R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JANUARY, 2020

PRESENT

THE HON' BLE MR. JUSTICE S.N. SATYANARAYANA

THE HON' BLE MR. JUSTICE B. VEERAPPA

THE HON' BLE MR. JUSTICE K. NATARAJAN

WRIT PETITION No.6872/2013(KLR)

BETWEEN:

1 . SMT. JAYAMMA
W/O LATE KALEGOWDA,
AGED 50 YEARS

2 . SRI NAGESH
S/O LATE KALEGOWDA
AGED 32 YEARS

3 . SRI MAHESH
S/O LATE KALEGOWDA
AGED 31 YEARS

PETITIONER Nos. 1 TO 3 ARE
R/A NO.490/A, ACCS LAYOUT
D BLOCK, SINGASANDRA
CHIKKABEGUR ROAD,
MADIVALA PO, BANGALORE 68.

4 . SMT. ROOPA
W/O D S NAGARAJ
AGED 28 YEARS

...PETITIONERS

(BY SRI SUNIL S RAO, ADVOCATE FOR PETITIONERS
SRI S.P. SHANKAR, SENIOR COUNSEL AS AMICUS CURIAE,
SRI K. SUMAN, AS AMICUS CURIAE,
SRI V. LAKSHMINARAYANA, SENIOR COUNSEL,
SRI M.R. RAJAGOPAL, ADVOCATE,
SRI BASAVARAJ, ADVOCATE,

SRI UDAYAPRAKASH MULIYA, ADVOCATE,
SRI RAVINDRANATH KAMATH, ADVOCATE,
SRI AJESH KUMAR, ADVOCATE,
SMT. CHANNAMMA, ADVOCATE,
SRI G.B. SHASTRY, ADVOCATE TO ASSIST HON'BLE COURT)

AND:

1 . THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF REVENUE
VIDHANA SOUDHA,
BANGALORE 560 001.

2 . THE ASSISTANT COMMISSIONER,
BANGALORE SOUTH TALUK
KANDAYA BHAVAN, K G ROAD
BANGALORE 560009.

3 . THE SPECIAL TAHSILDAR
BANGALORE SOUTH TALUK
KANDAYA BHAVAN, K G ROAD
BANGALORE 560009.

4 . SRI VENKATARAMANAPPA
S/O LATE GIRIYAPPA
AGED 75 YEARS
R/A NO.220, CHIKKABEGUR VILLAGE
BANGALORE NORTH TALUK
BANGALORE 68.

...RESPONDENTS

(BY SRI UDAYA HOLLA, ADVOCATE GENERAL,
SRI N. DINESH RAO, ADDL. ADVOCATE GENERAL,
SRI T.S. MAHANTESH, ADDL. GOVERNMENT ADVOCATE,
SRI VENKATESH DODDERI, ADDL. GOVT. ADVOCATE,
SRI B.S. BUDIHAL, HCGP FOR R1 TO R3;
SRI K.S. MALLIKARJUNA REDDY, ADVOCATE FOR R4)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 18.4.2012 AND 02.05.2012 PASSED BY THE RESPONDENT No.3 IN RRTCR 35/12-13 RESULTING IN MR No. H157/2011-12, FOUND AT ANNEXURE-H & ANNEXURE-J ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS IS COMING ON FOR PRONOUNCEMENT OF ORDERS ON REFERENCE THIS DAY, ***SATYANARAYANA J., VEERAPPA J., NATARAJAN J.,*** MADE THE FOLLOWING:

ORDER ON REFERENCE

In view of the reference order passed by the learned single judge dated 02.04.2019, made in Writ Petition No.6872/2013 and 12485/2013 the Hon'ble Acting Chief Justice by the order dated 8.4.2019 referred the following questions for reference to a larger bench, as under:

REFERENCE MADE BY THE LEARNED SINGLE JUDGE

(1) Whether State of Karnataka, authorized to enact Law under Entries in List II, could in the background of Constitutional mandate in Article 246(3), traverse beyond authorized field of legislation set out in Entry 45 and Entry 65 of the Constitution of India?

(2) Whether the appointment of a revenue official in the rank of an Assistant Commissioner as an Appellate

Authority under Section 136(2) of the Act and Rule 69 of the KLR Rules and Deputy Commissioner as revisional authority under Section 136(3) of the KLR Act, leading to adjudication of various complex adversarial revenue disputes, inter-parties, involving adjudication of question relating to title and possession, is violative and in excess of the powers of the State under Article 246(3), read with Entries 45 and 65, List II, Schedule-VII of the Constitution and would the same militate the Basic Structure Doctrine of Separation of powers?

(3) Whether proviso to Section 135 of KLR Act would result in enlarging the period of limitation under Central Enactment by reason of two parallel proceedings i.e., one under Revenue Jurisdiction and the other under Section 9 of Code of Civil Procedure by reason of proviso to Section 135 of KLR Act?

(4) Whether it is permissible to split the cause of action available to an aggrieved person by requiring him to first exhaust

the remedies under Chapter XI of KLR Act and then to start de novo civil proceedings as contemplated in Section 135 and proviso thereto?

2. This is a classic case of deprivation of rights in respect of immovable property for more than five decades, neither deciding the rights nor have reached finality which affects the larger sections of the society in the State of Karnataka which affects their fundamental rights as guaranteed under Articles 14 and 21 of Constitution of India. Now time warrants to set right the same in the interest of the general public at large.

BRIEF FACTS LEADING TO THE REFERENCE

3. The petitioners before the learned Single Judge sought for a writ of certiorari to quash the order dated 18.4.2012 and 2.5.2012 passed by the 3rd respondent/Special Tahsildar in RRTCR 35/2012-13 resulting in MR No.H 157/2011-12 as per Annexures-H and J; to direct the Tahsildar to annul all the entries made on the basis of Annexure-J; a writ of mandamus

directing the 3rd respondent-Special Tahsildar to restore the entries in RTC as it stood before 24.12.2008; direct the 1st respondent-State Government to transmit all such adversarial litigation in the Revenue Courts (Assistant Commissioner and Deputy Commissioner) to the respective territorial Courts of Senior Civil Judge and District and Sessions Judges respectively; and a writ declaring to read down the term of the Assistant Commissioner under Sec. 136(2) and Deputy Commissioner under 136(3) of the Karnataka Land Revenue Act (for short hereinafter referred to as 'the KLR Act') to mean and include the respective territorial Senior Civil Judge and territorial District Judge respectively.

FACTUAL MATRIX OF THE CASE

4. It is the case of the petitioners that they are in possession and enjoyment of property bearing Sy.no.161 measuring 2 acres 10 guntas situated at Begur Village and Hobli, Bengaluru South Taluk and the said land is Service Inam land, out of which, 30

guntas was re-granted in the name of one Pillappa the grand father of petitioner Nos. 2, 3 and 4 attached to the office and remaining 1 acre 20 guntas was purchased by Smt. Pillamma the grand mother of petitioner Nos. 2, 3 and 4. Sy.No.161 was totally measuring 8 acres 10 guntas which was a Service Inam land attached to Neeraganti office of Begur Village. Several applicants applied for re-grant of the said land before the Tahsildar and the Tahsildar by the order 14.3.1995 declared the rights of the parties in respect of the said land. The 4th respondent also filed an application for re-grant of the land pertaining to Sy.No.162 of Begur Village, but he did not claim any right or title over the land in question i.e., Sy.No.161 and hence, he was granted 30 guntas in Sy.No.162.

5. Being aggrieved by the said order, petitioners preferred an appeal in M.A.No. 52/1995 before the District Judge. The 4th respondent also filed appeal in M.A.No.162/2006. It is also relevant to state at this stage that on 17.3.2003, the 4th respondent filed an

application for impleading himself in M.A.No.52/1995 filed by petitioners, wherein he was not a party claiming that he was cultivating 2 acres in Sy.No.161, 10 guntas in Sy.No.197, 16 guntas in Sy.No.196, 25 guntas in Sy.No.222 and 10 guntas in Sy.No.246 of the same village. Ultimately, the learned District Judge dismissed the said application holding that it was not tenable in the eye of law. The order dated 14.3.1995 passed by the Tashildar re-granting the lands in favour of the petitioners has reached finality. The District Judge considering both the appeals, by the common order dated 30.10.2008 dismissed both the appeals confirming order dated 13.8.2011 passed by the Tahsildar holding that respondent No.4 is entitled to only 30 guntas in Sy.No. 162.

6. The grandfather of petitioner Nos. 2 to 4 by name Pillappa was the occupant of 30 guntas of land in Sy.No.161. Apart from the same, the grandmother of petitioner Nos. 2 to 5 – Pillamma, wife of Pillappa had purchased 1 acre 20 guntas of land in Sy.No.161 from

one chikkanagappa under a registered Sale Deed dated 22.6.1955. Hence, the petitioners are having interest to an extent of 2 acres 10 guntas in Sy.No.161 i.e., 1 acre 20 guntas purchased by grand mother and 30 guntas by virtue of occupancy rights granted in favour of their grandfather Pillappa. When things stood thus, the petitioners came to know that respondent No.4 had requested the Tahsildar to change the khatha in his name pertaining to Sy.Nos. 161, 184, 196, 197, 246, 222 and 162 situated at Begur village. The Tahsildar, without impleading the petitioners or their father as a party to the proceedings, has proceeded in RRT 26/2005-06 and refused to enter khatha in the name of the 4th respondent on 01.09.2005. Thereafter, the 4th respondent preferred an appeal before respondent No.2 in RA No.276/2005-06 assailing the order passed by the Tahasildar. The 4th respondent very recently in the second week of December 2012 came near the property of the petitioners and tried to dispossess them stating that the RTC of land bearing Sy.No.161 are standing in

his name to an extent of 1 acre 20 guntas and other survey numbers and hence, he is entitled to the possession of the same.

7. It is further case of the petitioners that though the Tahasildar rejected claim of respondent No.4, yet again proceedings in RRTCR 35/2012-13 were initiated by the Tahasildar and by the orders dated 18.4.2012 and 2.5.2012 directed to enter the name of respondent No.4 in the katha bearing Sy.No.161. Thereafter, the petitioners came to know that the impugned mutation was made by Tahasildar on the basis of order passed by the Assistant Commissioner in RA 276/2006. Therefore, the petitioners have filed the present writ petition for the relief sought for.

8. On the basis of the reference made by the learned Single Judge, the Hon'ble Acting Chief Justice has referred this matter to be decided by the full Bench and that is how the matter is before us.

9. In view of the above, keeping in view the important questions referred to by the learned Single Judge, we have invited the members of the Bar by the order dated 9.4.2019 including amicus curiae appointed by the learned Single Judge to assist this Court on the reference made by the learned Single Judge.

ARGUMENTS ADVANCED BY LEARNED COUNSEL FOR THE PARTIES, LEARNED AMICUS CURIAE AND LEARNED MEMBERS OF THE BAR

10. Sri S.P.Shankar, learned Senior Counsel/ Amicus Curiae contended that Chapter VI of the KLR Act deals with 'Revenue Jurisdiction'. Section 61 of the KLR Act, deals with 'Exclusive Jurisdiction of Revenue Courts' and 'bar of Jurisdiction of Civil Courts'. It depicts that a Revenue Court shall have jurisdiction to determine, decide or dispose of, any matter which it is, by or under this Act, empowered to determine, decide or dispose of and no Civil Court shall exercise jurisdiction as to any such matters. He would refer to the provisions of Section 62(b) of the KLR Act to the effect

that, nothing in Section 61 of the KLR Act shall be held to prevent the Civil Courts from entertaining any of the suits, namely:-Suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record. Section 63 of the KLR Act envisages that, No Civil Court shall entertain any suit or other proceeding against the State Government on account of any act or omission of the State Government or any Revenue Officer, unless, the plaintiff first proves that previously to the institution of the suit or the other proceeding, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit or proceeding, it was possible to present.

11. The learned Senior Counsel further contended that Chapter XI of the KLR Act deals with 'Record of Rights', i.e., A record of right shall be prepared in the prescribed manner in respect of every village and such record shall include the particulars, such as:

(a) the names of persons who are holders, occupants, owners, mortgages, landlords or tenants of the land or assignees of the rent or revenue thereof;

(b) the nature and extent of the respective interest of such persons and the conditions or liabilities (if any) attaching thereto;

(c) the rent of revenue (if any) payable by or to any of such persons; and

(d) such other particulars as may be prescribed.

He also referred the provisions of Section 128, 'Acquisition of rights to be reported'. Section 128 (4) depicts that, No document by virtue of which any person acquires a right in any land as holder, occupant, owner, mortgagee, landlord or tenant or assignee of the rent or revenue thereunder, shall be registered under the Indian Registration Act, 1908, unless the person liable to pay the registration fee also pays to the registering authority such fees as may be prescribed for

making necessary entries in the record of rights and registers referred to under Section 129 of the KLR Act; and on registration of such a document, the registering authority shall make a report of the acquisition of the right to the prescribed officer. He would further contend that the provisions of Section 129 of the KLR Act deals with 'Registration of Mutations and Register of Disputed Cases'. It depicts that, the prescribed officer shall enter in the Register of Mutations every report made to him under Sub section (1) of Section 128 or received by him under Sub section (2) or Sub-section (4) of the said Section.

12. The learned Senior Counsel would further contend that in view of Section 135 of the KLR Act, no suit shall lie against the State Government or any officer of the State Government in respect of a claim to have entry made in any record or register maintained under this Chapter or to have any such entry omitted or amended: provided that, if any person is aggrieved as to any right of which he is in possession, by an entry made

in any record or register maintained under this Chapter, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his right under Chapter VI of Specific Relief Act, 1877; and the entry in the record or register shall be amended in accordance with any such declaration. He would also contend that the proviso to Section 135 uses the word 'may' in enabling the aggrieved person by reason of order under Section 136 to file a suit. Statute does not make it compulsory to file the suit and it is made optional. If the statute had used word 'shall' in the said proviso, it would have been possible to contend that limitation does not stop nor the cause of action would be spent or exhausted, on termination of proceedings under Section 136 and the same would continue till disposal of the suit. If this was the position, limitation prescribed for filing a declaratory civil suit under Article 58 of Limitation Act would have fictionally enlarged to accommodate continuing cause of action. That is not the intention of the Legislature.

Hence provisions of Section 58 of Limitation Act would prevail.

13. The learned Senior Counsel also contended that in view of dictum of this Court in the case of ***Kalappa Manappa Kammanr vs. Assistant Commissioner reported in ILR 1989 KAR 988***, it is held that, any person aggrieved by the order passed under Chapter XI of the KLR Act has got a right of suit under the proviso to Section 135 of the KLR Act. Anything decided by the Assistant Commissioner under the said Chapter is neither final nor conclusive. He also relied upon the Full Bench decision of this Court in the case of ***C.N. Nagendra Singh vs. The Special Deputy Commissioner, Bangalore District and others*** **reported in *ILR 2002 KAR 2750*** - para 8, to the effect that, every revenue officer who is authorized to hold an enquiry in respect of disputed cases is a revenue court. The very fact that he is prohibited from recording the statements and depositions of parties, makes it clear that no substantial rights of the parties in respect of the

disputed property can be gone into by such revenue Court. If title or right set up by one party to an immovable property is disputed by the other party, such title to the property cannot be enquired into by the revenue courts much less any decision be rendered for any purpose whatsoever. In the first place the revenue court constituted under the Act can only go into question of assessment, recovery of land revenue and land revenue administration and it has no jurisdiction to go into the question of title in respect of immoveable property which exclusively vests in the Civil Court.

14. Learned Senior Counsel also referred to the entry 45, List II, Schedule VII of the Constitution of India i.e., land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and record of rights, and alienation of revenues. He also referred to Entry 65 List-II of the Schedule that, jurisdiction and powers of all Courts, except Supreme Court with respect to any of the matters in that list.

15. Learned Senior Counsel further contended that, in addition to provisions of Constitution of India vide para 6 of Schedule X, Article 323A and 323B, there are many Statutes, indicating that the orders passed by several authorities shall be final. Judicial review is a basic feature of the Constitution and there are no unreviewable discretions in the Constitutional dispensation as held by the Hon'ble Supreme Court in the case of ***Election Commission, Gujarat vs. Union of India*** **reported in** ***(1995) suppl 3 SCC 643***, so also in the case of ***L Chandra Kumar reported in AIR 1997 SC 1125*** (7 judges) and contended, if there is no proviso appended to Section 135, as now appended, an aggrieved person has his rights and remedies in common law. Proviso appended to Section 135 is both inappropriate and misplaced. There is no proviso appended to Section 136. Pith and substance of Section 135 of the Act is to debar institution of suits against State and its officer. Proviso to Section 135 of the Act is gratuitous advice to seek declaration of his right under

Specific Relief Act based on an entry made in revenue records adverse to the claim of the land holder. He also referred to Article 246(3) of the Constitution of India and contended that the State has exclusive power to make laws with respect to any of the matters enumerated in List II. State has no power to legislate beyond the field of legislation set out in List II.

16. The learned Senior Counsel further contended that in view of provisions of Article 21 of Constitution of India, the purpose of law is to resolve disputes and restore law and order and help the society to live peacefully in the matter of their possession, lands and other natural as well as constitutional rights. Right to life and livelihood envisaged under Article 21 of the Constitution of India would include the right to speedy trial and disposal of interse disputes at the earliest. The proceedings under Section 136 of the KLR Act r/w proviso to Section 135, would make a detour of litigation before the Revenue Authorities and collaterally under Articles 226 and 136 of Constitution, whose decision is

neither final, nor conclusive and would be subject to decision of Civil Court. The entire time taken for the litigation in the revenue jurisdiction is not to be excluded from the limitation provided under Article 58 read with Section 3 of the Limitation Act. Such proceedings are antithetical to concept and aspect of speedy trial and speedy justice assured under Article 23 (Part III) of Constitution of India, as held by the Hon'ble Supreme Court in the case of ***Deep Chand –vs- The State of Uttar Pradesh reported in AIR 1959 SC 648***.

17. The learned Senior Counsel suggested for redrafting of Section 136 of the KLR Act to include:

I. (a) On receipt of an application for transfer of khatha and to mutate the name of the applicant in the event of change of ownership or devolution of title, the revenue Officer shall call for objections from public and notify the same in notice board, fixing an outer limit of 30 days to file objections, if any, supported by documents.

(b) In the event of non receipt of objections within the time allowed, the request for transfer of khatha and mutation of entry in the revenue record be deemed to have been granted.

(c) In the event of objections filed by or dispute of title raised by anybody, parties must be directed to approach the Civil Court and get declaratory relief under Specific Relief Act.

(d) The moment a dispute is raised and supported by documents, revenue jurisdiction shall cease or be ousted, directing the parties to seek interse relief in a competent Civil Court.

II. The State of Karnataka, in exercise of its power to make rules and to remove the difficulties in implementation of the Act, vide Sections 197 and 201 of KLR Act, is authorized to make Rules to remove difficulties while implementing Chapter VI and XI of the

Act, as has been done in the State of Bihar where the Mutation Rules, 2011, have been enacted.

18. Sri K.Suman, learned Amicus Curiae, while arguing question No.1 under reference relying upon the decision of the Full Bench of this Court in the case of ***K. Ashok vs. Shri Pandurang and Others*** **reported in** ***ILR 2012 KAR 4571 (FB) para 12*****,** wherein the words, 'Appeal', 'Revision', 'Distinction between Appeal and Revision' and 'Final' were examined, contended that the Deputy Commissioner is entitled to entertain revision petition under Sub-section (3) of Section 136 of the KLR Act as against orders made under Sub-section (2) of Section 136 of the KLR Act. It was further held that the intention of the Legislature is to provide an opportunity to the aggrieved party to prefer a revision under Section 136(3) of the KLR Act as against the order of the Appellate Authority before approaching the Law Courts and therefore, the provisions of Section 136(3) of the Land Revenue Act has been made.

19. The learned Senior Counsel further pointed out to the observation of the Division Bench of this Court in the case of ***Murugarajendra Mahaswamy's*** case that "*if the intention of the Legislature was that the Deputy Commissioner should also have the power to interfere with an appellate order made under Sub-section (2) of Section 136 of the KLR Act, it would have specified the said provision also in Sub-section (3) of Section 136 of the Act just as Sections 127 and 129"* is not correct. The scheme and provisions of the Acts and the language employed in the above said provisions cannot be said that they are different. The word 'final' appearing in the provision cannot take away the right of the aggrieved party to challenge the order of the Appellate Authority before the Deputy Commissioner, who is the highest authority of the Revenue District or Court, by way of revision petition before approaching the Law Courts.

20. In support of his contentions, Sri Suman, learned Amicus Curiae relied upon the judgments of the Hon'ble Supreme Court in the case of ***Navtej Singh***

Johar –vs- Union of India and Others **reported in** ***(2018) 10 SCC page 1 paragraph 96*** to the effect that rights that are guaranteed as Fundamental Right under the Constitution are the dynamic and timeless rights of 'liberty' and 'equality' and it would be against the principles of our Constitution to give them a static interpretation without recognizing their transformative and evolving nature. He further contended that Constitution is a living organism and the latent meaning of the expressions used can be given effect to only if a particular situation arises. It is not that with changing times the meaning changes, but changing times illustrate and illuminate the meaning of the expressions used. The connotation of the expressions used takes its shape and colour in evolving dynamic situations.

21. The learned Amicus Curiae also relied upon paragraphs 97, 98, 99, 100, 101 and 106 of the ***Navtej's case*** to the effect that the Constitution has been conceived of and designed in a manner which acknowledges the fact that 'change is inevitable'. It is

the duty of the Courts to realize the constitutional vision of equal rights in consonance with the current demands and situations and not to read and interpret the same as per the standards of equality that existed decades ago. The judiciary cannot remain oblivious to the fact that the society is constantly evolving and many a variation may emerge with the changing times. There is a constant need to transform the constitutional idealism into reality by fostering respect for human rights, promoting inclusion of pluralism, bringing harmony, that is, unity amongst diversity, abandoning the idea of alienation or some unacceptable social notions built on medieval egos and establishing the cult of egalitarian liberalism founded on reasonable principles that can withstand scrutiny.

22. It is further contended that the Court as the final arbiter of the Constitution, has to keep in view the necessities of the needy and weaker sections. The role of the Court assumes further importance when the class or community, whose rights are in question, are those

who have been the object of humiliation, discrimination, separation and violence by not only by the State and the Society at large, but also at the hands of their very own family members and the development of law cannot be mute spectator to struggle for the realization and attainment of the rights of such members of the Society.

23. The learned Amicus Curiae also contended the fact that the Legislature has chosen not to amend the law, despite the 172nd Law Commission Report specifically recommending deletion of Section 377 of the Indian Penal Code, which may indicate that Parliament has not thought it proper to delete the aforesaid provisions. All that the Court has to see is whether constitutional provisions have been transgressed and if so, as a natural corollary, the death knell of the challenged provisions must follow. He would further contend that it is the effect of law upon the fundamental rights which calls the Courts to step in and remedy the violation. The individual is aggrieved because the law hurts. The hurt to the individual is measured by the

violation of a protected right. Hence, while assessing whether a law infringes a fundamental rights, it is not the intention of the lawmaker that is determinative, but whether the effect or operation of the law infringes fundamental rights. He also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Joseph Shine –vs- Union of India*** **reported in** ***(2019) 3 SCC 39*** to the effect that there is necessity of certainty of law, yet with the societal changes and more so, when the rights are expanded by the Court in respect of certain aspects having regard to the reflective perception of the organic and living Constitution, it is not opposite to have an inflexible stand on the foundation that the concept of certainty of law should be allowed to prevail and govern. The progression in law and perceptual shift compels the present to have a penetrating look to the past.

24. The learned Amicus Curiae would also contend that when the Constitutionality of a provision is assailed, the Court is compelled to have a keen scrutiny of the provisions in the context of developed and

progressive interpretation. A Constitutional Court cannot remain entrenched in a precedent, for the controversy relates to the lives of human being who transcendentally grow. It can be announced with certitude that transformative constitutionalism asserts itself every moment and assets itself to have its space. It is abhorrent to any kind of regressive approach. The whole thing can be viewed from another perspective. What might be acceptable at one point of time may melt into total insignificance at another point of time. However, it is worthy to note that the change perceived should not be in a sphere of fancy or individual fascination, but should be founded on the sold bedrock of change that the society has perceived, the spheres in which the legislature has responded and the rights that have been accentuated by the constitutional Courts.

25. The learned Amicus Curiae also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Swiss Ribbons Pvt Ltd & Another –vs- Union of India & Others*** **reported in** ***2019 (2) Supreme Page 524***

paragraph-8 to the effect that the rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes J., that the Legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the Legislature. The Courts should feel more inclined to give judicial deference to legislative judgments in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere this admonition has been more felicitously expressed than in ***Morey –vs- Doud (351) US 457 I L Ed 2d 1485 (1957)*** where Frankfurter J., said in his inimitable style 'In the utilities, tax and economic

regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The Legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainity, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events – self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.' The Courts must, therefore, adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or equalities or by the possibilities of abuse of any of its provisions. At paragraph-20, it has been held that the test for violation of Article 14 of the Constitution of India, when legislation is challenged as being violative of the principle of equality, have been settled by this Court time and again. Since equality is only among equals, no discrimination results if the Court can be shown that

there is an intelligible differentia which separates two kinds of creditors so long as there is some rational relation between the creditors so differentiated with the object sought to be achieved by the legislation. This aspect of Article 14 of the Constitution of India has been laid down in judgments too numerous to cite, from the very inception. With regard to power of the Court he submitted that the Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the Courts do not substitute their views on what the policy is. Therefore, he suggested that a judicial review can be read down to the provisions of Section 136(2) and 136(3) of the KLR Act and Rule 69 of the Karnataka Land Revenue Rules, 1966 (for short hereinafter referred to as 'the KLR Rules') by replacing the word 'Assistant Commissioner' with that of 'Senior Civil Judge and the word 'Deputy

Commissioner' with that of 'District Judge' and in respect of Bangalore City, the same shall have to be read as 'Small Cause Court' and City Civil Court respectively.

26. Sri M.R.Rajagopal, learned Counsel from the Bar contended that when there is involvement of immovable property with regard to title, dispute would arise. The Karnataka Land Revenue Act is enacted only to collect taxes. Entry 45 List II Schedule-VII of the Constitution of India deals with Land Revenue, including the assessment and collection of land revenue, the maintenance of land records, survey for revenue purposes and record of rights and alienation of revenues as contemplated under Section 62 of the Act. Section 61(2) of KLR Act deals only with land revenue, tax, maintenance of records which is a comprehensive provision. He referred to Section 127 of KLR Act, with regard to chapter II – Record of Rights. He also relied upon Section 128 of explanation I and II which deals with the rights mentioned above which include a

mortgage without possession, but do not include an easement or a charge not amounting to a mortgage of the kind specified under Section 100 of the Transfer of Property Act. Sub-clause (2) of Explanation II envisages that a person in whose favour a mortgage is discharged or extinguished or a lease determined acquires a right within the meaning of this Section.

27. The learned Counsel further contended that Section 9 of Code of Civil Procedure contemplates by birth to protect rights in respect of immovable property; Chapter XI – Record of Rights directly affects title and possession; Sections 127 and 61 of KLR Act are one and the same; Section 129 of the KLR Act deals with registration of mutations and register of disputed cases; Section 133 of the KLR Act deals with presumption regarding entries in the revenue records which is an independent provision. Section 136 (3) of KLR Act envisages there is no reference to Sub-section(2) of Section 136 of KLR Act; Entry 65 List II Schedule VII of the Constitution of India deals with 'Jurisdiction and

Powers of all Courts'; Article 300-A of the Constitution of India deals with 'Right to Property'. He would further contend that preamble of the KLR Act, 1964 indicates that it is an Act to consolidate and amend the law relating to land and land revenue administration in the State of Karnataka. Whereas it is expedient to consolidate and amend the law relating to land, the assessment and recovery of land revenue, the land revenue administration and other matters hereafter appearing. He also relied upon the Scope, Purpose and Object of the KLR Act which has its origin in the Mysore Land Revenue Code, which is basically an enactment meant for identifying the alienated agricultural lands so that a record of all such land holdings is maintained, particularly, for the purpose of the revenue authorities having information to identify persons from whom revenue is assessed and collected. Raising revenue is the basic object and it is for that purpose, the land holdings are recorded in the revenue records and the name of persons in whose name holdings stand etc., are

also recorded. Revenue authorities do not regulate the acquisition or extinction of rights in properties including agricultural lands etc. Revenue authorities are primarily required to keep a record of the names of persons, who have acquired rights for ensuring that the revenue i.e., the land revenue is collected from such persons. Such is the basis purpose of the Act.

28. The learned Counsel also relied upon the provisions of 2(16) with regard to 'Land Records' which means records maintained under the provisions of or for the purpose of this Act (Chapter XI) are different. Section 2(24) deals with 'Revenue Officer' which means that every officer of any rank whatsoever appointed under or employed for the purpose of this Act. Section 2(26) deals with 'Settlement' which means the result of the operations conducted in a Zone in order to determine the land revenue assessment. Section 2(33) deals with 'Survey Settlement' which includes settlement made under the provisions of Chapter-X. He also relied upon the provisions of Section 202 – 'Repeal

and Savings' wherein at Schedule, Serial Number-13 in the year 1958 by Act No.17, the KLR Act, 1958 was adopted with effect from 01.11.1973. He would further contend that in view of the provisions of Section 200 of the Mysore Land Revenue Code 1888, Chapter VI of the KLR Act is in consonance with Entry 45 List II Schedule VII of the Constitution of India. Therefore, Chapter XI is not necessary.

29. In support of his contentions, the learned Counsel relief upon the following judgments:

(i) P Ramachandra Rao vs. State of Karnataka reported in (2002)4 SCC 578 (para 22 & 33), that legislation is that source of law which consists in the declaration of legal rules by a competent authority. When judges by judicial decisions lay down a new principle of general application of the nature specifically reserved for the legislature, they may be said to have legislated, and not merely declared the law. Salmond

on Principles of Jurisprudence (12th Edition) goes on to say -

> *"we must distinguish law-making by legislators from law-making by the Courts. Legislators can lay down rules purely for the future and without reference to any actual dispute; the courts, insofar as they create law, can do so only in application to the cases before them and only insofar as is necessary for their solution. Judicial law-making is incidental to the solving of legal disputes; legislative law-making is the central function of the legislator."*

It is not difficult to perceive the dividing line between permissible legislation by judicial directives and enacting law – the field exclusively reserved for the legislature. We are concerned here to determine whether in prescribing various period of limitation, adverted to above, the Court transgressed the limit of judicial legislation. At para-23, it has been referred to Bars of limitation, judicially engrafted, are, no doubt, meant to provide a solution to the aforementioned

problems. But a solution of this nature gives rise to greater problems like scuttling a trial without adjudication, stultifying access to justice and giving easy exist from the portals of justice. Such general remedial measures cannot be said to be apt solutions. For two reasons, we hold such bars of limitation uncalled for and impermissible; first, because it tantamounts to impermissible legislation – an activity beyond the power which the Constitution confers on the judiciary, and secondly, because such bars of limitation fly in the face of law laid down by the Constitution Bench in ***A.R. Antulay case*** **reported in** ***(1992) 1 SCC 225*** and, therefore, run counter to the doctrine of precedents and their binding efficacy.

(ii) Kalpana Mehta and Others –vs- Union of India and Others reported in (2018) 7 SCC 1 – paragraphs 24, 25, 26, 30, 31, 32;

(iii) Rinarbai Rambhad and Others –vs- State of Bombay (Now the State of Gujarat) and Others reported in AIR 1962 Guj. 18 paragraphs-6 and 7;

(iv) Bharath Bank Ltd., Delhi –vs- Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi, Union of India – Intervener reported in AIR 1950 SC 188, paragraphs 24, 25, 26, 29 and 30.

30. Sri Basavaraj. S., learned Counsel advanced his arguments on reference/question No.2 with regard to appointment of a revenue official in the rank of an Assistant Commissioner as an Appellate Authority under Section 136(2) of the KLR Act and Rule 69 of the KLR Rules and Deputy Commissioner as revisional authority under Section 136(3) of the KLR Act, leading to adjudication of various complex adversarial revenue disputes, inter-parties, involving adjudication of question relating to title and possession, is violative and in excess of the powers of the State under Article 246(3),

read with Entries 45 and 65, List II, Schedule-VII of the Constitution of India and would the same militate the basic structure Doctrine of Separation of powers, and contended that the provisions of Section 136 (2) and (3) of KLR Act are in violation of fundamental rights of the parties and also in violation of basic structure of the Constitution and against Article 13(1)(g) of the Constitution of India. He contended that the Constitution of India came into force with effect from 26th January 1950. In 1950 and 1951 several land reform laws were enacted. The said laws were challenged in Uttar Pradesh, Madhya Pradesh and Bihar High Courts. The Bihar Act was struck down. The first amendment to the Constitution of India was enacted on 10th May 1951. By the 25th amendment, Article 31-C was added on 20th April 1972, which deals with Saving of laws giving effect to certain directive principles, i.e., Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or

clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Articles 14, 19 or 31 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy; provided that where such law is made by Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

31. The learned Counsel would further contend that in the year 1971 by the 26th amendment, Privy Purse was abolished and in the year 1972, by the 29th amendment, Kerala Land Reforms (Amendment) Act, 1969 and Kerala Land Reforms (Amendment) Act, 1971 were added to 9th schedule. The said amendments were challenged before the Hon'ble Supreme Court in the case of ***Kesavananda Bharathi vs State of Kerala reported in (1973)4 SCC 225*** and the Hon'ble Supreme

Court held that, even though Article 13 may not apply to constitutional amendment, there are implied limitations to amendment in the form of "basic structure" of the constitution.

32. The learned Counsel would further contend that, doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal line between three organs- legislature, executive and judiciary. Independence of Courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution. Separation of judicial power is a significant constitutional principle under the Constitution of India. Separation of powers between three organs--legislature, executive and judiciary--is also nothing but a consequence of principle of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial

power may amount to negation of equality under Article 14. A legislation can be invalidated on the basis of breach of separation of powers since such breach is negation of equality under Article 14 of Constitution of India. Therefore, he would contend that the provisions of Section 136 (2) and (3) of KLR Act are in violation of Article 14 of Constitution of India. He would further contend that the right to property is now considered as not only constitutional right, but also human right.

33. In support of his contentions, learned Counsel relied upon the following judgments:

i) Sajjan singh and others Vs. State of Rajastan and others, Reported in AIR 1965 SC 845.

ii) C. Golaknath and others Vs. State of Punjab and others, Reported in AIR 1967 SC 1643.

iii) His Holiness Kesavananda Bharati Sripadaglvaru Vs. State of Kerala and others, Reported in (1973) 4 SCC 225.

iv) Minerva mills ltd., and others Vs. Union of India, Reported in (1980) 3 SCC 625.

v) Supreme Court Advocates on Record and another Vs. Union of India, Reported in (2016) 5 SCC 1.

vi) State of Tamil Nadu Vs. State of Kerala and another, Reported in (2014) 12 SCC 696.

vii) Shanti Bhushan Vs. Supreme Court of India through its Registrar and another, Reported in (2018) 8 SCC 396.

viii) Brij Mohan Lal Vs. Union of India and others, Reported in (2007) 15 SCC 614.

ix) Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial coke and Chemicals ltd., and others, Reported in (2007) 8 SCC 705.

34. Sri Sunil S. Rao, learned Counsel for the petitioners, referring to the provisions of 28, 29, 30 and 31 of the KLR Act and Rules 38 (a), (b), (c), (d), 39 and 40 with regard to preparation of Preliminary Records by Village Accountant, Settlement of disputes, Maintenance of Record of Rights, contended that under

Article 227 of Constitution of India the High Court shall have superintendence over all Courts –Tribunals and Authorities under Section 136(2) and (3) of the KLR Act which are quasi judicial authorities. He would further contend that the case on hand pertains to classic adversarial civil dispute between various litigating parties and during pendency of civil disputes various monied litigants, are trying to shift and alter their litigative position using revenue entries and while using such revenue entries, it is seen that the Officers, more specifically, the Lower Cadre Revenue Officials are involved. He would further contend that it has become common notion off late that tricksters, fraudsters and conmen collude with the revenue officials, more specifically, the officials in the cadre of Tahsildar and the Assistant Commissioner and create revenue entries to suit their needs. Therefore, the powers conferred on the officials under the KLR Act and more specifically quasi judicial powers conferred by the statute which have been conferred on the/in par rank with the

officials referred to in Section 136 (2) and (3) of the KLR Act and it appears from historical chronology of facts that the rank of officials more specifically mentioned under Section 136 (2) and (3) of the KLR Act, were done so at the given point of time, since these officers, were custodians of all the revenue records, which were quite often disputed by various litigants. That apart from the same ease of accessibility of the same and the question of answerability inter-alia the hierarchy was accounted for as one among the various factors for conferring some quasi judicial powers on the revenue officials *inter alia* themselves to determine to determine litigative disputes acting in their quasi judicial capacities.

35. The learned Counsel would further contend that the orders passed by revenue officials acting under quasi judicial authority have been a warehouse of litigations which are appealed against both before the High Court in the form of writ petition under Articles 226 and 227 of the Constitution of India or some times the litigants directly approach Civil Courts to mitigate

such grievances, where the revenue entries or effects of the same are finally determined. He would further contend that in most of the disputes which involve adversarial claims before the High Court involving a multi party interests, claiming their rights and interests upon the same property by propounding right, title and interest vide different predecessors-in-title, in most such circumstances also, the High Courts have always felt that the parties to such claims resolved only before a Civil Court. The said findings in most such cases are derived after 10-12 years of revenue disputes between the parties and during such revenue disputes, it is quite often seen that the parties indulge in various forms of mischievous and misconceived practices of having prepared sketches and reports by a revenue inspector, who would act as a precursor and a determinative factor in adjudicating the possessory rights of the parties.

36. The learned Counsel would further contend that, if the Civil Courts are empowered to handle as are handled by Assistant Commissioner and the Deputy

Commissioner acting somewhat under provisions of Sections 136(2) and (3) of the KLR Act then quiet obviously the hearing would be conducted in a most systematic manner and if the matter requires deeper consideration, the Civil Courts may exercise their power concurrently under Section 9 of Code of Civil Procedure and under those circumstances, reasonableness of judicial system would avoid the cascading effect of multiple litigations. Once the Civil Courts start dealing with the questions of right to property and the right of possession, a major mischief in the adjudicatory mechanism will be set at naught.

37. The learned Counsel would further contend that from the language employed in KLR Act, it can be seen that the quasi judicial powers conferred under Section 136 (2) and (3) of the KLR Act are more special powers which have been conferred upon the quasi judicial authority and not on any specific person. By nature of the authority adjudicating the proceedings indicates the rank of a person and not the person

himself and as such, it would not be illegal or unconstitutional for any judicial member, ranked in par with such specified in Section 136(2) and 136(3) of the KLR Act, to officiate and preside upon such proceedings. Therefore, he sought to allow the writ petition as sought for.

38. In support of his contentions, learned Counsel relied upon the following judgments:

(i) Associated Cement Companies Ltd., -vs- P.N. Sharma and Another reported in AIR 1965 SC 1595;

(ii) Chief Justice of Andhra Pradesh and Others –vs- L.V.A. Dixitulu and Others reported (1979)2 SCC 34;

(iii) Shri Kumar Padma Prasad –vs- Union of India and Others reported in (1992) 2 SCC 428;

(iv) Harinagar Sugar Mills Ltd., -vs- Shyam Sundar Jhunjhunwala and Others reported in AIR 1961 SC 1669;

(v) Union of India –vs- Madras Bar Association reported in (2010)11 SCC 1;

(vi) L. Chandra Kumar –vs- Union of India and Others reported in (1997) 3 SCC 261;

(vii) S.P.Sampath Kumar –vs- Union of India and others reported in (1987)1 SCC 124;

(viii) R.K.Jain –vs- Union of India reported in (1993)4 SCC 119;

(ix) Hiral P. Harsora and Others –vs- Kusum Narottamdas Harsora and Others reported in (2016)10 SCC 165; and

(x) Madras Bar Association –vs- Union of India and Another reported in (2014) 10 SCC 1.

39. Smt. Chennamma, learned Member of the Bar contended that the Administrative Law seeks to regulate and control abuse of administrative power with a view to infuse fairness and accountability in the administrative process necessary for securing equity and inclusiveness in the domestic and world order. One of the greatest achievements of Indian judiciary has been conscious

development towards a comprehensive system of administrative law as a fair policy-delivery mechanism. She contended that the time tested principle of governmental morality has been strengthened by firmly engrafting the principle of 'legitimate expectation' both procedural and substantive law. Courts have developed some of the finest principles of environmental and consumer jurisprudence. So far, courts have been successful in handling the inevitable tension between the democratic right of the majority to rule and the socio-economic needs of the individuals and groups especially those who are deprived and disadvantaged. She would further contend that, the focal point of administrative law is fairness and accountability in administrative process. Unfortunately, because all other mechanisms, statutory and administrative, have failed to deliver upto the expectations. It is natural that judicial review of administrative action plays a dominant role, despite the fact that, it involves considerable cost, time and effort. Insptie of its various limitations,

internal and external, no human institution has done so much in dealing with malignancy in the exercise of administrative powers as the judiciary has done in India. While, at all other levels of control, there appears to be 'shadow boxing', Court's direction is firm and fixed. In the changed scenario of economic liberalization and globalization of economy, the court is emphasizing 'self-restraint' in order to provide necessary flexibilities to the administration to the extent of almost withdrawing from certain areas of policy formation. She would further contend that, in the absence of any statutory administrative procedure code laying down minimum procedural requirements, there exist a bewildering variety of administrative procedures. Sometimes, procedure is laid down in the law under which authority is created. At times, the authority is left free to develop its own procedure or follow the procedure of the civil courts. In the absence of any of these, administrative authority is required to follow the principles of natural justice which require a minimum

standard of fairness expected to vary widely according to the context and cannot be stretched too far in a ritualistic manner. This makes the administrative procedure less overtly in judicial nature.

40. The learned Counsel further contended that, the sole object of Article 32 of the Constitution of India is the enforcement of Fundamental Rights guaranteed by the Constitution. It follows that no question other than relating to fundamental right will be determined in a proceeding under Article 32 of Constitution. The difference between Articles 32 and 226 is that, while an application under Article 32 lies only for the enforcement of Fundamental Rights, the High Court under Article 226 has a wider power to exercise its jurisdiction not only for the enforcement of Fundamental Rights, but also ordinary legal right. She further contended that, the crucial aspect of administrative law is, fairness and accountability in the administrative process. Inspite of various limitations, over the years owing to the failures of all mechanism to

deliver just, fair and reasonable expectations, judicial review of the administrative action has played a commanding role. Revealing many interesting facets even in the changed scenario, the directions given by the court remained firm and fixed. The court cautioned statutory authority not to act with any preconceived notions. The Court made it clear that the demands of principles of natural justice varies in different situations depending not just upon the facts and circumstances of each case, but also on the power and composition of the tribunal, guided by the rules and regulations under which it functions. The trend shows that there is consistency with the observations formed by the court and is in line with the survey of past few years. She also referred to the definition of "Revenue officer" under sub section (24) of Section 2, to mean, 'every officer of any rank whatsoever appointed under or employed for the purposes of the Act'.

41. The learned Counsel in support of her contentions relied upon the dictum of this Court in the

case of ***N.Chandra Reddy vs. The State of Karnataka*, reported in *ILR 2016 KAR 3275,*** to contend that, the there is no provision in KLR Act or Rules framed thereunder for reviewing the order passed on merit by Order passed by the Assistant Commissioner under Section 136(2) of the KLR Act. Once the Assistant Commissioner passes the order under Section 136(2), he becomes *functus-officio*.

42. The learned Counsel also relied upon the following judgments:

(i) *Damodar and others vs. Government of Karnataka and others*, reported in *AIR (2015)4 KAR 548* to the effect that the revenue courts have no jurisdiction to go into the question of tile in respect of immoveable property which exclusively vests with the Civil Courts;

(ii) *Madan vs. Deputy Commissioner, Ramanagaram and others* reported in (2011)4 Kant.LJ 383, Para 4;

(iii) *Minerva Mills Ltd. and others vs. Union of India and others* reported in *AIR 1980 SC 1789;*

(iv) *Zee Elefilms Ltd. and another vs. Union of India and others* reported in *(2005)4 SCC 649,* para 10;

(v) *Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Assn. and another* reported in *(2007)4 SCC 669,* para 17 and 29 on doctrine of proportionality;

(vi) *Union of India and others vs. Major General Shri Kant Sharma and another* reported in *AIR 2015 SC 2465;*

(vii) *Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati and others* reported in *(2015) 8 SCC 519,* para 20 and 42;

43. Sri Udaya Prakash Muliya, learned Counsel, contended that there is difference between Chapter VI "Revenue Jurisdiction" and Chapter XI "Record of

Rights" of the KLR Act. He would contend that in view of the provisions of Section 62(b) of the KLR Act, the Civil Courts have jurisdiction to entertain suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record. He contended that the data available as of now does not give a good picture about the comparison of the pendency of less number of litigation before revenue authorities than civil courts. Under the provisions of Section 136(2) and (3), appointing a Judicial Officer to perform functions of a revenue officer under the umbrella of revenue Court would only be an order which once again could be subjected to challenge in a regularly instituted suit, may be before a Junior Division Civil Judge, and the provisions of Section 136 of the Act is inconsistent and derogatory to Entry 45, List II of Schedule VII of the Constitution of India. He further contended that in Mysore Land Revenue Code, 1888, and Record of Rights Act, 1958, it was mandated that the decision of Civil Court shall bind the Deputy

Commissioner, the sole revenue officer, designated to deal with mutation of entries with revenue land vide Section 67 of the said Code. The provisions, both in Mysore Land Revenue Code and Record of Rights Act did not constitute, designate or appoint any authority to decide any claim for change in mutation entry or record of rights, wherein there is dispute regarding title. The revenue officer was authorized to change mutation entry and record of rights, only on undisputed facts. The jurisdiction of revenue authority was totally barred when dispute of title was claimed or made, as held by the Full Bench of this Court in the case of *Nagendra Singh (supra)*.

44. The learned Counsel further contended that title to revenue land when disputed, the only remedy known to law is to invoke provisions of section 9 of Code of Civil Procedure, availing the benefit under Chapter VI of Specific Relief Act. Therefore, he contended that provisions of Section 136 of the KLR Act being counter productive is beyond the legislative competency of Entry

45, List II Schedule VII of the Constitution of India, keeping retaining of this provision, if at all, unless there is stoppage of clock of limitation, at the starting point when an order passed under Section 129(4) and (6) of the KLR Act as commencement period for cause of action, for filing a suit for declaration, the mischief intended would continue, leading gullible litigants to run from pillar to post and the land mafia which includes corrupted bureaucrats from exploiting the poor litigants. Therefore, he sought to strike down provisions of Section 136 (2) and (3) of KLR Act.

45. Sri V. Lakshminarayana, learned Senior Counsel contended that the second proviso to Article 31A, of the Constitution provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in

force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof. He would further contend that preamble of the KLR Act reads that it is an Act to consolidate and amend the law relating to land and the land revenue administration in the State of Karnataka. He also invited attention of the Court definitions under Section 2 of the KLR Act. Sub Section (16) of Section 2 defines 'Land records' which means 'records maintained under the provisions of or for the purposes of the KLR Act'; Section 2(24) defines 'Revenue Officer' which means every officer of any rank whatsoever appointed under or employed for the purposes of this Act; Section 2(26) defines 'Settlement' which means 'the result of the operations conducted in a zone in order to determine the land revenue assessment'. He also invited attention of the Court that, Article 254 of the Constitution of India refers to

Inconsistency between laws made by Parliament and laws made by the Legislatures of States. He further referred to Chapter-III of the KLR Act-- 'Procedure of Revenue Officers'. Section 24 of the KLR Act deals with 'Revenue Officers to be Revenue Courts' – A Revenue Officer, not below the rank of the Tahsildar while exercising power under this Act, or any other law for the time being in force, to inquire into or to decide any question arising, for determination between the State Government and any person or between parties to any proceedings, shall be a Revenue Court.

46. The learned Senior Counsel further contended that Section 61 of the KLR Act is a general provision of revenue jurisdiction. Sections 127 to 136 under Chapter XI of the KLR Act are special provision and the special provisions shall prevail over the general provisions.

47. He also invited attention of the Court to the provisions of Sections 62, 63, 135 and 136 of the KLR

Act, contending that, under Section 136, the provisions of Chapter V shall not apply to any decision or order under this Chapter XI. The person aggrieved by any entry can approach the Civil Court without invoking the provisions of Section 136 of the KLR Act. He would further contend that the person aggrieved against the procedural irregularity under the KLR Act, can invoke the provisions of the Act and not with regard to any dispute, title based on any source of title, etc., and the remedy is only to approach the competent Civil Court.

48. The learned Senior Counsel also filed submission summary before the Court and contended that, since the KLR Act does not deal with ownership, possession and title, whenever there is dispute involving issues between two parties, the suit is maintainable. He would further contend that the suit directly against the Government and its Officers for correction of Revenue Records is not permissible, but if a person disputes the record of rights or is aggrieved by record of rights, suit is maintainable along with substantial relief of

declaration and injunction including correction of record of rights.

49. The learned Senior Counsel further contended that the bar under Section 63 read with Section 135 of the KLR Act (exclusion of proviso) operates only against Government and Government Officers and not against private individuals. The jurisdiction on ownership, possession and title would not come within purview of KLR Act. Chapter-V is general provision. Chapter XI is special provision, which prevails over general provision. Therefore, the remedy under Chapter V cannot be compared to remedies under Chapter XI. Once a dispute touching ownership, title or possession goes to Civil Court, the Revenue Officer cannot exercise such powers. A provision should be read down subject to civil proceedings under Section 9 of Code of Civil Procedure before a Civil Court.

50. In support of his contentions, the learned Senior Counsel relied upon the following judgments:

(i) Binoy Viswam –vs- Union of India and Others reported in 2017(7) SCC 59- Judicial review-paragraphs 83, 85 and 86;

(ii) SBI –vs- Santosh Gupta and Another reported in (2017) 2 SCC 538 –Judicial review – paragraph 43;

(iii) (2017)2 SCC 144 repugnancy – paras-22 and 23;

(iv) Goa Glass Fibre Ltd., -vs- State of Goa reported in (2010) 6 SCC 499-Validity and Judicial review – para 27;

(v) Sanjeev Coke Manufacturing Company –vs- M/s. Bharat Coking Coal Ltd., reported in (1983) 1 SCC 147; Judicial review, para-25;

(vi) Shayara Bano –vs- Union of India reported in (2017) 9 SCC 1 - Article 14 of the Constitution of India, paras-87, 93, 95, 97, 100, 101;

(vii) Hiral P. Harsora –vs- Kusum Narottamdas Harsora reported in (2016) 10 SCC 165, para 48 sub-para 51;

(viii) State of H.P. –vs- Satpal Saini reported in (2017) 11 SCC 42 – para 7, 8, 9 and 12;

(ix) Sanjay Singh –vs- U.P. Public Service Commission reported in (2007)3 SCC 720 – para 19;

(x) S.E. Batra -vs- Taruna Batra reported in (2007) 3 SCC 169 – para 16;

(xi) Dhulabhai etc. -vs- State of M.P. and Mother reported in AIR 1969 SC 78 – paras 28 and 31;

(xii) B. Prabhakara Rao –vs- Desari Pana reported in (1976) 3 SCC 550; para 10;

(xiii) Bhim Singhji –Vs- Union of India reported in (1981)1 SCC 166 – para 17;

(xiv) Garikapati Veeraya –vs- N. Subbiah Choudhry & Others reported AIR 1957 SC 540- para 23 (v);

(xv) K.V. Balan & Another –vs- Sivagiri Sree Narayana Dharma Sanghom Trust & Others reported in AIR 2006 Ker. 58 (FB) para 13;

(xvi) CHI –vs- Ramesh Gelli reported in (2016) 3 SCC 788 – paras 40, 41, 42;

(xvii) Maharashtra State Board of Secondary and Higher Secondary Education –vs- Paritosh Bhupeshkumar Sheth reported in (1984) 4 SCC 27 – paras 20 and 29;

(xviii) Madhavi Amma –vs- S. Prasannakumari reported in (2013) 4 SCC 77 – paras 24 and 25;

(xix) Tata Power Co. Ltd., -vs- Reliance Energy Ltd. reported in (2009) 16 SCC 659 – paras 100 and 101;

(xx) Rajinder Singh Vs. State of Jammu and Kashmir and others, Reported in (2008) 9 SCC 368 paras-17, 18, 19 and 20;

(xxi) T. Ravi and Anothers –vs- B. Chinna Narasimha and Others reported in (2017) 7 SCC 342 – Record of Rights – para 103;

(xxii) A.R. Antulay –vs- R.S. Narak and Another reported in AIR 1988 SC 1531 – para 81-90;

(xxiii) R.K. Garg –vs- Union of India reported in (1981) 4 SCC 675 paras 7 and 8;

(xxiv) State of A.P. –vs- Pratap Karan reported in (2016)2 SCC 82 para 90;

(xxv) Nikesh Tarachand Shah –vs- Union of India and Another reported in (2018)11 SCC 1 – paras 15, 20, 21 to 24;

(xxvi) State of Kerala and Another –vs- Mohammed Basheer reported in 2019 SCC Online SC 59 – Definition of ownership - paras 16 and 17;

(xxvii) CBI –vs- Keshub Mahindra and Others reported in (2011) 6 SCC 216 – para 11;

(xxviii) C. Golak Nath and Others –vs- State of Pubjab and Another reported in AIR 1967 SC 1643 – Highest Court – para 44; and

(xxix) A.S. Krishna and Others –vs- State of Madras reported in AIR 1957 SC 297 paras 8, 12 and 13;

51. Sri N. Ravindranath Kamath, learned Counsel filed his Memo of Submission contending that Section 128 of the KLR Act deals with the matter relating to question of rights to be reported. The legislature with an intention to resolve the matter in context to the entry has provided a provision under Section 135 of the KLR Act to approach the Civil Court and also there is a provision for Appeal/Revision under Section 136(2) and (3) of the KLR Act. He also relied upon the judgment of this Court in the case of Somappa –vs- Chandrappa reported in ILR 1985 KAR 3872, wherein, this Court has held that suit for declaration of title and consequential rectification of entries in Record of Rights is maintainable and is one of the remedies provided under the KLR Act. Therefore he submits that there is no necessity for the aggrieved person to approach Revenue Authorities under Section 136 of the KLR Act and he can approach the Civil Court. When the Act itself envisages about the jurisdiction of Civil Court to entertain a suit relating to the matter involved in

Chapter XI of the KLR Act why is it necessary for him to approach Revenue Authorities under Section 136 of the KLR Act that too in an Appeal and a Revision thereupon before the Assistant Commissioner and Deputy Commissioner.

52. The learned Counsel also expressed practical difficulty in conducting proceedings before the Revenue Authorities and contended with regard to the advantage of the litigant in approaching the Civil Court. Ultimately, he contended that this Court has unfettered power to transfer the powers vested with the Executives under Section 136 of the KLR Act merging the powers vested in a Civil Court as per Section 135 of KLR Act and the three different litigations provided under the KLR Act can be combined into a single litigation to save the precious time of the Courts and this jurisdiction should vest with the Civil Court alone, which the High Court can declare by issuing appropriate writ. Any direction to amend the law to Legislature will not be viable. He would further contend that if Sections 135

and 136 are merged together, the entire jurisdiction may be ordered to be vested with the Civil Court. A suit challenging the order of the Tahsildar under Chapter XI of the KLR Act shall lie with the Civil Judge and an Appeal shall lie to Senior Civil Judge, which shall be a summary proceedings within the definition as provided under the Code of Civil Procedure to be decided within a time limit of six months and it would be useful to the common man and precious time of the Court can be saved.

53. Sri Ajesh Kumar, learned Counsel from the Bar while relying upon Section 62 of the KLR Act contended that the procedure under the KLR Act, Rule of Law is compromised in view of the provisions of Section 136(2) and (3) of the KLR Act and the rights of the parties are deprived. Therefore, it is high time for the Courts to interfere and issue a writ of mandamus to the State Government as prayed for in the present writ petition.

54. Sri G. Balakrishna Shastry, learned Counsel filed list of judgments and precedents held thereon to contend that the record of rights is not a document of title, but it merely raises presumption of correctness of entry which is rebuttable. Mutation of a land in the revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title. It only enables a person in whose favour mutation is made to pay the land revenue. He also contended that in view of the provisions of Section 61(1) and Section 62 of the KLR Act, bar is not attracted whether a suit is filed in respect of a dispute between two parties and a civil suit is maintainable for a declaration of title and possession even though, such a relief is founded on the averment that – Revenue Records are illegal or incorrect. Bar is attracted only in respect of claims against the Government when Government is impleaded as a party and in respect of matters provided therein. Learned Counsel further contended that the provisions of Section 136(3) of the KLR Act envisages the power

given to the Deputy Commissioner to protect the immoveable property, in particular, Government properties.

55. In support of his contentions, learned Counsel relied upon the following judgments:

(i) Payappa Nemanna Huded –Vs- Chamu Appayya Huded reported in 1969(2) Mysore Law Journal 198 (DB)

(ii) Srimanmaharaja Niranjana Jagadguru Mallikarjuna Murugarajendra Mahaswamy Vs. Deputy Commissioner, reported in ILR 1986 KAR1059 (DB).

(iii) S. Halappa Vs. Assistant Commissioner, Shimoga Sub-Division, Shimoga and others, reported in 1993(1) KLJ 82 (DB).

(iv) Smt. Maramma Vs. The Tahsildar Sirguppa, reported in ILR 1999 KAR 1203.

(v) Mallegowda Vs. C. Channaveeregowda and Others, reported in ILR 2011 KAR 4225.

(vi) Sri Ashok Vs. Shri Pandurang and Others, reported in ILR 2012 KAR 4571 (FB).

(vii) C.N. Nagendra Singh Vs. The Special Deputy Commissioner, Bangalore District and Others, reported in ILR 2002 KAR 2750.

(viii) P.K. Vasudevan Vs. The Deputy Commissioner of Kodagu District and Others, reported in ILR 2002 KAR 4637.

(ix) ASS Kaur Vs. Krtar Singh and others, reported in AIR 2007 SC 2369.

(x) Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company and others, reported in (2019) 3 SCC 191 para 6.

(xi) Baburao Adarshappa Birade vs. Mallappa Chennappa Birade & another reported in 1967(1) MY.L.J. 261

(xii) Patel Doddakempegowda Vs. Chikkeeregowda, reported in ILR 1986 KAR 2404.

(xiii) Rajasab Husseinsab Mulla Vs. Inayathullakhan, reported in ILR 1992 KAR 1649 (DB).

(xiv) The State of Karnataka and others Vs. Smt. H. J. Shankunthalamma, reported in ILR 2007 KAR 5106.

(xv) State of Tamilnadu and Others –vs- K. Shyam Sunder and Others reported in AIR 2011 SC 3470.

ARGUMENTS ADVANCED ON BEHALF OF THE RESPONDENTS-STATE

56. Per contra, Sri Udaya Holla, learned Advocate General along with Sri T.S.Mahantesh, learned Addl. Government Advocate, submitted notes of arguments and contended that without identifying the problem areas, it is not feasible to find a solution for them. Section 24 of the KLR Act specifies that revenue officers, not below the rank of Tahsildar, exercising power under the Act shall be a Revenue Court. Section 61 provides for exclusive jurisdiction of Revenue Courts and bar of jurisdiction of civil courts in respect of matters which are required to be decided under the KLR Act. The provisions of Section 61(2) of the KLR Act

specifies that civil court shall not exercise jurisdiction in respect of matters specified in Section 61(2) (a) to (h) which indicate that they primarily relate to assessment, land revenue, entries to be made in land records. Section 62 of the Act specifies that nothing contained in Section 61 shall be held to prevent the civil courts from entertaining any of the suits specified in this Section namely:

(a) suits against State Government to contest the amount claimed or paid under protest, or recovered as land revenue on the ground that such amount is in excess of the amount authorized in that behalf by the State Government or that such amount had previous to such claim, payment or recovery been satisfied in whole or in part or that the plaintiff or the person whom he represents is not the person liable for such amount:

(b) suits between private for the purpose of establish private right, although it may be affected by any entry in any land record.

(c) suits between private parties for possession of any land being a whole survey number or sub-division of a survey number or a part thereof. Chapter XI encompassing within itself 127 to 136 relating to record of rights and the mode and method and procedure for entry in the record of rights.

57. The provisions of Section 135(1) bars suits against State Government or any officers of the State in respect of claims to have an entry made in record of rights and proviso thereto states that any person aggrieved by an entry in the record of rights may institute a suit against person denying his title. Said section only bars suits being filed against Government or its officers regarding entries in record of rights and does not bar a person from filing a suit against any person in respect of his title irrespective of the entry in

record of rights or not . A person can file a suit for declaration and/or injunction in respect of any property at any time and even when any proceedings are pending before the revenue court.

58. The learned Advocate General contended that the first question under reference does not arise for consideration in view of Article 246 (3) of Constitution of India which states that legislature shall have exclusive power to make laws in respect of matters enumerated in List II of 7th schedule of the Constitution. Entry 45 of list II empowers state legislature to enact laws in respect of land revenue, including assessment and collection of revenue, maintenance of land records, survey for revenue purposes and record of rights and alienation of revenues. This entry is wide enough to cover all matters which are set out in KLR Act. He further contended that the Hon'ble Supreme Court has repeatedly held that entries in 7th Schedule are not source of power, but merely demarcate fields of legislature and that these are to be construed liberally and widely so as to attain the

purpose. He further contended that the legislative lists are merely topics of legislation and must receive liberal construction inspired by a broad and generous spirit and not in a narrow and pedantic sense and further that if the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic. Entry 65 of List II of the 7th Schedule of the Constitution of India relates to jurisdiction and power of all Courts in respect of any of the matters in List II. Therefore, the State Legislature is empowered to exclude jurisdiction of Civil Courts in respect of matter relating to Entry 45 and confer the same on revenue Courts.

59. He further contended that the second question under reference relates to competence of revenue officials (Revenue Court) to adjudicate complex adversarial revenue disputes relating to title. The said question is no more *res integra*. This Court, in the case of ***C.N. Nagendra Singh vs. The Special Deputy Commissioner, Bangalore District and others*** **reported**

in *ILR 2012 KAR 2750* and held that the revenue courts are precluded from going into title of property and revenue authorities have no jurisdiction to find out whether sale deed is valid or not.

60. With regard to third question under reference, he contended that, it relates to whether Limitation Act get extended by virtue of proviso to Section 135. Proviso to Section 135 does not extend or shorten the period of limitation provided under the Limitation Act. It merely states the obvious viz., the right of a person to file Civil Suit when an entry is made contrary to his interest. Limitation is always to be construed from the date of cause of action. In case a wrong entry is made in record of rights, it gives a fresh cause of action to file a suit. Even without the proviso, it is open to the person aggrieved to file a civil suit challenging the entry or seek declaration of title or injunction. It is an additional cause of action which accrues on such entry being made.

61. With regard to fourth question under reference he contended that, it relates to issue as to whether by virtue of Section 135 and its proviso, cause of action is split up. This is not Correct. The right to go to Civil Court at any time is not prevented by the Act. Section 135 bars suits being filed against State and its officials regarding entries made in the record of rights. It does not prevent parties filing suits against rival claimants or individual and seeking declaration of title, injunction etc. Proviso merely states the obvious that in case entry is made in record of rights the person aggrieved is entitled to file a suit for declaration of title and entry shall be amended in accordance with such declaration.

62. In support of his contentions, learned Advocate General relied upon following judgments.

REVENUE COURTS PRECLUDED FROM GOING INTO TITLE

(i) C.N. Nagendra Singh –vs- The Special Deputy Commissioner, Bangalore District

and Others reported in ILR 2002 KAR 2750 (FB) (head note and para 8);

(ii) Bhagwan Dayal (since deceased), by LR., Bansogoal Deney and Another –vs- Mst. Reoti Devi (deceased) represented by her daughter Mst. Dayavati reported in AIR 1962 SC 287 (para 8 and 13) Revenue Court is precluded from going into title. It cannot decide title to property;

(iii) N. Vasudevaraju and Another –vs- The Deputy Commissioner, Ramanagaram District, Ramanagaram and Others reported in 2011(1) Kar LJ 422 (para 12 to 17, 18);

(iv) Sri Basappa Ningappa Makapur –vs- The Assistant Commissioner and Others reported in 2001(1) KCCR 488 (head note and para 7 & 8) - Revenue authorities have no jurisdiction to find out whether sale deed is valid or not;

(v) The State of Gujarat –vs- Patil Raghav Natha and Others reported in 1969 (2) SCC 187 (para 14) -Commissioner under Land Revenue Act cannot go into the question of title;

ENTRIES IN 7TH SCHEDULE TO BE CONSTRUED LIBERALLY AND WIDELY

(vi) Offshore Holdings Private Limited –vs- Bangalore Development Authority and Others reported in 2011(3) SCC 139 (para 67 & 71) - Entries in 7th Schedule are not source of power, but merely demarcate fields legislation and that these are to be construed liberally and widely so as to attain the purpose.

(vii) Ujagar Prints –vs- Union of India reported in 1989 (3) SCC 488 (const. Bench)(para 48) - Entries to the legislative list are merely topics of fields of legislation and must

receive a liberal construction inspired by a broad and generous spirit and not in a narrow and pedantic sense.

The expression "with respect to" in Article 246 brings in the doctrine of "pith and substance" in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the legislation, looked at as a whole, is substantially 'with respect to' the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic.

(viii) State of Rajasthan –vs- Shri G. Chawla and Dr. Phumal reported in AIR 1959 SC 544 (para 8) - Legislature possesses plenary powers of legislation. Power to legislate

includes power to legislate on ancillary matters.

(ix) Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia and Others --vs- State of Bombay and Others reported in AIR 1962 SC 486 (para 20) - If legislation enables something to be done, it gives power by necessary implication to do something which is indispensable for carrying out the purpose.

LAYMEN MANNING LAND TRIBUNAL IS CONSTITUTIONALLY VALID

(x) Khatija Bi –vs- State of Karnataka & Others reported in 1975 (2) Kar LJ (para 10, 24 to 29)

(xi) H.S. Srinivasa Raghavachar and Others –vs- State of Karnataka and Others reported in 1987(2) SCC 602 (head note & para 8) - Layman Land Tribunal constituted under

the Karnataka Land Reforms Act is not illegal or *ultravires* the Constitution.

COURT CANNOT ISSUE WRIT TO LEGISLATE

(xii) Khazan Singh (Dead) by LRs –vs- Gurbhajan Singh and Others reported in 2007 (3) SCC 169 (para 16)

(xiii) Binani Zinc Limited –vs- Kerala State Electricity Board and Others reported in 2009 (11) SCC 244 (para 25 & 26)- Court cannot issue writ to legislature to law.

(xiv) M/s. Narinder Chand Hem Raj and Others – vs- Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others reported in 1971 (2) SCC 747 (para 7);

(xv) State of Himachal Pradesh and Others –vs- Satpal Saini reported in 2017(11) SCC 42 (para 7 to 11) - Court cannot issue writ to legislate or even frame Rules;

SUIT UNDER SECTION 62(B) OF KLR ACT

(xvi) Dundappa –vs- Sundrawwa and Others reported in 2017(6) Kar LJ 138 (para 9 & 10)

Section 135 makes it clear that its proviso enables institution of a suit against any person denying or interest to denying for relief of declaration. Similarly, Section 62 also enables private parties to institute a civil suit in the Civil Court for the purpose of establishing their private right although it may be effected by any entry in any land record.

CONSIDERATION

63. Having heard the learned Counsel for the parties and learned Amicus Curiae, it is relevant to consider the provisions of Article 246 of the Constitution of India which reads as under:

"246. Subject-matter of laws made by Parliament and by the Legislatures of States.-

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this

Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List."

64. A plain reading of the said provisions makes it clear that under the Constitution there are three folds distribution of legislative power between the Union and the states made by the three lists in the Seventh Schedule of the Constitution. The words 'notwithstanding anything contained in clauses (2) and (3)' in Article 246(1) and the words 'subject to clauses (1) and (2)' in article 246(3) lay down the principle of federal supremacy, viz., that in case of inevitable conflict between Union and State powers, the Union power enumerated in List I shall prevail over the State power as enumerated in Lists II and III and in case of an

overlapping between Lists II and III the latter shall prevail. Though, undoubtedly, the Constitution exhibits supremacy of Parliament over State Legislatures, yet the principle of federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an irreconcilable direct conflict between the entries in the Union and the State Lists.

65. It is impermissible to legislate in a manner as it would violate the 'basic structure' of the Constitution. It has been authoritatively held that an amendment to the provisions of the Constitution would not be sustainable if it violate the 'basic structure' of the Constitution, even though the amendment had been carried out, by following the procedure as contemplated under 'Part XI' of the Constitution. The same apply to all other legislations as well, even though the legislation had been enacted by following the prescribed procedure.

KARNATAKA LAND REVENUE ACT

66. The Karnataka Land Revenue Act, 1964 enacted by virtue of the power under Article 246(3) of the Constitution of India at Entry 45 List II Schedule VII of the Constitution of India received the assent of the President on 06th May 1964. It is an act to consolidate and amend the law relating to land and land revenue administration in the State of Karnataka. WHEREAS, it is expedient to consolidate and amend the law relating to land, the assessment and recovery of land revenue, the land revenue administration and other matters.

OBJECT OF THE ACT

67. The Scope, Purpose and Object of the Act:-- The Karnataka Land Revenue Act, 1964, which has its origin in Mysore Land Revenue Code, is basically an enactment meant for identifying the alienated agricultural lands so that a record of all such land holdings is maintained, particularly, for the purpose of the revenue authorities having information to identify

persons from whom revenue is assessed and collected. Raising revenue is the basic object and it is for that purpose, the land holdings are recorded in the revenue records and the name of persons in whose name holdings stand etc., are also recorded. Revenue authorities do not regulate the acquisition or extinction of rights in properties including agricultural lands etc., Revenue authorities are primarily required to keep a record of the names of persons, who have acquired rights for ensuring that the revenue i.e., the land revenue is collected from such persons which is the basic purpose of the Act.

INTENTION OF THE ACT

68. The intention of the legislature while enacting the Karnataka Land Revenue Act is the assessment and recovery of land revenue, the land revenue administration and other matters as contemplated under Entry 45, List II, Schedule VII of Constitution of India and nothing beyond that. In view of the reference/questions framed by learned Single Judge, it

is relevant to consider the provisions of Chapter VI- 'Revenue Jurisdiction' i.e., Sections 60 to 66 and Chapter XI- 'Record of Rights' - Sections 127 to 136. The provisions of Section 61(1) clearly defines the exclusive jurisdiction of Revenue Courts to determine, decide or dispose of any matter which is empowered to do so under the Act and no Civil Court shall exercise jurisdiction as to any such matters. That is, the assessment, the recovery of land revenue, the land revenue administration and other matters mentioned in Section 61(2) of the KLR Act i.e.,

(a) claims against government relating to any property pertaining to any office or for any service whatsoever,

(b) objections- (i) to the amount or incidence of any assessment of land revenue, or

(ii) to the mode of assessment or levy, or to the principle on which such assessment or levy is fixed, or

(iii) to the validity or effect of the notification of survey or settlement;

(c) claims connected with or arising out of any and the proceedings for realization of land revenue or other demands recoverable as arrears of land revenue under the Act, or any other law for the time being in force;

(d) to set aside the claims, on account of irregularity, mistake or any other ground, except fraud, sales for arrears of land revenue etc.

69. The provisions of Section 61 of the Act is the exclusive Jurisdiction of Revenue Courts and bar of jurisdiction of Civil Courts. The only relevant exception is Sub-Section (c) of Section 62 of the Act which provides that, suits between private parties for possession of any land being a whole survey number or sub-division of a survey number or part thereof, but, this is not a suit falling within the ambit of the

provision. When the Civil Court has no jurisdiction to hold that an entry made in any record of revenue survey or settlement is wrong, it cannot, in law, proceed to grant the relief as prayed for by the plaintiff because the relief is based on such a finding to be recorded by the Civil Court.

70. The provisions of Section 62 of the KLR Act deals with 'Savings of Certain Suits', which reads as under:

> *Nothing in section 61 shall be held to prevent the Civil Courts from entertaining any of the following suits, namely:--*
>
> *(a) suits against the State Government to contest the amount claimed or paid under protest, or recovered as land revenue on the ground that such amount is in excess of the amount authorised in that behalf by the State Government or that such amount had previous to such claim, payment or recovery been satisfied in whole or in*

part or that the plaintiff or the person whom he represents is not the person liable for such amount;

(b) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record;

(c) suits between private parties for possession of any land being a whole survey number or sub--division of a survey number or a part thereof.

71. A plain reading of the said provision makes it clear that Section 61 of the Act would not bar a suit coming under any of the Clauses (a), (b) and (c) of Section 62 of the Act. Section 62 of the Act states that nothing in Section 61 shall be held to prevent the Civil Courts from entertaining suits, between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record and suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record and suit

between private parties for possession of land being a whole survey number or sub-division of survey number or Part thereof under Clauses (b) and (c) of Section 62 of the Act.

72. Chapter XI of the KLR Act deals with 'Record of Rights'. Section 127 deals with Preparation of Record of Rights in every village and such record shall include the names of persons who are holders, occupants, owners, mortgagees, landlords or tenants of the land or assignees of the rent or revenue thereof; the nature and extent of the respective interest of such persons and the conditions or liabilities (if any) attaching thereto; the rent of revenue, (if any) payable by or to any of such persons; and such other particulars as may be prescribed. Sub-sections (2) and (3) deal with Record of Rights which shall be maintained by such officers in such areas as may be prescribed and different officers may be prescribed for different areas. When the preparation of the record of rights referred to in Sub-section (1) is completed in respect of any village, the fact

of such completion shall be notified in the official Gazette and in such manner as may be prescribed.

73. The provisions of Section 128 of the KLR Act deals with Acquisitions of rights to be reported. A reading of the provisions makes it clear that any person acquiring any right as holder by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, to report orallly or in writing his acquisition of such right to the prescribed officer of the village within three months from the date of such acquisition.

74. The provisions of Section 128(4) of the Act envisages that it is duty of registering authority to make report of the acquisition of right under registered document and it is the duty of the registering authority to send an intimation to the revenue authorities and on the basis of that report, the revenue authorities have to change the entries.

75. The provisions of Sections 129 and 129-A of the KLR Act prescribes that the Prescribed Officer shall enter in the Register of Mutations, every report made to him under Sub-section (1) of Section 128 or received by him under Sub-section (2) or Sub-section (4) of the said Section. Whenever a Prescribed Officer makes an entry in the Register of Mutations, he shall at the same time post up a complete copy of the entry in a conspicuous space in chavadi and shall give written intimation to all persons appearing from the Record of Rights or Register of Mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein either orally or in writing to the Prescribed Officer. The objections entered in the Register of Disputed Cases and such other objections as may be made during the enquiry shall be enquired into and disposed of by such officer and in such manner as may be prescribed and Orders disposing of such objections shall be recorded in the Register of Mutations by such officer. The Officer holding an enquiry under

Sub-section (4) of Section 129 of the Act shall have all the powers under Chapter III, that a Revenue Officer has in making a formal or summary enquiry under this Act. Entries in the Register of Mutations shall be tested and if found corrected or after correction, as the case may be, shall be certified by such officer as may be prescribed. The transfer of entries from the Registers of Mutations to the Record of Rights shall be effected in the prescribed manner, provided that an entry in the Register of Mutations shall not be transferred to the Record of Rights until such entry has been duly certified.

75. The provisions of Section 129 of the KLR Act contemplates that every holder of agricultural land including a tenant, if he is primarily liable to pay land revenue shall be supplied by the Prescribed Officer with a patta book containing a copy of the record of rights pertaining to such land. The patta book shall also contain information regarding the payment of land revenue in respect of the land and other State

Government dues of the holder or, as the case may be, the tenant, and information in respect to the or cultivation of the land and the areas of crops sown in it as shown in the village records and such other matters as may be prescribed. The patta book shall be prepared, issued and maintained in accordance with the rules made by the State Government in that behalf. Such rules may provide for fees to be charged for preparing, issuing and maintaining the book.

77. The provisions of Section 130 of the Karnataka Land Revenue Act, 1964 is with regard to obligation to furnish information that any person whose rights, interests or liabilities are required to be or have been entered in any record or register, under this Chapter shall be bound, on the requisition of any officer engaged in compiling or revising the record or register, to furnish or produce for his inspection within thirty days from the date of such requisition, all such information or documents needed for the correct compilation or revision thereof, and any person who

fails to furnish information or produce the document required under sub-section (1) within the period specified in the said sub-section shall be liable to pay a penalty not exceeding twenty-five rupees as may be fixed by the Tahsildar and the amount payable as penalty shall be recoverable as an arrear of land revenue. The same has to be done only after giving an opportunity to be heard.

78. The provisions of Sections 131 and 132 of the KLR Act refers to requisition of assistance in preparing maps and certified copies of records to be annexed to plaint or application.

79. The provisions of Section 133 of the KLR Act, prescribes presumption regarding entries in records – that an entry in the Record of Rights and a certified entry in the Register of Mutations or in the patta book shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

80. The provisions of Section 134 of the KLR Act prescribes applications for certified copies of entries in the Record of Rights or the Register of Mutations may be made to and such copies may be given by the prescribed officers.

81. The provisions of Section 135 of the KLR Act envisages bar of suits that no suit shall lie against the State Government or any officer of the State Government in respect of a claim to have an entry made in any record or register that is maintained under this Chapter or to have any such entry omitted or amended, provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in any record or register maintained under this Chapter, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 and the entry in the record or register shall be amended in accordance with any such declaration.

82. The provisions of Section 136 of the KLR Act envisages appeal and revision and it specifically bars the application of provisions of Chapter V to any decision or order under Chapter XI of the Act. Sub-section (2) of Section 136 of the KLR Act prescribes that any person affected by an order made under Sub-section (4) or any entry certified under sub-section (6) of Section 129 may, within a period of sixty days from the date of communication of the order or the knowledge of the entry certified, appeal to such officer as may be prescribed by the State Government in this behalf and his decision shall be final. Sub-section (3) of Section 136 specifies that the Deputy Commissioner may, on his own motion or on application of a party, call for records under Section 127 and examine any record of rights and under Section 129 make an entry in the Register of Mutations and register of disputed cases and pass such orders as he may deem fit and no order shall be passed except after hearing the party, who would be adversely affected by such order.

83. **Though the Land Revenue Act came into force on 19th March, 1964 any persons affected by an order under Sub-section (4) or (6) of Section 129 before such officer prescribed (Assistant Commissioner) by the State Government and the Deputy Commissioner on his own motion or on application of a party, call for and examine any records made under Sections 127 and 129 and pass such orders as he may deem fit. The fact remains that any order made by the Assistant Commissioner or Deputy Commissioner under Chapter-XI of the Land Revenue Act is neither final nor conclusive even after more than five decades and the aggrieved parties have to approach this Court under Articles 226 and 227 of the Constitution of India or file a suit for declaration of rights.**

84. **Admittedly the object of the Act is only relating to land, the assessment and recovery of land revenue, the land revenue administration and**

other matters as contemplated under Entry 45 List-II of Seventh Schedule to the Constitution of India.

85. The scope and object of the Act is only to deal with the land revenue including assessment and collection of revenue, maintenance of land revenue records, survey for revenue purpose, record of rights and alienation of revenue and authorities under Land Revenue Act have no jurisdiction to decide the title between the parties in respect of immovable property.

86. Our view is fortified by the Co-ordinate Bench of this Court in the case of C.N. Nagendra Singh-vs- The Special Deputy Commissioner, Bangalore District and Others (supra) reported in ILR 2002 KAR 2750, wherein at paragraphs-8 and 9 it has been held as under:

> *" 8. Rule 43 of the Karnataka Land Revenue Rules deals with settlement of disputes. It states every case entered in register of disputed cases shall be enquired into and decided by the*

Sheristedar or by any officer of the Revenue Department equal or superior in rank to him on an appointed day of which due notice shall be given to the parties concerned. It categorically states the proceedings of the enquiry shall be oral and held in the public and there shall be no recording of statements and depositions. The only record shall be the decision of the officer holding the enquiry, in the register itself, which shall contain a brief summary of the facts elicited during the enquiry and the grounds for the decision. Of course an appeal is provided against such decision to the Assistant Commissioner in charge of the Sub-Division whose decision shall be final. Therefore, it becomes clear every revenue officer who is authorized to hold an enquiry in respect of disputed cases is a revenue Court. The very fact he is prohibited from recording the statements and depositions of the parties makes it clear that no substantial rights of the parties in respect of the disputed property can be gone into by such revenue Court. If

title or right set up by one party to an immovable property is disputed by the other party such title to the property cannot be enquired into by the revenue Courts much less any decision be rendered for any purpose whatsoever. In the first place the revenue Court constituted under the Act can only go into questions of assessment, recovery of land revenue and land revenue administration and it has no jurisdiction to go into the question of title in respect of an immovable property which exclusively vests in the Civil Court.

9. Considering Rule 43 when a person claims title to a properly under a Will for the purpose of getting a mutation entry in the revenue records before any such entry is made the Revenue Court should prima facie be satisfied that the said documents is genuine and valid even in the absence of any dispute as the said Will comes in the way of natural succession. By virtue of Section 128 when the owner of the land dies, the title to the said property passed on to

the legal heir by succession or survivorship or inheritance and the property vests with such a legal heir without there being any document and purely based on the relationship of the deceased with the legal heir. A will can come into operation only after the death of the executant. If a Will is set up to deprive a legal heir who had acquired title to the property either by succession, survivorship or inheritance, the person claiming under the Will has to show better title. If the Will is disputed strict proof of Will as required under Sections 63 and 64 of the Succession Act is to be provided. When the revenue Court is prevented from recording the statement of the parties and the depositions, the question of establishing the genuineness of the Will for any purpose whatsoever before the revenue Court in an enquiry would not arise. Under these circumstances, the revenue Courts have no jurisdiction to go into the genuineness or validity of the Will or to the question of title in respect of the land in dispute. The decision of the

Revenue Court has to be necessarily based on the undisputed facts. The Revenue Court cannot go into the disputed questions of relationship, status of the parties title to the property or genuineness or otherwise of a document or challenge to the documents on the ground of fraud, undue influence, misrepresentation or mistake. As such, the petitioner cannot take advantage of Rule 43 in the case of a Will.

87. The Hon'ble Supreme Court while considering the powers of Revenue Court in the case of ***Bhagwan Dayal –vs- Reoti Devi reported AIR 1962 SC 287*** at paragraphs- 8 and 13 has held as under:

"8. We shall first take the question whether the judgment of the Revenue Court passed on the findings recorded by the District Munsif in Suit No. 15 of 1939 operates as res judicata in the present suit in respect of the plaintiff's right to succeed to the share of her husband, Raghubar Dayal, in the joint properties. Some of the facts relevant to

the question may be recapitulated. The respondent Reoti Devi filed Suit No. 15 of 1939 in the Revenue Court for recovery of her share of profits of Village Chaoli against Bhagwan Dayal in respect of 1343, 1344 and 1345 Fasli on the ground that she was his co-sharer. The present appellant, who was the defendant in that suit, contested the suit, inter alia, on the ground that he and his deceased brother constituted members of a joint Hindu family and that on his brother's death his interest in the entire joint family property devolved on him by right of survivorship. As the defendant raised the question of title, the Revenue Court framed an issue on the question of title raised in the pleadings and referred the same to the civil court for decision under Section 271 of the Agra Tenancy Act, 1926 (hereinafter called the Act). The learned District Munsif decided the issue against the appellant herein, with the result that the Revenue Court made a decree on the basis of that finding in favour of the respondent herein. Against

the said decree, the appellant preferred an Appeal (No. 65 of 1941) to the District Court, Agra, but that appeal was dismissed. The second appeal filed by him in the High Court of Allahabad was also dismissed. The result of that litigation was that a decree was given in favour of the respondent herein for recovery of her share of the profits of village Chaoli. The question is whether the said decree operated as res judicata in the present suit. The learned Judges of the High Court differed on the question of res judicata; Agarwala, J., held that the said decision of the Revenue Court in Suit No. 15 of 1939 did not operate as res judicata, while Gurtu, J., held that it did.

13. The first query is whether the present sun is based on a cause of action in respect of which relief can be obtained by means of a suit specified in the Fourth Schedule to the Act. The present suit is for a declaration of the plaintiff's title to the plaint schedule properties and for an injunction

restraining the execution of the decree obtained by the defendant in the Revenue Court. The plaintiff claims title to the suit properties on the ground that he was a member of a joint Hindu family along with his deceased brother and, therefore, he succeeded to his share by right of survivorship. The question is whether such a suit is in the nature of suits specified in the Fourth Schedule to the Act. The said Schedule does not provide for any suit by a person claiming to be the proprietor of a property and in possession thereof praying for a declaration of his title and for an injunction against another who is trying to interfere with his title. If so, under Section 230 of the Act, the Revenue Court has no exclusive jurisdiction to entertain a suit of the nature that is before us. If it is not a suit of that nature, under that section, the civil court's jurisdiction is not ousted. A Full Bench of the Madras High Court had occasion to consider a similar question arising under the Madras Estates Land Act, 1908, in

Venkatarama Rao v. Venkayya [AIR 1954 Mad 788] . There, certain tenants filed a petition under Section 40 of the Madras Estates Land Act, 1908, in the Revenue Court for commutation of rent against the landholders. The landholders raised the plea that the village in which the petitioners' lands were situated was not an estate and, therefore, the petition was not maintainable in the revenue court. The Revenue Divisional Officer held that it was not an estate and, on that finding, dismissed the petition. The matter was taken up on appeal to the District Court and thereafter to the High Court without success. Subsequently, the landlords filed a suit in the civil court against the tenants for an injunction restraining them from removing the paddy crops standing on the suit lands until the rent was paid to them. The landholders raised the plea that the decision of the Revenue Court holding that the village was not an estate was binding on the civil court. The Full Bench of the Madras High Court held that the said finding

was not binding on the civil court. Adverting to Section 189(3) of the Madras Estates Land Act, which corresponds to Section 230 of the present Act, the learned Judges observed thus at p. 790:

> *"Therefore, it is clear that it is only in respect of such disputes or matters as are covered by the suits or applications specified in Section 189(1) that the Revenue Court can be said to have exclusive jurisdiction, that is, jurisdiction to the exclusion of a civil court.*
>
> ***
>
> *If a particular matter is one which does not fall within the exclusive jurisdiction of the revenue court, then a decision of a Revenue Court on such a matter, which might be incidentally given by the revenue court, cannot be*

binding on the parties in a civil court."

"We agree with the said observations. On the same analogy, the present suit was not within the exclusive jurisdiction of the Revenue Court and, therefore, the suit in the civil court was maintainable. If so, Section 11 of the Code of Civil Procedure is immediately attracted to the present suit. The relevant part of Section 11 of the Code reads:

> *"11. No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."*

In this case the title to properties now put in issue was tried in the Revenue Court. But that court is not competent to try the present suit in which the same issue is raised. It follows that in terms of Section 11 of the Code, the decision on the said issue in the Revenue Court could not operate as res judicata for the necessary condition of competency of that court to try the present suit is lacking."

88. In the case of ***State of Gujarat –vs- Patil Raghav Natha and Others reported in 1969(2) SCC 187*** while considering the provisions of Bombay Land Revenue Code, 1879, the Hon'ble Supreme Court has held that, the Commissioner exercising revisional powers under Land Revenue Act cannot go into question of title and paragraph-14 of the said judgment reads as under:

"14. *We are also of the opinion that the Commissioner should not have gone into the question of title. It seems to us that when the title of an occupant is*

disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent court and not to decide the question of title himself against the occupant."

89. It is relevant to state at this stage that the entries in the Seventh Schedule are not source of power, but merely demarcate fields of legislation and that these are to be construed liberally and wildly so as to attain the purpose as held by the Hon'ble Supreme Court in the case of ***Offshore Holdings Private Limited –vs- Bangalore Development Authority and Others reported in (2011) 3 SCC 139*** wherein paragraphs-67 and 71 read as under:

" 67. The entries in the legislative lists are not the source of powers for the legislative constituents but they merely demarcate the fields of legislation. It is by now well-settled law that these entries are to be construed liberally and

widely so as to attain the purpose for which they have been enacted. Narrow interpretation of the entries is likely to defeat their object as it is not always possible to write these entries with such precision that they cover all possible topics and without any overlapping.

71. The courts have taken a consistent view and it is well-settled law that various entries in the three Lists are not powers of legislation but are fields of legislation. The power to legislate flows, amongst others, from Article 246 of the Constitution. Article 246(2), being the source of power incorporates the non obstante clause, "Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State" have power to make laws with respect to any of the matters enumerated in List III. Article 246 clearly demarcates the fields of legislative power of the two legislative constituents. It clearly states on what field, with reference to the relevant constitutional lists and which of the

legislative constituents has power to legislate in terms of Article 246 of the Constitution. While the States would have exclusive power to legislate under Article 246(2) of the Constitution in relation to List II; the Concurrent List keeps the field open for enactment of laws by either of the legislative constituents."

90. The Hon'ble Supreme Court while considering the provisions of Articles 245, 246 and 254 and Seventh Schedule of the Constitution of India in the case of ***M/s. Ujagar Prints and Others –vs- Union of India reported in (1989)3 SCC 488*** has held that ***the entries to the legislative list are merely topics of fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow and pedantic sense wherein paragraph-48 of the said judgment reads as under:***

"48. Entries to the legislative lists, it must be recalled, are not sources of the legislative power but are merely topics

or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression "with respect to" in Article 246 brings in the doctrine of "Pith and Substance" in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the legislation, looked at as a whole, is substantially "with respect to" the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic."

91. The Hon'ble Supreme Court while considering the judicial power held that the court cannot issue a writ to legislature to enact law in the case of ***S.R. Batra --vs- Taruna Batra reported in (2007) 3 SCC 169*** wherein paragraphs-16 reads as under:

"16. In our opinion, the above observation is merely an expression of

hope and it does not lay down any law. It is only the legislature which can create a law and not the court. The courts do not legislate, and whatever may be the personal view of a judge, he cannot create or amend the law, and must maintain judicial restraint."

92. The Apex Court in the case of ***Binani Zinc Limited –vs- Kerala State Electricity Board reported in (2009) 11 SCC 244*** *at* paragraphs-25 and 26, it has been held as under:

"25. The State, for sufficient and cogent reasons, may refuse to constitute such a Commission or fail or neglect to do so within a reasonable time. For the aforementioned purpose the Central Government can take recourse to certain measures but the same would not mean that the court can in exercise of its power of judicial review, issue a writ or order in the nature of mandamus directing the State to constitute such a Commission. In fact in this case itself the Central Government was able to

persuade the State Government to establish a Commission by entering into a memorandum of understanding on 17-8-2001 in terms whereof the State of Kerala made itself bound to constitute the Commission by October 2001.

26. If the contention of Mr Venugopal is accepted and taken to its logical conclusion, the superior courts would be entitled to direct the Government to implement even conditional legislations. We, therefore, are of the opinion that the same is not legally permissible."

93. The Hon'ble Supreme Court in the case of ***Himachal Pradesh –vs- Satpal Saini reported in (2017) 11 SCC 42,*** while considering the provisions of Articles 226, 32, 245 and 246 of the Constitution of India has held that the Court cannot issue a writ to legislate or even frame Rules and paragraphs-7 to 11 read as under:

" 7. *In Mallikarjuna Rao v. State of A.P. [Mallikarjuna Rao v. State of A.P., (1990) 2 SCC 707 : 1990 SCC (L&S)*

387] and in V.K. Sood v. Deptt. of Civil Aviation [V.K. Sood v. Deptt. of Civil Aviation, 1993 Supp (3) SCC 9 : 1993 SCC (L&S) 907] this Court held that the court under Article 226 has no power to direct the executive to exercise its law-making power.

8. In State of H.P. v. Parent of a Student of Medical College [State of H.P. v. Parent of a Student of Medical College, (1985) 3 SCC 169 : AIR 1985 SC 910] this Court deprecated the practice of issuing directions to the legislature to enact a law: (SCC p. 174, para 4)

> *"4. ... The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging...."*

The same principle was followed in Asif Hameed v. State of J&K [Asif Hameed v. State of J&K, 1989 Supp (2) SCC 364:

1 SCEC 358] where this Court observed that: (SCC p. 374, para 19)

> *"19. … The Constitution does not permit the court to direct or advise the executive in matter of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or executive…."*

In Union of India v. Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294 : AIR 2002 SC 2112] this Court observed that: (SCC p. 309, para 19)

> *"19. … it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules."*

9. Similarly, in Supreme Court Employees' Welfare Assn. v. Union of India [Supreme Court Employees'

Welfare Assn. v. Union of India, (1989) 4 SCC 187 : 1989 SCC (L&S) 569] , this Court held that a court cannot direct the legislature to enact a particular law. This is because under the constitutional scheme, Parliament exercises a sovereign power to enact law and no other authority can issue directions to frame a particular piece of legislation. This principle was reiterated in State of J&K v. A.R. Zakki [State of J&K v. A.R. Zakki, 1992 Supp (1) SCC 548 : 1992 SCC (L&S) 427 : AIR 1992 SC 1546] , where this Court observed that: (A.R. Zakki case [State of J&K v. A.R. Zakki, 1992 Supp (1) SCC 548 : 1992 SCC (L&S) 427 : AIR 1992 SC 1546] , SCC p. 554, para 10)

> *"10. … A writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation.*

Section 110 of the J&K Constitution, which is on the same lines as Article 234 of the Constitution of India, vests in the Governor, the power to make rules for appointments of persons other than the District Judges to the Judicial Service of the State of J&K and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court."

In V.K. Naswa v. Union of India [V.K. Naswa v. Union of India, (2012) 2 SCC 542 : (2012) 1 SCC (Cri) 914] , this Court referred to a large number of decisions and held that: (SCC p. 547, para 18)

> *"18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner."*

10. A discordant note had been struck by a Bench of two Judges in Gainda Ram v. MCD [Gainda Ram v. MCD, (2010) 10 SCC 715] . A direction was issued to the legislature to amend legislation before a particular date. The Constitution Bench in Manoj Narula v. Union of India [Manoj Narula v. Union of India, (2014) 9 SCC 1] held that this direction by a Bench of two Judges was contrary to the law laid down earlier by three Judges. In that context, the Constitution Bench has conclusively enunciated the legal position thus: (Manoj Narula case [Manoj Narula v.

Union of India, (2014) 9 SCC 1] , SCC p. 68, para 127):

> *"127. The law having been laid down by a larger Bench than in Gainda Ram [Gainda Ram v. MCD, (2010) 10 SCC 715] it is quite clear that the decision, whether or not Section 8 of the Representation of the People Act, 1951 is to be amended, rests solely with Parliament."*

11. Having regard to the settled position, the impugned directions are unsustainable."

94. The Division Bench of this Court in the case of ***Dundappa –vs- Sundrawwa and Others reported in 2017(6) KLJ 138*** at paragraphs-9 and 10 has held as under:

"Re: Maintainability:—

9. It is the argument of the Learned Counsel for the respondent No. 1/defendant No. 1 that the appeal is

not maintainable since the remedy lies in the form of revision before the jurisdictional Deputy Commissioner. No doubt the jurisdictional Deputy Commissioner has the power of revision under Section 136 of the Karnataka Land Revenue Act, 1964, which Section is reproduced hereinbelow:

> *"Section 136 - Appeal and Revision*
>
> *(1) The provisions of Chapter V shall not apply to any decision or order under this Chapter.*
>
> *(2) Any person affected by an order made under sub-section (4) or an entry certified under sub-section (6) of section 129 may, within a period of sixty days from the date of communication of the order or the knowledge of the entry certified, appeal to such officer as may be prescribed by the State Government in this behalf and his decision shall be final.*

(3) The Deputy Commissioner may, on his own motion or on application of a party, call for and examine any records made under section 127 and section 129 and pass such orders as he may deem fit:

Provided that no order shall be passed except after hearing the party who would be adversely affected by such order."

However, what cannot be forgotten is that the relief sought for by the plaintiff in his plaint in the Court below is for declaration to declare that he is the exclusive owner of the suit schedule 'A' properties by holding that the order passed by the Assistant Commissioner, Bagalkote in RTS Appeals No. 27 and 28 of 2008-09 dated 01.02.2010 and also to the subsequent M.R. No. 553/09-10 of Shirur Village and 267 of Hallur Village effected in respect of the suit land properties and the Taluk

Panchayat order passed in 2/08-09 dated 02.04.2009 in respect of the house property are null and void. He has also sought for a consequential relief of injunction against the defendant. As already observed above, the Court below through its impugned judgment and decree has decreed the suit of the plaintiff in part ordering and decreeing that plaintiff and defendant No. 2 are entitled to ½ share each in the suit schedule properties and by decreeing the counter claim of the defendant No. 1, she was also held to be entitled to Vi share in the suit schedule properties. Thus, the main relief of the plaintiff is for declaration regarding his alleged ownership of the suit schedule 'A' properties. Since the plaint averments clearly show that the defendants have denied his alleged ownership over the said property, he has sought the said relief of declaration. As entries in the revenue records have come in the way of declaring his ownership, he has prayed to hold those revenue entries as null and void.

10. Section 135 of the Karnataka Land Revenue Act, 1964 reads as below:

"Section 135 - Bar of suits: No suit shall lie against the State Government or any officer of the State Government in respect of a claim to have an entry made in any record or register that is maintained under this Chapter or to have any such entry omitted or amended:

> *Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in any record or register maintained under this Chapter, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his right under Chapter VI of the Specific Relief Act, 1877; and the entry in the record or register shall be amended in*

accordance with any such declaration."

Reading of the above Section makes it clear that its proviso enables a person who is aggrieved as to any right of which he is in possession by an entry made in any record or register maintained by the Revenue Authorities under Chapter XI of the said Act, can institute a suit against any person denying or interested to deny his title, for the relief of declaration of his right. Similarly, even Section 62(b) of the very same Act also enables the private parties to institute a civil suit in the Civil Court for the purpose of establishing their private right, although it may be affected by any entry in any land record. Therefore, the suit of the plaintiff in the Court below was maintainable. Consequently, challenging the judgment and decree passed in the said suit in the form of present appeal is also maintainable. As such, the contention of the Learned Counsel for the respondent

No. 1 herein on the point of maintainability is not acceptable.

CONCLUSION

95. **For the reasons stated above, *question No.1* framed under reference has to be answered in the *affirmative* holding that the State is authorized to enact the law under Entries in List-II of Seventh Schedule in the background of constitutional mandate under Article 246 (3) of Constitution of India and not to traverse beyond authorized field of legislation set out in Entry 45. Entry 65 is not applicable with regard to revenue matters. Accordingly, *question No.2* has to be answered in *negative* holding that the revenue officials in the rank of Assistant Commissioner/Appellate Authority and Deputy Commissioner/Revisional Authority under provisions of Section 136 (2) and (3) of the Karnataka Land Revenue Act cannot decide the dispute between interse parties involving adjudication relating to title and possession and**

they are authorized only to decide the entries based on the source of title.

96. The proceedings initiated under the Karnataka Land Revenue Act and proceedings initiated under the provisions of Code of Civil Procedure are different and distinct. In view of the provisions of Article 246(3) read with Entry 45 List II, Schedule VII and the Enactment of the provisions of the Karnataka Land Revenue Act which clearly indicate that the Revenue Authorities/Courts can only take necessary steps for assessment and recovery of land revenue and land revenue administration, maintenance of land Records, survey for revenue purpose, record of rights alone, there is no necessity for the parties first to exhaust their remedies under Chapter XI of the Karnataka Land Revenue Act. In view of provisions of Section 135 and proviso under Section 62(b) of the Karnataka Land Revenue Act and thereafter, start denovo proceedings as contemplated under the proviso to Section 135 of the Act thereto. It is clear from the

provisions of Karnataka Land Revenue Act under that Chapter XI, begins with heading Record of Rights and has nothing to do with the interse civil dispute between the parties. This Court and Hon'ble Apex Court time and again has held that the revenue authorities have no jurisdiction to decide the title between the parties in respect of immoveable property.

97. In view of the proviso of Sections 135 and 62 (b) of the Karnataka Land Revenue Act, a party can approach the Civil Court by filing a suit against any person denying or interested to deny his title for the relief of declaration of his right, to establish his private right and any declaration made by the competent Civil Court will be binding on the private parties as well as authorities concerned, who pass the orders under Section 136(2) and (3) of the Karnataka Land Revenue Act. It is well settled that any adverse finding recorded either by the Assistant Commissioner or Deputy Commissioner with regard to record of rights in respect of private parties or any entries exercising their power

under the provisions of Section 136, Chapter XI of the Land Revenue Act, it shall not be binding on the Civil Court as well as any decision made by the authorities under the Land Revenue Act only with regard to land revenue, assessment and collection of revenue, maintenance of records, survey for revenue purpose and record of rights only. The authorities under the Land Revenue Act have no jurisdiction to decide the title between the parties and parties who are entitled can file a suit invoking the provisions of Section 9 of Code of Civil Procedure subject to cause of action as and when arises. **Therefore, question No.3 under reference raised would not enlarge the period of limitation under the Central Enactment.**

98. It is well settled that the revenue entries are not documents of title as held by the Hon'ble Supreme Court in the case of ***Asif Hameed and Others –vs- State of Jammu and Kashmir and Others reported in AIR 1989 SC 1809 B*** and also in the case of ***Gurunath Manohar Pavaskar & Others –vs- Nagesh***

Siddappa Navalgund (2007) 13 SCC 565 wherein para 11 and 12 read as under.

> *"11. Furthermore, the High Court committed an error in also throwing the burden of proof upon the appellant-defendants without taking into consideration the provisions of Section 101 of the Evidence Act. In Narain Prasad Aggarwal v. State of M.P. [(2007) 11 SCC 736 : (2007) 8 Scale 250] this Court opined: (SCC p. 746, para 19)*
>
> > *"19. Record-of-right is not a document of title. Entries made therein in terms of Section 35 of the Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable."*

12. A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of the Evidence Act. The courts below, were, therefore, required to appreciate the evidence keeping in view the correct legal principles in mind."

Therefore, question No.4 raised under reference has to be answered in the negative holding that there is no need for the aggrieved party to exhaust remedies under Chapter XI of the Act and start den ova civil proceedings as contemplated under provision to Section 135 of the Karnataka Land Revenue Act.

99. ***It is true that all the citizens are entitled to speedy justice in terms of Articles 14 and 21 of Constitution of India. Independence of Courts from the executive and legislature is fundamental rule of law and one of the basic tenets of Indian***

Constitution. Separation of judicial power is a significant constitutional principle under Constitution of India. Separation of powers between three organs – the legislature, executive and judiciary - is also nothing but consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial powers may amount to negation of equality under Article 14 of the Constitution of India and legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality under Article 14 of Constitution of India.

100. It is the experience of this Court that though the aggrieved or affected parties by an order passed under the provisions of Sub-section (4) or an entry certified under Sub-section (6) of Section 129 or records made under Section 127 or 129 under Chapter XI of the Karnataka Land Revenue Act can file an appeal under Section 136(2) of the Karnataka Land Revenue Act

before such Officer as may be prescribed by the State Government (Assistant Commissioner) whose decision shall be final and Deputy Commissioner may on his own motion or on the application of a party, call for and examine any records made under Sections 127 and 129 of the Act. The fact remains that even after a lapse of five decades, the party who approaches the revenue authorities on either of the provisions stated supra neither final nor conclusive and ultimately aggrieved party either from the order of the Assistant Commissioner or Deputy Commissioner or writ or Division Bench or upto Supreme Court, proceeding under those provisions, ultimately has to approach the competent Civil Court to decide his title or possession in respect of immovable property. The procedural aspect either appeal or revision is a long drawn litigation before the revenue authorities and ultimately, the revenue authorities have no jurisdiction to decide the title between the parties except the entries based on source of title and there is no need for the aggrieved party to

necessarily undergo a futile exercise for any entry made either under the provisions of Section 127 or 129 of Karnataka Land Revenue Act. Therefore, it is for the litigant, to directly approach the competent Civil Court, aggrieved by any order or entry made either under Section 127 or 129 of KLR Act in order to avoid futile exercise which is in violation of the provisions of Articles 14 and 21 of Constitution of India.

101. It is also relevant to state at this stage, that the learned Advocate General has filed an affidavit of Sri B. Sadashiva Prabhu, Deputy Secretary to Government, Department of Revenue, for having taken steps for speedy disposal of revenue matters. The same is placed on record which reads as under:

"AFFIDAVIT

I, B. Sadashiva Prabhu, S/o Y. Vittala Prabhu, aged about 52 years, worked as Deputy Secretary to Government, Revenue Department, presently posted as Addl. Deputy Commissioner, Mandya for election purpose, now having come over to

Bengaluru, do hereby solemnly affirm and state on oath as follows:

1. State Government with the object of ensuring speedy disposal of revenue cases including RRT proceedings has implemented Revenue Court Case Monitoring System (RCCMS) since 2017. The same updates the cases on a daily basis and it is monitored on a weekly basis by the concerned revenue authorities. The system is being upgraded and additional features are being sought to be incorporated in the RCCMS based on the experience gathered till date.

2. At present, the dates of hearing of the revenue cases are updated on the System which is available for public view. In addition, there is a provision to intimate the date of hearing to the parties concerned and their counsel through manually triggered SMS. The final orders passed are uploaded on the System. In fact, there is a provision to upload petition copies on the system which is viewable by the parties as well as general public.

3. As stated earlier, based on the experience garnered till date, the authorities are proposing to carry out the following exercise in RCCMS by including few indicators:

i) Whether the case in question is a title dispute requiring the matter to be referred to the Civil Court;

ii) Whether the matter relates to dispute pertaining to inheritance;

iii) Whether the dispute relates to revenue entries;

iv) Whether the dispute relates to KLR Act, Inam Abolition Act, PTCL Act or Karnataka Land Reforms Act;

v) Whether the dispute relates to survey work and incidental thereto;

4. The Government is proposing to form a High Level Committee chaired by the Principal Secretary, Department of Revenue and other officers concerned with the object of monitoring and reviewing the system which is in place and to update the entire

process in order to ensure speedy disposal of revenue cases and also to ensure continuous improvement in the system based on the experience.

5. The Revenue Officers' meetings are being held every month under the chairmanship of the Deputy Commissioner of the District to monitor various issues including progress of the revenue cases.

6. Regional Commissioners are also periodically conducting meetings of the revenue officers and reviewing progress of the cases. Directions will be given to give more stress on disposal of older cases.

7. Government is proposing to carry out the following in order to strengthen the system of revenue courts and disposals:

i) A committee is proposed to be constituted under the chairmanship of a retired Judicial Officer of the cadre of District Judge to review the orders passed by Revenue Courts randomly and making appropriate recommendations;

ii) *Periodical training programs for the officials who will be presiding over the revenue Courts;*

iii) *Delegating powers to the available KAS Officers of the rank of the Assistant Commissioners and Senior Assistant Commissioners posted in other department to dispose off revenue cases which are presently being handled by jurisdictional Assistant Commissioners;*

8. In the State, total land parcels which are assigned separate survey numbers (including part survey numbers) which are specified in the Record of Rights aggregate to 1,84,93,492. From the year 2001-2019, number of mutations which have taken place in respect of the various land parcels aggregate to 2,92,25,523. Out of the said huge number of mutations which have been effected. 28,88,864 mutations have been effected pursuant to the orders of the Revenue Courts as well as Tribunals, High

Court and Supreme Court. Out of them, number of mutations which have been effected as a result of the orders of the Tahsildar are 14,56,524. The mutations effected as a result of orders of Assistant Commissioner is 11,75,140. The mutations effected as a result of orders of the Deputy Commissioner is 1,01,666. The mutations effected as a result of the orders of this Hon'ble Court Supreme Court is 12,691 and that the mutations effected as a result of the Hon'ble Supreme Court is 551. Similarly, the cases disposed of by the Karnataka Appellate Tribunal is 19,208. The cases disposed of by the Land Tribunal is 9,685 and by the Deputy Tahsildars is 1,13,399. A chart indicating the above details is produced herewith.

9. The cases before the Tahsildar, Assistant Commissioner and Deputy Commissioner relate proceedings under the Karnataka Land Revenue Act, Inams Abolition Act, PTCL Act and Karnataka Land Reforms Act. All these cases get reflected in the RCCMS and are being monitored. As on the date, total number of pendency of the cases before the Revenue Courts in all the districts of the State is

1,52,916. The State proposes to ensure disposal of these cases on a time bound basis and old cases will be given priority.

Sd/-
DEPONENT

VERIFICATION

I, the above named deponent, do hereby verify that all the facts stated in the affidavit are true to my knowledge and that no part thereof is false and nothing material is concealed therefrom.

Verified at Bengaluru, on this the 25th day of April 2019.

Identified by

Sd/-
DEPONENT

Assistant,
Advocate General's officer,
High Court building,
Bengaluru-560001."

102. We are aware of the fact that the Court cannot legislate any law or direct the Government to legislate any Act or Rules. It is the exclusive domain of the State as contemplated under the provisions of Article 246 (3) of the Constitution of India. The

draconian procedure of filing appeal and revision before the authorities under provision of Sections 136(2) and 136(3) of the Karnataka Land Revenue Act without there being any finality, either final or conclusive, and ultimately the parties have to be driven before the competent Civil Court, who have fought before revenue authorities for more than four to five decades. When the parties approaching the Court bringing notice the draconian procedure of filing the appeal and revision, the Court or the Authority cannot follow the proposition of 'wait and watch' by sitting on the fence and cannot expect the citizens to run from pillar to post for the revenue entries and ultimately, the competent authority, who is the Civil Court will have to decide the title between the parties and the authorities cannot be allowed to use the citizens as commodity or chattel only for the purpose of following the procedure.

103. It is relevant to state at this stage that the entrustment of the revenue work to the Tahsildar, Assistant Commissioner and the Deputy Commissioner

should be assigned separately to deal with the revenue proceedings only and cannot be clubbed with the administrative work as well as protocol work, whereby the authorities are not in a position to dispose of the revenue proceedings pending before them regarding change of Khatha, Appeal and Revision within time for which they are blamed unnecessarily.

104. It is high time for the State Government to take appropriate steps to ensure that there will be separate Tahsildar, Assistant Commissioner and Deputy Commissioner, to decide the revenue proceedings alone and the authorities shall not be entrusted with administrative and protocol duty and the State Government can appoint separate Tahsildar, Assistant Commissioner and Deputy Commissioner for protocol duties enabling the concerned officers to decide the application for Khatha, Appeal and Revision within the time stipulated, failing which the proceedings initiated by the parties with great expectations will be frustrated

because of the inordinate delay in concluding the revenue proceedings under the KLR Act.

105. In that view of the matter, time and circumstances now warrant that the Court has to act as a guardian to protect Dharma and at this stage, it is apt to extract verse 7-8 of Chapter 4 of the Bhagavadgeetha, which says:

"ಯದಾ ಯದಾಹಿಧರ್ಮಸ್ಯ ಗ್ಲಾನಿರ್ಭವತಿ ಭಾರತ
ಅಭ್ಯುದಾನಮಧರ್ಮಸ್ಯ ತದಾತ್ಮಾನಾಂ ಸೃಜಾಮ್ಯಹಂ
ಪರಿತ್ರಾಣಾಯ ಸಾಧೂನಾಂ ವಿನಾಶಾಯ ಚ ದುಷ್ಕೃತಾಂ
ಧರ್ಮ ಸಂಸ್ಥಾಪನಾರ್ಥಾಯ ಸಂಭವಾಮಿ ಯುಗೇ ಯುಗೇ!"

which means.

"Whenever there is decay of righteousness,
O Bharata,
And there is exaltation of unrighteousness,
then I myself come forth;
For the protection of the good, for the
destruction of evil-doers,
For the sake of firmly establishing
righteousness, I am born from age to age."

Therefore, the Court cannot act like a mute spectator to allow injustice being done to the citizen for several decades and it is high time for the State Government to

expedite the procedure contemplated under the Karnataka Land Revenue Act within the time stipulated so as to enable the parties to approach the competent Civil Court. Hence we make the following directions and recommendations.

DECLARATION

106. In view of the peculiar facts and circumstances of the present case and for the reasons stated above, we hereby declare that:-

i) The revenue authorities viz., the Tahsildar, Assistant Commissioner and Deputy Commissioner have no jurisdiction to decide the title dispute between the parties in respect of the immoveable property/properties. It is the exclusive domain of the competent Civil Court to adjudicate the dispute/title in respect of the immoveable property/properties and ultimately if any decree to be passed by

the competent Civil Court will be binding on the parties as well as the revenue authorities in the State;

ii) Any order passed by the jurisdictional Tahsildar under the provisions of Section 129 of the Karnataka Land Revenue Act touches the title in respect of the immoveable properties, there is no need for the aggrieved party to file an appeal/revision before the Assistant Commissioner/Deputy Commissioner as it is a futile exercise and therefore, the aggrieved party can straightaway approach the competent Civil Court for declaration of title and consequential relief and the judgment and decree to be passed will be binding on the parties to the lis as well as the Revenue Authorities;

iii) Any person aggrieved by the order passed by the jurisdiction Tahsildar exercising powers under the provisions of Section 129 of the Karnataka Land Revenue Act regarding entries based on the source of title and if there is no dispute with regard to title, then only an appeal/revision can be filed before the Assistant Commissioner/Deputy Commissioner under the provisions of Section 136(2) and 136(3) of the Karnataka Land Revenue Act.

RECOMMENDATIONS AND DIRECTIONS

107. In view of the draconian procedure of filing an appeal/revision before the Assistant Commissioner, and prolonging the matters either by the Authorities or the Officers for their protocol or executive work, the following recommendations are suggested to the State Government for framing proper Rules with regard to disposal of the case in a time bound manner:

i) In case any application is filed for transfer of Mutation or Khatha or RTC, based on the source of title without there being any dispute, the said application shall be considered for transfer of mutation or Khatha or RTC, within a period of three months from the date of receipt of notice by the other side;

ii) As soon as the application is filed for change of entries, khatha or mutation, at the first instance, the Tahsildar shall have to verify whether there is any dispute with regard to title in respect of the property in question and then, the Tahsildar can direct the parties to approach the competent Civil Court;

iii) Aggrieved by the orders passed by the Tashildar, if an appeal/revision is filed before the Assistant Commissioner or

Deputy Commissioner, then the Assistant Commissioner/Deputy Commissioner shall take necessary steps to dispose of the appeal/revision within six months from the date of filing of such revision after service of notice on the other side;

iv) If the authorities are not in a position to adhere to the time fixed, then cogent reasons must be aspired by the concerned Officer and in case, if there is a delay of more than three months for transfer of mutation, khatha and entries, the Tahsildar shall record the reasons for the delay and submit to the higher Authorities. In case, if there is delay in disposing of the appeal by the Assistant Commissioner, he has to submit the reasons to the Deputy Commissioner and if the Deputy Commissioner in disposing off the revision, he has to submit the reasons to the Secretary to the Revenue Department

and ultimately, the higher authorities shall ensure speedy disposal of the proceedings;

v) Consideration of application for change of Khatha or Mutation/Entries and appeals/revisions under the Karnataka Land Revenue Act, shall be included in the schedule to the Karnataka Guarantee of Services to Citizens Act 2011;

vi) The Government with an object of ensuring speedy disposal of revenue cases including RRT proceedings has to implement Revenue Court Case Monitoring System (RCCMS) and the same should be implemented in all the revenue matters in letter and spirit of the said system;

vii) As soon as any application is filed for change of khatha entries, mutation, the Tahsildar should verify whether the dispute pertains to

title or inheritance of properties or revenue entries or Karnataka Land Revenue Act, Inams Abolition Act, PTCL Act, survey work or incidental thereto and be specified within 30 days from the date of receipt of notice by the opposite party;

viii) The State Government shall take appropriate steps to constitute the High Level Committee chaired by the Principal Secretary, Department of Revenue and other Officers concerned with the object of monitoring and reviewing the system which is in place and to update the entire process in order to ensure speedy disposal of revenue cases;

ix) The State Government shall direct the concerned Revenue Officers to hold meetings every month under the Chairmanship of the Deputy Commissioner of the District to

monitor various issues including progress of the revenue cases;

x) The State Government shall also direct the Regional Commissioners to conduct periodical meetings of the Revenue Officers for reviewing progress of the cases;

xi) The State Government shall constitute a Committee under the Chairmanship of a retired Judicial Officer of the cadre of District Judge to review the orders passed by the Revenue Courts randomly and to make appropriate recommendations for the Government;

xii) The State Government shall take necessary steps to appoint the Tahsildars-Revenue Court, Assistant Commissioners and Deputy Commissioners only as Appellate Authority and Revisional Authority exclusively for

revenue cases without assigning any protocol or executive work to them; and

xiii) The State Government shall take necessary steps to amend the Rules as suggested by us in order to provide speedy justice to the general public at large within a period of six months from the date of receipt of a copy of this order.

108. With the above declarations, recommendations and directions, we answer question Nos.1 to 4 raised under Reference accordingly.

109. The registry is directed to place the matter before the learned Referral Judge, after obtaining necessary orders from the Hon'ble Chief Justice.

110. In crafting this judgment, the erudition of the learned Counsel for the parties, their industry, vision and above all, dispassionate objectivity in discharging their role as officers of the Court must be

commended. We acknowledge the assistance rendered by Sri Udaya Holla, learned Advocate General; Sri N. Dinesh Rao, learned Additional Advocate General, Sri S.P. Shankar and Sri V. Lakshminarayana, learned Senior Counsel and Sri K. Suman, learned Counsel Amicus Curiae;, Sriyuths M.R. Rajagopal, Basavaraj, Udaya Prakash Muliya, Sunil S. Rao, Ravindranath Kamath, Ajesh Kumar, G. Balakrishna Shastry and Smt. Channamma, learned Counsel for the parties as well as Sriyuths T.S. Mahantesh, Additional Government Advocate, Venkatesh Dodderi and B.S. Budihal, the learned Government Advocates and the same are placed on record.

The Registry is directed to send a copy of this Order to the Chief Secretary to the Government, State of Karnataka, forthwith for taking necessary steps.

Sd/-
JUDGE

Sd/-
JUDGE

Sd/-
JUDGE

Kcm/Nsu/-