



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

WRIT PETITION NO. 1939 OF 2022 (LR)

BETWEEN:

M.G. PALAKSHAPPA GOWDA
DEAD BY LRS.

1. M.P. MEGHARAJ
SINCE DECEASED REP. BY LRS.

1(a). SMT. SHARADAMMA
W/O M.P. MEGHARAJ
AGED ABOUT 72 YEARS
R/AT SOLUR POST
SHIKARIPURA TALUK
SHIVAMOGGA DISTRICT-577214.

1(b). SMT. PRATHIMA
W/O MANJUNATHA BASSEGENNI
D/O LATE M.P. MEGHARAJ
AGED ABOUT 45 YEARS
R/AT AGADI POST
HAVERI TALUK
HAVERI DISTRICT - 581 128.

1(c). SMT. RESHMA
W/O SHIVANAGOWDA HULIGINAKOPPA
D/O LATE M.P. MEGHARAJ
AGED ABOUT 42 YEARS
R/AT SOLUR POST
SHIKARIPURA TALUK
SHIVAMOGGA DISTRICT-577214.



- 1(d). MRS. SUSHMA
W/O SANTHOSH
D/O LATE M.P. MEGHARAJ
AGED ABOUT 40 YEARS
R/AT SOLUR POST
SHIKARIPURA TALUK
SHIVAMOGGA DISTRICT-577214.
2. SUGANDHAPPA M.P.
SINCE DECEASED REP. BY LRS.
- 2(a). SMT. NETHRAVATHI
W/O SUGNADHAPPA M.P.
AGED ABOUT 63 YEARS
R/AT SOLUR POST
SHIKARIPURA TALUK
SHIVAMOGGA DISTRICT-577214.
- 2(b). SMT. CHAITRA PATIL M.S.
W/O LOHIT HANASAVADI BASAVARAJAPPA
D/O LATE SUGNADHAPPA M.P.
AGED ABOUT 34 YEARS
R/AT NO.303 F.NO.S1
KUSHI ATMA HOMES
11TH CROSS, MPM LAYOUT,
MARTHALLI, BENGALURU -560056.
- 2(c). MANJUNATHA PATIL M.S.
S/O SUGNADHAPPA M.P.
AGED ABOUT 33 YEARS
R/AT SOLUR POST
SHIKARIPURA TALUK
SHIVAMOGGA DISTRICT-577214.
3. SMT. KUMARAMMA GAMAGUNDI
D/O M.G. PALASHAPPA GOWDA
AGED ABOUT 65 YEARS.
4. SMT. PUSHPAVATHI
D/O M.G. PALASHAPPA GOWDA



AGED ABOUT 62 YEARS.

5. SMT. VANAKSHI ALADAKATTE
D/O M.G. PALASHAPPA GOWDA
AGED ABOUT 61 YEARS.
6. SRI. KASHI VISHWANATHA
S/O M.G. PALASHAPPA GOWDA
AGED ABOUT 56 YEARS.
7. SMT. NIRMALA MARIGOWDARA
D/O M.G. PALASHAPPA GOWDA
AGED ABOUT 54 YEARS.
8. SMT. CHANDRAKALA V.K.
D/O M.G. PALASHAPPA GOWDA
AGED ABOUT 52 YEARS.
9. SMT. REKHA M.P.
D/O M.G. PALASHAPPA GOWDA
AGED ABOUT 47 YEARS.
10. SMT. THEJASHWINI M P
D/O M G PALASHAPPA GOWDA
AGED ABOUT 45 YEARS.

ALL ARE RESDING AT SALURU VILLAGE
ANAJANAPURA HOBLI,
SHIKARIPURA TALUK
SHIVAMOGGA DISTRICT -577214.

...PETITIONERS

(BY SRI. S.RAJASHEKAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
REVENUE DEPARTMENT



VIDHANA SOUDHA
BENGLAURU - 560001.

2. THE LAND TRIBUNAL B ITS
CHARIMAN
SHIKARIPURA TALUK
SHIKARIPURA TALUK
SHIVAMOGGA DISTRICT - 577214.

3. THE TAHASILDAR
SHIKARIPURA TALUK
SHIVAMOGGA DISTRICT - 577214.

SMT.SHARADAMMA
DEAD BY LRS

4. SRI. MALLIKARJUNAPPA
S/O SHIVAPPA
5. SRI. UMESHAPPA
S/O SHIVAPPA

RESPONDENTS NO.4 AND 5 ARE
RESIDING AT ESOORU VILLAGE
ANJANAPURA HOBLI,
SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT - 577214.

...RESPONDENTS

(BY SMT. B.P. RADHA, AGA FOR R1 TO R3
SRI. M.R. RAJAGOPAL, SENIOR COUNSEL FOR
SRI. H.N. BASAVARAJU, ADVOCATE FOR R4 AND R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ORDER PASSED BY THE RESPONDENT NO.2



DATED 11.01.2022 PRODUCED AT ANNEXURE-G; DIRECT THE RESPONDENT NO.2 TO CONFIRM THE TENANCY IN FAVOUR OF THE PETITIONER FORENTIRE LAND BEARING SY.NO.33 MEASURING 9.16 GUTNAS SITUATED AT HOTHANAKATTE VILAGE, KASABA HOBLI, SHIKARIPURA TALUK SIVAMOGA DISTRICT.

THIS WRIT PETITION HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, **E.S. INDIRESH J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

CAV JUDGMENT

In this writ petition, the petitioners are assailing the order dated 11.01.2022, passed by the respondent No.2-Land Tribunal in LRT.7.C.R.9/1975-76, *inter-alia* sought for direction to respondent No.2-Land Tribunal to confirm the tenancy in favour of the petitioners in respect of the land bearing Sy.No.33 measuring, 9.16 acres, situate at Hothanakatte village, Shikaripura Taluk, Shimogga District.



2. Relevant facts for the adjudication of this writ petition are that the father of the petitioners was cultivating the land bearing Sy.No.33 of Hothanakatte village, Shikaripura Taluk to an extent of 9.10 acres, under the landlord-Shivappa and as such, filed Form No.7, seeking occupancy rights before the Land Tribunal. The said application made by the petitioners was rejected and being aggrieved by the same, the petitioners have approached this Court, in W.P.No.18763 of 1982 and this Court vide order dated 11.12.1984 (Annexure-D) allowed the writ petition and remanded the matter to the Land Tribunal for fresh consideration. It is also stated that, the mutation entry stand in the name of petitioners as per Annexure-C. It is further stated in the writ petition that, after remand, the Land Tribunal passed an order dated 18.09.1992 (Annexure- E) and as such, granted occupancy rights to the petitioners.



Being aggrieved by the same, the legal representatives of landlord Shivappa, had preferred W.P.No.39008 of 1992 and this Court vide order dated 26.08.1999 (Annexure-F), set aside the order of the Tribunal and remitted the matter for fresh consideration. Pursuant to the same, the Land Tribunal vide order dated 11.01.2022, (Annexure-G), granted occupancy rights in respect of the land bearing Sy.No.33 to an extent of 2.33 acres of land, however rejected the claim for remaining extent of land and being aggrieved by the same, the petitioners have presented this writ petition.

3. I have heard Sri. S. Rajashekar, learned counsel for the petitioners; Smt. B.P. Radha, learned Additional Government Advocate appearing on for respondent-State and Sri. M.R. Rajagopal, learned



Senior Counsel appearing for Sri. H.N. Basavaraju, learned counsel for the respondent Nos. 4 and 5.

4. Sri. S. Rajashekar, learned counsel for the petitioners, contended that, the petitioners are in possession of the entire land bearing Sy.No.33 measuring 9.16 acres situate at Hothanakatte Village, Shikaripura Taluk, Shivamogga District and the revenue records reflects that the petitioners are in possession of the entire land in question and as such, the respondent No.2 has committed an error in granting an extent of 2.33 acres only and therefore, sought for interference of this Court. It is also argued by the learned counsel for the petitioners that, the petitioners have produced documents as to the cultivation of the entire extent of 9.16 acres of land which is also reflected through RTC extracts issued by the respondent-authorities. In that view of the



matter, the finding recorded by the Land Tribunal requires to be interfered with by granting occupancy rights to the entire extent of land in favour of petitioners.

5. It is further submitted by the learned counsel for the petitioners by referring to the admission made by the respondent-Shivappa that, the respondent-landlord, agreed for conferment of occupancy rights in respect of entire extent of the land to the petitioners. In this regard, he further refers to the RTC Extracts, and submitted that, the RTC extracts have been prepared on whims and fancies and therefore, contended that the Land Tribunal ought to have granted occupancy rights to the petitioners to the entire extent of land and therefore, sought for interference of this court. In this regard, he refers to the Division Bench judgment



of this Court, in case of ***Rathna Das and Others v. State of Karnataka and Others*** in W.A.No.810 of 2026, disposed of on 03.06.2026 and contended that, even if the land is 'Punja' Land, and if such land is brought into cultivation later and therefore, the same has to be accepted and as such, sought for interference of this court.

6. Per contra, Sri. M.R. Rajagopal, learned Senior Counsel appearing for the respondent Nos.4 and 5 submitted that an extent of 6.15 acres, was held to be 'Beelu', and therefore, sought to justify the impugned order passed by the Land Tribunal. It is further contended by the learned Senior Counsel that, the occupancy rights has to be granted only if the tenant is in cultivation of the land in question as on 01.03.1974 and it is the duty of the tenant to produce such relevant documents to establish the



cultivation of the tenanted land and as such, sought for dismissal of the writ petition. It is also contended by the learned Senior Counsel that, the petitioners were belonging to Patels community, and father of the petitioners was the Chairman of the group panchayat and as such, the claim made by the petitioners cannot be accepted. It is further contended that since the major portion of the land was uncultivable in nature and as such, learned Senior Counsel countered the submission made by the learned counsel for the petitioners.

7. Smt. B.P. Radha, learned Additional Government Advocate appearing for the respondent-State produced the original records, and sought to justify the impugned order passed by the Land Tribunal.



8. In the light of the submission made by the learned counsel appearing for the parties, on careful consideration of the finding recorded by the Land Tribunal, it would indicate that the father of the petitioners has filed an application seeking occupancy rights in respect of land bearing Sy.No.33 of Hothanakatte village, Shikaripura Taluk, Shivamogga District to an extent of 9.16 acres. It is also to be noted that, the landlord in their deposition before the Land Tribunal as per Annexure-B, admits that the petitioners herein were in cultivation of the land to an extent of 9.10 acres (Annexure-B). The mutation extract specified that the petitioners are in cultivation of the entire extent of the land. In the backdrop of these aspects, the Land Tribunal in the order dated 18.09.1992 (Annexure-E), has arrived at a conclusion that, the petitioners are in cultivation of the land to an extent of 9.10 acres. The finding



recorded therein would indicate that the petitioners are in possession of the same, since 1965-66. It is also to be noted from the original records, wherein, the RTC extracts would indicate that the petitioners are in cultivation of the land to the entire extent of land. Perusal of the report of the Village Accountant produced at Annexure-K would indicate that the petitioners are in cultivation of the land to an extent of 9.08 acres, wherein, it is reflected that, the petitioners had grown Paddy, in 2.33 acres of land and Sugar Cane in remaining 6.15 acres of land. The said aspect of the matter would indicate that the petitioners are in cultivation of the entire extent of land. It is also forthcoming from the RTC extracts produced at Annexure-H series wherein, the petitioners were growing paddy in the land to an extent of 2.33 acres and the remaining 6.15 acres shown as 'Beelu-Punja'. However, on careful



consideration of the RTC extracts for the year 1975-76 it is shown that, the petitioners were growing paddy to an extent of 6.15 acres, and same was continued in the RTC extracts for the period from 1976-77. The RTC extracts for the year 1977-78 provides that the petitioners were in cultivation of entire extent of the land. So also, it is shown for the year 1974-75, that, the petitioners were growing paddy for 01 acre and remaining land to extent of 8.08 acres was 'Beelu'. In this regard, there is discrepancy as to the extent of land mentioned in the RTC extracts and same would not effect the right of the petitioners to claim entire extent of land, as per the RTC extracts for the year 2007-08 (Annexure-H14) onwards, shows that, the petitioners were cultivating the entire extent of land by growing Paddy, Maize, and Sugarcane. The said aspect would indicate that, the entire extent of land was brought



into cultivation by the petitioners. In the case of **Smt. Ratna Das** (Supra), the Division Bench of this Court, at paragraph 16, held as follows:

"16. We are alive to the situation that even if a land is stated as a punja land, but if the person proves that despite the land being punja land, it was brought into cultivation, by means of placing cogent evidence and documents, the same can be considered. But in the case on hand, except producing certain documents, which were considered and rejected as not benefiting to the claim of tenancy by the appellants herein/original tenant, by the Writ Court"

(Emphasised by me)

9. It is also pertinent to mention here that as the Land Tribunal has arrived at a conclusion that the petitioners were in cultivation of the land during the relevant period i.e. 01.03.1974, and that the respondents admit tenancy of the petitioners. Therefore, the Land Tribunal has committed an error



in granting occupancy rights only to an extent of 2.33 acres, while rejecting the claim made by the petitioners to an entire extent, without analysing the RTC extracts in the right perspective.

10. At this juncture, it is relevant to follow the declaration of law made by the Division Bench of this court, in the case of, ***Chandrashekaraiah vs. Land Tribunal, Shimoga***, reported in ***1980 (1) KLJ (SN) 153***, held that the entries in pahanies, have presumptive evidentiary value. Under such circumstances, it is the duty of the Land Tribunal to look into the circumstances of the case, and sufficient to displace the presumption from the entries in the pahanies and thereafter, the Tribunal shall give finding contrary to such entries. It is also relevant to cite the judgment of this court ***Krishna Bhat, vs. Land Tribunal, Bantwal***, reported in ***ILR***



1986 KAR 1574, paragraphs 11 and 18 reads as under:

"11. Section 2 is the definition section. Sub-section (18) defines 'land' means agricultural land that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house site, or land used exclusively for non agricultural purposes. Sub-section (32A) stipulates that 'Tahsildar' includes a Special Tahsildar empowered by the State Government to exercise all or any of the powers of the Tahsildar under the Act. Sub-section (33) defines 'tenancy' means the relationship of landlord and tenant. Sub-section (34) defines 'tenant' means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes (i) a person who is deemed to be a tenant under Section 4; (ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961; (iia) a person who cultivates personally any land on lease under a lease created contrary to the provisions of Section 5 and before the date of the commencement of the amendment Act; (iii) a



person who is a permanent tenant and (iv) a person who is a protected tenant. Sub-section (35) defines 'Tribunal' means the tribunal constituted under Section 48 of the Act.

Section 44 provides for vesting of all lands held by or in the possession of tenants immediately prior to the date of commencement of the Amendment Act with effect on and from the said date in the State Government.

Section 45 provides for registering tenants as occupants of lands on certain conditions. It stipulates that every person who was a tenant in respect of the land before the date of vesting and which he has been cultivating personally is entitled to be registered as an occupant subject to the provisions of the other Section in Chapter III.

Section 48 provides for constitution of the Tribunals Sub-section (1) stipulates that there shall be a Tribunal for each Taluk consisting of the Assistant Commissioner of the Revenue Sub-Division having jurisdiction over the Taluk or an Assistant Commissioner specially appointed for the purpose by the State Government and four other members to be nominated by the State Government of whom atleast one shall be a person belonging to Scheduled Caste or Scheduled Tribe. Provision is also made for constituting additional Tribunals for



any Taluk. Sub-section (2) stipulates that the Assistant Commissioner shall be the Chairman of the Tribunal. Sub-section (7) provides that the Tahsildar or any officer specially appointed for the purpose by the State Government shall be the Secretary of the Tribunal.

Section 48A deals with enquiry by the Tribunal. Sub-section (1) provides that every person entitled to be registered as an occupant under Section 45 may make an application to the Tribunal within the period stipulated therein. Sub-section (2) stipulates publication of the public notice calling upon the landlord and all other persons having an interest in the land to appear before it on the date specified in the notice. It further provides that the tribunal shall also issue individual notices to the persons mentioned in the application and also to such others as may appear to it to be interested in the land. Sub-section (3) contemplates that the form of the application, the form of the notices, the manner of publishing or serving the notices and all other matters connected therewith shall be such as may be prescribed. It further provides that the Tribunal may for valid and sufficient reasons permit the tenant to amend the application. Sub-section (4) provides that the Tribunal may after such verification as it considers necessary by order



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either grant or reject the application, where no objection is filed to the claim. Sub-section (5) stipulates that where an objection is filed disputing the claim or setting up a rival claim, the Tribunal shall hold an enquiry and determine by order the person entitled to be registered as occupant and pass orders accordingly. Sub-section (5A) provides that where there is no objection in respect of any part of the claim, the Tribunal may at once pass orders granting the application as regards that part and proceed separately in respect of the other part objected to. Sub-section (6) stipulates that the order of the Tribunal shall be final and it shall send a copy of every order passed by it to the Tahsildar and parties concerned. Sub-section (8) stipulates that where no application is made within the time allowed under sub-section (1), the right of any person to be registered as an occupant shall have no effect.

Section 48B deals with the powers of the Tahsildar to determine the amount payable under Section 47, whereas Section 50 deals with his power in determining the encumbrances and payment of the amount while determining the amount payable under Section 48B.



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Section 55 empowers the Tahsildar to issue certificate of registration in favour of the tenant subject to such rules as may be prescribed.

Section 112(A) lays down the duties of the Tahsildar and Section 112(B) lays down the duties of the Tribunal. Section 133 confers exclusive jurisdiction to the Tribunal to decide whether the land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land from prior to 1st March 1974 and when such questions arise in any suit, case or proceedings concerning a land before a Civil or Criminal Court or Officer or Authority, the question shall be referred to the Land Tribunal and the Tribunal shall decide the question so referred to it and communicate its decision to such Court, Officer or Authority.

Rule 19 of the Karnataka Land Reforms Rules, 1974 (for short the 'Rules') prescribes the form of application under Section 48A and the notice. Rule 19(1) lays down that the application under sub-section (1) of Section 48A shall be in Form-7. It further stipulates that the application shall furnish particulars of all the lands held under each separate tenancy in one or more than one Taluk in respect of which the applicant claims to be entitled to be registered as an occupant and where the lands are



situated in more than one Taluk, the application shall be filed before the Tribunal of the Taluk where the greater part of the lands are situated and on receipt of such application, the Tahsildar shall send the extracts of the application to the Tribunals concerned and in so far as the lands in his Taluk are concerned, he shall verify the particulars mentioned in the application with reference to the revenue records, including the record of rights wherever they are prepared and also note the same on the application. It further stipulates that the public notice and the individual notice referred to in sub-section (2) of Section 48A shall be in Form-8 and Form-9 respectively.

Rule 17 provides the procedure to be followed by the Tribunal. Sub-rule (1) contemplates that the procedure to be followed in respect of the applications made to the Tribunal is as specified for a summary enquiry under Section 34 of the Karnataka Land Revenue Act, 1964. Sub-rule (4) stipulates that the progress in the enquiry of each case shall be noted by the Chairman immediately after hearing or the holding of the spot inspection by the Tribunal. Sub-rule (5) provides that the opposite party shall be allowed to cross-examine the witness and if he does not wish to cross-examine, a note shall be made accordingly and



further a brief summary of the evidence given by such witness shall be recorded by the Chairman.

Rule 21 provides that the Certificate of Registration of a tenant as an occupant of land shall be in Form-10 and Rule 21C provides that immediately on receipt of the final orders passed by the Tribunal under Section 48A conferring occupancy right to a tenant, the Tahsildar shall issue a certificate to such tenant that he has been registered as an occupant.

Rule 24 provides for enquiry by Tahsildar and it lays down that on receipt of a declaration under Section 66, the Tahsildar shall verify the correctness of the particulars furnished therein with reference to the entries in the record of rights, other documents if any produced and by making such local enquiry and inspection as he considers necessary either by himself or through any officer of the Revenue Department not lower in rank than of a Revenue Inspector.

Rule 44 stipulates that Tahsildar shall maintain certain registers. Sub-rules (1C) and (1D) proscribe the registers to be maintained in connection with the proceedings under Section 48A. These sub-rules came into effect from 12-6-1980.

Form-7 is the form prescribed for making an application under Section 48A(1) for registration of



occupancy right. Among other things, the applicant is required to furnish the name of the landlord and his address, the survey number, sub-division number and the extent of the land in respect of which occupancy right is claimed, together with the assessment, the village and taluk in which the land in question is situated and the period for which the applicant has been cultivating the said land as tenant.

Public notice in Form-8 and the individual notice in Form-9 shall be issued by the Secretary of the Tribunal in which among other things, the description of the lands in respect of which claim was made shall also be given.

12. These are the relevant provisions of the Act and the Rules. As noticed earlier, the Tribunal shall consist of 5 members including its Chairman. The Secretary of the Tribunal is not the Member of the Tribunal. The Tahsildar or any officer specially appointed for the purpose by the State Government shall be the Secretary of the Tribunal. The Tahsildar includes a Special Tahsildar empowered by the State Government to exercise all or any of the powers of the Tahsildar under the Act. Thus it is seen that in the normal course, the Tahsildar of the Taluk or a Special Tahsildar empowered by the



State Government to exercise all or any of the powers of the Tahsildar under the Act would automatically become the Secretary of the Tribunal unless any other officer is specially appointed as Secretary of the Tribunal by the State Government. A close reading of the provisions of the Act and the Rules would show that the functions of the Tahsildar and the functions of the Secretary are different and distinct. No doubt a Tahsildar of the Taluk in certain circumstances may have to discharge dual functions under the Act and the Rules, one the functions as Tahsildar and the other the functions as Secretary of the Tribunal. However, we do not find any provision in the Act or the Rules, empowering either the Tahsildar or the Secretary of the Tribunal to refer the claim application made under Section 48A(1) to a surveyor for any purpose including for verification, measurement, recording of statements of the parties or the neighbours or preparing a sketch and making a report either before the commencement of the enquiry or during the course of the enquiry under Section 48A of the Act.

13. Now turning to the powers of the Tribunal also we do not find any provision empowering the Tribunal to refer the application made under



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Section 48A to a surveyor and call for a report from him either before the commencement of the enquiry or during the course of the enquiry. The only verification of the application before the commencement of the enquiry is as provided under Rule 19 which is by the Tahsildar and not by any other officer or agency.

14. As per the scheme of the Act and the Rules, once the application in Form-7 is received by the Tribunal under Section 48A of the Act and the application in question is verified by the Tahsildar as provided under Rule 19, the next step the Tribunal shall follow is as provided under sub-section (2) publishing or causing to be published a public notice as well as issuance of individual notice stipulated therein so as to enable the parties interested in the land claimed by the applicant for registration of occupancy right to appear before the Tribunal on the date specified in the notice. It is provided under sub-section (3) that the Tribunal may for valid and sufficient reasons permit the applicant to amend the application. If no objection is filed or where there is no objection in respect of any part of the claim, the Tribunal may proceed to make an order as provided under sub-sections (4) and (5A) as the case may be. It is only when a



claim is objected to or a rival claim is set up, the Tribunal shall conduct the enquiry to find out whether the applicant or which of the rival claimants is entitled to be registered as an occupant and pass orders accordingly. While conducting the enquiry, the Tribunal has to follow the procedure laid down in Rule 17. It is provided under Section 112B(a) of the Act that holding of an enquiry includes local inspection. Similarly sub-rule (4) of Rule 17 also indicates that the Tribunal in the course of conducting an enquiry may hold spot inspection. However, we do not find any provision to forward the application made under Section 48A, straightaway before taking up the enquiry or during the course of the enquiry to any other outside agency including the surveyor, either for verification, or measurement or for conducting a preliminary enquiry and submit a report for being used as a piece of material in the course of the enquiry.

15. The next question that requires to be examined is whether the Tribunal is totally prevented from obtaining a report from the surveyor in respect of the lands involved in the claim for grant of occupancy right and if it is not so prevented, then



what would be the occasion to call for a surveyor's report and the scope and ambit of such a report.

16. Undoubtedly, the Tribunal is required to determine before conferring ownership on the claimant, not only that the land is an agricultural land and that the claimant is a tenant of the said land from prior to 1st March 1974 but also the identification of the land over which occupancy right is claimed. If the question is examined from the point of view of determining the identity of the land over which occupancy right is claimed, no enquiry need be held if the claim is in respect of the whole of a survey number or the whole of a sub-division of a survey number. The difficulty would arise only in case the claim is made, to a portion of a survey number or a portion of a sub-division of a survey number. In such a case, the Tribunal should determine the exact identity of the portion of the land in respect of which occupancy right is claimed. If the claimant while seeking occupancy right in respect of a portion of a survey number or portion of a sub-division of a survey number has furnished the boundaries of the portion of the land in his application, certainly the Tribunal should ascertain the extent of the land comprised within the boundaries for conferring occupancy



right in respect of the said portion of the land. In such a case, the Tribunal could refer the particulars of the land to a surveyor or any other competent person to measure and fix the land within the boundaries given in the application and submit a report together with a sketch. Similarly where a claim is made in respect of a portion of a survey number or portion of a sub-division of a survey number and boundaries of the portion of the land are not given in the application, the Tribunal after examining the claimant and obtaining the boundaries of the land over which he laid his claim, could obtain such a report with sketch and use them as a piece of material in the enquiry. In both these cases, the report as well as the sketch would be used as a piece of evidence, provided the correctness of the report and the sketch is admitted by the parties and if not, on the proof of the report and the sketch by examining the author of it. This procedure would be part of the enquiry to be held by the Tribunal under Section 48A of the Act. However, it must be remembered that the report and the sketch of the surveyor is not for initiating or enlarging the scope of the claim or for rendering the decision solely on that basis but is a report of an expert for determining the identity of the property claimed. The evidenciary value of the



report and the sketch is as in the case of any other evidence subject to the test of its correctness by cross-examination of its author if its correctness is disputed. The Tribunal alone could exercise this power in the course of the enquiry and not by any other authority or officer such as the Secretary of the Tribunal or the Tahsildar.

POINT NO. 2:

17. As noticed earlier, sub-section (1) of Section 48A provides for making an application within the time allowed for registration of occupancy right by every person entitled to be registered as an occupant under Section 45. Sub-section (1) of Section 45 stipulates that every person who was a tenant in respect of the lands before the date of vesting and which he has been cultivating personally, is entitled to be registered as an occupant. It necessarily follows that 'land' means land as defined in Section 2(18) and the 'tenant' means tenant within the meaning of Section 2(34) of the Act. Thus it is obvious that a person seeking registration of occupancy right must establish that the land in respect of which occupancy right was claimed is 'land' as defined in the Act, that he is a 'tenant' within the meaning of the Act, that he was a tenant in respect of the said land immediately



before the date of vesting and which he has been cultivating personally. These questions are to be decided exclusively by the Tribunal as stipulated under Section 133 of the Act.

18. The two conditions laid down in Section 45 for registration of occupancy right are that the person claiming registration was a tenant of the land before the date of vesting and which he has been cultivating personally. The precondition for the operation of Section 45 is that the land in question was vested in the State Government under Section 44 of the Act. In Balesharam v. Land Tribunal, Chikodi [1978 (1) K.L.J. 116.] the Full Bench of this Court, while explaining the scope of Sections 44 & 45 observed that the land held by a person in his capacity as a tenant immediately prior to the date of commencement of the Amendment Act, 1974, which was not in his actual possession before the said date, also stood transferred to and vested in the State Government under Section 44(1) if the land is not held by him under a lease permitted by Section 5 of the Act, that the land must have been tenanted immediately prior to 1st March 1974 and not at any time in the past and that the person claiming occupancy right must have been a tenant of any of the classes stipulated in sub-section 1 of



Section 45 and such person must have been personally cultivating the land immediately before 1st March 1974 and that the primary requirement for registration of occupancy rights therefore is that the person claiming such right must have been cultivating the land personally immediately prior to 1st March 1974 and if he was then out of possession by wrongful or illegal Act of others, he cannot be registered as an occupant merely on proof that the land was tenanted and so vested in the State Government. However, it was emphasized that if the tenant who was lawfully entitled to cultivate the land personally immediately prior to 1st March 1974 but was wrongfully or illegally prevented from doing so, he may take recourse to any one of the remedies provided under the Act to recover possession from the unauthorised occupant and request the Tribunal to defer consideration of his application till the possession of the land is restored to him and if he recovers possession in accordance with law, he may then ask the Tribunal to proceed with his application on the merits and when possession is so recovered, the Tribunal has to proceed on the basis that the tenant must be deemed to have been personally cultivating the land from the date of his



dispossession till the date of restoration of possession."

11. Following the declaration of law referred to above, I am of the opinion that, as the material on record, would indicate that the petitioners are in possession of entire extent of land as per the Form No.7 filed before the Land Tribunal, and as, the Land Tribunal has not followed the procedure as contemplated under the provisions of the Act, I am of the opinion that, the Tribunal has erred in allowing the application made by the petitioners only to an extent of 2.33 acres of land, and holding that, the remaining extent of land is 'Beelu', which is contrary to the material on record, which would clearly establish the fact that, the entire extent of land was under cultivation by petitioners. In the result, I pass the following:



ORDER

- i. The writ petition is ***allowed***.
- ii. Order dated 11.01.2022 in LRT.7 C.R.9 of 75-76, passed by the Land Tribunal (respondent No.2) vide Annexure-G, is accordingly set aside and hereby confirmed that, the petitioners are in cultivation of the entire extent of land, measuring 9.16 acres, in Sy.No.33 of Hothanakatte village, Shikaripura Taluk, Shivamogga District.

**SD/-
(E.S.INDIRESH)
JUDGE**

SB
List No.: 1 Sl No.: 56