



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA

WRIT PETITION NO. 26018 OF 2022 (SCST)



BETWEEN:

- 1 . SMT. KUMARI
W/O. JAYARAM,
AGED ABOUT 51 YEARS,
RESIDING AT KALLAPURA VILLAGE,
BHADRAVATHI TALUK,
SHIVAMOGGA DISTRICT-577 201.

...PETITIONER

(BY SRI. MADHUKAR NADIG, ADVOCATE)

AND:

- 1 . THE DEPUTY COMMISSIONER
SHIVAMOGGA DISTRICT,
SHIVAMOGGA-577201.
- 2 . THE ASSISTANT COMMISSIONER
SHIVAMOGGA DISTRICT-577201.
- 3 . THE TAHASILDAR
BHADRAVATHI TALUK,
BHADRAVATHI-577301.
- 4 . SRI. RANGAPPA
S/O. LATE GOUNIYANAPPA,
AGED ABOUT NOT KNOWN,
RESIDING AT KALLAPURA VILLAGE,
JOLADALA POST,
BHADRAVATHI TALUK-577213.
- 5 . SMT. RATHANAMMA





W/O. MALLESHAPPA,
D/O. LATE GOUNIYANAPPA,
AGED ABOUT NOT KNOWN,
RESIDING AT JYOTHI RAO STREET,
VIDYANAGAR, SHIVAMOGGA-577201.

6 . SMT. JAYAMMA @ SHASHIKALA
W/O. SUBRAMANYA,
D/O. LATE GOUNIYAPPA,
AGED ABOUT NOT KNOWN,
SIBIKERE VILLAGE,
THIRTHAHALLI TALUK,
SHIVAMOGGA DISTRICT-577 201.

7 . SMT. MANJULA
W/O. R. PRAKASH,
D/O. LATE GOUNIYAPPA,
AGE NOT KNOWN,
NO. 175, BANNERGHATTA ROAD,
BASAVANAPURA EXTENSION,
BENGALURU-560083.

...RESPONDENTS

(BY SMT. HEMALATHA.V., AGA FOR R-1 TO R-3;
SRI. S.V.PRAKASH., ADVOCATE FOR C/R-4 AND R-5
TO R-7_

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 14.11.2022, PASSED BY THE R-1 IN SC, ST APPEAL No.10/2021 ON THE APPEAL FILED BY THE PETITIONER ANNEXURE-L AND CONSEQUENTLY THE IMPUGNED ORDER DATED 20.12.2019 PASSED BY THE R-2 IN PTCL.CR-15/16-17 ON THE APPEAL FILED UNDER SECTION 5A OF THE PTCL ACT 1974, ANNEXURE-F.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.12.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:



CORAM: THE HON'BLE MR JUSTICE N S SANJAY GOWDA

CAV ORDER

The facts, which are not in dispute, are as follows:

1. On 26.12.2002, the Committee constituted for regularising unauthorised occupation passed an order regularising the unauthorised possession of Gonyappa in respect of land bearing Sy. No. 1 measuring 1 acre 20 guntas, situated in Rangapura village of Holehonnur 3rd Hobli of Bhadravathi Taluk. Pursuant to this order, a saguvali chit was also issued to Gonyappa on 13.02.2003, with the usual condition that it shall not be alienated within a period of 15 years.
2. On 31.08.2009, Gonyappa chose to execute a registered Will bequeathing the aforementioned land in favour of Kumari (the writ petitioner), who was not related to him. Gonyappa is also stated



to have executed a General Power of Attorney in her favour.

3. On 14.01.2011, Gonyappa passed away and the bequest came into effect.
4. On 25.11.2013, Kumari instituted a suit in O.S.490/2013 against Rangappa (the son of Gonyappa) seeking a declaration that she was the owner in possession of the suit property and for a consequential decree of injunction. She stated that she was constrained to file the suit, since Rangappa was trying to interfere with her possession.
5. On 12.01.2016, however, a compromise was entered into between Kumari and Rangappa, whereby Rangappa conceded that his father had executed a Will in favour of Kumari and on that basis, she was in possession. He stated that he



had no objection for a decree being passed in her favour. Accordingly, on the basis of this compromise, the suit was decreed.

6. On 07.09.2019, though Rangappa had conceded for a decree in favour of Kumari, he proceeded to file an application for resumption and restoration of the land which had been granted to his father before the Assistant Commissioner as provided under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ("**the PTCL Act**"). He contended that the land had been transferred in violation of the terms of the grant by virtue of the bequest.
7. The Assistant Commissioner, after hearing the parties and holding an enquiry, proceeded to hold that the execution of a Will to Kumari amounted to



a transfer as defined under the Act and since the transfer had been made within the prohibited period of non-alienation, the land was required to be resumed and restored to the legal heir of Gonyappa.

8. Being aggrieved by this order, Kumari preferred an appeal to the Deputy Commissioner, but the Deputy Commissioner found no fault with the order of the Assistant Commissioner and proceeded to confirm his order and dismissed the appeal.
9. Being aggrieved by these orders, the present writ petition is filed by Kumari.
10. Sri. Nadig, learned Counsel appearing for the petitioner submitted as follows:
 - i. The land in question cannot be considered as a granted land as defined under the PTCL Act



since it was not a land granted to Gonyappa because he belonged to a Scheduled Caste, but the land had been granted to him because he was in unauthorised occupation of the same.

- ii. Only if a land is granted under the Land Grant Rules from the quota of land earmarked for SC/ST can it be considered as a granted land.
- iii. A testamentary disposition of a granted land is excluded from the definition of the granted land under the PTCL Act and hence, the entire proceedings were without jurisdiction.
- iv. Rangappa, the son of the grantee, after conceding for a decree to be passed in favour of the petitioner could not have filed an application for resumption.

11. Sri. S.V. Prakash, learned Counsel appearing for the respondent submitted as follows:



- i. The regularisation of an unauthorised occupation is also a grant and the moment an order of regularisation is passed in favour of a person belonging to the SC/ST, the land would come within the purview of the definition of a granted land under the PTCL Act.
- ii. A bequest made in favour of a person who is not a member of the grantee's family does amount to a transfer as held by a Division Bench of this Court in ***W.A.No.100348/2014 disposed of on 11.06.2020*** and hence, the orders of the authorities cannot be found fault with.
- iii. Since the land had been transferred within 6 years of the grant in contravention of the term which barred a transfer for 15 years, the



authority had rightly ordered for resumption of the lands.

12. In light of the above submissions, the questions that would arise for consideration are:

- i. Whether the regularisation of an unauthorised occupation of a land, even in favour of a person belonging to a member of the SC/ST, would make it a 'granted land' as defined under the PTCL Act; and**
- ii. Whether a testamentary disposition of a land by a person belonging to the SC/ST stand excluded from the purview of the PTCL Act.**

13. In order to answer the above questions, a brief reference to the provisions of the Karnataka Land Revenue Act, 1964 and its Rules, 1966 ("the **KLR Act**" and "the **KLR Rules**") relating to



regularisation of unauthorised possession, the provisions of the PTCL Act would be necessary.

14. Chapter VII of the KLR Act deals with 'Grant, Use and Relinquishment of Unalienated land'.

15. An alienated land is defined under Section 2(1) as land transferred in so far as rights of the State Government to payment of rent or revenue, wholly or partially to the ownership of any person. Thus, if the rights to rent or revenue which the Government possesses have not been transferred, it would be an unalienated land.

16. Section 91 of Chapter VII of the KLR Act deals with grant of unoccupied land on certain conditions and it states that the Deputy Commissioner may require the payment of a price for unalienated land or sell the same by auction and may impose conditions as he may deem fit



before granting permission for a land to be occupied. This right is, however, made subject to the rules that may be framed by the Government in that regard.

17. Section 92 of the KLR Act deals with grant of alluvial land which has vested in the Government, and Section 93 deals with grant of permission for taking up unoccupied land and it states that no person shall enter into the occupation of any unalienated land unless he has secured permission in writing by the Thasildar. The provision also states that the permission so granted shall be subject to the provisions of Section 91 and the Rules made by the State Government.

18. Thus, these provisions permit the Deputy Commissioner to grant unalienated land and also the Thasildar to grant permission to occupy land,



but this would be subject to the rules framed by the Government in this behalf.

19. Section 94 of the KLR Act deals with penalties for unauthorised occupation of land and states that if any person unauthorisedly enters upon the occupation of unalienated land, over which he is not entitled to, he shall be liable to pay twice the assessment apart from being levied with a fine and also be subject to eviction under the provisions of the Public Premises (Eviction Of Unauthorised Occupants) Act, 1971.

20. Thus, if any person is in unauthorised occupation of an unalienated piece of land, he would be liable to pay twice the assessment, a fine and also be evicted from the said land.

21. However, notwithstanding the above provisions which seek penalise any attempt to occupy land



unauthorisedly, Sections 94A to 94D of Chapter VII of the KLR Act provide for regularisation and grant of land to persons in occupation of the land.

22. Section 94A of the KLR Act, which was inserted by Act 2 of 1991 with effect from 20.03.1991, deals with regularisation of certain cases of unauthorised occupation to be recommended by the committees constituted therein. It basically states the State shall constitute committees in every constituency of the legislative assembly or even additional committees comprising of a maximum of 5 members, who shall follow the prescribed procedure and, notwithstanding the bar of unauthorised occupation under Section 94 of the KLR Act, they can recommend the grant the land to such person who is in unauthorised occupation, if he has been in possession prior to 01.01.2005 for a period of at least three years and



satisfies the prescribed conditions under Section 94A of the KLR Act, and he was to file an application seeking regularisation within 3 months from the date of commencement of the 1994 amending Act.

23. Thus, though Section 94 of the KLR Act prohibits the unauthorised entering and occupying of any unalienated land, Section 94A creates an exception and provides for regularisation of unauthorised occupation of a person if he is in possession before 01.01.2005 and satisfies the conditions prescribed under the Rules and also files an application seeking regularisation within the specified time. It is to be noted here that this provision which provides for regularisation is not limited to any class or category of persons and is available to every person, so long as he is in unauthorised occupation before a cut off date for a



prescribed period and satisfies the conditions prescribed.

24. Section 94B of the KLR Act deals with grant of land in certain cases and basically states that the Deputy Commissioner or any other authorised officer may, within two years from the date of the commencement of the amending Act of 2007, recommend to the Committee constituted to regularise an unauthorised occupation to grant the land to the person who has been in unauthorised occupation of any land, including the land referred to in sub-section (2) of Section 79, even if he is liable to be evicted from such land and had been eligible to apply for regularisation but had not made an application within a specified period, and had continued in possession as on the date of the commencement of 1997 Amending Act. The provision also states that the restriction provided



for grant under the provisos to Section 94A and the table provided therein would also apply to a grant under Section 94B of the KLR Act.

25. Thus, even if a person had not made an application under Section 94A of the KLR Act, but was eligible for grant of any land by virtue of being in unauthorised occupation, a provision was made for the Deputy Commissioner to recommend to the Committee for making a grant and the Committee could thereafter grant the land.

26. It may also be pertinent to state here that this recommendation of grant of land for unauthorised occupation and the consequential grant by the Committee was not restricted or made applicable to any particular person or class of persons and no reservation for the grant of such in favour of any class of persons has been made under the



provisions. These two provisions would also indicate that it is the legislative policy to regularise the unauthorised occupation of any land, irrespective of their social status, obviously because this class of persons were insufficient holders and had occupied the land due to poverty.

27. Section 94C of the KLR Act deals with grant of land in case of dwelling house in occupied land, while Section 94CC dealt with land in case of construction of dwelling house in occupied land in urban area subject to the conditions prescribed therein.

28. In the year 2017, Section 94D was inserted providing for regularisation and grant of land appurtenant thereto built on Government land in unrecorded habitations.



29. These two provisions would not be relevant for this case as it relates to houses constructed on land and also the construction of house and land appurtenant to unrecorded habitations of persons belonging to certain communities within a village.
30. These provisions, though not directly related to the issue on hand, clearly indicate that it was also the legislative policy to regularise a wrong without reference to the status of the person or without being specific to any class of persons.
31. Section 197 of the KLR Act enables the Government to make Rules and in exercise of this power, the State has framed the Karnataka Land Grant Rules in 1969 ("**the 1969 Rules**"), and these Rules detail the procedure to be followed by the authorities for grant of land.



32. Rules 3 to 12 of the 1969 Rules, which relate to grant of land for agricultural purposes would only be relevant and the other rules dealing with grant of other lands would not be relevant, and, hence, only these rules are being discussed and considered.
33. The Rules require the preparation and publication of list of lands available for disposal (Rule 3), determination of the persons who are eligible for grant of land for agricultural purposes (Rule 4).
34. Rule 5 of the 1969 Rules mandates that the land available for disposal in any village shall be granted observing the reservation indicated therein. Mandatorily 50% of the lands are required to be reserved for persons belonging to Schedule Castes and Tribes, 25% to others while the remaining lands are to be granted to others. Rule



5A of the 1969 Rules mandates that the lands disposed off to Scheduled Castes and Scheduled Tribes in a Taluk should not be less than 50%. Thus, these two rules specifically provide for reservation of 50% of the lands which are available for disposal in a village to a Taluka exclusively to eligible persons belonging to SC/ST.

35. Rule 6 of the 1969 Rules prescribes the order of priority, Rule 7 prescribes the extent of lands which can be granted, while Rule 8 prescribes the procedure for grant of lands for agricultural purposes and Rule 9 prescribes the conditions that are to be attached to a grant. Rule 10 stipulates the restriction on disposal of the lands, while Rule 11 deals with the disposal of the trees grown on the granted lands.



36. Rule 12 of the 1969 Rules stipulates the price payable for land granted under the Rules and Rule 12(4) enables the granting authority to waive the price upto 75% to persons belonging to SC/ST and 100% if the price is less than Rs.500/-.
37. A reading of these 1969 Rules would indicate one significant factor that these rules can be applied only in respect of the lands which are available for disposal after it has been identified as being fit and available for disposal.
38. Thus, normally, a land is granted to eligible persons if it is identified and is available for disposal and such a grant would require reservation of at least 50% of the land for persons belonging to the SC/ST. It is only when the lands are identified, can it be granted to persons belonging to SC/ST. It is therefore only these



lands which really be considered as a land which is granted to persons belonging to SC/ST. It is to be kept in mind that 50% of the lands are set apart for being granted to persons of a particular weaker section of the society i.e., persons belonging to SC/ST and these lands cannot be granted to any other class of people and will have to be necessarily granted to persons belonging to SC/ST.

39. The fact that the land can be granted only to persons who have less than a specified income and less than a specified extent, irrespective of the category under which he seeks for grant, establishes that the land is granted only for the persons who can be construed as being weaker both financially and socially.



40. A land granted under the 1969 Rules is obviously with an intent that the grantee uses the land for the purpose for which it is granted and uplifts him from backwardness and poor financial health and it is for this reason the 1969 Rules require that the person retains his granted land for a minimum period of time i.e., 15 or 20 years, depending on the time of the grant. The expectation of the Rules is that if a person holds on to the land and put it to cultivation, he can eke out a livelihood and thereby come out of the throes of poverty.

41. In case he does not cultivate the lands within a specified time, the granting authority has been conferred with the power to cancel the grant. It is to be noticed that after the period prohibiting alienation expires, the grantee is not barred from alienating the lands under the 1969 Rules since the intent of the Rule that the grantee has made



use of the lands beneficial and has improved his status has been met.

42. It is also to be noticed that even during the period when the non-alienation clause subsists, the proviso to Rule 9(1)(i) of the 1969 Rules permits the alienation of the land after a period of 5 years from the grant, but this can be done only with the permission of the granting authority and subject to the conditions that may be imposed by him. In cases of lands granted to scheduled castes and tribes, the proviso makes it clear that the permission as required under the PTCL Act should be obtained i.e., the permission of the Government.

43. It is only after all the conditions prescribed are fulfilled and the grantee executes an agreement binding himself to the terms of the grant, is he put



in possession of the land. Thus, a person becomes entitled to possession of the land only if he meets the conditions specified in the Rules for the grant.

44. However, the scenario in respect of cases in which unauthorised possession of a person is regularised is completely different. In these cases, the person who seeks the grant is already in possession, though it was unauthorised, and he was liable to be evicted and also be imposed with a fine. This right to seek regularisation is not restricted or confined only to a certain class of persons and is available to every person who is in unauthorised possession.

45. This significant and vital difference between a land granted under the 1969 Rules and the regularisation of the unauthorised possession of a land will have to be noticed. Under the 1969



Rules, 50% of the available lands in a village or a Taluka is required to be reserved or set apart from being granted to persons belonging to SC/ST, while in cases of regularisation it is basically conferring legitimacy to an illegal act which may have been committed by any person.

46. Since the illegality of every person in possession is sought to be regularised, the rule relating to the sale for a specified period on such persons would have a completely different dimension as compared to a land granted to a person belonging to SC/ST, since lands granted under the land grant rules for SC/ST was with the intent to ensure that they get out of the poor financial and social position that they are in, whereas in the latter cases, the wrongful act of a person, who is already in possession and obviously dependent on it, is being legitimised.



47. It is also to be kept in mind that the length of the unauthorised possession could have been for a long time or for the specified period and as a consequence, the person was already dependent on it and was thus in a position much better than a SC/ST person, who had no land holding or has insufficient holding when he was granted land under the 1969 Rules. In other words, there is a marked difference between a person in possession of the land, which is regularised and a person who is landless or an insufficient holder and as a result of which becomes eligible for grant under the 1969 Rules.

48. Furthermore, since the right for regularisation is fundamentally dependent on the aspect of unauthorised possession and not on a person's social status, whereas in the case of a land granted under the 1969 Rules, it is dependent on



the social status of the person seeking the grant, it is clear that the lands in cases where the possession of an unauthorised occupant is regularised cannot be compared to cases where land is granted under the 1969 Rules and as a consequence, such lands cannot really be considered as a granted land as defined under the PTCL Act.

49. At this stage, an analysis of the PTCL Act to understand and appreciate the context and meaning of the lands to which they apply would be relevant.

50. The PTCL Act was enacted with the following objectives as indicated in the Statement of Objects and Reasons:

“The non-alienation clause contained in the existing Land Grant Rules and the provision for cancellation of grants where the land is alienated in contravention of the



above said provision are found not sufficient to help the Scheduled Castes and Scheduled Tribes grantees whose ignorance and poverty have been exploited by persons belonging to the affluent and powerful sections to obtain sales or mortgages either for a nominal consideration or for no consideration at all and they have become the victims of circumstances. To fulfill the purposes of the grant, the land even if it has been alienated, should be restored to the original grantee or his heirs.

The Government of India has also been urging the State Government for enacting a legislation to prevent alienation of lands granted to Scheduled Castes and Scheduled Tribes by Government on the lines of the model legislation prepared by it and circulated to the State Government.”

51. As could be seen from the above, the PTCL Act was brought in to undo a wrong that had already been committed against the persons belonging to the SC/ST, who had been granted land to uplift them from the position that they were in, but had been cheated by exploiting their ignorance and poverty. The statement clearly states that the PTCL Act was brought in to “*fulfil the purpose of the grant*”, thus indicating that the intent of the



grant, as originally envisaged at the time of the grant, was sought to be achieved.

52. The preamble of the PTCL Act also makes it clear that the Act was to provide for prohibition of *certain* lands granted by the Government to persons belonging to SC/ST and for restoration of lands which had already been granted to persons belonging to SC/ST. Thus, transfer of not all lands granted to SC/ST was sought to be prohibited and only certain lands was sought to be prohibited and further, the Act was to ensure restoration of lands already granted to persons belonging to SC/ST.

53. The PTCL Act defined a "granted land" as follows:

"3(a) *****

3(b) "**Granted Land**" means any land granted by the Government to a person belonging to any of the Scheduled castes or the Scheduled Tribes and includes land allotted or granted such person under the relevant law for the time being in force relating to agrarian reforms or land ceilings



or abolition of imams, other than that relating to hereditary offices of rights and the word "Granted" shall be construed accordingly"

54. A plain reading of this definition would indicate that it includes all lands granted to persons belonging to SC/ST, thereby, clearly meaning that the lands should have been granted to that person because he belongs to the SC/ST. It is therefore clear that if a land is granted to a person not on the basis that he belongs to SC/ST but because he fulfils certain conditions required for the grant, such a land would not fall within the meaning of Section 3(b) of the PTCL Act. It thus follows that merely because a person fulfills the conditions for a grant and he incidentally happens to belong to SC/ST, that would not translate or transform the grant to be a *granted land* as defined under the PTCL Act.



55. Section 4 of the PTCL Act creates a prohibition of the transfer of granted lands and Section 5 provides for resumption and restitution of granted lands. These provisions basically bar the transfer of any granted land and if there has been a transfer in contravention of the terms of the grant, it enables the authority to declare the transfer to be null and void and thereafter resume and restore the land to the grantee or to his legal heirs.
56. If the land in question is not a granted land, it is manifestly obvious that the provisions of the PTCL Act cannot be invoked.
57. From the analysis of the provisions of the KLR Act, its Rules and the provisions of the PTCL Act, it is clear that only a land granted to a person because he belongs to a schedule caste from amongst the



land set apart for being granted to SC/ST can be construed as a *granted land* as defined under Section 3 (b) of the PTCL Act.

58. If a land is granted because a person is in unauthorised possession, it would be a grant because he was in unauthorised possession and not because he belongs to SC/ST. If the person in unauthorised possession, incidentally, happens to be a person belonging to SC/ST, that grant of land cannot be construed as a land which has been granted because he belongs to the SC/ST.

59. To reiterate, in order for a land to be a *granted land* as defined under the PTCL, the principal cause for the grant should be the fact that the person being granted the land belongs to the SC/ST. If a person is being granted land under the general provisions which are applicable to all



individuals, the mere incidental fact that the person belongs to SC/ST cannot transform the land to be a *granted land* as defined under the PTCL Act.

60. It must also be kept in mind that no person, whether he belongs to the SC/ST or not, has an inherent right to seek grant of land. Only if land is available and is set apart from being granted to a particular category of persons can a person from that category apply, and he can only have the right for his request to be considered. In fact, Rule 26 of the 1969 Rules makes this expressly clear by stating that the grant of land is discretionary and cannot be sought for as a matter of right.

61. On the other hand, in respect of person who is in unauthorised possession, though Rule 108-L of the KLR Rules states that the grant of a land is



discretionary, he has a statutory right to seek regularisation of his unauthorised occupation, since that right is conferred on him by law and he only has to satisfy the conditions prescribed under the statutory provision. If once the conditions prescribed in the statute are satisfied, then that unauthorised occupant cannot be denied the benefit of regularisation. This difference in the grant made under the Land Grant Rules and the grant made by virtue of a statutory provision relating to regularisation would by itself bring the land which is regularised in favour of the unauthorised occupant out of the definition of *granted land* under Section 3(b) of the PTCL Act.

62. There is yet another factor, which confirms the legal position that a land which is granted by virtue of regularisation of a person's unauthorised



occupation cannot be construed as a *granted land* as defined under Section 3(b) of the PTCL Act.

63. An issue had been raised that an order conferring occupancy rights under the provisions of the Karnataka Land Reforms Act would also be a *granted land* as defined under the PTCL Act, if the beneficiary of the order belonged to SC/ST and consequently such a land could be resumed if it was transferred in contravention of the terms of the grant or the law relating to the grant.

64. The issue was considered by a Full Bench of this Court in the case of ***Mohammed Jaffar***¹. The Full Bench on consideration of the matter in detail held as follows:

“13. Section 44 of the KLR Act, as stated above, deals with vesting of the land in the Government. As per the argument of the learned Government

¹ Mohammed Jaffar And Anr. vs State Of Karnataka And Ors., *ILR 2002 KAR 4693*.



Advocate, the entire land vests in the Government. It is clear from the above said provisions of the Act that the Act is an agrarian reforms Act and wherefore the grant made by the Government under Sections 77 and 77A of the KLR Act would come within the ambit of "granted land" as the land is granted by the Government under the said sections of the Act. Therefore, the land, which is not granted by the State Government, cannot *prima facie* be hit by the provisions of the PTCL Act. It is also clear that all the lands held by or in possession of the tenants vest with the State Government free from all encumbrances and the State Government is entitled to take possession of the said properties. However, as per Section 44(e) the Government is not entitled to take possession of the tenanted land and the permanent tenants, protected tenants and other tenants holding the land are entitled to such right or privileges and subject to such conditions provided under Act. In view of Section 44 of the KLR Act, it is clear that conferment of occupancy right by the Land Tribunal, and not by the Government, is only a declaration of pre-existing right which has been conferred on the tenant under Section 45 and vesting of the land is subject to right that is conferred on the tenant for conferment of occupancy right. Section 45 of the KLR Act gives a right to a person who is a tenant on the land to get the occupancy right conferred in his favour



and Sections 48 and 48A deals with the Constitution of the Tribunals and enquiry by the Tribunal. The occupancy right will be conferred by the Land Tribunal and not by the Government under Section 48A of the KLR Act on a tenant who was cultivating the land personally on 1-3-1974. Therefore, what is conferred on the tenant who was personally cultivating the land on 1-3-1974 is the declaration of his occupancy right of land on 1-3-1974, by the Tribunal. The preamble to the KLR Act clearly shows that the Act is enacted to confer ownership on the tenants and wherefore, it is clear that the conferment of occupancy right on the tenant who was personally cultivating the land on 1-3-1974 is conferment of ownership on the tenant as per the preamble to the Act and the same is subject to certain restrictions which are imposed in the certificate of registration issued under Section 55 of the Act in Form 10. It is also seen that conferment of occupancy right is only declaration of the fact that the tenant who was personally cultivating the land on 1-3-1974 and the land which has vested with the Government, the tenant is declared as the occupant of the said land subject to the restrictions contained in the certificate of registration and if the tenant proves that he has been personally cultivating the land on 1-3- 1974 he cannot be denied conferment of occupancy right.



14. Under the circumstances, it is clear that occupancy right cannot at all fall within the ambit of 'granted land' as defined under the PTCL Act. Considering the argument of the learned Government Advocate with regard to automatic vesting of land in the Government, it is seen that the vesting of land in the Government is subject to vested right of a tenant to get occupancy right and for determination of right and conferment of occupancy Land Tribunal, a Statutory Authority established under the Land Reforms Act, is the Competent Authority to determine the same on a tenant who was personally cultivating the land on 1-3-1974. In view of this, the occupancy right, which has been granted by the Land Tribunal, cannot be construed as "granted land" as defined under the PTCL Act. The learned Single Judge in *Narayan Parameshwar Naik's* case and the Division Bench in *Lalitha Nagappa Naik's* case, supra have not considered these aspects and have wrongly come to the conclusion that the KLR Act is an Agrarian Reforms Act by itself would not give the tenant to get occupancy right and the argument of the learned Government Advocate on the reasoning of the said decisions, is not acceptable. Certainly, the decisions in *Narayan Parameshwar Naik's* case *Lalitha Nagappa Naik's* case, supra, are not applicable and cannot be said to be a correct law to decide the controversy in the facts of the present case, and the said decisions



are liable to be reversed. On the other hand, the learned Single Judge in *Mohammed Jaffar's* case (ILR 2001 KAR 1931), by an elaborate order, while considering the provisions of Sections 77 and 77A of the KLR Act and has rightly interpreted them with valid reasons. Accordingly, we are satisfied with the reasons of the learned Single Judge in *Mohammed Jaffar's* case, approve the same. On overall consideration and as discussed above, we are of the view that the land in respect of which the occupancy right has conferred under Section 48A of the KLR Act would not fall within the ambit of 'granted land' as defined under Section 3(1)(b) of the PTCL Act and answer the referred question in negative."

65. As could be seen from the above, the Full Bench has held that a land cannot be construed as a *granted land* under Section 3(b) of the PTCL Act even though the land had stood vested in the Government under Section 44 of the Karnataka Land Reforms Act since it was the Land Tribunal which would adjudicate upon the pre-existing right of a tenant and determine that he would be entitled to be conferred with the occupancy rights



and hence it was not the Government which was granting the land even though it was the owner of the land.

66. In other words, the Full Bench of this Court has held that if a land is granted to a person in recognition of a pre-existing right by an adjudicating authority constituted for determining whether the applicant would be entitled to the fruits of his pre-existing right, such a grant would fall outside the purview of the definition of *granted land* even if the law was a result of an agrarian reform.

67. In a case relating to regularisation of an unauthorised occupation also, Section 94A of the KLR Act confers on an unauthorised occupant to apply for and be granted the land under the orders of a committee constituted under Section 94A of



the KLR Act if he established that he was in unauthorised occupation before the cut off date for a prescribed period.

68. The Committee, as in the case of the Land Tribunal, would comprise the jurisdictional MLA, nominated Members and the Thasildar as its Secretary. This Committee would embark upon an enquiry and determine whether the applicant was in unauthorised occupation of a Government land for the prescribed period and before the cut off date. It would also determine whether the applicant is otherwise eligible for the grant and only after such an adjudication is made, the Committee passes an order recommending the grant, which is required to be complied by the authorities.



69. It is therefore clear that in cases of lands granted by virtue of an order regularising unauthorised occupation, it is not the Government which grants the land and consequently, just as in the case of lands granted under the Land Reforms Act, the land so granted would fall outside the purview of *granted land* as defined under the PTCL Act and consequently, the provisions of said PTCL Act cannot be invoked to resume the land when alienated in contravention of the terms of the grant.

70. The proposition of law that would result from the above mentioned analysis is that a land granted to a person by virtue of a recommendation made by the Committee constituted under Section 94A of the KLR Act is not a *granted land* as defined under Section 3(b) of the PTCL Act and consequently, no proceedings can be initiated for resuming and for



restitution of such a land under the provisions of the PTCL Act.

71. The 1st question is therefore answered accordingly.

72. As far as the 2nd question is considered, in light of the fact that the land involved in this case is held to be not a *granted* land as defined under Section 3(b) of the PTCL Act, the question as to whether a testamentary disposition is a transfer or not would be of no relevance.

73. However, since arguments were advanced on this aspect of the matter also, the 2nd question is also required to be considered.

74. A transfer has been defined under Section 3 (e) of the PTCL Act as follows:

“3(e) “**Transfer**” means a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition



and includes the creation of a charge or an agreement to sell, exchange, mortgage or lease or enter into any other transaction.”

75. A plain reading of the said definition indicates that a testamentary disposition of a granted land is excluded from the definition of a transfer.

76. However, a Division Bench of this Court in **W.A.No.100348/2014** disposed of on 11.06.2020 has interpreted the definition of *transfer* as defined under Section 3(e) of the PTCL Act and has held that a testamentary disposition to members of the granted family alone is excluded from the definition of a transfer. It has been held that if the testamentary disposition is to anyone who is not a member of the grantee’s family, then it would amount to a transfer.

77. In light of this judgment, since Kumari was not a member of the grantee Gonyappa’s family, if the



provisions of the PTCL Act had applied, it would have amounted to a transfer. However, since it is held that the provisions of the PTCL Act itself would not be attracted as the land cannot be construed as a *granted* land as defined under the PTCL Act, this question has been rendered academic.

78. In the result, the impugned orders are set aside, and it is held that the proceedings for resumption initiated by Rangappa on the premise that the land in question was a *granted land* is held to be totally without jurisdiction and they are quashed.

79. This Writ Petition is accordingly ***allowed***.

Sd/-
(N S SANJAY GOWDA)
JUDGE

PKS
List No.: 1 Sl No.: 97