IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 11TH DAY OF AUGUST, 2023

PRESENT

THE HON'BLE MR JUSTICE S.R. KRISHNA KUMAR

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT APPEAL NO. 100434 OF 2023 (KLR-CON)

BETWEEN:

1. DR. TEJAPPA S/O. DODDASANGAPPA PUJAR,
   AGE: 61 YEARS, OCC: RTD. TEACHER,
   R/O: NEAR JAIHIND SCHOOL, SHALMALA NAGAR,
   KALAGHATAGI ROAD, DHARWAD.

2. SMT. SHARDADEVI W/O. TEJAPPA PUJAR,
   AGE: 59 YEARS, OCC: RTD. TEACHER,
   R/O: NEAR JAIHIND SCHOOL, SHALMALA NAGAR,
   KALAGHATAGI ROAD, DHARWAD.

3. SHRI. RAVI S/O. TEJAPPA PUJAR,
   AGE: 41 YEARS, OCC: P.SERVICE,
   R/O: NEAR JAIHIND SCHOOL, SHALMALA NAGAR,
   KALAGHATAGI ROAD, DHARWAD.

4. SHRI. SANTOSH S/O. TEJAPPA PUJAR,
   AGE: 38 YEARS, OCC: P.SRVICE,
   R/O: NEAR JAIHIND SCHOOL, SHALMALA NAGAR,
   KALAGHATAGI ROAD, DHARWAD.

...APPELLANTS

(BY SRI.H.L.HAVARAGI, ADVOCATE)

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HIGH COURT OF
KARNATAKA
DHARWAD BENCH
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AND:

1. SAYAD MOINUDDIN S/O. SAYED ISMAIL
   DAFEDAR, AGE: 66 YEARS, OCC: RETIRED,
   R/O: HAZARAT NIZAMUDDIN COLONY,
   1ST CROSS, KSRTC DEPOT ROAD,
   DHARWAD-580001.

2. THE DEPUTY COMMISSIONER,
   D.C.COMPOUND, DHARWD,
   DISTRICT DHARWAD-580001.

3. THE ASSISTANT COMMISSIONER,

D.C.COMPOUND, DHARWD,
DISTRICT DHARWAD-580001.

4. THE TAHASHILDAR, DHARWAD,
TQ AND DIST: DHARWAD.

…RESPONDENTS

(BY SRI.D.M.MALLI, ADVOCATE FOR C/R1;
SMT.GIRIJA S.HIREMATH, HCGP FOR R2 TO R4)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING THIS HON BLE COURT TO, SET-ASIDE AN IMPUGNED ORDER DATED 06/07/2023 PASSED IN W.P.NO.104059/2023 (GM-CON) BY THE SINGLE JUDGE OF THIS HON BLE HIGH COURT, AND THEREBY ALLOW THE WRIT APPEAL, IN THE INTEREST OF JUSTICE.

THIS WRIT APPEAL COMING ON FOR ORDERS, THIS DAY, ***S.R.KRISHNA KUMAR J.,*** DELIVERED THE FOLLOWING:

JUDGMENT

This intra-court appeal is directed against the impugned order dated 6.7.2023 passed in WP No.104059/2023, whereby the said petition filed by the respondent No.1/writ petitioner was allowed by the learned Single Judge.

2. Heard the learned counsel for the appellants; learned counsel for caveator respondent No.1 and learned HCGP for respondents No.2 to 4. Perused the material on record.

3. The material on record discloses that the subject land bearing Sy.No.64/A2 measuring 2 acres 25 guntas situated at Attikolla village, Dharwad was converted for non-agricultural purpose vide NA order dated 2.1.1992 pursuant to which layout was formed and sites were sold in favour of various persons including the respondent No.1/writ petitioner vide registered Sale Deed dated 22.08.1992. pursuant to the said sale deed, the Khata, revenue records etc. changed into the name of respondent No.1 in relation to the sites purchased by him. However, subsequently, pursuant to representation given by the appellant herein, the Deputy Commissioner passed the an order dated 23.05.2023 canceling the conversion without notifying the respondent No.1 or the other land owners. Accordingly, the respondent No.1 preferred the aforesaid writ petition seeking quashing of the cancellation order and for other reliefs inter-alia contending that the said cancellation order was without jurisdiction or authority of law in the light of judgment of this Court in

the case of ***Smt.Rathna vs. Deputy Commissioner***[1]***,*** followed subsequently in the case of ***L.N. Lakshmanappa Vs. Deputy Commissioner and others***[2]***,*** since the Deputy Commissioner has become functus-officio after passing the conversion order in addition to the fact that the cancellation order was in violation of principles of natural justice. The said writ petition having been opposed by the respondents No.2 to 4/State, the learned Single Judge proceeded to pass the impugned order allowing the petition, aggrieved by which, the appellants are before this Court by way of present appeal.

4. At the outset, it is necessary to state that the appellants herein were not parties to the aforesaid writ petition or to the impugned order. However, it is contended that the appellants are the owner of the subject lands and necessary permission is to be granted in their favour to prefer and prosecute the present appeal. It is also contended that the respondent No.1 and other land

[1] WP No.45634/2013, dated 14.11.2013
[2] WP 24459/2018, dated 31.7.2018

owners had violated the terms and conditions of conversion and Deputy Commissioner was justified in canceling the conversion. It was further contended that the respondent No.1 has an equally efficacious and alternative remedy by way of an appeal under Section 49 of the Karnataka Land Revenue Act, 1964 (for short, 'KLR Act') and as such, learned Single Judge has committed an error in allowing the petition filed by the respondent No.1. It was therefore submitted that the impugned order passed by the learned Single Judge deserves to be set-aside. In support of his contentions, learned counsel for the appellants placed reliance upon Circular issued by the State Government dated 2.7.2005 as well as the following judgments:

a) Chennappa Vs. BDA and others[3]

b) Mohammed Anwer Vs. State of Karnataka & Another[4]

c) Patel Narshibhai Tobhandas Vs. State of Gujarat & Others[5]

[3] WA No.49/2013, dated 9.2.2015
[4] WP 18358/2013, dated 29.8.2013
[5] Spl.CA No.12313/2011, dated 30.1.2023

5. Per contra, learned counsel for the respondent No.1/Writ petitioner submits that apart from the fact that respondents No.2 to 4/State have accepted the impugned order of the learned Single Judge and have not challenged the same, the appellants have no locus-standi to prefer the present appeal. It was also submitted that the impugned order passed by the learned Single Judge is correct and proper and same does not warrant interference by this Court in the present appeal.

6. A perusal of the facts and grounds urged in the memorandum of appeal will indicate that though the appellants are not parties to the writ petition or to the impugned order of the learned Single Judge, the appellants have not put-forth any contention as regards their alleged locus-standi to challenge the impugned order. Undisputedly, the appellants are neither parties to the conversion order nor to the impugned cancellation order nor do they claim any right through or under the respondent No.1/writ petitioner. Further, the appellants

have already instituted the suit in OS No.366/2014 against various defendants including respondent No.1, which is pending before the competent Civil Court, apart from filing the criminal case also against the respondent No.1. Under these circumstances, we are of the considered opinion that the appellants do not have locus-standi to prefer the present appeal or assail the impugned order and consequently, the present appeal deserves to be dismissed on this ground alone.

7. A perusal of the material on record including the impugned order will indicate that the learned Single Judge has correctly placed reliance upon earlier judgment of this Court in ***Rathna's*** case supra to come to the correct conclusion that upon passing the order of conversion, the Deputy Commissioner become functus officio and consequently, he did not have jurisdiction or authority of law to cancel the conversion order, particularly, in the absence of enabling provisions in this regard under Section 95 or 96 of the KLR Act . The said

finding recorded by the learned Single Judge is correct and proper and in accordance with law as well as the facts of the instant case and the same does not warrant interference in the present appeal.

8. Insofar as reliance placed by the learned counsel for the appellants on State Government Circular dated 2.7.2005 is concerned, the said Circular merely elaborates and clarifies the provisions of Sections 95 and 96 of the KLR Act and does not state anywhere as to the power or jurisdiction of the Deputy Commissioner to cancel the conversion granted by him, and as such, no reliance can be placed upon the said Circular by the appellants in support of their claims.

9. A perusal of the material on record will indicate that it is an undisputed fact that the conversion/NA order was passed by the Deputy Commissioner on 2.1.1992, while impugned cancellation order was passed on 23.5.2023 after more than thirty years and there is absolutely, no explanation whatsoever forthcoming by the

respondents No2. to 4/State regarding the long and inordinate delay and laches on their part to not pass cancellation order within a reasonable time/period as held by the Hon'ble Apex Court and in this Court in many judgments, including in the case of ***Chedilal Yadav Vs. Harish Yadav***[6]***.*** Viewed from this angle also, the impugned cancellation order having not been passed within a reasonable time from the date of conversion order and after more than thirty years, the impugned cancellation order is vitiated on account of long and inordinate delay, unexplained delay and laches and on this ground also, the learned Single Judge was fully justified in quashing the cancellation order and allowing the writ petition filed by the respondent No.1/writ petitioner.

10. The reliance placed by the appellants upon the judgment of Division Bench of this Court in ***Chennappa's*** case supra is also misconceived and untenable; in the said case, the cancellation order was passed pursuant to

[6] 2018 (12) SCC 527

direction issued by this Court and consequently, the said judgment is not applicable to the facts of the instant case as sought to be contended by the appellants, whose contention cannot be accepted.

11. The judgment of Gujarat High Court in ***Patel Narshibhai's*** case supra is also not applicable to the facts of the instant case particularly, when no ratio is laid down in the said judgment with regard to powers/jurisdiction of the Deputy Commissioner to cancel an earlier order of conversion; so also the other judgment of this Court in ***Mohammed Anwer's*** case is also distinguishable on facts inasmuch as in the said case, conditional order for conversion passed on 29.09.2010 stipulating payment of Rs.70,255/- was cancelled on 18.12.2010 for non-payment of the said amount. It is therefore clear that even this judgment is not applicable to the facts of the instant case.

12. In view of the foregoing discussions, we do not find any merit in the present appeal and same is hereby ***dismissed***.

Pending applications, if any, do not survive for consideration and accordingly, they are disposed off.

Sd
JUDGE

Sd
JUDGE

JTR
List No.: 1 Sl No.: 25