IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR N. V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE M.I.ARUN

WRIT APPEAL NO. 902 OF 2023 (SC-ST)

BETWEEN:

1. SRI MUNIYAPPA
   S/O LATE SESHAPPA
   AGED ABOUT 57 YEARS
   R/AT KEREGUDDADAHALLI
   CHIKKABANAVARA POST
   YESHAWANTHAPURA HOBLI
   BENGALURU NORTH TALUK-560 090.

...APPELLANT

(BY SRI P.N. NANJA REDDY, ADVOCATE)

Digitally signed by H K HEMA
Location: High Court of Karnataka

AND:

1. THE STATE OF KARNATAKA
   DEPARTMENT OF REVENUE,
   VIDHANA SOUDHA
   BENGALURU-560 001
   REPRESENTED BY ITS
   PRINCIPAL SECRETARY.

2. THE DEPUTY COMMISSIONER
   BENGALURU DISTRICT
   K.G. ROAD, BENGALURU-560 009.

3. THE ASSISTANT COMMISSIONER
BENGALURU NORTH SUB-DIVISION
KANDAYA BHAVAN, K.G. ROAD
BENGALURU-560 009.

4. SHRI. T.K. KEMPARAJU
S/O LATE KRISHNAPPA
AGED ABOUT 64 YEARS
R/AT NO.846, L.N. COLONY
6TH MAIN ROAD
BENGALURU-560 022.

5. SHRI. P. JAGADISH
S/O C. PADMANABHAIAH
AGED ABOUT 41 YEARS
R/AT "NIRMALA MAHAL"
AYYAPPA LAYOUT
MALLASANDRA EXTENSION
T. DASARAHALLI POST
BENGALURU-560 057.

…RESPONDENTS

(BY SRI K.S. HARISH, GOVERNMENT ADVOCATE
FOR R.1 TO R.3;
SRI K. ANANDA, ADVOCATE FOR C/R.5)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE ORDER PASSED IN WRIT PETITION NO.46702/2019 DATED 10.07.2023 AND DISMISS THE WRIT PETITION FILED BY THE 5TH RESPONDENT AND GRANT SUCH OTHER RELIEF/S AS THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE

CIRCUMSTANCES OF THE CASE INCLUDING THE COSTS, IN THE INTEREST OF JUSTICE.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE N. V. ANJARIA
and
HON'BLE MR JUSTICE M.I.ARUN

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE M.I.ARUN)

1. Aggrieved by the order dated 10.07.2023 passed in Writ Petition No.46702 of 2019, respondent No.5 therein has preferred this appeal.

2. The land in question was granted in favour of the grandfather of the appellant by the State in the year 1978. The appellant belongs to Scheduled Caste/Scheduled Tribe. The grantee sold the land in favour of one Paul Ambookar in the year 1989, who in turn sold it to one Aswathamma. The grantee filed an application for restoration of the land under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ('the PTCL Act' for short) and the same

was restored in his favour. Thereafter, by an order dated 29.03.2004, the land has been converted for non-agricultural purposes. Subsequently, a General Power of Attorney is said to have been executed by the grantee in favour of one Padmanabhaiah C., who sold the land in favour of his wife in the year 2004 by utilising the said General Power of Attorney. However, the grantee and his wife cancelled the General Power of Attorney in the year 2006 and sold the land in favour of respondent no.4. Thereafter, respondent No.4 has sold the land in favour of respondent No.5 under a registered sale deed dated 17.06.2011. On 17.06.2012, the appellant herein on the ground that the original grantee had died and that he had succeeded to his interest in the land filed an application for restoration of the land on the ground that the transfers made were in contravention of the PTCL Act. Respondent No.3 before whom the said application was made rejected the petition filed by the appellant. The appellant preferred an appeal before respondent No.2 who allowed the said appeal in favour of the appellant and ordered for restoration of the land in his favour. Aggrieved by the same, respondent No.5 herein preferred Writ Petition No.46702 of 2019 and challenged the order of respondent No.2. The learned Single Judge on the ground that the

land has been converted for non-agricultural purposes way back in the year 2004 and that alienations have taken place subsequent to it and for that reason, the land loses it character of a granted land and hence, the appellant herein is not entitled for the protection under the provisions of the PTCL Act and also on the ground that this Court cannot decide as to the validity of the General Power of Attorney referred above and that the appellant herein is required to approach the competent Civil Court to question the General Power of Attorney or the sale deeds and that the said documents have remained unchallenged so far, has allowed the writ petition and has set aside the order passed by respondent No.2-Deputy Commissioner. Challenging the same, the present writ appeal is filed.

3. Admittedly, the land granted in favour of the grandfather of the appellant has been converted for non-agricultural purposes and thereafter alienated. The General Power of Attorney said to have been executed by the grandfather of the appellant and the sale deeds through which the land has been conveyed have not been challenged by the appellant so far before any competent Civil

Court. This Court in exercise of its powers under writ jurisdiction cannot decide disputed question of facts.

4. The only question that arises for consideration in this appeal is whether the learned Single Judge erred in concluding that the land once converted for non-agricultural purposes is not entitled for the protection under the provisions of the PTCL Act?

5. A Full Bench of this Court while answering a reference in the case of Munnaiah and Ors. vs. The Deputy Commissioner, Bangalore District and Ors. in ILR 2021 KAR 3169 [Writ Petition No.60483 of 2016 DD 05.07.2021] has held that in the case of converted land, the requirement of obtaining permission under Section 4(2) of the PTCL Act does not arise as permission under the provisions of the PTCL Act is mandatory only in respect of granted land and that the land once converted for non-agricultural purposes, loses the character of a granted land. The relevant portion of paragraph No.12 of the judgment reads as under:

> "(ii) Whether an order of conversion passed by the Deputy Commissioner, under Section 95 of the Karnataka Land Revenue Act, 1964 would take away a granted land from the purview of the PTCL Act?
>
> (A) Article 46, which is contained in Part IV of the Constitution of India provides that State shall promote with special care, the educational and economic interests of the weaker section of the

people and in particular Scheduled Castes and Scheduled Tribes and protect them from social injustice and all forms of exploitation. In rural areas, land provides economic status to the owner. The State is therefore, under a constitutional obligation to ensure that opportunities provided to the poor to augment their economic position. The Act, which is a special legislation is enacted to protect and preserve the economic interests of the persons belonging to Scheduled Castes and Scheduled Tribes and to prevent their exploitation. The assignment/allotment of the land is made to a person belonging to Scheduled Castes and Scheduled Tribes to augment their economic position. It is well-settled rule of statutory interpretation that a statute is an edict of the Legislature and the conventional way of interpreting or constructing a statute is to see the intention of its makers. A statute has to be construed according to the intent of those that make it and the duty of the judicature is to act upon the true intent of the Legislature - 'the mens or sentential legis' [See Principles of Statutory Interpretation, Justice G.P. Singh, 14th Edn., Page 3].

(B) Thus, if Section 3(1)(b) and Section 4(2) of the Act are read together in conjunction, it is evident that the benefit of protection from transfer of land to persons belonging to Scheduled Caste and Scheduled Tribe community has been granted only in respect of granted land i.e., the land allotted to the persons belonging to the Scheduled Caste and Scheduled Tribe community by the Government or allotted to such persons under the relevant law for the time being in force relating to agrarian reforms or land ceiling or abolition of inams, other than that relating to hereditary offices or rights. However, when such person seeks conversion of the aforesaid land under Section 95(2) of the Act, it presupposes that the land granted is an agricultural land and the person belonging to Scheduled Caste and Scheduled Tribe intends to use it for non-agricultural purposes. At the cost of repetition, it may be stated that the intention of the Legislature is to grant protection to an allottee in respect of 'granted land'. Once such permission for conversion of land is granted under Section 95(2) of the Act by the Deputy Commissioner, the aforesaid land loses its nature as a "granted land" and therefore, the protection available under Section 4(2) of the Act is no longer available. Accordingly, the second issue is answered in the affirmative:"

6. In the instant case, admittedly, the appellant has sought for restoration of the land under Section 4(2) of the PTCL Act in

respect of a land that has been converted for non-agricultural purposes and has been subsequently transferred in favour of respondent No.5 herein which, the appellant is not entitled to in the light of the discussions made above. We do not see any error in the well reasoned order of the learned Single Judge. Hence, the writ appeal is hereby dismissed.

In view of dismissal of the appeal, pending interlocutory applications, if any, stand disposed of.

SD/-
(N. V. ANJARIA)
CHIEF JUSTICE

SD/-
(M.I.ARUN)
JUDGE

hkh.
List No.: 1 Sl No.: 86