

Krishnappa Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Feb-17-2020

Judge : B.Veerappa

Appeal No. : WP 13029/2015

Appellant : Krishnappa

Respondent : The State Of Karnataka

Advocate for Pet/Ap. : Sri. K.A.Ariga

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE17H DAY OF FEBRUARY, 2020 BEFORE THE HON' BLE MR. JUSTICE B. VEERAPPA WRIT PETITION No.13029/2015(KLR-RR/SUR) BETWEEN: KRISHNAPPA S/O LATE MUNISHAMAPPA AGED ABOUT66YEARS R/O AMRUTHA HALLI YELAHANKA HOBLI BANGALORE NORTH TALUK-560092 ...PETITIONER (BY SRI K. A. ARIGA, ADVOCATE) AND:

1. . THE STATE OF KARNATAKA REPRESENTED BY ITS PRINCIPAL SECRETARY REVENUE DEPARTMENT, VIDHANA SOUDHA, BANGALORE-560001. 2 . DEPUTY COMMISSIONER, BANGALORE DISTRICT, BANGALORE-560009. 3 . ASSISTANT COMMISSIONER BANGALORE NORTH SUB DIVISION DR. B. R. AMBEDKAR VEEDHI BANGALORE-560052 2 4 . SPECIAL DEPUTY COMMISSIONER BANGALORE NORTH TALUK BANGALORE-560001. 5 .

TAHASILDAR BANGALORE NORTH TALUK AND ADDL. TALUK BANGALORE-560009. RESPONDENTS (BY SRI Y.D. HARSHA, ADDITIONAL GOVERNMENT ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE

ORDER

DATED 10.11.2011 AT ANNEXURE-A PASSED BY THE RESPONDENT-4 IN EXERCISE OF POWER UNDER SECTION 136(3) OF KARNATAKA LAND REVENUE ACT 1964 ETC. THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This is a classic case of the victimization of the petitioner by the dual stand taken by the Government Authorities i.e., the Assistant Commissioner under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 and the Deputy Commissioner under the provisions of Section 136(3) of the Karnataka Land Revenue Act, 1964, is before this Court, seeking for a writ of certiorari to quash the Order dated 10.11.2011 made in RRT/(2)N(A)/CR/31/ 2008-09 passed by the 4th respondent-Special Deputy Commissioner, in exercise of power under Section 136(3) of the Karnataka Land Revenue Act, 1964, directing the authorities to remove the entries made in the name of the petitioner in respect of Sy.No.74/313 measuring 2 acres of Bandikodigehalli, Jala Hobli, Bengaluru North Taluk. I. FACTS OF THE CASE:

2. It is the case of the petitioner that the land bearing Sy.No.74/313 measuring 2 acres situated at Bandikodigehalli, Jala Hobli, Bengaluru North Taluk, was granted in favour of one Nagamma, the grand mother of the petitioner, on 04.08.1962 in No.LND161-62, with a condition that the land should not be alienated for a period of ten years from the date of the grant. On 21.05.1969, before expiry of seven years, Smt.Nagamma-grantee sold the said land, contrary to the conditions of grant under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. Thereafter, Nagamma filed an application under Section 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition

of Transfer of Certain Lands) Act, 1978, before the 3rd respondent- Assistant Commissioner for restoration of the land and to declare that the sale deed dated 21.05.1969 executed by her, as null and void. The Assistant Commissioner, after hearing the parties, by the Order dated 26.09.1988 allowed the application, declared that the sale deed dated 21.05.1969 executed by Nagamma is in violation of the provisions of the Karnataka Scheduled Castes Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, as null and void and restored the land in favour of the legal representatives of the said Nagamma. The said Order dated 26.09.1988 passed by 5 the Assistant Commissioner has reached finality. In spite of the said Order, the purchaser did not vacate the land. Therefore, the Assistant Commissioner, by the Order dated 15.02.1992, in exercise of the powers conferred under the provisions of Section 39(ii) of the Karnataka Land Revenue Act, 1964, directed the Tahsildar to take possession of the land and to restore the same to the legal representatives of Nagamma.

3. Subsequently, on 14.07.1992, the Assistant Commissioner issued an endorsement/order stating that the possession of the land in question has been handed over to the legal representative of Nagamma i.e., Sri Krishnappa-present petitioner, on 21.05.1992. The said order has reached finality. In the meanwhile, the petitioner being the legal representative of original grantee-Nagamma, filed an application before the 5th respondent-Tahsildar for change of khatha in respect of the land in question, along with affidavit dated 6 02.04.1991. Based on the said application and affidavit, the khatha was changed in the name of the petitioner. The RTC and mutation entry also was changed in the name of the petitioner in the year 1991- 92 in M.R.No.9/91-92. The revenue entries were made in the name of the petitioner from 1993-94 onwards, till 2005-06, as per Annexure-H, and the petitioner has been in possession and enjoyment of the land in question.

4. When things stood thus, very strangely, the Deputy Commissioner, initiated proceedings under the provisions of Section 136(3) of the Karnataka Land Revenue Act, 1964, and proceeded to pass the impugned Order canceling the entries made in favour of the petitioner, on the ground that the land was not granted to the petitioner by the Government and the entries made in his name unauthorizedly. Hence, the present writ petition is filed. 7

5. Though respondents have not filed objections to the writ petition, Sri Y.D.Harsha, learned Additional government Advocate, sought to justify the impugned Order.

6. I have heard the learned counsel for the parties to the lis. II. ARGUMENTS
ADVANCED BY LEARNED COUNSEL FOR THE PETITIONER7 Sri K.A.Ariga, learned counsel for the petitioner contended that the impugned Order passed by the 4th respondent-Deputy Commissioner in exercise of powers under the provisions of Section 136(3) of the Karnataka Land Revenue Act, 1964, is in utter violation of the principles of natural justice and the same is liable to be quashed. He further contended that, under the provisions of Section 136(3) of the Karnataka Land Revenue Act, 1964, the Deputy Commissioner cannot initiate proceedings after lapse of more than 50 years 8 and therefore, the impugned order is liable to be quashed on the ground of inordinate delay and laches. The notice served on the petitioner as alleged in the impugned order is not the address given before the Assistant Commissioner by the original grantee- Nagamma as well as the petitioner. So also, the Order passed by the Assistant Commissioner restoring the land in favour of the original grantee-Nagamma as well as the petitioner as per Annexures-B, C and E, respectively, clearly depicts that the address of Nagamma and the petitioner is Amruthahalli and not the address shown in the impugned Order passed by the Deputy Commissioner. Thereby, the Deputy Commissioner has not at all served notice to the original grantee or her legal representative- Krishnappa, whose name has been entered in the revenue records by the revenue authorities, in exercise powers under the provisions of Section 114 of the Indian Evidence Act during the course of official business. 9

8. He further contended that the Deputy Commissioner proceeded to record a finding that the petitioner has not produced any records to show that the land was a granted land. The grand mother of the petitioner is not the custodian of the original records. It is the Government who is the custodian of the original records and it is for the Government to verify and pass Orders after providing an opportunity of hearing to the petitioner. He further contended that according to the authorities, on the application filed by the original grantee/grand mother of the petitioner for restoration of the land under Section 4 of the Karnataka Scheduled

Castes Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, the Assistant Commissioner recorded a finding that the records confirms the grant vide No.LND161-62 dated 04.08.1962. The condition then imposed was that the land should not be alienated for 10 years from the date of the grant. As admitted by 10 the respondents, the sale has taken place on 21.05.1969, within a period of 7 years of the grant. Therefore, the sale deed executed by the original grantee-Nagamma, in favour of the purchaser is held as null and void and the Tahsildar was directed to take possession of the land, immediately, and restore the same in favour of the legal heirs of the original grantee since the original grantee was reported to have died two months back and ordered to restore the land in favour of the legal representative of the original grantee, i.e., the petitioner.

9. He further contended that, in one breath, the authorities held that the grant was confirmed and in another breath, held that the petitioner has not produced any records. The dual stand taken by the authorities is unsustainable. It is nothing but depriving the valuable rights of the petitioner in respect of the immovable property. He further contended that the 11 Assistant Commissioner passed the restoration order on 15.02.1992 in favour of the present petitioner. The Assistant Commissioner, issued the endorsement dated 14.07.1992 as per Annexure-E stating that the possession has been handed over to Krishnappa- petitioner herein, on 21.05.1992. All the documents produced before this Court clearly indicates that the petitioner is residing at Amruthahalli. In pursuance of the grant, the revenue entries are made in the name of the original grantee. Subsequently, after restoration, from the year 1994-95 till 2006-07, petitioners name is reflected in the revenue records, including mutation. At this belated stage, it is not open for the Deputy Commissioner to initiate proceedings under Section 136(3) of the Karnataka Land Revenue Act, 1964. Therefore, he sought to allow the writ petition. 12

III. ARGUMENTS ADVANCED BY LEARNED ADDITIONAL GOVERNMENT ADVOCATE FOR THE RESPONDENTS

10 Per contra, Sri Y.D.Harsha, learned Additional Government Advocate, sought to justify the impugned action of the Deputy Commissioner and contended that though the notice was issued, on seven dates the petitioner did not appear and the matter was adjourned. Therefore, the impugned order came to be passed on the ground that the petitioner failed to appear and prove that the land in question was a

granted land, and no records are available with the Tahsildar, in that regard. Therefore, he sought to dismiss the writ petition. IV. POINT FOR DETERMINATION¹¹ In view of the rival contentions urged by the learned counsel for the parties, the only point that arises for consideration is: Whether the Deputy Commissioner is justified in passing the impugned order initiating the proceedings under the provisions of Section 13 136(3) of the Karnataka Land Revenue Act, 1964, after lapse of more than 50 years, in the facts and circumstances of the present case?.

12. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record, carefully. V. DETERMINATION¹³ It is undisputed fact that on 04.08.1962, the jurisdictional revenue authorities granted land measuring 2 acres in Sy.No.74/313 situated at Bandikodigehalli, Jala Hobli, Bengaluru North Taluk, in favour of Nagamma-original grantee who is the grand mother of the present petitioner, with a condition that the land should not be alienated for a period of ten years from the date of the grant. It is also not in dispute that, in violation of the said condition, the original grantee sold the land in favour of one Laxmamma, on 21.05.1969. In view of the Karnataka Scheduled Castes Scheduled Tribes (Prohibition of 14 Transfer of Certain Lands) Act, 1978, came into force, Nagamma-original grantee, filed an application under Section 4 of the said Act for restoration of the land. The Assistant Commissioner, considering the entire material on record and after hearing both the parties, by the Order dated 26.09.1988, declared the sale deed dated 21.05.1969 as null and void. The said order reads as under: The petitioner has clearly stated the date of grant as 04.08.1962 and the records confirms the grant vide No.LND161-62 dated 04.08.1962. The condition then imposed was that the suit land should not be alienated for 10 years from the date of grant. As admitted by the respondent, the sale has taken place on 21.05.1969. This sale has taken place well within 7 years of the grant. The condition of non-alienation has been violated by the respondent and this attracts Section 4 of the Act. Therefore, declare the sale transactions dated 21.05.1969 in respect of the suit land as null and void. Further order 15 that the Tahsildar, Bengaluru North Taluk, should take the possession of the land immediately and then he should restore to the legal heir of the petitioner, who is reported to have died 2 months back, forthwith. In the

result, the petition is allowed. The land ordered to be restored to the legal representative of the petitioner.

14. The said Order passed by the Assistant Commissioner has reached finality. It is also not in dispute that, inspite of the above Order, the land was not restored. Subsequently, the Assistant Commissioner, by the Order dated 15.02.1992 in case No.KSC.ST.31/88-89, in exercise of powers under the provisions of Section 39(ii) of the Karnataka Land Revenue Act, 1964, passed the Order as under: By the Order No.KSC.ST.31/88-89 dated 26.9.88 of this Court the schedule land is to be restored to the petitioner as required under the Karnataka SCs/STs (PTCL) Act, 1978. Further as required under Section 39 of the 16 Karnataka Land Revenue Act, 1964, an eviction notice has since been served on the respondent. The respondent has not reported the vacation of the land. Therefore in exercise of the powers vested in me under Section 5(a) of the KSC.ST(PTCL) Act, 1978 read with Rule 3(6) of the Rules framed under the said Act and as provided in Section 39(ii) of the KLR Act do hereby take possession of the schedule land and order restoration of the same to Smt.Nagamma/his legal heir. Under Section 39(ii) of the KLR Act the Revenue Inspector, Jala Hobli, is deputed to remove any person including the respondent to vacate the land measuring 2 acres out of Sy.No.74 of Bandikodigehalli, Jala Hobli, Bengaluru North Taluk and put the petitioner/her LRs in possession of the property.

15. It is also not in dispute that the very Assistant Commissioner, issued endorsement dated 14.07.1992, to the effect that the possession of the land in Sy.No.74 measuring 2 acres of Bandikodigehalli, Jala Hobli, 17 Bengaluru North Taluk has been handed over to the L.R of Smt. Nagamma, i.e., Sri Krishnappa, (the present petitioner) on 21.05.1992.

16. It is also not in dispute that on the basis of the application along with affidavit for change of khatha, the revenue authorities accepted the application and changed the mutation in the name of the petitioner in M.R. No.9/1991-92 and entered petitioners name in the RTC for the years 1992-93 till 2005-06. Though the very grant was made on 04.08.1962, very strangely, the Deputy Commissioner proceeded to initiate proceedings under Section 136(3) of the Karnataka Land

Revenue Act, 1964, after lapse of more than 50 years. The very initiation of proceedings by the Deputy Commissioner is erroneous and contrary to the material on record. The documents produced before the Court including the Order passed by the Assistant Commissioner, clearly depicts that the grant was made on 04.08.1962 and 18 subsequently, alienation was made on 21.05.1969, within a period of seven years from the date of the grant. Therefore, the Assistant Commissioner, in exercise of powers under the provisions of Section 4 of the Karnataka Scheduled Castes Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, declared the sale deed dated 21.05.1969 as null and void and the land was restored in favour of the legal representatives of the original grantee on 26.09.1988.

17. It is undisputed fact that, while passing the order under the provisions of the Karnataka Scheduled Castes Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, the Assistant Commissioner, considering the original records, confirming the grant in No.LND161-62 dated 04.08.1962, restored the land in favour of the original grantee. Subsequently, the very Assistant Commissioner issued an endorsement dated 14.07.1992 stating that the possession of the land has 19 been handed over to the legal representative of the original grantee on 25.01.1992, i.e., Sri Krishnappa- present petitioner. Such being the case, the Deputy Commissioner cannot proceed after lapse of more than five decades, that is a more reasonable time that preserves to each party the rights and advantages of immovable property he possesses and protects each party from losses that he ought not to suffer. It is so because the law does not expect a settled thing to be unsettled, after lapse of long time. Though the notice was issued to the petitioner at different address, contrary to the address given before the Assistant Commissioner, the fact remains that the Deputy Commissioner cannot initiate proceedings under Section 136(3) of the Karnataka Land Revenue Act, 1964, after more than 50 years. In view of the above settled position of law, there is no necessity to remand this case, in view of material document produced before this Court clearly indicates that it was a granted land. 20 Based on the same, the Assistant Commissioner confirming the grant, restored the land to the original grantee which has reached finality. Under the provisions of Section 136(3) of the Karnataka Land Revenue Act, 1964, the Deputy Commissioner cannot blame the

petitioner on the ground that he has not appeared nor produced the records before the Court. The grantee is not the custodian of the records, whereas, the Government who granted the land is the custodian of the records. On that ground alone, the order passed by the Deputy Commissioner cannot be sustained.

18. The Deputy Commissioner has erred in holding that the records are not in the office of the Tahsildar. Naturally, the records will be in the record room of the concerned land grant office. On the basis of the sale deed, the authorities entered the name of the purchaser in the revenue records and based on initiation made 21 under Section 4 of the Karnataka Scheduled Castes Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, the authorities confirming the grant, declared the sale deed as null and void and restored the land to the original grantee and possession was handed over to the petitioner. Now, after lapse of more than 50 years, the proceedings initiated under Section 136(3) of the Karnataka Land Revenue Act, 1964, by the Deputy Commissioner is nothing but dual stand taken by the authorities under the State Government only to harass the person who was granted the land, thereby the very beneficial legislation enacted with an object to protect the persons belonging to Scheduled Castes and Scheduled Tribes under the Karnataka Scheduled Castes Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, will be defeated. The attitude of the government and its authorities is nothing but depriving the immovable property to an unprivileged person in the Society. The same cannot be encouraged. 22

19. Though the learned Additional Government Advocate sought to justify the impugned Order on the ground that the records are not produced, the statement made by the Additional Government Advocate is very strange, since the custodian of the records is the State Government. Unfortunately, in one breath, the Assistant Commissioner who is acting under the Karnataka Scheduled Castes Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, proceeded to confirm the grant based on the report of the Tahsildar. Thereafter, the Deputy Commissioner initiated proceedings under Section 136(3) of the Karnataka Land Revenue Act, 1964 based on the report of the very Tahsildar. The attitude of the authorities of the State Government under different Acts, one under Karnataka

Scheduled Castes Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, and other under the Karnataka Land Revenue Act, 1964, by 23 the Deputy Commissioner is nothing but double edged weapon for the authorities to take action against the person who was granted with land with an object.

20. Even in the absence of any limitation prescribed under Section 136(3) of the Karnataka Land Revenue Act, 1964, this Court and the Honble Supreme Court, time and again have held that action under Section 136(3) of the Karnataka Land Revenue Act should be taken within a reasonable period of three years. My view is fortified by the judgment of the Honble Supreme Court in the case of Nekkanti Rama Lakshmi vs. State of Karnataka and another reported in ILR 2018 KAR1352 The proceedings initiated by the Deputy Commissioner without reference to the proceedings of the Assistant Commissioner who directed the Tahsildar to restore the land under the provisions of Karnataka Scheduled Castes Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, 24 who was also a party before the Deputy Commissioner clearly indicates that authorities are not discharging their institutional responsibility and constitutional obligation and thereby, are depriving the right of the petitioner in respect of immovable property which is in violation of Article 300A and action of the authorities is in violation of Articles 14 and 21 of the Constitution of India.

21. The Deputy Commissioner initiated the proceedings without verifying the original records and the Order of the Assistant Commissioner dated 26.09.1988 and restoration order dated 15.02.1992. The Tahsildar, who was a party before the Assistant Commissioner as well as Deputy Commissioner should have brought the above facts to the notice of the authorities i.e., the Assistant Commissioner and the Deputy Commissioner. Because of dereliction of duty of 25 the authorities, the party should not be dragged before the Court of law, after five decades. VI

JUDGMENT

S OF THE APEX COURT²² The principle of power coupled with duty was succinctly stated by Earl Cairns L.C. in the House of Lords of Julius vs. Lord Bishop of Oxford [5 App. Cas. 214 at 222-223]. quoted with approval therewith by the Honble Supreme Court in Commissioner of Police, Bombay vs. Gordhandas

Bhanji, reported in AIR 1952 SC16thus: There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is responded, to exercise that power when called upon to do so. 26 23. It would thus be clear that the authorities under different enactments under 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 of accountable for due effectuation of constitutional goals.

24. The Honble Supreme Court in an identical circumstances in the case of Joint Collector Ranga Reddy District and Another -vs- D. Narsing Rao and 27 Others reported in (2015)3 SCC695relying upon the dictum in the case of State of Gujarat -vs- Patil Raghav Natha reported in (1969) 2 SCC187while considering the provisions of Section 65 of the Bombay Land Revenue Code, 1879, held that:- Though there is no period of limitation prescribed under Section 211 to revise an order made under Section 65 of the Act, the said power must be exercised in reasonable time and on the facts of the case in which the decision arose, the power came to be exercised more than one year after the order and that was held to be too late.

25. The Honble Apex Court considering the provisions of Maharashtra Land Revenue Code, 1966, in the case of Santoshkumar Shivgond Patil -vs- Balasaheb Tukaram Shevale reported in (2009)9 SCC352at para-11 has held that:- It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise 28 of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the

law does not expect a settled thing to be unsettled after a lapse of long time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein. In the said case, the reasonable period within which the power of revision would be exercised was three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of the Tahsildar 29 passed on 30.3.1976 is flawed and legally not correct.

26. The Honble Supreme Court while considering the provisions of Section 21 of the Punjab General Sales Tax Act in the case of State of Punjab v. Bhatinda District Co-operative Milk Producers Union Ltd., reported in (2007) 11 SCC363 in page 367, at paragraph 11 has held that: A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo motu power can be exercised at any time. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. The revisional jurisdiction should ordinarily be exercised within a period of three years having regard to the purport in 30 terms of the said Act. In any event, the same should not exceed the period of five years.

27. Admittedly in the present case, after the lapse of more than 50 years, the Deputy Commissioner initiated the proceedings under the provisions of Section 136(3) of the Act on the basis of the report of the Tahsildar is unreasonable and cannot be sustained. My view is also fortified by the dictum of the Honble Supreme Court in the case of Mohd. Kavi Mohamad Amin -vs- Fatmabai Ibrahim reported in (1997) 6 SCC71 wherein, while considering the provisions of Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976, it is held that though the said

section does not prescribe for any time-limit for initiation of proceedings, such power should be exercised within a reasonable time and on the facts of the case, the suo motu enquiry initiated under the said section after a period of nine months was held to be beyond reasonable time and at paragraphs-1 and 2 it is held as under:

31. 1. The appellant by two registered sale deeds dated 11-12-1972 and 28-12-1972 purchased from the respondent Survey Plot No.53 measuring an area of Ac.3.06 guntas and Survey Plot No.372/1+2 measuring an area of Ac.3.18 guntas. On the basis of aforesaid purchase the name of the appellant was mutated in the record of rights on 14-2- 1973. It appears that in September 1976 the Mamlatdar of the area concerned initiated a suo motu enquiry under Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 as applicable to the State of Gujarat, (hereinafter to be referred to as the Act) in respect of the validity of the aforesaid sale deeds. On 29-4-1977 the Mamlatdar held that the sales in question were invalid as the appellant was not an agriculturist belonging to the State of Gujarat. The appeal, revision and the writ petition filed against the aforesaid order have been dismissed.

2. Although Mr.Bhasme, learned counsel appearing for the appellant took a stand that under Section 63 of the Act aforesaid, there should not be any discrimination amongst the agriculturists with reference to the State to which such agriculturist belongs. But according to him even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84-C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this Court that wherever a power is vested in a statutory authority without prescribing any time-limit, such power should be exercised within a reasonable time. In the present case the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant reliance was placed on a judgment of Justice S.B. Majmudar (as he then was in the High Court of Gujarat)

in State of Gujarat v. Jethmal Bhagwandas Shah [Spe. WA No.2770 of 1979]. disposed of on 1-3- 1990, where in connection with Section 84-C itself it was said that the power under the aforesaid section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat v. Patil Raghav Natha[(1969) 2 SCC187: (1970) 1 SCR335 and in the case of Ram Chand v. Union of India[(1994) 1 SCC44 has impressed that where no time-limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under Section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The impugned orders are set aside. No costs. 34 28. The Honble Supreme Court in the case of Chhedi Lal Yadav v. Hari Kishore Yadav, reported in (2018) 12 SCC527has held that actions must be taken within reasonable time, where no period of limitation specified - 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 and at paragraphs-9, 10, 11, 12, 13 and 14 it has been held 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 SCC713:

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- 35 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 36 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 37 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 38695 : (2015) 2 SCC (Civ) 396]. where this Court affirmed the view [Collector v. D. Narasing Rao, 2010 SCC Online AP406: (2010) 6 ALD748 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

SCC695: (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 39 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 SCC340 . VII. CONCLUSION²⁹ At this stage, learned Additional Government Advocate submits that in view of the Order dated 10.10.2014 passed by the Government, the Orders passed by the Special Deputy Commissioner under Section 136(3) between 10.10.2011 and 30.09.2014 have been set-aside and the matter has been remanded. The said submission of the learned Additional 40 Government Advocate cannot be accepted at this belated stage. Even assuming that the Deputy Commissioner has no power as on the date of the order even on that ground also, question of remand to the Deputy Commissioner does not arise, after lapse of more than 50 years.

30. For the reasons stated above, the point raised for consideration in the present writ petition has to be answered in the negative holding that the Deputy Commissioner is not justified in passing the impugned order, initiating the proceedings under Section 136(3) of the Karnataka Land Revenue Act, 1964, after inordinate delay of more than 50 years, that too, when the Assistant Commissioner allowed the application filed under Section 4 of the Karnataka Scheduled Castes Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, for

restoration after confirming the 41 grant made in favour of the grand mother of the present petitioner was genuine and valid.

31. In view of the above, the writ petition is allowed. The impugned order passed by the Deputy Commissioner is hereby quashed imposing cost of Rs.25,000/- each, on the concerned Tahsildar and the Deputy Commissioner, payable from their personal pocket within one month from the date of receipt of certified copy of this Order, to the Chief Ministers drought relief fund, for dereliction of their duty and not from the State Government, failing which the Prl. Secretary to Government, Revenue Department, shall take necessary steps to recover the same in accordance with law. Ordered accordingly. Sd/- JUDGE kcm

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