R. Rudraiah & Anr vs State Of Karnataka & Ors on 4 February, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1070, 1998 (3) SCC 23, 1998 AIR SCW 857, (1998) 1 JT 435 (SC), (1998) 1 SCR 553 (SC), 1998 (1) SCR 553, 1998 (1) SCALE 375, 1998 (1) ADSC 772, 1998 (1) JT 435, (1998) 3 RECCIVR 24, (1998) 3 SUPREME 244, (1998) 1 LACC 247, (1998) 1 SCALE 375, (1998) 119 PUN LR 14, (1999) 1 RENCJ 124, (1999) 1 BANKLJ 214, (1998) 4 CIVLJ 711, (1998) 72 DLT 73, (1998) 44 DRJ 817, (1998) 2 CIVILCOURTC 482, (1998) 2 RENCR 2, (1998) 1 RENTLR 420, (1998) 2 CURCC 1

Author: M. Jagannadha Rao

Bench: S.B. Majmudar, M. Jagannadha Rao

PETITIONER:
R. RUDRAIAH & ANR.

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT: 04/02/1998

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T M. JAGANNADHA RAO. J.

Leave granted in both SLPs.

In each of these appeals, the appellants are Sri B. Rudraiah and his son Sri B.Veeranna. The party respondents are Sri Lakshmi Narasappa (3rd respondent). Smt. Kittamma (wife of Late Narasimha Murthy) 4th respondent) and Sri S.N. Prahlada Rao, (son of Late Narasiah (Jr.) (5th respondent). These two appeals aeon directed against the order sin CRP No. 625 of 1988 and CRP No. 2829 of 1988 dated 18.7.1989 of the karnataka High Court allowing the said revisions which were Karnataka High Court allowing the said revisions which were filed by Lakshmi Narasappa (3rd respondent) and S.N. Prahlada Ram. (5th respondent) respectively. In those revisions the appellants were respondents. The revisions filed in the High Court under Section 121-A of the Karnataka Land Reforms Act, 1961 were allowed, setting aside the orders dated 7.11.1987 passed by the appellate authority and by the Land Tribunal on 27.4.1987 registering occupancy rights in favour of the first appellant i.e. B.Rudraiah in respect of 3 acres 34 juntas and 1 acre 24 juntas in Survey No. 55 and 62 respectively of Saneguruvanahalli village, Bangalore North Taluk. Aggrieved by the orders of the High Court dated 18.7.1989, these two appeals are filed by Rudraiah, the aggrieved party. His son B. Veeranna has joined as the second appellant.

The main ground on which the High Court has allowed the revisions of respondents 3 and 5 and dismissed the Form 7 applications of the 1st appellant b. Rudraiah is that the said application for grant of occupancy right was filed on 7.3.1984 beyond the period prescribed by Section 48-A of the Karnataka Land Reforms act, 1961 (hereinafter called the Land Reforms Act, 1961). The said provision in Section 48-A was introduced by Karnataka Act 1 of 1979 (with effect from 1.3.1974) fixing time limit for filing applications under Section 45 for registration as "occupants" before the Tribunal. These words introduced by the amending Act 1 of 1979 fixing time limit read as follows:

> "before the expert of a period of six months from the date of the commencement of Section 1 of the Karnataka Land reforms (amendment) Act, 1978"

In view of the amendment made by Act 1/1979, the High Court held that the time stood extended only for 6 months from 1.1.1979 i.e. upto 30.6.1979 and this date being not in dispute, the application filed by the 1st appellant on 7.3.1984 before the Land Tribunal was time barred.

The appellant No.1 seeks to have the period of limitation extended beyond 30.6.1979 by linking up the commencement of limitation under Section 48-A of the KLR Act, 1961 with certain orders passed in proceedings under the Karnataka Village offices Abolition Act, 1961 (hereinafter called the Village offices (Abolition) Act, 1961) against Kittamma, (wife of Narasimha Murthy) (4th respondent) and in favour of Lakshmi Narasappa (3rd respondent) and S.N.Prahlada Rao (5th respondent). they being her husband's brother and deceased brother's son respectively.

We shall therefore refer to the facts relating to the connection of the proceedings before us, under the Land Reforms Act, 1961 with the proceedings under the Karnataka Village Officers Abolition Act, 1961.

The facts leading to the dispute inter Se between S.K. Lakshmi Narasappa (3rd respondent), S.N. Prahlada Rao (5th respondent) on the one hand and Kittamma on the others, are as follows:

Narasaih (Jr), Narasimha Moorthi and S.K. Lakshmi Narasappa (3rd respondent) are the sons of Narasiah (Sr) who was the Baravardar of the Shamboghi Office of the village Saheguruvanahalli. The lands in question were emoluments attached to the said village office. Th rights thereto, according the respondents 3 and 5 devolved on the death of Narasiah (Sr) upon his aforesaid three sons. Of them Narasimha Moorthi (who allegedly sold this property on 11.3.1970 to Rudraiah, 1st appellant) died in 1971, leaving being him, his wife Kittamma (4th respondent in these Case).

Later on, Narasiah (Jr) died in 1975 leaving being him Prahlada Rao (5th respondent). The village offices stood abolished under the Village offices Abolition Act, 1961, w.e.f. 1.2.1963 and under the provision of Section 5 of that Act, the erstwhile holders of the village office could obtain re-grant of the lands after the village offices stood abolished under Section 4(1) of the said Act and after the emoluments stood "resumed" by force of Section 4(3) of the said Act. It is the case of the 1st appellant that even before 1961, he was the cultivating tenant of the land in question and continued to be in possession. Prior to his death in 1971, Narasimha Moorthi, one of the sons of Narasiah (Sr) applied before the Asstt. Commissioner under section 5 of the KVO Act, 1961 for re-grant of the entire lands exclusively in his favour. This was contested by his brother S.K. Lakshmi Narasappa (3rd respondent) and narasiah (Jr.). It appears that the Asstt. Commissioner by orders dated 22.6.1970 decided the lands should be re-granted in favour of all three brothers, i.e. sons of the last holders and he did not accept the report of the Tahsildar that re- grant should be in favour of Narasimha Moorthi (husband of Kittamma) alone for the entire land. narasimha Moorthi filed an appeal MA No.21 of 1971 before the District Judge and as he died, his wife Kittamma came on record as appellant. The matter was remanded on 20.2.1973 and after remand, an order was passed on 19.4.82 by the Tahsildar again against Kittamma. During the pendently of the appeal, Narasiah Jr, died in 1975 and Prahlada Rao, his son came on record in his place. Against the fresh order dated 19.4.1982, Kittamma filed appeal MA 20 of 1982 questioning the aforesaid order of the Tahsildar, before the appellate authority, impleading Lakshmi Narasappa her husband's brother) and Prahlada- Rao, (her husband's nephew), as respondents. In that appeal, the 1st appellant Rudraiah filed IA No. 3 for being impleaded as purchaser of the entire property from narasimha Moorthi and the said application for implement was allowed on 30.1.84 by the Addl. City Civil Judge, thew appellate authority. Thereafter, the appeal of Kittamma was dismissed on 17.12.1984 and the revision of Kittamma CRP 300 OF 1985 was also dismissed by the High Court on 22.1.1985. Kittamma's SLP (c) 9387 of 1985 was dismissed by this Court on 9.1.1987. It appears that appellant also filed CRP 654 of 1985 and it was rejected on 30.7.1989. (There are also another SLP (C) 14391/1981 by 1st appellant's son Veeranna (second appellant) and others against an order in another CRP 624/1985 which was dismissed by this Court on 9.5.1991). It is to be noticed that Veeranna, 2nd appellant son of Rudraiah (1st appellant) claims to have purchased the share of Narasimha Moorthi from Kittamma. This is why Kittamma is now supporting the case of the appellants. The above is a rsum of the facts in the proceedings under section 5 of the Village Officers (Abolition) Act, 1961.

We shall now refer to the rival contentions of the parties in the appeals before us.

It is contended by the learned counsel for the appellants Sri. R.S. Hegde that the provision in section 48- A prescribing limitation has to be considered liberally in favour of tenants and the period is to be extended. It is also contended alternatively that unless the claims regarding re-grant of the emoluments of the village office under Sections 5 of the Village Officers (Abolition) Act, 1961 were finally decided by the concerned authorities under that Act, the period of limitation fixed under Section 48-A of the Land Reforms Act, 1961 did not start, inasmuch as it is not possible to specify who the landlord is. He contends that the application under Section 45 in Form 7 requires the name of landlords to be specified and that if it is not known who the landlords are until the case under section 5 of the Village Officer's emoluments is finally decided, time does not start till that question is finally decided. yet another contention is that affect 1.2.1963, when the village offices stood abolished and when under Section 4(3) of that Act the emoluments of the village office stood automatically resumed, the lands stood vested in the Government under Section 4 of that Act and therefore became 'government lands'. Consequently, under Section 107 of the Land Reforms Act, 1961 these lands were not covered by the said Land Reforms Act. if they were not so covered, then the time limit in Section 48-A of that Act, relating to filing of applications by tenants for occupancy did not also apply. Contention is that the said provisions under Section 45 and Section 48-A operated - by virtue of Section 126 of the Land Reforms Act, 1961 - only from the dates on which the question of re - grant to favour of the erstwhile village officers was finally decided. Hence it is argued that the provision relating to the period of limitation mentioned in Section 48-A of the Land Reforms Act, 1961 namely 6 months from the commencement of Section 1 of Karnataka Land Reforms Amendment Act. 1978 (Act1/1979) - did not come into operation till 22.1.1985 when Kittamma's CRP 300 of 1985 was dismissed or when appellants CRP 653 of 1985 was dismissed on 20.7.1989. yet another contention is that amendment to section 126 by Land Reforms Act introduced by act 1/79 is not classificatory.

The above contentions of the appellants are supported by learned senior counsel Sri P. Krishna Murthy Appearing for Kittamma, 4th respondent. learned counsel relies also on rule 4 of the Karnataka Village office Abolition rules, 1961 dealing with the time and manner of payment of `occupancy - price' under Section 5 and 6 of the Village Offices (Abolition) Act, 1961 by the erstwhile village office Es upon re - grant of lands in their favour after the abolition of the village offices. he contends that until the erstwhile village offices are declared entitled to re - grant upon payment of occupancy price and until they had actually paid the same, the time fixed under Section 48-A of the Land Reforms Act, 1961 does not start to run.

On the other hand, Sri N.S. Hegde, learned senior counsel for the respondents 3 and 5 (i.e. S.K. Lakshmi Narasappa and S.N. Prahlada Rao) contends that Section 48-A of the Land Reforms Act, 1961 which refers to the period of limitation for filing application under section 45 of the Land Reforms Act, 1961 is unambiguous and operates by its own force and no resort can be made to Section 5 of Village Offices (Abolition) Act, 1961 which deals with re - grant of emoluments attached to village office Es. It is contended that there can be no linkage between the two Acts. it is argued that time in the present case had expired clearly on 30.6.1979, as fixed by statute and there was therefore no ambiguity in the language f that provision. Alternatively, it is argued that these lands, upon abolition village offices, are not `government lands'. Hence Section 107 of the Land reforms Act, 1961 does not apply. On the other hand, Section 126 of that Act came into play immediately

after 1.3.1974 when section 48-A was introduced with retrospective effect by Act 1/79 w.e.f. 1.3.1974. After the Amendment in 1979, time stood extended for section 126 by Act 1 of 1979 was only classificatory and only removal of doubts. Further, the respondent 3 and 5 did not. In the re - grant proceedings under section 5 of the Village Offices (Abolition) Act, 1961 disputes the right of Kittamma regarding re - grant of the share of her husband Narasimha Murthy and it was only Kittamma who disputed the right of her husband's brothers to get two shares. Once the Dy. Commissioner had passed orders on 22.6.1970 to re - grant under section 5 of the Village Offices Abolition Act of 1961 in favour of respondent 3 and 5 as also respondent 4 or again after remand, the Tahsildar passed fresh orders on 19.4.1982, the intention of the government to re - grant became clear. Even assuming that the lands became `government lands' after the village officers were abolished, the provisions of Section 126 of the Land reforms Act, 1961 came into operation, at any rate from 19.4.1982 when the second order of re - grant was passed after remand. It is argued that there was therefore no justification on the part of the 1st appellant to file the application under section 45 (read with section 48-A) on 7.3.1984, was filed only on 7.3.1984 and was hopelessly time barred by 5 years. Alternatively, viewed from 19.4.1982, it was barred by 2 years.

On these contentions, the following points arise consideration :

(1) Are the provisions of Sections 45, 48-A of the Land Reforms Act.

1961 dealing with the period of limitation for filing application for grant of occupancy right (namely 6 months from date of Commencement of Section 1 of Ac t 1/1979 i.e. 30.6.1979) clear and unambiguous and not capable of extension on the ground that there is ambiguity or on the around that they lead to grave injustice?

(2) Can the appellant rely on Section 5 and 8 of the Village Officer (Abolition) Act, 1961 and Rule 4 Karnataka Village Offices Abolition Rules, 1961 read with Section 107 and 126 of the Land Reforms Act, 1961 and Form 7 under that Act, to contend that unless the rights of recontend that unless the rights of regrant to the erstwhile village officers under Section 5 of the Village Offices(Abolition) Act, 1961 is finally decided, the limitation under Section 46-A of the land Reforms Act, 1961 does not commence?

Point 1:

The point is whether the language in Section 48-A of the Land Reforms Act. 1961 fixing a period of limitation is clear and unambiguous. If the period is 6 months from the date of commencement of section 1 of the KLR Amendment Act of 1978 (Act 1/1979), and if the date of commencement of that section is not in dispute and the six month period for filing application is to count from 1.1.79 and it expired on 30.6.1979, can it be said that the language of section 48-A is ambiguous and is to be liberally construed? Can it be said that if 30.6.79 is the last day for filing of applications by tenant then section 48-A must be treated as harsh and unjust to tenants and should be interpreted differently?

> We shall first examine the relevant provisions of Land Reforms Act, 1961. The said Act came into force from 2.10.1965. Chapter 1 thereof deals with `definitions' .

Chapter II deals with general provisions regarding tenancies like, who are tenants or deemed tenant, rent, termination of tenancies, eviction of tenants, tenants' right to purchase, procedure for taking possession or recovery rent etc. We are here concerned with Chapter III which deals with `conferment of ownership of tenants' in possession and who are personally cultivating lands as on 1.3.1974. In fact that is the date when new Sections 44. 45 were substituted by Act 1 of 1974 W.e.f. 1.3.1974. Section 44(1) says that all lands held by or in possession of tenants immediately prior to the date of commencement of the Amendment Act (except lands held by reasons permitted under Section 5) shall, w.e.f. on and from the said date (i.e. 1.3.1974) stand transferred to and vest in the State Government.

Then come Sections 45 and 48-A (as amended by Act 1/1979) and they read as follows:

> "45.Tenants to be registered as occupants of land on certain conditions, (1) Subject to the provision of the succeeding sections of this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sublet, such subtenant shall with effect on and from the date of vesting be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally.
>
> 48-A. Enquiry by the Tribunal, etc.- (1) Every person entitled to be registered as an occupant under section 45 may made an application to the Tribunal in this behalf. Every such application shall, save as provided in this Act, be made before the expiry of a period of six months from the date of the commencement of section 1 of the Karnataka Land Reforms (Amendment) Act. 1978".

In order to understood the intention of the legislature in bringing forward the above Amendment, we shall refer to section 48-A as it stood before the Karnataka Land Reforms (Amendment) Act, 1978 (Act 1/1979). We shall show that earlier it is fact contained a specific provision for condonation of delay in filing the application under Section 45, but the same was deleted by the 1978 Amendment. The unamended Section 48-A read as follows:

> "Every person entitled to be registered as an occupant under Section 45 may make an application to the tribunal in this behalf. Every such applications shall, save as provided in this Act, be made on or before the 31st day of December 1974.
>
> Provided that the tribunal may, for sufficient cause shown, admit an application well beyond that date but on or before 30th June, 1977".

Comparing this with the amended section 48-A set out above, it will be noticed that the above proviso was deleted by the Amending Act 1/1979 with effect from 1.3.1979. Therefore to obviate

hardship, 6 months time was given from date of commencement of Section 1 of the Amending Act, 6 months from 1.1.1979, i.e. upto 30.6.1979.

It is obvious that by deleting the provisions relating to the power to condone the delay for sufficient cause, the legislature had clearly intended sufficient cause, the Legislature had clearly intended to do away with the said power of condonation of the Tribunal. It was in fact so held by a learned Single Judge of the Karnataka High Court in Virupaxappa Vs. Land Tribunal [1980 (2) Karnataka L.J.428]. This view, in our opinion, is quite correct. If therefore the Legislature wanted to make a deliberate departure and introduced an amendment to take away the power of condonation of delay, it is difficult to accept the contention that Section 48-A is capable of more than one interpretation - one leading to injustice and another permitting avoidance of such injustice to tenants and that the Court should opt for a liberal interpretation. Another reason for rejecting the appellant's contention is that we have also to give importance to the words `save as provided in the Act', occurring in section 48-A. It is no where else provided in the Land Reforms Act, 1961 that the period fixed for tenant to file an application under section 45 gets extended, None has been brought to our notice.

It is true there is a principle of interpretation of statutes that the plain or grammatical construction which leads to injustice or absurdity is to be avoided (See Venkatarama Iyer, J in Tirath Singh vs. Bachiter Singh (AIR 1955 SC 830 at 855). But that principle can be applied only if "the language admits of an interpretation which would avoid it". Sham Rai Vs. Dt. Magistrate (AIR 1952 SC 624 AT

327). In our view Section 48-A, as amended, has fixed a specific date for the making of an application by a simple rule of arithmetic, and there is therefore no scope for implying any `ambiguity' at all. Further "the fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship. But in construing such provisions, equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide". (Sir Dinshaw Mulla in Nagendranath Dev vs. Suresh Chandra Dev [ILR 60 Cal 1 (PC)].

For the aforesaid reasons, we hold that the application filed by the 1st appellant under Section 45 on 7.3.1984, long after 30.6.1979 is barred by section 48A of Land Reforms Act, 1961 and the High Court was right in dismissing the said application while exercising revisional powers. Point 1 is said against the appellants.

Point 2:

> We shall now deal with the alternative contention advanced for the appellant and on behalf of Kittamma (4th respondent) that until proceedings under the Village offices (Abolition) Act, 1961 as to re-grant became final in the CRPs disposed on 22.1.1985 or 20.7.1989, the limitation for filing application under Section 45 did not start:
>
> It is true that Form 7 framed for purposes of filing an application by the tenant under Section 45 [read with Section 48-A and Rule 19(1)] of the Land Reforms Act, 1961, requires in the first column that the name of Landlord/landlords' and their address

> to be given. But, on the facts of this case, if after 1.1.1979 when fresh period of limitation was given upto 30.6.1979 - the 1st appellant did want to file an application, he could have mentioned in the above column that the landlord, according to him was Narasimha Moorthi (on hid death, Kittamma). He could have also stated by was of a Note that there was dispute raised by Laxmi Narasappa and Prahlada Rao that they had two shares out of the land and that the said question was pending in proceedings under Section 5 of the Village Offices Abolition Act, 1961.
>
> Further, even if it was not possible to add such a Note, there is a clear provision in Section 48-A read with Rule 19(1) for a public notice in Form 8 addressed to all other persons entitled to be registered as occupants under Section 45 and to all Landlords of such lands and all other persons interested in such lands. Unfortunately, the 1st appellant did not avail of such a procedure which was clearly available and permissible. We may also state that in an application under Section 45 as present din Form 7, the tenant who claims occupancy rights mouser prove his possession as tenant before 1.3.1974. Even if the names of landlords are not known, the provision for public notice protects the rights to natural justice of landlords or persons interested in the lands, whose names are not known to the tenant applicant and not shown in Form 7. There is therefore no such difficulty as imagined by the 1st appellant in the matter of filing an application under Form 7 before 30.6.1979.

We shall next take up the main point that after the village offices stood abolished under Section 4(1) of the Village Offices Abolition Act, 1961 and the emoluments of the office holders stood `resumed' under Section 4(3), the lands became `government lands' and hence Section 107 of the Land Reforms Act, 1961 excluded such `government lands' from the purview of that Act (including Section 45) and it was only when the question of re-grant of those lands under the Village Offices Abolition Act, 1961 was finally decided that the lands ceased to be `government lands' and it became possible to know who the landlord was, that Form 7 application could be filed.

It is true that under Section 4(1) of the Village Offices Abolition Act, 1961 it is stated that "all village offices shall be and are hereby abolished" and Section 4(3) says that land attached to the office "be and is hereby resumed". It is true that Section 5 provides for re-grant if land so resumed to the holder of the village office. Here what is important to notice is the language employed in sub- clause (3) of Section 4 which deals with resumption as compared to the language employed later in section 5(3) of the same Act. It reads:-

> "Section 4(3): Subject to the provisions of Section 5. Section 6 and Section 7. all land granted or continued in respect of or annexed to a village office by the State shall be an is hereby resumed and..."

In other words, the resumption is not absolute but subject to the provision relating to re-grant to erstwhile office holders as in Section 5 and other types of re-grant in Section 6 and 7. Section 5(1) deals with re-grant to the office holders and procedure to be followed by them to pay the occupancy-price and upon such payment on or before the date stated in the provision, the holder

"shall be deemed to be an occupant or holder of a rioter patty" and under Section 4(2), if he does not pay the occupancy price within the prescribed period, he shall be summarily evicted. Therefore, on ambulation and resumption, the erstwhile office holder continues in occupation of the land which previously was attached to his office and with a right to have his claim for re-grant considered. If he does not pay the occupancy price then he can be evicted. Of course, if he is not re-granted the land, he has any way to vacate.

Section 5 (3) which prohibits transfer of land re- granted under Section 5(1) (and now as per amending Act 13/78 within a period of 15 years after the date of the commencement of Act 13/78) says in Section 5(4) that such transfers shall be null and void and be.

> "forfeited to and vest in the State Government free from all encumbrance".

On a comparison of language employed by the legislature in Section 4(3) of the Village Offices Abolition Act, 1961 which only speaks of resumption subject to re-grant under Sections 5,6, and 7 with the language employed in Section 5(3) which speaks of `vesting in the State Government free of all encumbrances". It is clear that by mere resumption under Section 4(3) subject to Sections 5,6, and 7, it was not intended by the legislature to equate constitutional resumption with absolute vesting of the land in the Government free from all encumbrances so as to be treated as `government land'. In fact, because of the restriction imposed by Section 4(3) that resumption is subject to Sections 5,6, and 7, the land resumed under Section 4(3) cannot be allotted for general or public purposes but remains strictly earmarked for re-grant and is liable to be re-granted under sections 5,6, and 7. On the other hand, land coming under Section 5(3) where it vests in government, free from all encumbrance, is clearly `government land' and is at the disposal of government for all public purposes. Therefore, on resumption under the section 4(3) the land has not become `government land'.

Next we shall refer to Section 107 of the Land Reforms Act, 1961 which is the main plank of the 1st appellant's argument.

> "Section 107: Act not to apply to certain lands: Subject to the provision of Section 110, nothing in this act, except Section 8, shall apply to lands-
>
> (i) belonging to Government
>
> (ii) .....
>
> (iii) belonging to or held on lease by or from a local authority....
>
> (iv) given as gallantry award...
>
> (vii) used for cultivation by the Coffee Board...

> (viii) held by any Corporation contract by the State Government or the Central Government or both...
>
> Section 107 says that the Land Reforms Act does not apply to `government lands'. This is however subject to the provision of section 110. Under section 110, Government may `by notification' direct that any land covered by sections 107 and 108 shall not be exempt from such of the provisions of this Act from which they have been exempted under the said section.

Reading the section, it appears that there are good reasons of policy as to why, under section 107 of the Karnataka Land Reforms Act, 1961, government land is exempt. Firstly the section takes notice of the fact that when ceiling on land held by various bodies is to be imposed, such a ceiling cannot be imposed on land held by Government or certain other enumerated bodies. Government `right to hold land' can not be limited, inasmuch as government does require lakhs of acres for use for public purposes. Further there is no purpose in taking over excess land from State Government and again revesting the said land in the State Government. Again the policy of the legislature appears to be, so far as Chapter III of the Act and amendments thereto are concerned, that tenants from Government are not entitled to claim occupancy under section 435 of the Act against the Government, even if they were in possession before 1.3.1974.

We shall first assume that the contention of the 1st appellant that upon `resumption' under Section 4(3) of the Village Offices Abolition Act, 1961 the land held by the erstwhile office holder had become `government land' is correct. The position then will be that if, as a matter of policy the provisions of section 107 of the Land Reforms Act, came into force, were not to be applied to such lands, then Section 45 and 48-A substituted by Act 1 of 1974 w.e.f. 1.3.1974 or as they now stand, would not also apply, ever after 1.1.79 or 30.6.79. Therefore such tenants cannot seek occupancy or ownership rights in lands held by government, even after 1.1.79. No application under section 45 would be maintainable and the very application of the appellant would have to be dismissed on that ground, whether filed in 1974 or 1979 or later. This contention of the appellants appears to have been advanced without noticing that it clearly self-destructive.

Further, even if the land had become `government land', on resumption, there is no procedure for change of ownership; from government land to the erstwhile-holder of village office outside section 4(3) so as to permit a contention that the land ceased to be government land. There can be a cessation of the land as government land under section 107 only if government proceeds to exclude by notification under section 110 such land from the purview of section 107. It is no body's case that after a decision as to who is entitled to re-grant under section 5 of the Village offices (Abolition) Act, 1961. government is to issue a notification under section 110 excluding the land so re-granted from the purview of `government land'. Hence the entire theory based on section 107 propounded by the appellant does not fit into the scheme of the Land Reforms Abolition Act, 1961.

Learned counsel for the appellant relied upon the decision of a learned Single Judge of the Karnataka High Court in Eswarappa vs. State of Karnataka (1979 (2) Karn.L.J.182) as an authority to say that the appellant could file an application under Section 45 of the Land Reforms Act, 1961

only after the determination of rights of the erstwhile village office holders' of re-grant were finally decided under the latter Act.

We do not think that the aforesaid decision helps the appellants. What is important to notice is that in that case the application under Section 45 in Form 7 was filed in time. This is clear from the case Nos. of the cases filed in the Tribunal as given in the Judgment. They appear to be of 1974 (before 1978 Amendment) and were disposed of by the Land Tribunal of 27.12.1976, long before the 1978 amendment gave further time upto 30.6.79. In fact, no question of limitation of an application filed under Section 45 after 30.6.79 arose in that case nor was decided. The applications of the tenants were contested by the opposite party stating that the lands in question were Patel Umbli lands, and that the lands were not yet re-granted to the opposite parties under the Village Offices Abolition Act. 1961 and hence the Tribunal did not have jurisdiction to decide the application filed under section 45 of the Land Reforms Act, 1961. The applicants-tenants, on the other hand, contended that the lands were not attached to village offices but were Devadayam Inam lands, and that the services attached to temples and the inam lands attached to the said services were both abolished w.e.f. 1.1.1970. The Tribunal accepted the plea of the opposite party and dismissed the Section 45 applications. The tenants filed a writ petition in the High Court and it was held that if the inam lands were attached to services rendered to religious institutions as contended for by the tenants, they would stand abolished under the statute of 1955. On the other hand, if they were inams attached to village offices, they would stand abolished by Act of 1961 w.e.f. 1.2.1963. The Land Reforms Act, 1961 came into force from 2.10.1965 and right to Occupancy had to be judged under section 45 on the basis of possession as tenant immediately before 1.3.1974 under Act 1/1974 as amended by Act 1/1979. On the above basis, it was held by the High Court that is view of the contention of the tenants, the rights of service holders under the 1955 Act had to be consider first because if the lands were attached to a religious service as inam, then the Village Offices (Abolition) Act would not apply and no question of re-grant under that Act could arise. In case, it was held under the 1955 Act that the lands were not inams attached to a religious service, then the question of their resumption under Village Offices Abolition Act would have to be decided. It was further held that it was only thereafter that claims under section 45 of the Land Reforms Act, 1961 could be "considered" and "therefore the Tribunal will have to keep these applications pending instead of disposing them of."

Thus, all that was decided in that case was that in cases where Section 45 applications under the Land Reforms Act, 1961 had been filed in time, and there was a dispute whether they were inam lands attached to a service connected with a temple or were emoluments attached 45 should be kept pending and adjourned till these auctions as to which Act applied, was decided. it is therefore clear that no question of limitation in filing application under section 45 and particularly one relating to the Amendment of Act 1/79 came up for consideration, in the above case. In fact, when Tribunal in that case passed orders on 27.12.76 the provision for condonation of delay in section 49A was very much in existence. That power was taken away only under Act 1/79. Hence the above judgment is clearly not relevant.

We shall then refer to Section 126 of the Land Reforms Abolition Act, 1961 upon which both sides relied. It deals with "Application of Act to Inams". It starts with the words. "For the removal of

doubts" and states that is "hereby" declared that the provisions of the Act, in so far as they confer any rights and impose any obligation on tenants and landlords, shall be applicable to tenants holding lands in inams and other aliened village or lands including tenants referred to in Section 8 of the Village Offices Abolition Act, 1961, but subject to the provision the said Act and to landlords and inamdars holding in such villages or lands.

The underlined words were introduced by Act 1 of 1979 w.e.f. 1.1.1979. It is the contention of the 1st appellant that it was only w.e.f. 1.1.1979 that the Act gave certain rights to tenants of land held by village offices and that the amendment of 1979 was not retrospective in the sense of being classificatory. It will be noticed that after the Amendment by Act 1/1979 in Section 126, the added words are preceded by the words "including". The words `removal of doubts' therefore govern the inams abolished under the Village Offices (Abolition) Act, 1961 also. in other words, the Amendment of 1979 is classificatory or declaratory that the Land Reforms Act, 1961 was always applicable to lands attached to village offices after abolitions of the said offices under the Village Offices (Abolition) Act. 1961. This contention of the appellant therefore fails. Even if the amendment is prospective, the application under section 45 is to be filed on or before 30.6.1979 and that was not done.

Learned senior counsel for Kittamma (4th respondent) Sri Krishnamoorthi contended that till the occupancy-price is paid by the erstwhile office holder under Section 5(1) of the Village offices Abolition Act read with Rule 4 of the Rules made under the Village Offices Abolition Act, the rights as to re-grant do not get crystallised and hence it is not possible to fill up Form 7 for filing an application under Section 45 of the Land Reforms Act, 1961. It is argued that till re-grant, the land is `government land'. We have already considered this contention and rejected the same.

For all the above reasons, the appeals are dismissed. There shall be no order as to costs.