

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE R DEVDAS

WRIT PETITION NO. 8185 OF 2021 (KLR-RES)

C/W

WRIT PETITION NO. 9733 OF 2019 (KLR-RES)

IN WP No. 8185/2021

BETWEEN:

SHRI. C. GANGADHARA MURTHY
S/O. SHRI. CHENNIGAPPA,
AGED ABOUT 54 YEARS,
NO.322, III-A CROSS, II BLOCK,
III STAGE, BASAVESHWARA NAGAR,
BANGALORE-560 079.

...PETITIONER

(BY SRI. ABHISHEK R HUDDAR., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF REVENUE,
M.S. BUILDING,
BANGALORE-560 001,
REP. BY PRINCIPAL SECRETARY.
2. THE DEPUTY COMMISSIONER
BANGALORE (URBAN) DISTRICT,
KANDAYA BHAVANA,
BANGALORE-560 009.
3. THE TAHSHILDAR
BANGALORE NORTH TALUK,



KANDAYA BHAVANA,
GROUND FLOOR, K.G. ROAD,
BANGALORE-560 009.

4. JOINT DIRECTOR OF LAND RECORDS
DEPUTY COMMISSIONERS OFFICE,
4TH FLOOR, K.G. ROAD,
BENGALURU-560 009.

...RESPONDENTS

(BY SMT.B.P.RADHA., AGA)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER
DATED 19.12.2019, ANNEXURE-S, PASSED IN CASE
NO.LND(N) CR 254/2017-18 BY THE R2 AND DIRECT THE R2
TO ASSESS THE SCHEDULE PROPERTY AS ARABLE LAND AND
REMOVE THE CLASSIFICATION OF LAND AS B KHARAB LAND.

IN WP NO. 9733/2019

BETWEEN:

SHRI. C. GANGADHARA MURTHY
S/O SHRI CHENNIGAPPA
AGED ABOUT 52 YEARS,
NO.322, III-A CROSS, II BLOCK,
III STAGE, BASAVESHWARA NAGAR,
BANGALORE 560 079.

...PETITIONER

(BY SRI. ABHISHEK R HUDDAR., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF REVENUE
M.S. BUILDING,

BANGALORE 560001
REP. BY PRINCIPAL SECRETARY

2. THE DEPUTY COMMISSIONER
BANGALORE (URBAN) DISTRICT,
KANDAYA BHAVANA,
BANGALORE 560009.
3. THE TAHSHILDAR
BANGALORE NORTH TALUK
KANDAYA BHAVANA, GROUND FLOOR
K.G. ROAD, BANGALORE 560009.
4. JOINT DIRECTOR OF LAND RECORDS
DEPUTY COMMISSIONER'S OFFICE
4TH FLOOR, K.G. ROAD,
BENGALURU 560009.

...RESPONDENTS

(BY SMT.B.P.RADHA., AGA)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE LETTER DATED 21.03.2018 ISSUED BY THE R-4 - ANNEXURE-F; DIRECT THE R-2 TO ASSESS THE SCHEDULE PROPERTY AR ARABLE LAND AND REMOVE THE CLASSIFICATION OF LAND AS 'B' KHARAB LAND.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 27.04.2026 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE R DEVDAS

CAV COMMON ORDER

(PER: HON'BLE MR JUSTICE R DEVDAS)

These two writ petitions are filed by the same petitioner, against the respondent – State and the revenue authorities and since the issue in both the writ petitions pertain to the rights of the petitioner in respect of 1 Acre 30 Guntas of kharab land being part of Sy.No.83/1, situated at Sriganhdada Kaval village, Yeshwantpur Hobli, Bangalore North Taluk, the two writ petitions were clubbed, heard together and are being disposed of by this common order.

2. Earlier, the petitioner was before this Court in Writ Petition No.54567/2017 seeking a writ of mandamus, directing the second respondent - Deputy Commissioner to consider the representations given by the petitioner, to remove the classification 'B' kharab in respect of 1 Acre 30 Guntas of land and bring the same into regular revenue yielding, arable/cultivable land. The said writ petition was disposed of on 17.01.2018 with a direction to the Deputy Commissioner to consider the representation and to pass

appropriate orders within two weeks from the date of receipt of a copy of the order and to remove the aforesaid 1 Acre 30 Guntas of land in Sy.No.83/1 from the classification 'B' kharab and assess the same as arable land. Liberty was also reserved to the petitioner to submit one more application along with copy of Annexure-M and a copy of the order passed by this Court. The respondent-State and its authorities preferred an intra-court writ appeal and the Division Bench has disposed of the appeal, while setting aside the order passed in W.P.No.54567/2017, but it also directed the Deputy Commissioner to consider the representation given by the petitioner and pass appropriate orders within a period of four weeks from the date of appearance of the petitioner before the Deputy Commissioner. The petitioner was directed to appear before the Deputy Commissioner on 21.10.2019. Accordingly, the Deputy Commissioner has passed the impugned order dated 19.12.2019, in case No.LND (N) CR 254/2017-18. The said order is assailed in W.P.No.8185/2021. In W.P.No.9733/2019, the petitioner

has questioned the communication dated 21.06.2018 made by respondent No.4-Joint Director of Land Records to the Additional Deputy Commissioner, Bengaluru District.

3. Learned counsel for the petitioner submitted that the petitioner has always contended that his great grandfather - Patel Thimmarayappa and his brother Hanumappa were the Patels having more than 100 acres of agricultural lands in Srigandhada Kaval village. Sy.No.83 totally measured 24 Acres 39 Guntas. The petitioner's ancestors also had huge number of livestock i.e., cattle, goats and sheep. They were using the dry lands in Sy.No.83 for grazing the cattle and domestic animals. In order to provide water for the livestock and the other arable lands, they constructed a tank/pond in 1 Acre 30 Guntas of land in Sy.No.83. It is asserted that the tank/pond was used only by the ancestral family of the petitioner and it was never open for public. It is contended that at the time of resurvey, the tank/pond which is commonly known as 'katte' was not assessed for revenue and continued to be shown as 'katte' in the revenue

records. Long thereafter, under a Partition Deed dated 11.02.1953, the joint family properties were divided amongst the family members and Sy.No.83/1 measuring 2 Acres 31 Guntas fell to the share of the petitioner's grandfather. The petitioner's grandfather executed a Will bequeathing several properties, including the property in question in favour of the petitioner's father - Chennigappa and accordingly, the property in question belongs to the petitioner's family. It is also stated that the 'katte', was nevertheless used as a common property amongst the larger family. After the death of petitioner's father, there was again a partition in the family and vide registered Partition Deed dated 25.04.2003, 28 Guntas in Sy.No.83/1, fell to the share of the petitioner. Nevertheless, under the registered Sale Deeds dated 08.07.2004, 29.07.2004, 19.08.2004 and 04.10.2004, the petitioner purchased the remaining extent of land and accordingly, the petitioner is the owner of the entire extent of 2 Acres and 31 Guntas in Sy.No.83/1. Mutation entries

have been made in favour of the petitioner, in the revenue records.

4. The petitioner realized that the classification of 1 Acre 30 Guntas of land in Sy.No.83/1 as 'B' kharab is factually erroneous and accordingly, the petitioner gave a representation to the Deputy Commissioner to treat the land as arable land and make necessary entries in the revenue records. In the alternative, the petitioner also submitted that he is ready to pay the value for reclassification of the lands in question.

5. Learned counsel for the petitioner further submitted that the revenue records disclose the fact that no part of Sy.No.83 was ever claimed as Government lands or public property. This aspect of the matter is admitted even in the impugned order passed by the Deputy Commissioner. However, it is only sought to be contended that, even if a private land or hiduwali land is classified as 'B' kharab since there is a 'katte' in the land, it cannot be reclassified as 'ain' land or arable land. Learned counsel submits while pointing out to the earlier

order passed in W.P.No.54567/2017 that, this Court had clearly held that such a contention that once a 'katte' is found even on private land, the same will automatically partake the nature of Government land, is without basis either with reference to provisions of the Act or the Rules, hence, the same is unacceptable. That being the position, it was incumbent upon the Deputy Commissioner to point out to any provision of law which would mandate that a 'katte' found in a private land automatically partakes the nature of Government land. But, the impugned order does not substantiate such a contention, with reference to any provision of law. Learned counsel would therefore submit that the impugned order being unsupported by any provision of law, is required to be set aside, while issuing necessary directions to the Deputy Commissioner to reclassify the lands in question as arable land.

6. Per contra, learned Additional Government Advocate sought to support the impugned orders passed by the Deputy Commissioner and the communication made by the Joint Director of Land Records.

7. Heard the learned counsel for the petitioner, learned Additional Government Advocate for the respondents and perused the petition papers.

8. On going through the previous order passed in W.P.No.54567/2017, this Court finds that a detailed examination of the records were made by this Court earlier. It appears that voluminous documents were produced before this Court, but at no point of time did the Government claim any rights over the property in question. However, one of the oldest documents that were found in the record was a document in Marathi language. Translation of the said document was called for and after examination, it was found that a tank/water body/katte was constructed by a wealthy farmer of the village in Sy.No.83. That, he had constructed the tank for self use and for the purpose of his livestock. There was no reference of either donating the 'katte' to the village or to the Government or for the use of the other villagers. In the impugned order passed by the Deputy Commissioner, it is clearly stated that the Government has taken a stand

that there is no reference to any portion of the land in Sy.No.83, much less its phode in Sy.No.83/1 being a Government land. However, the Deputy Commissioner has once again reiterated that once a 'katte' is found even on private land, the same will automatically partake the nature of Government land.

9. It has to be observed here that despite this Court clearly indicating that such a contention is not supported by any provision of law, the Deputy Commissioner and the Joint Director of Land Records have failed to point out to any provision of law which supports such contention. A mere assertion by the Deputy Commissioner or the State for that matter that once a 'katte' is found even on private land, the same will automatically partake the nature of Government land, unsupported by any provision of law, cannot be countenanced.

10. It is noticeable that in W.P.No.54567/2017, this Court noticed the relevant provisions in order to examine the position of law in respect of 'B' kharab lands,

commencing from Rule 27 of the Karnataka Land Revenue Code, 1888, Rule 21 of the Karnataka Land Revenue Rules, 1966 and the definition of the word 'phut kharab' as found in the Karnataka Revenue Survey Manual. For easy reference, all the said provisions are extracted as below:

"27. Cultivation of phut kahrab and cases in which such cultivation is prohibited – Land included as unarable in a survey number assessed for purposes of agriculture only may, ordinarily, be brought under 11 cultivation without extra charge by the occupant of such number, or by any one claiming under him, but such cultivation is prohibited in the following cases, viz.-

- (a) when the land is occupied by a road, pathway or channel or by a tank used for irrigation or for drinking or domestic purposes;
- (b) when the land is used as a burial ground; and
- (c) when the land has been assigned for the use of the village potters or any public purpose:

Provided that this prohibition shall not apply in the case of a tank, when such tank is used for irrigation only and waters only the land which is in the sole occupation of the occupant, or when the privilege of cultivating the dry bed of the tank has been specially conceded to the occupant."

"21. Classification: (1).....

(2) During the process of classification, land included as unarable shall be treated as "Pot Kharab". Pot Kharab lands may be classified as follows-

- (a) That which is classified as unfit for agriculture at the time of survey including the farm buildings or threshing floors of the holder;

(b) That which is not assessed because, (i) it is reserved or assigned for public purpose; (ii) it is occupied by a road or recognized footpath or by a tank or stream used by persons other than the holders for irrigation, drinking or domestic purposes; (iii) used as burial ground or cremation ground; (iv) assigned for village potteries."

"1. Definition. – Phut Kharab means a piece or pieces of land classed as unarable and included in a survey number. Some of the fields classified for agricultural purposes, contain interior land which cannot be cultivated such interior lands are brought under Phut Kharab as per its definition at the time of classification of the field. Phut Kharab includes, land comprised in a survey number which for any reason is held not likely to be brought under cultivation and also includes lands in a field covered with buildings which may be removed at any time, burying grounds which may be disused and brought under plough, tracks and paths which may cease to be employer from any change in the course of the stream and such alike."

"2. Kinds of Phut Kharab – There are two kinds of Phut Kharabs. They are (1) Uncultivable and (2) Cultivable but withdrawn and reserved for some other purpose. The rule about the first kind is that unarable land included in a survey number assessed for purposes of agriculture when it is classed as unfit for agriculture at the time of survey including the farm building or threshing floor of the holder may be brought under cultivation by the holder at any time without paying any additional assessment. The Phut Kharab or land unfit for cultivation such as (1) Deep pits, (2) Water courses scored out by streams (3) Rocks etc., are deducted as uncultivable and the holder may bring such land under cultivation without any liability to a change because it is assumed that such cultivation can only be effected by the expenditure of owner. The rule regarding the second kind is that unarable land included in a survey

number assessed for purpose of agriculture when reserved or assigned for public purpose, or occupied by a road or recognized footpath or by tank or stream used by the public for irrigation or for drinking or for domestic purpose, or used or a burial or funeral ground by the public etc., or assigned for village potteries cannot be cultivated. Thus in respect of second kind of Phut Kharab cultivation is prohibited even though the land may be cultivable unless the Deputy Commissioner permits it, and alters the assignment of the Phut Kharab when the purpose for which it is reserved is no longer operative (e.g., the abandoned tank, abandoned nala etc.) but in the case of a road the rule to be observed is; once a highway always a highway. Cart-road assigned as Phut Kharab when not needed for the purpose may be allowed to be cultivated by the holder of the field on his paying the usual assessment.

If such strip is in alienated land assessment should be levied when it is clear that exemption originally accorded was granted on the ground that the land was to be used as a road or for any other definite purpose. If this class of Phut Kharab is permitted to be cultivated, then it could be assessed even during currency of the Settlement at the same rate as the rest of the Survey number and the assessment increased. When the cultivation of such kharab land is without permission, the occupants can be evicted from the foot path kharab if its enclosure causes inconvenience to occupants of neighbouring land."

11. It is clear from Rule 27 of the Karnataka Land Revenue Code that, cultivation in phut kharabs are prohibited when the land is occupied by a road, pathway or channel or a tank used for irrigation or for drinking or domestic purposes, however, the prohibition does not

apply when the land is in the sole occupation of the occupant. Similarly, Rule 21 of the Karnataka Land Revenue Rules also employs the same words, giving the same meaning. The definition of the word 'phut kharab' as found in the Karnataka Revenue Survey Manual defines that there are two kinds of phut kharabs: (1) Uncultivable and (2) Cultivable but withdrawn and reserved for some other purpose. In the first category, lands which have Deep pits, Water courses scored out by streams, Rocks etc., which make them incapable of cultivation are grouped. On the other hand, the rule regarding the second kind is that unarable land included in a survey number assessed for purpose of agriculture, when reserved or assigned for 'public purpose' or occupied by a road or recognized footpath or by tank or stream 'used by the public for irrigation' are grouped. A plain reading of these provisions make it clear that if a tank or a stream is used by the general public, the same will continue to be used and reserved for the use of general public. Therefore, such lands which have roads, footpaths, pathways, tanks,

streams which are available for and used by the general public, acquire the character of public properties. Therefore, respondent No.2-Deputy Commissioner was required to apply his mind to all these provisions, which were referred to in the order dated 17.01.2018 in W.P.No.54567/2017, before deciding the issue and considering the representation given by the petitioner. Further, while the petitioner has maintained that the tank was formed by his ancestors for the use of the family and not for public use, the respondents were required to take into consideration, such relevant aspects of the matter.

12. This Court is also of the considered opinion that reference made to the orders passed by the National Green Tribunal, circular bearing No.Rev.Dpt/46/LGP/2017 dated 14.06.2018, Wet Lands (Conversion and Management) Rules, 2010, the report submitted by Justice N.K. Patil in terms of the directions issued in a PIL in Environment Support and Others Vs. State of Karnataka and others dated 11.04.2012 etc., are not applicable to the facts and circumstances of this case. Those matters

pertain to public property and lands belonging to the Government or the State. The primary question that needs to be decided in the present case is, whether the property in question is a public property or a private property. As noticed earlier, the respondent-State and its authorities have never claimed that the property in question belongs to the State. It has been conceded throughout that the land in question does not belong to the State.

13. Moreover, the bald assertion of the Deputy Commissioner that if a portion of a private property is reflected as "Kere", then it becomes government property or 'B' kharab land, will militate against Article 300A of the Constitution of India. Time and again, the Hon'ble Supreme Court has held that the mandate of Article 300A is that no person is to be deprived of his property save by authority of law. In the case of **HARI KRISHNA MANDIR TRUST VS. STATE OF MAHARASTRA AND OTHERS, (2020) 9 SCC 356**, in paragraph No.97, it is held as follows:

"97. Article 300-A of the Constitution of India embodies the doctrine of eminent domain which comprises two parts, (i) possession of property in the public interest; and (ii) payment of reasonable compensation. As held by this Court in a plethora of decisions, including State of Bihar and Others v. Project Uchcha Vidya, Sikshak Sangh and Others; Jelubhai Nanbhai Khachar and Others v. State of Gujarat and Anr.; Bishambhar Dayal Chandra Mohan and Ors. v. State of Uttar Pradesh and Others, the State possesses the power to take or control the property of the owner for the benefit of public. When, however, a State so acts it is obliged to compensate the injury by making just compensation as held by this Court in Girnar Traders v. State of Maharashtra and Others".

14. The Hon'ble Supreme Court has further held in paragraph No.100 that the High Court exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a writ of mandamus or in the nature of mandamus, but are duty bound to exercise such power, where the government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute or rule, or a policy decision of a Government or has exercised such discretion *malafide*, or on irrelevant consideration. It was directed that in all such cases, the High Court must issue a writ of mandamus and give directions to compel performance in

an appropriate and lawful manner of the discretion conferred upon the Government or a public authority. It was further directed that in an appropriated cases, in order to prevent injustice to the parties, the court may itself pass an order or give directions which the Government or the public authorities should have passed, had it properly and lawfully exercised its discretion.

15. Having regard to such positive directions issued by the Hon'ble Supreme Court and having regard to memo dated 19.01.2018 filed by the learned Additional Government Advocate in W.P.No.54567/2017, along with the true translation of the Revenue and Survey Settlement Records, which were in Marati, since it is clear that even between the years 1843 and 1883, the Headman of the village Sri.Dhanagowda and others had formed a Tank (Kere) in Sy.No.83, the earlier Official Memorandum dated 26.02.2019 at Annexure-O to the writ petition, issued by the then Deputy Commissioner, cannot be faulted. The then Deputy Commissioner had permitted the removal of the classification 'B' kharab in respect of

1 Acre 30 Guntas in Sy.No.83/1 of Srigandhada Kaval Village, subject of course to the final decision in W.A.No.3354/2018.

16. However, in the impugned order passed by the Deputy Commissioner, at Annexure-S, dated 19.12.2019, he did not consider any of the provisions mentioned in the decision in W.P.No.54567/2017 dated 17.01.2018. The Deputy Commissioner does not dispute the factual findings that the Tank was constructed by one Sri.Dhanagowda Sahukar, in his private lands. However, the Deputy Commissioner has brushed aside the claim of the petitioners while stating, "when once a Katte is formed even on private land, the same will automatically partake the nature of Government land". The said statement is not supported by any provision of law. On the other hand, the said statement is clearly in violation of the constitutional right conferred on the owner of the property in Article 300A of the Constitution of India.

17. For the reasons stated above, this Court is of the considered opinion that the impugned orders passed

by the Deputy Commissioner in Case No.LND(N) CR/254/2017-18, dated 19.12.2019 and the impugned communication dated 21.06.2018 issued by the 4th respondent-Joint Director of Land Records to the Additional Deputy Commissioner, Bengaluru District cannot be sustained. Further, having regard to the adamant attitude and conduct of the respondent-State and its authorities in not considering the legitimate request/claim made by the petitioners, this Court is constrained to issue positive directions to the respondents.

18. Accordingly, this Court proceeds to pass the following:

ORDER

- (i) Both the writ petitions are ***allowed***.
- (ii) The impugned orders passed by the Deputy Commissioner in Case No.LND(N) CR/254/2017-18, dated 19.12.2019 and the impugned communication dated 21.06.2018 issued by the 4th respondent-Joint

Director of Land Records to the Additional Deputy Commissioner, Bengaluru District, are hereby quashed and set aside.

- (iii) The respondent-Deputy Commissioner, Bengaluru Urban District, and the respondent-Joint Director of Land Records, Bengaluru, are hereby directed to issue necessary orders to remove the classification 'B' kharab from the revenue records, survey settlement records and the RTC in respect of Sy.No.83/1, situated at Srigandhada Kaval Village, Yashawanthapura Hobli, Bengaluru North Taluk, measuring 1 Acre 30 Guntas, as expeditiously as possible and at any rate within a period of two months from the date of receipt of a copy of this order.

Ordered accordingly.

19. Pending Interlocutory Application(s), if any,
stand disposed of.

Sd/-
(R DEVDAS)
JUDGE

JT/DL
CT: JL