



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR N. V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

WRIT APPEAL NO. 210 OF 2023 (SC-ST)



BETWEEN:

1. SMT. M. MANJULA
D/O. LATE K. L. MUNIYAPPA,
AGED ABOUT 48 YEARS,
R/O. NO. 84, 1ST D CROSS,
NELAGADARANAHALLI,
BENGALURU - 560 073.
2. SMT. M. SARASWATHI
D/O. LATE K. L. MUNIYAPPA,
AGED ABOUT 45 YEARS,
R/O. NO. 30,
NEW BEML,
CPRI COLONY,
BENGALURU - 560 098.
3. SMT. M. GAYATHRI
D/O. LATE K. L. MUNIYAPPA,
AGED ABOUT 42 YEARS,
R/O. NO. 65/1,
ADITHYA PROVISION STORES,





6TH CROSS, TEACHERS COLONY,
NAGASHETTYHALLI,
BENGALURU - 560 094.

...APPELLANTS

(BY SRI. SARAVANA S., ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER
BENGALURU DISTRICT,
K.G. ROAD,
BENGALURU - 560 009.
2. THE ASSISTANT COMMISSIONER
BENGALURU NORTH SUB-DIVISION,
BANGALORE - 560 009.
3. THE THASILDAR
BENGALURU NORTH (ADDL.) TALUK,
YELAHANKA,
BENGALURU - 560 004.
4. T. A. BALAJI
S/O. T. ASHWATHANARAYANA,
AGED ABOUT 48 YEARS,
R/O: NO. 1309, AKSHAYA NIVAS,
2ND MAIN ROAD,
GANDHINAGAR, YELAHANKA,
BANGALORE - 560 064.



5. V. R. LAKSHMINARAYANASHETTY
S/O. Y.L. RAMAIAHSHETTY,
AGED ABOUT 69 YEARS,
R/O. NO. 1309, AKSHAYA NIVAS,
2ND MAIN ROAD,
GANDHINAGAR,
YELAHANKA,
BANGALORE - 560 064.

...RESPONDENTS

(BY SRI K.S. HARISH, GOVERNMENT ADVOCATE FOR
R1 TO R3 &
MS. PRAKRUTHI RAJU, ADVOCATE FOR
SRI YESHU BABA RAMDUTT MISHRA, ADVOCATE FOR
R4 & R5)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER PASSED BY THE LEARNED SINGLE JUDGE DATED
10.06.2022 IN W.P. No.18014/2021 AND PASS SUCH OTHER
APPROPRIATE ORDERS UNDER THE CIRCUMSTANCES OF
THE CASE.

THIS APPEAL COMING ON FOR ORDERS THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE
N. V. ANJARIA
and
HON'BLE MR JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. V. ANJARIA)

Heard learned Advocate Mr. Saravana S for the appellants, learned Additional Government Advocate for respondent Nos.1 to 3 and learned Advocate Mrs. Prakruthi Raju for learned Advocate Mr. Yesu Babu Ramdutt Mishra for respondent Nos.4 and 5.

2. The present appeal under Section 4 of the Karnataka High Court Act, 1961, preferred by the appellants-original petitioners is directed against judgment and order dated 10th June 2022 passed by learned Single Judge dismissing the writ petition.

2.1 In the writ petition, the appellants-petitioners challenged order dated 7th September 2021 passed by respondent No.1-Deputy Commissioner, Bengaluru. It was



next prayed to grant the land bearing Survey No.189 admeasuring 2 acres, situated at Kattigenahalli Village, Jala Hobli, Bangalore North Taluk, previously Devanahalli Taluka, Bangalore Rural District.

2.2 As per the aforementioned order dated 7th September 2021, appeal filed by respondent Nos.4 and 5-private parties-T.A. Balaji and another, came to be allowed. Learned Assistant Commissioner whose order was under challenge in appeal, directed restoration of land. As stated above, the appeal was allowed and the same came to be confirmed by learned Single Judge.

3. The facts are that the appellant-petitioners are the heirs of one late Sri Lakshmaiah, who belonged to the Scheduled Caste and came to be granted the land in question in the year 1981. Under the two registered Sale Deeds dated 16th March 1995/29th March 1995, which were executed in favour of private respondent Nos.4 – Sri Balaji, the land was transferred.



3.1 The petitioners initiated proceedings before the Assistant Commissioner. The Assistant Commissioner held by passing order dated 1st April 2008 that there was violation of the provisions of the Karnataka Scheduled Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, consequently, cancelled the Sale Deeds and directed resumption of lands to be regranted in favour of the petitioner.

3.2 Respondent Nos.4 and 5 challenged the aforesaid order dated 1st April 2008 before the Deputy Commissioner by preferring appeal under section 5A of the Karnataka Scheduled Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred as 'the Act'). The appeal was decided on 6th January 2016. In Writ Petition No.3149 of 2017, the case was remanded on the aspect of consideration of delay and if the delay was to be condoned, to decide on merits. Thereafter, the proceedings resulted in order dated 7th September 2021, passed by the Deputy Commissioner, impugned in the petition.



3.3 While setting aside the order of the Assistant Commissioner, the aspect weighed with the Deputy Commissioner was that the land was alienated and transferred in favour of the appellants-Balaji and others, as the respondents herein, in the year 1995 and that the appellant-petitioner sought restoration thereof in the year 2007-2008 after lapse of about more than 11 years which was not a reasonable period, but amounted to inordinate delay.

4. The legal provisions and development of law in the subject deserve to be noticed. While 'granted land' is defined in Section 3(b) of the Act, Section 4 of the Act deals with the prohibition of transfer of granted lands, to provide that notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or commencement of the Act, in terms of the contravention of the grant or in contravention of the law in that regard or in breach of sub-Section (2) of Section 4, such transfer shall be treated as null and void, not to give any



right, title or interest in favour of the person to whom the land is transferred.

4.1 As per sub-Section (2), no person shall after commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government. Under sub-Section (3), the provisions in sub-Sections (1) and (2) are made applicable to the sale of any land in execution of any decree or award, etc., of the Court. Section 5 of the Act deals with the resumption and restitution of granted lands.

4.2 Section 5 as it stood originally, reads as under,

"5. Resumption and restitution of granted lands-

(1) Where, on application by any interested person or on information given in writing by any person or *suo-motu*, and after such enquiry as he deems necessary, the Assistant Commissioner is satisfied that the transfer of any granted land is null and void under Sub-section (1) of Section 4, he may,-

(a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed:



Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;

(b) restore such land to the original grantee or his legal heir. Where it is not reasonably practicable to restore the land to such grantee or legal heir; such land shall be deemed to have vested in the Government free from all encumbrances. The Government may grant such land to a person belonging to any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land.

(1-A) After an enquiry referred to in Sub-section (1) the Assistant Commissioner may, if he is satisfied that transfer of any granted land is not null and void pass an order accordingly.

(2) Subject to the orders of the Deputy Commissioner under Section 5-A, any order passed under sub-sections (1) and (1-A) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Assistant Commissioner in pursuance of any power conferred by or under this Act.

(3) For the purposes of this Section, where any granted land is in the possession of a person, other than the original grantee or his legal heir, it shall be presumed, until the contrary is proved, that such person has



acquired the land by a transfer which is null and void under the provisions of sub-section (1) of Section 4."

4.3 It would be noticed from the aforesaid provision that there is no prescription of time limit for resumption or restitution of the land which is null and void under Section 4(1) of the Act. However, various judicial decisions, prominent amongst is **Nekkanti Rama Lakshmi vs. State of Karnataka [(2020) 14 SCC 232]**, which was in the very context of Sections 4 and 5 of the Act. It was held therein that the application made for restitution of the land after delay of 25 years, was not liable to be acceptable in law, as it was after unreasonable delay. It was held that there was no annulment of transfer could be allowed.

4.3.1 It was observed and held in **Nekkanti Rama Lakshmi (supra)**,

"However, the question that arises is with regard to terms of Section 5 of the Act which enables any interested person to make an application for having the transfer annulled as void under Section 4 of the Act. This section does not prescribe any period within which such an application can be made. Neither does it prescribe the period within which suo motu action may be taken.



This Court in Chhedi Lal Yadav & Ors. vs. Hari Kishore Yadav & Ors., [2017 (6) Scale 459] and also in the case of Ningappa vs. Deputy Commissioner & Ors. [C.A. No. 3131 of 2007, decided on 14.07.2011] reiterated a settled position in law that whether statute provided for a period of limitation, provisions of the statute must be invoked within a reasonable time. It is held that action whether on an application of the parties, or suo motu, must be taken within a reasonable time."

(para 8)

4.3.2 It was further stated,

"An application for restoration was made after 24 years and was allowed. It is in that background that this Court upheld that it was unreasonable to do so. We have no hesitation in upholding that the present application for restoration of land made by respondent Rajappa was made after an unreasonably long period and was liable to be dismissed on that ground. Accordingly, the judgments of the Karnataka High Court, namely, R. Rudrappa vs. Deputy Commissioner, 2000 (1) Karnataka Law Journal, 303 and G. Maregouda vs. The Deputy Commissioner, Chitradurga District, Chitradurga and Ors, 2000(2) Kr. L.J.Sh. N.4B holding that there is no limitation provided by Section 5 of the Act and, therefore, an application can be made at any time, are overruled."

4.4 While the aforesaid law that relief of setting aside of transfer could not be granted after unreasonably long period



and the applications made under Section 5 for restitution or resumption of the land by a person could not be acted upon in favour of such person on the ground of delay, the legislature intervened to proceed to amend Section 5 by virtue Karnataka Scheduled Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 2023, notified in the Gazette Notification dated 27nd July 2023. Thereby sub-clauses (c) and (d) were inserted, namely,

“(c) Notwithstanding anything contained in any law, there shall be no limitation of time to invoke the provisions of this Act.

(d) The provisions of clause (c) shall apply to all cases pending before all the competent authorities and all Courts of Law adjudicating the cases under this section.”

4.5 It was stated at the bar that the validity of the aforesaid amendment is challenged in Writ Petition No.27496 of 2023 which is pending before the learned Single Judge of this Court. This judgment does not travel anything on merit of the said validity proceedings.



4.6 However, the aspects which emerged in light of the law laid down in **Nekkanti Rama Lakshmi (supra)**, vis-à-vis the amendment in Section 5 and the situation obtained, came to be dealt with by the coordinate bench of this Court at Dharwad in **Smt. Gouramma alias Gangamma vs. Deputy Commissioner, Haveri**, which was Writ Appeal No.100101 of 2024 decided on 29th July 2024.

4.6.1 After noticing the amendment in Section 5, the division bench observed thus, in para 3(d),

"The Amendment Act that is made applicable with retrospective effect is only a duplication of the existing legal position. Such duplication happened even in English legislative history, hardly needs to be mentioned. The question of delay is a matter of limitation which this statute is silent about. Clauses (c) and (d), now introduced to Section 5(1) of the Act, do not bring any change in the statutory scheme. At the most, they are declaratory of what the statute has been all through, so far as the limitation period is concerned. Nobody disputes that there was no limitation period earlier and there is no limitation period now too. Laches, which would involve a host of factors, pertains to the Domain of Equity."



4.6.2 It was observed that in **Nekkanti Rama Lakshmi (supra)**, did not speak of limitation period, but focused on the long lapse of time in making the application for restitution of the land, by quoting paragraph 8 above from the said decision, the division bench then held as per para 3(f),

"It may be true, that the legislative debates might have taken place about the observations of the Apex Court in **Nekkanti** and other such cases while passing the Amendment Bill. That *per se* does not lend credence to the contention that the said amendment intends to invalidate the law declared by the highest court of the country which it did after considering all aspects of the matter including the sense of equity & justice. If the Legislature intended to silence the voice of **Nekkanti**, it would have employed a different terminology. We repeat that, ordinarily, delay is decided by computing the period of limitation prescribed by law, whereas "laches" is decided keeping in view a host of factors. Cases are repleat in Law Reports relating to delay and laches in writ jurisdiction under Articles 12, 226 & 227 of the Constitution of India. This is only to illustrate."

4.7 From the decision of the Supreme Court in **Union of India vs. N. Murugesan [(2022) 2 SCC 25]**, the division



bench highlighted the nice distinction between 'delay and latches', as against 'limitation'. It was observed that the 'limitation' is a prescription of time for taking an action as contemplated by the legislature, whereas the concept of 'delay and latches' has a different connotation to operate.

4.8 The coordinate bench of this Court in **Smt. Gouramma (supra)**, proceeded on the above reasoning to clarify that the issues were examined without touching the aspects of validity of amendment which is pending adjudication. It was held in **Smt. Gouramma (supra)** that on the ground of latches, the court would be justified in denying the relief of setting aside the transfer and restoring the land to the applicant when he has approached the court after unreasonable delay and his approaching the court is marred by latches.

5. The Supreme Court in **N. Murugesan (supra)**, explained the word 'latches' thus,

"The word "laches" is derived from the French language meaning "remissness and slackness". It thus involves unreasonable



delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy."

(para 21)

5.1 The Supreme Court proceeded to observe that the remedy for which the party knocks the doors of the Court may not be provided to him on equitable grounds when such party is guilty of indolence and his action suffers from latches,

"Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy."

(Para 22)



5.2 Though the principles governing overlap, the delay and laches has the facet in equity. Delay is the genus to which the laches and acquiescence are species. The jurisprudential concepts of delay, laches and acquiescence have their own colour and connotation and conceptually often different from crossing the period of limitation prescribed in the statutory provision. Limitation binds the litigant in terms of initiating a legal action or filing any proceedings. Laches concedes an element of culpability in allowing time to pass by in commencing the action in law.

6. In light of the above discussion and the position of law that would emerge, in the facts of the case, the restoration of the land cannot be permitted after 12 years. The question of laches would come into play. 12 years having been passed, it would be highly unreasonable, unjust and inequitable, as well as against law to grant any relief to the original grantee-the petitioner-appellant, permitting restoration of the land and to treat the transfer of the land taken place long back to be null and void.



6.1 In view of the reasons and discussion as above, the judgment and award of the learned Single Judge does not book any error.

7. The appeal is dismissed.

In view of dismissal of the appeal, the interlocutory applications, as may be pending, would not survive and they stand accordingly disposed of.

**Sd/-
(N. V. ANJARIA)
CHIEF JUSTICE**

**Sd/-
(K. V. ARAVIND)
JUDGE**