

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT PETITION NO. 17282 OF 2024 (KLGP)

C/W

WRIT PETITION NO.24250 OF 2024 (KLGP)

IN WP NO.17282/2024:

BETWEEN:

MR. N CHALUVARAYASWAMY,
S/O LATE NARASIMHA GOWDA ,
AGED ABOUT 64 YEARS,
R/A EJJALAGATTA VILLAGE,
BARMAHADEVARAHALLI POST,
NAGAMANGALA TALUK,
MANDYA 571 432.

...PETITIONER

(BY SRI.ASHOK HARANAHALLI., SENIOR COUNSEL A/W
SRI. SIDDHARTH B MUCHANDI., ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS CHIEF SECRETARY
REVENUE DEPT, M S BUILDING,
BENGALURU 560 001.
2. THE TAHSILDAR,
BENGALURU SOUTH TALUK,
KANDHAYA BHAVAN, K G ROAD,
BENGALURU 560 001.
3. THE ADDITIONAL DIRECTOR OF LAND RECORDS
BENGALURU DISTRICT, K R CIRCLE,
BENGALURU 560 001.

4. THE DEPUTY DIRECTOR OF LAND RECORDS,
BENGALURU DISTRICT,
K R CIRCLE, BENGALURU 560 001.

...RESPONDENTS

(BY SMT. CHANDINI S., HCGP FOR R1 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT, DIRECTION ORDER A) QUASHING THE ORDER DATED 28.03.2024 PASSED IN LGC(S) No-409/2023 PENDING BEFORE THE KARNATAKA LAND GRABBING PROHIBITION SPECIAL COURT VIDE ANNEXURE-A.

IN WP NO.24250/2024:

BETWEEN:

MR. N CHALUVARAYASWAMY,
S/O LATE NARASHIMA GOWDA,
AGED ABOUT 64 YEARS,
R/AT EJJALGATTA VILLAGE,
BARAMAHADEVARAHALLI POST,
NAGAMANGAL TALUK, MANDYA 571 432.

...PETITIONER

(BY SRI.ASHOK HARANAHALLI., SENIOR COUNSEL A/W
SRI. SIDDHARTH B MUCHANDI., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
REP BY ITS CHIEF SECRETARY,
REVENUE DEPT, M S BUILDING,
BENGALURU 560 001.
- 2 . DEPUTY COMMISISONER
BANGALORE URBAN DISTRICT
KANDAYA BAHAVAN, BENGALURU 560 009.
- 3 . THE ASSISTANT COMMISSONER,
BANGALORE NORTH TALUK,
BANGALORE 560 009.
- 4 . THE TAHSILDAR,
BENGALURU SOUTH TALUK,
KANDAYA BAHVAN, K G ROAD ,

BENGALURU 560 001.

5 . SRI. G VENKATESH BHOVI,
FATHER'S NAME NOT KNOWN
TO THE PETITIONER
AGED NOT KNOWN TO THE PETITIONER
R/AT NO 36/1, 2ND MAIN,
MARUTHI LAYOUT, KODIEGNAHALLI,
BENGALURU 560 112.

...RESPONDENTS

(BY SMT. CHANDINI S., HCGP FOR R1 TO R4;
SRI. SHASHI KUMAR A R., ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT, DIRECTION, ORDER A)QUASHING ORDER DATED 19/06/2024 PASSED IN LGC(S) NO.485/2023 PENDING BEFORE KARNATAKA LAND GRABBING PROHIBITION SPECIAL COURT VIDE ANNEXURE-A AND B) GRANTING ANY OTHER RELIEFS.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, THIS DAY, **KRISHNA S. DIXIT.J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
AND
HON'BLE MR JUSTICE G BASAVARAJA

CAV ORDER

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

Petitioner is knocking at the doors of Writ Court grieving against the proceedings in LGC(P) No.485/2023 and LGC(S) No.409/2023 pending on the file of Special Court established under the provisions of Karnataka Land

Grabbing Prohibition Act, 2011, for offences punishable under sections 4(3) & 5.

2. BRIEF FACTS OF THE CASE:

(a) The subject land in Sy.No.13 admeasuring 3 Acres & 31 Guntas in Makali village, Bangalore North Taluk, belonged to Gowdaiah S/o Muddegowda who gifted to Anjaneya Swamy Deity by registered Gift Deed bearing No.539/1923-24 dated 4.1.1923, so that its usufructs could be made use of for the maintenance of temple. All Revenue Records such as Record of Rights, Index of Land, RTCs, Mutation Registers, Tippanis, reflect the same.

(b) In respect of subject land, occupancy has been registered by the Land Tribunal vide order dated 2.1.1982 in the name of cultivators in LRF 2, 3, 4, 6 & 8 of 1979-80; accordingly, occupant's name is mutated in the Revenue Records vide M.R.No.11/1981-82; to this effect, the respondent-Tahasildar has issued an endorsement dated 18.1.2008 specifying the extent of land as 3 Acres & 31 Guntas.

(c) The order of Land Tribunal was put in challenge before the District Land Reforms Appellate Tribunal vide Appeal No.123/1986, the same ended in vain vide Government Notification dated 8.10.1990, followed by W.P.No.44933/2001 calling in question the Land Tribunal's orders and the same came to be withdrawn

unconditionally on 9.10.2006. Thus, the rights have become concrete under the agrarian laws and therefore, cannot be readily impeached before the Special Court.

(d) The land owners vide registered Sale Deed dated 28.3.2007 sold the land to one Mr.Lakshmikantha. All the Revenue Records came to be mutated accordingly in favour of the buyer who had paid a consideration of Rs.1,32,12,500/-. This Lakshmikantha gifted the subject land to the petitioner herein vide registered Gift Deed Dated 27.4.2021. Property records are also mutated. When this is the position, the subject cases have been registered against the petitioner on the premise that the land in question is a public property and that the petitioner has encroached the same. This is how the proceedings before the Special Court have commenced. The same have been put in challenge before us, essentially on the ground that the land is private land; title deeds are more than a century old; Tribunal has granted occupancy more than forty years ago; all Revenue Records stand in the name of private persons, petitioner is the transferee of this land by registered instrument; 2011 Act itself is not applicable.

3. SUBMISSIONS ON BEHALF OF PETITIONER:

Learned Sr. Advocate Mr.Ashok Haranahalli appearing for the petitioner made the following submissions seeking quashment of the proceedings:

(a) Land in question is purely a private land as contradistinguished from public land; there is abundant evidentiary material including orders of the statutory Tribunals to this effect.

(b) Petitioner by no stretch of imagination would fit into the definition of land grabber and therefore, the 2011 Act is not at all applicable.

(c) Even otherwise, the 2011 Act being prospective in operation from 2014, the alleged act of the petitioner taken at face value, would not amount to offence, retrospectivity being proscribed under Article 20(1) of the Constitution of India.

(d) Initiation of criminal proceedings is a serious matter and that seriousness having not been reflected in the order impugned, interference of this court is warranted.

4. SUBMISSIONS ON BEHALF OF PRIVATE RESPONDENT AND OFFICIAL RESPONDENTS:

(a) Whether petition land belongs to the government or not is a pure question of fact that cannot

be examined by the Writ Court, but can be ascertained after the trial at the hands of Special Court; so also, the act of land grabbing and the person being land grabber, have to be treated.

(b) Learned counsel appearing for the private respondent having filed Statement of Objections added that the subject land is a part of reservoir/tank that obviously belongs to the government; there is such a report by the Tahasildar; the report was prepared in the light of PIL court order in W.P.No.38401/2014.

(c) Whether the subject land grabbing happened before or after the Act came into force, can also be ascertained during the course of trial and in any event, this court cannot cut short the ongoing proceedings at the hands of Special Court, no extraordinary circumstances having been made out.

5. Having heard the learned counsel for the parties and having perused the Petition Papers, we are inclined to grant indulgence in the matter for the following reasons:

5.1 Initiation of criminal proceedings of the kind is a serious matter since it will have drastic implications on the fundamental rights of citizens. This view gains support by the observations of the Apex Court in **INOX AIR**

PRODUCTS (P) LTD vs. STATE OF A.P.¹. While entertaining private complaints, the Special Court has to take special care and caution, regarding being had to rights and liberties of individuals constitutionally guaranteed. Learned Sr. Advocate Mr.Haranahalli is right in pointing out that the due seriousness exercised by the court below, is not demonstrable from the perusal of records in general and the impugned order in particular. This constitutes first error apparent on the face of record that vitiates the proceedings in question.

5.2 For attracting the penal provisions of 2011 Act, at least there should be three essential ingredients *prima facie* demonstrable: (i) The land should fit into the inclusive definition under section 2(d); there should be an act of land grabbing as defined under section 2(f) and the accused should be a land grabber as defined under section 2(e) of 2011 Act. Let us examine the first ingredient as to what the word 'Land' means:

"(d) "Land" includes,-

(i) *land belonging to the Government, Wakf or the Hindu Religious Institutions and Charitable Endowments, a local authority, a statutory or non statutory body owned, controlled or managed by the Government;*

(ii) *rights in or over land, benefits to arise out of land, and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth."*

¹ 2025 SCC OnLine SC 209

The definition requires public character of the property; if that character is lacking, the charging section is not attracted. Apparently, the subject land was a matter of registered Gift Deed of 1923 i.e., more than a century ago. The Land Tribunal granted occupancy in respect of the subject land more than four decades ago; all the Revenue Records stood in the name of cultivators; they sold the land by a registered Sale Deed dated 28.3.2007 to one Mr.Lakshmikantha. Apparently this happened seventeen years ago. He gifted the subject land to the petitioner on 27.4.2021. All this is ascertainable from the public records. By no stretch of imagination, the land in question would fall even in the penumbra of statutory definition.

5.3 Now let us examine the second ingredient of the offence namely the act of land grabbing which is defined in section 2(f) of 2011 Act:

"(f) "land grabbing" means every activity of grabbing of any land, without any lawful entitlement and with a view to illegally taking possession of such land, or enter into or create illegal tenancies or lease and licences agreements construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and license basis for construction, or use and occupation, of unauthorised structures; and the term "to grab land" shall be construed accordingly."

The definition apparently involves a noun and a verb. Noun is already treated in the immediately preceding subparagraph. Act of grabbing should relate to the land as defined in section 2(e) which is already reproduced and discussed. Without that component, the verb 'grabbing' loses significance. In other words, grabbing of land having public character. The definition is apparently inclusive but no private land as such can be brought within its contours, when we speak of grabbing. To put it broadly, the land should belong to an entity which at least answers the definition of 'State' under Article 12 of the Constitution of India. A private land, pure & simple, is not within the definition. If the legislature intended it otherwise, it would have adopted the definition of immovable property given under section 3(17) of the Mysore General Clauses Act, 1899 which reads as under:

"Immovable property" shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth".

The State legislature in its wisdom has given a separate dictionary clause which is markedly different from the terminology of 1899 Act.

5.4 The third ingredient is interwoven in the definition of 'land' and of 'land grabbing'. The term 'land grabber' is defined under section 2(e) of 2011 Act.

"land grabber" means a person or group of persons or a Society, who commits or has

committed land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest."

Unless the land is having the public character as discussed in the immediately preceding paragraph, there cannot be an act of *land grabbing* and as a concomitant of this, there cannot be a *land grabber*. Since 1923, the subject land has been a private land, pure & simple with no elements of public character whatsoever. As already mentioned above, more than four decades ago, occupancy has been granted by the Tribunal; challenge to the Tribunal's order in W.P.No.44933/2001 has failed inasmuch as the same has been withdrawn unconditionally. The cultivators sold the land to a private person who in turn gifted it to the petitioner, who stands miles away from the definition of 'land grabber'.

5.5 There is force in the submission of Mr.Haranahalli that the 2011 Act enacts the offence punishable under sections 3, 4 & 5, obviously with prospective effect; it could not have been otherwise because of constitutional prohibition of making an act an offence with retrospective offence, vide Article 20(1). The

2011 Act came into force w.e.f. 9.10.2014. Originally, land was in the possession of Anjaneya Swamy Deity, which is a legal person in Indian Jurisprudence, by virtue of registered Gift Deed of 1923. Persons who were cultivating the subject land got occupancy at the hands of Land Tribunal way back in 1982. They sold the land to one Mr.Lakshmikantha who in turn gifted the same to the petitioner. The charging provisions of the Act do not make continuation in the possession of land an offence, if the so called 'land grabber' was already in lawful possession years before the Act came into force. It is not the case of complainant nor the version emerges from the record that for the first time, the petitioner gained entry to the subject land post enactment. In a sense, doctrine of tacking which Black Law dictionary defines as under needs to be kept in view while addressing the issue of this nature:

"the joining of consecutive periods of possession by different persons to treat the periods as one continuous period; especially the adding of one's period of land possession to that of a prior possessor to establish continuous adverse possession for the statutory period."

5.6 The vehement submission of private counsel that in PIL W.P.No.38401/2014, there is a finding recorded by the Coordinate Bench to the effect that the subject land is part of tank bed and therefore, the encroachers have to be removed, has not been demonstrated by producing a copy of that order. Some loose observation made by the

Surveyor as reflected in Tahasildar's endorsement dated 18.1.2008 is highly insufficient to defeat the constitutional right to property guaranteed under Article 300A, as progressively construed by the Apex Court in a catena of decisions. After all, registered Gift Deed of 1923, statutory Tribunal's order granting occupancy, entries in the Revenue Records made pursuant thereto, registered Sale Deed of 2007 and registered Gift Deed of 2021 lend credence to the case of petitioner that the subject land belongs to him. We are told at the Bar that the subject PIL is still pending and therefore, we being a Coordinate Bench cannot come in its way of issues being decided therein, in accordance with law. Our observations are confined to the disposal of this petition only.

5.7 The last contention of learned counsel appearing for the private respondent that whether the subject land answers the definition of 'land' in section 2(d), whether petitioner is a 'land grabber' under section 2(e) are to be examined by the Special Court, is bit difficult to countenance when there is a fool-proof case of the petitioner demonstrated by public records. There is absolutely no case that would merit a full-fledged trial and of culminating into possible conviction. In fact, case of the petitioner squarely fits into quashment principles enunciated by the Apex Court in *STATE OF HARYANA vs.*

CH. BHAJAN LAL² wherein, it is *inter alia* observed as under:

"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

In the above circumstances, these petitions succeed; a Writ of Certiorari issues quashing the cases in LGC(P) No.485/2023 and LGC(S) No.409/2023 pending on the file of the Special Court, costs having been made easy.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE

Snb, Bsv, cbc
List No.: 1 Sl No.: 1

² AIR 1992 SC 604