

Nadakerappa Since Deceased By Lrs. vs Pillamma Since Deceased By Lrs. . on 31 March, 2022

Author: S. Abdul Nazeer

Bench: Krishna Murari, S. Abdul Nazeer

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7657-7658 OF 2017

NADAKERAPPA SINCE DECEASED
BY LRS. & ORS.

... APPELLANT(S)

VERSUS

PILLAMMA SINCE DECEASED
BY LRS. & ORS.

... RESPONDENT(S)

JUDGMENT

S. ABDUL NAZEER, J.

(1) These appeals are directed against the judgment dated 30.12.2014 passed by the Division Bench of the High Court of Karnataka at Bangalore in Writ Appeal No.1563 of 2007 connected 16:39:21 IST Reason:

with Writ Appeal No.1950 of 2007.

(2) The brief facts necessary for the disposal of these appeals are as follows:

Smt. Pillamma w/o Late Mariyappa and her children (respondents herein) filed Writ Petition No(s).27230/2002 and 23034/2002 before the High Court of Karnataka at

Bangalore challenging the order dated 27.02.1989 passed by the Karnataka Land Reforms Appellate Authority and the Order of the Land Tribunal dated 30.04.1982 and also the Notice dated 24.05.2002 issued by the Land Tribunal for correcting the extent of land found in the order of the Land Tribunal dated 30.04.1982. They are the owners of the lands bearing Survey No(s).4/7, 4/2 and 1/11 measuring 35 guntas, 25 guntas and 1 acre 14 guntas respectively of Srigandadakaval Village, Bangalore North Taluk. Smt. Pillamma died during the pendency of the proceedings before the High Court. Her children who were already on record continued the proceedings before the High Court. Their father, late Mariyappa s/o Channappa had purchased the lands under a deed of sale dated 30.08.1954 from one Venkatappa.

(3) Appellants are the legal representatives of one Nadakerappa.

Nadakerappa claiming to be the tenant of the said lands filed two applications in Form No.7 for grant of occupancy rights of the said lands along with two other lands i.e. Survey No(s).4/14 and 65. The Land Tribunal by its order dated 30.04.1982 granted occupancy rights in favour of Nadakerappa in respect of the lands bearing Survey No.4/7 to an extent of 35 guntas, Survey No.4/2 to an extent of 25 guntas and Survey No.1/11 to an extent of 25 guntas. Certificate of registration was issued in favour of Nadakerappa in respect of these lands on 08.09.1982 to the extent indicated above. Nadakerappa paid an amount of Rs.462/- towards premium for the grant of certificate of registration. The compensation in respect of the granted lands was ordered to be paid to the land owners on 27.11.1984 by Nadakerappa. It is to be noticed here that Mariyappa was not made party to the said applications filed by Nadakerappa. In the application dated 31.12.1974, the name of one Ramakrishnappa s/o Byrappa was shown as land owner and, in another application dated 30.10.1974, the ownership column was left blank.

(4) Mariyappa filed Writ Petition No.12461/1984 before the High Court challenging the order of the Land Tribunal which came to be transferred to the Land Reforms Appellate Authority and the same was numbered as LRA No.179/1986. The Appellate Authority by its order dated 27.02.1989, dismissed the appeal for default. Mariyappa died in the year 1993.

(5) Mariyappa, during his life time, had filed an application before the Tahsildar, Bangalore North Taluk, to rectify the revenue entry for the year 1989-90 and to show his name in respect of 29 guntas of land in Survey No.1/11. However, on 25.04.1992, the Tahsildar passed an order adverse to the interest of Mariyappa. Mariyappa filed an appeal before the Assistant Commissioner in R.A. No.196/1992-93 challenging the said order which was also dismissed on 26.10.1995. Since Mariyappa died in the year 1993, his legal representatives filed Revision Petition No.118/2001 before the Special Deputy Commissioner challenging the order of the Assistant Commissioner. The said Revision Petition was allowed by the Special Deputy Commissioner by an order dated 19.04.2002. Nadakerappa challenged the said order by filing Writ Petition No.20187/2002 before the High Court which was allowed on 01.07.2002. Consequently, the order of the Tahsildar, the Assistant Commissioner, as also the Special Deputy Commissioner, were set aside. The order in Writ Petition No.20187/2002 stood confirmed in Writ Appeal No.3971/2002.

(6) In the meanwhile, Nadakerappa filed a suit bearing O.S.No.7459/1991 before the City Civil Court, Bangalore, seeking injunction in respect of 1 acre 14 guntas of land in Survey No.1/11 of Srigandadakaval Village. The Civil Court granted an order of temporary injunction in the said suit. This order was challenged by the land owners in MFA No.319/1993 before the High Court. The said appeal was disposed of by the High Court on 08.07.1998 restraining the parties from cutting and removing the trees standing thereon to an extent of 29 guntas. Finally, O.S. No.7459/1991 was decreed by the Civil Court on 21.05.2003. The land owners challenged this judgment by filing an appeal, RFA No.1134/2003 before the High Court. After considering the matter in detail, the High Court has dismissed the appeal on 10.01.2014. (7) Nadakerappa had filed a memo in the year 2002 before the Land Tribunal seeking correction of a clerical mistake found in the order of the Land Tribunal dated 30.04.1982. On receipt of the memo, the Land Tribunal issued a notice to the land owners for an enquiry. The land owners filed Writ Petition No.23034/2002 challenging the validity and correctness of the said notice. They also filed Writ Petition No.27230/2002 challenging the Appellate Authority's order dated 27.02.1989 dismissing LRA No.179/1986 and also the order dated 30.04.1982 passed by the Land Tribunal granting occupancy rights in favour of Nadakerappa. (8) Learned Single Judge of the High Court, by order dated 25.07.2007 dismissed Writ Petition No.27230/2002 filed by the land owners on the ground of delay and laches. The other writ petition, i.e. W.P.No.23034/2002 filed by the land owners was allowed and the notice dated 24.05.2002 was quashed by the High Court.

(9) Nadakerappa represented by his legal representatives challenged the order passed in Writ Petition No.23034/2002 by filing Writ Appeal No.1563/2007. The land owners challenged the other order passed in Writ Petition No.27230/2002 by filing Writ Appeal No.1950/2007. The Division Bench of the High Court allowed Writ Appeal No.1950/2007 and the order passed in Writ Petition No.27230/2002 was set aside. Consequently, the order of the Land Tribunal dated 30.04.1982 and the order passed by the Appellate Authority in LRA No.179/1986 were quashed and the matter was remanded to the Land Tribunal for fresh disposal. In view of this order, the High Court held that Writ Appeal No.1563/2007 has become infructuous. As noticed above, these orders are under challenge in these appeals.

(10) Therefore, two questions arise for consideration in these appeals. The first question is whether the Division Bench was justified in reversing the order of the Learned Single Judge in W.P. No.23034/2002, setting aside the order of the Land Tribunal dated 30.04.1982 and remanding the matter to the Land Tribunal. The second question is whether the Learned Single Judge was justified in quashing the notice dated 24.05.2002.

(11) On the first question, Shri A.N. Venugopal Gowda, learned senior counsel appearing for the appellants, submits that there is a long and inordinate delay of 20 years in challenging the order of the Land Tribunal. He further submits that the appellants are in possession of the lands in question as protected tenants from the year 1955 and the respondents were well aware of the proceedings as early as in the year 1993. Mariyappa, the predecessor in interest of the respondents had not prosecuted the case against Nadakerappa. Accepting these grounds, the learned Single Judge has dismissed the writ petition. The Division Bench of the High Court has set aside the said order in a mechanical manner and has remanded the matter to the Land Tribunal without any justification. He

has urged several other grounds in support of the order of the Learned Single Judge on this question.

(12) On the other hand, Mr. Vikas Singh and Ms. Kiran Suri, learned Senior Counsel appearing for the respondents, submit that Nadakerappa filed the application in Form No.7 for grant of occupancy rights wherein the column earmarked for the name of the landlord was kept blank. Though there is no provision for filing a second Form No.7, he filed the same in which the name of the landlord was shown as “Rama Krishnappa”. It is further submitted that Nadakerappa obtained the order of the Land Tribunal dated 30.04.1982 by playing fraud upon the said Tribunal. The respondents, having obtained the order by playing fraud, cannot be allowed to keep the fruits of the said order. In view of the above, finality of the litigation cannot be pressed into service. In this connection, they have relied on several judgments of this Court. Secondly, it is submitted that there is no documentary evidence before the Land Tribunal to establish the relationship of tenant and landlord which is a pre-requisite under Section 2(33) of the Karnataka Land Reforms Act, 1961 (for short ‘the Act’). (13) On the second question, learned Senior Counsel, Mr. A.N. Venugopal Gowda, submits that having regard to the amendment to Section 48A of the Act wherein a proviso was added by Act No.31 of 1995, Nadakerappa filed a memo for correction of clerical error in the order. The Land Tribunal rightly issued notice on this memo to the respondents. Learned Single Judge was, therefore, not justified in quashing the said notice on the ground of delay. However, learned senior counsel appearing for the respondents, have sought to justify the order of the learned Single Judge. (14) Before considering the above questions, it is necessary to consider the contention of the learned counsel for the parties as to the existence or otherwise of the relationship of landlord and tenant between Mariyappa, the landlord and Nadakerappa who had filed the application in Form No.7 for grant of occupancy rights in respect of the lands in question. Materials on record clearly establish that Venkatappa was the original owner of these lands. He had executed a sale deed dated 28.08.1954 in favour of Mariyappa which was registered on 30.08.1954. However, Venkatappa sold these properties again in favour of Sharabaradhya by a deed of sale dated 07.07.1954 registered on 21.10.1954. As the sale deed executed in favour of Sharabaradhya was subsequent to the sale deed executed in favour of Mariyappa, Sharabaradhya could not get any right, title or interest over the said properties. Sharabaradhya executed registered lease of deeds dated 29.04.1955 and 23.05.1956 in respect of the lands in question in favour of Nadakerappa. It is relevant to note here that Sharabaradhya executed the registered deed of relinquishment on 24.09.1964 in respect of these properties in favour of Venkatappa. It is no doubt true that when these lease deeds were executed in favour of Nadakerappa, Sharabaradhya had no right, title or interest in respect of these properties. However, after the execution of these lease deeds, the name of Nadakerappa was entered in the RTC. It is also clear that after execution of the lease deeds, Nadakerappa was put in possession of the properties as a tenant. The contention of the learned counsel for the landlord is that there is no contract of tenancy between the landlord Mariyappa and Nadakerappa. However, learned counsel for the appellants has contended that Nadakerappa was a protected tenant as defined under sub-section (34) of Section 2 of the Act.

(15) The expression ‘tenant’ is defined in sub-section (34) of Section 2 of the Act. As per this provision, a tenant includes a person who is a protected tenant. The expression ‘tenancy’ is defined in sub-section (33) of Section 2, which means relationship of landlord and tenant. Sub-section (27)

of Section 2 defines the expression ‘protected tenant’, which means a tenant of any land if he has held it continuously and cultivating it personally for a period of not less than twelve years prior to the appointed day. The appointed day here is 01.03.1974.

(16) Materials on record would clearly indicate that Nadakerappa was in possession and cultivating the lands from the date of the aforesaid lease deeds. In fact, this position has been admitted by the landlord which is evident from the documents produced by the appellant along with IA No.103954 of 2021. The appellant has produced the certified copy of an application in Form No.7 dated 27.12.1974 filed by Mariyappa seeking grant of occupancy rights of some other lands in Sajjepalya Village, Bangalore, North Taluk dated 27.12.1974. While filing application in Form No.7, the applicant is not only required to give the description of the land in respect of which he seeks registration of occupancy rights under Section 45 of the Act but is also required to give details of the lands held by him or his family for the purpose of considering ceiling on land holdings under Chapter IV of the Act. The form of the application is statutorily prescribed under Rule 19 of the Karnataka Land Reforms Rules, 1974 (for short ‘the Rules’). Form No.7 prescribed under Rule 19(1) is as under:

“FORM 7 [See Rule 19(1)] Application under Section 48A(1) for registering as an occupant under Section 45 To The Tribunal.....Taluk Name of the applicant..... Age Profession Place of residence I am the tenant/sub-tenant of the following land:

Name of Taluk Village Sy. Plot Area Assessment Period for landlord/landlord No. or A.G. Rs.P. which s and his/their Hissa applicant addresses No. has been cultivating the land as tenant I have been cultivating the land as a tenant for.....years. I am interested in getting registered as an occupant of the land on the terms and conditions laid down in the Karnataka Land Reforms Act, 1961.

I, the family of which I am a member, hold the following lands in my name and in the names of my family members other than those described above as owner/tenant/or in any other capacity: Taluk Village Sy. No. Plot or Area Assessment Capacity Hissa No. in which held

1. Self
2. Wife
3. Minor Children
4. Unmarried daughters
- 5.

Any other particulars Place:..... Date:..... Signature of applicant The Tahsildar should check up the above information with reference to original records and keep ready for enquiry by the Tribunal.

Note: The information given above, if found to be incomplete or incorrect the petitioner is liable to conviction and levy of penalties as provided under Section 125 of the Act.” (17) In the Form No.7 filed by Mariyappa, he has admitted that Survey Nos.11/1, 4/2 and 4/7 of Srigandadakaval Village owned by him; is in the possession of Nadakerappa as a tenant. (18) Learned senior counsel appearing for the landowners submits that the document Form No.7 said to have been filed by Mariyappa, is a fabricated document and that the respondents have filed a complaint before the jurisdictional police station in this regard. It is also submitted that there is no statutory requirement for including the lands owned by the tenant in the said application. (19) Form No.7 filed by the appellant is a certified copy. Having perused the said document, we have no hesitation to hold that it is not a fabricated document. Form No.7 requires the applicant to disclose the other lands held by him and the members of his family. When the landlord himself admits that Nadakerappa was a tenant as early as on 27.12.1974, there is no question of holding that no relationship of landlord and tenant existed between Mariyappa and Nadakerappa. Perusal of the materials on record, makes it clear that Nadakerappa was in possession and cultivating the said lands from the year 1955 and was qualified to be treated as a ‘protected tenant’.

(20) Now, let us consider the first question involved in these appeals. As noticed above, Mariyappa was the owner of the property by virtue of the Sale Deed dated 30.08.1954. However, Nadakerappa did not show his name in the application filed on 30.10.1974 in Form No.7 for grant of occupancy rights. In fact, he did not show anybody’s name as the land owner of the property and left the said column blank. However, in the concluding part of his application in Form No.7, he has mentioned that the said property is standing in the name of Mariyappa s/o Channappa. In the second application in Form No.7 filed by Nadakerappa dated 31.12.1974 he has shown the name of one Ramakrishnappa s/o Byrappa. The land Tribunal granted occupancy rights by Order dated 30.04.1982 in respect of Survey No(s).4/7, 4/2 and 1/11 to an extent of 35 guntas, 25 guntas and 25 guntas respectively. Mariyappa challenged the said order of the Land Tribunal by filing W.P. NO.12461/1984 before the High Court of Karnataka. This Case was referred to the Appellate Authority wherein it was re-numbered as LRA No.179/1986. The said LRA was dismissed on 27.02.1989. No steps were taken up by Mariyappa to seek setting aside of this order. Mariyappa passed away on 15.10.1993. The legal representatives of Mariyappa filed W.P. No.27230/2002 seeking quashing of the order of the Land Tribunal dated 30.04.1982 and also the order of the Appellate Authority dated 27.02.1989. This writ petition was filed after a long delay of 13 years from the date of dismissal of LRA No.179/1986. The only reason assigned for the delay was the financial problems and ill-health. Learned Single Judge of the High Court has dismissed this writ petition on the ground of delay and laches.

(21) As mentioned above, it is clear that though LRA was dismissed by the Appellate Authority on 27.02.1989, Mariyappa did not choose to challenge the said order. Even otherwise, the respondents were aware of the order of the Land Tribunal which is evident from different proceedings initiated by them against the appellants. The dismissal of LRA No.179/1986 was accepted by Mariyappa. In

fact, in the year 1992, Mariyappa filed an application to rectify the entry for the year 1989 by entering his name in respect of 29 guntas of land in Survey No.1/11. The Tahsildar dismissed the said application of Mariyappa on 25.04.1992. This order was challenged by Mariyappa by filing an appeal before the Assistant Commissioner which was also dismissed on 26.10.1995. In the meantime, Mariyappa died. After a lapse of seven years a review petition i.e. R.P.No.118/2001 was filed by the legal representatives of Mariyappa before the Special Deputy Commissioner which was allowed on 19.04.2002. Nadakerappa challenged this order by filing W.P.No.20187/2002 before the High Court which was allowed by the learned Single Judge on 01.07.2002. A writ appeal, W.A.No.3971/2002, filed by the legal representatives of Mariyappa was dismissed on 02.08.2002. After the order passed by the Land Tribunal, Nadakerappa's name was entered in the RTC to the full extent of 1 acre 14 guntas of land in Survey No.1/11. When attempts were made by the landlord to dispossess him of the said land, he filed a civil suit bearing O.S. No.4171/1991. The Trial Court granted temporary injunction in favour of the Nadakerappa. This order was modified by the Order in MFA No.319/1993. These proceedings would clearly show the grant of occupancy rights in favour of Nadakerappa. Therefore, they cannot plead ignorance of grant of occupancy right on 30.04.1982. There is also no merit in the contention of the respondents/landlords that on account of ill health and financial problems, they could not approach the Court within a reasonable time. We are of the view that the learned Single Judge has rightly dismissed the writ petition on the ground of delay. The observations of the learned Single Judge in this regard are as under:

“After passing of the order of the Land Tribunal, proceedings have arisen both on civil side as well as on the revenue side. As aforementioned, the dispute arose between the parties with regard to change of katha in the year 1989. Ultimately, the matter came up to the Division Bench in this Court in W.A. No.3971/2002, wherein it is held that the parties have to get their matter settled in an appropriate forum such as the Land Tribunal. As aforementioned, civil suit is also filed by the third respondent against the petitioners herein for injunction in O.S. No.7459/1991. Now the matter is pending in RFA No. 1134/2003 before this Court. In all these revenue as well as civil proceedings, the petitioners herein are parties. The appeal filed by the petitioners in LRA No.179/86 before the Land Reforms Appellate Authority was dismissed for default on 27.2.1989. W.P. 27230/2002 questioning the order of the Land Reforms Appellate Authority dated 27.2.1989 and the order of the Land Tribunal dated 30.4.1982 is filed before this Court in the year 2002 i.e., after the lapse of about 13 years from the date of dismissal of LRA No. 179/1986. The only reason assigned by the petitioners for filing the belated writ petition is that because of financial and ill health they could not move this Court. The said reason cannot be accepted inasmuch as the petitioners have been fighting litigation either in Revenue Courts or in Civil Court or before this Court.....; The petitioners knew very well the order passed by the Land Tribunal and the appellate authority at least in the year 1989, when the revenue litigation arose. Moreover the petitioners in their written statement filed in O.S. No.7459/1991, have stated that the Tribunal has granted occupancy rights in favour of respondent No.3 over 25 guntas in Sy. No.1/11. Thus, W.P. No.27230/2002 is liable to be dismissed on the ground of delay and laches. This Court does not wish to unsettle the settled matter by entertaining the

writ petition. Petitioners have accepted the order of the Land Tribunal and have acted on the said basis for 13 long years. Now it is not open for them to contend that they did not know the order of the Land Tribunal.” (22) However, the contention of the respondents is that the name of land owner was not shown in the application Form No.7 and that the order from the Land Tribunal was obtained by suppression of material facts.

(23) We have already noticed that in the first application though the name of Nadakerappa was not shown in the landlord’s column, the same was mentioned at its concluding portion. Therefore, it was unnecessary for him to file the second application wherein the land owner was shown as Ramakrishnappa. These applications were filed as early as on 30.10.1974 and on 31.12.1974. The Karnataka Land Reforms Act, 1961 is a beneficent legislation for granting occupancy rights to cultivating tenants of agricultural lands. It is a well-settled canon of construction that in construing the provisions of such enactments, the court should adopt a construction which advances, fulfils and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory. The object of the Act was mainly to confer ownership on the tenants of the lands. Section 45 was introduced by Act No.1 of 1974 w.e.f. 01.03.1974 providing for registration of occupancy rights in favour of the tenant. Rules have been framed in exercise of the power conferred under Section 137 of the Act to effectuate the purpose of the Act. Rule 19 provides for the form of application and notice. This rule clearly states that on receipt of an application, the Tahsildar shall send extracts of the application to the Tribunals concerned. So far as the lands in his Taluk are concerned, the Tahsildar has to verify the particulars mentioned in the application with reference to the revenue records including the record of rights wherever they are prepared and also note the same on the application.

(24) It is common knowledge that most of the tenants during the relevant point of time i.e. nineteen seventies were underprivileged and illiterate villagers hailing from remote and far-flung areas. A large number of tenants were lacking from the adequate and basic necessities of life and were suffering from the acute poverty. Legislature has recognized this aspect and has cast responsibility on the Tahsildar to verify the particulars mentioned in the application with reference to the Revenue Records and to note the same on the application. Therefore, it was the duty of the Tahsildar to verify the Revenue Records and other documents and incorporate/record the name of the owner of the land in Form No.7. Having perused the materials on record, we are satisfied that the tenant in the instant case has not practiced any fraud in order to get the occupancy rights registered in his name. (25) The Division Bench, without assigning any cogent reasons, has set aside the order of the learned Single Judge and has remanded the matter to the Land Tribunal. It is settled law that the order of remand cannot be passed as a matter of course. An order of remand cannot also be passed for the mere purpose of remanding a proceeding to the lower court or the Tribunal. An endeavour has to be made by the Appellate Court to dispose of the case on merits. Where both the sides have led oral and documentary evidence, the Appellate Court has to decide the appeal on merits instead of remanding the case to the lower court or the Tribunal. We are of the view that, in the instant case, the Division Bench has remanded the matter without any justification.

(26) In view of our finding, as above, it is unnecessary to consider the other contentions of the learned counsel for the appellants on the first question.

(27) Coming to the second question, W.P.No.23034/2002 was filed challenging the notice issued by the Land Tribunal dated 24.05.2002 on the basis of a memo filed by the tenant for correction of the survey number. A proviso has been added to Section 48A of 'the Act' by Act No.31 of 1995 which has come into force w.e.f. 20.10.1995 which reads as under:

“Provided further that the Tribunal may on its own or on the application of any of the parties, for reasons to be recorded in writing correct the extent of land in any order passed by it after causing actual measurement and after giving an opportunity of being heard to the concerned parties.” (28) In view of the above proviso, it was permissible for the tenant to make an application seeking correction of the extent of land in the order of the Land Tribunal. The proviso was inserted on 20.10.1995 and the memo seeking correction of the order of the Land Tribunal was filed in the year, 2002. The learned Single Judge was, therefore, not justified in quashing the Notice issued by the Land Tribunal on the ground of delay of about 20 years. We have already noticed that most of the tenants are villagers from remote areas and most of them are illiterate persons and that the Act is a beneficent legislation. This aspect has to be kept in mind while deciding cases under the Act. Whether the order requires correction or not has to be decided by the Land Tribunal, after hearing the parties. In fact, the learned Single Judge, while disposing of W.P. No.20187 of 2002 on 01.07.2012 which arose out of the dispute relating to entries in revenue records, had observed that whether Nadakerappa is entitled to the entire extent of 1 Acre 14 Guntas in Sy.No. 1/11, and whether his application for correction is maintainable are matters to be decided by the Tribunal. This order of the learned Single Judge has been confirmed by the Division Bench. For the aforesaid reasons, we are of the view that the learned Single Judge was not justified in quashing the Notice. The Division Bench has held that in view of setting aside the Order of the Land Tribunal dated 30.04.1982, the Writ Appeal has become infructuous. In our view, the matter requires adjudication by the Land Tribunal on this question.

(29) In view of the above, we pass the following order:

(I) The order in Writ Appeal No.1950 of 2007 dated 30.12.2014 passed by the Division Bench of the High Court of Karnataka at Bengaluru is set aside and the order of the learned Single Judge in W.P.No.27230/2002 dated 25.07.2007 is restored.

(II) The order in Writ Appeal NO.1563 of 2007 dated 30.12.2014 is set aside and the order of the learned Single Judge in W.P.No.23034/2002 dated 25.07.2002 is also set aside. We direct the Land Tribunal to hold an inquiry on the notice dated 24.05.2002 and pass appropriate orders thereon in accordance with law as expeditiously as possible. (30) These appeals are accordingly allowed. There shall be no order as to costs.

.....J. (S. ABDUL NAZEER)J. (KRISHNA MURARI)
New Delhi;

March 31, 2022.