mind is the correct legal position. 8. Reliance was also sought to be placed on a decision of our High Court in M. Narayana Rao v Land Tribunal, Honnali and Another . In that decision, it is true that a learned Single Judge of this Court in the year 1979 took the view that a lessee in lawful cultivation of land prior to the abolition of the inams and who continued to cultivate the land as on 1-3-1974 would be entitled to claim occupancy rights under the Land Reforms Act. The position in law has been slightly altered particularly after the decision of the High Court striking down the Amendment Act and the notification of the State Government and having regard to the correct legal position as it obtains at this point of time, with utmost respect to the views canvassed by the learned Single Judge in the year 1979, I am still of the view that as of now the forum for deciding the rights is the one which is prescribed namely the Special Deputy Commissioner. My attention was also drawn to an earlier decision of this Court in Ramakrishniah v Land Reforms Tribunal, Ramanagaram, wherein, in the year 1977 the same view was taken but I have already indicated as to what would be the position at this point of time and the reasons for it. 9. I need to mention at this point of time that the respondents' learned Counsel drew my attention to one other point namely the fact that on an earlier occasion when the Karnataka Appellate Tribunal's decision was challenged and the case came up to this Court in Writ Petition No. 16703 of 1981 connected with Writ Petition No. 343 of 1988, that this Court remanded the proceedings to the Land Tribunal and not to the Karnataka Appellate Tribunal after quashing the order. The submission was that it is therefore very clear that the High Court itself has directed the Tribunal to decide the cases and that a Court of co-ordinate jurisdiction namely the present one should not take any other view. One aspect of the matter which stands out is that it is very clear to me from a reading of that order as also the later order of 1997 passed by my brother Vishwanath, J., that on neither of the occasions was the attention of the Court drawn to the question as to whether the Tribunal was the legally designated authority to decide these cases or whether they should have been sent to the Special Deputy Commissioner. One can say with a degree of certainty that had this issue been brought to the specific notice of the Courts namely that these are inam lands and not agricultural lands and that the authority to decide these disputes is a different one, that this Court would certainly have issued directions that the cases must be routed to the cor-

rect authority. 10. As indicated by me earlier though I have pointed out that the issue had been argued by the learned Counsel at considerable length, to my mind the crux of the dispute rests with the simple question as to whether the Tribunal is the correct forum to hear and decide these disputes and there can be no two opinions about the fact that as the law stands at this point of time the Special Deputy Commissioner is the statutorily designated authority and not the Tribunal. The question arises as to what precisely should be done because the petitioner had applied to the Tribunal to transfer the cases to the Special Deputy Commissioner. That appears to be an over simplification because there would not be much difficulty in transferring the cases to the Special Deputy Commissioner. The consequences of such a course of action to the parties and particularly to the respondents who are at the receiving end is what this Court has to take serious note of, their learned Advocate did bring it to my notice that the starting point of the proceeding before the authority under the Inams Abolition Act has to be an application in Form No. 1 and he pointed out to me that in this case the applicants have not filed any such Form No. 1 nor had they approached that authority but that the applicants have filed the Form No. 7 and approached the Tribunal. Learned Counsel submitted that if this be the position, that it would not be permissible at this point of time to restart the proceeding before the Special Deputy Commissioner by filing the Form No. 1 for obvious reasons namely that it is too late in the day and secondly that it would mean a de novo hearing of the entire proceeding which is against the interest of the parties. I am conscious of this diffculty but I do not share the view that if the proceedings are transferred to the Special Deputy Commissioner in their present form and at the present point of time that the proceedings will be vitiated in any way because of the fact that the Form No. 1 has not been filed by the applicants. If the Form No. 1 and Form No. 7 are effectively scrutinised, they are nothing more than similar applications wherein the basic details and particulars be set out and those particulars only pertain to such details as to nature and extent of the land, the length of time during which the applicant claims to have been in possession and the like. It is a well-settled law that if a party approaches the wrong legal forum and considerable time elapses and the party is thereafter required to approach the correct forum, that the intervening period cannot be treated as a bar as far as limitation is concerned because the law recognises that the party who has been pursuing a legal remedy is entitled to claim exclusion of that period of time. Under these circumstances even if one were to examine the technicalities of the case the transfer of the proceedings will not present any legal bar of limitation as far as the respondents are concerned. 11. The allied issue is the question as to whether Form No. 1 is condition precedent for the Special Deputy Commissioner to exercise jurisdiction. It is a familiar situation that often arises before Courts and judicial forums, that even if the type of proceeding instituted turns out to be erroneous that the Court has the power to direct corrective action because it comes within the doctrine of curability. It is in this background that I need to point out that as far as the respondents are concerned, that they had filed the requisite Form No. 7 and I also understand that it was filed within the prescribed period. Had they filed

Form No. 1 instead of filing Form No. 7 at that point of time they would have still been within time and having regard to the fact that they are now virtually redirected to the correct forum it would only mean that it is a corrective action and in this background, the non-filing of the Form No. 1 will not in any way affect the validity of the proceeding before the Special Deputy Commissioner. On the contrary, Form No. 7 filed by the petitioners will have to be deemed to be analogous to the Form No. 1 which they would have otherwise filed had they gone to that authority in the first instance. I need to clarify this aspect of the law because I do not want a situation whereby obstacles will be raised in the way of the decision of the case before the Special Deputy Commissioner because this litigation has gone on for long enough and it is high time that it is disposed of. 12. Having regard to the aforesaid situation, the impugned order dated 30-6-1998 is quashed and set aside and it is directed that the cases shall stand transferred to the Special Deputy Commissioner. I am conscious of the fact that the cases are part heard but this will not affect the proceedings at all because it is only the evidence that has been recorded. The Special Deputy Commissioner shall continue with the cases from the point at which they were when the hearing was stopped by the interim order of this Court. The parties are represented before me and it is directed that they shall appear before the Special Deputy Commissioner on 20-8-1998 at 11 A.M. when the authority shall issue further directions to the parties with regard to the further course of action in the cases. Having regard to the fact that the cases are very old and that there are several persons whose interests are involved, the authority shall endeavour to clear and dispose of the cases as expeditiously as possible. 13. The last question that arises is with regard to the question of costs. I am fully in agreement with the submissions canvassed by the respondents' learned Advocates that the application to transfer the cases has come at a very belated stage. I had in fact asked the learned Counsel as to why this position was not pointed out before my brother Vish-wanath, J., on the last occasion when the case was sent back to the Tribunal and the reason given was that the Government circular came only after that date. Even assuming that this was the position nothing stopped the petitioners from bringing this fact to the notice of the Tribunal or to this Court at an earlier point of time before the cases had made so much of progress. I have tried to undo the damage that would occur as a result of the transfer but I am still firmly of the view that the petitioners cannot be allowed to get away lightly. In these circumstances they will therefore have to pay exemplary costs as quantified by this Court and the payment of the costs will be condition precedent vis-a-vis the Special Deputy Commissioner. In each of the writ petitions filed before me one of the applicants is a respondent and to my mind, the interest of justice would require that the petitioners be ordered to pay a sum of Rs. 1000/- by way of costs in each of the cases to each of the applicants. As indicated by me, the payment of costs will be condition precedent which means that they will have to be paid to the applicant or to his learned advocate before the petitioners are heard by the Special Deputy Commissioner. 14. The petitions accordingly succeed to this extent and stand disposed of. I have heard the learned Government Advocate on merits on behalf of respondents 1

and 2. At this stage, the learned Counsel Mr. H. Basavaraju who represents respondent 23(a) has pointed out to me that in the course of all these litigation his client has been dragged from Court to Court and in view of this position, it is directed that costs quantified at Rs. 1,000/- will also have to be paid to respondent 23(a). 15. Since the point of law involved in these cases is common, I have disposed of all the writ petitions through a common order which will hold good in all the cases.