OFFICE OF THE SUB REGISTRAR
OLD TAHSIL OFFICE,
NEAR INSPECTION BUNGALOW,
SHAHAPUR.

…RESPONDENTS

(BY SMT. SHANTHA B. MULLUR, ADV. FOR R1(A) TO R1(C);
SRI VEERANAGOUDA MALIPATIL, HCGP FOR R2 & R5;
SRI G.B.YADAV, ADVOCATE FOR R3;
SRI RAVI B. PATIL, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSITTUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI AND A QUASH THE ORDER DATED 30.10.2015 PASSED BY THE 2ND RESPONDENT LAND TRIBUNAL SHAHAPUR IN FILE NO-REV/LRF/12-46/75-76, THE CERTIFIED COPY OF WHICH AT ANNEXURE-K ETC.

THIS WRIT PETITION IS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard learned counsel Sri R.S.Sidhapurkar for the petitioners, learned counsel Smt.Shantha B. Mullur for respondent Nos.1(a) to 1(c), the learned High Court Government Pleader Sri Veeranagouda Malipatil for respondent Nos.2 and 5, learned counsel Sri G.B.Yadav for respondent No.3 and learned counsel Sri Ravi B. Patil for respondent No.4.

2. The writ petition is filed with the following prayers:

> *"a) Issue a writ in the nature of certiorari and a quash the order dated 30.10.2015 passed by the 2nd respondent Land Tribunal Shahapur in file No.REV/LRF/12-46/75-76, the certified copy of which at Annexure-K.*
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> *b) Issue any other suitable writ or order or directions deemed fit under the facts and circumstances of the case including awarding of costs in the interest of justice and equity.*
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> *c) Issue any other suitable writ or order declaring the sale deeds bearing No.SHP-1/05512 of 2015-16 and No.SHP-1/05513 of 2015-16 dated 07.11.2015 registered at the Office of Sub Registrar, Shahapur, Tq: Shahapur, Dist: Yadgir as null and void and not affecting the right and interest of the petitioners over the land Sy.No.131 and 165 of Anabi village, Tq: Shahapur, Dist: Yadgir and consequently cancel the same, in the interest of justice and equity."*

3. The facts in brief, which are utmost necessary for disposal of the writ petition are as under:

One Sri Trilokchand Bhandari was the owner of the lands in different survey numbers, which are detailed out hereunder:

Survey Numbers	Extent (A-G)	Village
1) 157	21-07	Anabi
2) 471	03-32	Anabi
3) 165	06-37	Anabi
4)131	15-16	Anabi
5) 154	07-14	Anabi
6) 155	09-33	Anabi

3.1 Because of mismanagement of the funds and financial aspects, said Sri Trilokchand Bhandari borrowed money from several people and ultimately became bankrupt and had to face insolvency proceedings in I.C. Case No.1/1961 on the file of the Principal Civil Judge, Vijayapur.

3.2 The Court while considering the assets held by said Sri Trilokchand Bhandari appointed one N.F.Ellavia a practicing advocate as the receiver on behalf of the Court to manage the assets of said Sri Trilokchand Bhandari to

be distributed among the persons namely, Raichand, Kushalji Shah and Naryan Mal and such other creditors.

3.3 The said N.F.Ellavia was managing the properties of said Sri Trilokchand Bhandari for some time. Thereafter, need arose to auction the properties of said Sri Trilokchand Bhandari in order to pay out the dues of the creditors. After the period of N.F.Illavia, Sri S.B.Hebballi another practicing advocate was appointed as Court receiver.

3.4 Sri.S.B.Hebballi took permission of the insolvency Court and auctioned some of the properties belonging to said Sri Trilokchand Bhandari. The petitioners herein participated in the said public auction and purchased the properties as mentioned supra.

3.5 It is pertinent to note that in the said public auction, respondent No.1 – Bhaghavan Chand was also a bidder. Since the petitioners were the highest bidders, their bid was confirmed and with the permission of the insolvency Court, the receiver executed the sale deeds in

favour of petitioner Nos.1 to 6 on 31.05.1982, which were registered in the office of the Sub-Registrar, Shahapur. On the day of registration of the sale deeds, the petitioners were also put into actual physical possession of the aforesaid lands. The sale deeds are marked as Annexures-A to D to the writ petition.

3.6 It is the contention of the petitioners that from the date of purchase of the land, they are in physical possession and enjoyment of the said lands. Among the petitioners, petitioner No.6 – Sharanappa sold 27 acres 7 guntas of land in SurveyNo.157 in favour of petitioner Nos.7 to 9 under a registered sale deed in the year 1998. Thereafter, the said purchasers, who are petitioner Nos.7 to 9 are in actual possession and enjoyment of the land in Survey No.157 and said sale deeds are marked at Annexures-E, F and G.

3.7 Since the land was in the custody of the receiver from the year 1962 onwards, the revenue entries were mutated in the name of the receiver and records of

rights from the year 1963-64 and 2000-01 are produced by the petitioners, which are marked at Annexure-H series.

3.8 A report was also filed by the receiver to the Court, which is marked at Annexure-H66. Thus, the petitioners were in possession and enjoyment of the land, which were sold by the Court receiver formed on behalf of the Court, which was adjudicated in insolvency case in I.C. Case No.1/1961 and therefore, the Karnataka Land Reforms Act, which came into force in the year 1974 and Land Tribunal formed under said Act did not have any jurisdiction to entertain form No.7 filed by the alleged tenants for grant of occupancy rights. Despite the same, the Land Tribunal exercised its rights and granted occupancy rights in favour of respondent No.2. At the first instance, the Land Tribunal rejected form No.7. However, deceased respondent No.1 filed a writ petition before this Court in W.P.No.21367/1982 and on account of creation of an Appellate Authority, the said writ petition was made

over to Appellate Authority, Kalaburagi, which was registered in Land Reforms Appeal bearing LRA No.564/1986.

3.9 However, consequent upon the abolition of the Appellate Authority, a civil petition was filed by said respondent No.1, which was renumbered as W.P.No.30346/2000, which came to be allowed on 21.09.2000 and the matter was remitted to the Land Tribunal for fresh disposal in accordance with law.

3.10 Post remand, the Land Tribunal considering the relevant aspects of the matter, without properly appreciating the material evidence on record and ignoring Section 108 of the Land Reforms Act, by order dated 10.07.2002 passed an order that respondent No.1 herein was the tenant and is entitled to have occupancy rights to the entire extent of 64 acres 22 guntas as aforesaid and was further directed to surrender the excess land to the Government in terms of Section 63 of the said Act.

3.11 Being aggrieved by the said order, the petitioners herein filed writ petition in W.P.Nos.29700-29708/2002 bringing it to the notice of this Court that the Land Tribunal failed to consider the provisions of Section 108 of the Karnataka Land Reforms Act. This Court allowed the writ petitions and quashed the order passed by the Land Tribunal dated 10.07.2002 and remanded the matter to the Land Tribunal for fresh disposal in accordance with law.

3.12 After the second remand, the Land Tribunal took up the matter for consideration in the light of the discussion made by this Court in the order passed in W.P.No.29700-29708/2002 and recorded the oral evidence of the parties and also based on the documentary evidence placed on record by the parties, again granted an order in favour respondent No.1 30.10.2015 holding that he was the tenant under the property and the Karnataka Land Reforms Act is applicable to the case on hand. Being

aggrieved by the same, the petitioners are before this Court.

4. Reiterating the grounds urged in the writ petition, the learned counsel for the petitioners vehemently contended that the Land Tribunal failed to understand the application of Section 108 of the Karnataka Land Reforms Act in holding that the land is a tenanted land and sought for allowing the writ petition.

5. Per contra, the learned counsel appearing for legal representatives of respondent No.1 would contend that on bear reading of Section 108 of the Karnataka Land Reforms Act, it is only applicable to the case where the minor interest is involved and in the case on hand, just because of the property was in the custody of the receiver, it cannot be construed that there was a bar for the Land Tribunal to exercise its jurisdiction in finding out that respondent No.1 was a tenant of the said land and therefore, sought for dismissal of the writ petition.

6. She further invited the attention of this Court to Section 4 of the Land Tribunal Act and contended that as per said section, the Land Tribunal has got jurisdiction to decide as to who are the deemed tenants and therefore, respondent No.1 was cultivating has been considered by the Tribunal as a deemed tenant and had the jurisdiction to grant occupancy rights even in respect of the deemed tenants and sought for dismissal of the writ petition.

7. Learned High Court Government Pleader appearing for respondent Nos.2 and 4 and learned counsel for respondent Nos.3 and 4 supported the arguments purtforth by the learned counsel appearing for legal representatives of deceased respondent No.1 and sought for dismissal of the writ petition.

8. Having heard the parties in detail, this Court perused the material on record meticulously.

9. On such perusal, it is crystal clear that the properties mentioned above are absolutely belongs to one Sri Trilokchand Bhandari at an undisputed point of time.

Said Sri Trilokchand Bhandari became bankrupt and therefore, the creditors by name Raichand, Kushalji Shah and Naryan Mal resident of Vijayapur filed a insolvency case under the provisions of the Provincial Insolvency Act for declaring that said Sri Trilokchand Bhandari has become insolvent and his assets be distributed among the creditors as per the provisions of the Provincial Insolvency Act. The said petition was registered by the Principal Civil Judge, Vijayapur in I.C. Case No.1/1961 *inter alia* appointed Sri N.F.Ellavia, the practicing advocate as a receiver to take custody of the properties belonging to said Sri Trilokchand Bhandari.

10. Thereafter, one Sri S.B.Hebballi another practicing advocate was appointed as receiver after the period of Sri N.F.Ellavia was over. It is at that juncture, on the request of Sri S.B.Hebballi, the Civil Court permitted the receiver to auction the lands belonging to Sri Trilokchand Bhandari, which were in the custody of the

Court receiver in order to pay out the dues of the creditors. The sale thus happened in a Court auction.

11. It is settled principles of law that a person, who purchases the property in a Court auction would be purchasing such property free from all encumbrances.

12. In this regard, this Court gainfully places reliance on the judgment of the Hon'ble Apex Court in the case of ***Rana Girders Limited vs. Union of India and Others*** reported in ***(2013) 10 SCC 746***. The relevant paragraphs of the said decision are culled out hereunder:

> *"20. Coming to the liability of the successor in interest, the Court clarified the legal position enunciated in M/s. Macson by observing that such a liability can be fastened on that person who had purchased the entire unit as an ongoing concern and not a person who had purchased land and building or the machinery of the erstwhile concern. This distinction is brought out and explained in paragraph 24 and 25 and it would be useful for us to reproduce herein below:*
>
> > *"19. Reliance has also been placed by Ms.Rao on Macson Marbles Pvt.Ltd.*

(supra) wherein the dues under Central Excise Act was held to be recoverable from an auction purchaser, stating:

We are not impressed with the argument that the State Act is a special enactment and the same would prevail over the Central Excise Act. Each of them is a special enactment and unless in the operation of the same any conflict arises this aspect need not be examined. In this case, no such conflict arises between the corporation and the Excise Department. Hence it is unnecessary to examine this aspect of the matter. The Department having initiated the proceedings under Section 11A of this Act adjudicated liability of respondent No.4 and held that respondent No.4 is also liable to pay penalty in a sum of Rs.3 lakhs while the Excise dues liable would be in the order of a lakh or so. It is difficult to conceive that the appellant had any opportunity to participate in the adjudication proceedings and contend against the levy of the penalty. Therefore, in the facts and circumstances of this case, we think it appropriate to direct that the said amount, if already paid, shall be refunded within a

period of three months. In other respects, the order made by the High Court shall remain undisputed. The appeal is disposed of accordingly."

The decision, therefore, was rendered in the facts of that case. The issue with which we are directly concerned did not arise for consideration therein. The Court also did not notice the binding precedent of Dena Bank as also other decisions referred to hereinbefore."

21. A harmonious reading of the judgments in Macson and SICOM would tend us to conclude that it is only in those cases where the buyer had purchased the entire unit i.e. the entire business itself, that he would be responsible to discharge the liability of Central Excise as well. Otherwise, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the Statute, claiming "first charge for the purchaser". As far as Central Excise Act is concerned, there was no such specific provision as noticed in SICOM as well. Proviso to Section 11 is now added by way of amendment in the Act only w.e.f. 10.9.2004. Therefore, we are eschewing our discussion regarding this proviso as that is not applicable in so far as present case is concerned. Accordingly, we thus, hold that in so far as legal position is

concerned, UPFC being a secured creditor had priority over the excise dues. We further hold that since the appellant had not purchased the entire unit as a business, as per the statutory framework he was not liable for discharging the dues of the Excise Department."

13. Applying the legal principles enunciated in the said decision to the case on hand, it is crystal clear that the auction sale was held on 31.05.1982. Since petitioner Nos.1 to 6 are highest bidders, it was sold in favour of petitioner Nos.1 to 6.

14. It is pertinent to note that respondent No.1. who claims to be the tenant of the lands in question also participated in the auction. It is further pertinent to note that by the time, the proceedings before the Land Tribunal had already commenced and he had filed form No.7 as a tenant. Respondent No.1 having known that his application before the Land Tribunal to seek for occupancy rights by filing form No.7 has no merits, with open eyes, has participated in the Court auction held by the receiver

under the orders of the Court in I.C. Case No.1/1961. Having participated in the auction and making a bid to purchase the property, respondent No.1 would not have further contended that he is the tenant of the properties.

15. Further, the Court auction was confirmed under the orders of this Court by filing a necessary report by Sri S.B.Hebballi marked at Annexure-H66 to the writ petition. After purchase of the lands by petitioner Nos.1 to 6, were into possession of the properties by the Court receiver appointed on behalf of the Court in the solvency proceedings in I.C. Case No.1/1961.

16. When such is the factual aspect of the matter, it is highly unbelievable and cannot be countenanced in law that respondent No.1 continued as the tenant in respect of the aforesaid land so as to further prosecute his case before the Land Tribunal by filing form No.7.

17. It is settled principles of law and requires no emphasis that a person before a judicial authority/quasi

judicial authority cannot approbate or reprobate with regard to his stand.

18. Applying the said principles of law to the case on hand, respondent No.1 having participated in the Court auction and is an unsuccessful bidder, could not have further prosecuted the matter before the Land Tribunal as a tenant of the land.

19. It is also pertinent to note that a Court receiver had put petitioner Nos.1 to 6 in possession of the properties, it is to be construed that it is the Court which had put them in possession of the properties. It is crystal clear that the Civil Court is a superior authority than to a Land Tribunal in exercising the right in respect of property, which is the subject matter the Civil Court in I.C. Case No.1/1961 and therefore, *per se* the Land Tribunal did not have any jurisdiction to entertain form No.7 filed by respondent No.1.

20. Having said thus, it is crystal clear that this Court has taken note of these aspects of the matter in

W.P.Nos.29700-29708/2002 and passed a detailed order. While passing the said order, the applicability of Section 108 of the Karnataka Land Reforms Act was taken note of by this Court and respondent No.1 having suffered an order in the aforesaid writ petitions, had the remedy of appeal before the appellate authority. Respondent No.1 herein did not file any appeal but was satisfied with the order of remand made by this Court.

21. Post second remand, the Land Tribunal again committed the same mistake in granting the occupancy rights in favour of respondent No.1 by order dated 30.10.2015, which is under challenge in this writ petition.

22. It is in this regard, it is just and necessary for this Court to cull out Section 108 of the Karnataka Land Reforms Act, which reads as under:

> *"108. Lands taken under management of Court of Wards, etc.—Subject to the provisions of section 110, nothing in the provisions of this Act except section 8 shall apply to lands taken under the management of the Court of Wards or of a Government officer appointed in his official capacity as a guardian under the Guardians and*

Wards Act, 1890, or to the lands taken under management temporarily by the civil, revenue or criminal courts by themselves or through the receivers appointed by them during the period of such management:

Provided that,—

(a) in the case of a tenancy subsisting on the date of taking over the management, 1[the provisions of section 44 shall apply and the land shall vest in the Government];

(b) in the case of a tenancy created during the period of management, when the land is released from such management, the tenant shall be dispossessed and the possession of the land shall be delivered to the person lawfully entitled to such possession;

(c) with effect from the date on which such land is released from such management, all the provisions of this Act shall apply to such land 2 [x x x] 2"

23. On close reading of the aforesaid provision, it is crystal clear that two contingencies are made out in the said section to exclude the jurisdiction of the Land Tribunal. Firstly, where in the subject matter of the property minor interest is involved in a petition under the Guardian and wards Act, the Land Tribunal loses its jurisdiction to entertain form No.7. Second contingency

where the exclusion of Land Tribunal is that where the property in question is the subject matter of civil proceedings and is in the custody of Civil Court or Criminal Court as the case may be even preferably, then the jurisdiction of the Land Tribunal is excluded in entertaining form No.7 or applicability of any other provisions of the Karnataka Land Reforms Act.

24. When the Act is crystal clear in excluding the such positions, the Land Tribunal ought not to have ventured upon adjudicating the matter with regard to form No.7 filed by respondent No.1 especially he himself has participated in the auction held by the receiver appointed by the Civil Court in I.C. Case No.1/1961. The said aspect of the matter is ignored by the Land Tribunal while passing the order under challenged under Annexure-K.

25. Insofar as the contention of respondent No.1 by resorting to Section 4 of the Karnataka Land Reforms Act is concerned, respondent No.1 cannot be termed as deemed tenant by resorting to said act.

26. Section 4 of the Karnataka Land Reforms Act reads as under:

> *"4. Persons to be deemed tenants.—A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not,—*
>
> *(a)a member of the owner's family, or*
>
> *(b)a servant or a hired labourer on wages payable in cash or kind but not in crop share cultivating the land under the personal supervision of the owner or any member of the owner's family, or*
>
> *(c)a mortgagee in possession:*
>
> *Provided that if upon an application made by the owner within one year from the appointed day,—*
>
> *(i)the Tribunal declares that such person is not a tenant and its decision is not reversed on appeal, or*
>
> *(ii)the Tribunal refuses to make such declaration but its decision is reversed on appeal, such person shall not be deemed to be a tenant."*

27. Since the property vested in the custody of the Court, as it is the property of Sri Trilokchand Bhandari,

which was taken over temporarily by the Court receiver in pursuance of the Court order, respondent No.1 could not have been termed as a deemed tenant even for the purpose of considering form No.7 before the Land Tribunal. Therefore, said argument of respondent No.1 cannot also be countenanced in law.

28. Moreover, it is crystal clear from the sale deeds marked at Annexures-A to D dated 31.05.1982 that the receiver has put petitioner Nos.1 to 6 in physical possession of the properties and therefore, respondent No.1 cannot contend that he is a deemed tenant.

29. Further, it is borne out from the records that respondent No.6 has sold the property in favour of petitioner Nos.7 to 9 by virtue of a further registered sale deeds in the year 1998, which are marked at Annexures-E, F and G. Therefore, at no stretch of imagination, aforesaid properties would be subject matter for enforcing the provisions of the Karnataka Land Reforms Act.

30. In view of the foregoing discussion, the order passed by the Land Tribunal at Annexure-K is suffering legal infirmities and is *non est,* as the Land Tribunal did not have a jurisdiction to entertain form No.7 filed by respondent No.1.

31. Accordingly, following order is passed:

ORDER

a) The writ petition stands allowed.

b) The order passed by respondent No.2 – Land Tribunal vide Annexure-K stands quashed.

c) No order as to costs.

Sd/-
JUDGE

SRT
CT:SI
LIST NO.: 1 SL NO.: 29