IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.1762 OF 2005(LR)

BETWEEN:

1. THE LORD BISHOP,
REPRESENTED BY ITS MANAGER AND
GPA HOLDER,
REV. FR. PETER FRANCIS FERNANDES,
DIOCEASAN ESTATE OFFICE,
BISHOP'S HOUSE, KODIALBAIL,
MANGALORE.

2. SRI. MELVIN D'SOUZA,
AGED 50 YEARS,
S/O. LATE STANY D'SOUZA,
R/O. PAYYABAIL HOUSE,
NEERAMARGA VILLAGE,
MANGALORE TALUK,
REPRESENTED BY GPA HOLDER,
MR.ANCY D'SOUZA.

... PETITIONERS

(BY SRI.CYRIL PRASAD PAIS, ADVOCATE FOR P1;
SRI. PANDIKAI ISHWARA BHAT, ADVOATE FOR P2)

AND

1. THE LAND TRIBUNAL,
BANTWAL, DK.

2. SRI. JEROME REBELLO,
SINCE DEAD BY LRS:

A) SMT. CARMINE REBELLO, MAJOR
D/O. LATE JEROME REBELLO,
R/O. MOGARNAD,
BANTWAL TALUK, D.K.

B) SMT. EVPHROSINA REBELLO, MAJOR,

C) SYLVIA REBELLO, MAJOR,

D) ROSHAN REBELLO, MAJOR,
NO.2(B) IS THE WIDOW, NO.2(C) & (D)

G) KUMARI KERAN DEZNY REBELLO, MAJOR,
NO.2 (E) IS THE WIDOW, NO.2(F) & (G),
ARE THE CHILDREN OF LATE ANTHONY REBELLO,
R/O. NEREMARGA VILLAGE,
MANGALORE TALUK, D.K.

H) JOSEPH REBELLO, MAJOR,
S/O. LATE JEROME REBELLO,
R/O. UJIRE, BELTHANGADY TALUK, D.K.

I) REV. SR. THERESA REBELLO, MAJOR,
D/O. LATE JEROME REBELLO,
NUN IN HOLY SPIRIT CONVENT,
BANNERAGHATTA, BANGALORE.

J) SRI. GREGORY REBELLO,MAJOR,
S/O. LATE JEROME REBELLO,
R/O. MUMBAI,

3. SMT. JULIAN MABLE LOBO,
D/O. LATE PRECELLA LOBO & J.F.LOBO,
AGED ABOUT 68 YEARS,

4. SRI. ERIC LOBO,
D/O. LATE PRECELLA LOBO & J.FG. LOBO,
AGED ABOUT 63 YEARS,

5. SMT. VIRIAN JAYCE LOBO,
VIRIAN JAYCE LOBO,
D/O. LATE PRESILLA LOBO & J.F.LOBO,
AGED ABOUT 59 YEARS,

6. SMT. ZEETA VERONICA LILLY LOBO,
D/O. LATE PRESILLA LOBO & J.F.LOBO,
AGED ABOUT 56 YEARS,

7. SMT. SARITA LOBO,
D/O. LATE PRESILLA LOBO & J.F.LOBO,
AGED ABOUT 51 YEARS,

8. SMT. FLORENCE SAIRA LOBO,
LAKYA HOBLI, CHIKKAMAGALURU TALUK,
CHIKKAMAGALURU.

9. MARITA JOHN D'COSTA,
AGED ABOUT 31 YEARS,

10. MANUEL JHON ANTHONY D'COSTA,
AGED ABOUT 29 YEARS,

PROPOSED RESPONDENTS NO.9 AND 10
ARE CHILDREN OF ANTONY D'COSTA
BOTH ARE RESIDING AT MERLA PADUVU HOUSE,
ARKULA VILLAGE, FARANGIPET POST,
MANGALORE.

... RESPONDENTS

[BY SRI. V.SESHU, HCGP, FOR R1;
SRI. H.N.MANJUNATH PRASAD, FOR R2(A) TO R2(J) &
R3 TO R10;
SRI. P.KARUNAKAR FOR R2(E) (F) & (G)]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY THE LAND TRIBUNAL MANGALORE, DATED 21.10.1978 VIDE ANNEX-A. IN SO FAR AS TH E SCHEDULE LANDS ARE CONCERNED. GRANT STAY VIDE ANNEX-A. IN SO FAR AS THE DISPUTED LANDS ARE CONCERNED.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The 1st Petitioner Bishop and the 2nd Petitioner his transferee are before the Writ Court for laying a challenge to the Land Tribunal order dated 21.10.1978 to the extent that it comprises of land admeasuring 01Acre & 15 cents in Sy.No.64/4 of Arkula Village and land admeasuring 01Acre & 48 cents in Sy.No.1/1a of Adyar Village, Bantwal Taluka. They do not have any grievance against grant of occupancy in respect of other lands comprised in the order.

2. Learned advocate appearing for the Petitioners argues that: in respect of subject lands, no occupancy was claimed and therefore, the same could not have been granted; the Petitioners did not have notice of the

proceedings at all; they came to know of the Land Tribunal order when the 2nd Respondent Shri Jerome Rebello threatened the 2nd Petitioner with the LT order. The 2nd Petitioner having bought the subject lands from the 1st Petitioner vide registered Sale Deed dated 30.09.1997 has been in cultivation and earlier, it was the 1st Petitioner who had been. The Tribunal has not followed the mandatory procedure. He also notifies to the Court about the civil Court proceedings and the revenue entries continuing in the name of his clients even long after LT order has been made.

3. After service of notice, the Respondent - Land Tribunal is represented by the learned HCGP who has graciously made available the original TCR for perusal and they are returned to him. The private Respondents being the LRs of the 2nd Respondent now deceased, have filed their Statement of Objections resisting the Writ Petition. Their learned counsel opposes the Petition making submission in justification of the impugned order and on the

ground of enormous delay & laches. He also mentions about earlier round of litigation and their pending appeal against the Civil Court Decree. Lastly, he mentions about death of 5th Respondent even prior to filing of the Writ Petition. Learned counsel has also filed a Memo agreeing to give up 20 Cents of land in favour of the 2nd Petitioner herein for buying peace. He therefore, seeks dismissal of the same.

4. Having heard the learned counsel for the parties and having perused the Petition papers, this Court declines indulgence in the matter for the following reasons:

a) The Land Tribunal granted the occupancy inter alia in respect of the subject lands vide order dated 21.10.1978. The Writ Petition has been filed on 13.10.2005 i.e., with a delay of about 27 years. The impugned order specifically mentions about the 'No Objection' of the 1st Petitioner for grant of occupancy. The tenants of the land had produced Levy Receipts and other material before the

Tribunal. The extent of land in actual cultivation of the tenants has been ascertained after the survey. A perusal of the original LCR shows that the 1st Petitioner was issued notice dated 20.09.1978 and only thereafter he notified his consent to the claim of the tenants. In fact, Form 10 itself was issued on 21.12.1998. It is not that the 1st Petitioner is a peasant, an agriculturist or a labourer; he is a qualified Bishop who will have wide exposure to the outer world. Therefore, the contention of the Petitioners that they did not have notice of the LT proceedings cannot be accepted, when delay runs into decades and third party rights have been created. This apart, the Writ Petition was filed *inter alia* against the 5th Respondent who had died a decade before its filing i.e., on 26.11.1985. His LRs have been brought on record by filing application under the provisions of Order XXII of CPC, 1908 does not much come to the aid of Petitioners vide *C MUTTU vs BHARATH MATCHWORKS, MANU/KA0137/1964*.

b) The contesting Respondents herein have bought the subject property in May, 2000 & November, 2004 by registered Sale Deeds and thus, the third party rights have been already created. These buyers were not made parties to the original Petition that was allowed on 08.06.2012. However, on the application of these persons Review Petition No.50/2013 having been favoured, vide order dated 28.07.2022, the judgment has been recalled and Writ Petition is restored to the Board. No explanation is offered by the Petitioners as to why they had not made the buyers of the land as parties to the Writ Petition. In fact, these buyers have put up structures on some part of the subject lands. Thus, the Petitioners have some amount of culpability that comes in the way of granting relief in the equitable jurisdiction of the Constitutional Court, as rightly contended by learned counsel for the contesting Respondents, who also mentions about his clients' pending

appeal against the Decree obtained by the Petitioners on the basis of earlier judgment referred to above.

c) The vehement submission of learned counsel for the Petitioners that the tenant has not made claim for occupancy in the original application in Form No.7 in respect of these two lands also does not merit acceptance inasmuch as, subsequently, the application was amended to include these lands and accordingly, the notice sent to the Landlord mentioned about these lands. Even otherwise, the other Table in the Form No.7 specifically mentions about these two lands as tenanted. Added, the 1st Petitioner had sent his consent for according occupancy without any reservation or condition. Therefore, the contention that the LT order to the extent it grants occupancy in respect of unclaimed lands being a nullity, can be challenged at any point of time does not merit countenance.

d) The vehement submission of Petitioners counsel that the Land Tribunal order is void and therefore, the

question of delay & latches for laying a challenge to the same does not arise, is only a half truth. Even a void order unless certified by the *magistra dicta* as being void, would continue to be operational. What is observed by the Apex Court in *STATE OF PUNJAB AND OTHERS VS. GURDEV SINGH AND ASHOK KUMAR, AIR 1992 SC 111* becomes instructive in matters like this. The observations at paras 5, 6 & 7 of the decision are worth reproducing:

> *"5…For the purpose of these cases, we may assume that the order of dismissal was void inoperative and ultra vires, and not voidable. If an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs.*
>
> *6. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In Smith v. East Elloe Rural District Council, 1956 AC 736 at p.769 Lord Radcliffe observed:*

"An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

7. Apropos to this principle, Prof. Wade states: "the principle must be equally true even where the 'brand' of invalidity' is plainly visible; for their also the order can effectively be resisted in law only by obtaining the decision of the Court (See: Administrative Law 6th Ed. p. 352). Prof. Wade sums up these principles:

"The truth of the matter is that the court will invalidate an order only if 'the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another."(Ibid p.352)."

e) Petitioners argument that this court has consistently observed about the requirement of boundaries of the tenanted land being specified, is true. Such a view is expressed in ***NARAYANA VS. THIMAPPA, (1981) 1 KLJ SN 77 and BAKILANA CHINNAPPA VS. LAND TRIBUNAL MERCARA TLQ, (1978) 1 KLJ 75***, cannot be much disputed. However, that cannot be construed to be a Thumb Rule. Added, the invocation of Rule contemplates an ideal situation where there is some dispute about the identity of the lands in respect of which occupancy is claimed. When there is no dispute at all, there is no scope for invocation of these Rulings. Even otherwise, this argued norm pales into insignificance once the landlord signified his consent to the claim for occupancy, in a wholesale way. It is not that the 1st Petitioner being the landlord had objected to the claim and participated in the LT proceedings. A proposition emerging from the Rulings cannot be mechanically applied regardless of factual

difference of the case at hands. More than a century ago in *QUINN vs. LEATHEM, (1901) A.C. 495, 506,* Lord Halsbury observed as under:

> *"a case is an authority for a proposition of law that it actually lays down in a given fact matrix and not for all that which logically follows from what has been so laid down."*

f) The last contention of the Petitioners that the subject lands are punja lands and therefore, no occupancy could have been granted, the same being non-agricultural, cannot be agreed to, at this length of time. Reasons are not far to seek: true it is that in Dakshina Kannada region, ordinarily, the punja lands are not treated as agricultural lands. However, it is not that they cannot be brought under cultivation. When the 1st Petitioner being the landlord had consented to the grant of occupancy unconditionally and in a wholesale way, he cannot now contend to the contrary. There is a lot of support for the view that even the punja lands can be brought under cultivation and therefore, in

such a case, occupancy can be accorded u/s 48A of the Karnataka Land Reforms Act, 1961 vide ***SUBHAKAR vs. LAND TRIBUNAL, KARKALA TALUK, KARKALA*** **(1999) 4 KLJ 524**. For the same reason, the entries in the revenue records depicting the subject land as punja lands do not much matter, the presumptive value arising u/s 133 of the Karnataka Land Revenue Act, 1964, notwithstanding.

g) There is another strong reason as to why this court should decline indulgence: the private Respondents being as gracious as can be, have filed a Memo through their advocate, this day, in the open court, which has the foilowing text:

> *"The undersigned counsel for the respondents 3 to 10 respectfully submits that the respondents are ready to give 23 cents of land where the 2nd Petitioner has constructed the house during the pendency of the case in order to put an end to the litigation."*

The 2nd Petitioner has bought the land, is true; at the same time, the private Respondents too have bought it, is equally true. Had the 2nd Petitioner made reasonable enquiries, he

could have known about the tenancy proceedings that culminated into grant of occupancy and subsequently, issuance of Form 10. Land Tribunal order and this Form are treated as the documents of title, on the basis of which entries in the revenue records have to be made. Setting aside the LT order at this stage would cause comparatively more injustice to the private Respondents who have bought the land after employing their prudence, whereas this prudence comparatively lacks *qua* the Petitioners. The Constitutional Court exercising equity jurisdiction has to take into account a host of factors in doing justice by striking a balance between competing equities. The private Respondents have stood tall and wise in giving up part of their claim. Subhaashita says:

> *"vinaasha kaale samutpanne, ardham tyejita panditah"*
> (literally it may translate to "*when one is loosing the whole, one is wise who saves a part of that…").*

The Writ Courts have to operate a theory of justice that can serve as the basis of practical reasoning and that would invariably include the ways of judging how to reduce injustice and advance justice, rather than aiming only at the characterization of perfectly just scenarios. A demand for perfect justice if conceded to, would breed injustice, inasmuch as conflicting considerations cannot be fully resolved in any society. After all, it was John Rawls (1921-2002) who wrote '*Justice as Fairness'*. The Writ Courts cannot ignore this *mantra* that animates the adjudicatory process.

In the above circumstances, this Writ Petition fails; although challenge to the impugned Land Tribunal order is negatived, a part of the lands now given up by the private Respondents would enure to the benefit of 2nd Petitioner so that he can save his building and the area appurtenant thereto, which in all is confined to 23 cents, as stated in the Memo.

In the event, if the Petitioners being unsatisfied with this judgment, lay a challenge thereto, it is open to the private Respondents to withdraw their Memo unconditionally inasmuch as the offer emanated gracefully and gratuitously.

Costs made easy.

Sd/-
JUDGE

BSV/CBC