

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE B. VEERAPPA

WRIT PETITION No.27947/2011(KLR-RR/SUR)

Dated:09-03-2020

MR. RAMAKRISHNA M vs. STATE OF KARNATAKA AND ANOTHER

O R D E R

This is an unfortunate case, where the Deputy Commissioner has initiated the proceedings under the provisions of Section 136(3) of the Karnataka Land Revenue Act, 1964 ('the Act' for short) after lapse of more than 48 years. The petitioner has filed the present writ petition to quash the impugned order dated 1.4.2011 made in RRT(2)(NA) CR 501/2009-10 by the 2<sup>nd</sup> respondent – Special Deputy Commissioner.

I. BRIEF FACTS OF THE CASE

2. It is the case of the petitioner that Rule-41 to 43M of the Mysore Land Revenue Code, 1888 got substituted by Notification No.RD 4 LAD 1960 dated 19.5.1960 and the 'political sufferer' also got included in the category of persons entitled for grant of land by the Government. Accordingly, after considering the material on record, the Assistant Commissioner granted 6 acres of land in Sy.no.1 of Arebinnamangala village, Jala Hobli, Bangalore North taluk

(formerly Devanahalli taluk) to one Sri M. Ramamurthy, who was political sufferer vide Grant Order No.LND.SR/1-551/1960-61 dated 14.11.1962. Totally, 16 persons were granted 6 acres of land each in the said Sy.No.1. All the revenue records were entered in the name of the said Ramamurthy. After the death of said Ramamurthy, his wife – Kamamma succeeded to his estate and her name entered in the revenue records. Thereafter, Smt. Kamamma w/o Ramamurthy sold 3 acres of land to Mr. Purushotham and remaining 3 acres of land in favour of Smt. Yashodamma under two registered sale deeds dated 23.2.1983. The said Purushotham and Yashodamma, in turn sold their respective 3 acres of land in favour of Muniswamigowda, the father of the present petitioner under the two registered sale deeds dated 17.3.1989 for valuable consideration. During the life time of said Muniswamigowda, he applied for conversion of 4 acres of land into non-agricultural/industrial purposes. Accordingly, the Deputy Commissioner exercising the powers under the provisions of Section 95 of the Act, has converted 4 acres of land in Sy.No.1 for non-agricultural/industrial purposes by Office Memorandum dated 25.11.1989 as per Annexure – 'P'. Subsequently, the said Muniswamigowda sold 4 acres of land to one Lt. Col. A. Gopalan under the registered sale deed dated 6.12.1989.

3. It is further case of the petitioner that the said Lt. Col. A. Gopalan (Retd.) availed loan from the Karnataka State Financial Corporation ('KSFC' for short) to set up an industry. Lt. Col. A. Gopalan defaulted in paying loan

amount and therefore, KSFC took over 4 acres of land and sold it to one Sharadamma under the registered sale deed dated 17.3.2004. Thereafter, Sharadamma sold the said property to Y. Balaraju under the registered sale deed dated 27.12.2004.

4. It is further case of the petitioner that his father - Muniswamigowda died on 7.2.1998 leaving behind him (petitioner) to succeed to his estate. The revenue entries with respect to 2 Acres of land has been entered in the name of the petitioner in MR No.12/2004-05. The Tahasildar issued further mutation of the said 2 acres of land in the name of the petitioner in MR No.2/2007-08 by showing conversion entry of the remaining extent of the land as per Annexure-U.

5. When things stood thus, the 2<sup>nd</sup> respondent - Special Deputy Commissioner initiated the proceedings under the provisions of Section 136(3) of the Act on the basis of the report of the Tahasildar dated 24.12.2008. The petitioner in response to the notice issued by the Deputy Commissioner filed detailed objections on 7.1.2010 and produced certified copies of Register of *Darkasth*, saguvali chit extract, Record of Rights; several sale deeds;

certified copies of Mutation Register Extract and RTC extracts; copy of the Official Memorandum dated 25.11.1989 issued by the Deputy commissioner relating to conversion of land for agricultural/industrial purpose etc., and contended that his father – Muniswamygowda has got converted 4 acres of land out of 6 acres on 25.11.1989 and retained 2 acres of land and prayed for dropping of the Proceedings. The Deputy Commissioner without conducting any enquiry as contemplated under the provisions of the Act, by the impugned order has cancelled *khatha* in M.R.No.2/2007-08 dated 31.7.2007 and vested 6 acres of land in the State Government. Hence, the present writ petition is filed for the relief sought for.

6. The respondent – State Government has not filed statement of objections.

7. I have heard the learned counsel for the parties to the *lis*.

## II. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PETITIONER

8. Sri M.A. Sebastian, learned counsel for the petitioner contended with vehemence that the impugned order passed by the 2<sup>nd</sup> respondent – Special Deputy

Commissioner exercising the powers under the provisions of Section 136(3) of the Act vesting the land of the petitioner in the State Government after lapse of more than 48 years, is unreasonable and cannot be sustained. He would further contend that out of 6 acres purchased by the petitioner's father under the two registered sale deeds, 4 acres already converted for non-agricultural purposes as per the order of the Deputy Commissioner dated 25.11.1989 and when the proceedings were initiated, the land was not agricultural land and the Deputy Commissioner has no power to initiate the proceedings under the provisions of Section 136(3) of the Act in respect of the converted land. On that ground also, the impugned order is liable to be quashed.

- Learned counsel for the petitioner would further contend that on 14.11.1962, the Assistant Commissioner granted 6 acres of land in Sy.No.1 of Arebinnamangala village to Ramamurthy, who was political sufferer and after his death, in the year 1983, his wife sold 3 acres of land to Purushotham and remaining 3 acres of land to Yashodamma and they in turn sold the land in favour of petitioner's father under the two registered sale deeds dated 17.3.1989. Throughout from 1962 till today, different sale deeds executed by different persons. The revenue entries initially stood in the name of the original grantee and

subsequently transferred in favour of his wife Kamalamma and thereafter in the names of Purushotham and Yashodamma and thereafter in the name of the petitioner's father on the basis of the registered sale deeds. The said materials have not been considered by the 2<sup>nd</sup> respondent in the proper perspective in the impugned order.

9. Learned counsel for the petitioner further contended that though the present petitioner filed objections before the Deputy Commissioner on 7.1.2010 alongwith the relevant documents of conversion etc., the 2<sup>nd</sup> respondent – Special Deputy Commissioner erroneously proceeded to vest the land in the State Government, which is impermissible. On that ground also, the impugned order is liable to be quashed. Therefore, he sought to allow the writ petition.

### III. ARGUMENTS ADVANCED BY THE LEARNED AGA

10. Per contra, Smt. M.C. Nagashree, learned AGA sought to justify the impugned order passed by the 2<sup>nd</sup> respondent and contended that inspite of the notice issued by the 2<sup>nd</sup> respondent to the petitioner, the petitioner has not produced any relevant documents to show that land

was granted to Ramamurthy and others (total 16 persons) free of cost in the year 1962. She would further contend that records are also not available to show that land was granted to said Ramamurthy and others. She would further contend that on the basis of the report submitted by the Tahasildar dated 24.12.2008 and the Office Note issued by the Secretary, Karnataka Public Lands Corporation, the proceedings were initiated by the 2<sup>nd</sup> respondent. In the absence of any relevant documents produced by the petitioner and in the absence of records, the 2<sup>nd</sup> respondent – Special Deputy Commissioner is justified in passing the impugned order vesting 6 acres of land in Sy.No.1(A) of Arebinnamangala village in the State Government. Therefore, she sought to dismiss the writ petition.

#### IV. POINT FOR DETERMINATION

11. In view of the rival contentions urged by the learned counsel for the parties, the only point that arises for consideration in the present writ petition is:

*Whether the 2<sup>nd</sup> respondent - Special Deputy Commissioner is justified in initiating the proceedings under the provisions of Section 136(3) of the Karnataka Land Revenue Act, 1964 after lapse of more than 48 years, that too when the land in question was converted by the very Special Deputy Commissioner on 25.11.1989 into non-*

*agricultural/industrial purposes, in the facts and circumstances of the case ?*

V.

CONSIDERATION

12. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record carefully.

13. It is the specific case of the petitioner that the Assistant Commissioner granted 6 acres of land in Sy.No.1 of Arebinnamangala village, Jala Hobli, Bangalore North taluk (formerly Devanahalli taluk) to one Sri M. Ramamurthy, who was political sufferer vide Grant Order No.LND.SR/1-551/1960-61 dated 14.11.1962 and saguvali chit also came to be issued in his favour. Totally, 16 persons were granted 6 acres of land each in the said Sy.No.1. All the revenue records were entered in the name of the said Ramamurthy. After the death of said Sri Ramamurthy, his wife – Kamamma succeeded to his estate and her name entered in the revenue records. Thereafter, Kamamma w/o Ramamurthy sold 3 acres of land in favour of one Purushotham and another 3 acres of land in favour of Yashodamma by executing two separate registered sale deeds dated 23.2.1983. It is also not in



dispute that the said Purushotham and Yashodamma, in turn sold their respective 3 acres of land in favour of Muniswamigowda, the father of the petitioner under two registered sale deeds dated 17.3.1989 for valuable consideration. It is also not in dispute that during the life time of said Muniswamigowda, he applied for conversion of 4 acres of land into non-agricultural/industrial purposes and the Deputy Commissioner exercising the powers under the provisions of Section 95 of the Act, has converted 4 acres of land for non-agricultural/industrial purposes on 25.11.1989. The said order dated 25.11.1989 passed by the Deputy Commissioner has reached finality. It is also not in dispute that the said 4 acres of converted land was sold by the father of the petitioner in favour of Lt. Col. A. Gopalan under the registered sale deed dated 6.12.1989 for valuable consideration of Rs.1,40,000/-.

14. It is also not in dispute that Lt. Col. A. Gopalan along with one V. Rajeev inter alia created equitable mortgage by way of deposit of title deeds of the aforesaid land in favour of the KSFC as collateral security for repayment of the loan of Rs.11,00,000/- and an additional term loan of Rs.3,00,000/- borrowed by M/s Ganesh Chamber Bricks represented by its partners Lt. Col. A. Gopalan (retd.) and Sri V. Rajeev. Due to the non-payment of loan installments as agreed upon, the KSFC initiated the proceedings under the provisions of Section 29 of the State Financial Corporations Act, 1951 and taken over possession of the mortgaged/hypothecated assets of the firm on 13.10.2010. Subsequently, the KSFC sold the

said 4 acres of converted land to K. Sharadamma vide registered sale deed dated 17.3.2004 for valuable consideration of Rs.11,00,000/-. The said sale made by the KSFC has reached finality. Thereafter, Sharadamma sold the said property to Y. Balaraju under the registered sale deed dated 27.12.2004.

15. It is an admitted fact that the KSFC is undertaken by the State Government. When things stood thus, very strangely, the 2<sup>nd</sup> respondent – Special Deputy Commissioner initiated the proceedings under the provisions of Section 136(3) of the Act after lapse of more than 48 years on the basis of the report of the Tahasildar dated 24.12.2008 and on the basis of the Office Note issued by the Secretary, Karnataka Public Lands Corporation. The petitioner in response to the notice issued by the 2<sup>nd</sup> respondent – Special Deputy Commissioner filed detailed objections on 7.1.2010 contending that his father – Muniswamygowda has got converted 4 acres of land out of 6 acres as per Annexure-P dated 25.11.1989 and retained 2 acres of land and prayed for dropping of the Proceedings. Along with his objections, the petitioner produced the following documents before the 2<sup>nd</sup> respondent – Special Deputy Commissioner:

- (a) Certified copy of Register of Darkasth for lands for occupation and action taken issued by the Assistant Commissioner, Doddaballapur Sub Division, Doddaballapur.
- (b) Certified copy of the Register of Darkasth for lands for cultivation issued by the Tahasildar, Devanahalli taluk.
- (c) Copy of the Saguvali Chit Register Extract
- (d) Certified copy of the Index of land
- (e) Certified copy of the Record of Rights – 3 Nos.
- (f) Copy of the sale deed dated 23.2.1983 (Document No.1634)
- (g) Copy of the sale deed dated 23.2.1983 (Document No.1635)
- (h) Copy of the sale deed dated 17.3.1989 (Document No.8418)
- (i) Copy of the sale deed dated 17.3.1989 (Document No.8419)
- (j) Certified copy of the Mutation Register Extract in MR 3 and 4/1988-89.
- (k) Copy of the Official Memorandum (conversion order) dated 25.11.1989 issued by the Deputy Commissioner, Bangalore District.
- (l) Copy of the RTC Extracts for the years 2001-02 to 2008-09 – 8 Nos.

16. The 2<sup>nd</sup> respondent – Special Deputy

Commissioner without conducting any enquiry as contemplated under the provisions of the Act, by the impugned order has cancelled *khatha* standing in the name of the petitioner in M.R.No.2/2007-08 dated 31.7.2007 and vested 6 acres of land in the -State Government. In the impugned order, in the beginning, while narrating the 'subject' in brief, though it is stated that the matter relating to initiation of the proceedings under the provisions of Section 136(3) of the Act in respect of land 2 Acres of land in Sy.No.1(A), but unfortunately in the operative portion of the impugned order, it is stated that 6 acres of land in Sy.No.1(A) is vested in the State Government. It is unfortunate that though along with the objections, the petitioner has produced certified copies of Register of *Darkasth*, saguvali chit extract, Index of Land and Record of Rights; several sale deeds; certified copies of Mutation Register Extract and RTC extracts; copy of the Official Memorandum dated 25.11.1989 issued by the Deputy commissioner relating to conversion of land for agricultural/industrial purpose etc., the Deputy Commissioner proceeded to hold that no documents are produced by the petitioner and come to the conclusion that the grant was false and proceeded to pass the impugned order.

17. It is the specific case of the petitioner that the jurisdictional Assistant Commissioner has granted 6 acres

each in Sy.No.1 of Arebinnamangala village, Jala Hobli, Bangalore North taluk in favour of one Mr. Ramamurthy and 15 others who were political sufferers vide grant order No.LND-SR/1-551/1960-61 dated 14.11.1962. Admittedly, the Deputy Commissioner has not initiated any proceedings against the other 15 political sufferers, in whose favour the land to an extent of 6 acres each was granted along with one Mr. Ramamurthy, under whom the petitioner is claiming the rights in respect of the property in question and there is no whisper in the entire impugned order to that effect, which clearly depicts that the Deputy Commissioner has initiated the proceedings under Section 136(3) of the Act by pick & choose method according to his own whims and fancies, which is in violation of Articles 14 and 21 of the Constitution of India. On that ground alone, the impugned order is liable to be quashed.

18. It is well settled that in the absence of any limitation prescribed under the Karnataka Land Revenue Act, it is the duty of the authorities concerned to initiate the proceedings within a reasonable period. Admittedly in the present case, the proceedings are initiated after lapse of more than 48 years and the same cannot be sustained. My view is

fortified by the Hon'ble Supreme Court in the case of *Chhedi Lal Yadav v, Hari Kishore Yadav* reported in (2018)12 SCC 527, wherein it is held that the actions must be taken within the reasonable time, when no period of limitation specified and even while dealing with beneficial legislations, rights accrued by third persons cannot be ignored lightly where no period of limitation prescribed and actions initiated after delay. In the said Judgment, the Hon'ble Supreme Court held at paragraphs 9 to 14 as under:

*“9. The learned counsel appearing for the appellants vehemently submitted that the delay must be overlooked because the Act is a beneficial piece of legislation intended to bring relief to farmers who had been dispossessed during the proscribed period. The reliance was placed on a judgment of this Court in *New India Assurance Co. Ltd. v. C.Padma [New India Assurance Co. Ltd. v.C. Padma, (2003) 7 SCC 713 : 2003 SCC (Cri) 1709]*, where this Court held that in a motor accident which took place on 18-12-1989, a claim petition barred by time but filed on 2-11-1995, after limitation itself was removed from the statute was maintainable. This Court held that there could be no resort to Article 137 of the Limitation Act, 1963 even though no period of limitation was prescribed. Accordingly, the Court held that the claim petition could not be rejected at the threshold on the ground of*

*limitation, after the deletion of sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 which had provided a period of six months. This view was taken having regard to the purpose of the statute. We, however, find that the judgment relied on has no application to the present case. It is a settled law where the statute does not provide for a period of limitation, the provisions of the statute must be invoked within a reasonable time.*

10. *In Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edn., “reasonable time” is explained as follows:*

*“That is a reasonable time that preserves to each party the rights and advantages he possesses and protects each party from losses that he ought not to suffer.”*

*Thus, time must be reckoned reasonably, not only in order to preserve rights and advantages a party possesses, but equally to protect each party from the losses he ought not to suffer. Thus, whether an action has been taken within a reasonable time, must also be viewed from the point of view of the party who might suffer losses.*

11. *In the instant case, we find that the High Court had observed as follows:*

*“The auction-sale took place in 1942, the application for restoration of*

*the lands was first made in 1975 and the appeal from it was dismissed for default in 1983. In the meanwhile, the disputed lands changed hands twice and were in the possession of the appellant-writ petitioners from 1962 and 1986. Such a long-settled position could only be upset for some very compelling reasons and on making out an extremely strong case for restoration of the appeal. There is nothing on record to suggest anything remotely like that. Secondly, the action of the Additional Collector in restoring the appeal even without any notice to the appellant-writ petitioners was clearly illegal and in contravention of Sections 4 and 5 of the Act.”*

*The High Court was clearly right in the view it had taken.*

*12. It is argued on behalf of the appellants that power of the Additional Collector for restoration of lands could have been exercised suo motu and since no limitation was prescribed for exercise of such power, the delay in this case may be overlooked. This submission presupposes that where the power can be exercised suo motu, such exercise may be undertaken at any time. The submission is directly contrary to a decision*



*of this Court in Collector v. D. Narsing Rao [Collector v. D. Narsing Rao, (2015) 3 SCC 695 : (2015) 2 SCC (Civ) 396] where this Court affirmed the view [Collector v. D. Narasing Rao, 2010 SCC OnLine AP 406 : (2010) 6 ALD 748] of the Andhra Pradesh High Court. Para '17' of the judgment reads as follows: (D. Narsing Rao case [Collector v. D. Narsing Rao, (2015) 3 SCC 695 : (2015) 2 SCC (Civ) 396] , SCC p. 706, para 17)*

*"17. ... that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law."*

*Thus, we have no hesitation in rejecting this contention.*

*13. In our view, where no period of limitation is prescribed, the action must be taken, whether suo motu or on the application of the parties, within a reasonable time. Undoubtedly, what is reasonable time would depend on the circumstances of each case and the purpose of the statute. In the case before us, we are clear that the action is grossly delayed and taken beyond reasonable time, particularly, in view of the fact that the land was transferred several times during this period, obviously, in the*

*faith that it is not encumbered by any rights.*

*14. We are of the view that merely because the legislation is beneficial and no limitation is prescribed, the rights acquired by persons cannot be ignored lightly and proceedings cannot be initiated after unreasonable delay as observed by this Court in *Situ Sahu v. State of Jharkhand*[*Situ Sahu v. State of Jharkhand, (2004) 8 SCC 340*].*

19. Admittedly, in the present case, the Assistant Commissioner granted 6 acres of land in Sy.No.1 of Arebinnamangala village to Ramamurthy, who was political sufferer, in the year 1962 and after his death, in the year 1983, his wife sold 3 acres of land to Purushotham and remaining 3 acres of land to Yashodamma and they in turn sold the land in favour of petitioner's father on 17.3.1989. Throughout from 1962 till today, different sale deeds executed by different persons. The revenue entries initially stood in the name of the original grantee and subsequently transferred in favour of his wife - Kamamma and thereafter in the names of Purushotham and Yashodamma and thereafter in the name of the petitioner's father on the basis of the registered sale deeds. Conversion order also came to be passed by the very Special Deputy Commissioner, exercising the powers under Section 95 of the Act on 25.11.1989. In spite of all these aspects and also ignoring the conversion order passed by the very Deputy Commissioner and several documents produced by the petitioner along with the objections,

the Deputy Commissioner proceeded to initiate the proceedings under Section 136(3) of the Act, which is impermissible.

20. It is well settled that the authorities under different enactments under the Government are under constitutional duty coupled with power. Every public servant is a trustee of the society and in all facets of public administration, every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in the public administration. A public servant entrusted with duty and power to implement constitutional policy under Articles 14, 21 and 300A and all inter-related directive principles of State policy under the Constitution, should exhibit transparency in implementation and be accountable for due effectuation of constitutional goals.

21. Admittedly in the present case, the 2<sup>nd</sup> respondent – Special Deputy Commissioner ignored the several documents produced by the petitioner along with the objections and he has not exhibited transparency while exercising the powers under the provisions of Section 136(3) of the Act and on that ground also, the impugned

order is liable to be quashed.

VI.

CONCLUSION

22. For the reasons stated above, the point raised in the present writ petition has to be answered in the negative holding that the 2<sup>nd</sup> respondent - Special Deputy Commissioner is not justified in initiating the proceedings under the provisions of Section 136(3) of the Karnataka Land Revenue Act, 1964 after lapse of more than 48 years, that too when the land in question was converted by the very Special Deputy Commissioner on 25.11.1989 into non-agricultural/industrial purposes, in the facts and circumstances of the case and therefore, the impugned order cannot be sustained and liable to be quashed.

23. Accordingly, the Writ Petition is allowed. The impugned order passed by the 2<sup>nd</sup> respondent - Special Deputy Commissioner made in RRT(2)(NA)CR 501/2009-10 dated 1.4.2011 as per Annexure - 'X' is hereby quashed.

Rule issued is made absolute.