

**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 23RD DAY OF JUNE, 2023**

PRESENT

THE HON'BLE MR JUSTICE S G PANDIT

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL

WRIT APPEAL NO. 100265 OF 2023

BETWEEN:

ERAPPA S/O. NARAYANAPPA,
AGE: 81 YEARS, OCC: AGRICULTURE,
R/O: GINIGERA, TQ & DIST: KOPPAL, PIN: 583231.

...APPELLANT

(BY SRI. MRUTYUNJAY S. HALLIKERI, ADVOCATE)

AND:

1. ASSISTANT COMMISSIONER,
KOPPAL, DIST: KOPPAL-583231.
2. DEPUTY COMMISSIONER,
KOPPAL, DIST: KOPPAL-583231.
3. SURESH S/O. SEVARAM LAKHOTIA,
AGE: 68 YEARS, OCC: AGRICULTURE AND BUSINESS,
R/O: C/O. S.R.C CHEMICALS PVT. LTD,
BANGAL ROAD, ALLA NAGAR, KOPPAL,
TQ AND DISTRICT: KOPPAL-583231.

...RESPONDENTS.

(BY SRI. ANAND R. KOLLI, ADV. FOR R3,
SRI. V. S. KALASURMATH, ADV. FOR R1 & R2).

THIS WRIT APPEAL IS FILED U/S. 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING THIS HON'BLE COURT TO, SET ASIDE THE ORDER DATED 23.11.2022 IN W.P NO. 144491/2019 (KLR-RES) PASSED BY THE LEARNED SINGLE CIVIL JUDGE, IN THE INTEREST OF JUSTICE AND EQUITY.

YASHAVANT
NARAYANKAR

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YASHAVANT
NARAYANKAR
Location: High Court of
Karnataka, Dharwad
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THIS APPEAL HAVING BEEN HEARD AND 'RESERVED FOR JUDGMENT' ON 15.06.2023, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, **VIJAYKUMAR A. PATIL, J.**, PRONOUNCED THE FOLLOWING:

JUDGMENT

This intra-court appeal is filed challenging the order of the learned Single Judge dated 23.11.2022 passed in W.P No.114449/2019 (KLR-RES) wherein the writ petition filed by the respondent No.3 was allowed.

2. Brief facts giving rise to filing of this appeal are that, the Respondent No.3 invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking prayer to issue writ of certiorari to quash the orders dated 22.08.2015 and 12.09.2019 passed by respondent No.1 and Respondent No.2, at Annexure-A and Annexure-B to the writ petition.

3. It is averred that the land bearing Sy.No.5/1 measuring 3 acres situated at Alla Nagar,

Koppal Taluk and District was purchased by the respondent No.3 from the appellant vide registered sale deed 09.03.2005. It is further averred that the appellant who has sold the property to the respondent No.3, had acquired the property vide grant order dated 04.09.1978 and the appellant belongs to the deprived community.

4. It is also averred that the appellant has initiated the proceedings under Section 4 and 5 of the Karnataka Schedule Caste and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as 'PTCL Act', for short). The respondent No.1 vide order dated 22.08.2015 has held that the sale transaction between the parties is in violation of the provisions of the PTCL Act. Being aggrieved by the order of the Assistant Commissioner dated 22.08.2015, the respondent No.3 has filed the appeal challenging the order dated 22.08.2015 before

the respondent No.2 Deputy Commissioner, Koppal. The respondent No.2/Deputy Commissioner dismissed the appeal filed by the respondent No.3 vide order dated 12.09.2019 by confirming the order of the Assistant Commissioner dated 22.08.2015. The respondent No.3 has assailed the order dated 22.08.2015 of the respondent No.1 and 12.09.2019 of the respondent No.2 in W.P.No.114449/2019. Learned Single Judge allowed the writ petition by quashing the impugned orders. In the above factual matrix the present appeal has been filed.

5. Learned Counsel Sri. Mrutyunjaya S. Hallikeri, for the appellant submits that learned Single Judge has committed error in setting aside the orders passed by the respondent Nos.1 and 2 on the ground that there is delay in initiation of proceedings under Section 5 of the PTCL Act. It is submitted that the finding recorded by the learned Single Judge suffers

from grave infirmities. The learned Single Judge ought to have considered the fact that the respondent no.3 had played fraud on the grantee and got the sale deed executed in the guise of mortgage deed and further his request to enter his name in revenue records was rejected as the same was in contravention of provisions of PTCL act by the revenue authorities. It is further submitted that the fraud played by the purchaser in getting sale deed executed in their favour vitiates all the proceedings hence, sought to interfere in the present appeal.

6. *Per contra*, learned counsel Sri Anand R.Kolli for respondent No.3 supports the impugned order of the learned Single Judge and submits that learned Single Judge has considered the case on hand keeping in mind the ratio laid down by the Hon'ble Supreme Court in the case of ***Nekkanti Rama Laxmi***

Vs. State of Karnataka and another¹ and has rightly concluded that the initiation of proceedings under the provisions of PTCL Act is belated one. He seeks for the dismissal of the appeal.

7. Learned H.C.G.P. Sri V.S. Kalasurmath appearing for respondent Nos. 1 and 2 submits that the appellant is not diligent in pursuing his rights, he has approached the Assistant Commissioner after lapse of more than seven years, learned Single Judge has considered the settled legal position of law and allowed the writ petition which does not call for any interference in the present appeal.

8. We have heard the learned counsel for the appellant, learned HCGP for respondent Nos.1 and 2 and the learned counsel for respondent No.3 and perused the material on record.

1 [(2020) 14 SCC 232]

9. It is not in dispute that the subject land i.e., land bearing Sy.No.5/1 measuring 3 acres situated at Alla Nagar, Koppal Taluk and District was granted to the appellant on 04.07.1978 and the appellant belongs to deprived community. It is also not in dispute that the appellant has alienated the subject land in favour of the respondent No.3 vide registered sale deed dated 09.03.2005 and thereafter the revenue records were mutated in the name of respondent No. 3/purchaser.

10. The appellant has initiated proceedings under Section 5 of the PTCL Act for resumption of land on the ground that the subject land has been alienated in violation of Section 4 (2) of the PTCL Act. The Assistant Commissioner allowed the application of the grantee for resumption and the same was confirmed by the Deputy Commissioner in appeal. It is also not in dispute that the subject land was

alienated/sold by the appellant grantee on 09.03.2005 in favour of the respondent No.3 and has initiated proceedings for resumption of land after lapse of 7 years. The land in question is utilised for the purpose of industrial activities and the factory building has been constructed on the land in question. When things stood thus, the initiation of proceedings by the grantee after a period of 7 years is an after thought, that too after receiving the entire sale consideration from the respondent No. 3. The initiation of proceedings under Section 5 before the Assistant Commissioner is hit by doctrine of unreasonable delay. The appellant grantee has contended that the purchaser has played fraud and in the guise of execution of mortgage deed has got executed the sale deed and in support of the said contention, he has relied on the unregistered mortgage deed dated 19.11.2015 entered between neighbouring landowners and the respondent No. 3/purchaser. The said

contention is required to be rejected for the reason that the appellant grantee cannot make bald assertion of fraud without there being any proper pleading supported with acceptable evidence. Mere reliance on some unregistered mortgage deed contending that fraud has been played on the grantee cannot be accepted. Moreover, the appellant/grantee with open eye has executed registered Sale Deed, when the appellant has executed registered sale deed it is not open for him to contend that, in the guise of mortgage deed, sale deed, was got executed.

11. The Hon'ble Supreme Court in the case of ***Nekkanti Rama Laxmi*** referred supra has held that the application for restoration and resumption of land should be filed within a reasonable time. In the instant case the appellant grantee has filed an application for restoration and resumption after a period of 7 years, the said time cannot be termed as

reasonable period. hence, the case on hand is clearly covered by the decision of the Hon'ble Supreme Court in the case of ***Nekkanti Rama Laxmi*** supra.

12. Learned Single Judge has considered the case of the grantee on merits and on appreciation of material on record, has categorically held that the appellant has initiated the proceedings under Section 5 of PTCL Act after lapse of 7 years and after third party interest has been created, we do not find any error in the aforesaid findings of the learned Single Judge calling for interference in the present appeal.

13. For the aforementioned reasons, we do not find any merit in this appeal. The same fails and hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

NAA