

IN THE HIGH COURT OF KARNATAKA AT BENGALURU  
THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**WRIT PETITION NO.17842 OF 2019(SC-ST)**

**Dated:09-07-2021**

SMT. DEVAMMA and Others vs. DEPUTY COMMISSIONER and Others

**ORDER**

The captioned writ petition is filed challenging the order passed by the respondent No.1/Deputy Commissioner who has allowed the appeal and set aside the order passed by the respondent No.2/Assistant Commissioner ordering resumption of petition lands in favour of the petitioners/grantees.

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

3. The Apex Court in the case of ***Nekkanti Rama Lakshmi's*** case while interpreting Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes(Prohibition of Transfer of Certain

Lands) Act, 1978, (for short "PTCL Act") had an occasion to examine the point of limitation wherein interested person can file appropriate application seeking annulment of sale as void under Section 4 of the PTCL Act. The Apex Court by reiterating the principles laid down in ***Chhedilal Yadav .vs. Hari Kishore Yadav*** and also in the case of ***Ningappa .vs. Deputy Commissioner and others*** was pleased to reiterate the settled position of law where Statute did not prescribe the period of limitation, the provisions of the Statute must be invoked within a reasonable time. The Apex Court was of the view that the authorities have to give due regard to the period of time within which action has to be taken by the interested person. The Apex Court was of the view that it is well within the discretion of the competent authorities to not to annul the alienations where there is inordinate delay in initiating action by the interested persons under Sections 4 and 5 of the PTCL Act. The Co-Ordinate Bench of this Court in W.P.No.50446/2012 disposed of on 24.1.2020 declined to entertain the application filed by the original grantee where there was a delay of ten years. This Court was of the view that the application itself was not maintainable since the same was not filed within a reasonable time. While recording the finding this Court was pleased to rely on the judgment of the Apex Court in ***Ningappa .vs. Deputy Commissioner and others***, where the Apex Court had declined to entertain the application which was submitted after nine years seeking restoration of land under Sections 4 and 5 of the PTCL Act. The judgment rendered by a Co-Ordinate Bench of this Court in W.P.No.50446/2012 is affirmed by the Division Bench of this Court in W.A.No.16/2021.

4. In the present case on hand, the husband of petitioner No.1 and father of petitioner Nos.2 to 5 namely Eraiah acquired right and title over the petition lands pursuant to grant made by the authorities on 22.09.1972. The petition land was granted subject to non-alienation clause of 15 years. The petitioners claim that original grantee died on 18.03.1991 and thereafter his legal representatives i.e., petitioner Nos.1, 4, 5 and respondent No.5 sold the petition land under registered sale deed dated 24.08.1993. The petitioners alleging that there is contravention of conditions of grant and also alienation is in violation of provisions of Section 4 and 5 of PTCL Act, sought for restoration of land by filing application in SC/ST.HSN No.14/2014-15. What emerges from the above said facts is that the grant is of the year 1972 and alienation has taken place in the year 1993 and the application came to be filed in the year 2014-15. There is a delay of 21 years.

5. Learned counsel appearing for the petitioners reiterating the grounds urged in the writ petition would contend before this Court that respondent No.1/Deputy Commissioner has not at all properly appreciated the facts and circumstances of the case. He would contend that the dictum laid down by the Hon'ble Apex Court in the case of ***Nekkanti Rama Lakshmi and Vivek M.Hinduja*** (*supra*) have no application to the present case on hand. He would submit to this Court that no reasons are assigned except citing the judgments rendered by the Hon'ble Apex Court.

He would submit to this Court that the respondent No.2/Assistant Commissioner has dealt with the materials on record and has rightly come to conclusion that there is clear violation of grant and no permission was obtained before alienating the petition land and therefore, the respondent No.2/Assistant Commissioner was justified in declaring the sale as null and void.

6. Learned counsel for the petitioners reiterating the grounds urged in the writ petition has placed reliance on the judgment rendered by the Division Bench of this Court in the case of ***Smt. P.Kamala vs. The State of Karnataka, Rep. by its Secretary, Revenue Department and Others*** and the order passed by the Co-ordinate Bench of this Court in ***Smt. Roopa vs. The State of Karnataka and Others***. Placing reliance on the order passed by the learned Single Judge, he would take this Court to the additional documents which are placed on record at Annexure-E. Learned counsel by placing reliance at paragraph 6 of the order passed by the learned Single Judge would vehemently argue and contend before this Court that though petition land was sold in the year 1993, the purchaser got his name mutated in the revenue records in the year 2007 and therefore, cause of action accrued in the year 2007 and therefore, the application filed by the petitioners is within reasonable time and these material aspects are not dealt with by the respondent No.1/Deputy Commissioner. Placing reliance on the judgment rendered by the Division Bench cited supra, he would submit to this Court that the purchasers have not raised any objections or plea regarding delay and laches before the

respondent No.2/Assistant Commissioner and therefore, the present petitioners had no occasion to explain the delay and therefore, he would submit to this Court that it is a fit case to remit the matter back to respondent No.2/Assistant Commissioner for fresh consideration. He would contend that the petitioners on the principles of ***audi alteram partem*** are entitled for an opportunity to offer an explanation in regard to delay and therefore, if the matter is remitted, petitioners would lead cogent evidence and offer explanation for having caused delay.

7. The second limb of argument addressed by the petitioners is that petitioner Nos.2 and 3 are not at all party to the sale deed and therefore, they being the daughters have legitimate right and are entitled to seek partition in the petition land and therefore, he seeks liberty insofar as petitioner Nos.2 and 3 are concerned to avail civil remedies in accordance with law. On these set of grounds, he would submit to this Court that the order passed by the respondent No.1/Deputy Commissioner is erroneous and no reasons are forthcoming in the order and the same is liable to be quashed by this Court.

8. Per contra, learned HCGP repelling the arguments canvassed by the learned counsel for the petitioners would submit to this Court that the facts in the present case on hand are squarely covered by the dictum laid down by the Hon'ble

Apex Court in the case of ***Nekkanti Rama Lakshmi and Vivek M.Hinduja*** (*supra*) and therefore, the order passed by the respondent No.1/Deputy Commissioner as per Annexure-C does not suffer from any illegality and therefore, would not warrant any interference at the hands of this Court.

9. Heard learned counsel for the petitioners and learned HCGP for respondent Nos.1 and 2. I have given my anxious consideration to the grounds urged in the writ petition. I have also carefully examined the judgment rendered by the Division Bench of this Court in the case of ***Smt. P.Kamala vs. The State of Karnataka*** (*supra*) and judgment rendered by the Co-ordinate Bench of this Court in ***Smt. Roopa vs. The State of Karnataka and Others*** (*supra*).

10. The points that would arise for consideration are as follows:

*"1) Whether the petitioners are entitled to invoke the provisions of Section 5 of Limitation Act to explain the inordinate delay caused in filing the application under Sections 4 and 5 of the PTCL Act seeking resumption of petition lands?*

*2) Whether the principles laid down by the Hon'ble Apex Court in the case of ***Nekkanti****

***Rama Lakshmi vs. State of Karnataka and Another, Vivek M.Hinduja vs. M.Aswatha and Jagadish vs. State of Karnataka***<sup>7</sup> would give a right to the grantee to offer an explanation for having brought action beyond reasonable time?

3) Whether the application filed by the petitioners under Sections 4 and 5 of the PTCL Act is not maintainable on account of inordinate delay?"

**Re: Point Nos.1 to 3:**

**Reasonable Period:**

11. The petitioners by placing reliance on the Division Bench judgment of this Court rendered in ***Smt. P.Kamala vs. State of Karnataka*** and also by placing reliance on the additional documents have taken a contention that the purchaser's name was mutated to the revenue records only in the year 2007 and therefore, the cause of action accrued in the year 2007. Therefore, an attempt is made before this Court by the petitioners to seek remand to enable the petitioners to offer an explanation in regard to delay caused in filing the application under Sections 4 and 5 of PTCL Act. The grounds urged by the petitioners needs to be examined by this Court in the light of the dictum laid down by the Hon'ble Apex Court in ***Jagadish vs. State of Karnataka, Nekkanti Rama***

**Lakshmi and Vivek M.Hinduja** (*supra*).

**12.** The Hon'ble Apex Court in the case of **Jagdish vs. State of Karnataka** (*supra*), while referring to **Satyan vs. Deputy Commissioner's** case was of the view that settled transactions cannot be permitted to be disturbed after long period of time. The Hon'ble Apex Court also had an occasion to deal with the application filed under Sections 4 and 5 of the PTCL Act. The relevant paragraph is extracted as under:

*"12. There are number of issues raised before us calling for the inter se play of the Inams Abolition Act and the SC & ST Act. We, however, do not see the need to examine them as, according to us, the appellant is disentitled to any relief on the short ground of having knocked the doors of the concerned authorities three decades after the SC & ST Act came into force. It is this very aspect which forms subject matter of debate in a number of judgments and finally in Satyan's case (*supra*), (they have been discussed Para 12 extracted hereinabove). It was recognized that there was no limitation of time prescribed but it should be exercised within a reasonable period of time. It is in that context that period of 20 years have been said to be too long a period for calling for interference by the concerned authorities. Leave the said period, in the present case, we are confronted with the factual situation of 30 years*



*period between the rights accruing and the exercise of rights. In the meantime, the lands have been developed by the private respondents who, according to us, is bona fide purchaser of the land and created infrastructure on the same. It does seem now an endeavour of the appellant to only extract some amount knowing fully well the kind of establishment which has come up on the land in question. We cannot be a part to such endeavour. We are, thus, of the view that in the conspectuous of the legal position discussed aforesaid and the facts referred to by us, the appellant is disentitled to any relief on this short ground of an inordinate delay in seeking to avail of their remedy in limine. Insofar as the other aspects raised in the present appeals are concerned, we are leaving the questions of law open since we are not required to comment on the same for adjudication of the present controversy."*

13. The Hon'ble Apex Court in the judgment cited supra has dealt with the voidable title of the transferee and gross inaction on the part of the grantee in not seeking restoration of lands. The Hon'ble Apex Court was of the view that if the transferee though would get voidable title is allowed to enjoy the property, on account of long delay, neither the authority *suo motu* nor the aggrieved party can seek restoration of the

lands.

14. What constitutes a reasonable period has been dealt with by the Hon'ble Apex Court in ***Nekkanti Rama Lakshmi and Vivek M.Hinduja*** (*supra*). The Hon'ble Apex Court in both the judgments has dealt with as to what would constitute a reasonable period.

15. If the facts of the present case are examined in the light of the ratio laid down by the Hon'ble Apex Court, the question that needs to be examined in the present case on hand is as to whether the petitioners can have recourse to the provisions of Limitation Act and offer an explanation in regard to inordinate delay caused in not initiating action under the provisions of Sections 4 and 5 of the PTCL Act. The principles laid down by the Hon'ble Apex Court in the judgment cited *supra* are founded on public policy and expediency. What could be gathered from the above cited judgments is that the Hon'ble Apex Court not only simply declared that the remedy is barred but that the title stands vested in favour of the transferee. The Hon'ble Apex Court was of the view that after reasonable period, both the right and remedy to seek restoration are lost.

16. The Doctrine of reasonable period as held in the case of ***Nekkanti Rama Lakshmi and Vivek M.Hinduja*** (*supra*) has to be understood and interpreted to the effect that

on account of inordinate delay if the application is moved beyond reasonable period, it would cut off not only grantee's right to bring an action under Sections 4 and 5 of the PTCL Act for resumption of the lands but would also vest the possessor with title i.e., a right would vest with the transferee who has acquired voidable title as held by the Hon'ble Apex Court in the case of **Jagdish vs. State of Karnataka** (*supra*). The judgments rendered by the Hon'ble Apex Court in the case of **Nekkanti Rama Lakshmi, Vivek M.Hinduja, Jagdish vs. State of Karnataka** and **Chhedi Lal Yadav** (*supra*) would clearly indicate that the Doctrine of reasonable period is not to punish the grantee who has neglected to assert his right but the same is propagated to protect those transferees who have maintained the possession of a property under registered document for a valuable sale consideration. Therefore, this Court is of the view that the grantee cannot revive his right by seeking liberty to explain the delay. Such a proposition would run contrary to what is laid down by the Hon'ble Apex Court in the judgments cited *supra*. Therefore, the Division Bench judgment relied by the petitioners in the case of **Smt. P.Kamala vs. The State of Karnataka** (*supra*) cannot be considered in the light of the judgment rendered by the Hon'ble Apex Court.

17. In terms of Articles 141 and 144 of the Constitution of India, the law declared by the Supreme Court of India is binding on all Courts and all authorities which are to act in aid of the law so declared. Therefore, the principle of reasonable

period explained by the Hon'ble Apex Court in the judgments cited supra has to be examined by the authorities while considering the application filed by the grantee seeking restoration of land under the provisions of Sections 4 and 5 of the PTCL Act. Therefore, the judgment of Co-ordinate Bench cited by the petitioners in ***Smt. Roopa vs. State of Karnataka*** (*supra*) is not in consonance with the principles laid down by the Hon'ble Apex Court and also the judgment rendered by the Division Bench in W.A.No.16/2021 wherein the application filed beyond nine years was held to be unreasonable and the order passed by the learned Single Judge was confirmed by the Division Bench. Therefore, I am of the view that since this Court is bound by the dictums laid down by the Hon'ble Apex Court, it is not necessary to refer to the judgments raised by the Co-ordinate Bench as well as by the Division Bench.

**Cause of Action:**

18. Though petitioners have tried to make out a case that cause of action arose in 2007 on the ground that the transferee got his name mutated in the year 2007 and therefore, cause of action accrued in the year 2007 cannot be acceded to. Petitioner Nos.1, 4, 5 and respondent No.5 have executed a registered sale deed on 24.08.1993 in favour of

respondent No.3. Since petitioners not only lost title but also delivered possession pursuant to sale deed in 1993, therefore, the alleged subsequent cause of action as alleged by the petitioners, for the first time, not in the pleadings but orally cannot be entertained.

19. In order to determine as to whether petitioners have brought in action seeking restoration of lands under Sections 4 and 5 of the PTCL Act, this Court has to ascertain when the right to sue first accrued since petitioners have tried to make out a case before this Court that the cause of action arose in 2007 when the transferee got his name mutated in the revenue records. There can be a little doubt that although cause of action may have arisen even on subsequent occasion, what is material for the purpose of computing the reasonable period is the date when the right to sue first accrued. The materials on record would indicate that the petitioners sold the petition land to respondent No.3 on 24.08.1993 and possession was also delivered. Therefore, the right to seek resumption would commence from the date of execution of sale deed. As the violation had already accrued on account of alienation contrary to grant conditions and also contrary to the provisions of Sections 4 and 5 of PTCL Act, this

Court is unable to accept the arguments canvassed by the learned counsel for the petitioners that the cause of action accrued in 2007. If the alienation has taken place in 1993, the application submitted by the transferee to effect changes in the katha cannot in strict sense be considered as invasion or denial of right of petitioners/grantees. Under mutation proceedings, the change of katha which is based on a registered document cannot be inferred as a threat to infringe the right of the petitioners. Therefore, the cause of action narrated by the petitioners appears to be illusory. Since the right to seek action had first accrued in 1993, the period to be computed has to be from the date of sale which is admittedly in the year 1993 and not 2007 when transferee sought change of katha. Therefore, the contentions raised by the petitioners in regard to cause of action has no substance and the same cannot be entertained at this stage.

20. The petitioners have filed restoration application before the respondent No.2/Assistant Commissioner in the year 2014-15. There is no explanation offered. Even in the writ petition, the petitioners have not whispered in regard to the compelling reasons which denied the petitioners in seeking an action under the provisions of Sections 4 and 5 of the PTCL Act. The petitioners have filed application seeking production of additional documents. However, to support the additional documents no foundation is laid. The additional documents produced as per Annexures-E and F are not at all relevant to decide the controversy between the parties. These documents would in no way come to the aid of the petitioners to overcome the Doctrine of

reasonable period. Even in the application, there is absolutely no whisper by the petitioners in regard to inordinate delay in bringing an action under the provisions of Sections 4 and 5 of the PTCL Act.

21. If the petitioners have lost their title, question of laying a foundation and offering an explanation in regard to delay cannot be entertained. The Hon'ble Apex Court has held that if an application is moved seeking restoration beyond reasonable period, the application itself is not maintainable. Hence, the question of affording opportunity to the petitioners to explain the delay would be a futile exercise and if permitted, the same would amount to abuse of process.

22. The judgment rendered by the Hon'ble Apex Court in the case of ***Jagadish vs. State of Karnataka, Nekkanti Rama Lakshmi and Vivek M.Hinduja*** (*supra*) are squarely applicable to the present case on hand. There is a delay of 21 years. Since there is a gross delay and inaction on the part of the petitioners in seeking restoration of petition lands, the respondent No.1/Deputy Commissioner has rightly declined to entertain the application filed by the petitioners herein. Therefore, this Court is of the view that the petitioners cannot revive their right by seeking liberty to explain the delay.

23. The grounds urged in the writ petition and the

contentions raised while arguing can be entertained only in those cases where the action is sought seeking resumption within reasonable time. All such contentions can be examined by the authorities only in those cases where applications are filed seeking restoration within a reasonable period and not in cases where the action is sought beyond reasonable time.

24. For the reasons stated supra, the point Nos.1 and 2 formulated above are answered in the negative and point No.3 is answered in the affirmative. Hence, I pass the following:

ORDER

The writ petition is devoid of merits and the same is accordingly dismissed.