

Sri a Narayanappa vs State of Karnataka

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Court : Karnataka

Decided On : Mar-01-2024

Judge : E.S.Indires

Appeal No. : WP/49784/2016

Appellant : Sri a Narayanappa

Respondent : State of Karnataka

Judgement :

-1- and IN THE HIGH COURT OF KARNATAKA, BENGALURU DATED THIS THE 01ST DAY OF MARCH, 2024 BEFORE THE HON'BLE MR. JUSTICE E.S. INDIRESH WRIT PETITION NO.51734 OF 2016 (KLR-RR/SUR) C/W WRIT PETITION NO.49784 OF 2016, WRIT PETITION NO.9861 OF 2017 AND WRIT PETITION NO.4684 OF 2022 IN W.P. NO.51734 OF 2016 BETWEEN: SRI. S.H. ANNEGOWDA S/O LATE HANUMANTHAPPA @ CHIKKATHAYAPPA AGED ABOUT 66 YEARS, R/AT SHIVAKOTE VILLAGE, HESARAGHATTA HOBLI, BENGALURU NORTH TALUK. PETITIONER (BY SRI. M. SHIVAPRAKASH, ADVOCATE) SHIVAKUMAR HIEMATH Digitally signed by AND: SHIVAKUMAR HIEMATH Date: 2024.03.04 11:07:02 +0530 1. THE CHIEF SECRETARY STATE OF KARNATAKA, VIDHANA SOUDHA, BENGALURU - 560 001.

2. THE SPECIAL DEPUTY COMMISSIONER-I BENGALURU NORTH SUB-DIVISION, BEGNALURU.

3. THE TAHSILDAR BENGALURU NORTH TALUK (ADDITIONAL), YELAHANKA, BENGALURU - 560 064. -2- and

4. SRI. BYRAPPA S/O LATE GANGABYRAIAH @ GANGA BYRAPPA AGED ABOUT 68 YEARS, R/O NO.8/22, 1ST FLOOR, 10TH B MAIN, JAYANAGAR 1ST BLOCK, BENGALURU - 560 011.

5. SRI. NARASIMHAIAH S/O LATE NARASIAH AGED ABOUT 62 YEARS, R/O BETTAHALLI, GIDDENAHALLI, DASANAPURA HOBLI, BENGALURU NORTH TALUK, BENGALURU - 562 162.

6. MARAPPA

S/O LATE CHIKKA ARASIAH SINCE DECEASED BY LRS. 6(a). GIRIYAMMA W/O LATE MARAPPA AGED ABOUT 65 YEARS. 6(b). MUNIRAJU S/O LATE MARAPPA AGED ABOUT 45 YEARS. 6(c). HANUMANTHARAYAPPA S/O LATE MARAPPA AGED ABOUT 43 YEARS. 6(d). RATHNAMMA D/O LATE MARAPPA AGED ABOUT 40 YEARS. 6(e). NAGENDRA S/O LATE MARAPPA AGED ABOUT 38 YEARS. RESPONDENTS 6(a) TO 6(e) ARE R/O GIDDENAHALLI, -3- and DASANAPURA HOBLI, BENGALURU NORTH TALUK, BENGALURU.

7. SRI. KALE GOWDA S/O LATE KEMPAGOWDA AGED ABOUT 72 YEARS, R/AT NO.437, HOSAKEREHALLI, VEERABHADRA NAGAR, BENGALURU SOUTH TALUK, BENGALURU - 560 098.

8. SRI. SHIVANNA M.V. S/O LATE MADEGOWDA @ MADDAIAH AGED ABOUT 70 YEARS, R/O NO.2908, SHETTYHALLI, RAGHAVENDRA COLONY, CHANNAPATNA, RAMANAGAR DISTRICT - 570 501. RESPONDENTS

(BY SRI. KEMPANNA, AAG AND SRI. MOHAMMED JAFFAR SHAH, AGA FOR R1 TO R3; SRI. S.M. CHANDRASHEKAR, SENIOR ADVOCATE FOR SRI. S.R. HEGDE HUDLAMANE, ADVOCATE FOR R4 TO R7) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA,

PRAYING TO QUASH THE ORDER IN NO.RRT/N/(A)CR-314/86-87 DATED 29TH JUNE, 2016 PASSED BY THE RESPONDENT NO.2-SPECIAL

DEPUTY COMMISSIONER-I VIDE ANNEXURE-G AND CONSEQUENTLY TO PASS ORDER ON THE IMPEADING APPLICATION FILED AND TO ALLOW THE APPLICATION FURTHER TO ADJUDICATE THE DISPUTE CONSIDERING THE CLAIM OF THE PETITIONER UNDER A REGISTERED SALE DEED DATED 08TH JULY, 1935; DIRECT THE RESPONDENT AUTHORITIES TO RESTORE THE NAME OF THE PETITIONER IN THE RELEVANT REVENUE RECORDS AS IT WAS EARLIER; AND ETC.

-4- and IN W.P. NO.49784 OF 2016 BETWEEN: SRI. A. NARAYANAPPA S/O LATE PATEL ANNAIAH GOWDA @ ANNE GOWDA AGED ABOUT 74 YEARS, R/AT SHIVAKOTE VILLAGE, HESARAGHATTA HOBLI, BENGALURU NORTH TALUK, BENGALURU - 560 089. PETITIONER (BY SRI. C.S. PRASANNA KUMAR, ADVOCATE FOR SRI. VIJAYA KUMAR R., ADVOCATE) AND:

1. STATE OF KARNATAKA REP. BY ITS SECRETARY, REVENUE DEPARTMENT, VIDHANA SOUDHA, BENGALURU - 560 001.

2. THE SPECIAL DEPUTY COMMISSIONER BENGALURU NORTH SUB-DIVISION, K.G. ROAD, BEGNALURU - 560 009.

3. THE TAHSILDAR BENGALURU NORTH TALUK (ADDITIONAL), YELAHANKA, BENGALURU - 560 064.

4. SRI. BYRAPPA S/O LATE GANGABYRAIAH @ GANGA BYRAPPA AGED ABOUT 69 YEARS, R/AT NO.8/22, 3RD CROSS, 10TH MAIN ROAD, JAYANAGAR 1ST BLOCK, BENGALURU - 560 011. -5- and

5. SRI. NARASIMHAIAH S/O LATE NARASIAH AGE ABOUT 62 YEARS, R/O BETTAHALLI, GIDDENAHALLI, DASANAPURA HOBLI, BENGALURU NORTH TALUK, BENGALURU.

6. MARAPPA

S/O LATE CHIKKA ARASIAH SINCE DECEASED BY LRS. 6(a). GIRIYAMMA W/O LATE MARAPPA AGED ABOUT 65 YEARS. 6(b). MUNIRAJU S/O LATE MARAPPA AGED ABOUT 45 YEARS. 6(c). HANUMANTHARAYAPPA S/O LATE MARAPPA AGED ABOUT 43 YEARS. 6(d). RATHNAMMA D/O LATE MARAPPA AGED ABOUT 40 YEARS. 6(e). NAGENDRA S/O LATE MARAPPA AGED ABOUT 38 YEARS. RESPONDENTS 6(a) TO 6(e) ARE R/O GIDDENAHALLI, DASANAPURA HOBLI, BENGALURU NORTH TALUK, BENGALURU.

7. SRI. KALE GOWDA S/O LATE KEMPEGOWDA AGED ABOUT 72 YEARS, -6- and R/O NO.437, HOSAKEREHALLI, VEERABHADRA NAGAR, BENGALURU SOUTH TALUK, BENGALURU - 560 098.

8. SRI. SHIVANNA M.V. S/O LATE MADEGOWDA @ MADDAIAH AGED ABOUT 70 YEARS, R/O NO.2908, SHETTYHALLI, RAGHAVENDRA COLONY, CHANNAPATNA, RAMANAGAR DISTRICT - 570 501.

9. THE FOREST DEPARTMENT KARNATAKA, REP. BY ITS LOCAL/TERRITORIAL OFFICERS.

10. SRI. SHIVANNA S.M. S/O MUNISHAMAIAH @ DODDA THAYAPPA AGED ABOUT 79 YEARS, R/AT SHIVAKOTE VILLAGE, HESARAGHATTA HOBLI, BENGALURU NORTH TALUK, BENGALURU - 560 089.

11. SRI. GOPALAKRISHANA S/O MUNISHAMAIAH @ DODDA THAYAPPA AGED ABOUT 71 YEARS, R/AT SHIVAKOTE VILLAGE, HESARAGHATTA HOBLI, BENGALURU NORTH TALUK, BENGALURU - 560 089.

12. SRI. RAMACHANDRAPPA S/O MUNISHAMAIAH @ DODDA THAYAPPA AGED ABOUT 68 YEARS, R/AT SHIVAKOTE VILLAGE, HESARAGHATTA HOBLI, BENGALURU NORTH TALUK, BENGALURU -560 089. RESPONDENTS (BY SRI. KEMPANNA, AAG AND -7- and SRI. MOHAMMED JAFFAR SHAH, AGA FOR R1 TO R3 AND R9; SRI. S.M. CHANDRASHEKAR, SENIOR ADVOCATE FOR SRI. S.R. HEGDE HUDLAMANE, ADVOCATE FOR R4 TO R7) THIS WRIT PETITION IS FILED UNDER ARTICLES 226

AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER IN NO.RRT/N/(A)CR-314/86-87 DATED 29TH JUNE, 2016 PASSED BY THE RESPONDENT NO.2-SPECIAL DEPUTY COMMISSIONER-I VIDE ANNEXURE-J, DIRECTING THE NAMES OF RESPONDENTS 4 TO 8 HEREIN TO BE ENTERED IN COLUMN NO.9 OF RTC IN RESPECT OF KRISHNARAJAPURAM VILLAGE, HESARAGHATTA HOBLI, BENGALURU NORTH ADDITIONAL TALUK, BENGALURU; DIRECT THE RESPONDENTS 2 AND 3 TO ENTER THE NAME OF THE PETITIONER AND RESPONDENTS 10 TO 12 IN COLUMN NO.9 OF RTC IN RESPECT OF SURVEY NO.23, KRISHNARAJAPURAM VILLAGE, HESARAGHATTA HOBLI, BENGALURU NORTH ADDITIONAL TALUK, BENGALURU, MEASURING AN EXTENT OF 73 ACRES; AND ETC. IN W.P. NO.9861 OF 2017 BETWEEN:

1. THE STATE OF KARNATAKA REP. BY TAHASILDAR, BENGALURU NORTH (ADDITIONAL TALUK), YELAHANKA, BENGALURU.

2. THE RANGE FOREST OFFICER BENGALURU RANGE, BENGALURU. PETITIONERS (BY SRI. KIRAN V. RON, AAG AND SRI. MOHAMMED JAFFAR SHAH, AGA) AND:

1. SRI. BYRAPPA S/O LATE GANGABYRAIAH @ GANGA BYRAPPA R/O NO.8/22, 3RD CROSS, -8- and 10TH MAIN ROAD, JAYANAGAR 1ST BLOCK, BENGALURU - 560 011.

2. SRI. NARASIMHAIAH S/O LATE NARASIAH, AGE: MAJOR, R/O BETTAHALLI, GIDDENAHALLI, DASANAPURA HOBLI, BENGALURU NORTH TALUK, BENGALURU - 562 123.

3. MARAPPA

SINCE DECEASED BY LRS. 3(a). GIRIYAMMA W/O LATE MARAPPA AGED ABOUT 65 YEARS. 3(b). MUNIRAJU S/O LATE MARAPPA AGED ABOUT 45 YEARS. 3(c). HANUMANTHARAYAPPA S/O LATE MARAPPA AGED ABOUT 43 YEARS. 3(d). RATHNAMMA D/O LATE MARAPPA AGED ABOUT 40 YEARS. 3(e). NAGENDRA S/O LATE MARAPPA AGED ABOUT 38 YEARS.

RESPONDENTS 3(a) TO 3(e) ARE R/O GIDDENAHALLI, DASANAPURA HOBLI, BENGALURU NORTH TALUK, BENGALURU.

4. SRI. KALE GOWDA S/O LATE KEMPAGOWDA -9- and AGE: MAJOR, R/O NO.437, HOSAKEREHALLI, VEERABHADRA NAGAR, BENGALURU SOUTH TALUK, BENGALURU - 560 098.

5. SRI. SHIVANNA M.V. S/O LATE MADEGOWDA @ MADDAIAH AGED: MAJOR, R/O NO.2908, SHETTYHALLI, CHANNAPATNA, RAMANAGAR DISTRICT - 570 501.

6. THE SPECIAL DEPUTY COMMISSIONER-I

BENGALURU NORTH SUB-DIVISION, BENGALURU - 560 009. RESPONDENTS (BY SRI. S.R. HEGDE HUDLAMANE, ADVOCATE FOR R1 TO R5; NOTICE TO R6 - SERVED; THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER IN NO.RRT/N/(A)CR-314/86-87 DATED 29TH JUNE, 2016 PASSED BY THE RESPONDENT NO.6-SPECIAL DEPUTY COMMISSIONER-1 VIDE ANNEXURE-A; AND ETC. IN W.P. NO.4684 OF 2022 BETWEEN:

1. SRI. SHIVANNA S.M. S/O SRI. MUNISHAMAIAH @ DODDATHAYAPPA AGED ABOUT 75 YEARS, R/AT SHIVAKOTE VILLAGE, HESARAGHATTA HOBLI, BENGALURU NORTH TALUK, BENGALURU - 560 089.

2. SRI. GOPALAKRISHNA S.M. S/O SRI. MUNISHAMAIAH @ DODDATHAYAPPA AGED ABOUT 65 YEARS - 10 - and R/AT SHIVAKOTE VILLAGE, HESARAGHATTA HOBLI, BENGALURU NORTH TALUK, BENGALURU - 560 089.

3. SRI. RAMACHANDRAPPA S.M. S/O SRI. MUNISHAMAIAH @ DODDATHAYAPPA AGED ABOUT 60 YEARS, R/AT SHIVAKOTE VILLAGE, HESARAGHATTA HOBLI, BENGALURU NORTH TALUK, BENGALURU -560 089. PETITIONERS (BY SRI. C.S. PRASANNA KUMAR, ADVOCATE FOR SRI. BHAT GANAPATHY NARAYAN, ADVOCATE) AND:

1. THE SPECIAL DEPUTY COMMISSIONER-I BENGALURU NORTH SUB-DIVISION, K.G. ROAD, BENGALURU - 560 009.
2. FOREST DEPARTMENT, KARNATAKA REP. BY FIELD OFFICER, BENGALURU NORTH (SUB-DIVISIO), BENGALURU - 560 055.
3. THE TAHSILDAR BENGALURU NORTH (ADDITIONAL) TALUK, YELAHANKA, BENGALURU - 560 064.
4. SRI. BYRAPPA S/O LATE GANGA BYRAIAH @ GANGA BYRAPPA R/O NO.8/22, 10TH MAIN ROAD, 3RD CROSS, JAYANAGAR 1ST BLOCK, BEGALURU - 560 011.
5. SRI. NARASIMHAIAH S/O LATE NARASIAH, - 11 - and AGE: MAJOR, R/O GIDDENAHALLI, DASANAPURA HOBLI, BENGALURU NORTH TALUK, BENGALURU - 562 123.
6. SRI. MARAPPA S/O LATE CHIKKA ARASIAH AGE: MAJOR, R/AT DASANAPURA HOBLI, BENGALURU NORTH TALUK, BENGALURU - 562 123.
7. SRI. KALE GOWDA S/O LATE KEMPEGOWDA AGE: MAJOR, R/AT HOSAKEREHALLI, VEERABHADRA NAGAR, BENGALURU SOUTH TALUK, BENGALURU - 560 098.
8. SRI. SHIVANNA M.V. S/O LATE MADEGOWDA @ MADDAIAH AGE: MAJOR, R/O NO.2908, SHETTIHALLI, RAGHAVENDRA COLONY, CHANNAPATNA, RAMANAGAR DISTRICT - 570 501. RESPONDENTS

(BY SRI. KEMPANNA, AAG AND SRI. MOHAMMED JAFFAR SHAH, AGA FOR R1; SRI. S.M. CHANDRASHEKHAR, SENIOR ADVOCATE FOR SRI. S.R. HEGDE HUDLAMANE, ADVOCATE FOR R5 TO R7) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER IN NO.RRT/N/(A)CR-314/86-87 DATED 29TH JUNE, 2016 PASSED BY THE RESPONDENT NO.1-SPECIAL DEPUTY COMMISSIONER-1 VIDE ANNEXURE-K; DIRECT THE RESPONDENTS 1 TO 3 TO PLACE ORIGINAL RECORDS - 12 - and PERTAINING TO THE SCHEDULE

PROPERTY BEFORE THIS HONBLE COURT; DIRECT THE RESPONDENTS 1 AND 2 TO MAKE ENTRY OF THE PETITIONERS NAME IN THE RTCS ALONG WITH SRI. A. NARAYANAPPA; AND ETC. IN THESE WRIT PETITIONS, ARGUMENTS BEING HEARD,

JUDGMENT RESERVED, COMING ON FOR PRONOUNCEMENT

OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In these writ petitions, the petitioners have sought for quashing order dated 29.06.2016 passed by the Special Deputy Commissioner-I, Bangalore North Sub-Division, Bangalore. Since the petitioners in the above writ petitions challenging the common order dated 29.06.2016 passed by the competent authority, all the writ petitions were clubbed, heard together and disposed of by this common order.

FACTS OF THE CASE

2. In W.P.No.51734 of 2016:

The petitioner claims to be the owner of the land in question in terms of the Sale Deed dated 08.07.1935 (Annexure-A) executed by the owners of the land bearing Sy.No.23 of Krishnarajapura jodi village, classified as Jodi - 13 - and Grama, in favour of the ancestors of the petitioner. It is stated that, the land in question is a Inam land. It is further stated that, the ancestors of the petitioner and thereafter the petitioner is in possession of the land in question pursuant to the execution of registered Sale Deed dated 08.07.1935 with the original Jodi Inamdars and continued in the ownership of the land in question. It is further stated that, there was partition in their family on 01.06.1949 and properties were divided amongst joint family members. It is stated that, the revenue authorities have initiated proceedings on the premise that the land in question is a gomal land in RRT.1(NA) CR 314 of 1986-87 in the matter of claim made by respondent Nos.4 to 6 (hereinafter referred to private respondents), seeking occupancy rights under the provisions of Mysore (Personal and Miscellaneous) Inam Abolition Act, 1954

(hereinafter referred to as the Act for short) and claimants in the above proceedings are residents of Bangalore city. It is also stated that Forest Department also made claim in respect of the subject land. It is further stated that, - 14 - and contesting private respondents herein have filed W.P.No.13022 of 2007 before this Court, seeking direction to the respondents to consider the application made by them to continue their names in the revenue records and as such, this Court by order dated 20.08.2007, directed the State Government to consider the case of the petitioners therein. Thereafter, two other writ petitions in W.P.No.15451-52 of 2014 have been filed, seeking similar direction and this Court, by order dated 04.06.2014, directed the respondent-authorities to conclude the proceedings at the earliest. It is further averred by the petitioner that, petitioner has made an application to implead himself in the impugned proceedings as per Annexure-D, as the petitioner is interested party and the competent authority as per Annexure-G dated 29.06.2016, without considering the claim made by the petitioner herein, passed the impugned order and therefore, being aggrieved by the same, the petitioner has presented this writ petition. - 15 - and

3. In W.P.No.49784 of 2016:

The petitioner claims to be owner in possession of the land bearing Sy.No.23 situate at Krishnarajapura village, Bangalore North Taluk and contended that, the father of the petitioner-Patel Annegowda, had purchased the land in question as per the registered Sale Deed dated 08.07.1935 from H.Narayana Rao and Honnabhatta - original Inamdars. It is stated that, the said Honnabhatta, had purchased the land from one B.H.Srikantaiah. It is the case of the petitioner that, pursuant to the judgment and decree passed in the partition suit in O.S.No.380 of 1947- 48, on the file of II Munsiff Court, Bangalore, subject land came to the share of the ancestors of the petitioner and as such, petitioner took up a contention that, the land in question is belonging to him. Feeling aggrieved by the

order dated 29.06.2016 passed by the respondent-

authorities, on the ground that the said authority without considering the impleading application filed by the - 16 - and petitioner has passed the impugned order, the petitioner has presented this writ petition.

4. In W.P.No.9861 of 2017:

The above writ petition is filed by the petitioner-State Government contending that, the land in question is a Government kharab gomal land and the revenue records reflects that the land in question is a sarkari kharab land and it is stated that, as per the notification issued by the State Government, land in question is belonging to the Forest Department and as such, challenged the impugned

order dated 29.06.2016 (Annexure-A) stating that, the

competent authority without considering the claim made

by the Forest Department has passed the impugned order

and accordingly, sought for interference of this Court.

5. In W.P.No.4684 of 2022:

The petitioners claim to be sons of Muniswamaiah, owner of the land bearing Sy. No.23 measuring 72 acres, situate at Krisnarajapura, Bangalore North Taluk. It is stated that, originally the land was belonging to H. - 17 - and Narayana Rao and Sri Honnabhatta and thereafter, the father of the petitioners acquired the property through their ancestors. It is the claim of the petitioners that, they have made an application to implead in the proceedings as per Annexure-E and same was not considered by the

competent authority while passing the impugned order

dated 29.06.2016 (Annexure-K) and therefore, the petitioners have presented this writ petition.

6. I have heard Sri M. Shivaprakash, learned

counsel appearing for the petitioner in W.P.No.51734 of 2016; Sri C.S. Prasanna Kumar, learned Senior Counsel on behalf of Sri R. Vijayakumar, learned counsel for the petitioner in W.P.No.49784 of 2016; Sri Kiran V. Ron, learned Additional Advocate General on behalf of Sri Mohammed Jaffar Shah, learned Additional

Government Advocate appearing for the petitioner-State in W.P.No.9861 of 2017; Sri C.S. Prasanna Kumar, learned Senior Counsel on behalf of Sri Ganapathi Bhat, learned counsel appearing for the petitioners in W.P.No.4684 of - 18 - and 2022; Sri Kempanna, learned Additional Advocate General on behalf of Mohammed Jaffar Shah, learned Additional Government Advocate appearing for the respondent-State in W.P.No.51734 of 2016, W.P.No.49784 of 2016 and W.P.No.4684 of 2022, Sri M.R. Rajgopal and Sri S.M. Chandrashekar, learned Senior Advocates on behalf of Sri S.R. Hegde Hudlmane, learned counsel appearing for the private contesting respondents. CONTENTIONS OF THE PARTIES

7. It is submitted by Sri M.Shivaprakash, learned

counsel appearing for the petitioner in W.P.No.51734 of 2016 that, the ancestors of the petitioner had purchased the land in question as per registered sale-deed dated 08.07.1935 from the original inamdars and the petitioner is in possession of the land in question having acquired the same through inheritance from his ancestors and he further submitted that, the respondent-authorities without considering the right, title or interest of the petitioner in - 19 - and the land in question has passed impugned order, which requires to be set aside in this writ petition.

8. Learned counsel for the petitioner further

contended that the respondent -authorities have not issued notice and fair hearing was not extended to the petitioner before passing the impugned order and as such contended that the impugned order is in violation of principles of natural justice.

9. He further contended that, private respondents

herein are claiming to be in possession of the land in question based upon the occupancy right said to have been granted to them under Inam Abolition Act. Therefore, they have approached this Court in W.P.No.13022 of 2007 and W.P.No.15451-52 of 2014 and this Court directed the respondent-authorities to consider their grievance relating to legitimate right in the land in question and

therefore he contended that, the impugned order is liable to be set aside, as while considering the grievance of the private respondents, the competent authority, without considering - 20 - and the case of the petitioners in right perspective has passed the impugned order. He also refers to finding recorded by the respondent-authorities that, the land in question is not belong to the Forest Department at any point of time and the entire finding recorded by the competent authority in the impugned order is without any basis and accordingly, sought for interference of this Court.

10. Sri. C.S. Prasanna Kumar, learned Senior

Counsel on behalf of Sri Vijayakumar R., learned counsel appearing for the petitioner in W.P.No.49784 of 2016 argued that, the petitioner is the owner in possession of the land in question and further contended that, the land in question was purchased by the father of the petitioner - Patel Annegowda as per registered sale-deed dated 08.07.1935 from its vendors-H.Narayana Rao and Honnabhata. He further submitted that, portion of the land has been sold by the father of the petitioner and thereby he contended that, the petitioner is aggrieved by the impugned order passed by the respondent-authorities, - 21 - and as the same is contrary to the principles of natural justice as the competent authority without extending fair hearing to the petitioner passed the impugned order and as such, contended that the impugned order is required to be set aside in this writ petition. He further contended that, the claim made by the private contesting respondents is based on the fake documents and alleged that, the private respondents have committed fraud while obtaining the impugned order, which vitiates all judicial acts and

accordingly sought for interference in the impugned order

passed by the competent authority in the light of the

judgment rendered by the Honble Supreme Court in the

case of A.V. Papayya Sastry and others vs. Government of A.P. and others reported in (2007) 4 SCC 221. He further contended that, the respondent-

authorities did not accept the impleading application, objection and written submission made by the petitioner during impugned proceedings and pleaded that, nothing is stated in the impugned order about the legitimate claim of - 22 - and the petitioner and accordingly sought for interference of this Court.

11. Sri. Kiran V. Ron, learned Additional Advocate

General appearing for the petitioner-State in W.P.No.9861 of 2017 contended that, the original Tippani in respect of the land in question shows that the subject land is a Government kharab gomal land and the occupancy right claimed by one Bhangarappa in Form No.6 was rejected during the year 1959 and he further contended that, out of 79 acres 22 guntas in Sy.No.23 of K.R.Pura village, an extent of 69 acres of land was allotted to Forest Department on 21.07.1998 and the Forest Department has planted saplings in the entire extent of the land in question and therefore he contended that, the impugned

order passed by the competent authority is not correct and

accordingly sought for interference of this Court.

12. Learned Additional Advocate General, while

referring to order in LRF (INA) 418/1987-88 on the file of Land Tribunal, Bangalore North, Taluk Bangalore and in - 23 - and the case No.06/1957-58 under the provisions of the Inam Abolition Act, argued that, occupancy right was conferred to an extent of 6 acres only in Sy.No.23 and remaining extent of land is in possession of the State Government where Forest Department has planted saplings and accordingly he argued that, the documents produced by the private respondents cannot be accepted. He further contended that, the competent authority has not extended fair hearing to the parties while passing the impugned

order and accordingly sought to remand the matter to the

competent authority to provide opportunity to all the parties to urge their grievances.

13. In response to the same, Sri C.S. Prasanna

Kumar, learned Senior Counsel appearing for the private petitioners pleaded that, the argument of the petitioner- State in W.P.No.9861 of 2017 cannot be accepted, as the Division Bench of this Court in the case of V. Sampangi Ramaiah vs. The Director/Commissioner & Others, reported in 2014 (4) KCCR 3246 has held that, there - 24 - and shall be a procedure to be adopted for a declaration of land as forest land and non-compliance of the same would disentitle the Forest Department to claim right over the land in question. He also refers to the judgment of the Division Bench of this Court in the case of Sri D.M. Deve Gowda vs. The Principal Chief Conservator of Forests in W.P.No.10502/2022 disposed of on 21.06.2022 and argued that, there is no concept of deemed forest as argued by the learned AAG and contended that, the petitioner-State has no locus standi to challenge the impugned order without producing the relevant notification to establish that the land in question is belonging to Forest Department, in terms of the provisions under the Karnataka Forest Act.

14. Sri C.S. Prasanna Kumar, learned Senior

Counsel on behalf of Sri Ganapathi Bhat, learned counsel appearing for the petitioners in W.P.No.4684 of 2022 argued that, the father of the petitioners is the owner in possession of the land in question, having purchased the - 25 - and same from its vendors - H.Narayanrao and Honnabhatta as per registered sale-deed dated 08.07.1935 and therefore he contended that, the impleading application filed by the petitioners at Annexure-E has not been considered by the respondent-authorities while passing the impugned order in the right perspective and therefore contended that, the impugned order suffers from infirmity on the ground of violation of principles of natural justice and accordingly, sought for interference of this Court. Sri C.S. Prasanna Kumar, learned Senior Counsel further invited the attention of this Court to the order sheet in S.C. No.2319/1959-60 on the file of Special Deputy Commissioner for Inam Abolition, Bangalore and argued that, the petitioners or their ancestors were not party in the said proceedings and therefore, granting occupancy right in Sy.No.23 of Krishnarajapura village in favour of the contesting respondents is not correct and violation of the procedure contemplated

under the Act. Elaborating on this aspect, he submitted that, the documents referred to by the contesting private respondents under Inam - 26 - and Abolition Act are bogus and not in existence and further argued that, the contesting private respondents have tampered the original records and accordingly argued that, the private respondents have no legal right to claim in the matter, as all further acts pursuant to fraud vitiates in entirety.

15. Per contra, Sri M.R. Rajgopal, learned Senior

Counsel appearing for the contesting private respondents in the aforementioned writ petitions pleaded that, originally land bearing Sy.No.23 measuring 79 acres belonging to H.Narayanrao and Krishnarajapura village is a Inam village. He submitted that, the land in question was a jodi Inam land and re-grant order was passed by the competent authority as per Annexures-R1 to R4 and the same was not questioned by the petitioners herein. Therefore, it is his specific contention that, the writ petitions are liable to be dismissed on the said ground alone. He further submitted that, the petitioners have alternative remedy under Section 28-A of the Act and - 27 - and therefore it is contended that, without exhausting the remedy available under law, the petitioners cannot approach this Court invoking Article 226 of the Constitution of India.

16. Learned Senior counsel also refers to

Section 3 of the Act and argued that, any such sale-deeds executed by the Inamdars shall cease to exist and not enforceable in nature, as the land is vested absolutely with the State Government. Accordingly, learned Senior Counsel submitted that, the petitioners have no legal right in the land in question. He further submitted that, Section 4 of the Karnataka Forest Act, 1963 provides for notifying the land to fortify that land has been vested in the Department of Forest and unless such notification is produced by the State Government to establish the grant made by the revenue authorities in favour of the Forest Department, the writ petition filed by the State Government in W.P.No.9861 of 2017 does not survive for consideration. - 28 - and

17. Sri M.R. Rajgopal, learned Senior counsel

further contended that the proviso to Section 135 of the Karnataka Land Revenue Act provides for remedy for the aggrieved parties to establish their right or/and title in respect of the subject land by approaching the Civil Court, seeking declaratory relief and without exhausting the said remedy, the petitioners herein have no legal right over the land in question without establishing their title to the land in question, in the circumstances of the case and accordingly, sought for dismissal of the writ petitions.

18. Sri S.M. Chandrashekar, learned Senior Counsel

appearing for the contesting private respondents argued that, Section 136(3) of the Karnataka Land Revenue Act is only meant for revenue entry proceedings and not a proceedings to decide the title over the land in question and accordingly, refuted the contention of the learned Additional Advocate General to remand the matter to the original authority to adjudicate the matter afresh. He also emphasised that, the competent authority under the - 29 - and provisions of Inam Abolition Act recorded a finding that, the jodidar has no objection in registering the name of applicants therein, who are the original grantees and therefore, contended that, the arguments advanced by Sri C.S. Prasanna Kumar, learned Senior Counsel appearing for the petitioners cannot be accepted. He further submitted that, the petitioners herein tried to prolong the

matter instead of challenging the original re-grant order

passed in terms of the provisions contained under the Inams Abolition Act and therefore, he sought for dismissal of the writ petitions. In order to buttress his arguments, learned Senior Counsel places reliance on the judgment of this Court in the case of C.R.Rakin Ahmed vs. Deputy Commissioner, Mysore, reported in KLJ 1990-1-161 and in the case of Smt. Jayamma and Others vs. The State of Karnataka, rep., by its Secretary, Department of Revenue and Others reported in ILR 2020 KAR 1449 and argued in favour of the impugned

order.

19. Sri S.M.Chandrashekar, learned Senior Counsel

further contended that, petitioners cannot make any grievance either before the Special Deputy Commissioner or before this Court urging that, their applications for impleadment ought to have been considered as the petitioners have no locus standi to raise the said contention in view of the judgment of the Honble Supreme Court in the case of Vidur Impex and Traders Pvt. Ltd. and Ors. v. Tosh Apartments Pvt. Ltd. and Ors Bhagwati Developers Pvt. Ltd. v Tosh Apartments Pvt. Ltd. and Ors, reported in AIR 2012 SC 2925. He also argued that, the petitioners have admitted that the land in question is a jodi Inam land and upon referring to Section 14 of the Inams Abolition Act, he submitted that, it is the land to be considered and not the village while re-granting the land in question and accordingly, sought for dismissal of the writ petitions.

20. With regard to writ petition filed by the State

Government in W.P.No.9861 of 2017, Sri S.M. - 31 - and Chandrashekar, learned Senior Counsel invited the attention of the Court to Sections 3 and 36 of the Forest Act and argued that, the writ petition filed by State Government deserves to be dismissed, as no official gazette has been passed under Section 3 of the Karnataka Forest Act and there is no compliance of the procedure contemplated under Section 36 of the said Act and further he argued that, the plea of the State Government that it is deemed forest is devoid of merits and as such, sought for dismissal of all the writ petitions.

21. Insofar as the contention raised by Sri C.S.

Prasanna Kumar, learned Senior Counsel appearing for private petitioners, Sri S.M. Chandrashekar, learned Senior Counsel appearing for the private respondents argued that, there is no pleading in the writ petitions alleging an element of fraud against the contesting private respondents and therefore, he submitted that, the petitioners have not made out a case for issuance of writ - 32 - and of mandamus to re-consider the case afresh and accordingly, sought for dismissal of the petitions.

22. In the light of the submission made by the learned counsel appearing for the parties, the following questions would arise for consideration:-

1) Whether the petitioners in W.P.No.51734/2016, W.P.No.49784/2016 and W.P.No.4684/2022 have made out a case for interference on the ground of violation of principles of natural justice? i) Whether the petitioner-State in W.P.No.9861/2017 establish that the land in question is belong to Forest Department as per the provisions under the the Karnataka Forest Act, 1963? ii) Whether the contesting respondents have made out a case for dismissal of the writ petitions on the ground of relegating the writ petitioners seeking declaratory reliefs? iii) What order? - 33 - and FINDINGS

23. In the light of the submissions made by the

learned counsel appearing for the parties, petitioner in W.P.No.51734/2016 contended that the ancestors of the petitioner have purchased the land in question as per registered sale-deed dated 08.07.1935 from the Jodi inamdars namely, H.Narayanrao and Honnabhatta. The petitioners in W.P.No.49784/2016 contended that the petitioners have become owner in possession of the land in question as per the registered sale-deed dated 08.07.1935 said to have been executed in favour of father of the petitioner - Patel Annegowda by its vendors- H. Narayana Rao and Honnabhatta. It is the case of the petitioners in W.P.No.4684 of 2022 that, they became owner in possession of the land in question pursuant to the sale-deed dated 08.07.1935 wherein, land in question has been purchased by one Patel Annegowda from H. Narayana Rao and Honnabhatta and thereafter, the joint family property was partitioned on 01.06.1949 and State - 34 - and Government has filed W.P.No.9861/2017 and pleaded that the land in question is belonging to Forest Department and saplings have been planted therein and these are the essential facts to determine their ownership in respect of the schedule lands and thereby, the petitioners have made a claim as owners in possession of the land in question.

24. The contesting private respondents have also

placed on record the Notification dated 07.07.1958 issued under Section 1(4) of the Mysore (Personal and Miscellaneous) Inam Abolition Act, 1954, specifying that the land in question is a jodi Inam land. At this juncture, it is the principal argument of Sri Prasanna Kumar, learned Senior Counsel that the contesting respondents have not filed application under Section 10(3) of the said Act and entire proceeding is fake and non-est. However, perusal of the re-grant order referred to above would indicate that an

order has been passed by the competent authority under

the said Act, granting occupancy rights in favour of ancestors of the contesting private respondents. These - 35 - and

facts would substantiate that, there is cloud in the

ownership of the lands in question.

25. It is to be noted that, the competent authority-

Special Deputy Commissioner, Benglauru North Sub- Division, Bengaluru initiated proceedings under Section 136(3) of the Karnataka Land Revenue Act, wherein the competent authority based on the record produced by the Tahsildar, North (Addl.) Taluk, by referring to the report dated 27.11.2008 arrived at a conclusion that the land bearing Sy.No.23 measuring 79 acres 22 guntas was jodi inam land and same has been classified as sarkari gomal land. Occupancy right was conferred to the occupants in respect of entire 72 acres of land. It is the submission of the learned counsel for the petitioners that, the petitioners have not been heard in the matter, however, entire finding recorded by the competent authority is based on the revenue records produced by the jurisdictional Tahasildar. It is also pertinent to mention here that, the impleading applications filed by the private writ petitioners and their - 36 - and grievance has not been addressed by the competent authority as contended by the writ petitioners. It is the contention of the State Government itself in W.P.No.9861/2017 that, the competent authority has not extended fair opportunity to the parties and that apart, the aggrieved parties have not been heard in the matter.

26. Petitioners in W.P.No.49784 of 2016 and W.P.No.4684 of 2022 seeking quashing of the impugned

order dated 29.06.2016, inter alia sought for direction to

the respondent-authorities to enter the names of the petitioners in column No.9 of RTC in respect of the subject matter of the land. It is stated in W.P.No.4684 of 2022 that, the petitioners are the sons of Munishamaiah @ Doddathayappa and are successors in title to the aforementioned land. Further, it is stated in the aforementioned writ petition that, petitioners paternal grand uncle and petitioners father in W.P.No.49784 of 2016 acquired the subject land as per registered sale-deed dated 08.07.1935 from the original inamdars. - 37 - and Thereafter, there was a partition in the family and as such, petitioners succeed to the estate of their ancestors.

27. In W.P.No.9861 of 2017, the cause title to the

writ petition provides that, petitioner No.1 is State of Karnataka by Tahasildar, Bangalore North (Additional Taluk), Yelahanka, Bengaluru and petitioner No.2 is the Range Forest Officer, Bengaluru Range, Bengaluru. It is apparent from the impugned order, which is not disputed by the parties that, petitioner No.1 in W.P.No.9861 of 2017 - Tahasildar, Bengaluru North (Additional Taluk), Bengaluru has filed a report dated 27.11.2008 before the competent authority stating that, the land in question is a Inam land and thereafter classified as sarkari gomal land. The report as per letter dated 27.11.2008 produced by the said Tahasildar would indicate that, there are no records in the office of the Tahsildar to substantiate that the subject land has been transferred to the Forest Department as per the letter dated 21.07.1988. The very same Tahsildar, North Taluk, had filed another report before the original - 38 - and authority stating that there are no records to substantiate that the land in question is transferred to Forest Department and now filed writ petition in W.P.No.9861 of 2017 urging that, the land has been transferred to the Forest Department, strangely taking contrary view and no relevant document of transfer/ notification issued by the State Government has been placed, except filing affidavit before the Honble Supreme Court. These two distinct stand of the Tahasildar North, would apparently shows that there are no

records relating to transfer of land in favour of the Forest Department by the State Government. The entire argument of the learned Senior counsel appearing for the private petitioners revolves around that the re-grant order made by the competent authority in favour of the private respondent is suffers from infirmity, as there is no such proceedings initiated under the provisions of the Act. However, no acceptable document is placed therein, except alleging fraud being committed by the private respondents. It is to be noted that, as rightly pointed out by Sri S.M. Chandrashekar, - 39 - and learned Senior Counsel appearing for the private respondents that, there is no pleading in the writ petitions filed by the private petitioners that, there is an element of fraud in the averments made in the writ petitions. It is also relevant to cite the judgment of Division Bench of this Court in the case of Smt. N.S. Nagalakshmi v Vidya Vardhaka Sangha, Bangalore and another, reported in 2005(6) Kar.L.J. 106 (DB), wherein it is held that, arguments beyond pleading are not tenable and cannot be accepted.

28. The State Government as a petitioner places

documents namely, revenue records, village map and Tippani to demonstrates that the land is belonging to Forest Department, however argued that, as per Section 9(1)(i) of the Inams Abolition Act, the tenancy rights of the forest lands cannot be granted to anybody, muchless the private respondents herein. The petitioner- State claiming that the land is belonging to the Forest Department as per letter dated 21.07.1988 and - 40 - and undisputably, no notification under Section 4 of the Forest Act is produced before the competent authority while passing the impugned order, nor before this Court to establish the transfer made thereunder, however, it is the stand of the petitioner-State that, as per A.T. Ramaswamy Committee report, 79 acres, 22 guntas of Government kharab gomal land is a Forest land. The entire arguments of the State Government revolves around the affidavit filed before the Honble Supreme Court, identifying the schedule land herein as a forest land and the said Committee has filed affidavit to finalise the survey number in various villages as deemed forest areas pursuant to the

judgment of the Honble Supreme Court in the case of

T.N.Godavarman Thirumulkpad vs. Union of India and others, (1997)2 SCC 267. In the absence of the cogent document produced by the petitioner-State as per the provisions under the Karnataka Forest Act, I am of the view that, the writ petition filed by the State Government cannot be accepted and even if the matter is remanded to the original authority, there wont be any improvement in - 41 - and the case of the petitioner - State Government, as there is no such document issued by the Government under Sections 3 and 4 of the Karnataka Forest Act.

29. It is well established principle in law that, if a

statutory provision prescribes a particular procedure to be followed by the authority to do an act, it should be done in that particular manner only. This principle was considered by Honble Supreme Court in the case of Ramchandra Keshav Adke (Dead) by Lrs. v. Govind Joti Chavare and others reported in AIR 1975 SC 915, in the case of Babu Verghese and others vs. Bar Council of Kerala and others reported in (1999) 3 SCC 422 and in the case of Mackinnon Mackenzie and Company Limited vs. Mackinnon Employees Union reported in (2015) 4 SCC 544. It is pertinent to mention here that, the Division Bench of this Court in D.M. Deve Gowdas case (supra) at paragraphs 4 to 7 held as follows:

4. This Court, vide judgment and order dated 12.06.2019 passed in W.P.No.54476/2016 (GM-MM-S) C/w W.P.No. 51135/2016 (Dhananjay vs. State of - 42 - and Karnataka and others), has categorically held that there is no concept of deemed forest. The Court was of the view that the land can either be a forest or a forest land, but there cannot be any deemed forest in absence of any provision under the Act.

5. There is consensus between learned counsel for the petitioner and learned Additional Government Advocate appearing for the respondents that the

judgment passed by this Court in the case of

Dhananjay (supra) squarely covers the controversy involved in the present writ petition.

6. In this view of the matter, we deem it

appropriate to allow this writ petition without calling for any statement of objections from the respondents as the judgment passed by this Court in the case of Dhananjay (supra) holds good. Paragraphs 18 and 19 are relevant which, on reproduction, reads as under:-

"18. For the reasons which we have recorded above, the applications made by the petitioners will have to be reconsidered. Whether the applications can be reconsidered or not in the light of the amendment to the said Rules is an issue to be decided by the concerned authority while deciding the applications. As no inquiry is made by the concerned authorities on the question whether the lands are covered by the wide concept of "forest" or "forest land" adopted by the Apex court by the order dated 12th December 1996, we cannot grant a declaration that the properties subject matter of the petitions are not forest. We, - 43 - and

however, make it clear that as the concept of 'deemed forests' appears to be a foreign to the law, the applications cannot be rejected only on the ground that the lands subject matter are 'deemed forests'.

19. Accordingly, we dispose of the petitions by passing the following order:

(i) The impugned order in both the petitions

are hereby quashed and set aside and the applications made by the petitioners for grant of the quarrying licence/lease or the renewal thereof, as the case may be, shall be decided afresh by the concerned competent authority in the light of what is held in the judgment and order. Appropriate decision shall be taken within a period of two months from the date on which a copy of this

order is provided to the concerned authority. We

make it clear that while considering the applications afresh, the concerned authority will have to consider whether the subject lands are "forest" or "forest land" as laid down in the decision of the Apex Court in GODAVARMAN (supra).

(ii) Needless to add that the if the authority

concerned finds that the land is a "forest" or a "forest land", lease or extension of lease cannot be granted unless the consent of the Central Government is obtained as per section 2 of the Forest Act.

(iii) We also make it clear that we have made

no adjudication about the applicability of the said Rules as amended with effect from 12th August 2016 and all the issues are left out to be decided by the concerned authority.

(iv) The petitions are allowed in the above terms with no order as to costs." - 44 - and

7. In view of the above, the writ petition is

allowed. The order impugned bearing No.B4/ KaGaGu/ CR-109/ 2018-19 dated 30.07.2021 and the endorsement dated 08.02.2022 issued by respondent No.3, the copies of which are annexed at Annexures-L and N respectively are quashed with a direction to the concerning Competent Authority to consider the application made by the petitioner for grant of quarrying lease afresh in the light of the judgment of this Court in the case of Dhananjay (supra) and take appropriate decision within a period of two months from the date a copy of the order is produced before him. We make it clear that while considering the application afresh, the concerned Authority will have to consider whether the subject land is Forest or Forest Land as laid down in the decision of the Apex Court in the case of T.N.Godavarman Thirumulkpad vs. Union of India and others, (1997)2 SCC 267.

30. Further, in the case of V. Sampangi Ramaiahs case (supra), the Division Bench of this Court at paragraph 10 has held as follows:

10. The object of the Act is to consolidate the law relating to forest produce in the State of Karnataka, Sub- section 14 of Section 2 defines Reserved Forest to mean any land settled and notified as such, in accordance with the produce of Chapter II of the Act. Section 3 empowers the State Government to constitute any land which is the property of the Government or over which the - 45 - and

Government has proprietary rights, as a reserved forest. For that purpose, a notification has to be issued under Section 4 of the Act declaring that it has been decided to constitute such land as a reserved forest specifying as nearly as possible, the situation and the limits of such land, An Officer called Forest Settlement Officer has to be appointed to enquire into and determine the existence, nature and extent of any rights claimed by or alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest produce. Such an Officer shall not be a Forest Officer.

31. Following the principles laid down in the above

judgments, the contentions raised by the State Government cannot be accepted and the writ petition filed by the petitioner-State in W.P.No.9861 of 2017 is liable to be dismissed.

32. Though the private petitioners in W.P.No.51734

of 2016, W.P.No.49784 of 2016 and W.P.No.4684 of 2022 urged by claiming that the subject land is belonging to their ancestors by virtue of sale-deeds referred to above, however, there is a cloud in determining the ownership of the subject land as there is no change of revenue records pursuant to the execution of sale-deed. As I have already - 46 - and arrived at a conclusion that the petitioner-State has failed to produced the relevant document to establish that the land in question as has been transferred to Forest Department in a manner known to law, by producing the relevant notification under Section 4 of Karnataka Forest Act, the only question to be answered in these writ petitions is with regard to the legal right

of the private petitioners.

33. The private petitioners are opposing the impugned order on the ground that fair opportunity has

not been extended to them and the impugned order

suffers from violation of principles of natural justice. It is also the case of the private petitioners that, the land in question is belonging to their ancestors. In this regard, it is also stated by the learned counsel appearing for the private petitioners that, there is a bar under the Act to confer occupancy right in favour of the private respondents. The private respondents are defending the impugned order passed by the competent authority on the - 47 - and ground that, they were tenants under the ancestors of the private petitioners and were cultivating the subject land and have recourse to the re-grant order in case No.2319/1959-60 and submitted that they are the registered permanent tenants and their names are reflected in the RTC extracts upto 1988 and thereafter, the name of the Government is entered in the RTC extracts. The private petitioners have also filed application in I.A.No.1/2024 and produced certain documents to establish that the original owners - H.Narayana Rao and Honnabhatta have sold the property as per registered sale-deed dated 08.07.1935 in favour of the ancestors of the private petitioners. It is also stated by the private petitioners that, the private respondents have committed fraud by including their names in the revenue records based on a re-grant order and according to the private petitioners, no such proceedings has been culminated under the provisions of the Act in case No.2319/1959-60 dated 06.07.1959. It is also required to state that no material has been placed by the private petitioners that, - 48 - and they have taken steps to challenge the modification of RTC or Mutation Register, wherein name of the private respondents or State by Forest Department was inserted thereon. (See ILR 2020 KAR 1449)

34. In the backdrop of these aspects, it is well

established principle in law that, disputed question of facts

cannot be adjudicated under Articles 226 and 227 of the Constitution of India. The Honble Supreme Court in the case of Arya Vyasa Sabha etc., v. The Commissioner of Hindu Charitable and Religious Institutions and Endowments, Hyderabad and another reported in AIR 1976 SC 475 at paragraph 7 has held as follows: 7. The contention does not appear to be correct. These questions were left open and undetermined because the High Court felt, and we think rightly, that they were disputed questions of fact and could not be appropriately determined in proceedings under Article

226. The writ petitioners were left at liberty to establish

their claim in regard to their institutions being religious denominations in a competent civil court. This position taken by the High Court was endorsed by this Court. We therefore decline to go into these questions. We would only reiterate what was said then: - 49 - and

A faint attempt was made to sustain the attack under Articles 14 and 26(d) of the Constitution but finally hardly any arguments were addressed worth noticing on these points. The High Court has rightly left open the question whether the Turner's Choultry is a private or a public charitable institution. This the Municipal Council is entitled to agitate before the Deputy Commissioner under Section 77 of the Act.. Before the High Court some of the writ petitioners had claimed that institutions were religious denominations within Article 26 and were therefore entitled to the protection guaranteed by that Article.

The High Court has, quite rightly, observed that these matters should be agitated in a proper forum and they have been left open for determination if and when so desired. This indisputably was the correct course to follow.

35. The said principle was reiterated in the case of

State of Uttar Pradesh and another vs. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti and others reported in (2008) 12 SCC 675 at paragraphs 29 and 34, held as follows:

29. The learned counsel for the appellants contended that the High Court was wholly wrong in entertaining a petition under Article 226 of the Constitution and in not relegating the writ petitioners to avail of alternative remedy available under the industrial law. It was also submitted that disputed questions of fact were involved in the petition which could not be - 50 - and

appropriately dealt with and decided in exercise of extraordinary jurisdiction by a writ court and on that ground also the Court ought to have directed the writ petitioners to approach an appropriate forum. Moreover, no action of retrenchment of employees had been taken and, as such, the writ petition was premature and not maintainable.

34. The learned counsel for the Samiti and the

employees, on the other hand, supported the final order

passed by the High Court. It was submitted that one of the Judges of the Division Bench was clearly in error in dismissing the petition on the ground of availability of alternative remedy. The other Judge was right in observing that an alternative remedy is not an "absolute" bar to a writ remedy under Article 226 of the Constitution particularly when it relates to enforcement of fundamental rights guaranteed by Part III of the Constitution. Moreover, the writ petition had already been entertained, several orders were passed from time to time and as held in several decisions, once a petition is entertained, it cannot be dismissed on the ground of availability of alternative remedy and must be decided on merits. That was done by the other Judge and that part of the decision could not be said to be contrary to law.

36. The said principle has been considered in detail

by the Honble Supreme Court in the case of Sanjay - 51 - and Sitaram Khemka vs. State of Maharashtra and others reported in (2006) 5 SCC 255. It is also well established principle in law that, Court cannot be build new constitutional structure to do complete justice. In this regard, it is relevant to cite the judgment of the Honble Supreme Court in the case of Kulwant Singh and others vs. Daya Ram and others reported in (2015) 3 SCC 177, wherein at paragraph 53, it is held as under:

53. That apart, the obtaining fact situation commands that this Court should invoke the jurisdiction under Article 142 of the Constitution for doing complete justice. There is no scintilla of doubt that Article 142 of the Constitution confers immense powers on this court to do complete justice in a case, for the powers vested in the Court are meant for doing complete justice in an appropriate manner. It is of wide amplitude, and it has its own restrictions. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to the powers which are specifically conferred on the Court. This inherent power is required to be exercised to prevent injustice and to do complete justice between the parties. It cannot allow any injustice to be carried on if the injustice is founded on certain technical principles. The Court is not to build a new structure to do the complete justice by ignoring - 52 - and

the substantive provisions, for that would amount to supplanting. But, certainly it can supplement. It has to be borne in mind that principle pertaining to do complete justice as engrafted in Article 142(1) is of immense potentiality. When the occasion arises, it is the obligation of this Court to prevent injustice arising from the exigencies of the case that is unfurled before it.

37. It is also settled principle in law that, this Court

while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, judicial review has to be exercised on the decision making process and not of the

decision itself. In this regard, it is relevant to cite the law declared by the Honble Supreme Court in the case of H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and others vs. M/s. Gopi Nath & Sons and others reported in 1992 Supp (2) SCC 312.

38. In the case of Debabrata Saha v. Serampore

Municipality and Ors., reported in AIR 2021 SC 4067, it is held that, any dispute pertaining to right of the property has to be decided by the Civil Court alone and - 53 - and cannot be adjudicated under Article 226 of the Constitution of India.

39. Though the learned Senior Counsel appearing

for the private petitioners denies that the private respondents claim to be the tenants under the ancestors of the private petitioners as well as the original owners of the land in question and further argued that the private respondents have committed fraud and have created fake documents to establish their right over the land in question, such arguments cannot be dealt with under Article 226 of the Constitution of India, as the same requires enquiry and full fledged trial to determine the disputed question of fact. Therefore, the judgments referred to by the learned Senior Counsel appearing for the private petitioners are not applicable to the case on hand, as this Court cannot come to the conclusion in the absence of the relevant document to adjudicate the disputed questions of facts. Therefore, I find force in the submission made by both the learned Senior Counsels - 54 - and appearing for the private respondents that, the private petitioners have to be relegated to Civil Court to adjudicate their rights in a manner known to law. However, in the event if the private petitioners establish their right before the competent Court that they are the absolute owners of the subject land in a declaratory suit, it is open for them to make a claim before the revenue authorities seeking change of entry in the record of rights and as such, at this stage, it is premature to issue a writ of mandamus to incorporate the names of private petitioners in the RTC extracts, as the disputed questions of fact have to be decided by the competent Civil Court. Hence, I do not express any observation regarding the rights of the private petitioners in W.P.No.51734 of 2016, W.P.No.49784 of 2016 and W.P.No.4684 of 2022 and it is not a case for

remanding the matter to the competent authority to extend opportunity of hearing as the private petitioners have to establish their right in respect of the subject land.
- 55 - and

40. I have also carefully examined the reasons

assigned by the competent authority while passing the impugned order dated 29.06.2016, wherein the said authority has arrived at a conclusion based on two reports of the Tahsildar, Bangalore North dated 27.11.2008 and 24.02.2009. It is the categorical finding by the competent authority in the impugned order that, the name of the Forest Department found place in column No.11 and not in column No.9 of the RTC which would establish the ownership of the land in question is not with the State Government. It is also to be noted that, the entire finding recorded by the competent authority is based on the revenue records, particularly, the records made available by the Tahsildar, Bengaluru North (Additional) Taluk, who is one of the petitioners in W.P.No.9861 of 2017 and therefore, this Court, by exercising writ of certiorari cannot find fault with the impugned order passed by the competent authority, which is based on the revenue records. Therefore, without expressing any opinion on the rights of the private petitioners which is to be determined - 56 - and on the question of fact, it is expedient for this Court to direct the private petitioners to prove their title in respect of the schedule property before the competent Civil Court.

41. In the result, I pass the following:

ORDER

1) Writ Petition Nos.51734 of 2016, 49784 of 2016 and 4684 of 2022 are disposed of and the private petitioners therein are hereby directed to approach the competent Court to establish their legal right in respect of subject matter of the land; 2) Writ Petition No.9861 of 2017 filed by the State of Karnataka is hereby dismissed. 3) In view of disposal of the writ petitions, pending interlocutory applications, if any, do not survive for consideration and are accordingly disposed of. Sd/- JUDGE sn/LG