

Smt B Lakshmiddevamma vs The Assistant Commissioner on 30 January, 2024

Author: Pradeep Singh Yerur

Bench: Pradeep Singh Yerur

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NC: 2024:KHC:4040
WP No. 11517 of 2012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE PRADEEP SINGH YERUR
WRIT PETITION NO. 11517 OF 2012 (SC-ST)

BETWEEN:

1. SMT.B.LAKSHMIDEVAMMA
W/O.H.KRISHNAMURTHY
DIED ON 17.2.2021.

THE LEGAL RERESENTATIES OF
PETITIONER NO.1
ARE ALREADY ON RECORD NAMELY
PETITIONER No.2(a) to 2(g).

2. SRI H.K. RAJASHEKAR
DEAD BY HIS LR'S
- 2 (a) SMT.PANKAJA
W/O.LATE H.K.RAJASHEKAR
MAJOR
- 2 (b) MASTER SAMUDDHA
S/O.LATE H.K.RAJASHEKAR
MINOR
- 2 (c) MASTER PRABHUDDHA
S/O.LATE H.K.RAJASHEKAR
- 2 (d) SRI H.K.DEVAPRASAD
BROTHER OF LATE.H.K.RAJASHEKAR
MAJOR
- 2 (e) SRI.H.K.BHARATHEESH

Digitally signed
by
GAVRIBIDANUR
SUBRAMANYA
GUPTA
SREENATH
Location: HIGH
COURT OF
KARNATAKA

BROTHER OF LATE H.K.RAJASHEKAR
MAJOR
2 (f) SMT.H.K.JAYAMMA
SISTER OF LATE H.K.RAJASHEKAR
MAJOR

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2 (g) SMT.H.K.VIJAYA
SISTER OF LATE H.K.RAJASHEKAR
MAJOR
ALL ARE R/AT NO.133
BADAMANAVARTHE KAVAL
Kengeri Hobli, AGARA POST
BENGALURU SOUTH RALUK
BENGALURU DISTRICT

.. PETITIONERS

(BY DR. NANDA KISHORE, ADVOCATE)

AND:

- 1 THE ASSISTANT COMMISSIONER
BANGALORE SOUTH DIVISION
BENGALURU
2. THE TAHSILDAR
BANGALORE SOUTH TALUK
BENGALURU
3. SRI MADANLAL BOTHRA
KARTHA OF MADANLAL BOTHRA HUF
AGED ABOUT 54 YEARS
NO.12, 3rd MAIN ROAD
5TH BLOCK, K.P.WEST
BENGALURU - 560 020
4. SRI DHARMACHAND BACHAVAT
S/O.LATE CHAMPALAL BACHAVAT
5. SRI SANTHOSHCHAND BACHAVAT
S/O.LATE CHAMPALAL BACHAVAT
6. SRI SUSHEEL BACHAVAT
S/O.LATE CHAMPALAL BACHAVAT
7. SMT.SHANTADEVI BACHAVAT
W/O.CHAMPALAL BACHAVAT
8. SRI BASANT BACHAVAT
S/O.RAICHAND BACHAVAT

9. SRI VINOD BACHAVAT
S/O.RAICHAND BACHAVAT
RESPONDENTS 4 TO 9
ARE NOW RESIDING AT
NO.96, 6th MAIN ROAD
MAITHRI APARTMENTS
MALLESHWARAM
BENGALURU - 560 003
10. THE DISTRICT COMMISSIONER
BENGALURU DISTRICT

.. RESPONDENTS

(BY SRI VENKAT SATYANARAYAN, HCGP FOR R-1, R-2 & R-10;
SRI DHANANJAY JOSHI, SENIOR ADVOCATE FOR
SRI VIGNESHWAR U., ADVOCATE FOR C/R-3;
SRI B.S.RAGHU PRASAD, ADVOCATE FOR R-5 TO R-9;
NOTICE TO R-4 IS
HELD SUFFICIENT V.O.D 05.11.2014)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A
WRIT OF CERTIORARI TO QUASH THE ORDER OF THE
ASSISTANT COMMISSIONER DATED 27.2.2007 VIDE
ANNEXURE-M AS WELL AS THE ORDER OF THE DEPUTY
COMMISSIONER DATED 4.1.2012 VIDE ANNEXURE-N ETC.,

THIS WRIT PETITION COMING ON FOR FURTHER
HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

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ORDER

This writ petition is preferred by the petitioners seeking a writ in the nature of certiorari to quash the order passed by the Respondent No.1/Assistant Commissioner dated 27.2.2007 vide Annexure-M as well as the order passed by the Respondent No.10/ Deputy Commissioner vide Annexure-N.

2. Heard learned counsel - Dr. Nanda Kishore for the petitioners; Sri Venkat Satyanarayan, learned HCGP for Respondent Nos.1,2 and 10; Sri Dhananjay Joshi, learned senior counsel on behalf of learned counsel - Sri Vigneswara .U for Respondent No.3; and Sri B.S. Raghu Prasad for Respondent Nos.5 to 9.

3. It is the vehement contention of learned counsel - Dr. Nanda Kishore appearing on behalf of the petitioners that the petitioners are the wife and son of one H. Krishnamurthy and the petitioners and their ancestors belong to "Adi Karnataka" caste, which is recognized as Scheduled Caste under the Constitution of India. Learned NC: 2024:KHC:4040 counsel further contends that Sri H. Krishnamurthy who is none other than husband of 1st petitioner and father of 2nd petitioner was granted 10 acres 30 guntas in waste land bearing Sy.No.133 of B.M. Kaval village, Bangalore South taluk, Bangalore district during 1941-42, which was confirmed vide grant order of the Government dated 21.3.1962. It is further contended that Sri H. Krishnamurthy was granted 3 acres and another 7 acres 30 guntas, in all totaling to 10 acres 30 guntas of land at an upset price of Rs.50/- per acre.

3.1 Learned counsel contends that pursuant to the grant in favour of H. Krishnamurthy, saguvali chit was issued as per No.LNO SR.1 188/61-62 and possession was delivered. Thereafter mutation was effected in the name of Sri H. Krishnamurthy pursuant to the issuance of saguvali chit and possession was also handed over and Sri H. Krishnamurthy was in possession and cultivating the land. It is also contended that revenue records such as NC: 2024:KHC:4040 record of rights, Tippani & Hissa survey Tippani extract etc., continued in the name of Sri H. Krishnamurthy.

3.2 Learned counsel contends that this being the state of affairs, Sri H. Krishnamurthy had approached the parents of respondents 4 to 9 for financial assistance as they were money lenders. Taking advantage of situation, the parents of respondents 4 to 9 got the sale deed executed in favour of Smt. Lada Devi Bachhawat to an extent of 3 acres in Sy.No.133 of B.M. Kaval village as security for the financial assistance. It is further contended that the said 3 acres of land formed part of 7 acres 30 guntas which was granted to Sri H. Krishnamurthy. Learned counsel contends that at no point of time the possession was ever delivered to the vendee Smt. Lada Devi Bachhawat by the vendor late Sri H. Krishnamurthy. The sale being nominal in nature, Sri H. Krishnamurthy continued to remain in peaceful possession of the above said 3 acres of land. It is further contended by the learned counsel that the said sale made NC: 2024:KHC:4040 in favour of Smt. Lada Devi Bachhawat is contrary to Section 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 {'SC & ST (PTCL) Act' for short} as no prior permission of the Government was obtained before the transfer and any sale/conveyance made is therefore null and void.

3.3 Learned counsel further contends that the legal representatives of Smt. Lada Devi Bachhawat thereafter effected sale of the very same property measuring 3 acres in favour of Respondent No.3/Sri Madanlal Bothra which again is contrary to Section 4 of the SC & ST (PTCL) Act and therefore the said sale is also null and void and is not a legally valid transaction which would not bind the rights of the original grantee - Sri H. Krishnamurthy.

3.4 Learned counsel further contends that the petitioners who are the wife and son of the original grantee - Sri H. Krishnamurthy are in peaceful possession and enjoyment of the land measuring 3 acres, which is NC: 2024:KHC:4040 part of 07 acres 30 guntas of land originally granted in favour of Sri H. Krishnamurthy. He further contends that there is no dispute with regard to the remaining extent of 4 acres 30 guntas (out of 7 acres 30 guntas) and the further extent of 3 acres of land granted to Sri H. Krishna Murthy are concerned and the petitioners are in peaceful possession and enjoyment of the said lands. It is also the case of the petitioners that the 3 acres of land which is the subject matter of this petition, is also in their possession and enjoyment though two illegal sale transactions have taken place and infact the said sale transactions would not affect and bind them.

3.5 It is contended by learned counsel for the petitioners that Sri H. Krishnamurthy died on 3.11.1989 and pursuant to his death, the petitioners continued to be in possession and enjoyment of the property in question. It is only when the petitioners discovered that some illegal sale transactions had taken place, an application came to be filed under Section 5 of the SC & ST (PTCL) Act to declare that the sale transactions were null and void. The NC: 2024:KHC:4040 Assistant Commissioner/respondent No.1 passed an order on 5.12.2003 dropping the proceedings on the ground that the original records had not been produced, but reserved liberty to the petitioners to file fresh application. Pursuant to the liberty granted, the petitioners filed fresh application, which also came to be rejected by the respondent No.1 on the ground that original grant order and saguvali chit had not been produced and so also on the ground of res judicata vide his order dated 27.2.2007. It is further contended that being aggrieved, the petitioners preferred an appeal before the Respondent No.10 under Section 5A of the SC & ST (PTCL) Act. The Respondent No.10/Deputy Commissioner rejected the appeal and confirmed the order of the respondent No.1/Assistant Commissioner.

3.6 Learned counsel for the petitioners vehemently contends that both the Respondent No.1 and Respondent No.10 have failed to conduct a proper enquiry by exercising the inherent powers vested with them and have

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NC: 2024:KHC:4040 passed an erroneous order which is illegal and arbitrary. It is further contended by the learned counsel that respondent No.1 could not have dismissed the application on the ground of res judicata as liberty was reserved to file fresh application to the petitioners.

3.7 Learned counsel further contends that SC & ST (PTCL) Act is a beneficial legislation enacted to protect the interest of Scheduled Caste and Scheduled Tribe persons and when such being the case, Respondent No.1 and Respondent No.10 ought to have applied their mind and carefully analyzed the materials on record and summoned the relevant original records including the saguvali chit and the grant order to ascertain the nature of the grant in favour of the original grantee/Sri H. Krishnamurthy and the same having not been done, the enquiry is inadequate and improper. Therefore dismissal of the application by Respondent No.1 and Respondent No.10 is contrary to the rules and regulations for conducting the enquiry and

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NC: 2024:KHC:4040 against the principles of natural justice and contrary to the materials on record.

3.8 It is further contended by the learned counsel that despite producing the saguvali chit and the original grant order, instead of advertng to the same and appreciating the same, Respondent No.1 and Respondent No.10 acted arbitrarily and the impugned orders passed by them are illegal and perverse and hence the same require to be set aside and quashed. It is the vehement contention of learned counsel that the alleged sale deed dated 3.1.1985, which came to the knowledge of the petitioners pertaining to the sale in favour of Smt. Lada Devi Bachhawatt, is a sham document which was executed taking advantage of the illiteracy and ignorance of Sri H. Krishnamurthy and thereafter taking advantage of the said sham document which was executed as a nominal deed by Sri H. Krishnamurthy for financial assistance, another sale has been executed in favour of 3rd respondent which is also null and void.

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NC: 2024:KHC:4040 3.9 Learned counsel further contends that the Tahasildar, Bangalore South taluk initiated proceedings under Section 79A of the Karnataka Land Reform Act 1961 and passed an order dated 28.2.1987 imposing a fine of Rs.500/- on Smt. Lada Devi Bachhawatt, the vendee of Sri H. Krishnamurthy and called upon her to file a declaration as required under Section 79C of the Karnataka Land Reforms Act and on failure to do so, the transaction would be declared as null and void and forfeit the land to the Government for having violated Sections 79A and 80 of the Karnataka Land Reforms Act. Learned counsel further contends the respondent No.1 subsequently passed an order on 31.5.1990 and declared the sale executed in favour of Smt. Lada Devi Bachhawatt on 3.1.1985 to be null and void and ordered forfeiture of the land to the State Government. This order of respondent No.1 was challenged by the legal representatives of Lada Devi Bachhawatt before the Appellate Tribunal in Appeal No.07/1997, which came to be allowed and the order of respondent No.1 came to be set aside and the matter was

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NC: 2024:KHC:4040 remanded for fresh consideration to the respondent No.1 vide order dated 29.6.1998. After remand, the Assistant Commissioner dropped the proceedings vide order dated 7.4.2001. It is the vehement contention of learned counsel that from the date of the sale until dropping of the proceedings, the matter was seized by the revenue authorities under the Karnataka Land Reforms Act and the petitioners could not have made any application under the provisions of SC & ST (PTCL) Act and therefore time spent in agitating the said proceedings by Sri H. Krishnamurthy or the petitioners cannot be construed as delay due to the fault of the petitioners and even if there is any delay, the same has been explained for the period from 1985 to 2002. Therefore he contends that there is no delay in filing the petition before the appropriate forum. Learned counsel also contends that the petitioners have been in possession and enjoyment of the land even as on date and only when the respondents 4 to 9 tried to take forcible possession, the petitioners approached the Respondent No.1/Assistant Commissioner for suitable

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NC: 2024:KHC:4040 orders. These aspects have not been considered by the Respondent No.1 and Respondent No.10 in the proper perspective while rejecting the application of the petitioners and thereby the impugned orders are tainted with malafides, arbitrariness and illegality and hence the same require to be set aside and quashed.

4. In support of his contentions, learned counsel for the petitioners relies upon the following judgments:

- 1) Smt. Chowdamma vs Special Deputy Commissioner,

Bangalore District and others (ILR 2003 KAR 2171)

2) Pedda Reddy vs State of Karnataka (1993 (1) KLJ 328)

3) Satyan V/s Deputy Commissioner (2019 SCC Online Sc 710)

4) Vivek M Hinduja and others V/s M Ashwatha and others. (2017 SCC Online SC 1858)

5) G Nagaraju V/s Deputy Commissioner (2020 SCC Online Kar 55)

6) P Surya Prakash V/s The Deputy Commissioner (2003 (4) KCCR 3064)

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7) Sri. Thimmanna V/s The Deputy Commissioner (2000 (2) KCCR 875)

8) Uppar Malleshappa V/s The State of Karnataka (2006 (1) KCCR)

9) Smt. Jayalakshamma V/s The State of Karnataka (2012 SCC Online Kar 6827)

10) Manchegowda and others V/s The State of Karnataka (1984 (3) SCC 301)

11) Mudippa Dead by his Lrs V/s The State of Karnataka (1997 SCC Online Kar 434)

12) Shahanaz Begaum V/s The State of Karnataka (2015 SCC Online Kar 8891)

13) Vijaya Mines and Minerals V/s The State of Karnataka (ILR 1997 Kar 1541)

5. Per contra, learned senior counsel - Sri Dhananjay Joshi on behalf of learned counsel - Sri Vigneswara .U for Respondent No.3 vehemently contends that initially 15 acres in Sy.No.133 of B.M.

Kaval village, Bangalore South taluk was granted to Sri H. Krishnamurthy under the 'Grow More Food Scheme' during 1942-43. He further contends 3 acres out of the above said 15 acres came to be confirmed in the name of Sri H. Krishnamurthy at an upset

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NC: 2024:KHC:4040 price of Rs.50/- per acre prior to 1962. He further contends that apart from the above mentioned 3 acres which was granted at an upset price, 7 acres 30 guntas was granted in favour of H. Krishnamurthy under the 'Grow More Food Scheme'. Thereafter the sale deed came to be registered on 3.1.1985 in favour of Smt. Lada Devi Bachhawat by Sri H. Krishnamurthy conveying 3 acres of land in the said B.M. Kaval village, Bangalore South taluk.

5.1 Learned senior counsel contends that on 31.5.1990 Respondent No.1 passed an order resuming the 3 acres of land for violation of Section 79A of the Karnataka Land Reforms Act 1961. This order was taken up in appeal and the Appellate Tribunal set aside the same and remanded the matter to Respondent No.1 for reconsideration. Learned counsel contends thereafter Respondent No.1 by the order dated 7.4.2001 dropped the proceedings which was initiated against Smt. Lada Devi Bachhawat, the vendee of the 3rd respondent under the provisions under Sections 79A and 80 of the Karnataka

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NC: 2024:KHC:4040 Land Reforms Act 1961. Thereafter vide order 5.12.2003 the Respondent No.1 rejected the application filed by the petitioners under Section 5 of the SC & ST (PTCL) Act. Learned senior counsel contends that in view of rejection of the application filed by the petitioners, the legal representatives of Smt. Lada Devi Bachhawat executed a registered sale deed dated 14.2.2005 in favour of 3rd respondent conveying 3 acres of land in Sy.No.133 of B.M. Kaval village, Bangalore South taluk.

5.2 Learned senior counsel vociferously contends that the order passed by respondent No.1 is not tainted with any malafides, there is no illegality or perversity, it is in accordance with the law of the land and the precedents laid by the Hon'ble Apex Court and this Court and in consonance to the provisions of the Act. Therefore, the impugned order passed by Respondent No.1/Assistant Commissioner and Respondent No.10/Deputy Commissioner confirming the same cannot be said to be illegal or perverse as no case is made out by the

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NC: 2024:KHC:4040 petitioners to show that they are the owners of the land to an extent of 3 acres. Infact, the said land already sold by way of registered sale deed and the application preferred to set aside the same having been rejected and there being a delay of more than 20 years in filing the application, question of entertaining this writ petition would run contrary to the well-established judgments consistently followed by the Hon'ble Apex Court and this Court in the catena of judgments. Under the circumstances, this petition is frivolous, filed only with an intent to protract

the proceedings and is devoid of merits and the same requires to be dismissed with exemplary costs.

6. In support of his contentions, learned senior counsel for Respondent No.3 relies upon the following judgments:

1) Nekkanti Rama Lakshmi v. State of Karnataka, reported in (2020) 14 SCC 232

2) Sri. Muniraju and others v. The State of Karnataka and others, W.A. Nos. 4127-4134 of 2013

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3) Nanjamma and others v. The State of Karnataka and others, Writ Petition No.12748 of 2011.

7. Learned HCGP apart from contending that there is no illegality or perversity in the impugned orders passed by the Respondent No.1 and 10, submits that the issue involved in these matters is well settled by the Hon'ble Apex Court and this Court in the catena of judgments.

8. Learned HCGP relies on the judgment in the case of Sri Nagalingappa -vs- The Deputy Commissioner and others in Writ Petition No.32645 of 2010 (SC-ST), wherein at paragraph 10 it is observed as under:

10. The distinguishing factor in the Judgment referred to by the learned counsel for petitioner in Nanjamma's case supra is that the land granted therein though under "grow more food scheme" was on a payment of an upset price. It is under factual circumstances held that the grant would not fall within the definition of 'granted land'. Paragraph 10 of the order is extracted hereunder:

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NC: 2024:KHC:4040 "10. From the perusal of the aforesaid judgment, this Court held that if the land is granted under "Grow More Foods Scheme"

at an upset price, then the said land will not fall within the definition of 'granted land'. The Co-ordinate Bench of this Court has considered the judgment rendered by the Hon'ble Apex Court in GUNTAIAH'S case (supra). The Division Bench of this Court in the case of MUNIRAJU & Ors. vs. State of Karnataka & Ors. in writ Appeal No.4127- 4134/2013 disposed of on 18.03.2015, held as under:

"WHEN the land is taken under 'GrowMore Food Scheme', the lessee is not required to pay rent or lease for the first year and he was required to pay half of the assessment of the land for the subsequent years. In the circumstances, we are of the

view that if the land was granted to Marappa on lease under 'Grow More Food Scheme' and thereafter it is confirmed to him, it cannot be considered as a land granted

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NC: 2024:KHC:4040 to him considering him as Scheduled Caste or a depressed person."

9. I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties.

10. Admittedly in the present case on hand, there is a registered sale deed executed by Sri H. Krishnamurthy in favour of Smt. Lada Devi Bachhawat to an extent of 3 acres on 3.1.1985. It is not in dispute that the petitioners made an application for resumption of land in 2002-03, which came to be dropped by the respondent No.1/Assistant Commissioner vide order dated 5.12.2003 and thereafter a fresh application having been made by the petitioners, again came to be rejected by respondent No.1 vide order dated 27.2.2007, which is the subject matter of this writ petition. It is also relevant to mention that the order of respondent No.1 challenged before the respondent No.10/Deputy Commissioner also came to be dismissed on 4.1.2012. According to the learned counsel for Respondent No.3, there is a delay of more than 22

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NC: 2024:KHC:4040 years, but learned counsel for the petitioners contends that even if the delay is calculated, it is only about 8 years and the same has been explained by the petitioners by filing necessary application which has been arbitrarily dismissed by respondent No.1 despite providing liberty to file fresh application at the first instance.

11. Though contention has been raised by the petitioners that they belong to Scheduled Caste and therefore SC & ST (PTCL) Act would apply for any transfer or conveyance of land having been granted to such persons, this Court will have to analyse as to whether the land has been granted to the petitioners as they belong to Scheduled Caste/Scheduled Tribe or whether it is granted primarily on the scheme floated by the Government of Karnataka under the 'Grow More Food Scheme'.

12. On perusal of Government Order No.RD 29 LBD 62 dated 21st March 1962 vide Annexure-C, it is apparently seen that initially land to an extent of 15 acres in Sy.No.133 of B.M. Kaval village, Bangalore South Taluk

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NC: 2024:KHC:4040 was granted to Sri H. Krishnamurthy under the 'Grow More Food Scheme' out of total extent of 115 acres 11 guntas of land including phut kharab of 21 guntas, which is considered as waste land and remaining land was granted to several other persons. Subsequently, the Deputy

Commissioner confirmed an extent of 10 acres of land in favour of one Sri Venkataramanappa and 3 acres in favour of Sri H. Krishnamurthy at an upset price of Rs.50/- per acre and cancelled all other grants for non-fulfilment of the terms and conditions of the grant under the 'Grow More Food Scheme'. When this being the state of affairs, some of the original grantees and others presented petitions to the Government requesting for the grant of land. The Divisional Commissioner, Bangalore Division inspected the land and recommended for sanction of the Government for re-distribution of land among several applicants in the manner described in Annexure-C. Accordingly, the Government accorded sanction to the distribution of land in Sy.No.133 of B.M. Kaval village, Bangalore South Taluk, as proposed by the Divisional Commissioner in favour of

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NC: 2024:KHC:4040 several applicants referred to in Annexure-C. In pursuance of the same, Sri H. Krishnamurthy was granted 7 acres 30 guntas in Sy.No.133 apart from 3 acres confirmed in his favour earlier, at upset price of Rs.50/- per acre.

13. It is also admitted by the petitioners that the land was granted in favour of Sri H. Krishnamurthy at an upset price of Rs.50/- per acre vide Annexure-C. It is also not disputed by the petitioners that before the Respondent No.1 and Respondent No.10, the original documents like the saguvali chit or the grant order was not furnished and placed on record. Before this Court the original records were summoned through the learned HCGP, who produced the original grant order which is identical to Annexure-C in the present writ petition.

14. The fact remains that Sri H. Krishnamurthy executed the sale deed in favour of Smt. Lada Devi Bachhawat way back on 3.1.1985 as per Annexure-J. The petitioners filed an application in the year 2002 under Section 5 of the SC & ST (PTCL) Act before the Assistant

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NC: 2024:KHC:4040 Commissioner to declare that the sale transactions are null and void. The Assistant Commissioner passed an order on 5.12.2003 dropping the proceedings on the ground that the original records had not been produced, but reserved liberty to the petitioners to file fresh application. This order of the rejection was not challenged by the petitioners. However, pursuant to the liberty granted, the petitioners filed fresh application, which also came to be rejected by the respondent No.1 on the ground that original grant order and saguvali chit had not been produced and so also on the ground of res judicata vide his order dated 27.2.2007. Being aggrieved, the petitioners preferred an appeal before the Respondent No.10/Deputy Commissioner under Section 5A of the SC & ST (PTCL) Act. The appeal came to be dismissed on 4.1.2012 confirming the order passed by the Assistant Commissioner.

15. On a careful perusal of the relevant dates of filing the application before the respondent No.1 and the

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NC: 2024:KHC:4040 impugned order passed and taking into consideration the registered sale deed dated 3.1.1985 executed by Sri H. Krishnamurthy in favour of Smt. Lada Devi, it is seen that as on date of filing the petition before the respondent No.1 in the year 2002-03, there is a delay of more than 17 years. Thereafter, 2nd application came to be filed in the year 2005-06 and the same came to be rejected by the respondent No.1 vide his order dated 27.2.2007. Therefore, there is a delay of more than 20 years in the present case on hand in the petitioners agitating the matter before the appropriate forum.

16. This Court will have to take into consideration the delay in filing the application even if it is considered that the petitioners belong to a Scheduled Caste category and whether the grant was made under the Scheduled Caste category. In the present case, there is an inordinate delay in petitioners agitating the matter before the appropriate forum. Further, on careful perusal of the grant order and the admission of the petitioners themselves, it

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NC: 2024:KHC:4040 seen that the land is granted at an upset price of Rs.50/- per acre. That being so, it cannot be said that the SC & ST (PTCL) Act would be applicable to the present case on hand.

17. My view is fortified by judgment of the Hon'ble Apex Court in the case of Nekkanti Rama Lakshmi -vs- State of Karnataka and another reported in (2020)14 SCC 232, wherein at paragraph 8 it is held as under:

"8. However, the question that arises is with regard to terms of Section 5 of the Act which enables any interested person to make an application for having the transfer annulled as void under Section 4 of the Act. This section does not prescribe any period within which such an application can be made. Neither does it prescribe the period within which suo motu action may be taken. This Court in Chhedi Lal Yadav v. Hari Kishore Yadav [(2018) 12 SCC 527: (2018) 5 SCC (Civ) 427] and also in Ningappa v. Commr. (2020) 14 SCC 236) reiterated a settled position in law that whether statute provided for a period of limitation, provisions of the statute must be invoked within

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NC: 2024:KHC:4040 a reasonable time. It is held that action whether on an application of the parties. or suo motu, must be taken within a reasonable time. That action arose under the provisions of a similar Act which provided for restoration of certain lands to farmers which were sold for arrears of rent or from which they were ejected for arrears of land from 1-1-1939 to 31-12-1950. This relief was granted to the farmers due to flood in Kosi River which make agricultural operations impossible. An application for restoration was made after 24 years and was allowed. It is in that background that this Court upheld that it was unreasonable to do so. We have no hesitation in upholding that the present application for restoration of land made by

respondent Rajappa was made after an unreasonably long period and was liable to be dismissed on that ground. Accordingly, the judgments of the Karnataka High Court, namely, R. Rudrappa v. Commr. (1998 SCC OnLine Kar 671 : (2000) 1 Kant LJ 523) Maddurappa v. State of Karnataka (2006) 4 Kant LJ 303) and G. Maregouda v. Commur. [(2000) 2 Kant LJ SN 4B] holding that there is no limitation provided by Section 5 of the Act and, therefore, an

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NC: 2024:KHC:4040 application can be made at any time, are overruled. Order accordingly.

18. The Division Bench of this Court while dealing with the similar situation in the case of Sri Muniraju and others -vs- The State of Karnataka and others in Writ Appeal Nos.4127-4134/2013 (SC/ST) decided on 18th March 2015 held at paragraph 14 as under:

"14. When the land is taken under 'Grow More Food Scheme', the lessee is not required to pay rent or lease for the first year and he was required to pay half of the assessment of the land for the subsequent years. In the circumstances, we are of the view that if the land was granted to Marappa on lease under 'Grow More Food Scheme' and thereafter it is confirmed to him, it cannot be considered as a land granted to him considering him as Scheduled Caste or a depressed person. In addition to that, appellants have not placed any material to show that the land in question was granted to Marappa under 'Grow More Food Scheme'. Appellants have only relied upon the RTC extracts to substantiate their contention that it is a granted land. But based on RTC entries, no court can hold that the land

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NC: 2024:KHC:4040 granted to Marappa as he belongs to depressed class or scheduled caste in order to attract the provisions of PTCL Act."

19. The coordinate Bench of this Court while dealing with the similar situation in the case of Nanjamma and others -vs- The State of Karnataka and others in Writ Petition No.12748/2011 (SC-ST) decided on 25th February 2022, held at paragraphs-8 and 10 as under:

"8. What is required to be considered in this writ petition is, whether the provisions of the PTCL Act would attract to the grants made under "Grow More Foods Scheme". As discussed above, land was granted in favour of father of respondent No.4 under "Grow More Foods Scheme" in the year 1946 and the said land was granted under the upset price being fixed at Rs.200/- per acre by the Deputy Commissioner in the year 1961. The father of respondent No.4 paid upset price and secured the title to the said property in his name, which document is relied upon by him as a 'Grant Certificate' and 'Saguvali Chit'. As far as payment of upset price is concerned, the father of

respondent No.4 has admitted the same in the written statement filed

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NC: 2024:KHC:4040 in O.S.No.466/1957. The petitioners have produced copy of judgment passed in the aforesaid suit, vide Annexure-G. The Trial Court has recorded a finding that, "According to the condition in Ex.D3, the grantee is entitled to get the grant confirmed in his favour after the expiry of the period of 5 years. The defendant has credited the required amount and has prayed for confirmation of the grant". From the perusal of the judgment passed in the aforesaid suit, it is clear that father of the respondent No.4 admitted that he has credited the required amount and prayed for confirmation of grant. The said fact has not been denied by the respondent No.4. The finding recorded by the Trial Court in the said judgment would clearly indicate that, what is given to the father of respondent No.4 is by way of conveyance and he was put in possession and enjoyment of the same as the absolute owner which is supported by the conditions stipulated in the 'Grant Certificate'. The respondent submits that the land is a granted land and provisions of the PTCL Act are applicable. Further it is submitted that the Hon'ble Apex Court in the case of GUNTAIAH (SUPRA) held that grant of agricultural lands to

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NC: 2024:KHC:4040 the member of SC and ST at a price lower than the market price or free of cost, initially on a temporary lease and later permanently under Rule 43-J with a condition that the grantee shall not alienate the lands to the third parties for a period of 15 years. If alienation is made, any breach of conditions restricting the third party purchaser cannot challenge such a condition as void and such transfer would not convey any right, title or interest to the purchaser by virtue of Section 4 of the PTCL Act

10. From the perusal of the aforesaid judgment, this Court held that if the land is granted under "Grow More Foods Scheme" at an upset price, then the said land will not fall within the definition of 'granted land'. The Co-ordinate Bench of this Court has considered the judgment rendered by the Hon'ble Apex Court in GUNTAIAH'S case (supra). The Division Bench of this Court in the case of MUNIRAJU & ORS VS. STATE OF KARNATAKA & ORS. in Writ Appeal No.4127-4134/2013 disposed of on 18.03.2015, held as under:

"WHEN the land is taken under 'Grow More Food Scheme', the lessee is not required to pay rent or lease for the

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NC: 2024:KHC:4040 first year and he was required to pay half of the assessment of the land for the subsequent years. In the circumstances, we are of the view that if the land was granted to Marappa on lease under 'Grow More Food Scheme' and

thereafter it is confirmed to him, it cannot be considered as a land granted to him considering him as Scheduled Caste or a depressed person."

20. Under the circumstances having considered the entire material on record and the impugned orders passed by Respondent No.1 and Respondent No.10 and having given thoughtful consideration to the submissions made by learned counsel for both the parties in the light of the judgments of the Hon'ble Apex Court and this Court cited supra, I do not find any merit in the petition filed by the petitioners. In fact, the judgments relied upon by learned senior counsel for Respondent No.3 are aptly applicable to the facts and circumstances of this case. There is no illegality or perversity in the impugned orders passed by Respondent No.1 and Respondent No.10. The reasons

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NC: 2024:KHC:4040 assigned and the conclusion arrived at by Respondent No.1 and Respondent No.10 are just and proper and the petitioners have not made out any case to interfere with the impugned orders, in exercise of the powers vested under Articles 226 and 227 of the Constitution of India.

21. In view of the discussion made hereinabove, in my opinion, the petitioners would not be entitled to a favourable order in this writ petition. Hence, I pass the following:

ORDER

i) Writ Petition is dismissed.

ii) In view of dismissal of Writ Petition, I.A.
No.1/2016 would not survive for

consideration and the same pales into insignificance.

Sd/-

JUDGE GSS