

M. Narayanappa Vs. the Special Deputy Commissioner and ors.

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Court : Karnataka

Decided On : Nov-09-2005

Judge : D.V. Shylendra Kumar, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 4, 4(1), 5 and 40; [Transfer of Property Act, 1882](#) - Sections 11; Mysore Land Revenue Code, 1888 - Rule 43(8); Depressed Classes Dharkhat Proceedings Rules; Karnataka Land Grant Rules, 1969 - Rule 29A; Depressed Class Rule; [Constitution of India](#) - Articles 14 and 227

Appeal No. : Writ Petition Nos. 8141 and 8142 of 2003

Appellant : M. Narayanappa

Respondent : The Special Deputy Commissioner and ors.

Advocate for Def. : G. Chandrashekaraiah, Additional Government Adv. for Respondents-1 and 2, ;K.G. Raghavan, Adv. for Respondents-3(a) and 3(b) in W.P. No. 8142 of 2003 and ;K.C. Shivasubramanyam, Adv. for Respondents

Advocate for Pet/Ap. : M. Naraynna Reddy, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. These two writ petitions, though are by two different persons, both of whom are claiming as legal heirs of persons in whose favour agricultural lands had been granted - an extent of 2 acres each - way back in the year 1947 and as persons belonging to depressed class [Adi Karnataka] and directed against different orders passed by the Assistant Commissioner and the Deputy Commissioner - statutory functionaries under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short, 'the Act'), first as original authority and second as the Appellate Authority - after having heard the matter at length, I am disposing of the petitions by this common order, as the legal issues that are canvassed on behalf of the petitioners and the respondents are common, though on facts, some more issues are sought to be raised insofar as the respondents 3 to 5 in W.P. No. 8141 of 2003 are concerned.

2. Both petitions owe their origin to the proceedings under the Act and the Assistant Commissioner having initiated the proceedings suo motu in terms of Section 5 of the Act for invalidating the transfers that had been effected either by the grantee or their legal heirs, as also the subsequent series of transactions that had taken place, till the proceedings were initiated and by issue of notice to persons who were presently in occupation of the subject lands.

3. Insofar as W.P. No. 8141 of 2003 is concerned, the petitioner claims to be a legal heir i.e., son of one Muniyappa, who had been granted an extent of 2 acres of land in Sy. No. 28, new No. 135 of Byrathi Village, Bidarahalli Hobli in the then Bangalore South Taluk, in terms of grant order followed by issue of Saguvali chit dated 8-6-1947 and granted under the Depressed Classes Dharkhat Proceedings Rules i.e., the relevant Rules under the Mysore Land Revenue Code, 1888. This land, it appears, had been transferred by the grantee in the year 1967 and had thereafter changed several hands and ultimately purchased by the respondents 3 to 5 in terms of the sale deed dated 17-2-1993 and the persons who were in possession in whom the Assistant Commissioner on taking suo motu action under the provisions of the Act, had issued notices in terms of Section 5 of the Act.

4. It is indicated that the efforts to serve notice on the original grantee was not fruitful and therefore the proceedings before the Assistant Commissioner went on only in the presence of respondents 3 to 5, who had filed their objections. The Assistant Commissioner though was of the view that the land in question which was originally part of Sy. No. 28 of Byrathi Village was the land granted in favour of persons belonging to Adi Karnataka Community under the Depressed Classes Dharkhat Proceedings Rules and as recorded in Mr. No. 10/46-47, as also other revenue records, and which had been subsequently given the Sy. No. 131, and presently known as Sy. No. 135, was a land which had been granted to the grantee subject to the condition of non-alienation for a period often years and as the initial sale transaction of the year 1967 was beyond the period of 20 years and as such, the transfer being not in violation of the terms of the grant, did not attract the provisions of the Act, did not come within the purview of Section 4 of the Act and therefore dropped the proceedings in terms of the order dated 24-5-1999.

5. Petitioner being aggrieved by this order had preferred an appeal to the Deputy Commissioner and claimed that he is the legal heir i.e., son of the grantee; that the order of the Assistant Commissioner is erroneous; that the grant was free grant subject to the condition of permanent non-alienation and therefore the order of the Assistant Commissioner was bad in law and the transaction voided and the land should be resumed and restituted to the appellant. The respondents 3 to 5 opposed the appeal by filing their objections. The matter was heard by the Deputy Commissioner and the Deputy Commissioner being of the view that there are some confusion in tracing the title; that mere mutation entries and other revenue records are not conclusive of the nature of the grant; that the appellant was claiming under the original grange was under the legal obligation to establish his case by producing the grant order in terms of the grant also that he is a person who is the son of the grantee; that the grant in favour of the person belonging to depressed class and such aspects having not been made good by the appellant and the Assistant Commissioner having discussed all aspects of the matter and having dropped the proceedings, there was no scope for interference with the order of the Assistant Commissioner and accordingly dismissed the appeal in terms of his order dated 19-11-2001. The Deputy Commissioner also indicated that there was some confusion in the identity of the land also and therefore as

combined effect of all these things has resulted in dismissal of the appeal.

6. Insofar as the W.P. No. 8142 of 2003 is concerned, this is also a petition which owes its origin to suo motu proceedings initiated by the Assistant Commissioner under Section 5 of the Act. The grant was of the year 1947, the extent is 2 acres in Block-I of old Sy. No. 28, new Sy. No. 126 of the very Byrathi Village, in favour of one Muniswamappa alias Muniswami, a person belonging to Adi Karnataka community under the Depressed Classes Dharkhat Proceedings Rules, followed by issue of Saguvali Chit dated 8-6-1947. This land was sold in terms; of the sale deed dated 3-11-1967 in favour of one O. Mani son of M.P. Mani, which after changing several hands, ultimately had reached to third respondent-C.I. Thomas in terms of sale deed dated 9-1-1995. It is in respect of such transactions, the Assistant Commissioner had initiated proceedings under Section 5 of the Act and the person claiming to be the son of the original grantee had also made an application subsequently and had joined the proceedings.

7. The third respondent (now by his legal representatives after his demise) had contested the proceedings and had filed his objections. The Assistant Commissioner held an enquiry, hearing and in terms of the order dated 26-10-1999, dropped the proceedings being of the view that the provisions of Sections 4 and 5 of the Act are not attracted as the first sale of the year 1967 was much beyond the period of 10 years, the period within which the land could not have been transferred in terms of Clause 8 of the conditions imposed under the Saguvali Chit issued in Form 2.

8. The aggrieved applicant further preferred an appeal to the Deputy Commissioner, but the Deputy Commissioner in terms of his order dated 21-3-2002 dismissed the appeal inter alia pointing out that the view taken by the Assistant Commissioner for not interfering in the matter, the transfer being beyond the prohibited period of 10 years even as indicated in the Saguvali Chit, was in consonance with the ruling of this Court in ILR 1998 Kar. Sh. N. 85, that based on the endorsement of the Tahsildar to the effect that original records are not available, it has to be held that the provisions of the Act cannot be invoked in the absence of the original records and in that view of the matter Deputy

Commissioner was of the opinion that the order of the Assistant Commissioner does not merit interference and on arriving at this conclusion he dismissed the appeal. It is as against this order of dismissal, the applicant is before this Court invoking 227 jurisdiction of this Court.

9. As noticed earlier, the question that arises in these two petitions being common, the grants being under a common grant order passed by the Deputy Commissioner granting lands to an extent of 2 acres 2 guntas to as many as 11 members in Sy. No. 28 of Byrathi Village, Bidarahalli Hobli, the terms imposed on the grant being almost identical and at any rate, the statutory conditions that govern this grant being the same in respect of such all grantees, two writ petitions are taken up together and I have heard the same.

10. Sri M. Narayana Reddy, learned Counsel has appeared for the petitioners in both the writ petitions. Sri KG. Raghavan, learned Counsel is appearing for the respondents 3(a) and 3(b) in W.P. No. 8142 of 2003. Sri K.C. Shivasubramanyam, learned Counsel is appearing for the respondents 3 to 5 in W.P. No. 8141 of 2003 and Sri G. Chandrashekaraiah, learned Government Advocate has represented the Statutory Authority in these two petitions.

11. The matter is heard at length and the learned Counsel have made elaborate submissions both innovative and full of substance, placing reliance on a good number of authorities. Submission of Sri Narayana Reddy, learned Counsel for the petitioners in both the cases, is that the Assistant Commissioner as well as the Deputy Commissioner have gone wrong in merely accepting the version that the transfer of the years 1967 and 1968 being beyond the period of 10 years from the date of the grant being not in violation of the conditions of grant indicated in the Saguvali chit issued in this case. Such a narrow view of the matter is too simplistic and de hors the consideration required of in such matters. His submission is that the authorities have deliberately overlooked the law that has been laid down in this regard and the authorities have not acted in consonance with the provision of Sub-section (1) of Section 4 of the Act which provision is attracted whenever the granted lands is transferred either in violation of the terms as indicated in the grant order itself or in violation of the conditions that govern the grants in terms of the

statute which prevailed at the time of the grant for every grant is subject to the limitation of the provisions that regulate such grant. Submission of the learned Counsel is that in respect of such grants made during the year 1947 in favour of the persons belonging to Scheduled Caste community or depressed class to which community both the petitioners belong to being persons belonging to Adi Karnataka Community, a community which was classified as a depressed class and for whose benefit the land had been granted, a statutory condition is imposed by Rule 43(8) of Rules under the Mysore Land Revenue Code, 1888 as it prevailed at the relevant point of time which condition also finds mention in Government Notification No. R.5682.L.R.389-37.3, dated 27-6-1938 and is amended by G.O.R. No. 1623.LR 55-43-3, dated 11-9-1943 that the land shall not be alienated at all the only exception being that the granted land could be offered as security for any loan which they want to raise either from the Government or Co-operative Society for bona fide use the agricultural purposes and this condition gets statutorily imposed on the grant orders and the condition is perpetual. That there is a non-alienation clause limited to a period of 10 years in the Saguvali chit is of no consequence and irrespective of the period mentioned in the Saguvali chit the statutory condition of total non-alienation would prevail over and exist for eternity and therefore the transfer of the year 1967-1968 from the grantee or his legal heir is void in terms of Section 4(1) of the Act and grants should necessarily resume to the State or restored to the grantees or their legal heirs. Learned Counsel submits that both the authorities have committed illegality in overlooking this statutory position, which is settled by the authorities of this Court. The orders are not sustainable and calls for interference and directions may be issued to the authorities to extend the benefit to the petitioners as available to them under the Act.

12. Learned Counsel for the petitioners also submits that the material on record amply indicated that the original grant in both the cases was in favour of the persons belonging to Adi Karnataka Community and this evidence coupled with the provision of Rule 43(8) of Rules under the Mysore Land Revenue Code, 1888 as it prevailed at the relevant time leaves one with no doubt at all about the consequences flowing from such transaction in the light of the provisions of Section 4(1) and therefore the impugned orders are not sustainable at all.

13. Learned Counsel also submits that the view taken by the Deputy Commissioner insofar as W.P. No. 8141 of 2003 is concerned indicating that there was certain confusion with regard to identity of the original grantee namely Muniyappa and that his relationship with Muniyappa has not been established satisfactorily and there are no documents to support his claim and therefore his arriving at the conclusion that applicant in this case was in no way related to the original grantee Muniyappa s/o Bodigappa is fatal to the appellant's case in view of the ratio of the decision of this Court in ILR 1998 Kar. Sh. N. 85, are all totally erroneous. That a notice issued by the Assistant Commissioner has clearly spelt out that the enquiry was in respect of the particular land which the respondents had purchased and were in possession and which was in fact a granted land in favour of Muniyappa and if that is the position, there was no scope for any confusion and at any rate the purchasers have not raised any doubt as to the title nor have shown that it was not a granted land and the record on the contrary indicates that the land in question was a granted land belonging to a member of Adi Karnataka Community and the statutory condition having been violated by the transfer in the year 1967, the Deputy Commissioner ought to have allowed the claim and ought not to have dismissed the appeal and to that extent the order of Deputy Commissioner is clearly erroneous calling for interference,

14. Insofar as W.P. No. 8142 of 2003 is concerned, Sri Narayana Reddy, submits that even here the Deputy Commissioner acting as the Appellate Authority has gone totally astray in taking the view that it was only the condition of non-alienation of 10 years that operated. The Deputy Commissioner has totally overlooked the provisions of Sub-section (1) of Section 4; that the Deputy Commissioner has unnecessarily embarked upon examination of scope of Rule 29-A of the Karnataka Land Grant Rules, 1969 by placing reliance on Full Bench decision of this Court reported in the case of B. Mohammad v. Deputy Commissioner, Dakshina Kannada District, Mangalore and Ors. : ILR 1999 KAR634 (FB) which is absolutely of no relevance nor has it any bearing on the facts of the present case. Placing reliance on the decision of this Court in ILR 1998 Kar. Sh. N. 85 is again of no real consequence nor was necessary and at any rate of view taken by the Deputy Commissioner who held that the provisions of the Act cannot be invoked if the Tahsildar issued an endorsement that the original records are not available is

nothing but a pervert act virtually placing the provision of the act at the mercy of the Tahsildar who can issue the endorsement to the effect that, either the records are available or not available; that such an order is not sustainable and the original order of the Deputy Commissioner as well as the Assistant Commissioner deserve to be quashed and the authorities ought to be issued suitable orders.

15. In support of his submissions, learned Counsel for the petitioner has placed reliance on the following decisions:

1. R. Rudrappa v. Deputy Commissioner, Chitradurga District, Chitradurga and Ors. : ILR 1999 KAR2683
2. H.S. Basavarajappa v. Deputy Commissioner and Ors. ILR 2000 Kar. 271
3. K.C. Javaregowda v. State of Karnataka and Ors. ILR 2004 Kar. 2404 (SC) (for the proposition that it is only a condition which is provided for in the rule at the time of the grant that operates and any conditions that could be varied or elaborated subsequently in amending to the rule);
4. Harishchandra Hegde v. State of Karnataka and Ors. : (2004)9SCC780 (for the proposition it is only the provision of this Court which prevails and any provisions of any other act including the provision of the [Transfer of Property Act, 1882](#)).

16. Learned Counsel for the respondents in each of the cases have also placed submissions before the Court in the course of the arguments. The writ petitions are stoutly resisted. It is urged that the orders do not call for interference and the writ petitions are required to be dismissed. Contentions are also urged on behalf of the respondents by Sri K. Shivasubramanyam, learned Counsel, who is appearing on behalf the respondents 3 to 5 in W.P. No. 8141 of 2003. Firstly, it is urged by him that the applicant that is the petitioner who is staking a claim to the land in possession of these respondents under provisions of the Act has not established that he is the legal heir of the original grantee; that his identity as legal heir is a factor that has to be established definitely and beyond doubt and that coupled with the fact that even the identity of the land in question is not established should sound the death-knell to the claim of the petitioner. It is not even demonstrated

that the land in possession and occupation of these respondents is purchased from one Elizebeth Thomas and John Thomas in terms of the registered sale deed dated 27-7-1993 in extent of Sy. No. 126 (present Sy. No. 135). The land in question had in fact been purchased by their vendors from one Miss A. Mani in terms of registered sale deed dated 2-2-1973. This Mani herself had got the land in terms of the Settlement deed executed by O.M. Mani, the father of the lady in terms of Settlement deed dated 10-5-1972. The said O.M. Mani had himself had acquired the land from one Smt. Akkayamma w/o Muniyappa with whom had joined the minor daughter Devamma in executing the registered sale deed dated 10-7-1967. Though the land in question is described as 2 acres 1 guntas in Sy. No. 131, while registering by the purchaser O.M. Mani, who is the Khatedar, the survey number had been changed to Sy. No. 135 and while these respondents trace their title so, the version of the petitioner was in fact at variance to these transactions and the petitioner on the other hand had claimed that the land in question had been sold by the original grantee K.A. Thomas in terms of sale deed dated 9-5-1968 and the said K.A. Thomas sold it to Miss A. Mani who in turn had sold it to Elizebeth Thomas on 2-7-1973 and the same has been purchased by the respondents and not only in the case of the respondents, and tracing of the title by the respondents is from a different source and there being considerable confusion of the identity of the land.

17. Entire proceedings are rightly held as not tenable by the Deputy Commissioner. Therefore, matter does not warrant any interference. Learned Counsel highlights that even in the original grant there being several Muniyappa's, has added confusion and if at all the confusion can only to resolve the case in favour of the respondents and cannot be seek for interference by this Court in exercise of Article 227 jurisdiction to set aside or get over the orders passed by the authorities. It is also the submission of Sri Shivasubramanyam that considering the arguments even if the orders calls for interference then the matter be remanded for a fresh consideration and fair decision taken in accordance with law and for quashing the order and leaving at it and directions cannot be issued to the respondents as sought for by the learned Counsel for the petitioner. In addition, learned Counsel Sri Shivasubramanyam also adopts the contentions as urged on behalf of the respondents in W.P. No. 8142 of 2003 by the learned Counsel for the

respondents in that writ petition. In support of his submission, he has placed reliance on the decision of this Court in the case of the Bangalore Development Authority v. Smt. Sumiradevi : ILR 2005 KAR1386 (DB).

18. Sri KG. Raghavan, learned Counsel appearing on behalf of the respondents 3(a) and 3(b) in W.P. No. 8142 of 2003 also urges that the orders passed by the authorities do not call for any interference. The writ petitions are without merit and substance. Therefore, the writ petitions deserve to be dismissed.

19. Sri Raghavan submits that apart from the reasoning given by the authorities for rejecting the claim of the person claiming to be the legal heir of the original grantees, the matter cannot be examined on two other grounds namely that the claim cannot be entertained having been put forth for the first time in the year 1998 though by suo motu proceedings instituted by the Assistant Commissioner in respect of the transaction that has taken place in the year 1967 that is almost 32 years after the transaction which, according to the learned Counsel, is too long a period or interval for any one to wake up and put forth their claims when the rights of parties had crystallised and that, at any rate, assuming that the provisions of the Act which had come into force with effect from 1-1-1979 gave a cause of action, such persons ought to seek for setting aside the transfer and for restoration of lands within a reasonable time though the statute by itself does not prescribe any period of limitation for making the application or invoking the jurisdiction of the Assistant Commissioner for action under Section 4(1). Let, the power should be exercised by the Assistant Commissioner acting as a statutory functionary within a reasonable time; that in bestowing any benefit under the provisions of a statute any authority invoking or exercising the statutory power is required to act within a reasonable time is a too well-known legal proposition settled by a catena of authoritative pronouncements of the Supreme Court. To cite a few on which the learned Counsel for the respondents has placed reliance, R. Rudrappa's case and an unreported decision of the Division Bench of this Court dated 9-2-1998 rendered in W.A. No. 8643 of 1996 and the well-settled proposition in this regard laid down by the Supreme Court in the case of State of Gujarat v. Patel Raghav Nat ha and Ors. : [1970]1SCR335 following in the case of Mansaram v. S.P. Pathak and Ors. : [1984]1SCR139 , which has been followed by this Court in many

other cases including in the case of Smt. Sumitradevi's case, particularly as discussed and indicated in paras 12, 13, 14 and 15 etc. of this judgment.

20. Based on the ratio in this case Sri Raghavan would submit that the invocation of the provisions of the Act by the petitioner in the year 1998 or even suo motu proceedings by the Assistant Commissioner in the year 1988 after a long lapse of time when the cause of action had arisen on 1-1-1979 is improper and illegal. There is an inordinate delay in exercise of power. If power is not exercised within a reasonable time, no action could have been taken which is adverse to the interest of the respondents and the impugned orders passed in this regard are viewed by applying such legal principle there is absolutely no need to interfere.

21. One more contention urged by Sri Raghavan, learned Counsel is that there is no violation of the condition under the first transfer of the year 1967, the transfer being after a period of 20 years from the date of the grant well-beyond the period of ten years. It is submitted that the period of non-alienation even in terms of the grant order by Saguvali Chit/Mucchalike as understood by the learned Counsel in respect of the Saguvali Chit issued in Form 2 and particularly as indicated in Clause 8 of the conditions subject to which the grant was made, the provision of Section 4(1) is not even attracted and therefore the action of the Assistant Commissioner as well as the Appellate Order of the Deputy Commissioner is clearly sustainable and the writ petitions deserves to be dismissed.

22. Elaborating this contention it is submitted by Sri Raghavan, learned Counsel for the respondents submits that assuming Section 4(1) speaks of three situations which renders the transfer of granted land to be void in the present case, the transfer being prior to the Act coming into force and therefore the first two situations operate namely the terms as indicated in the grant order of the conditions subject to which a grant can be made in terms of the rules governing such grants at the relevant time. Learned Counsel would submit that though Rule 43(8), which reads as under:

43. (8) Occupancies granted to applicants belonging to Depressed classes under Rule 43(5) above and those granted by Government free of upset price or reduced upset price to poor and landless people of other communities or to religious or

charitable institutions, shall not be alienated and the grantees shall execute Mucchalike in the form prescribed by Government. This shall not, however, prevent lands granted to depressed class under Rule 43(5) being accepted as security for any loan which they may wish to obtain from Government or from a Co-operative Society for the bona fide purposes of improving the land.

Does not speak the condition of permanent non-alienation in respect of the lands granted to the depressed classes in terms of Rule 43(5) of these rules the condition operates only in the form of Mucchalike to be executed by the grantee even as indicated in the very Rule that the grant order was followed by issue of the Saguvali Chit, a copy of which is claimed to be produced as Annexure-R1 to the objections filed on behalf of the respondents and which indicates a period of 10 years as the non-alienation period is this Mucchalike to give effect to the condition statutorily stipulated in Rule 43(8) that the condition is made effective only through the undertaking to be executed by the grantee; that Saguvali chit itself should be taken as the one executed in terms of Rule 43(8) and if that document recites the condition as only non-alienation for a period of 10 years that alone is the period during which the prohibition can operate and not a prohibition of permanent nature.

23. Submission of the learned Counsel for the respondents is that while Rule 43(8) no doubt provides for imposing a condition of permanent non-alienation, it is also for a lesser period and the period should necessarily be indicated in the undertaking executed by the grantee and if in such an undertaking it is mentioned as 10 years then even in terms of the Rule that alone will be the prohibitory period and not any other period. Learned Counsel would urge to accept explain this interpretation of the Rule 43(8) which, according to the learned Counsel, will also be in consonance with the spirit of Section 11 of the Transfer of Property Act, that a condition of permanent non-alienation is inconsistent with a grant and if such inconsistent condition is to some extent reduced by indicating the period of non-alienation to be 10 years that should be necessarily accepted and the Rule 43(8) should be so understood as one providing for condition only in terms of undertaking and not in any other manner and if such an interpretation is accepted, the condition under Clause 8 being one in furtherance of the provisions to Rule

43(8) that alone can be the condition and not the condition of permanent non-alienation in which event the transfer in the year 1967 is not in violation of the condition of the grant under the Rules governing such grants. It is urged that therefore, the writ petitions deserve to be dismissed upholding the orders of Assistant Commissioner as also the Deputy Commissioner.

24. Sri G. Chandrashekaraiah, learned Government Advocate appearing for the statutory respondents, would submit that the argument for defending the action or rather inaction on the part of the statutory authorities are clearly not supportable in the present case; that the statutory authorities are right in arriving at the conclusion that the condition which operates in respect of lands granted in favour of Scheduled Caste/Adi Karnataka Community in the year 1947 in terms of Rule 43(8) of the Rules under the Mysore Land Revenue Code is clearly one of permanent non-alienation as enshrined in the rule itself and not of any reduced period nor is there any scope for reducing the period in the manner as is sought to be urged by placing the interpretation on the provisions of Rule 43(8). Learned Government Advocate would submit that the orders passed by the authorities are clearly not sustainable in law and this Court has taken a view that insofar as the condition of non-alienation as imposed by Rule 43(8) is one of permanent non-alienation; that irrespective of the condition mentioned in the Saguvali Chit as the statutory condition contained the Rule prevails the impugned orders are not sustainable and call for interference. The land has to be resumed to the State and as identity of the person entitled to the restoration of land is not clear the land has to be necessarily resumed to the State and disposed of in accordance with law on statutory provisions.

25. Let me consider the submissions of the learned Counsel on either side.

26. Firstly, it is necessary to be clear about the factual aspects. For the purpose of Act being attracted, what is essential is that the land should be the granted land and it should be in favour of the persons belonging to Scheduled Caste/Adi Karnataka Community.

27. In the present case, there is absolutely no doubt or dispute that the land is granted terms of the grant order of the year 1947 and it was in favour of the

persons belonging to Adi Karnataka Community under the Depressed Class Rule and the proceedings is in terms of Rule 43(8) of Rules under the Mysore Land Revenue Code, 1888. This position in fact has been conceded by the respondents in W.P. No. 8142 of 2003. Though this aspect is disputed by Sri K. Shivasubramanyam, learned Counsel for the respondents 3 to 5 in W.P. No. 8142 of 2003 the available records, though not the original grant order but good number of contemporaneous revenue records and records of rights etc., clearly indicate that the original grant is in favour of the persons belonging to Adi Karnataka Community. If so, there cannot be any escape from this conclusion and this finding of fact is not one which calls for disturbance or interference by this Court in 227 proceedings.

28. Even on the question of identity of the land, the respondents have been put on notice for action under the provisions of this Court. The notice apprises that action has to be taken in terms of Section 4 as per the grant in respect of the land which was in their possession which they are taken for the purpose of invalidating the sale transaction for resuming and ultimately to be restored in favour of the original grantee or the legal heir. The dispute with regard to the identity of the land is also not a dispute which is required to be examined in writ jurisdiction under Article 227. No doubt the respondents can call for an aid on such submission to support the orders of the authorities. But while doing so, this Court may not embark on varying the findings of the authorities particularly on the aspect of identity of the land or as to the community to which the original grantee belonging or of the legal heir who claim under the depressed class. These aspects get concluded at the stage of the first authority or at the appellate stage.

29. Even with regard to the identity of the person though it is contended in W.P. No. 8141 of 2003 that the petitioner is not the person belonging to Scheduled Caste Community nor is he a person who is the legal heir to the original grantee, it is not necessary for this Court to examine this aspect. The question whether a particular person is the legal heir may assume importance only when the land is to be resumed in favour of the petitioners and the authorities may examine this aspect as and when the need arises and take into consideration all the evidence that may be available or made available to them to reach a conclusion on that

aspect. Therefore, this is an aspect which should not detain me from determining the crux of the matter that is involved in these writ petitions i.e., whether or not the condition imposed in the grant order has been violated.

30. However, if an illegality has crept in while passing the order, the matter nevertheless calls for interference even in the limited exercise of this Court's jurisdiction under Article 227 of the Constitution. The real question in my opinion which arises for determination is as to whether the understanding of the provisions of Section 4(1) by the Assistant Commissioner or by the Deputy Commissioner is proper and correct. The proper meaning and intent of the law as is provided in Section 4(1) has to be understood and interpreted by this Court while examining the scope of Section 4(1).

31. This aspect of the matter is no longer *res Integra* and this Court has taken a view in the case of *Shivayya Mallikarjunaiah Mysore v. Assistant Commissioner, Sirsi and Ors.* 1991(3) Kar. L.J. 38, that it is the conditions as stipulated under the rule governing the grant of the land which prevails; that it is only the statutory condition that should prevail and the condition as imposed in the grant order or even a *Saguvali Chit* has to yield to the statutory condition as imposed under the Rule which is referred to and followed in the case of *T.N. Parameshwarappa v. State of Karnataka and Ors.* 1991(3) Kar. L.J. 751 : ILR 1992 Kar. 1091.

32. Even on an examination of the provisions in the light of the arguments urged by Sri Raghavan, learned Counsel for the respondents 3(a) to 3(b) in this petition and which arguments holds good for the other respondents in other petitions also the submission is that the Rule 43(8) should be so understood as the one providing for a condition only in terms of undertaking and not in any other manner.

33. I am afraid on a plain reading of this Rule this inference does not follow at all. If the rule provides for the condition of permanent non-alienation, the undertaking is only to evidence that condition. In a case where no undertaking is executed at all, it cannot be said that no condition operates. The undertaking is one that is required to be in consonance with and not one which can be at variance with the rule. The undertaking even if executed can only be in respect of permanent non-alienation and not for any other purpose. That apart the very fact that this

undertaking forms part of Form 2, the Saguvali Chit, and not the grant order serves as a determining factor if a question crops up as to which one of the conditions has to be upheld. The condition imposed under the Saguvali Chit if it is in furtherance of statutory condition then certainly it would have to be given effect to. But, where the condition stipulated in the Saguvali Chit runs counter to the statutory condition or is at variance then they become ineffective and irrelevant for purpose of determining an issue arising therefrom.

34. Though Sri Raghavan submits that this is a condition only for payment of land revenue, I am of the view that the tenor of the condition imposed in the Saguvali Chit is only to ensure that the land granted to the persons belonging to Depressed class is retained for them without being transferred. In fact, this is the purpose and object of such grants even under Rule 43(8) of Rules under the Mysore Land Revenue Code, 1888. It is only to achieve this purpose of ensuring that the land is retained by such grantees without losing the land either by voluntary transfer or by coercion or other methods. The provisions of the Act having been upheld by the Supreme Court, the moment a violation of the terms of the grant takes place the statutory condition imposed on such grant gets activated rendering such transfer otiose. Any interpretation to be placed on such a condition imposed by the statute should be only in furtherance of the object sought to be achieve by the provisions of the Act and not otherwise. While interpretation of the provisions of Rule 43(8) may not directly arise in the present case, understanding Rule 43(8) it would only put to the effect that the conditions under this Rule of grants in favour of the Depressed Class is only one of permanent non-alienation and this is a condition which can independently operate in terms of Sub-section (1) of Section 4 of the Act. Irrespective of the nature of the condition imposed under the grant order or the Saguvali Chit, this condition operates and is also a situation where for that violation also Section 4(1) is attracted.

35. The interpretation sought to be placed by Sri Raghavan, learned Counsel for the respondents that understanding of Rule 43(8) should be in conjunction and by taking one from the provisions of Section 11 of the Transfer of Property Act, cannot be accepted for the reason that under Section 4(1) there is a clear distinction made between the two situations namely, the conditions that were

imposed under the grant order and conditions as provided for under the Rules governing such grants. This clearly indicates that there can be variance between the two sets of conditions for the purpose of attracting Section 4(1) and violation of either set of condition is sufficient. If that is the tenor and the intention of Section 4(1) of the Act, the interpretation of Rule 43(8) as stated above and the reliance placed by the learned Counsel for the respondents pales into inconsequence as a statutory condition attached to a grant under the Rule governing the grant independently operate for the purpose of Section 4(1) of the Act. It is for this reason, I am rejecting the submission of Sri Raghavan, learned Counsel for the respondents for treating the transfer of the year 1967 as not in violation of the terms of grant in the sense the transfer is not the one within the purview of Section 4(1) of the Act.

36. The section does not prescribe any limitation for putting the clock back insofar as setting any transfer at sought if it is in violation of the condition is concerned. Even if the question is one of the power being exercised by the authorities after long lapse of time in an unreasonable manner at any belated point of time, to brand such exercise of the very power itself as bad is not correct when what is a reasonable time is not capable of being fixed in a given framework. What is reasonable in one situation may not be reasonable in another situation. The concept of exercise of power within a reasonable time will always be linked with the very statutory provision and the purpose and object of such statutory provision. When the statute intends to ensure that the benefit of the grant should extend over a period not circumscribed and limited by any expression in the provision, then such provision should operate for good not only in bestowing the relief to the persons entitled under the Act but also to remove any mischief that may occasion which could lead to defeating the object of the provision. Admittedly, the Act does not prescribe any period of limitation for invoking the provisions of Section 4(1), for stirring the Assistant Commissioner into action who fairly pronounced that the transfer in violation or in contravention terms of the grant in void, for assuming and restoring the land to grantee or the legal heir. Learned Counsel for the respondent is quite conscious of this statutory position and that is the reason why the learned Counsel has called in aid the concept of the doctrine of exercise of power within a reasonable time.

37. Learned Counsel Sri Raghavan for the respondents submits that this is not an aspect which necessarily violates the doctrine of equality or fairness in State action. Even under Article 14 an action in non-contrary exercising power at any point of time becomes arbitrary particularly when it is inevitably affecting the interest of the third party and therefore such exercise of power can be construed as violative of Article 14 or which leads to the action being get invalidated. This result follows only when the power has exercised in such an unreasonable manner after a unreasonable delay etc.

38. Learned Counsel has urged that following the view taken by this Court and the Supreme Court in decisions wherein the action of statutory authorities was in examination for the purpose of upholding or otherwise of the order, when such authorities has exercised the power after a long lapse of time, the exercise of power even for suo motu exercise in the year 1998 by the Assistant Commissioner by issue of notice should be construed as an unreasonable exercise of the power as it is admittedly after a lapse of 19 years. Question is as to whether the action by the Assistant Commissioner becomes bad, if taken under Section 4(1) at this point of time.

39. As discussed earlier, the Act does not prescribe any statutory period of limitation. If so, the person claiming under a grantee can definitely approach the Assistant Commissioner at any point of time by filing an application under Section 4 and the Assistant Commissioner has no power to throw out such an application as one barred by limitation. The power for suo motu action is in the alternative and when one examines the purpose and the object that such provision is made and such power is conferred, it becomes clear that the intention of the Legislature is to send a message to all such person who get into possession of the lands which is a granted land that it does not ensure to their benefit but reverts to the state and can only be utilised for regranting to the persons belonging to Depressed Class or Scheduled Caste Community. The purpose and object is very clear that it is meant for re-habituating the persons belonging to Scheduled Caste Community, a community which has been exploited hitherto. That is the reason why whether the person has moved the Assistant Commissioner or not, the Assistant Commissioner can take suo motu action for invalidation of the transfer in terms of

Section 4(1) as provided for the statute. If an application can be filed by such persons for claiming the benefit under the Act without any restriction of time, a different interpretation cannot be placed on the very function, if it is by suo motu action on the part of the Assistant Commissioner. If an application at any point of time after the Act came into force under Section 4, is one which the Assistant Commissioner has to necessarily entertain and cannot reject, the action by the Assistant Commissioner taken suo motu though might be one taken after lapse of 19 years from the date the Act came into force cannot be characterised as delayed or unreasonably delayed or as one not taken within a reasonable time. Hereagain the Assistant Commissioner is not the one who has been given power to adjudicate on the right of parties but only to set in motion the process or the form of resumption of the land to the State which has to be completed and followed up in order to give effect to the provision governing the grant. It is not a provision for determining the rights of the transferee but a provision for invalidating the transaction and for resumption of the land. If at all, the unreasonableness in the provision is only the invalidation of the transaction itself which is achieved by the operation of law and not by the action taken by the Assistant Commissioner and when grantee or his legal heir does not act, the Assistant Commissioner can take suo motu action.

40. The theory of the rights of parties being effected, if the power is used at a later point of time cannot be accepted as the right is not affected at that point of time but at the time of the illegal transfer whenever it might have taken place by the very operation of the provisions of Section 4 which came into operation only in the year 1979 when all such transfers even if subsequent would date back to 1979 insofar as their invalidity is concerned. If such a provision has been held to be constitutionally valid, no interpretation can be placed on the provisions of this Act to off-set or derail this provision on the ground of belatedness. The interpretation of the action becoming invalidated on account of lapse of time cannot be accepted for one another reason i.e., if such interpretation is accepted, it will amount to indirectly reading into the provision a period of limitation which the Legislature itself has not written or to read into it.

41. It is the function of the Court to interpret the statutory provision and while understanding the statutory provision or if there is any ambiguity, to resolve the ambiguity also to interpret the provision in a manner to achieve the object of the act deliberately and even to the extent of supplying something which is not expressly provided by the statute.

42. On a perusal of the object of the scheme of the Act, it is not the function of the Court to partially read in the statutory provisions. The word or situation not provided for, it is also not the function of the Court to place or statutorily the period of limitation into Section 4, which is essentially an Legislature function and not any part of judicial function.

43. In this regard, even the celebrated quotation cited in *Seaford Court Estates Limited v. Asher* (1949)2 All ER 155: (1949)2 KB 481 and which is approved by the Supreme Court in the case of *N.K. Jain and Ors. v. C.K. Shah and Ors.* : 1991 CriLJ1347a that when a Judge come across this ruck in the texture of it, he must ask himself the question as to how they would have straightened it? He must then to do so as they would have done. A Judge must not alter the material of which the Act is woven-but he can and should iron out the creases. When the object of the Act is clear and the provisions are in any way ambiguous then the Judge should achieve that purpose by the act of interpretation which is a tool in the hand of a Judge. If the interpretation of the doctrine of exercise of power within a reasonable time by the Assistant Commissioner, for the purpose of Section 4(1) as canvassed by the learned Counsel for the respondent is accepted in the present case, it achieves the very opposite of the purpose of the Act and it is for this reason such an interpretation cannot be accepted. It only amounts to embarking upon legislation. The reading of Section 4(1), I am of the very clear view that it cannot be done in such a manner and therefore this argument has to be necessarily rejected.

44. As the contention urged by the learned Counsel for the respondents fails and the orders of the Assistant Commissioner and the Deputy Commissioner impugned in these writ petitions for not entertaining the application and not invalidating the transaction in terms of Section 4(1) for resumption, are not

sustainable in the light of the very provision of Section 4(1), the impugned orders at Annexure-A and B in both the petitions are quashed by issue of writ of certiorari. Rule is made absolute.

45. The next question that arises is what a consequent directions should be issued to the authorities whether to remand the matters for one more round of enquiry or to direction the authority to take further action for resumption of the land and for restoration. The matter if at all is to be remanded then there is no need for such directions. If there is still any doubt or ambiguity with regard to the status as legal heir of the original grantee, that is a matter which is required to be resolved by the Assistant Commissioner in the enquiry at the stage of resumption and restitution of possession.

46. In the circumstances, it is held that the transactions under which the respondents claim to be owners and in possession of the granted land are all voided in terms of Section 4(1) of the Act; that the land is required to be resumed to the State and restituted to the persons who are the legal heirs of the grantee if it is so established, otherwise it remains with the State for further distribution in accordance with the provisions of the Act.

47. Accordingly, the Assistant Commissioner is hereby directed that in both cases, he should proceed from the stage of issuing notices to the occupants of the land for resumption by the actual taking of possession from the occupants and after such resumption in favour of the State is achieved in accordance with the provisions of the Act, to consider the further questions of regrant in favour of persons who are applicants on establishing the version that they are, in fact, the legal heirs of the original grantee.

48. Writ petitions are allowed. Rule issued and made absolute.