IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO.14663 OF 2016 (KVOA)

BETWEEN:

SMT. KADIRI NARASAMMA @ MENASAMMA,
AGED ABOUT 63 YEARS,
W/O LATE CHIKKA HANUMAIAH,
RESIDING OF RACHANAMADU VILLAGE,
KENGERI HOBLI, BANGALORE SOUTH TALUK,
BANGALORE URBAN DISTRICT,
SINCE DECEASED, REP. BY HER LR'S
(PETITIONER DIED ON 29.11.2016
LR APPLICATION WAS ALLOWED ON 19.01.2018
WITH PERMISSION OF COURT AMENDMENT
CARRIED OUT ON 19.01.2018)

P1(B) SMT JAYAMMA,
AGED ABOUT 49 YEARS,
D/O KADIRI NARASAMMA @ MENASAMMA,
W/O SRI NAGARAJU,
R/AT NO.45, GUNDU RAO QUARTERS,
MAGADI ROAD, DASARAHALLI,
BENGALURU - 560 056.

...PETITIONER

(BY SRI ABHINAY Y T, ADVOCATE FOR
SRI KARTHIK V, ADVOCATE)

AND:

1. SRI THIMMAIAH,
   AGED ABOUT 68 YEARS,
   S/O VENKATARAMAPPA,
   RESIDING OF RACHANAMADU VILLAGE,
   KENGERI HOBLI, BANGALORE SOUTH TALUK,
   BANGALORE URBAN DISTRICT.
2. SRI CHIKKA NARASIMHAIAH,

AGED ABOUT 58 YEARS,
S/O NARASIMHAIAH,
RESIDING AT RACHANAMADU VILLAGE,
KENGERI HOBLI, BANGALORE SOUTH TALUK,
BANGALORE URRBAN DISTRICT.

3. SRI RAJA,
AGED ABOUT 44 YEARS,
S/O NARAYANAPPA,
RESIDING OF RACHANAMADU VILLAGE,
KENGERI HOBLI, BANGALORE SOUTH TALUK,
BANGALORE URBAN DISTRICT.

4. THE TAHSILDAR,
BANGALORE SOUTH TALUK,
KEMPEGOWDA ROAD, BANGALORE-9.

5. SMT NARASAMMA,
AGED ABOUT 51 YEARS,
W/O SRI PUTTANNA,
D/O SMT KADIRI NARASAMMA @ MENASAMMA @
LATE CHIKKA HANUMAIAH,
R/AT NO.40, 2ND CROSS, 1ST MAIN,
HOSAKERE HALLI ROAD, VEERABHADRA NAGAR,
BENGALURU - 560 085.

6. SMT GALAMMA,
SINCE DECEASED BY HER LR'S

6(a) SRI HANUMANTHAPPA,
HUSBAND OF LATE GALAMMA,
AGED ABOUT 52 YEARS,

6(b) MS.UMA,
AGED ABOUT 29 YEARS,
D/O LATE GALAMMA & SRI HANUMANTHAPPA,

6(c) SRI DILIP,
AGED ABOUT 25 YEARS,
S/O LATE GALAMMA & SRI HANUMANTHAPPA,
R6(a to c) ARE RESIDING AT NO.13,
BYTARAYANAPURA SLUM QUARTERS,
VASUDEVABHATTACHARYA EXTENSION,

NEAR SHARADA SCHOOL, BENGALURU - 560 026.

...RESPONDENTS

(BY SRI NAGARAJAPPA A, ADVOCATE C/R1,
SRI RAJAKUMAR M, AGA FOR R4,
NOTICE TO R2 IS HELD SUFFICIENT,
R3, R5, R6(a), R6(b) & R6(c) ARE SERVED
BUT UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE ENTIRE RECRODS CONNECTED WITH MA.108/2011 ON THE FILE OF THE COURT OF II ADDL. DISTRICT JUDGE, BANGALORE RURAL DISTRICT, BANGALORE TO THE EXAMINE THE SAME AND ISSUE A WRIT CERTIORARI QUASHING JUDGEMENT DTD 20.2.2016 PRODUCED AS PER ANENXURE-L AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25th MARCH 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

This petition is filed assailing the order dated 20.02.2016, in M.A.No.108/2011, on the file of II Additional District Judge, Bangalore Rural District.

2. In terms of the said impugned order at Annexure-L, learned District Judge has allowed the appeal under Section 3(2) of Karnataka Village Offices Abolition Act, 1961, ('Act, 1961') filed by respondent No.1. Consequently, the order at Annexure-H, dated 20.07.2010, in HOA.CR.87/ 2003-04, passed by Tahsildar is set-aside.

3. The Tahsildar in terms of the said order dated 20.07.2010 at Annexure-H, had re-granted the land bearing Survey No.3, measuring 2 acres 35 guntas, in Rachanamadu Village, Kengeri Hobli, Bengaluru South Taluk in favour of Kadari Narasamma @ Menasamma, the original petitioner of this petition.

4. In terms of the impugned order, the learned District Judge by setting aside Tahsildar's order has regranted the land in favour of respondents No.1 to 3 the legal representatives of late Narasimhaiah.

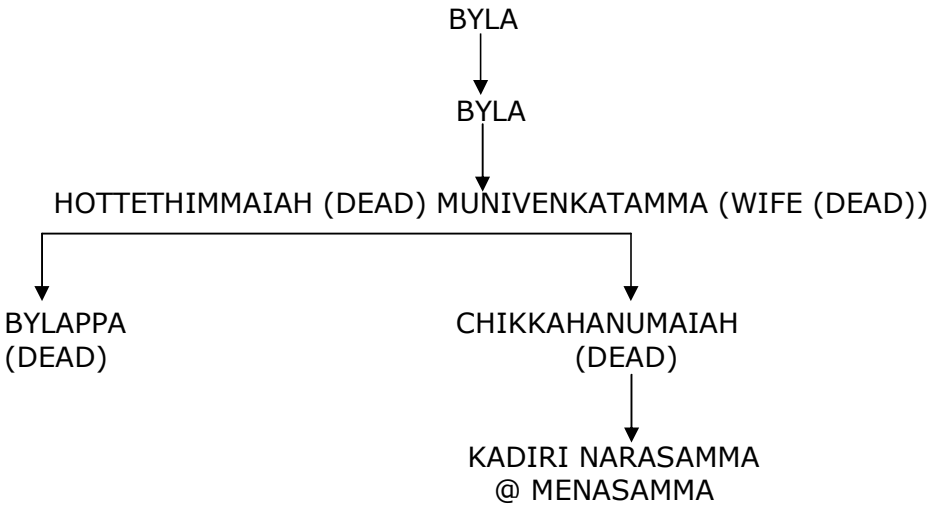
5. The learned District Judge further held that late Narasimhaiah was the original *barwardar* of the land in question, and late Narasimhaiah had sold the aforementioned property to Thimmaiah son of Venkataramanappa (the appellant before the learned District Judge) through registered sale deed dated 09.09.1971.

6. The learned District Judge also held that, though the property was re-granted in favour the legal representatives of late Narasimhaiah, in view of the law in ***Syed Bhasheer Ahmed And Others V. State of***

Karnataka*[1]*, the benefit of the grant would enure to the purchaser. Thus, the learned District Judge directed the re-grant in favour of Thimmaiah-the purchaser from Late Narasimhaiah.

7. The petitioner Kadari Narasamma @ Menasamma (wife of late Chikka Hanumaiah, and the daughter of late Narasimhaiah who sold the property on 09.09.1971) is before this Court assailing the order passed by the learned District Judge.

8. The genealogy furnished by the original petitioner Kadari Narasamma is as under and this genealogy appears to be not in dispute.



[1] ***ILR 1994 KAR159***

9. Learned counsel appearing for the petitioner would contend that Kadari Narasamma @ Menasamma, (original writ petitioner) is wife of Chikka Hanumaiah. Said Chikka Hanumaiah is son of Hotte Thimmaiah. Said Hotte Thimmaiah is the son of Byla. And said Byla is the son of Byla (both father and son are named Byla).

10. It is urged that Byla, the propositus was the Holder of village office. After his demise, said office is inherited by his son Byla. And after the demise of said Byla son of Byla, Hotte Thimmaiah inherited the office. Said Hotte Thimmaiah had two sons namely Bylappa and Chikka Hanumaiah. Bylappa was unmarried and died without issues. Chikka Hanumaiah married Kadari Narasamma. Said Kadari Narasamma after the death of her husband Chikka Hanumaiah inherited the rights of a village office holder.

11. The contention is, Kadari Narasamma, being the wife of Chikka Hanumaiah, alone is entitled to re-grant.

12. Learned counsel for the petitioners would urge that, Kadari Narasamma's father-Narasimhaiah though sold Sy.No.3 measuring 2 acre 35 guntas to Thimmaiah-1st respondent of this petition, through a registered sale deed

dated 09.09.1971; the sale is invalid and does not confer any right in favour of 1st respondent-Thimmaiah as Narasimhaiah did not have any right over the said property. It is also urged that, as on the date of sale (09.09.1971) the property was not yet re-granted to Narasimhaiah or any one else.

13. Under the Act, 1961, three applications were filed seeking re-grant. One application dated 29.11.1967 is by Narasimhaiah (father of Kadari Narasamma), and another application dated 26.09.1977 by 1st respondent-Thimmaiah who purchased the property under the sale deed dated 09.09.1971 from Narasimhaiah, and the third one is by Kadari Narasamma the daughter of Narasimhaiah, is dated 28.08.2003 marked at Annexure-R1(8). It is to be noticed that Kadari Narasamma has not claimed right through her father but from her husband.

14. Initially, in the first round of litigation, vide order dated 14.05.1979, the application filed by 1st respondent-Thimmaiah seeking re-grant of the land which he had purchased under the registered sale deed dated 09.09.1971 was rejected. The application filed by Narasimhaiah seeking

re-grant was not considered as Narasimhaiah had died by the time the order was passed.

15. In terms of the said order dated 14.05.1979, the Assistant Commissioner directed that, in case, there is a claim by legal heirs of Narasimhaiah, same has to be adjudicated. Assistant Commissioner also held that 1st respondent-Thimmaiah is in unauthorized occupation and has to be evicted.

16. Admittedly no such eviction proceeding has taken place.

17. It is seen that legal representatives of late Narasimhaiah namely, Chikka Narasimhaiah and Raja Narayanappa, *and the daughter-Kadari Narasamma*, did not make a claim to re-grant the land immediately after the demise of Narasimhaiah as legal representatives of Narasimhaiah. Chikka Narasimhaiah and Raja Narayanappa filed Writ Petition No.38785/2003 and sought direction to consider their claim as legal representatives of deceased Narasimhaiah. The Court directed the consideration of the same by the Assistant Commissioner. Thereafter, in view of the amendment to the law, the jurisdiction is conferred on

the Tahsildar and accordingly, the legal representatives of Narasimhaiah namely Chikka Narasimhaiah and Raja Narayanappa filed claim before the Tahsildar in proceeding No.HOACR87/2003-2004. And *Kadari Narasamma* made the claim for the first time in the year 2003 by moving an application in the proceeding before the Tahsildar which was initiated at the instance of Chikka Narasimhaiah and Raja Narayanappa.

18. It is relevant to notice that, Kadari Narasamma *made the claim for re-grant in the year 2003, not as the daughter of* Narasimhaiah, *but as successor of her husband on the premise that her husband's ancestors were the Village Office Holders.*

19. The Tahsildar in the said proceeding referred to above, vide order dated 21.08.2006 held that Chikka Narasimhaiah and Raja Narayanappa, the legal heirs of Narasimhaiah are eligible for re-grant.

20. Kadari Narasamma filed an appeal before District Judge in M.A.No.139/2006 challenging the order dated 21.08.2006 rejecting her application seeking re-grant and allowing Narasimhaiah's application.

21. The said appeal was allowed-in-part, vide order dated 09.03.2007, and the matter was remitted to Tahsildar for fresh consideration in accordance with law.

22. The order in M.A.No.139/2006 remitting the matter to Tahsildar is called in question by 1st respondent-Thimmaiah in Writ Petition in W.P.No.6164/2007. 1st respondent-Thimmaiah also filed W.P. 12186/2006 seeking a declaration that in view of re-grant of land to his seller Narasimhaiah's two sons, the purchaser- Thimmaiah would be entitled to the benefit of re-grant as per the ratio in ***Syed Bhaseer Ahmed*** (*supra)*.

23. Writ petitions are disposed of vide order dated 22.08.2008, with an observation that the declaration sought in the Writ Petition cannot be considered in writ jurisdiction.

24. 1st respondent-Thimmaiah filed Writ Appeals No. 1615/2008 and 2177/2008 assailing the order in the aforementioned Writ Petitions.

25. The Division Bench vide order dated 26.06.2012 disposed of the Writ Appeals with liberty to agitate all grounds in M.A.No.108/2011 pending before District Judge

which was filed by 1st respondent-Thimmaiah assailing the order dated 20.07.2010 passed by Tahsildar as the Tahsildar had re-granted the land to Kadari Narasamma pursuant to the remand order dated 09.03.2007 in M.A.No.139/2006.

26. In M.A.No.108/2011, the learned District Judge in terms of the *impugned order dated 20.02.2016* has set-aside the order passed by Tahsildar and re-granted the property to legal representatives of deceased Narasimhaiah and also held that the said re-grant would enure to the benefit of 1st Thimmaiah-the appellant in M.A.No. 108/2011.

27. Learned counsel appearing for the petitioners (legal representatives of the original petitioner Kadari Narasamma) assailing the order in M.A. No. 108/2011 would contend that Narasimhaiah, the father of the original petitioner, is not an heir to the property of Byla and his descendants. Kadari Narasamma being the daughter-in-law of Hotte Thimmaiah is the only person who can claim re-grant.

28. It is further urged that, merely because tastik amount is said to have been received by him, Narasimhaiah cannot claim to be the *Barwardar* of the property.

29. It is also urged that Narasimhaiah never made a claim that his ancestors were village office holders. Tahsildar having rightly noticed that Kadari Narasamma has inherited the property as village office holder from her husband Chikka Hanumaiah, rightly ordered re-grant in favour of Kadari Narasamma.

30. The learned District Judge could not have disbelieved Annexure–B, the copy of the extract of *barabaluti* register signed by the Tahsildar, North Bengaluru. Though the property is located in Bengaluru South taluk, it is quite possible that when Annexure B was issued, the office of the Tahsildar, Bengaluru South might have been vacant on account of transfer or retirement of the Tahsildar and the Tahsildar, Bengaluru North must have had the charge of Bengaluru South Tahsildar is the submission.

31. Learned counsel for the petitioners would also urge that under the Act, 1961, the expressions 'Holder of village office' or 'Holder' and 'Officiator' are defined. Narasimhaiah whose claim is allowed, cannot be considered as ‘Holder of a village office’ or ‘Holder’ is the submission.

32. The Court's attention is also invited to Annexure R1(1), the application filed by late Narasimhaiah under Section 5 of Act, 1961 and the Rules framed under the Act, 1961. In the application, Narasimhaiah has claimed one Venkatagiri as *Barwardar* and also stated that he is interested in serving as Thoti. Referring to the contents of the said application dated 29.11.1967 marked at Annexure R1(1), it is urged that, late Narasimhaiah did not make a claim that he is a 'Holder of a village office' or 'Holder'.

33. It is urged that, at best, late Narasimhaiah can claim to be the 'Officiator', and the "Officiator" under the Act, 1961, does not get the status of the "Holder of a village office" or "Holder" and is ineligible to claim re-grant as held in ***Deshaih vs Chinnaswamy***[2]

34. It is also urged that, having applied to be registered as *Thoti*, on the same day, i.e., 29.11.1967, Narasimhaiah filed an application under Section 5 of Act, 1961 seeking re-grant of the land. Later, he filed undated application under Section 9. In the said application, the

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[2] ***(1995) 5 KLJ 402***

details of “Village Office” is not furnished and columns meant for it is mentioned as ***'nil'.***

35. Learned counsel for the petitioners submits that, certified copy of the *barabaluti* register marked at Annexure-B**,** reveals that the petitioner's husband's ancestor-Byla as the “Holder of village office” and, as such, applicant Kadari Narasamma is entitled to re-grant as held by Tahsildar.

36. Referring to the original records in the government file (secured by the Court), it is also urged that the Revenue Inspector had submitted the report to the Tahsildar stating that the property in possession of Narasimhaiah. Tahasildar forwarded the said report to the Assistant Commissioner. The said report dated 02.06.1972 is rejected by the Assistant Commissioner on the premise that, the Revenue Inspector is not a competent person to issue such report.

37. It is also urged that the Assistant Commissioner on 16.09.1974 has also directed that the copy of the *barabaluti* register be produced for further action and the Tahasildar has addressed a letter to the Assistant Commissioner on 06.07.1977 enclosing the extract of the

barabaluti register. Said extract is marked at Annexure-B and learned District Judge erred in rejecting the claim on the premise that, the name of the village is struck off and rewritten in the extract of the *barabaluti* register.

38. It is further submitted on behalf of the petitioners that, claim of first respondent is accepted on the basis of the tastik said to have been paid in respect of the petition property in the year 1987. The tastik is said to have been paid is based on the report of the Revenue Inspector, which is without jurisdiction and said report was already rejected by the Assistant Commissioner.

39. Learned counsel for the petitioners would place reliance on the following judgments:

(i) ***Thimmarasiah vs The Mysore Revenue Appellate Tribunal & Others***[3]

(ii) ***G.V.Subba Rao vs Tahsildar & Ors.***[4]

(iii) ***Sri. Kempaiah vs Chikkaboramma and others***[5]

40. Learned counsel for respondent No.1 would raise the following contentions:

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[3] ***1967(1) Mys.L.J.41***
[4] ***ILR 1998 Kar 2371***
[5] ***AIR 1998 SC 3335***

40.1 The original petitioner Kadari Narasamma has made a statement in the year 2003, that her father has sold the property in favour of first respondent-Thimmaiah. Thus, Kadari Narasamma cannot claim any right over the property which is sold by her father.

40.2 It is also urged that, husband of Kadari Narasamma did not file application seeking re-grant. Even Kadari Narasamma did not file application till 2003, though law enabled application seeking grant since 1963.

40.3 Kadari Narasamma's father Narasimhaiah sold the property on 09.09.1971, and Kadari Narasamma was aware that her father has sold the property and did not make any claim till 2003 as she was aware that she had no right over the property. Only after escalation is value of the property post 2000, the untenable claim is made.

40.4 The Full Bench of this Court in ***Syed Basheer*** *(supra),* has held that sale deeds executed by the persons eligible to claim grant, between 01.02.1963 to 07.08.1978, even before the grant is made, would be valid and the purchasers in the aforementioned period are also entitled to

the benefit of re-grant, in case, the re-grant in favour of the seller.

41. Learned counsel for the first respondent also urged that except the concocted *barabaluti* register extract marked at Annexure-B, which is issued by the Tahsildar North, Bengaluru, though the property is located in Bengaluru South Taluk, no other document is produced to hold that Kadari Narasamma or her ancestors had right over the property. Since, the property in question is in Bengaluru South Taluk, the concocted extract-Annexure B, of alleged *barabaluti* register cannot be relied upon.

42. In addition, it is also urged that Annexure-B does not refer to any Survey number in Column No.17 and does not refer to any extent in Column No.18 as required. The said extract refers to Vadarepura village and same is struck off and later the village "Rachanamudu" is inserted and No.73 is mentioned in the column pertaining to village and it cannot be construed that the said number refers to survey No.73.

43. Late Narasimhaiah did receive tastik amount from the Government which would demonstrate that Narasimhaiah

was doing *Thoti* service, as such, is entitled to claim re-grant is the further contention.

44. It is also urged that Kadari Narasamma's father sold the property on 09.09.1971 to first respondent - Thimmaiah and the petitioners cannot claim any right over the property and there was no objection to the said sale deed.

45. Learned counsel for respondent No.1 would also urge that the application filed by impleading applicants who intend to come on record as respondents No. 7 and 8, is also not maintainable as the sale deed dated 28.07.2014 executed by petitioner-Kadari Narasamma is not valid as the transaction is hit by rule of *lis pendes* and also within 15 years' non-alienation period imposed under Section 5(3) of Act, 1961.

46. In addition, is also urged that the original petitioner Kadari Narasamma having sold the property (without title) on 28.07.2014, cannot prosecute the petition to challenge the order passed by the learned District Judge which is rendered on 20.02.2016 after the aforementioned sale deed dated 28.07.2014. It is also urged that the sale is

not brought to the notice of the Court when the matter was pending before the learned District Judge.

47. In support of the contention learned counsel for the Respondent No.1 has relied o the judgment of Apex Court in ***H. Anjanappa and Others vs. A. Prabhakar and Others***[6]***.***

48. The Court has considered the contention raised at the Bar and perused the records.

49. As far as the contention relating to the sale of the property during the pendency of the proceeding before the District Court and not bringing the same to the notice of the District Court is concerned, the Court is of the view that the sale during the pendency of the proceeding is not barred unless there is any such prohibition in terms of the orders passed by the court.

50. There is no mandate under law to disclose the sale that has taken place during the pendency of the proceeding. Not reporting the sale in the absence of any court order restraining such sale, does not render the

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[6] ***2025 SCC OnLine SC 183***

transaction invalid or the seller does not lose the locus to prosecute or defend the proceeding. However, it would be appropriate and fair on the part of the seller to bring to the notice of the Court about the sale transaction. In any case the transaction will be subject to the decision the Court.

51. It is also noticed that Section 5(3) of Act, 1961, providing restriction on alienation for 15 years from the date of the grant, is amended in 2003 and after the said amendment, the 15 years' restriction has to be reckoned from the date of re-grant after the amendment in 2003. Thus the sale would be null and void. In such an event, proviso to Section 5(4) of the Act, 1961 enables the heirs of transferors to seek re-grant.

52. Thus, the petitioners are entitled to prosecute the matter, notwithstanding the sale of the property as the purchaser's right will be subject to the result of the proceeding. The ratio laid down in ***H. Anjanappa and Others*** *(supra)*, has no application to the case on hand to prevent Kadari Narasamma the respondent before the District Court, from challenging the order passed by District Judge who has set aside the order which was in favour of

Kadari Narasamma. Said Kadari Narasamma is not a *pendente lite* purchaser. She is *pendente lite* seller. The ratio in ***H. Anjanappa and others*** *(supra),* applies to the *pendente lite* purchaser.

53. Now the questions that need consideration are;

(i) Whether the petitioner Kadari Narasamma had made out a case for re-grant?

(ii) Whether respondent No.1-the purchaser from late Narasimhaiah, has made out a case for re-grant in his favour or in favour of heirs of Narasimhaiah and can claim benefit of re-grant order made in favour of heirs of Narasimhaiah?

54. It is not in dispute that the Act, 1961 came into force on 01.02.1963. Thus, both the parties to the proceedings must establish that as on 01.02.1963 they were eligible to seek re-grant.

55. The law relating to *barabaluti* register mandates that two *barabaluti* registers should be maintained; one in the Taluka office and another in the District office. The correctness of Annexure-B, the alleged extract of *barabaluti*

register is disputed by 1st respondent, and doubted by the District Court.

56. The Court is of the view that, the veracity of Annexure-B has to be ascertained by comparing with original register maintained by the revenue department.

57. In the light of the contentions raised, the Court vide order dated 08.01.2026, directed the Government to produce the original *barabaluti* register relating to the land in question. The Tahasildar has filed a memo dated 01.07.2025 stating that, the *barabaluti* register is not maintained.

58. The Court brought to the notice of the learned Government advocate that certified copy of the extract of *barabaluti* register is produced at Annexure-B, and vide order dated 14.01.2026, directed the Tahasildar to file an affidavit explaining the basis for issuing extract of *barabaluti* register issued as per Annexure-B

59. The Tahasildar Bengaluru South Taluk has filed the affidavit dated 02.06.2026. The relevant portion of the affidavit reads as under:

> *"3. I state and submit that after gone (sic) through the Bala Baluthi copy issued by the Bengaluru North Taluk this Office is (sic) verified the entire register of Shanabhogha Inamti but there was (sic) not registered records in Sy.No.3 of Rachanamadu Village, Bengaluru South Taluk Office. This Office in (sic) only maintain (sic) Shanabhoghana Inamati Bala Baluthi registered but not (sic) maintain the Bala Baluthi registered of Thoti Inamti Registered.''*

60. The document at Annexure-B produced by the petitioner is said to be the copy of the *barabaluti* register extract said to have been issued by Tahsildar, Bengaluru North Taluk on 13.03.1975.

61. The column No.7 of the said register refers to responsibility/obligation between original person and the person whose name appears in the register. (The Court has interpreted the Kannada word *"bhadhyate"* appearing in column No.7 as responsibility/obligation)

Against the said column, the following entry is made:-

> *"SDO.No.Dis.B-24/37-38 16.8.37."*

62. Apparently this entry in column No.7 does not convey any meaning. And as observed by the learned District

Judge, in column No.2 the name of the village Vaderapura is struck off and Rachanamudu is mentioned.

63. In column No.3 the person's name is mentioned as Byla and in column No.8 father's name is mentioned as Byla.

64. The column No.17 pertains to survey number and column No.18 pertains to the extent. Both columns are left blank.

65. It is to be noticed that admittedly the property is located in Bengaluru South Taluk and the copy is issued by the Bengaluru North Taluk on 13.03.1975.

66. The certified copy of *barabaluti* register could not have been issued by the Tahsildar, Bengaluru North Taluk when the property is located in South Talulk is one of the contentions of the respondent No.1. No explanation in this behalf is furnished before the District Judge and the Tahsildar.

67. Before this Court, the learned counsel for the petitioners urged that Bengaluru South Taluk Tahsildar's charge must have been with Bengaluru North Taluk

Tahasildar either on account of leave or transfer or some kind of vacancy.

68. It is relevant to notice that Tahsildar, Bengaluru South was arrayed as respondent No.4 before the learned District Judge. The Tahsildar was not represented before the learned District Judge.

69. In a proceeding like this, the *barabaluti* register is an important piece of document to consider the claim related to re-grant.

70. The extract of *barabaluti* register marked at Annexure-B is doubted on the ground that it is issued by the Tahsildar, Bengaluru North Taluk though the property is located in Bengaluru South Taluk. Opposing the objection, it is pointed out that the occupancy price paid by the first respondent is received by the Tahsildar, Bengaluru North Taluk. Merely because the Annexure-B is issued by the Tahsildar, Bengaluru North Taluk, that may not by itself be a ground to disbelieve the Annexure-B. It is a possibility that, for certain period or on a given date the Tahsildar, Bengaluru North might be holding charge of Tahsildar, Bengaluru South. However, said contention is not established.

Assuming that Tahsildar Bengaluru South, was absent and charge was with Tahasildar Bengaluru North, even then, said document does not refer to the property in question. The errors and infirmities in the said document as already noticed above are considered by the District Judge. There is no evidence to corroborate the entry in Annexure-B. The burden is on the petitioners to explain the discrepancies in Annexure-B. The petitioners have not produced another certified copy of *barabaluti* register.

71. The view taken by the District Judge to disbelieve said document cannot be said to be erroneous to interfere in the jurisdiction under Article 227 of Constitution of India as no other document is available to hold that Sy.No.3 was possessed by Byla as Holder of village office.

72. The view taken by the District Judge is strengthened by the memo and the affidavit filed by the Tahsildar, Bengaluru South where it is stated that the *barabaluti register* is not maintained. The law mandates such register to be maintained. However, it is stated that it is not maintained. Hence, there has to be an appropriate direction in this behalf.

73. However, in any case, the petitioners' claim is not established through Annexure-B, as the said document does not refer to the property involved in this petition.

74. In the order dated 20.07.2010, Tahsildar has held that Kadari Narasamma's husband and husband's father and grand-father were the occupants of the petition land. However, the basis for rendering such a finding is not forthcoming in the said order.

75. The Tahsildar in his order dated 20.07.2010 has concluded that Byla was the *Barwardar* and thereafter, it is inherited by his descendants and Kadari Narasamma being the wife of great grand-son of Byla has discharged the duty as *Thoti* and is entitled to re-grant. It is to be noticed that, while recording the said finding, the Tahsildar has referred to the order in M.A.No.139/2006.

76. The Tahsildar has also come to the conclusion that, the purchaser-respondent No.1 is not entitled to re-grant as he purchased the property from a person who is not the member of the village office holder's family or authorized holder.

77. The Tahsildar has recorded a finding that order dated 28.01.2006 granting land to Chikka Narasimhaiah son of Narasimhaiah and Raja son of Narayanappa is held to be erroneous in terms of order dated 09.03.2007 in M.A. No.139/2006 passed by the District Court**.** Though the order passed by the Tahsildar on 28.01.2006 is set-aside by the District Judge in M.A. No.139/2006, it is to be noticed in W.A. Nos.1615/2008 and 2177/2008 this Court permitted the appellant-Thimmaiah in the said appeal to raise all the contentions available. However, it appears that Tahsildar was carried away by the order in M.A. No.139/2006.

78. It appears from the observation in the Tahsildar's order dated 20.07.2010 that, the Tahsildar has understood the order in M.A. No.139/2006 as having upheld the contents of Annexure-B, the alleged extract of *barabaluti* register.

79. Tahsildar has proceeded on the premise that Narasimhaiah is not the member family of Barwardar. It is to be noticed that Narasimhaiah did not claim to be the member of family of Byla.

80. Learned District Judge in the impugned order has opined that, the Tahsildar while passing the order dated

20.07.2010 has ignored the stay order granted by the High Court in the pending Writ Appeals. It is stated that, the stay order is granted in the Writ Appeals on 15.04.2011, and not on 20.07.2010. The observation of the District Judge that the Tahsildar has passed the order when the proceeding was stayed is erroneous. However, District Judge has not set aside the order dated 20.07.2010 passed by the Tahsildar on the said ground alone.

81. The learned District Judge has also held that the extract of *barabaluti* register does not refer to the property in question. District Judge has noticed that no application is filed by children of grandchildren of Byla seeking re-grant. Thus, the District Judge has held that the claim of Kadari Narasamma, that Byla was the village office holder is doubtful. Those observations/findings are certainly plausible based on records.

82. In the original record, there is a document which records that Byla is *Thoti* of Rachanamudu village and he is unable to discharge the duty and in his place Narasimhaiah is appointed temporarily to discharge the duty. Based on the

said order, the petitioners contend that the status of Byla as 'Holder of village office' is established.

83. The Court has perused the original file submitted by the learned Government Advocate. Said order relied on by the petitioners is in page No. 34 of the original file. Said order reads as under.

> "ಹೋಬಳಿ ಮಜಕೂರು ರಾಜನಮಡು ಗ್ರಾಮದ ತೋಟಿ ಬೈಲಾ ತನ್ನ ಖಾಯಿಲೆ ಸಬೂಬು ಕೆಲ್ಸ ನರ್ವಹಿಸಲಾರ ಆಗಿ, ಅದೇ ಗ್ರಾಮದಲ್ಲಿರುವ ನರಶಿಂಹ್ಯನ ಹಂಗಾಮಿ ಯಾಗಿ ತೋಟಿ ಕೆಲ್ಸಕ್ಕೆ ತೆಗೆದುಕೊಳ್ಳು ಸಬ್ ಡಿವಿಜನ್ ನಂ.952 ತಾರೀಖು 8–4–1930ನೇ ನಂಬರ್ ಆರ್ಡರ್ ಬಂದದ್ದಾಗಿರುತ್ತೆ. ಈ ಅಂಶ ಸದರಿಯವರಿಗೆ ತಿಳಿಸಿ ರುಜು ಪಡೆದು ಅ. ಮಾಡಿ."

84. Aforementioned order does not refer to any survey number, or extent of the land. It is difficult to hold that the said order is pertaining to petition property.

85. More important, the document at page No.34 in the original file is neither the original order nor the certified copy. It is said to be the “copy”. It does not disclose as to who prepared the said document/copy. It does not bear any seal of the office.

86. Thus, this Court is not inclined to hold that said document is a piece of acceptable evidence to conclude that

the Byla was Holder of village office based on said document. Thus both the documents, namely Annexure-B, the alleged extract of *barabaluti* register and alleged order handing over the *Thoti* work to Narasimhaiah are not proved and cannot be relied upon.

87. The learned District Judge has concluded that Narsimhaiah was rendering *Thoti* service and he has received salary for the service in the year 1972 in terms of orders dated 08.04.1930 by paying the land revenue. The learned District Judge has referred to Section 2(1)(f) of Act, 1961 to hold that late Narasimhaiah was the person having interest in the property in terms of order dated 08.04.1930.

88. Learned District Judge has also referred to Section 2(1)(n) of Act, 1961 to hold that the tastik received by Narasimhaiah is an emolument attached to the village office.

89. Learned counsel for the petitioners urged that the tastik paid in the year 1972 cannot be considered as proof of *Thoti* service rendered.

90. It is indeed true that Narasimhaiah in his application marked at Annexure-R1(1) has introduced himself as interested to serve as *Thoti*. In the said application, he has mentioned Venkatagiri as *Barwardar*. Narasimhaiah did not claim that Byla was village office holder.

91. The learned District Judge has referred to the tastik payment made from 1987 to 2004. Said finding is untenable as the right of the person claiming re-grant is to be determined with reference to the rights possessed by the applicant as on the appointed date i.e. on 01.02.1963.

92. The Co-ordinate Bench of this Court *in* ***Deshaiah*** *(supra),* has held that Officiator is not entitled to re-grant as the Officiator is not recognized under Section 5 of Act, 1961. In the said judgment, the Court has not considered the scope of proviso to Section 7 of the Act, 1961 (before the amendment of 1978), which provided for re-grant of land to unauthorized occupant.

93. The learned District Judge has also held that name of Narasimhaiah was found in the records for the year 1969-70 as *Thoti* and has also referred to the Tahsildar's

report dated 11.07.1972 to come to the conclusion that Narasimhaiah was discharging duty as *Thoti* since 1930.

94. The Court does not agree with the finding of the District Court that Narasimhaiah was in possession of the property for more than 40 years by paying the land revenue. As rightly contended by the learned counsel for the petitioners, the Tahsildar's report dated 11.07.1972 is not accepted by the Assistant Commissioner as the Assistant Commissioner has opined that the Revenue Inspector is not a competent person to draw the report relating to the possession of inam lands.

95. As already noticed, the Court has held the original *barabaluti* register is not available. The Court has held that Kadari Narasamma has failed to establish that the property was assigned to her husband's ancestor Byla as Holder of village office. Applying the same analogy, the Court has to take a view that there are no records to hold that Narasimhaiah was the Holder of village office.

96. The original file maintained by the Government would disclose two certified copies. One document is said to be the certified copy of a register maintained by the Revenue

Department. However, the nomenclature of the register is not specifically mentioned. Said certified copy was issued to *Thoti* Narasimhaiah on 16.11.1967. Said document would disclose Venkatagiri as *Thoti*.

97. Another document is the certified copy of an extract issued on 16.11.1967 to *Thoti* Narasimhaiah. The nomenclature of the register from which said document is issued is not forthcoming. Said document also reveals that a *Thoti Venkatagiri* is in possession of the property. These two documents do not disclose the name of *Thoti Narasimhaiah.*

98. This being the position, the Court has to hold that, there are no records to show that Narasimhaiah was holding the property as Holder of village office.

99. The certified copy of record of right for the years 1967-70, 1970-71 and 1971-72 would disclose name of Narasimhaiah in column No.9. However, the basis for such entry is not forthcoming. Under these circumstances, the finding of the District Court that *Thoti Narasimhaiah* was the *Barwardar* of the land in question cannot be accepted.

100. It is noticed that, the property is sold to first respondent by Narasimhaiah on 09.09.1971. Till today, the State has not taken steps for resumption of land for itself. There are no other claimants for the re-grant.

101. In the year 1979, the Assistant Commissioner passed rejected the application of first respondent-Thimmaiah who sought re-grant based on the sale deed. In the said order the Assistant Commissioner has directed eviction of first respondent-Thimmaiah and directed to consider the claim of legal representatives of deceased Narasimhaiah. However, no steps are taken to resume the land from the first respondent.

102. In the peculiar facts of the case discussed above, it is evident that the first respondent is in possession of the property. It is noticed that heirs of Narasimhaiah (other than Kadari Narasamma) have given up their claim by entering into settlement with Kadari Narasamma. It is also noticed that except Kadari Narasamma who made a claim in 2003 stating that her husband's ancestors were village office holders, none from the family of Byla made a claim over the said property.

103. The Court has also noticed that Narasimhaiah was not the village office holder. Should the Court set aside the re-grant order in favour of children of Narasimhaiah in a situation where Narasimhaiah has sold the property in 1971 to 1st respondent?

104. Learned counsel for the petitioners would urge that the Division Bench of this Court in ***Thimmarasiah*** *(supra),* has held that to make a claim as Holder of village office, one has to be the officer and without being the officer and merely by being in possession, a person cannot claim to be a Holder of village office under the Act, 1908. It is indeed true the Division Bench in the aforementioned case has held that one who is merely performing the duties of a village officer, is not a village officer within the meaning of the Act, 1908.

105. It is relevant to notice that Act, 1961, has repealed the Act, 1908. The Act, 1961 has defined the expression "Holder of village office" or "Holder" and also defined the expression "Unauthorised Holder". The judgment in ***Thimmarasiah*** (*supra*), does not deal with the provisions of the Act, 1961.

106. It is also relevant to notice that, Act, 1961 was amended in 1978 and till then, Section 7 of the Act, 1961 provided for grant of land to unauthorized holder. It is only after the amendment in the year 1978, the law provided for eviction of unauthorized person and re-grant of land to the village office holder.

107. In the instant case, the claim for re-grant was made on 29.11.1967 by Narasimhaiah and it is well before the amendment to Section 7 of Act, 1961.

108. Whether the amendment to Section 7 of Act of 1961 is prospective or retrospective, is a matter that may require consideration to consider the claim of first respondent. No arguments are advanced with reference to the amendment to Section 7 of the Act of 1961 which was brought into effect in 1978.

109. Narasimhaiah was in unauthorized occupation of the land. The reason is Assistant Commissioner in his order dated 14.05.1979 has held that 1st respondent –purchaser from Narasimhaiah is in unauthorized occupation. That would mean his seller Narasimhaiah was in unauthorized occupation. In that event heirs of Narasimhaiah including

Kadari Narasamma are eligible to re-grant *if the amendment to Section is held to be prospective*. *In that event the benefit of re-grant would enure to the benefit of 1st respondent in view of law declared in* ***Syed Basheer*** *(supra).*

110. If the amendment to Section 7 is held to be retrospective, then, Narasimhaiah is not entitled to seek re-grant.

111. Though it is evident that the amendment to Section 7 is by way of substitution, and in such situation generally, the amendment is retrospective or retroactive, it is also well settled position of law that, there is no such absolute rule that the *amendment by way of substitution* is always retrospective. In a given situation it may have prospective application as well.

112. However, in this case the Court need not embark upon the question which is not addressed, more so in a situation where said question if answered in either way will not come to the aid of the petitioners as the Court has already come to the conclusion that the petitioners have failed to establish that the Byla was the Holder of village office or Holder. Apart from that, sons of Narasimhaiah have

given up their claim over the property. The claim is prosecuted by Kadari Narasamma, not in her capacity as the daughter of Narasimhaiah, but in her capacity as heir of her husband. In that view of the matter the petition has to be dismissed holding that the petitioners are not entitled to re-grant.

113. The first respondent is in possession of the property eversince he purchased in 1971, and the said sale was facilitated because of entry in the record of right in the name of Narasimhaiah, and State has not cancelled the sale, (though the Assistant Commissioner has held that the purchaser is not eligible to seek re-grant) and also considering the fact that position of the purchaser has changed in view of the law in ***Syed Basheer*** (supra), the Court is of the view that the possession held by the purchaser from Narasimhaiah since 1971 should not be disturbed in a proceeding filed by Kadari Narasamma who did not acquire any right over the property for the reasons already discussed.

114. The Court has passed this order by taking into consideration that the State never laid a claim over the over the property all these years, and was adjudicating who among the rival claimants is entitled to the property.

115. This Court has already noticed that the original *barabaluti* registers are not available. The jurisdictional Deputy Commissioner shall take steps to ascertain as to whether the said registers are kept in any other office coming under the jurisdiction of the Deputy Commissioner.

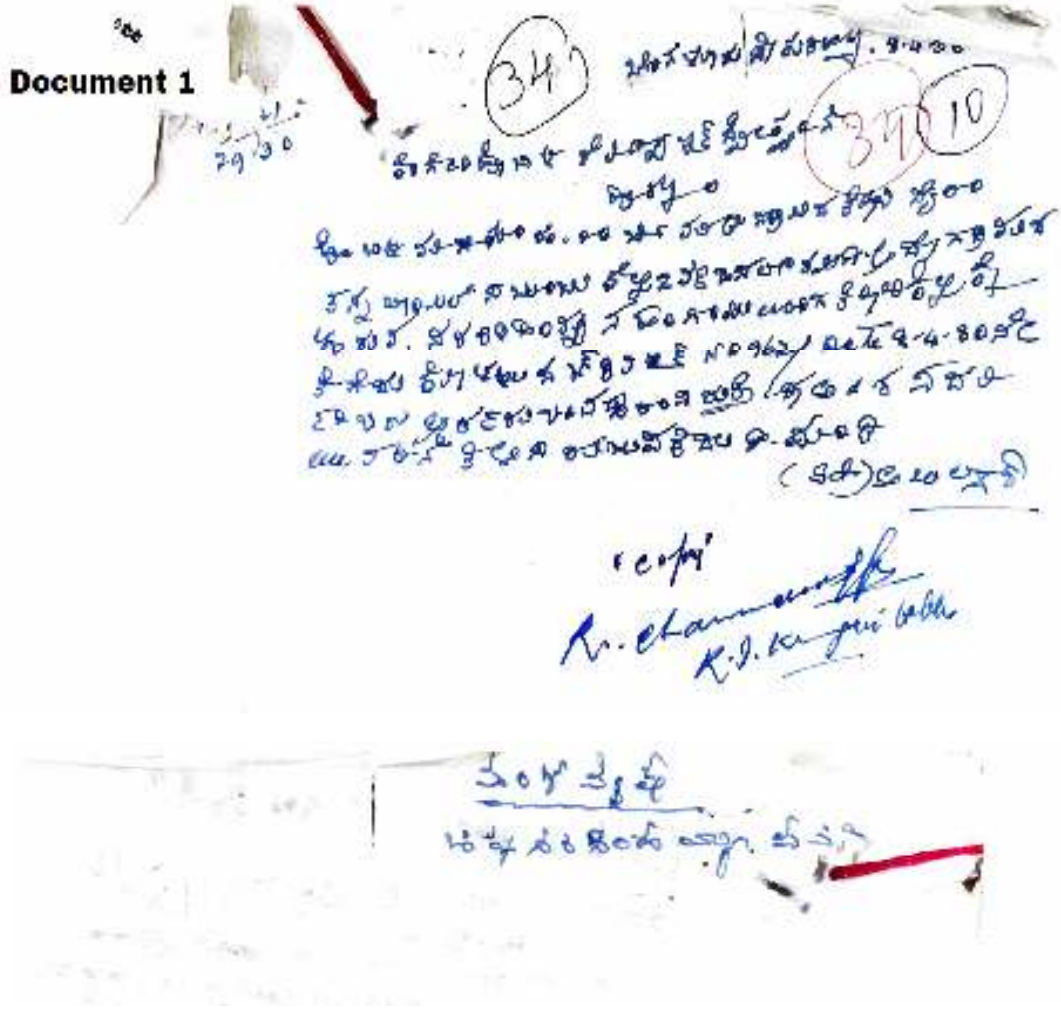
116. The steps taken in this regard and the outcome of such exercise shall be reported to the Registry of this Court within three months from today.

117. The Court has also noticed that some of the documents referred to in the order which are found in the original file submitted by the learned Government Advocate are fragile. Thus, the scanned copies of those documents are made part of the order by annexing the same as documents No.1, 2 and 3.

118. Before concluding, it is to be recorded that on 18.03.2026, the case was listed for pronouncement of

orders. The learned counsel for the petitioners sought adjournment on the premise that the original *barabaluti* register is available and sought time to produce the copy of the same. Accepting the request, the matter was adjourned to 25.03.2026. On that day, the learned counsel for the petitioners again sought time to produce the records. The petitioners did not even produce any records to show that an application is filed to obtain the copy of the *Barabaluti* Register. When queried, learned counsel for the petitioners submitted that, the application is filed before the District Court where according to the petitioners, the certified copy of the *Barabaluti* Register was produced. The Court declined the request for adjournment. However, secured the records from the District Court through telephonic communication. The records sent from the District Court did not reveal any certified copy of *Barabaluti* Register other than what is marked as Annexure - B to the Writ Petition. The Court has already analysed the said document.

Document 1



(6)

Document 2

Record of ~~[illegible]~~ Rights [illegible]

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CR 622/67-68

50 P. COURT FEE 40 P.
INDIA
40 PH 50 PAISE
10-11-67

Applied By [illegible]
Applied On 16-11-67
[illegible] By X M.K. Varappa
[illegible] On 16-11-67
[illegible] By S.S. [illegible]
[illegible]
16-11-67

Extract

Tahsildar
Bangalore South Tal
16/11/67

Document 3

7

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50 P. COURT FEE 50 P.
भारत INDIA
५० पैसे 50 PAISE
10-11-67

CR 622/67-68

Applied By [illegible]
Applied On 16-11-67
Prepared By Md. Dalappa
Prepared On 16-11-67
Compared By S. S. Krishnaswamy
0-50
0-12
16-11-67

Extract
Tahsildar
Bangalore South

119. Hence, the following:

ORDER

(i) Writ petition is ***dismissed.***

(ii) Government Advocate to communicate this order to the jurisdictional Deputy Commissioner to carry out the exercise as directed in paragraphs No.115 and 116.

(iii) The steps to be taken by the jurisdictional Deputy Commissioner to trace the original *barabaluti* register, as directed in paragraphs No.115 and 116 of this order and the outcome of the steps shall be reported to the Registry of this Court within three months from today.

(iv) The copy of the said report shall be served on the counsel for the petitioners and respondents by the Registry of this Court.

(v) Registry shall send back the records to the District Court.

(vi) Registry shall also return the original records to the learned Government Advocate.

(vii) No order as to costs.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN/CHS/GVP