IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT APPEAL NO. 1220 OF 2025 (LR-SEC)

BETWEEN:

THIMMAIAH
SINCE DEAD BY LRS

H.T. GANGADHARAIAH
SINCE DEAD BY LRS

1. GOVINDAMMA
W/O LATE GANGADHARAIAH
AGED ABOUT 65 YEARS
R/AT NULUGUMMANAHALLI
MANCHENAHALLI HOBLI
GAURIBIDANUR TALUK
CHIKKABALLAPURA - 561 208

2. H.G. GANGEGOWDA
S/O LATE GANGADHARAIAH
AGED ABOUT 42 YEARS
R/AT NULUGUMMANAHALLI
MANCHENAHALLI HOBLI
GAURIBIDANUR TALUK
CHIKKABALLAPURA - 561 208

3. SRI H.T. CHANDRAIAH
S/O LATE THIMMAIAH

AGED ABOUT 50 YEARS
R/AT HANUMANTHAPURA VILLAGE
JARABANDHAHALLI POST
MANCHENAHALLI HOBLI
GAURIBIDANUR TALUK
CHIKKABALLAPURA - 561 208

4. SRI H.T. KRISHNEGOWDA
S/O LATE THIMMAIAH
AGED ABOUT 40 YEARS
R/AT HANUMANTHAPURA VILLAGE
JARABANDHAHALLI HOBLI
MANCHENAHALLI HOBLI
GAURIBIDANUR TALUK
CHIKKABALLAPURA - 561 208

5. SMT. VEBKATALAKSHMAMMA
D/O LATE THIMMAIAH
W/O NARASIMHAMURTHY
R/AT SUNKADA GATE
(NEAR GOVT. SCHOOL)
DODDABALLAPURA TALUK
BENGALURU SOUTH TALUK
BENGALURU RURAL - 561 203

6. SMT. NARAYANAMMA
D/O LATE THIMMAIAH
W/O SRI ANJAN KUMAR
R/AT UJJINI HOSHALLI
KAMALURU POST
DODDABALLAPURA TALUK
BENGALURU RURAL - 561 203

…APPELLANTS

(BY SRI P.N. MANMOHAN, ADVOCATE FOR
SRI PRAVEEN KAMATH M.R., ADVOCATE)

AND:

1. SRI K. NARAYANA GOWDA
   S/O H.A. KEMPAIAH
   AGED ABOUT 65 YEARS
   R/AT HANUMANTHAPURA VILLAGE
   JARABANDHAHALLI POST
   MANCHENAHALLI HOBLI
   GAURIBIDANUR TALUK
   CHIKKABALLAPURA - 561 208

2. ASSISTANT COMMISSIONER
   GAURIBIDANUR TALUK
   GAURIIDANUR
   CHIKKABALLAPURA - 562 101

…RESPONDENTS

(BY SRI YESHWANTH NETAJI, ADVOCATE FOR
SRI K.V. NARASIMHAN, ADVOCATE FOR R-1 &
SMT. NAMITHA MAHESH, AGA FOR R-2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THIS WRIT APPEAL AND SET ASIDE THE IMPUGNED JUDGMENT DATED 16.06.2025 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WRIT PETITION No.37713/2016 (LR-SEC) & ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

CAV JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellants have filed the present intra-court appeal impugning an order dated 16.06.2025 [**impugned order**] passed by the learned Single Judge of this Court in WP.No.37713/2016 (LR-SEC). The learned Single Judge partly allowed the said writ petition by the impugned order, whilst, the claim made by the legal heirs of Smt. Venkatamma [petitioner No.1(a) to (d) in the writ petition] claiming occupancy rights in respect of land falling in Survey No.2/2B, Gollahalli Village, Gauribidanuru Taluk, was rejected; The claim made by respondent No. 1 (K. Narayana Gowda) was arrayed as petitioner No.2 in writ petition, claiming occupancy rights in land falling in Survey No.15/2B, Gollahalli Village, Gauribidanuru Taluk, to the extent of one- half share, was allowed. The learned Single Judge had held that respondent No.1 and the representatives of respondent No.2 shared the said subject land equally.

2. The Appellants claimed that the subject land (land measuring 5 acres and 12 guntas falling in Survey No.15/2B, situated in

Gollahalli Village, Gauribidanuru Taluk, Chikkaballapura District) belonged to them. It is further stated that the said land was purchased by the predecessors in interest of the appellants, from the heirs of the original owner (Kare Rangappa), under two registered sale deeds dated 18.04.1980 and 18.02.1981. They claim that the subject land was mutated in the names of the purchasers/ their successors in interest, are in continuous possession and enjoyment of the same.

3. The respondent No.1 claims occupancy rights in respect of part of the subject land, which was rejected. However, the said claim has been accepted by the learned Single Judge, albeit to the extent of one half share and the said decision forms the subject matter of the present appeal.

The Context

4. As noted above, the appellants claim that the subject land was owned by one Kare Rangappa. His legal heirs had sold the same to Thimmaiah and his son H.T. Gangadharaiah, under two registered sale deeds dated 18.04.1980 and 18.02.1981. The appellants are the legal heirs of late Thimmaiah and H.T. Gangadharaiah. The appellant No.1 is the wife of late Gangadharaiah and appellant No.2 is his son. Appellant Nos.3 and

4 are sons of late Thimmaiah and appellant Nos.5 and 6 are his two daughters.

5. The subject land to the extent of one (01) acre, out of five (05) acres and twelve (12) guntas was purchased by Sri. Thimmaiah on 18.04.1980 and H.T. Gangadharaiah (son of late Thimmaiah), who is since expired, had purchased the remaining portion of the subject land - land measuring four (04) acres and twelve (12) guntas - under the registered sale deed dated 18.02.1981. The subject land is mutated in the name of late Thimmaiah, under MR.No.20/1979-80 and the balance land was mutated under MR.No.6/1998-99.

6. The revenue records clearly show that the certified copies of the revenue records have been placed on record. The entries of the year 1971-72 to 1976-77, reflect the cultivator's name as Gangadharappa and the owner's name as Kareranga. The entries of the year 1977-78 to 1980-81, reflect the names of Gangadharappa, as well as K. Narayana Gowda (R-1) under Column No.12(2). However, the entries for the year 1981-82, reflect the names of Gangadharappa, K. Narayana Gowda and Thimmaiah under Colunm No.12(2).

7. On 27.02.1999, respondent No.1, K. Narayana Gowda filed an application in Form 7A under Section 77A of the Karnataka Land Reforms Act, 1961 [**KLR Act**], claiming occupancy rights in respect of the subject land. It is relevant to note that prior to the said date, on 29.01.1999, the mother of respondent No.1, is petitioner No.1 in the writ petition WP.37713/2016 - had filed Form '7A' claiming occupancy rights in respect to lands falling in Survey No.2/2B, to the extent of 37 guntas. Both applications were clubbed together and considered by the Assistant Commissioner (respondent No.2).

8. Although the said applications were in respect of different parcels of land, the Assistant Commissioner, had clubed the same, as they were filed by related parties i.e., mother and son. The claim of writ petitioner No.1 for occupancy rights was rejected by the learned Single Judge of this Court in WP.No.5388/2002, albeit, to the extent of 25 guntas. The said order had dismissed the claim of the petitioner No.1. Therefore, as noted above the writ petitioner No.1 is not arrayed as a party to the present appeal.

9. After the application was filed, Inspection was conducted pursuant to the said application, which was reported and the survey report indicates that the surveyor visited the house of Respondent

No.1 and learnt from his mother that he serves as a teacher at Manchenahalli School and therefore he could not be present for measurement/survey of the land. Inspection was conducted subsequently in the year 2003 and the said report dated 05.02.2003 indicates that there was some quarrel between respondents and petitioners.

10. The Assistant Commissioner considered these applications for grant of occupancy right and dismissed the same by an order dated 15.03.2003. Respondent No.2 noted that Gangadharappa, s/o Kare Rangappa is owner of the subject land and after his demise, Hanumantharayappa and Radharama were owners and they cultivated the land from 1972. His sons had given a joint statement to the effect that the subject lands have been purchased by their father from Kare Rangappa in the name of the eldest son. The sale deed are also produced. Respondent No.2 had recorded their statement. They also made statement to the effect that they were in cultivation of the subject land. We consider it apposite to set out the findings of the Assistant Commissioner (respondent No.2) has set out in the order dated 18.03.2003, insofar as it relates to the subject land. The same are reproduced. The relevant extract to the said order is reproduced below.

"The documents concerned to Sy no: 15:2B in The Gollahali Village, as per the Pahani record, there is total 6A 12 gunta land there is Kharab 1-00 acre and residue 5acre 12 gunta. This land belongs to Gangappa. After his death, his brother Hanumantharayappa and Radharama have sold to HT Gangadharappa son of Thimmaiah through registered sale deed in Reg No: 2583:80-81 dated: 18-2-81. The Pahani records have been examined, the name of K Narayanagowda is in 12:2 from 1977-78 to 1981-82. The name of applicant is not entried in Cultivation 12:2 column from 1971-72 to 1976-77. Apart from this when Taluk surveyor went to conduct the survey by informing to present in the said place in advance, the said was not present and it has came to know through Mahazar. From the report it has came to know that on date: 5-2-2003 when went to conduct survey with Revenue Inspector, applicants and respondents have fought and not co-operated to the survey, the 2nd applicant is the lecturer Manchenahalli Composite Pre-University College.

The aforesaid aspects have been examined; it has confirmed that the 2nd applicant submitted application for Sy No: 15:2B is not cultivator of said land on date: 1-3-1974 as per Section 77A of Karnataka Land Reforms Act 1961.

:ORDER:

The Form-7A Applications submitted by 1st and 2nd applicants for 0-13 gunta land in Sy No: 2:2B and 5 Acre 12 gunta land in Sy No: 15:2B in Gollahalli Village, Manchenahalli Hobli Gowribidanuru taluk as per Section 77A of Karnataka Land Reforms Act 1961 has been dismissed.

> This order has been dictated to the typists and typed ad revised and pronounced in Open court on date: 15-3-2003."

11. Respondent No.1 and his mother (writ petitioner No.1) preferred an appeal before the Karnataka Appellate Tribunal [**KAT**] (Appeal No.602/2003) assailing the order dated **15.03.2003.** KAT rejected the said appeal by an order dated 13.05.2016. We consider it apposite to set out the finding. The relevant extract of the said order is set out below.

> "10. Now coming to the claim of the 2nd appellant who has filed Form No. 7A claiming the grant of occupancy right pertaining to land measuring 5.12 acres in Sy. No. 15/2b. Originally the said land was belonging to one Karegangappa. After his death his brothers Hanumantharayappa and Radharam have sold the same land to one H.T. Gangadharappa S/o. Thimmaiah vide registered sale deed dated 18.02.1981. The trial court has said that on verification of RTC the name of the 2nd appellant K.N. Gowda is found in RTC for the year 1977-78 to 1981-82 and his name is found in Col. No. 12(2). But the name of the Gangadharappa was found in Col. No. 12(2) in RTC for the period from 1971-72 to 1981-82. But the name of the 2nd appellant Narayana Gowda not found in Col. No. 12(2) for the period 1971-72 to 1976-77 means as on the relevant point of time i.e. as on 01.03.1974 his name was not found since he was not the tenant of the said land. The trial court also rejected the claim of the 2nd appellant on the ground that the 2nd appellant is a teacher in the combined Pre-

University College. This aspect makes it very clear that the 2nd appellant K. Narayana Gowda 1 is not the tenant of the disputed land. Merely because the name of the 2nd appellant Narayana Gowda was found in Col No. 12(2) for the period 1977-78 to 1981-82 is not the ground for accepting his tenancy because the 2nd appellant has shown one Thimmaiah as landlord of his disputed land. according to the sale transaction his son Gangadharappa had purchased 5.12 acres in Sy. No. 15/2b vide sale deed dated 18.02.1981 from the brothers of Kare Gangappa. When that being the case, the claim made by the 2nd appellant against Thimmaiah as his Landlord is not correct.

11. Furthermore, there must be evidence before the court to say the land in question should be the tenanted land and it should be vested with the Government as on the relevant point of time. Absolutely no material has been placed by the 2nd appellant to prove regarding the vesting of land. The purchaser Gangadharappa has given the evidence before the trial court as under:-

[ಸುಮಾರು 1981–82ರ ಸಾಲಿನಲ್ಲಿ ಕ್ರಯಕ್ಕೆ ಪಡೆದಾಗಿನಿಂದಲೂ ನಮ್ಮ ತಂದೆಯವರು ಹಾಗು ನಾವು ಜಮೀನು ಸಾಗುವಳಿ ಮಾಡುತ್ತಿರುತ್ತೇವೆ. ನಾವು ಈ ಜಮೀನನ್ನು ಯಾರಿಗೂ ಕೋರಿಗಾಗಲೀ ಗುತ್ತಿಗೆಗಾಗಲೀ ಕೊಟ್ಟಿರುವುದಿಲ್ಲ. ನಾವೇ ಸ್ವಂತ ಸಾಗುವಳಿ ಮಾಡುತ್ತಿರುತ್ತೇವೆ. ಸದರಿ ಜಮೀನಿನಲ್ಲಿ 3.00 ಎಕರೆ ನೀಲಗಿರಿ ಮರಗಳನ್ನು ಬೆಳೆಸಿರುತ್ತೇವೆ. ರೇಷ್ಮೆ ಬೆಳೆ ಇದ್ದು ಭತ್ತ ಬೆಳೆಯುತ್ತಿದ್ದೇವೆ...][1]

(Kannada Extraction)

(Translation of Kannada Version)

[1] "Our father and I have been cultivating the land since we acquired it in the year about 1981-82. We have not given this land to anyone on loan or lease. We are cultivating it ourselves. We have grown eucalyptus trees in the said land of 03 acres. We are also growing silk and rice."

This is the evidence of the 2nd respondent before the trial court.

12. Per contra the 2nd appellant herein has given his evidence which reads as under:

ಮೊದಲು ಗಂಗಾಧರಪ್ಪ ಬಿನ್ ಕರೆರಂಗಪ್ಪ ನಂತರ ಗಂಗಾಧರಪ್ಪನವರ ಪವತಿ ನಂತರ ಅವರ ಸಹೋದರರಾದ ಇವರು ರಾಧಾರಾಮ ಹನುಮಂತರಾಯಪ್ಪ ಭೂಮಾಲೀಕರಾಗಿರುತ್ತಾರೆ. ನಾನು ಸದರಿ ಜಮೀನನ್ನು 1972ರಿಂದಲೂ ಸಾಗುವಳಿ ಮಾಡುತ್ತಿದ್ದೇನೆ. ಸದರಿ ಜಮೀನು ನನಗೆ 1972ರಲ್ಲಿ ನನಗೆ ಮೇಲಿನ ಭೂ ಮಾಲೀಕರು ಗೇಣಿಗೆ ನೀಡಿದ್ದರು. 1972ರ ಹಿಂದೆ ಆದರೇ ಸ್ವಂತ ಸಾಗುವಳಿ ಮಾಡುತ್ತಿದ್ದರು. ನಾನು ರಾಗಿ, ಕಡಲೇ ಕಾಯಿ, ಜೋಳ ಮುಂತಾದ ಬೆಲೆಯನ್ನು ಬೆಳೆಯುತ್ತಿದ್ದವು. ಬೆಳೆದ ಫಸಲಿನಲ್ಲಿ ಅರ್ಧ ಭಾಗ ಭೂ ಮಾಲೀಕರಿಗೆ ಕೋರು ರೂಪದಲ್ಲಿ ಕೊಡುತ್ತಿದ್ದೆನು. ಕೋರು ಕೊಟ್ಟಿರುವುದಕ್ಕೆ ಯಾವುದೇ ದಾಖಲೆಗಳು ಇರುವುದಿಲ್ಲ.[2]

It means the appellant has no any evidence to prove his tenancy. But it appears that he wanted to say orally to the effect that he was a tenant since the year 1972 itself. Even then he has no any documentary evidence or any believable evidence on this important issue.

12. As noted above, aggrieved by the said order Respondent No.1, who is his mother, had preferred a writ petition being WP.No.37713/2016, which was partly allowed by the impugned order.

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[2] First, Gangadharappa son of Karerangappa, then after the death of Gangadharappa, his brother Sri Radharama Hanumantharayappa became the land owner. I have been cultivating the said land since 1972. The said land was given to me on lease by the above land owner in 1972. Before 1972, I was cultivating it myself. I used to grow rice, groundnut, jowar etc. I used to give half of the grown crop to the land owner in the form of Koru. There are no records for giving Koru.

13. It is apparent from the above that the Assistant Commissioner and the KAT had examined the claim of the respondent and had found that the entries made in the land records did not substantiate his claim in being a tenant in possession and cultivation of the subject land during the material period.

14. It is relevant to note that respondent No.1 had made an application for being registered as an occupant of the subject land under Section 77A of the KLR Act. The said section was introduced by virtue of Act No.23 of 1998 with effect from 01.11.1988. Section 77A is reproduced below.

> **77-A. Grant of land in certain cases.—**
>
> (1) Notwithstanding anything contained in this Act, if the Deputy Commissioner, or the [or any other officer authorised by the State Government in this behalf] is satisfied after holding such enquiry as he deems fit, that a person,—
>
> (i) was, immediately before the first day of March, 1974 in actual possession and cultivation of any land not exceeding one unit, which has vested in the State Government under Section 44; and
>
> (ii) being entitled to be registered as an occupant of such land under Section 45 or 49 has failed to apply for registration of occupancy rights in respect of such land under sub-section (1) of Section 48-A within the period specified therein; and

(iii) has continued to be in actual possession and cultivation of such land on the date of commencement of the Karnataka Land Reforms (Amendment) Act, 1997,

-he may [* * *] grant the land to such person subject to such restrictions and conditions and in the manner, as may be prescribed.

(2) The provisions of sub-sections (2A) and (2B) of Section 77 and the provisions of Section 78 shall apply mutatis mutandis in respect of the grant of land made under sub-section (1).]

[Provided that the land so granted together with the land already held by such person shall not exceed 2 hectares of D class of land or its equivalent thereto.]"

15. The objective of introducing Section 77A of the KLR Act was to grant another opportunity to a person who is a lawful tenant on an appointed date, but had failed to make an application under Section 45 of the KLR Act. Such an applicant could be registered as an occupant only if the Deputy Commissioner or any other officer authorized by the State Government was satisfied after holding such enquiry, as it deems fit, that the applicant was immediately before the first day of March, 1974 in actual possession and cultivation of any land, not exceeding one unit, but which was vested with the State Government by virtue of Section 44 of the KLR Act. Additionally, the Deputy Commissioner was also required to be satisfied that the applicant had failed to apply for

registration of the occupancy rights under Section 48 (1A) of the KLR Act, but had continued to be in actual possession and cultivation of such land on the date of the Karnataka Land Reforms Act, 1997. The procedure for grant of land was specified under Rule 26-C of the Karnataka Land Reform Rules. In ***Hosabayya Nagappa Naik and others v. State of Karnataka, by its Secretary, Revenue Department and others : ILR 2002 KAR. 1342***, the Co-ordinate Bench of this Court had considered the scope of inquiry to be conducted under Section 77A of the KLR Act. The relevant extract of the said Rule is set out below.

> "7. Having indicated the sweep and the extent of Rule 26C let us now consider the scope of the Rule. Sub-Rule 5 of the Rule is only to be understood in the context of Section 77A and this is where the main provision of Section 77A takes control of the situation. The procedure envisaged under Rule 26C for the purposes of granting of land under Section 77A of the Act cannot go beyond the purpose for which the section is provided for. As noticed earlier the object of the section is to provide an opportunity to those who might have been truly and lawfully tenants of the land, who were in possession and cultivation and continued to be in possession and cultivation, who might have missed the bus by not making an application within the stipulated period which in fact had come to be extended from time to time and to ensure that there possession and cultivation is continued without being disturbed any further. It is very essential to

point out that an application under Section 77A is not the same as an application under Section 45, and the enquiry contemplated under Section 77A cannot be the same as an enquiry conducted by the Land Tribunal under Section 48A of the Act. Whereas on an application under Section 45, enquiry by the Land Tribunal is for grant of conferment of occupancy rights, an application under Section 77A to the Deputy Commissioner or other officer authorised by the State Government is for the purpose of grant of land. The provisions of Section 77A is for the purpose of granting of land on satisfaction of certain conditions namely three conditions mentioned therein. It is to be noticed that conditions (1) and (2) are conditions which should have been satisfied and foregone in respect of the land. It is not an enquiry to ascertain whether a person can be granted land being a tenant as on the appointed date, such an enquiry was within the scope of Section 48A and not for the purposes of condition (1) of Section 77A. Here the enquiry is only for a limited purpose to find out the accomplished fact as to whether the person was in actual possession and cultivation of the land on the appointed date. It is not as though the authorities are to hold an enquiry for the purpose of conferment of occupancy rights on the premise that the applicants were lawful tenants on the appointed date and the enquiry was for such purpose. The factum of the applicants being a lawful tenant on the appointed date and was in cultivation as on the appointed date is not to be established now in the present enquiry, but it should have been a concluded fact that the scope of the present enquiry is to let in evidence to satisfy or prove the existence of such a concluded fact. It is for the applicant to show that it was an undisputed fact

and on record and that without anything further more he was a tenant lawfully in possession and cultivation of the land on the appointed date. The second condition is also of significance and importance in the context of considering the application ie., the land should have been vested in the State Government as on the appointed date as it was a tenanted land. This again is an event which should have already taken place and as such the evidence that is required to be placed by the applicant to show that this is an event that has taken place already. Obviously it should find a place in some official record, as vesting of the land is in favour of the State Government. In the absence of any such record is again becomes a disputed fact which again is not within the scope of an enquiry under Section 77A of the Act. If these two conditions are fulfilled then there is the necessity and scope for inquiring with regard to the third condition namely as to whether the applicant has continued to be in possession and cultivation of such land as on the date of the commencement of the amending Act Ie. 1.11.1998.

8. We say this for yet another reason namely that the last date for filing of application under Section 45 in Form No. 7 had been extended from time to time. If the scope of enquiry contemplated under Section 77A of the Act was to be the same as an enquiry under Section 48A of the Act then it would have been the simplest thing for the Legislature to extend such date instead of providing for a separate provision as under Section 77A. On the other hand the Legislature has advisedly provided for an enquiry under the Section and two very important distinguishing features have to be noticed. One is that the authority to whom the

application under Section 77A is to be made is the Deputy Commissioner or any other Officer authorised by the State Government in this behalf and not the Land Tribunal which is the inquiring authority under Section 48A of the Act and secondly that the application in Form No. 7A is for grant of land whereas an application under Form No. 7 of the Rules and filed under Section 45 of the Act was for grant of occupancy rights. Having regard to these distinctions we are of the view that the scope of enquiry under Section 26C is to be understood for this purpose and not as though it is an enquiry as contemplated under Section 48A of the Act though for enquiry under either section, Section 48A or 77A, it is mentioned to be a summary enquiry as contemplated under Section 34 of the Karnataka Land Revenue Act. Though the procedure mentioned under Rule 17 or Rule 26C of the Rules is the same procedure as the one contemplated under Section 34 of the Karnataka Land Revenue Act, one should not lose sight of the fact that the enquiry under Rule 26C is for the purposes of Section 77A for ascertaining fulfillment of the three conditions enumerated therein. As such the interpretation placed in the context of an enquiry under Rule 17 though is as provided under Section 34 of the Karnataka Land Revenue Act, cannot be very apt in the context of the provisions of Section 77A and Rule 26C. There cannot be any dispute about the fundamental requirements of one observing the principles of natural justice, recording the summary of evidence of the witnesses examined, for offering the witness examined in chief for cross examination by the opposite side, affording sufficient opportunity to each party to present their case and passing of reasoned order ultimately on examination of the

> evidence on record. But in a situation where there is no scope for observance of these aspects as in the instant case where the documents on record doesn't indicate anything positive with regard to compliance of the first two conditions enumerated in Section 77A, the question of offering the respondents for cross examination or even shutting out the applicants from examining the witnesses for the purposes of proving the existence of the first two conditions doesn't arise. What is not in existence and is not borne out on record in respect of an accomplished fact and of a past event cannot be made good by means of oral evidence at the time of an enquiry for the purposes of Section 77A of the Act."

16. In a later decision, the full Bench of this Court in ***Lokayya Poojary and another v. State of Karnataka and others : ILR 2012 KAR 4345,*** this Court has held as under:

> "16. Interestingly, as in the case of Rule 17, for conducting enquiry, the procedure prescribed under Section 34 of the Karnataka Land Revenue Act, 1964, is not made applicable to enquiry under Section 77-A of the Act. In an enquiry under Section 77-A read with Section 26-C, the question of the authority going into the question whether the land in question is a tenanted land or not, would not arise, which question, the Tribunal constituted under the Act alone is competent to go into under Section 48 of the Act. No such power or jurisdiction has been conferred under Section 77-A on the Deputy Commissioner or the Assistant

Commissioner. The enquiry contemplated under Section 77-A is to be confined only to the following:

(1) Whether the person who has made an application under Section 77-A was in actual possession and cultivation of any land before the first day of March, 1974;

(2) Being entitled to be registered as occupants of such land under Section 45 or 49, has failed to apply for registration of occupancy rights in respect of such land under sub-Section (1) of Section 48-A within the period specified therein. In other words, if such an application had been filed, which claim is adjudicated upon by the Tribunal and if it is negatived, then such a person is not entitled to file an application under Section 77-A;

(3) Whether such a person is continued to be in actual possession and cultivation of such land on the date of commencement of the Karnataka Land Reforms Amendment Act, 1977.

17. Proviso makes it clear that the land so granted together with the land already held by such person shall not exceed 2 Hectares of 'D' class of land or its equivalent thereto. In other words, if the applicant held land in excess of 2 Hectares of 'D' Class of land or its equivalent thereto, he was not entitled to grant of land under Section 77-A of the Act, even if he was a tenant of the land in question prior to 01.03.1974 and continued to be in possession of the land and cultivating the land till the introduction of Section 77-A of the Act. Though such land vested with the Government as on 01.03.1974, he was not entitled to grant of land.

18. If we keep the above principle and the Legislative intent in mind, what emerges is while

amending the Act and introducing Section 77-A, the Legislature was very clear in its mind that by the said amendment, they were not intending to have one more forum for registration of occupancy rights under Section 45 of the Act. These two provisions were intended to cover two independent fields. Similarly, if a person has availed the benefit of Section 45-A and lost the battle, Section 77-A was not meant to give him one more opportunity, a second innings. The power to grant occupancy rights under Section 45 was vested with a quasi-judicial authority like a Tribunal. On the day the amendment introducing Section 77-A came into force, the Tribunals were in existence and functioning. The intention of the Legislature was not to give them jurisdiction to decide the claims under Section 77-A. A separate machinery is now contemplated under Section 77-A. The enquiry that was contemplated under Section 45 is totally different from the enquiry under Section 77-A, as is clear from the fact that corresponding to Section 77-A Rule 26(c) was enacted and the claim under Section 77-A had to be adjudicated in terms of the procedure prescribed under Section 26(c). A reading of Section 77-A makes it very clear this provision has a limited application. It applies to only certain cases, It is necessary to bear in mind the context in which Section 77-A is introduced. This provision finds a place in Chapter IV, whereunder as per Section 77 a provision is made for disposal of surplus lands on such land being vested with the Government and also other lands which are vested in the State. Therefore, in a proceeding under Section 77-A, the enquiry that was contemplated under Section 48-A is excluded. This is a provision that enables a person who is in occupation of a land, of which he was a tenant and continues to be

> in possession as a tenant to apply for grant of such land, if he had failed to make an application for grant of occupancy rights within the time stipulated. Such a person is given an opportunity to make an application for grant of land provided he continues to cultivate the land and he was not holding land in excess of 2 Hectares of land. Therefore, in the said proceedings the question whether the said land is a tenanted land or not, cannot be gone into, as is clear from the language used in Section 77-A. The entire enquiry contemplated under Section 77-A is in respect of a land, which is vested in the State Government under Section 44, as on 01.03.1974. It should be an undisputed fact. If the said fact is disputed, then Section 77-A has no application. The jurisdiction under Section 77-A is attracted only in respect of undisputed tenanted lands. Vesting of the land as on 01.03.1974 with the Government, which fact is not in dispute, is a condition precedent for application of Section 77-A."
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> (emphasis added)

17. In the present case, the land records do not reflect that respondent No.1 was in occupation of the subject lands. The learned Single Judge had clearly erred in holding that the RTC extracts produced indicated that respondent No.1 along with the said Gangadharaiah, were in cultivation of the land under the landlord Kare Rangappa. On the appointed date i.e., 01.03.1974 does not reflect that respondent No.1 was a tenant under Kare Rangappa or was in cultivated possession of the subject land. As

noted above, the certified copy of the RTC extracts reflect the name of Gangadharappa under Column 12(2) for the years 1971-72 to 1976-77. The name of respondent No.1 appears along with Gangadharappa under Column 12(2) in the year 1977-78. The report of the Revenue Inspector also does not establish that respondent No.1 was in cultivation of the land in question on the appointed date.

18. The sons of late Thimmaiah (H.T. Gangadharaiah and appellant Nos.3 and 4) had deposed that they were in cultivation of the subject land after execution of the sale deed. However, the land records reflect the name of Gangadharappa also prior to 1981-82. However, there could not be any material to determine whether respondent No.1 was cultivating the land as a tenant under Karerangappa during the relevant year and thereafter. In view of the above, we are unable to concur with the decision of the learned Single Judge to interfere with the orders passed by the Assistant Commissioner and the KAT, which were impugned in the WP.No.37713/2016.

19. The appeal is accordingly allowed and the impugned order is set aside.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE

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