

Chowdappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-04-1993

Reported in : ILR1993KAR1482; 1993(1)KarLJ271

Judge : Vasanthakumar, J.

Acts : Karnataka Village Offices Abolition Act, 1961 - Sections 5(3); Karnataka Village Offices Abolition (Amendment) Act, 1978

Appeal No. : W.P. No. 27085 of 1992

Appellant : Chowdappa

Respondent : State of Karnataka

Advocate for Def. : M. Siddagangaiah, HCGP for R-1 and R-2 and ;V. Gopala Gowda, Adv. for R-3

Advocate for Pet/Ap. : A. Nagarajappa, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Vasanthakumar, J.

Govt. Pleader to take notice for R-1 and R-2. Writs of certiorari and mandamus have been sought for by the petitioner in this Writ Petition.

1. Writ of Certiorari has been sought in respect of an order dated 30.4.1988 passed in B.C.D.A.C.R.71/80-81 by the Tahsildar, Srinivasapura Taluk. The operative portion of the order reads:-

Writ of Mandamus to the Tahsildar, Srinivasapura Taluk as not to give effect to his order dated 30.4.1988 passed in INACR/71/80-81 and not to change the Khata in favour of one Sabjansab.

2. Few facts to briefly state are:-

Certain claims were made by some persons claiming themselves to be having interest in Thoti Sainic Inam Lands attached to the Thoti Office of Kollur Village, Kasaba Hobli, Srinivasapura Taluk. The jurisdiction Assistant Commissioner by his order dated 6.12.71 (Annexure-E) by virtue of powers conferred under Section 5(1) of the Karnataka Village Offices Abolition Act, 1961 re-granted certain extent of lands comprised in Sy.Nos. 85 and 127, situate in Kollur Village in favour of three persons by name Ramappa, Muniswamy and Giddappa.

In the aforesaid order, it is observed that:-

'Separate action will be taken regarding the extents of lands out of S.No. 127 which was sold by Giddappa and Chowdappa as the sale purchasers have not applied for regrant of the above portion of lands. Regarding O. 2 1/2 guntas of land coming to the share of Chowdappa out of Sy.No.85 separate orders will be passed as he has not credited (wrongly typed as completed) the occupancy price'.

On 7.9.82, the Tahsildar, Srinivasapura Taluk, in I.N.A.C.R.71/80-81 has passed the following order (Annexure-F):

It is to be noted that on 27.7.67 Chowdappa son of Munivenkatappa, petitioner in this Writ Petition had alienated an extent of 2 1/2 acres in Sy.No. 127 in favour of one Sabjan Sab son of Chandu Sab. The aforesaid Sabjan Sab with a view to regularise the sale transaction effected in his favour had invoked Writ jurisdiction

of this Court by filing a Writ Petition numbered as W.P.No. 23408/82 for purpose of regularisation of the sale transaction effected in his favour by the petitioner and the above Writ Petition was dismissed for want of particulars of the regrant in question. Subsequently, Sri Sabjan Sab filed another Writ Petition under Article 226 of the Constitution of India numbered as W.P.4026/88 seeking registration of Khata in his name by virtue of regrant order made in favour of his predecessor-in-title Chowdappa on 7.9.1982. On 7.3.88 this Court while allowing the Writ Petition No. 4026/88 passed the following Order: -

'The Petitioner is the transferee. He is a purchaser of 2 acres and 2 guntas of land in Sy.No. 127 of Kollur Village, Srinivasapur Taluk. Kolar District, from the III respondent by a sale deed dated 27.7.1967.

The petitioner approached this Court earlier in Writ Petition No. 23408/1982 and by order dated 22.9.1982, this Court dismissed the Writ Petition on the ground that the petitioner did not possess any material with him to show that there has been a regrant in respect of the said lands nor was he able to show that vendor had applied for regrant.

Now the petitioner has produced a copy of the regrant order dated 7.9.1982 by which his vendor has been regranted 2 acres and 2 guntas in Sy.No. 127, under Section 5 of the Karnataka Village Officers Inams Abolition Act, 1963. The petitioner has prayed for a Writ of mandamus to the II Respondent to change the Khata of the land purchased by him, in view of the regrant order, and also prayed for an interim order not to dispossess him.

The Tahsildar is bound to change the Khata after satisfying himself whether the land purchased by the petitioner is regranted and if so, regularise his title in accordance with law and in the light of the decision of this Court in Lakshman Gowda's Case which is reported in 1978(1) Kar.LJ. Page-1, Instead of approaching the Tahsildar for necessary relief, the petitioner has approached this Court.

The Writ petition is dismissed with the above observations and there is no need to issue rule'.

In pursuance of the order passed by this Court in W.P.No. 4026/88, the Sabjan Sab moved the matter before the jurisdictional Tahsildar who after giving due notices to the concerned parties has on 30.4.1988 on materials placed passed the order rejecting the claim of the petitioner Chowdappa and directed the regularisation of sale effected in favour of Sabjan Sab.

3. Aggrieved against the order dated 30.4.1988, the petitioner preferred an appeal before the Principal District Judge, proceedings numbered as M.A.43/88, who after giving due notices on 20.8.1992 dismissed the appeal filed by the petitioner placing reliance on the ratio decidendi of the case B. RUDRAIAH v. S.N. PRAHALDA RAO, : ILR 1991 KAR513 . The petitioner after exhausting his remedies has invoked the Writ jurisdiction of this Court challenging the legality of the order dated 30.4.1988, wherein the jurisdictional Tahsildar regularised the sale in favour of Sabjan Sab rejecting the claims of the petitioner.

4. By placing reliance on the ratio decidendi of HANUMAIAH v. STATE OF KARNATAKA, : ILR 1987 KAR550 . CHIKKANARASIAH v. TIRUPATHIAH, ILR 1989 KAR 1020 MUNISWAMAPPA v. STATE, : ILR 1990 KAR3923 , the petitioner's Counsel contends that the jurisdictional Tahsildar in his impugned order dated 30.4.1988 erred in regularising the sale transaction effected by the Office holder on 27.7.67 in whose name the regrat order was made on 7.9.1982 which is subsequent to 7.8.78. When Karnataka Act 13 of 1978 came into force where Sub-section 3 of Section 5 of the Act was substituted.

5. The third respondent Sabjan Sab, the purchaser of the lands which is the subject matter regrat (hereinafter called alienee) has contended that proposition of law as advanced by the petitioner's Counsel does not stand to reason in view of the ratio decidendi of the following cases:

1) 1981(1) Kar.L.J. 1 Lakshmana Gowda v. State of Karnataka.

2) : ILR 1989 KAR1869 - N.P. Krishnareddy v. State of Karnataka

3) 1989(2) Kar.L.J. 88 - Smt. Sarojamma v. State of Karnataka

4) 1989(2) Kar.L.J. 245 - Sannabeeregowda v. Tahsildar

5) W.A.2729/85 DD 29.5.1990 - K.N. Ramareddy v. State of Karnataka (unreported)

6) AIR 1991 SC 1893 - Sunderjas Kanylal Bathija v. Collector, Thane Maharashtra

6. Sri. V. Gopal Gowda, Counsel for the alienee has taken considerable pain in projecting the case of his client. The main points canvassed by him summarised would be points:-

1) That the ratio decidendi of Lakshmana Gowda's case has to be applied even in case of re-grants made after 7.8.78, the date of Amendment Act 13/78 coming into force in respect of sale transactions effected between 1.2.63 and 7.8.78.

2) In cases where applications for regrant are pending between 1.2.63 and 7.8.78, and re-grants made in respect of those applications after 7.8.78, then in such events also the ratio decidendi of Lakshmana Gowda's case has to be made applicable.

Sri Gopal Gowda invites this Court's attention to the case of SMT SAROJAMMA v. STATE OF KARNATAKA, 1989(2) KLJ 88 : Para 77:

'It may also be observed after a careful examination of the judgment in Writ Appeal No. 568 of 1985 that the Court was concerned with a case in which the regrant was one that was made subsequent to 1978 under Section 7 of the Act and not under Section 5 or Section 6 of the Act. This is one of the important distinguishing features that has to be borne in mind while dealing with the case on hand particularly in view of the fact that I have already drawn the inference that the impugned order in the instant case and the order of regrant were made under Section 5(1) of the Act only'.

This Court in Writ Appeal No. 867/89 dated 20.2.1991 Sarojamma v. State has set aside the above Decision. The operative portion reads:-

'On carefully going through the Judgment under appeal, we find the same runs counter to the decision in HANUMAIAH v. STATE OF KARNATAKA : ILR 1987 KAR550 . As a matter of fact, learned Counsel for State Mr. Gupta fairly states that

the order cannot be supported in view of the said decision. Accordingly, it is hereby set aside, the order on the application of the original grantee for resumption will stand'.

Regarding Point No. 2 is concerned, Court's attention is drawn to SANNABEERE GOWDA's case, 1989(2) KLJ 245 where the same Single Judge who decided SAROJAMMA's case has observed that the principle laid down in CHIKKANARASAI AH v. TIRUPATHIAH is attracted to the facts of the case. I do not think that submission is acceptable because what was under consideration in the said case was the effect of the order passed under Section 7 of the Act with reference to amendment of the Act in 1978. In the instant case, we are concerned with the effect of an order passed under Section 5 of the Act in respect of an application which is anterior to 1978. In the case of LAKSHMANA GOWDA v. STATE, it is made crystal clear that the amendment brought into force in 1978 is only prospective in operation. I am therefore convinced that the principle laid down in CHIKKANARASAI AH's case does not apply to the facts of this case'. In view of the Decision rendered in W.A. 867/89 ratio decidendi of the SANNABEEREGOWDA's case cannot also be legally accepted.

7. Sri Gopala Gowda further invites the attention of this Court to the Decision rendered in W.A. 2729/1985 decided by this Court on 29.5.90 Rama Reddy v. State of Karnataka in support of his contention on Points Nos. 1 and 2 which arose out of the order passed in W.P. 41991/82 dated 3.9.1985 not reported. The learned Single Judge in Writ Petition No. 41991/82 passed the following order:-

'The petitioner has purchased 23 guntas of wet land in S.No. 157, situated at Kotnapur village, Shidalaghatta Taluk, by registered sale deed dated 14.8.68. The lands are Neeraganti service Inam Land. The vendors of the petitioner have made an application for re-grant which is still pending.

I have held in W.P.No. 15040/81 and 15041/81, that the pendency of regrant proceedings by itself does not enable the alienee to invoke Section 43 of the T.P. Act nor is he entitled to the benefit of the law laid down by the Court in Lakshmana Gowda v. State of Karnataka and others (1981(1) Kar.LJ.1). I have also held that the pendency of regrant proceeding 'cannot be pleaded as just cause under Rule

5A (iii) of K.V.O. Act Rules

The petitioner was served with notice as contemplated by Section 7 of the Act. Petitioner has admitted in his Writ Petition that he has received notice and attended the office of the Tahsildar. His only grievance is that though he requested for adjournment, such an adjournment was not granted. But it is seen that the petitioner has not attended the office inspite of notice and had not offered his explanations. In view of the fact that he has received notice and reasonable opportunity as contemplated under Section 7 of the K.V.O.A 'Act has been afforded, there is no infirmity in the order passed by the Tahsildar. Vide Annexure-C. Hence, I am the following order: Rule is discharged. Writ Petition is dismissed'.

Subsequently in the Writ Appeal No. 2729/85 preferred against the Decision rendered in W.P.No. 41991/82, the Division Bench has observed as follows:-

'Pending Writ Appeal, the vendor of the appellant had been re-granted the land covered by Sy.No. 157 of Kothapur Village under Section 7(3)(a) of the Karnataka Village Offices Abolition Act, 1961 in relation to 23 guntas. Accordingly, the position completely changes. The Tahsildar, Siddalaghatta Taluk, Kolar District, is hereby directed to take note of this order of regrant and consider the case of the appellant in the light of the decision reported in LAKSHMANA GOWDA v. STATE OF KARNATAKA AND ORS. (1981(1) Kar.LJ. page 1), SANNA BEERE GOWDA v. THE TAHSILDAR, ARSIKERE TALUK AND ORS. (1989(2) Kar.LJ. - 245) and SMT. SAROJA v. STATE OF KARNATAKA (1989(2) Kar.LJ. 88) and pass consequential orders in favour of the appellant, The Writ Appeal is ordered accordingly.'

8. The petitioner's Counsel invites the attention of this Court to Paragraph-2 of the Judgment of the Supreme Court reported in STATE OF KARNATAKA v. SEENAPPA, ILR 1992 KAR 2177 which reads:

2. ' The Karnataka Village Officers Abolition Act, 1961 (for short the 'said Act') came into effect from February 1, 1963. It is common ground that under the said Act the lands given to the Village Officers were resumed and then re-granted to them. The re-grants were made at different periods. Sub-section (3) of Section 5 of

the said Act placed a restriction on transfer of land re-granted. It runs as follows.

'(3) The occupancy of the ryotwari patta of the land, as the case may be, regranted under Sub-section (1) shall not be transferable otherwise than by partition among members of Hindu Joint Family without the previous sanction of the Deputy Commissioner and such sanction shall be granted only on payment of an amount, equal to fifteen times the amount of full assessment of the land'.

Subsequently, this Sub-section (3) of Section 5 of the said Act was amended by the Karnataka Offices Abolition (Amendment) Act, 1978. After the said amendment the said sub-section reads as follows:-

'(3) The occupancy or the ryotwari patta of the land, as the case may be, re-granted under Sub-section (1) shall not be transferable otherwise than by partition among members of Hindu joint family for a period of 15 years from the date of Section 1 of the Karnataka Village Offices Abolition (Amendment) Act, 1978'.

Although several questions have been answered by the High Court in the said Judgments, the arguments before us were confined to the Decision on question Nos. (vi) and (vii) as formulated in the aforesaid Judgment. The said questions run as follows:-

'(vi) Did a transferee of a Service Inam Land from its holder or authorised holder after its regrant under Section 5 or 6 of the Principal Act, get title to or interest in, such land, if such transfer had taken place without the previous sanction of the Deputy Commissioner under the unamended Sub-section (3) of Section 5 of the Principal Act?

(vii) Is Sub-section (4) of Section 5 of the Principal Act attracted to:-

(a) a transfer of a Service Inam Land in contravention of unamended Sub-section (3) of that Section or

(b) a transfer of such land in contravention of amended Sub-section (3) of that Section; or

(c) both of them'.

The High Court has taken the view that omission to obtain the previous sanction of the Deputy Commissioner under original Sub-section (3) of Section 5 of the said Act did not render void a transfer of a land regranted effected prior to the coming into force of the aforesaid amendment of Sub-section (3) of Section 5 but that such transfer can be regularised by payment to the Government an amount equal to fifteen times of full assessment of that land.

(3) In our view, this interpretation placed by the Division Bench of the Karnataka High Court on the provisions of Sub-section (3) of Section 5 (before its amendment) appears to be a fair and just interpretation. The only condition laid down for the grant of previous sanction appears to be payment of an amount equal to fifteen times the full assessment of the land. There is no indication as to the principles on which the sanction was to be granted or refused and hence the interpretation placed by the Karnataka High Court that the only condition of sanction was the payment of an amount equal to fifteen times of full assessment of the land appears to be a just construction. That construction has stood for the last more than ten years and transactions must have been effected on the basis of the view of the law laid down by the Karnataka High Court. There is no good reason which would lead us to take a different view, nor can it be said that the view taken is in any manner unjust and unfair.

(4) In these circumstances, we uphold the interpretation placed by the Karnataka High Court on the provisions of Sub-section (3) of Section 5 of the said Act. The question No. (vi), therefore, must be answered against the State. As we have upheld the view of the Karnataka High Court on question No. (vi), no decision is called for on question No. (vii). In the result, the Special Leave petitions and Appeal preferred by the State of Karnataka are dismissed.'

The respondent's Counsel Sri. Gopal Gowda submits that in view of the pronouncement, it is not open for the authorities to declare the alienation subsequent to 1.2.63 as invalid. Further, it is contended by the respondent that even after Amendment Act coming into force, the ratio decided by this Court in LAKSHMAN GOWDA v. STATE OF KARNATAKA, ILR (Karnataka) 1980(2) 892 : 1981 (1) KLJ 1 which was later on affirmed by the Supreme Court has to be

followed.

The respondent's Counsel further invites this Court's attention to the Decision rendered in ADIVEPPA SHIVAPPA MATUR v. TAHSILDAR, ILR 1990 KAR 379 : 1990(1) KLJ 879 and contends that if authorities had considered petitioners' application seeking regrant before the Amendment Act 1978 came into force, then law laid down by the Supreme Court would have been made applicable but due to laches in not considering the application expeditiously and merely because regrant was made subsequent to Amendment Act 1978 coming into force rigors of law regarding non-alienation clause as envisaged under the Amendment Act should not made applicable. It is to be stated that question canvassed before this Court were not advanced before the authorities.

There is a Division Bench Decision of this Court decided in Chikka Narasaiah v. Tirupathiah which has discussed the effect of the amended Act (Act No. 13/78) and also the scope of Sections 5(3) and 7 of the Karnataka Village Offices Abolition Act 1961 (Act 14/61). In the above Decision, similar contentions were advanced and reliance was placed on the ratio decidendi in Lakshmana Gowda v. State of Karnataka¹⁰. At paragraph-6, Court has observed thus:-

'The Principal Act came into force with effect from 1.2.1963. It was amended in the year 1978. The Act abolished the hereditary Village Offices. It is a historical fact that in several cases, Government lands were attached to these offices and they were meant, essentially, as part of the remuneration payable to the holder of the respective village office. They were alienable, except with the permission and subject to the conditions, in force, at the relevant time.

At paragraph-11 The Act covers three different situations under Sections 5, 6 and 7. The cases involving the claims of an office holder or of a valid alienee coming under Section 5 and Section 5 respectively as against the claim of an unauthorised holder has to be examined in the manner provided by the statute, because these claims could arise only by virtue of the resumption of lands by the Government and the provisions governing the re-grant thereafter.

Questions 2 and 3 posed in Lakshmana Gowda's case were:-

(ii) 'Did the holder or the authorised holder of a service Inam Land get title to it when that land stood resumed to the Government under Sub-section (3) of Section 4 of the Principal Act or did he get such title to that land only when it was regranted to him under Section 5 or 6 as the case may be, of the Principal Act?'.

(iii) 'Did an alienate of a service Inam Land from its holder or the authorised holder, acquire title to such land, if the alienation had taken place between the date of the coming into force of the Principal Act and the date of the regrant, after its regrant to its holder or the authorised holder under Section 5 or 6, as the case may be, of the Principal Act?'.

These were answered at page 913. On question (ii) the answer is found at para 64 thus:

'Hence, our answer to the question is that the holder or the authorised holder of a Service Inam Land did not get title to it when that land stood resumed to the Government under Sub-section (3) of Section 4 of the Principal Act, but he got title to it only when it was regranted to him under Section 5 or 6, as the case may be, of the Principal Act'.

Thereafter, the doctrine of feeding the grant by estoppel of Section 43 of the Transfer of Property Act were applied to hold that the alienees obtained valid title to the granted lands, in answer to question No. (iii), at para 65:

We have already held that though the holder or the authorised holder of a Service Inam Land got title to such land only when it was actually regranted to him under Section 5 or 6 of the Principal Act, such title related back to the date of coming into force of that Act. From this, it would follow that if he purported to alienate such land before it was regranted to him, but after the Principal Act came into force, the doctrine of feeding the grant by estopped embodied in Section 43 of the Transfer of Property Act, would apply and the title he subsequently acquired on such regrant of that land, would enure to the benefit of his alienee who would get a good title to such land after such regrant to his alienor. There is also no good reason why the benefit of Section 43 should be denied to such an alienee when the Principal Act did not prohibit the holder or the authorised holder of a Service

Inam Land from transferring his interest or right therein after it was resumed and before it was regranted to him'.

These 'observations were sought to be relied, to contend that even if the lands were regranted after the coming into force of the Amendment Act of 1978, the said grants enured to the benefit of prior alienees from the grantees. The emphasis of the Writ Petitioner's contention is that the grant made subsequently in favour of the grantee (his alienor) enured to his benefit for conferring title even though, the grant was after the relevant provisions were amended, which prohibited alienation for a period of 15 years.

It is to be seen that at paragraph 12 it is observed that Section 5(3) stood amended with effect from 7.8.1978, thereby imposing a complete bar against alienation for a period of 15 years from the date of the Amendment Act. Hence, while considering the principles stated in para-65 of Lakshmana Gowda's case, it has to be examined whether, the doctrine of feeding the grant by estoppel can be extended, so as to override the bar imposed by the amended Section 5(3).

When a person purports to transfer a property without title, the transferee gets title only when the alienor acquires a valid title; in such a case, the moment the alienor gets a valid title, (underlined by me) the estate would pass on to the transferee by the application of the doctrine of feeding the estoppel. But here, that is not possible because at the very instant of the grant, the bar against alienation imposed by the statute operates.

At paragraph-14 it is observed, that in the year 1978, Principal Act was amended. Section 5(3) as amended came into force with effect from 7.8.1978. Section 5(4) as introduced by the Amendment Act was read down in Lakshmana Gowda's case as having only prospective operation from 7.8.1978. Section 7 was substituted with effect from 24.12.1975 and a new Section 7A was introduced with effect from 7.8.1978. There is a total bar to alienate the granted lands for a period of 15 years from 7.8.1978 if the land is granted either under Section 5 or 6. If the land is granted under Section 7, it shall not be transferred similarly, as per Section 7A. Therefore, if a land is granted after the Amendment Act became effective, the reading down of Section 5(3) of Section 5(A) in Lakshmana Gowda's case, would

in no way benefit the transferees from the grantees. The grant is subject to the restrictions and these specific statutory restrictions cannot be overridden by an equitable doctrine of estoppel, or by applying Section 43 of the Transfer of Property Act.

Coming to the above conclusion, this Court placed reliance on Hanumaiah v. State of Karnataka. The facts of the case fairly come within the purview of ratio decidendi in Chikka Narasimhaiah v. Thirupataiah.

9. Further the Decisions rendered by this Court in Muniswamappa v. State of Karnataka and SAMPATH KUMAR v. TAHSILDAR, : ILR 1991 KAR4030 were brought to the notice of this Court, wherein the effect of amendment Act 13/1978 and order, being made after amended Sections 5(3) and 7 coming into force has been discussed. Paragraph 8 reads:

'Again another Division Bench of this Court in CHIKKANARASIAH v. TIRUPATHAIAH : ILR 1989 KAR1520 reconsidered the matter once again and followed the view taken in Hanumaiah's case : ILR 1987 KAR550 with reference to Section 7 it has held as follows:-

'Section 5(3) stood amended with effect from 7.8.1978, thereby imposing a complete bar against alienation for a period of 15 years from the date of the Amendment Act. Hence, while considering the principle to be examined whether, the doctrine of feeding the grant by estoppel can be extended, so as to override the bar imposed by the amended Section 5(3).

When a person purports to transfer a property without title, the transferee gets title only when the alienor acquires a valid title; in such a case, the moment the alienor gets a good title, the estate would pass on to the transferee by the application of the doctrine of feeding the estoppel. But here, that is not possible because at the very instant of the grant, the bar against alienation imposed by the Statute operates'.

10. Respondents Counsel submits that there has been conflict of opinions rendered by various Decisions by this Court as noted supra and as such this

matter has to be referred to the Full Bench for authoritative pronouncement and in this regard he cites the following Decisions in support of his contention:-

1) : [1988]1SCR340 - SHYAMARAJU HEGDE v. VENKA-TESH BHAT

2) - SUNDARJAS KANYALA BHATHIJA v. THE COLLECTOR, THANE, MAHARASHTRA.

In SHYAMARAJU v. U.V.BHAT, : [1988]1SCR340 , the Supreme Court at para-13 has observed:-

'As against the two authorities of this Court, namely, the case of Vishesh Kumar : [1980]3SCR32 and Aundal Ammal : [1987]1SCR485 dealing with provisions of different statutes, there is a direct decision of this Court in the case of Krishnadas Bhatija which has already been quoted. This Court was dealing with the very provision after its amendment in 1975 and the very question which now falls for consideration was before this Court. In Krishnaji's case the decision of this Court had been relied upon as a binding authority and it was concluded that the High Court has powers to entertain a revision under Section 115 C.P.C., against the revisional order of a District Court. It is conceded that the impugned provision which was being considered by this Court in Krishnadas Bhatija's case continues to be the same. Though the decision rendered in Bhatija's case (supra) by this Court is not a detailed one, the conclusion on the point is clear and admits of no ambiguity. The Full Bench in the impugned judgment clearly went wrong in holding that the two-Judge Bench of this Court referred to by it had brought about a total change in the position and on the basis of those two Judgments. Krishnaji's case would be no more good law. The decision of a Full Bench consisting of three Judges rendered in Krishnaji's case was binding on a Bench of equal strength unless that decision had directly been overruled by this Court or by necessary implication became unsustainable. Admittedly there is no overruling of Krishnaji's decision by this Court and on the analysis indicated above it cannot also be said that by necessary implication the ratio therein supported by the direct authority of this Court stood superseded. Judicial propriety warrants that decisions of this Court must be taken as wholly binding on the High Courts. That is the necessary outcome of the tier system. We may briefly refer to the observations of the Lord

Chancellor in *Broom v. Cassell & co.* (*Cassell & Co. v. Broom*) (1972) 1 AER 801, where the Lord Chancellor administered a warning by saying: 'I hope it will never be necessary to say so again, that in the hierarchial system of Courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers'. This has been approved by this Court on more than one occasion, Added to the above is the provision of Article 141 of the Constitution which unequivocally states that the law declared by this Court shall be binding on all Courts within the territory of India. In the facts and circumstances of the case, the High Court should not have taken on to itself, the responsibility of saying that its earlier Full Bench Judgment based upon a decision of this Court in the circumstances indicated above had lost its binding authority in view of two other judgments rendered in different situations and setting. We are really not in a position to appreciate the manner in which a coordinate Bench of the High Court has chosen to overrule an earlier judgment of that Court'.

In *SUNDARJAS KANYALAL BHATHIJA v. COLLECTOR, THANE*, AIR 1991 SC 1893, the Supreme Court observed at paras-17 to 21 reads:-

'It would be difficult for us to appreciate the Judgment of the High Court. One must remember that pursuit of the law, however, glamorous it is, has its own limitation on the Bench. In a multi-Judge Court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned Single Judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure.

Deprecating this kind of tendency of some Judges, Das Gupta, J., in *Mahadeolal Kanodia v. Administrator General of West Bengal*, : [1960]3SCR578 said (at p.941):

'We have noticed with some regret that when the earlier decision of two judges of the same High Court in *Deorajin's case*, : AIR1954 Cal119 was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case

of difference of opinion with an earlier decision, of referring no less than legal propriety form the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of co-ordinate jurisdiction in a High Court start overruling one another's decision'. The attitude of Chief Justice, Gajendragadkar, in *Lala Shri Bhagwan v. Ram Chand*, AIR 1966 SC 1767 was not quite different (at p. 1773) :

'It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is jointed on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Judges departed from this traditional way in the present case and chose to examine the question himself.

The Chief Justice Pathak, in a recent decision stressed the need for a clear and consistent enunciation of legal principle in the decisions of a Court. Speaking for the Constitution Bench (*Union of India v. Raghubir Singh* : [1989]178ITR548(SC) learned Chief Justice said (at p.766): (Of SCC) : (AT P.1939 of AIR):

'The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance of the individuals as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a Court'. Cardozo propounded a similar thought With more emphasis:

I am not to mar the symmetry of the legal structure by the introduction of inconsistencies and irrelevancies and artificial exceptions unless for some sufficient reason, which will commonly by some consideration of history or custom or policy or justice. Lacking such a reason, I must be logical just as I must be

impartial, and upon like grounds. It will not do to decide the same question one way between one set of litigants and the opposite way between another' (The nature of the Judicial Process by Benjamin N. Cardozo p.3). In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of Judges of superior Courts and Tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Subordinate Courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute'.

11. In a Division Bench Judgment of this Court, K.A. Swami J., in GURUPUTRAPPA MALLAPPA HARKUNI v. TAHSILDAR, : ILR 1990 KAR3020 has lucidly explained the purport and scope of Section 5(3) of the Karnataka Village Offices Abolition Act, 1961 as amended by Act 13 of 1978. Paragraphs-6 and 7 reads:

'We would like to make it clear at the outset that a mere fact that a statute draws certain facts from a time antecedent to its passing, it does not become retrospective. At page 387 of 'Craies on Statute Law' Seventh Edition, dealing with the subject retrospective enactments, it has been observed thus:-

A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. But a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing'.

Sub-section (3) of Section 5 of the Act, as amended by Karnataka Act 13/1978 is not retrospective merely because it covers the re-grants made prior to coming into force of Karnataka Act 13/1978. However, Sub-sections (3) and (4) of Section 5 of the Act, as amended by Karnataka 13/1978 and as interpreted by a Division

Bench of this Court in LAKSHMANA GOWDA v. STATE OF KARNATAKA AND ORS. (1981 (1) KLJ.1) do not cover the alienations made prior to 7.8.78. In the above decision, it has been held as follows:-

'87. In the light of the above principles of statutory construction we hold that Sub-section (4) of Section 5 of the Principal Act should be construed as being applicable only to transfers made subsequent to 7.8.1978 and not to transfers which had taken place prior to that date and that Sub-section (3) occurring in that Section should be construed as having reference to amended Sub-section (3) and not to original Sub-section (3) of that Section'. Therefore, it is clear that Sub-section (3) and (4) of Section 5 of the Act as amended by Karnataka Act 13/1978 will cover only the alienations made after 7.8.1978 even though the regrant has taken place earlier to that date. Therefore, it is not possible to hold that the cases in which re-grants had taken place prior to 7.8.1978 and alienation of such lands takes place subsequent to 7.8.1978 are not covered by Sub-sections (3) and (4) of Section 5 of the Act as amended by Karnataka Act 13/1978. Further it does not also amount to giving retrospective effect to the said provisions. A vested right can also be taken away by the statute.

7. In addition to this, it is also relevant to notice that Sub-section (3) of Section 5 of the Act as amended by Karnataka Act 13/1978 use the word 'regranted' which means the regrant which had taken place earlier to 7.8.1978. As far as the alienation of the regranted land is concerned, there is a prohibition for alienating the same from 7.8.78 for a period of 15 years. Sub-section (4) of Section 5 of the Act makes such alienations null and void and the lands so transferred, as penalty, are liable to be forfeited to and vest in the State Government free from all encumbrances and any person in possession thereof shall be summarily evicted therefrom by the Deputy Commissioner and the lands shall be disposed of in accordance with the law applicable to the disposal of unoccupied unalienated lands subject to the proviso thereto'.

11. Placing reliance on ratio decidendi of the aforesaid case decided by Supreme Court, the respondent's Counsel contends that Division Bench which decided the matter in Chikkanarasaiah's case should have referred the matter to a larger

Bench and the observations made by the Division Bench would virtually overrule the ratio decidendi of Lakshmana Gowda's case and should be treated as obiter as question of grant under Sections 5 or 6 was not there before the Court which decided Chikkanarasaiah's case.

12. What is to be noted is that the Decision rendered in Chikkanarasaiah's Case did not overrule the Decision laid down in Lakshmana Gowda's case, in view of the fact that the question of effect of regrant subsequent to 7.8.78 in respect of alienations effected between 1.2.63 and 7.8.78 were not before the Court in Lakshmana Gowda's case. It only reiterated propositions of law laid down in Lakshmana Gowda's case and distinguished the same from the facts of the case in Chikkanarasaiah's case and as such it cannot be said that the Decision rendered in Chikkanarasaiah's case having overruled the Decision of Lakshmana Gowda's case which is of co-ordinate jurisdiction. The Division Bench in Chikkanarasaiah's case has referred to Lakshmana Gowda's case. The contentions advanced by the respondents Counsel cannot be legally accepted.

13. Preponderance of the ratio decidendi of the Cases mentioned above clearly postulate that it is not open for the alienees to contend that they are entitled to the benefit arising out of the regrant made subsequent to 7.8.1978 (Act 13/78) by virtue of the ratio decidendi laid down in Lakshmana Gowda's case. The ratio as decided in the following cases:-

a) : ILR 1987 KAR550 - Hanumaiah's case

b) ILR 1992 KAR. 2177 - State of Karnataka v. Seenappa

c) : ILR 1989 KAR1520 - Chikkanarasaiah v. Tirupathiah

d) : ILR 1990 KAR3923 - Muniswamappa v. State of Karnataka

e) ILR 1990 KAR. 4020 - Sampath kumar v. Tahsildar

f) : ILR 1990 KAR3020 - Guruputrappa Mailappa Harkuni v. Tahsildar

hold persuasive and binding value. As such circumstances warrant setting aside of the impugned order. The sale transaction dated 27.7.67 effected by the petitioner

Chowdappa in favour of third respondent Sabjan Sab cannot be declared as valid for purpose of either regularisation or change of Khata in view of the operation of the provisions of the Amended Act 13 of 1978 and the same is hit by Sub-section (3) of Section 5 of the Karnataka Village Offices Abolition Act, 1961.

14. Accordingly, this Writ Petition is allowed as prayed for. Hence Rule is issued and the same is made absolute.

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