NC: 2023:KHC:24092
WP No. 4990 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 4990 OF 2023 (SCST)

BETWEEN:

SMT. CHIKKAMMA,
W/O YARRANNA,
AGED ABOUT 57 YEARS,
R/A MUDHIGRE GOLLARAHATTI,
MEKERAHALLI, SIRA TALUK,
TUMKUR DISTRICT - 572 137.

...PETITIONER

(BY SRI. NARENDRA BABU H L., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
   REPRESENTED BY ITS PRINCIPAL SECRETARY,
   DEPARTMENT OF REVENUE,
   M. S. BUILDING,
   BANGALORE - 560 001.

2. THE DEPUTY COMMISSIONER,
   TUMKUR SUB-DIVISON,
   TUMKUR - 572 101.

3. THE ASSISTANT COMMISSIONER,
   MADHUGIRI SUB-DIVISION,
   MADHUGIRI,
   TUMKUR DISTRICT - 572 132.

Digitally signed by LAKSHMINARAYAN N
Location: High Court of Karnataka

4. SRI. KUMARA NAYAKA M P.,
S/O LATE THIMMANAYAKA,
AGED ABOUT YEARS,
MUDHIGERE GOLLARAHATTI,
MEKERAHALLI, SIRA TALUK,
TUMKUR DISTRICT - 572 137.

…RESPONDENTS

(BY SRI. VENKATA SATYANARAYANA., HCGP FOR R1 TO 3;
SRI. LINGARAJU. K S., ADVOCATE FOR R4)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED THAT THE IMPUGNED ORDER DATED 08/02/2023 IN CASE BEARING NO.PTCL.29/2019 PASSED BY THE R-2/ DEPUTY COMMISSIONER TUMKUR DISTRICT. AS PER ANNEXURE-E AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed by the purchaser feeling aggrieved by the order passed by the respondent No.3/Assistant Commissioner ordering for restoration of petition land and the order passed by the respondent No.2/Deputy Commissioner confirming the order of the Assistant Commissioner.

2. Before I advert to the facts of the present case, it would be useful to refer to the judgments rendered by the Apex Court on this issue in ***Nekkanti Rama Lakshmi .vs. State of Karnataka and another***[1] and ***Vivek M. Hinduja .vs. M. Aswatha***[2]***.*** It would be also useful to refer to the judgment rendered by a Co-Ordinate Bench of this Court in W.P.No.50446 of 2012, which was confirmed by the Division Bench in W.A.No.16/2021 disposed of on 05.04.2021.

3. The Apex Court in the case of ***Nekkanti Rama Lakshmi,*** while interpreting Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, (for short "PTCL Act") had an occasion to examine the point of limitation wherein interested person can file appropriate application seeking annulment of sale as void under Section 4 of the PTCL Act. The Apex Court by reiterating the principles laid

[1] (2020) 14 SCC 232
[2] (2019) 1 Kant LJ 819 SC

down in ***Chhedi Lal Yadav .vs. Hari Kishore Yadav***[3] and also in the case of ***Ningappa .vs. Deputy Commissioner and others***[4] has held that where Statute did not prescribe the period of limitation, the provisions of the Statute must be invoked within a reasonable time. The Apex Court was of the view that the authorities have to give due regard to the period of time within which action has to be taken by the interested person. The Apex Court was of the view that it is well within the discretion of the competent authorities not to annul the alienations where there is inordinate delay in initiating action by the interested persons under Sections 4 and 5 of the PTCL Act. The co-ordinate Bench of this Court in W.P.No.50446/2012 disposed of on 24.1.2020 declined to entertain the application filed by the original grantee where there was a delay of ten years. This Court was of the view that the application itself was not maintainable since the same was not filed within a reasonable time. While recording the

[3] (2018) 12 SCC 527
[4] (2020) 14 SCC 236

finding, this Court relied on the judgment of the Apex Court in ***Ningappa .vs. Deputy Commissioner and others,*** where the Apex Court had declined to entertain the application which was submitted after nine years seeking restoration of land under Sections 4 and 5 of the PTCL Act. The judgment rendered by a co-ordinate Bench of this Court in W.P.No.50446/2012 is affirmed by the Division Bench of this Court in W.A.No.16/2021.

4. In the present case on hand, the petition land was granted to one Lakshmamma, who is mother of respondent No.3 and there was a restriction for alienation for a period of 15 years. The original grantee along with her major sons sold the petition land in favour of petitioner under registered sale deed dated 27.04.1989. The respondent No.4 initiated action by filing an application under Section 5 of the PTCL Act in 2017. The Assistant Commissioner after notifying the parties has allowed the application and ordered for restoration on the ground that alienation contravenes the provisions of

Section 4(1)(2) of the PTCL Act. The said order is confirmed by the Deputy Commissioner.

5. In the present case on hand, there is a delay of 28 years in initiating action. The authorities below have not examined the delay and laches in moving the application. The judgments cited supra clearly indicates that on the ground of gross delay and laches, the application made by the grantee or by the legal heirs under Section 5 of the PTCL Act requires to be rejected. The Hon'ble Apex Court in the above cited judgment has held that where statute does not provide for limitation, the authorities and State must act consciously and if the process of invoking the provisions of statute is delayed and is initiated after long lapse of time, the delay by itself would act as an impediment. Thus, without exception and coming across various rules of law, the Apex Court has categorically stated the law in respect of exercise of power/jurisdiction under statute where no limitation is stipulated. The law on the point of delay and laches to

invoke the provisions of PTCL Act is well settled by catena of judgments.

6. In the instant case, diligence is woefully lacking. There is a gross delay of 28 years in initiating action. Therefore, the respondent No.3/Assistant Commissioner was not justified in entertaining the application. The respondent No.4 is not entitled for restoration of the petition land as the material on record also indicates that third party rights are created.

7. For the reasons stated supra, the order passed by the respondent No.3/Assistant Commissioner and the order passed by the respondent No.2/Deputy Commissioner are liable to be quashed.

8. Hence, I pass the following:

ORDER

(i) The writ petition is allowed;

(ii) The order passed by the respondent No.2/Deputy Commissioner vide Annexure-E and the order passed by the respondent No.3/Assistant Commissioner vide Annexure-D are hereby set aside.

Sd/-
JUDGE

HDK
CT:STK