

Jayamma Vs. State Of Karnataka

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Court : Karnataka

Decided On : Mar-15-2021

Judge : R Devdas

Appeal No. : WP 9723/2020

Appellant : Jayamma

Respondent : State Of Karnataka

Advocate for Pet/Ap. : Sri. Ashok Haranahalli

Judgement :

-1- R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE15H DAY OF MARCH, 2021 BEFORE THE HON' BLE MR.JUSTICE R. DEVDAS WRIT PETITION NO.9723 OF2020(SC/ST) C/W WRIT PETITION NOs.5008/2020 (SC/ST), 915/2020 (SC/ST) IN W.P. NO.9723/2020 BETWEEN1. JAYAMMA W/O SRI MAREGOWDA AGED ABOUT60YEARS R/AT NO.8123 SHOBHA APARTMENT TALAGATTAPURA KANAKAPURA ROAD BENGALURU- 560 062 2 . HARISH S/O SHIVALINGAIAH AGED ABOUT32YEARS R/AT NO.8123 SHOBHA APARTMENT KANAKAPURA ROAD BENGALURU- 560 062 3 . SHANKAR G S/O A .GOPALA REDDY R/AT FLAT NO.A6 -2- SRI SAI HOME STYLE APARTMENT NEAR GREEN HOUSE LAYOUT, DODDATHOGUR ELECTRONIC CITY BENGALURU- 560 100 4 . M/S UNIDESIGN BUILDERS AND DEVELOPERS PVT. LTD. REPRESENTED BY ITS

MANAGING DIRECTOR MR.P.NAVANEETH MENON HAVING OFFICE AT NO.EL-51/74M SATHI CIVIL LANE ROAD, AYYANTHOLE, THRISSUR- 680 003 REPRESENTED BY HIS GPA HOLDER MR. ARUN KUMAR S/O RAGHAVENDRA NAYAR AGED ABOUT 41 YEARS R/AT No.269, 2ND CROSS NEAR BHA COMPLEX KALYANA NAGAR, BENGALURU- 560 045 ...PETITIONERS (BY SRI ASHOK HARANAHALLI, SENIOR COUNSEL FOR SRI C R GOPALASWAMY, ADVOCATE) AND 1. STATE OF KARNATAKA DEPARTMENT OF REVENUE REP. BY ITS PRINCIPAL SECRETARY VIDHANA SOUDHA BENGALURU- 560 001 2 . DEPUTY COMMISSIONER BENGALURU URBAN DISTRICT BENGALURU- 560 009 -3- 3 . ASSISTANT COMMISSIONER BENGALURU SOUTH SUB-DIVISION BENGALURU, KANDAYA BHAVAN K.G. ROAD, BENGALURU- 560 009 4 . SHIVANNA M.G ASSISTANT COMMISSIONER BENGALURU SOUTH SUB-DIVISION BENGALURU, KANDAYA BHAVAN K.G. ROAD BENGALURU- 560 009 5 . SHIVAPPA LAMANI TAHSILDAR BENGALURU SOUTH TALUK KANDAYA BHAVAN, 1ST FLOOR K.G. ROAD BENGALURU- 560 001 6 . VASU R. THE ASSISTANT COMMISSIONER OF POLICE ELECTRONIC CITY SUB-DIVISION BENGALURU SOUTH-EAST BENGALURU CITY- 560 100 7 . KISHORE KUMAR B.K POLICE INSPECTOR ELECTRONIC CITY POLICE STATION BENGALURU- 560 100 8 . MUNIRAJU M. S/O LATE MUNIYAPPA AGED ABOUT 62 YEARS, R/AT No.163, DODDATHOGURU VILLAGE ELECTRONIC CITY 1ST STAGE BEGUR HOBLI, BENGALURU- 560 068 RESPONDENTS -4- (BY SRI SAJAN POOVAYYA, SENIOR COUNSEL FOR SRI G R VENKATESH MURTHY, ADVOCATE FOR C/R8 SMT SAVITHRAMMA, HCGP FOR R1 TO R3 SRI PRASANNA B R, ADVOCATE FOR R4 SRI NAGARAJ DAMODHAR, ADVOCATE FOR R5 TO R7) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

DATED 18.02.2020 PASSED BY THE R-4 ASSISTANT COMMISSIONER VIDE ANNEXURE-R AND ETC. IN W.P. NO.5008/2020 BETWEEN 1. M/S UNIDESIGN BUILDERS AND DEVELOPERS PVT LTD., REPRESENTED BY ITS MANAGING DIRECTOR, MR P NAVANEETH MENON, HAVING OFFICE AT NO.EL-51/74M, SATHI CIVIL LANE ROAD, AYYANTHOLE, THRISSUR-680003 REPRESENTED

BY HIS GPA HOLDER, MR ARUN KUMAR, S/O RAGHAVENDRA NAYAR, AGED ABOUT 41 YEARS, R/AT NO.269, 2ND CROSS, NEAR BHA COMPLEX, KALYANA NAGARA, BENGALURU-560045 2 . JAYAMMA W/O SRI MAREGOWDA, AGED ABOUT 60 YEARS, R/AT NO.8123, * Page No.4 is retyped and replaced vide chamber order dated 18.03.2021 -5- SHOBHA APARTMENT, TALAGATTAPURA, KANAKAPURA ROAD, BENGALURU-560062. 3 . HARISH S/O SHIVALINGAIAH, AGED ABOUT 32 YEARS, R/AT NO.8123, SHOBHA APARTMENT, KANAKAPURA ROAD, BENGALURU-560062 4 . SHANKAR G S/O A GOPALA REDDY, R/AT FLAT NO.A6, SRI SAI HOME STYLE APARTMENT, NEAR GREEN HOUSE LAYOUT, DODDATHOGUR, ELECTRONIC CITY, BENGALURU-560100 ...PETITIONERS (BY SRI ASHOK HARANAHALLI, SENIOR COUNSEL FOR SRI C R GOPALASWAMY, ADVOCATE) AND 1. STATE OF KARNATAKA DEPARTMENT OF REVENUE REP BY ITS PRINCIPAL SECRETARY, VIDHANA SOUDHA, BENGALURU-560001 2 . DEPUTY COMMISSIONER BENGALURU URBAN DISTRICT, BENGALURU-560009 -6- 3 . ASSISTANT COMMISSIONER BENGALURU SOUTH SUB DIVISION, BENGALURU, KANDAYA BHAVAN, K G ROAD, BENGALURU-560009 4 . TAHSILDAR BENGALURU SOUTH TALUK, KANDAYA BHAVAN, IST FLOOR, K G ROAD, BENGALURU-560001 5 . ASSISTANT COMMISSIONER OF POLICE ELECTRONIC CITY SUB-DIVISION, BENGALURU SOUTH EAST, BENGALURU CITY-560100 6 . POLICE INSPECTOR ELECTRONIC CITY POLICE STATION, BENGALURU-560100 7. MUNIRAJU M, S/O LATE SRI MUNIYAPPA AGED ABOUT 62 YEARS, R/AT NO.163, DODDATHOGURU VILLAGE, ELECTRONIC CITY, 1ST STAGE BEGURU HOBLI, BENGALURU - 560068. RESPONDENTS (BY SMT SAVITHRAMMA, HCGP FOR R1 TO R5 SRI SAJAN POOVAYYA, SENIOR COUNSEL FOR SRI G R VENKATESH MURTHY, ADVOCATE FOR R7) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE * Page No.6 is retyped and replaced vide chamber order dated 18.03.2021 -7- ACT AND ATTITUDE OF THE R-2 TO 6 IN DEMOLISHING THE PETITIONER PROPERTIES AND DISPOSSESSING THE PETITIONERS AND THEIR TENANTS FROM THE PROPERTIES IS ARBITRARY ILLEGAL AND UNSUSTAINABLE AND ETC. IN

W.P. NO.915/2020 BETWEEN1. M/S UNIDESIGN BUILDERS AND DEVELOPERS PVT. LTD. REPRESENTED BY ITS MANAGING DIRECTOR MR P NAVANEETH MENON HAVING OFFICE AT NO.EL-51/74M SATHI CIVIL LANE ROAD, AYYANTHOLE THRISSUR-680 003 REPRESENTED BY HIS GPA HOLDER MR ARUN KUMAR S/O RAGHAVENDRA NAYAR AGED ABOUT41YEARS R/AT NO.269 2ND CROSS NEAR BHA COMPLEX KALYANA NAGAR BENGALURU-560 045 2 . HARISH S/O SHIVALINGAIAH AGED ABOUT32YEARS, R/AT NO.8123 SHOBHA APARTMENT KANAKAPURA ROAD, BENGALURU-560 062 -8- 3 . SHANKAR G S/O A GOPALA REDDY R/AT FLAT NO.A6 SRI SAI HOME STYLE APARTMENT NEAR GREEN HOSUE LAYOUT DODDATHOGUR ELECTRONIC CITY BENGALURU-560 100 ...PETITIONERS (BY SRI ASHOK HARANAHALLI, SENIOR COUNSEL FOR SRI C R GOPALASWAMY, ADVOCATE) AND1. NATIONAL COMMISSION FOR SCHEDULED CASTES5H FLOOR LOKNAYAK BHAWAN KHAN MARKET NEW DELHI-110 003 REPRESENTED BY ITS VICE CHAIRMAN2. STATE OF KARNATAKA DEPARTMENT OF REVENUE M S BUILDING DR AMBEDKAR VEEDHI BENGALURU-560 001 REPT BY PRINCIPAL SECRETARY3. DIRECTOR GENERAL AND INSPECTOR GENERAL OF POLICE HEAD QUARTER NRUPATHUNGA ROAD, BENGALURU-560 001 4 . DEPUTY COMMISSIONER BENGALURU URBAN DISTRICT KANDAYA BHAVAN -9- K G ROAD, BENGALURU-560 009 5 . ASSISTANT COMMISSIONER BENGALURU SOUTH SUB DIVISION BENGALURU KANDAYA BAHVAN K G ROAD, BENGALURU-560 009 6 . TAHSILDAR BENGALURU SOUTH TALUK KANDAYA BHAVAN ,1ST FLOOR K G ROAD, BENGALURU-560 009 7 . MUNIRAJU M S/O LATE MUNIYAPPA AGED ABOUT62YEARS, R/AT NO.163 DODDATHOGURU ELECTRONIC CITY POST BENGALURU-560 100 RESPONDENTS (BY SRI D BASAVARAJA, ADVOCATE FOR R1 SMT SAVITHRAMMA, HCGP FOR R2 TO R6 SRI CHANDAN H B, ADVOCATE FOR C/R7) THIS WRIT PETITION IS FILED UNDER ARTICLES226& 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

PASSED BY THE VICE CHAIRMAN NATIONAL COMMISSION FOR SCHEDULED CASTES NEW DELHI, DTD.1.11.2019, VIDE ANNEXURE-C AND

ETC. THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 09.02.2021 AND COMING ON FOR PRONOUNCEMENT OF

ORDER

, THIS DAY, THE COURT MADE THE FOLLOWING: * Page No.9 is retyped and replaced vide chamber order dated 18.03.2021 -10- COMMON

ORDER

These three writ petitions arise between common parties and in respect of a property bearing Sy.No.152/1, situated at Doddathogur Village, Begur Hobli, Bangaluru South Taluk. Therefore, the petitions were heard together and are disposed of by this common order.

2. Certain undisputed facts are that one Sri.Kaveriga was granted the land in question. Subsequent to his death, the legal heirs who inherited the property, got the khata transferred in their names. According to the inheritance khata, the names of the legal heirs of Sri.Kaveriga were entered in the revenue records, in respect of the property in question. The khathedars sold the property under a registered sale deed dated 09.04.2001, in favour of one Sri.Karar Ahmed. Consequent to the transfer, the revenue records were mutated in the name of Sri.Karar Ahmed. Thereafter, he got the lands converted from agricultural to non-agricultural purpose, from the competent authority, on 21.09.2001. Sri.Karar Ahmed sold a parcel of the converted land, measuring about 1 acre 30 guntas, out of 2 acres 31 guntas, in favour of one -11- Sri.K.Boopathy, on 27.07.2002. The remaining extent was sold in favour of M/s. Pathy Housing Private Ltd., represented by Sri.K.Boopathy, on 21.05.2003. The said Sri. K. Boopathy got a plan sanctioned for formation of a layout in respect of 1 acre 30 guntas and thereafter formed residential sites in the layout and sold 12 sites in favour Sri.K.C.Varghese. These 12 sites measuring about 14,880 sq.ft. were sold by Sri.K.C.Varghese in favour of M/s. Unidesign Builders and Developers Pvt. Ltd., the petitioner in W.P.No.915/2020 and W.P.5008/2020 and the 4th petitioner in W.P.No.9723/2020.

3. In the meanwhile, some persons had moved the Tahsildar, Bangalore South Taluk, seeking change of revenue entries in respect of Sy.No.152/1 and the

adjacent properties. The Special Tahsildar, by order dated 21.12.2005 had directed entry of the names of the applicants in the revenue records, including Sy.No.152/1. Sri.K.Boopathy preferred an appeal before the Assistant Commissioner and the appeal was allowed, setting aside the order passed by the Special Tahsildar and further directed restoration of the khata as it stood earlier. At this juncture, the 8th respondent Sri.Muniraju M filed Revision Petition before the Deputy -12- Commissioner, challenging the order passed by the Assistant Commissioner stating that he has not sold the property in favour of Sri.Karar Ahmed and that his name and signatures were fabricated in the sale deed. The Deputy Commissioner allowed the Revision Petition and set aside the order passed by the Assistant Commissioner.

4. The petitioner M/s. Unidesign filed a petition in W.P.No.56193/2017, calling in question the order passed by the Deputy Commissioner. In the said writ petition, along with the official respondents, respondent No.8 Sri.Muniraju M, Sri.Karar Ahmed, Sri.K.Boopathy and Sri. K. C. Varghese were arrayed as party respondents. The writ petition was allowed by order dated 03.04.2019, setting aside the orders of the Deputy Commissioner, while restoring the order passed by the Assistant Commissioner. A specific direction was given to remove the name of Sri Muniraju from the revenue records in respect of Sy.No.152/1, while noticing that he had sold the property and the lands were converted to non- agricultural use. A further direction was also given to reflect the formation of residential sites and the local authority was directed to give distinct site numbers. The writ appeal preferred by Sri -13- Muniraju M was dismissed on 18.12.2019. In the meanwhile, M/s. Unidesign sold various sites in favour of petitioners No.1, 2 and 3. The said petitioners obtained sanctioned plan, put up construction and let out the properties on lease to various tenants.

5. The respondent No.8 Sri M Muniraju seems to have approached the National Commission of Scheduled Castes, New Delhi, (hereinafter referred to as 'the National Commission' for short) alleging that atrocities were perpetrated by M/s. Unidesign, Sri. Mohammed Yusuf, Smt.Ashraff Unnisa, Sri. K Das, Sri.Venkateshappa, Sri.Chikka Gurumurthy, Sri Krishnappa and others, stating that they had fabricated the documents to snatch away landed properties from

him. Report is said to have been obtained from the Tahsildar, Bengaluru South Taluk and the Joint Director of Land Records. The National Commission thought it fit to recommend to the government to ensure resumption and restoration of the granted land comprised in Sy.No.152/6 (earlier part of Sy.No.152/1) measuring 1 acre 25 guntas in favour of Sri M Muniraju and to ensure that possession of the entire land vests with Sri M Muniraju in accordance with Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, (hereinafter referred to as the 'PTCL Act', for short) and to set aside all sale transactions and to ensure immediate closure of criminal cases registered against Sri. M Muniraju and to initiate proceedings against all the concerned for having committed acts of atrocities upon Sri. M Muniraju. The National Commission communicated its proceedings dated 01.11.2019, to the Director General of Police, Bengaluru, the Deputy Commissioner, Bengaluru Urban District and the Commissioner of Land Records, vide a communication dated 11.11.2019, for taking necessary and prompt action. The petitioners herein filed W.P.No.915/2020, calling in question the proceedings and directions issued by the National Commission. By order dated 22.01.2020, a co-ordinate Bench of this Court stayed the proceedings and directions given by the National Commission. However, it was observed that the interim order will not come in the way of the authority exercising power under the provisions of the PTCL Act.

6. Learned Senior Counsel Sri. Ashok Haranahalli, appearing for the petitioners would submit that the 8th respondent Sri. M Muniraju, thereafter filed a criminal complaint before the Electronic -15- City Police and the police registered criminal cases against the petitioners for offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and other provisions of the Indian Penal Code. It is submitted that the petitioners moved this Court seeking quashment of initiation of criminal cases and interim orders of stay are passed preventing further investigation.

7. The learned Senior Counsel submits that about 6.00 in the morning of 26.02.2020, a demolition drive commenced under the supervision of the Tahsildar. When explanation was sought from the Tahsildar as to why the buildings are being demolished, the Tahsildar said that the demolition is carried out to execute an

order passed by the Assistant Commissioner, under the provisions of PTCL Act. Photographs have been annexed to the memorandum of writ petition showing the cranes and bulldozers demolishing the structures. W.P.No.5008/2020 is filed seeking a declaration that the act of demolition and dispossession is arbitrary, illegal and to restore the possession of the properties in favour of the petitioners. A direction is sought to appoint a Commissioner to assess the damages and loss caused and to award damages and compensation -16- from the respondents. The Assistant Commissioner, Tahsildar, Assistant Commissioner of Police and the Police Inspector of Electronic City Police Station have been named eo-nomine.

8. The learned Senior Counsel submits that the petitioners have obtained the certified copy of order dated 18.02.2020, passed by the Assistant Commissioner, Bengaluru South Taluk, in proceedings No.K-SC/ST (S) 15/2019-20, which shows that the 8th respondent Sri Muniraju is shown as "Appellant" and Sri Bhoopathi and Sri Karar Ahmed are arrayed as "Respondents". The learned Senior Counsel submits that in the impugned order the Assistant Commissioner says the proceedings were initiated pursuant to the directions issued by the National Commission but, it is obvious that a conspiracy has been hatched by Sri. Muniraju and the official respondents-Assistant Commissioner, the Tahsildar and the previous owners Sri. K Bhoopati and Sri. Karar Ahmed, to knock off the landed properties, illegally and without authority of law. It is submitted that although M/s.Unidesign has been named as the accused in the proceedings before the National Commission, it is not arrayed as party respondent. Sri. Muniraju had entered Caveat in W.P.No.915/2020 and he was aware of the interim orders passed -17- by this Court, staying the proceedings and directions issued by the National Commission. Nevertheless, proceedings under the PTCL Act is said to have been taken up following the directions issued by the National Commission. It is submitted that the conspiracy is betrayed by the fact that an affidavit dated 14.01.2020, is said to have been filed by Sri. K Bhoopati stating that pursuant to the notice received by him from the Assistant Commissioner, he has perused the records and found that the subject matter falls within the purview of PTCL Act, as his vendor had not obtained necessary permission before purchasing the property. A farcical statement is made that he was not aware that the property was sold in violation of the provisions of the PTCL Act. Nonetheless, Sri. K Bhoopati states

that if it was found that there was violation of the provisions, he should be suitably compensated.

9. The learned Senior Counsel submits that the demolition drive happened on 26.02.2020, certified copy of the impugned order was sought on 27.02.2020, but the certified copy was issued on 11.03.2020. In fact, it is submitted that the certified copy was handed over in this Court on 11.03.2020, when the proceedings in W.P.No.5008/2020 was underway. The learned Senior Counsel -18- therefore submits that he need not further elaborate to convince this Court that the highhanded action on the part of the official respondents, at the behest of Sri. Muniraju is arbitrary, illegal and without authority of law. It is therefore submitted that the writ petitions are required to be allowed while setting aside the impugned orders passed by the National Commission, Assistant Commissioner and suitable compensation should be awarded, while imposing exemplary costs on the Assistant Commissioner, the Tahsildar, the Assistant Commissioner of Police and the Inspector of Police, Electronic City Police Station.

10. As regards, the limitation of the authority of the National Commission, the learned Senior Counsel has placed reliance on the following decisions; 1. All India Indian Overseas Bank SC and ST Employees' Welfare Association and others Vs. Union of India and others, reported in (1996) 6 SCC606 2. Bhabani Prasad Jena Vs. Convener Secretary, Orissa State Commission for Women and Anr., reported in 2010 AIR SCW4603 -19- 3. Karnataka Antibiotics and Another Vs. National Commission SC and ST and others, reported in ILR 2008 KAR3305 4. Municipal Corporation of Delhi Vs. Lal Chand and Others, (In the High Court of Delhi) in W.P.(C)5468/2011, D.D.17.09.2013, and 5. Sri Ganganna Vs. State of Karnataka and others, in W.P.No.46279/2013 disposed of on 09.10.2020 reported in Manu/KA/4146/2020.

11. Per contra, learned Senior Counsel Sri. Sajan Poovayya, appearing for the 8th respondent Sri. M Muniraju, raises a preliminary objection regarding alternative statutory remedy being available to the petitioners and he therefore submits that the writ petitions are required to be dismissed on that ground alone. The learned Senior Counsel submits that a statutory appeal is provided in the form of Section

5A of the PTCL Act, against an order passed by the Assistant Commissioner. The learned Senior Counsel submits that even if the order passed by the Assistant Commissioner under the provisions of the PTCL Act, is rank bad and deserves to be set aside, the petitioners should not be permitted to deviate from the -20- set procedure of availing the appeal remedy before the Deputy Commissioner.

12. On the merits of the matter, the learned Senior Counsel submits that the first transaction between the legal heirs of the Sri.Kaveriga and Sri. Karar Ahmed on 09.04.2001, is hit by the provisions of the Section 4(2) of the PTCL Act. It is an admitted fact that prior permission of the State Government is not taken for transfer of a granted land, in terms of Section 4(2) of the Act. It is submitted that the petitioners have never disputed that Sri.Kaveriga, in whose favour the land was granted under the relevant Grant Rules was a person belonging to Scheduled Caste community. It is submitted that the law is well settled that if the first transaction is a void transaction, either for violation of the conditions of the grant or for violation of Section 4(2), then all subsequent transactions are also void.

13. On the question of availability of alternative efficacious remedy and maintainability of the writ petitions, learned Senior Counsel Sri.Ashok Haranhalli places reliance on the following decisions: -21-

1) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others, (1998) 8 SCC12) Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. And Others, (2003) 2 SCC107

3) M. P. State Agro Industries Development Corporation Ltd., Vs. Jahan Khan, (2007) 10 SCC88

4) Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Co- operative Housing Society, Jaipur and others, (2013) 5 SCC427 14. Heard the learned Senior Counsels, the learned Counsels for the eo- nomine Assistant Commissioner, Tahsildar and the learned HCGP and perused the petition papers.

15. Since question of maintainability of the writ petitions and availability of alternative remedy was raised on behalf of the respondents, this Court is required to deal with that question. In *Whirlpool Corporation (supra)*, it was held that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This Court has a discretion to entertain or not to entertain a writ petition. It has been held that the writ Courts have -22- imposed upon themselves certain restrictions, one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But, the alternative remedy has been consistently held by Honble Supreme Court as not to operate as a bar in at least three contingencies, viz., where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the Principle of Natural Justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

16. In *Rajasthan State Industrial Development (supra)* it was held that the primary purpose of the writ is to protect and to establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex-debito justitiae*) and its grant or refusal is at the discretion of the Court. It was held that while dealing with a writ petition, the Court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ and the nature and extent of injury that is likely to ensue by such grant or refusal. Hence, discretion must be -23- exercised by the Court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Furthermore, it was held that the conduct of the opposite party is exhibited from the material available on record to have determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, it was also held that a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.

17. Having regard to the rulings of the Honble Apex Court, when we analyze the averments made in the writ petition, this Court finds that grave miscarriage of justice is suffered by the petitioners herein, at the hands of not only the private respondent, but also the official respondents. The Assistant Commissioner, who has been arraigned a party eo-nomine, claims to have taken up the proceedings as directed by the National Commission. But, what is -24- noticeable is that the National Commission recommended the case of the 8th respondent to the Government of Karnataka to ensure resumption and restoration of the land in favour of the 8th respondent. A communication dated 11.11.2019, was made by the National Commission to the Director General of Police, the Commissioner of the Land Revenue and the Deputy Commissioner, Bengaluru Urban District along with a copy of the recommendation of the Commission. In the impugned order passed by the Assistant Commissioner, no reference is made to any communication, either by the National Commission or the Deputy Commissioner or the State Government, directing the Assistant Commissioner to take up the proceedings. Therefore, it is clear that the Assistant Commissioner has initiated the proceedings at the behest of the 8th respondent. Even otherwise, if the Assistant Commissioner had initiated the proceedings on going through the recommendation dated 01.11.2019, made by the National Commission, notice to M/s. Unidesign should have been issued, as the entire allegation was against M/s. Unidesign. Ignoring the said requirement, the Assistant Commissioner has issued notice only to Sri.Bhoopathy and Sri.Karar Ahmed. It is stated in the impugned order that -25- Sri.Bhoopathy appeared before the Assistant Commissioner and filed an affidavit dated 14.01.2020, admitting that the sale in his favour was in violation of the provisions of the PTCL Act. He further prays that if the authority finds that there was violation, he should be suitably compensated. Sri Bhoopathy had nothing to lose. This clearly betrays the conspiracy and consorted effort of Sri Muniraju and the official respondents in defrauding the petitioners.

18. The diabolic conspiracy is further exhibited by the swiftness with which the respondents have proceeded. Final order is passed on 18.02.2020, declaring that the sale transaction dated 09.04.2001, by the legal heirs of Sri.Kaveriga in favour Sri.Karar Ahmed and the sale transaction dated 27.07.2002 by Sri.Karar Ahmed in favour of Sri.K.Bhoopathy are null and void. In the meanwhile, the petitioners had

filed Writ Petition No.915/2020, calling in question the orders/recommendation of the National Commission. The 8th respondent herein had filed a Caveat and he was aware of the interim order dated 22.01.2020, passed by this Court, staying the proceedings and directions given by the National Commission. Nevertheless, the 8th respondent has succeeded in securing an illegal order at the hands of the Assistant -26- Commissioner. What is more intriguing is that the impugned order was passed on 18.02.2020 and on 26.02.2020 the buildings belonging to the petitioners were demolished, post haste.

19. Rule 3 (6) of the Karnataka Scheduled Castes and Scheduled Tribes (PTCL) Rules, 1979, mandates that after an order of resumption is passed by the Assistant Commissioner, he may proceed to evict the persons in possession thereof, in the manner specified in Section 39 of the Karnataka Land Revenue Act, 1964 and take further action as provided in Section 5 of the PTCL Act. It is necessary to notice that the Act provides for an appeal to the Deputy Commissioner. An appeal could be preferred within a period of three months from the date on which the order is communicated to the aggrieved party. It is by now well settled that execution of a decree/order is not permissible until the expiry of the period of appeal. Moreover, Section 39 of the Karnataka Land Revenue Act prescribes the following mode for eviction: (i) by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land; and -27- (ii) if such notice is not obeyed, by removing or deputing a subordinate officer to remove any person who may refuse to vacate the same; and (iii) if the officer removing any such person is resisted or obstructed by any person, the Deputy Commissioner or the Revenue Officer, as the case may be, shall hold a summary inquiry into the facts of the case and, if satisfied that the resistance or obstruction was without any just cause and that such resistance and obstruction still continues, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, take or cause to be taken, such steps and use or cause to be used, such force as may, in the opinion of such officer, be reasonably necessary for securing compliance with the order.

20. It is clear from the documents available on record that the procedure prescribed under Section 39 of the Karnataka Land Revenue Act, has not been followed before evicting the persons in possession of the commercial/residential buildings. Therefore, there being violation of the principles of natural justice and the -28- fundamental rights of the petitioners being violated by the respondent-authorities, this Court proceeds to hold that although alternative remedy is available to the petitioners, this Court would not hesitate to entertain the writ petition, for the reasons stated above.

21. Insofar as the powers and functions and limitations of the authority of the National Commission is concerned, in All India Indian Overseas Bank SC and ST Employees Welfare Association (supra), the Apex Court has held that the National Commission, constituted under Article 338 of the Constitution of India, its powers and duties are regulated in terms of Clause (5) of Article 338. It was held that the Commission lacks the authority to issue an order directing to stop promotion process pending further investigation and final verdict in the matter. It was held that all the procedural powers of a Civil Court are given to the Commission for the purpose of investigating and enquiring into the matters as provided under sub-clause (b) of Clause (5) and that too for that limited purpose only. In Bhabani Prasad Jena (supra) it was held that the State Commission for Women is not entrusted with the power to take up the role of a Court or an adjudatory Tribunal and -29- determine the rights of the parties. It was held that the Commission is not a Tribunal discharging the functions of a judicial character or a Court. Similarly the Delhi High Court in W.P(C)No.5468/2011, by order dated 17.09.2013, in the case of Municipal Corporation of Delhi Vs. Lal Chand and Others, held that the National Commission for Scheduled Castes, in terms of sub-clause (b) of Clause (5) the Commission could only inquire into specific complaints of deprivation of rights and safeguards of the Scheduled Caste persons as a class and not deprivation of any civil right of an individual person belonging to the Scheduled Castes. It was noticed that there are many rights granted to and safeguards provided for the persons belonging to Scheduled Castes like the reservation in public appointments, admission to educational institutions, safeguards against deprivation of benefit of a particular scheme announced either by the State Government or the Central Government, allotment of lands, plots, houses, flats,

petrol bunks/LPG outlets etc. It was held that sub-clause (b) of Clause (5) relates to such deprivation of rights.

22. Recently a co-ordinate Bench of this Court, in the case of Sri Ganganna Vs. The State of Karnataka and others, in -30- W.P.No.46279/2013 (SC-ST), which was decided on 09.10.2020, dealt with a similar situation where the Karnataka State SC and ST Commission had passed orders directing restoration of land in favour of the complainant, without even issuing notice to the aggrieved person. While considering the powers of the State Commission under the provisions of the Karnataka State Commission for the Scheduled Castes and Scheduled Tribes Act, 2002, it was noticed that sub-clause (b) of Section 8 had similar provision to that of sub-clause (b) of Clause (5) of Article 338. The co-ordinate Bench proceeded to hold that a reading of the provisions would lead to an unmistakable interpretation that the functions entrusted to the Commission are in the nature of investigation and examination of various safeguards provided to the Scheduled Castes and Scheduled Tribes. The provisions of the Act do not clothe the Commission with such powers to entertain the petition which is filed by a grantee seeking restoration of land and investigation into the matter. This Court is in respectful agreement with the decision of the co-ordinate Bench.

23. What is noticeable in the instant case is that the National Commission, has issued recommendation to the State Government -31- and other authorities, without even issuing a notice to persons against whom the complaint was made by Sri.M.Muniraju. Even otherwise, there was no specific directions given to the Assistant Commissioner to take up the case suo motu. The impugned order does not indicate that the Deputy Commissioner had directed the Assistant Commissioner to take up the matter on the recommendation of the National Commission. Further, if the Assistant Commissioner had read the recommendation made by the National Commission, it was incumbent upon the Assistant Commissioner to cause a notice to M/s.Unidesign which was indicted by the National Commission. On the other hand, clandestinely, an affidavit is said to be given by Sri.K.Bhoopathy, admitting violation of the provisions of law, and seeking compensation. The Assistant Commissioner was well aware of the fact that Sri.K.Bhoopathy had disposed off the properties in favour of

Sri.K.C.Varghese, who had in turn sold it to M/s.Unidesign. Therefore, it is obvious that the Assistant Commissioner, has abused his office to pass an order in favour of Sri.M.Muniraju, knowing fully well that the properties were no more in the hands of -32- Sri.K.Bhoopathy and several litigations were already instituted as between Sri.M.Muniraju and M/s.Unidesign.

24. The Assistant Commissioner and the Tahsildar have made a consorted effort, abusing their office and violating the procedures, as noticed above, to take possession of the properties in question, proceeding to demolish the structures and buildings which were in possession of the rightful owners or tenants, with utter disregard to the provisions of law and human rights. The Assistant Commissioner and the Tahsildar are impleaded as parties eo-nomine and they have engaged learned Counsels who were unable to meet the allegations made against them. On the other hand, blame is sought to be placed against each other that the Tahsildar was required to follow the process as contemplated under Section 39 of the Karnataka Land Revenue Act, while it is contended by the Tahsildar that he followed the instructions of the Assistant Commissioner.

25. There can be no manner of doubt that the impugned order passed by the Assistant Commissioner is arbitrary, illegal and tainted with malice. It is therefore required to be quashed and set aside. The matter requires to be reconsidered on merits by the -33- Assistant Commissioner, affording full opportunity to the petitioners herein.

26. So far as the orders passed by the National Commission is concerned, since it is stated to be a recommendation and the matter is directed to be reconsidered at the hands of the Assistant Commissioner, no further action shall be taken on the basis of the recommendation made by the National Commission.

27. Insofar as the compensation sought by the petitioners, this Court is of the considered view that factual assessment is required before considering the question of grant of compensation. Although there is no doubt in the mind of this Court that the petitioners are entitled for compensation, however, since factual assertions are to be looked into, the same could be considered by a competent Civil Court. The type of construction, age of construction, the installations and

fittings provided in the building, whether tenanted or in own use, such other aspects are required to be gone into. Therefore, liberty is granted to the petitioners to approach the competent Civil Court seeking compensation/damages.-.34- 28. Before parting with these writ petitions, it needs to be mentioned that the highhanded action on the part of the Assistant Commissioner and the Tahsildar is required to be taken note of and appropriate action is required to be initiated against them, to take things to their logical conclusion. This Court should take judicial notice of the fact that such highhanded action on the part of the respondent-authorities could not have happened if the authorities were sensitive enough about their powers and functions and the obvious disregard may have been occasioned due to the fact that postings are given to such sensitive offices, not on merits or with public interest in mind. It is obvious that the respondent-authorities are fearless of the consequences of being in conflict with the law. Such officers are emboldened by the fact that they are protected by the Government. Every now and then the citizens of this State are given to understand that plum postings are assigned for monetary considerations. Such news and information are published in national newspapers, magazines, Television channels and social media. Allegations are levelled by the opposition leaders and social activists. Cutting across all political parties that have formed Government, allegations are levelled against Heads of the -35- Departments, Ministers and the Chief Ministers. There cannot be two views that if an Officer shells out money to get a plum posting, he would employ every means possible to recover the money he has invested and makes every effort to make money for future needs and therefore, this forms the vicious circle of corruption. Time has come when this Court has to step in to find out the truth of the fact and direct the State to put in place regulations to check the tentacles of corruption from taking strangle hold of the society. Therefore, this Court would urge that Honble the Chief Justice may take note of the observations of this Court and take up suo motu proceedings against the State Government to put an end to the pernicious practice of providing postings for monetary considerations and reasons other than public interest.

29. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

1 The writ petitions are allowed with costs of Rs.10,000/- (Rupees Ten Thousand Only) each, payable by the respondent-Assistant Commissioner (Sri M.G.Shivanna), the respondent-Tahsildar (Sri Shivappa Lamani) -36- and respondent No.8 (Sri M.Muniraju) to each of the four petitioners. The costs shall be paid within a period of four weeks from today and an acknowledgement shall be furnished in the office, for records. The strictures passed by this Court and costs imposed on the respondent-Assistant Commissioner and the respondent-Tahsildar shall be entered in their Service Register.

2. The impugned order dated 18.02.2020 passed by the respondent-Assistant Commissioner in Case No.K-SC-ST(S) 15/ 2019-2020, is hereby quashed and set aside.

3. The matter stands remanded to the Assistant Commissioner who shall issue notice to the petitioners herein, permit them to file objections and raise all grounds including the question of delay and laches in initiation of the proceedings under Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978.-.37- 4. The Additional Chief Secretary, Department of Revenue, shall initiate an enquiry against the respondent-Assistant Commissioner and the respondent-Tahsildar and if required place them under suspension immediately. At any rate, the respondent-Assistant Commissioner Sri M.G.Shivanna, shall not hear this matter.

5. The enquiry may be entrusted to the Honble Lokayukta.

6. The petitioners herein shall be put back in possession of the land in question, which was resumed by virtue of the impugned order.

7. Liberty is granted to the petitioners to approach the competent Civil Court to seek compensation/damages at the hands of the respondent-Assistant Commissioner, respondent-Tahsildar, the State Government and the 8th respondent Sri. M Muniraju.

8. The recommendation dated 01.11.2019, made by the National Commission and the communication dated 11.01.2019, need not be acted upon. A copy of this

order shall be forwarded to the Chief Secretary, Additional Chief Secretary, Department of Revenue, for further -38- action. A copy of this order shall also be placed before Honble the Chief Justice of this Court. It is ordered accordingly. In view of the disposal of the petitions, pending IAs do not survive for consideration and are accordingly disposed of. SD/- JUDGE DL/JT

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