



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.11112 OF 2021 (SC-ST)

BETWEEN:

1 . SRI VENKATESH

2 . SRI. RAMESH

...PETITIONERS

(BY SRI.CHAITANYA HEGDE, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
BY THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT,
VIDHANA SOUDHA,
DR. B. R. AMBEDKAR VEEDHI,
BANGALORE-560 001.

- 2 . THE SPECIAL DEPUTY COMMISSIONER
BANGALORE DISTRICT,
BANGALORE-560001
- 3 . THE ASSISTANT COMMISSIONER
BANGALORE SUB-DIVISION,
BANGALORE-560001.
- 4 . M. B. SHANKAR REDDY
.....

...RESPONDENTS

(BY SRI.VENKATA SATYANARAYANA, HCGP FOR R1 TO 3;
SRI.RAKSHITHA.D.J, ADVOCATE FOR R4)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTING THE RESPONDENTS TO FORTHWITH RESTORE PEACEFUL VACANT POSSESSION OF THE SCHEDULE PROPERTY TO THE PETITIONERS PURSUANT TO THE ORDER DATED 25.07.1986 PASSED BY THE R3 IN CASE NO.KSC:ST:122 TO 132/79-80 DATED 25.07.1986, ANNEXURE-B AND THE ORDER DATED 14.08.1987 PASSED BY R2 IN CASE NO.SC/ST APPL. 11 TO 20/1096-87 ANNEXURE-C.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.07.2023, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed by the legal heirs of the original grantee seeking a writ in the nature of mandamus to the respondents to forthwith restore peaceful vacant possession of the schedule property in terms of the order dated 25.7.1986 passed by respondent No.3 in No.KSC:ST:122 to 132/79-80 as per Annexure-B.

2. The facts leading to the case are as under:

The father of the petitioners namely Krishna belonged scheduled caste. The authorities granted petition land to the petitioners' father under Rule 43(G) of the Mysuru Land Revenue Rules. The upset price of the land was fixed at Rs.300/- per acre and the land was granted by waiving price of Rs.200/- per acre. On similar terms, one acre land each was

granted to twenty other persons belonging to Scheduled Caste.

3. The original grantee during his life time sold the land in favour of respondent No.4. After coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, (for short "PTCL Act") proceedings were initiated under Section 5 of the said Act against the father of respondent No.4-Bhoomi Reddy in respect of all ten piece of lands which were subject matter of alienation in contravention of the grant condition. Third respondent-Assistant Commissioner vide order dated 25.7.1986 (Annexure-B) ordered for resumption of land by declaring the transaction in favour of respondent No.4 as null and void. The said order was upheld by the Deputy Commissioner under Section 5A of the PTCL Act.

4. The purchaser however questioned the order of restoration before this Court in W.P.12518/1987. The Co-ordinate Bench of this Court set aside the order of restoration on the ground that the grant was made on the reduced upset price and therefore, condition of non-alienation provided under Rule 43(G) (4) is not applicable. The order of the learned Single Judge was taken in an appeal before the Division Bench in W.A.No.1481/1991 by some of the Co-grantees of the petitioners' father. State preferred writ appeal in WA.No.2142/1992 assailing the order of the learned Single Judge passed in W.P. 12518/1987. The Division Bench dismissed the appeal and thereby confirmed the order of the learned Single Judge. The review petition filed in CP.No.897/1996 was also dismissed vide order dated 15.2.1999.

5. Learned counsel appearing for petitioners reiterating the grounds urged in the writ petition

would contend that petitioners are not barred from maintaining the present petition and the principles of *estoppel* or *res judicata*, in view of the decision rendered between the parties in W.P.12518/1987 and confirmed by the Division Bench in 2142/1992, is not applicable in the light of the subsequent judgment rendered by the Apex Court in ***Siddagowda Vs. Assistant Commissioner***¹ case.

6. While vehemently arguing, learned counsel for petitioners pointed out that the judgment rendered by the learned Single Judge in W.P.12518/1987 and confirmed by the Division Bench in 2142/1992 is not in consonance with the statutory provisions of PTCL Act and therefore, the order passed by the learned Single Judge and confirmed by the Division Bench does not operate as *res judicata*. Placing reliance on the judgment rendered by the Apex Court in the case

¹ (2003) 10 SCC 675

of **Mathura Prasad Bajoo Jaiswal and others .vs. Dossibai N.B.Jeejeebhoy**², he would contend that since the earlier law relating to interpretation of grants made under Rule 43(G) of Mysuru Land Revenue Rules, 1960, is altered by subsequent judgment rendered by the Apex Court and if the transaction is held to be in violation of law prevailing then, the principles of *res judicata* are not applicable. To buttress his arguments, he has also placed reliance on the judgment rendered by the Apex Court in **Nand Ram .vs. Jagdish Prasad**³ and **Canara Bank .vs. N.G. Subbaraya Setty**⁴.

7. Citing the principles and guidelines laid down by the Apex Court in the judgments cited supra, it is contended that the present *lis* is squarely covered by the judgment rendered by the Apex Court in the

² AIR 1971 SC 2355

³ 2020 AIR SCW 1884

⁴ 2018(5) AIR SCW 3395

case of **Siddegowda** as the *lis* that was taken up to Apex Court was in respect of transactions covered under the very Grant Order and therefore, he would contend that the sum of Rs.100/- collected by the State at the time of grant would never constitute the price even in 1967, and therefore, conditions in terms of Rule 43(G)(4) of Rule did operate as a prohibition from alienation.

8. Placing reliance on the law laid down by the Apex Court in the case of **Manche Gowda .vs. State of Karnataka**⁵, he would contend that the delay in the present case on hand is satisfactorily explained at Paragraphs 13 and 14 of the petition and the fact that petitioners belong to Scheduled Caste, their rights are bound to be protected. Placing reliance on the law laid down by the Apex Court in **Tukaram Kana Joshi**

⁵ AIR 1984 SC 1151

.vs. M I D C⁶, he would contend that this Court is required to exercise judicial discretion. He would point out that though delay and laches is one of the facets to deny the discretion, it is not an absolute impediment. He would further argue and contend that if demand for justice is found to be very compelling, this Court can interfere inspite of inordinate delay. Reliance is placed on the principles laid down by the Apex Court in the case of **H.D. Vora .vs. State of Maharashtra⁷**. On these set of grounds, he would vehemently argue and contend that this is a fit case to issue a direction to the respondent to forthwith restore possession of the vacant land to the petitioners pursuant to the order dated 25.07.1986 passed by respondent No.3 as per annexure-B.

9. Per contra, learned counsel appearing for respondent No.4 has strongly resisted the writ petition

⁶ 2012(8) AIR SCW 6343

⁷ AIR 1984 SC 866

by filing statement of objections. Reiterating the defence set up in the statement of objections, learned counsel appearing for respondent No.4 would point out that the restoration order passed by respondent No.3-Assistant Commissioner and confirmed by Deputy Commissioner was challenged by the father of respondent No.4 in W.P.12518/1987. The Co-Ordinate Bench of this Court has set aside the order of restoration passed by respondent No.3-Assistant Commissioner vide order dated 9.4.1991. Though petitioner's father preferred an appeal in WA.1481/1991, the same was dismissed for non-prosecution, while the appeal filed by the State in W.A.No.2142/1992 was dismissed by the Division Bench vide order dated 22.1.1996. Review petition filed by the State in CP.No.2142/1992 was also dismissed vide order dated 15.2.1999. On these set of grounds, he would contend that the prayer sought

in the writ petition cannot be entertained as the restoration order passed by respondent No.3-Assistant Commissioner and confirmed by respondent No.2-Deputy Commissioner is set aside by the Co-Ordinate Bench of this Court in W.P.12518/1987 and confirmed by the Division Bench in W.A.No.2142/1992.

10. Heard the learned counsel for the petitioners and the learned Senior Counsel appearing for respondent No.4 and learned HCGP for respondents 1 to 3.

11. The restoration order passed by respondent No.3-Assistant Commissioner is set aside by the Co-Ordinate Bench of this Court in W.P.12518/1987. Against the said order some of the grantees/respondents No. 4, 5, 11, 12 & 13 in W.P. No.12518/1987 preferred an appeal in W.A.No.1481/1991, which was dismissed for non-

prosecution. Therefore, the order passed by the Co-Ordinate Bench reversing the order of restoration has attained finality. The appeal by the State in W.A.No.2142/1992 is dismissed on merits.

12. The petitioners in the captioned writ petition is seeking a mandamus to direct the official respondents to restore possession in the light of the law laid down by the Apex Court in the case of ***Siddegowda***(*supra*). Reliance is also placed on the judgment rendered by the Co-Ordinate Bench in W.P.No.21583/2009 has taken a contrary view. The Co-Ordinate Bench while declining the claim of the purchasers was also not inclined to take cognizance of the order passed in W.P.12518/1987 and WA.No.2142/1992. The Co-ordinate Bench, on the contrary, placed reliance on the judgment rendered by the Apex Court in ***Siddegowda's*** case. The Apex Court in the above said case held that the provisions

(prohibition) apply when land is allotted to grantee for price less than market value and the same is alienated within 15 years of such grant.

13. Therefore, the question that requires consideration at the hands of this Court is as to whether the relief sought in the captioned writ petition can be entertained by ignoring the judgment rendered in W.P.No.12518/1987, which is confirmed by the Division Bench in W.A.No.2142/1992. The next question that requires consideration at the hands of this Court is as to whether the judgment rendered by the Co-Ordinate Bench in W.P.21583/2009 would automatically over-rule the judgment rendered in W.P.No.12518/1987.

14. Though I find some force in the submission made by the learned counsel for the petitioner that the judgment rendered by the Apex Court in

Siddegowda's case has altered question of law relating to prohibition against alienation of granted land when it is purchased for upset price, however, I am not inclined to accede to the argument advanced by the learned counsel for the petitioner that in the light of change of law, the decision rendered in W.P.No.12518/1987 and confirmed by the Division Bench in W.A.2142/1992 loses its binding character.

15. The restoration order passed by respondent No.3-Assistant Commissioner vide order dated 25.7.1986 declaring the alienation in favour of Bhoomi Reddy as null and void and confirmed by the Deputy Commissioner is reversed by the Co-Ordinate Bench of this Court in W.P.12518/1987 and confirmed by the Division Bench in W.A.2142/1992. It is a trite that law favours finality to binding judicial decisions pronounced by Courts that are competent to deal with the subject matter. The binding character of the

judgments pronounced by the Courts of competent jurisdiction has always been treated as an essential part of the rule of law. This Court may gainfully refer to the decision of the Constitution Bench of the Apex Court rendered in the case of ***Daryao .vs. State of U.P.***⁸, wherein Apex Court summed up the law in the following words:

*"It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. (***) The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis."*

16. The petitioner's father has accepted the order passed by this Court in W.P.No.12518/1987. The writ appeal preferred by the co-grantees in W.P.No.1481/1991 was also dismissed for non-

⁸ AIR 1061 SC 1457

prosecution, while State's appeal in WA.2142/1992 is dismissed on merits and review petition is also dismissed. Though Apex Court in a subsequent litigation while interpreting Rule 43 G(4) of Karnataka Land Revenue Rules, 1956 held that prohibition in respect of land granted for an upset price would apply, but the judgment rendered by the Co-Ordinate Bench in W.P.12518/1987 would operate as a *res judicata*. The law laid down by the Apex Court in the case of **Siddegowda** at the most can be treated as a change in law but that would not upset the earlier judgments.

17. That even erroneous decisions can operate as a *res judicata* is also fairly well settled by a long line of decisions rendered by Apex Court. In **Mohanlal Goenka .vs. Benoy Kishna Mukherjee**⁹ . The Apex Court observed:

⁹ AIR 1953 SC 65

"There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'."

Similarly, in **State of West Bengal .vs. Hemanth Kumar Bhattacharjee¹⁰**, Apex Court reiterated the above principles in the following words:

"A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides."

The decision rendered by the Apex Court in **Kalinga Mining Corporation .vs. Union of India¹¹** is a timely reminder of the very same principle. The following passage in this regard is apposite:

"In our opinion, if the parties are allowed to reargue issues which have been decided by a court of competent jurisdiction on a subsequent change in the law then all earlier litigation relevant thereto would always remain in a state of flux. In such circumstances, every time either a statute or a provision thereof is declared ultra

¹⁰ AIR 1966 SC 1061

¹¹ (2013) 5 SCC 252

vires, it would have the result of reopening of the decided matters within the period of limitation following the date of such decision."

18. Therefore, on reading the above said principles culled out supra, what emerges is that the Court is not concerned with the correctness or otherwise of the earlier judgment. It is equally trite that even in regard to mixed question of law and facts determined in the earlier proceedings between the same parties, cannot be revived or reopened in a subsequent proceedings between the same parties. Having said that, I may add that the only exception to the doctrine of *res judicata* is fraud that vitiates the decision and renders it a nullity. The petitioner's father and petitioner herein having not chosen to take it further by assailing the order of the Co-Ordinate Bench in W.P.12518/1987 are definitely precluded from re-opening or re-contesting the issue that has been finally decided.

19. Though learned counsel appearing for the petitioners has placed reliance on the judgment rendered by the Apex Court in ***U.P. Pollution Control Board .vs. Konoria Industrial Limited***¹². I am of the view that the principles laid down in the said case are not applicable to the present case on hand. That was a case where matter arose under public law where the validity of the particular provision was under challenge. The Apex Court in the given set of facts held that refund may be granted on principle of public interest and equity, more so, where no case of unjust enrichment is made out. The Apex Court in the said case was dealing with the binding nature of the judgment rendered by the Apex Court under Article 141 of Constitution. The Apex Court dealt with the legal position which was explained in ***Shenoy and Company .vs. CTO***¹³ where Apex Court declared a

¹² (2001) 2 SCC 549

¹³ (1985) 2 SCC 512

law under Article 141 of Constitution and therefore, the Apex Court was of the view that the conclusion reached in such a case as to the validity of the levy would apply not only to the parties before the Court but the same has to be extended to other cases where similar issue is involved. However the said proposition has no application to the present case on hand as the matter that arose for consideration does not fall within the purview of the public law and it being a adversarial litigation, the principle of *res judicata* and *estoppel* would be applicable more particularly when a decision of Court has attained finality and therefore, the same would bind the petitioner's father as well as the present petitioner.

Whether Writ Petition is liable to be dismissed on the ground of inordinate delay:

20. When the writ jurisdiction is invoked with inordinate delay, the unexplained delay has to be

examined by the Court. Further, the inordinate delay coupled with creation of third party rights in the meanwhile is an important factor which always weighs in deciding whether or not to exercise such jurisdiction. In the present case on hand, there is inordinate and unexplained delay and in the interregnum the rights of a purchaser has stood crystallized. There are catena of judgments which state that delay and laches extinguish the right to put forth a claim. The restoration order passed by assistant commissioner was set aside by this Court in 2001 and the captioned petition is filed in 2020 and therefore this Court is not inclined to exercise discretion in favour of petitioners who are guilty of laches. The plea based on justice, equity and good conscience is no good alibi in expiation of the sin of gross delay. The writ Court should not entertain stale causes . There can be no

automatic extension of the benefit of a judgment rendered by coordinate bench, more particularly when petitioner has approached this Court after a long delay of 20 years. The Apex Court has consistently reiterated that such petitions should not be considered ignoring the delay and laches. In a case where petitioner approaches the Court after coming to know of the relief granted by the Court in similar cases, the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment rendered by co-ordinate bench subsequently covering identical issue. Therefore, I am more than satisfied that the petitioners in the instant case, though, similarly situated are not entitled for reliefs. The Court should bear in mind impact of delay

vis-à-vis the rights of the respondents purchasers. In view of subsequent developments and in the light of law laid down by Apex Court in the case of ***Nekkanti Rama Lakshmi .vs. State of Karnataka and another***¹⁴ and ***Vivek M. Hinduja .vs. M. Aswatha***¹⁵, the rights of petitioners, if any, have stood eroded and since the jurisdiction under Article 226 of Constitution is discretionary, as much as it is extraordinary, the ultimate guide for the Court would be its **innate sense** of justice, and it would, in substance, boil down to self-imposed limitation to be exercised wisely, depending upon the facts of the case. Having regard to the facts and circumstances of the case, I am not inclined to grant any relief to the petitioners even on the ground of delay.

¹⁴ (2020) 14 SCC 232

¹⁵ (2019) 1 Kant LJ 819 SC

21. For the foregoing reasons, I proceed to pass the following:

ORDER

The writ petition is dismissed.

Sd/-
JUDGE

*alb/-