

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

W.A.No.3065/2013 (LR-SEC 48-A)

BETWEEN:

1. MISS CHANDRA R
D/O LATE DR. RAJARATHNAM
AGED ABOUT 75 YEARS
RESIDING AT B-3, KEB LAYOUT
BANNERGHATTA ROAD
BANGALORE - 560 076.
2. MRS AMBUJAM SIMON
D/O LATE DR. RAJARATHNAM
AGED ABOUT 74 YEARS
RESIDING AT NO.1284, 3RD STREET
GOLDEN COLONY, MOGAPPAIR
CHENNAI - 600 050.
3. MRS. JEEVANATHI DEVASHAYAM
W/O LATE ALEXANDER DEVASAHAYAM
AGED ABOUT 68 YEARS
RESIDING AT A-1, EWST WING
GRACE GARDEN APARTMENTS
HENNUR MAIN ROAD
BANGALORE - 560 043.
4. SRI DAVID R DEVASHAYAM
S/O LATE ALEXANDER DEVASAHAYAM
AGED ABOUT 50 YEARS
R/AT NO.H-131, D.D.A FLATS
ASHOK VIHAR PHASE - 1
NEW DELHI - 110 052.

5. DR. MERCY DEVASHAYAM
D/O LATE ALEXANDER DEVASAHAYAM
AGED ABOUT 48 YEARS
R/AT NO.H-131, D.D.A FLATS
ASHOK VIHAR PHASE - 1
NEW DELHI - 110 052.
6. SMT HEPSIBA LAL
S/O LATE ALEXANDER DEVASAHYAM
AGED ABOUT 46 YEARS
R/AT NO.H-131, D.D.A FLATS
ASHOK VIHAR PHASE - 1
NEW DELHI - 110 052.
7. SRI NITYANADAM
S/O LATE D. RAJARATHNAM
AGED ABOUT 70 YEARS
R/AT B-3, KEB LAYOUT
BANNERGHATTA ROAD
BANGALORE - 560 076.
8. SRI VICTOR THYAGARAJ J
D/O LATE DR.RAJARATHNAM
AGED ABOUT 66 YEARS
RESIDING AT FLAT A, "D" BLOCK
PADIKUPPAM ROAD, SRI BALAJI NAGAR
ANNA NAGAR WEST, CHENNAI - 600 040.
9. DR. R. EARNEST DHANRAJ
S/O LATE D. RAJARATHNAM
AGED ABOUT 64 YEARS
R/AT NO.177, RAJRATHNAM STREET
CARMEL, DAISY NAGAR, KALPUDUR
KATAPADI, VELLORE DISTRICT
TAMILNADU - 632 059.

APPELLANTS NO.1 TO 9 ARE
REPRESENTED BY THEIR
GENERAL POWER OF ATTORNEY HOLDER
SRI R. ALBERT SELVARAJ
S/O LATE DR. RAJARATHNAM
AGED ABOUT 67 YEARS
R/AT A-1, WEST WING
GRACE GARDEN APARTMENTS
HENNUR MAIN ROAD
BANGALORE - 560 043.

10. SRI R. ALBERT SELVARAJ
S/O LATE DR. RAJARATHNAM
AGED ABOUT 67 YEARS
R/AT A-1, WEST WING
GRACE GARDEN APARTMENTS
HENNUR MAIN ROAD
BANGALORE - 560 043. ...APPELLANTS

(BY SMT. NALINI CHIDAMBARAM, SR. COUNSEL FOR
SRI D. ASWATHAPPA, ADV.)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL
SECRETARY, DEPARTMENT OF REVENUE
M.S. BUILDING, BANGALORE - 560 001.
2. SRI SIDDARANGASWAMY
SINCE DECEASED BY HIS LRS.
- 2A) SMT. ANJINAMMA
W/O LATE SIDDARANGASWAMY
AGED ABOUT 66 YEARS.
- 2B) SMT. LAKSHMI DEVI
D/O LATE SIDDARANGASWAMY
AGED ABOUT 45 YEARS.
- 2C) SMT. RUPA
D/O LATE SIDDARANGASWAMY
AGED ABOUT 43 YEARS.
- 2D) SRI PRAVIN KUMAR
S/O LATE SIDDARANGASWAMY
AGED ABOUT 41 YEARS.
- 2E) SRI NAVEEN KUMAR
S/O LATE SIDDARANGASWAMY
AGED ABOUT 38 YEARS.

ALL ARE RESIDING AT NEAR BHARAT GAS
KAKOLU ROAD, RAJANUKUNTE VILLAGE
HESARGAHATTA HOBLI
BANGALORE NORTH TALUK
BANGALORE - 560 064.

SRI H.P. LEELADHAR, ADV., FOR R-2 (A-E);
R-3, R-4, R-5, R-6 & R-8 ARE SERVED;
V/O DATED 25.03.2015 NOTICE TO R-7
IS DISPENSED WITH)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.48674/11 DATED 15/02/2013.

THIS APPEAL HAVING BEEN HEARD AND RESEVED, COMING ON FOR PRONOUNCEMENT THIS DAY, **VISHWAJITH SHETTY J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

This intra court appeal is filed assailing the order dated 15.02.2013 passed by the learned Single Judge of this Court in W.P.No.48674/2011.

2. Heard the learned Senior Counsel appearing for the parties, the Additional Government Advocate for respondent nos.1 & 8 and also perused the material available on record.

3. Brief facts of the case as revealed from the records which would be necessary for the purpose of disposal of this appeal are, land bearing Sy. No.31/1 (New No.53) of Ramanahalli village, Hesaraghatta Hobli, Bengaluru North Taluk, measuring 5 acres (hereinafter referred to as 'the land in dispute') was granted to one

Sri Rajarathnam on 16.10.1946. Rajarathnam died on 01.09.1963 and he was survived by his seven children who inherited the land in dispute. After coming into force of the Act No.1 of 1974 with effect from 01.03.1974, the father of respondent nos.2 to 7 herein - late Sri Chandrappa had filed Form No.7 on 23.12.1974 under Section 45 of the Karnataka Land Reforms Act, 1961 (for short, 'the Act') claiming occupancy rights of the land in dispute contending that he was the tenant in occupation and cultivation of the land in dispute for the last about 15 years.

4. In the Form No.7 filed by Chandrappa, he had shown the name of Rajarathnam as the landlord of the land in dispute. Before the Land Tribunal, the legal heirs of late Rajarathnam were brought on record and they had participated in the enquiry proceedings. The Land Tribunal vide its order dated 07.08.1979 had granted occupancy rights of the land in dispute in favour of Chandrappa. The legal heirs of Rajarathnam had filed W.P.No.33828/1996 challenging the said order dated 07.08.1979 passed by the Land Tribunal. This Court had

allowed the said writ petition and remitted the matter to the Land Tribunal for fresh consideration. After remand, the Land Tribunal recorded further evidence of the parties and by order dated 29.01.2005 once again granted occupancy rights of the land in dispute in favour of the claimant - Chandrappa. The said order was challenged by the legal heirs of Rajarathnam in W.P.No.16625/2005 which was allowed and the matter was remitted by this Court vide order dated 12.03.2008.

5. Subsequent to the second remand, when the matter was pending before the Land Tribunal, the claimant - Chandrappa died and his legal heirs who are respondent nos.2 to 7 had come on record. The Land Tribunal, thereafter, vide order dated 08.12.2011 rejected the Form No.7 filed by the claimant and being aggrieved by the said order, respondent no.2 - Sidhrangaswamy who is one of the legal heir of the claimant had filed W.P.No.48674/2011 before this Court and the learned Single Judge of this Court vide the order impugned has allowed the writ petition and the order of the Land Tribunal was quashed and the claimant was

conferred with the occupancy rights in respect of the land in dispute. Being aggrieved by the said order, the legal heirs of the landlord late Rajarathnam have preferred this intra court appeal.

6. Smt. Nalini Chidambaram, learned Senior Counsel appearing for the appellants submits that Form No.7 was filed by the claimant as against a dead person, and therefore, the Land Tribunal could not have entertained the same and occupancy rights of the land in dispute cannot be granted in favour of the claimant. She submits that the land was granted to late Rajarathnam in the year 1946 considering his service in the military, and therefore, unless a notification is issued under Section 15(6) of the Act vesting the land with the State, the claim made for grant of occupancy rights in respect of the land in dispute cannot be considered by the Land Tribunal. She submits that the claimant has not produced any rent receipts for having paid the rent or wara nor has he deposited the same before the competent authority and she has invited the attention of this Court to Section 9 of the Act in support of this contention of hers. She has

also contended that the land in dispute was throughout cultivated personally by the landlord - Rajarathnam and after his death by his legal heirs and at no point of time, the land in dispute was leased to the claimant - Chandrappa and he was not a tenant of the land in dispute. She submits that the claimant was holding other lands in the same village and she also refers to a document, wherein the claimant had sold certain land and submits that from the aforesaid document it can be gathered that the claimant was not a tenant of the land in dispute. In support of her arguments, she has relied upon the judgments in the case of **Y.V.SRINIVASA RAO & ANOTHER VS ERANICKA - 2002(2) KAR.LJ 236, S.MALLIKARNJUNAPPA VS STATE OF KARNATAKA & ORS. - ILR 2004 KAR 2119, and GANGAPPA YAMANAPPA CHALAWADI VS STATE OF KARNATAKA & OTHERS - 2007 SCC Online KAR 392.**

7. Per contra, Sri Udaya Holla, learned Senior Counsel appearing for the legal heirs of the claimant submits that the appellants have not produced any material either before the Land Tribunal or before this Court to show that late Rajarathnam was in military

service. He submits that except the oral statement of his son - Albert Selvaraj, there is no material available on record so as to establish that late Rajarathnam was in military service and considering the same, the land in dispute was granted to him. He submits that the oral and documentary evidence available on record were not properly appreciated by the Land Tribunal and thereby the Land Tribunal has erred in rejecting the claim for grant of occupancy rights of the land in dispute. He submits that the material on record would go to show that late Rajarathnam was serving in the office of the Accountant General and he had retired in the year 1952 and except that there is no material to show that he was in military service. He also submits that the letter-head of the Accountant General appears to have been misused by the legal heirs of late Rajarathnam to establish that he was in military service earlier. He submits that the grant certificate issued on 16.10.1946 indicates that Rajarathnam had purchased the land in dispute under an auction sale, and therefore, the grant cannot be considered as a grant made in favour of a soldier.

8. Learned Additional Government Advocate appearing on behalf of respondent nos.1 & 8 has also argued in support of the order impugned passed by the learned Single Judge and has prayed to dismiss the appeal.

9. The points that arise for consideration in this intra court appeal are as follows:

(i) whether the appellants have proved the requirement of issuance of a notification under Section 15(6) of the Act for considering claimant's Form No.7?

(ii) whether the Land Tribunal was justified in rejecting the Form No.7 filed by the claimant?

10. Point no.(i): It is the specific case of the appellants that the land in dispute was granted to late Rajarathnam in the year 1946, who was in military service and the said land was cultivated by Rajarathnam personally during his life time and thereafter by his legal heirs and at no point of time the land in dispute was leased to the claimant Chandrappa. It is also their case that since late Rajarathnam was a soldier, in the absence of a notification under Section 15(6) of the Act, the

claimant is not entitled for grant of occupancy rights of the land in dispute.

11. Section 5 of the Act provides for prohibition of leases, etc., but it makes an exception in respect of a tenancy created or continued by a soldier or seaman and Section 15 of the Act provides for resumption of land by soldier or seaman. The expression "land" appearing in the aforesaid two sections is the land which falls within the definition of "land" under Section 2(A)(18) of the Act.

12. Sections 5 & 15 of the Act reads as under:

"5. Prohibition of leases, etc.- (1) Save as provided in this Act, after the date of commencement of the Amendment Act, no tenancy shall be created or continued in respect of any land nor shall any land be leased for any period whatsoever.

(2) Nothing in sub-section (1) shall apply to.-

(a) a tenancy created or continued by a soldier or seaman if such tenancy is created or continued while he is serving as a soldier or a seaman or

within three months before he became a soldier or a seaman.

- (b) to any land leased after the commencement of the Karnataka Land Reforms (Amendment) Act, 1995 in the districts of Uttara Kannada and Dakshina Kannada by land owners or persons registered as occupants under the provisions of this Act for the purpose of utilising the land for aquaculture for a period not exceeding twenty years, at such lease rent as may be determined by mutual agreement between the parties and such agreement shall be registered and a copy thereof shall be sent to the Deputy Commissioner within fifteen days from the date of such registration.

(3) Every lease created under subsection (2) shall be in writing."

"15. Resumption of land by soldier or seaman.- (1) A soldier or a seaman who has created or continued a lease in accordance with the provisions of Section 5 shall, subject to the provisions of this Act, be entitled to resume land to the extent of the ceiling area

whether his tenant is a protected tenant or not.

(2) The soldier or the seaman shall, if he bona fide requires the land to cultivate personally, issue a notice to the tenant requiring him to deliver possession of the land within the period specified in the notice, which shall not be less than the prescribed period.

(3) The notice referred to in sub-section (2) shall be given.-

- (i) in the case of a soldier in service in the Armed Forces of the Union, at any time not later than one year from the date on which he is released from the Armed Forces or is sent to the reserve;
- (ii) in the case of the father, mother, spouse, child or grand-child of a soldier, within one year from the date of the death of such soldier, and
- (iii) in the case of a seaman, within one year from the date on which he ceases to be a seaman.

(4) If the tenant fails to deliver possession of the land within the period specified in the notice, the soldier or the

seaman may make an application to the Tahsildar within whose jurisdiction the greater part of the land is situated, furnishing the prescribed particulars for eviction of the tenant and delivery of possession of the land.

(5) On receipt of such application, the Tahsildar shall issue a notice to the tenant calling upon him to deliver possession of the land to the soldier or the seaman within such time as may be specified in the notice, which shall not be less than the prescribed period and if the tenant fails to comply, the Tahsildar may summarily evict the tenant and deliver possession of the land to the soldier or the seaman.

(6) Where the Tahsildar, on application by the tenant or otherwise and after such enquiry as may be prescribed, is satisfied that a notice as required by sub-section (2) is not issued, he shall, by notification, declare that with effect from such date as may be specified in the notification the land leased shall stand transferred to and vest in the State Government free from all encumbrances. The Tahsildar may take possession of the land in the prescribed manner and the tenant shall be entitled to be registered as an occupant

thereof. The provisions of Section 45 shall mutatis mutandis apply in this behalf."

13. From a reading of Section 5(1) of the Act, it is clear that no tenancy shall be created or continued in respect of any land nor shall any land be leased for any period whatsoever after coming into force of the Amendment Act No.1 of 1974 with effect from 01.03.1974, and the prohibition under Section 5(1) of the Act would not be applicable for the tenancy created or continued and land leased as provided under Section 5(2) of the Act. The Division Bench of this Court in **NARASING GOPALRAO DESAI VS THE LAND TRIBUNAL, KHANAPUR - (1984)1 KLJ 360**, has held that even though under sub-section (1) of Section 5 of the Act, there is a total prohibition of leasing agricultural lands, sub-section (2) permits a soldier or seaman to create or continue the tenancy. In the case of **BALASAHEB VENKATESH KHASBAGH @ KULKARNI VS LAND TRIBUNAL, BELGAUM - 1985(2) KLJ 569**, it has been held that a lease whether created, continued or granted by a soldier or a seaman must be in writing.

14. Section 15(1) of the Act provides for resumption of land of which lease was created or continued by a soldier or a seaman as provided under Section 5(2) of the Act and Section 15(2) provides for issuance of notice by the soldier or seaman to the tenant and Section 15(3) provides for as to how notice referred to in sub-section (2) shall be given. Section 15(3)(ii) provides that if the soldier is dead, his parents, spouse, children and grand children shall give notice referred to in sub-section (2) within one year from the date of death of the soldier. Section 15(6) provides that if a notice as required under sub-section (2) is not issued, the Tahsildar shall issue a notification and from the date mentioned in such notification, the leased land shall stand transferred to and vest with the State Government free from all encumbrances and only thereafter, the tenant shall be entitled to be registered as an occupant of the leased land.

15. In Narasingh Gopalrao Desai's case (*supra*), the Division Bench of this Court has held that unless a notification under Section 15(6) of the Act is issued

declaring vesting of the land leased by a soldier, the occupancy rights in respect of such land cannot be granted under Section 48-A of the Act. The same has been reiterated in the case of Y.V.Srinivasa Rao's case (supra) and at paragraph 9 of the said judgment, it has been observed as under:

"9. This interpretation of mine is also based on the pronouncement of the Division Bench of this Court in the case of Narasing Gopalrao Desai v Land Tribunal, Khanapur. The Division Bench of this Court has in detail considered these aspects and has held that "a tenant of a soldier or seaman cannot get occupancy right unless the land is vested in the Government by a special declaration made to that effect by the Tahsildar as required under Section 15(6) of the Act. Such a land is not vested in the State under Section 44. Section 44 of the Act makes an exception to lands held by tenants under the lease given or continued by a soldier or seaman. Section 5(2) permits a soldier or seaman to create or continue the tenancy although there is a total prohibition of such leasing of agricultural lands under Section 5(1). Hence, if the tenant in occupancy of such a land approached the Tribunal for occupancy, the Tribunal cannot grant occupancy, unless

there is a proof of vesting of that land under Section 15(6). If the proceedings are before the Tahsildar, the Tribunal shall defer consideration of the application for occupancy till the proceedings before the Tahsildar are completed or the appeal, if any, is disposed by the Assistant Commissioner".

16. The original owner of the land in dispute late Sri Rajarathnam has died on 01.09.1963. Section 15 of the Act gets attracted only if the soldier or seaman has created or continued the lease in accordance with the provisions of Section 5 of the Act. Sections 5 & 15 of the Act were substituted by the Act of 1974 with effect from 01.03.1974. Prior to the same, the statute did not provide for issuing notification of vesting as provided under Section 15(6) of the Act. Therefore, for the purpose of issuing a notification under Section 15(6) of the Act, it has to be first established that the soldier had created or continued the lease as provided under Section 5(2) of the Act. It is the specific case of the appellants that the land in dispute was never leased to the claimant and he was not their tenant at any point of time. If that is so, Section 15 of the Act which provides for resumption

of tenanted/leased land by the soldier does not get attracted.

17. The lease/tenancy under Section 5(2)(a) of the Act is required to be created or continued by the soldier while he was serving as a soldier or within three months before he became a soldier and such a lease is required to be in writing. There is no document available on record establishing creation or continuation of lease as provided under Section 5(2)(a) of the Act.

18. The material on record would go to show that prior to his death, late Rajarathnam was serving in the office of Accountant General, Bengaluru. The appellants have not produced any material before the Land Tribunal or before this Court to show that as on the date of grant of the land in dispute, Rajarathnam was serving as a soldier. Unless they establish that late Rajarathnam had created or continued the lease/tenancy of the land in dispute when he was serving as a soldier or within three months before he became a soldier and the tenant had filed application under Section 45 of the Act claiming occupancy rights of the land which was subject matter of

such lease, the requirement of issuing any notification of vesting under Section 15(6) of the Act does not arise, and therefore, even if the Tahsildar has not issued any notification under Section 15(6) of the Act, the same will not come in the way of considering the claim of the tenant under Form No.7 for grant of occupancy rights of the land in dispute. The burden to prove that the tenancy/lease was created or continued by a soldier while he was serving as a soldier or within three months before he became a soldier is on the appellants/landlords and in the present case they have failed to discharge the same, and therefore, the Land Tribunal was not justified in holding that the claimant is not entitled to be registered as a occupant of the land in dispute in the absence of a notification of vesting under Section 15(6) by the Tahsildar. Accordingly, we answer point no.(i) for consideration in the negative.

19. Point no.(ii):- The Form No.7 was filed by the claimant showing late Rajarathnam as the landlord of the land in dispute. The material on record would go to show that his children were brought on record before the Land

Tribunal and thereafter throughout they have participated in all the proceedings, and therefore, there is no merit in the contention urged on behalf of the appellants that Form No.7 of the claimant was liable to be dismissed since the same was filed against a dead person.

20. The claimant has stated in his Form No.7 filed on 23.12.1974 that he was the tenant of the land in dispute for the last about 15 years. The material on record would go to show that late Rajarathnam was serving in the office of Accountant General and he had retired in the year 1952. Though the appellants who are the legal heirs of late Rajarathnam have contended that the land in dispute was cultivated by Rajarathnam during his life time and thereafter by his legal heirs, they have failed to prove the same. Late Rajarathnam who died in the year 1963 had seven children and the material on record would go to show that five of them had settled out of Bengaluru and only two of them viz., Nithyananda and Albert Selvaraj were residing in Bengaluru. Nithyananda was an employee of a private company and he is residing

at Bannerghatta while Albert Selvaraj was in defence service and after his retirement, he has settled at Hennur.

21. Nithyananda has admitted in his statement recorded before the Land Tribunal that he had seen the claimant Chandrappa cultivating the land in dispute. The claimant has deposed before the Land Tribunal contending that he was the tenant of the land in dispute under late Rajarathnam and the landlords were periodically collecting their share in the crop grown by him towards rentals. His witness Veeranna has corroborated this evidence and has stated that Chandrappa was growing Ragi and Hurali crops in the land in dispute. Even the other witnesses examined on behalf of Chandrappa have corroborated his evidence. Ex.R-4 - sketch dated 12.02.1977 prepared by the Surveyor shows that claimant is in occupation of the land in dispute.

22. The entries in the revenue records of the land in dispute for the period from 1971-72 onwards stand in the name of the claimant Chandrappa, and therefore,

there is a presumption under Section 133 of the Karnataka Land Revenue Act, 1964, in favour of the claimant. The appellants have failed to rebut the said presumption. In addition to this statutory presumption, the above referred oral and documentary evidence would also go to show that the claimant was in occupation and cultivation of the land in dispute as on 01.03.1974 and immediately prior to the said date. The appellants have specifically contended that non-issuance of notification of vesting under Section 15(6) of the Act disentitles the claimant to be registered as an occupant of the land in dispute as the same belonged to a soldier. Section 15 of the Act provides for resumption of leased or tenanted land by the soldier, if such a lease or tenancy is created or continued by the soldier in accordance with the provisions of Section 5 of the Act. Therefore, the appellants have impliedly admitted the tenancy of the claimant Chandrappa.

23. In the case of **PANDURANG JIVAJIRAO MANGLEKAR BY LRS VS STATE OF KARNATAKA - ILR 2007(3) KAR 3602**, it has been held by this Court that where the landlord's witness has admitted claimant's

possession as a tenant, it is the best evidence against the party making it and hence, claimant was entitled for grant of occupancy rights.

24. In the case of **SRIKANTE GOWDA VS LAND TRIBUNAL - 1977(2) KLJ 126**, it has been held by this Court that the statutory presumption as to the record of rights under Section 133 of the Karnataka Land Revenue Act, 1964, cannot be ignored unless such presumption is rebutted in accordance with law. The circumstantial evidence along with oral evidence was required to be considered by the Land Tribunal.

25. The Division Bench of this Court in the case of **RADHAKRISHNA SETTY VS THE LAND TRIBUNAL - 1977(2) KLJ 281** has held that the Land Tribunal is bound by the statutory presumption as to entries made in the record of rights and the order of the Tribunal without any reference to such entries and having no discussion as to the oral evidence is not valid.

26. It is the specific case of the claimant that the landlords were collecting share in the crop grown by him in the land in dispute, towards rentals. It is not his case

that the landlord was refusing to collect rent or wara. Therefore, there is no requirement of compliance of Section 9 of the Act by the claimant as contended by the appellants. It is trite law that rent receipts alone cannot be considered as a proof for tenancy. The oral and documentary evidence available on record conclusively prove that the claimant was in occupation and cultivation of the land in dispute as a tenant as on 01.03.1974 and immediately prior to the said date, and therefore, non-production of any rent receipts would be immaterial in the present case for deciding the issue of tenancy. The judgment in S.Mallikarjunappa's case and Gangappa Yamanappa Chalawadi's case supra would therefore not be applicable to the facts of the present case.

27. The fact that the claimant owned some other land or he has sold certain land for valuable consideration, etc., are irrelevant for the purpose of considering his claim for grant of occupancy rights of the land in dispute. What was required to be considered by the Land Tribunal was whether the claimant had proved that he was in occupation and cultivation of the land

which was the subject matter of Form No.7 as on 01.03.1974 and immediately prior to the said date as a tenant of the said land and if such tenancy was created or continued by a soldier, whether the same was created or continued in compliance of the requirements of Section 5(2)(a) of the Act. The Land Tribunal, unfortunately has placed reliance upon irrelevant material and has erroneously rejected Form No.7. We, therefore, answer point no.(ii) also in the negative.

28. In the earlier two rounds of litigation, the Land Tribunal had granted occupancy rights of the land in dispute to the claimant. In the third round, the Land Tribunal has completely overlooked the relevant evidence available on record and has proceeded to dismiss the Form No.7 on irrelevant considerations. The Land Tribunal at one breath has held that the claimant's Form No.7 cannot be considered by it since a notification of vesting under Section 15(6) of the Act is not issued by the Tahsildar, and on the other hand, the Land Tribunal has also held that the landlords are in possession of the land in dispute and the lands were not leased to the

claimant at any point of time. The said two findings are contradictory and cannot go together. The learned Single Judge was, therefore, fully justified in quashing the impugned order passed by the Land Tribunal and granting occupancy rights of the land in dispute to the claimant in exercise of his powers under Article 226 of the Constitution of India. We do not see any illegality, infirmity or perversity in the said order. The writ appeal, therefore, lacks merit and accordingly, the same is dismissed.

**SD/-
JUDGE**

**SD/-
JUDGE**

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