

HC-KAR



CNR: KAHC010582442024

NC: 2026:KHC:36006
WP No. 28247 of 2024
C/W WP No. 27322 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2026

BEFORE

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

WRIT PETITION NO. 28247 OF 2024 (LR)

C/W

WRIT PETITION NO. 27322 OF 2024 (KLR-RES)

IN WP NO.28247/2024

BETWEEN:

SRINIVAS BHATTA
SINCE DEAD BY LRS

1. S. SUBRAMANYA BHAT
S/O. LATE SRINIVAS BHATTA,
AGED ABOUT 76 YEARS,
AGRICULTURIST,
R/O. SOULI, ALGERI VILLAGE,
DOORVASAPURAM POST,
THIRTHAHALLI TALUK,
SHIVAMOGGA DISTRICT-577 432.

S. GOPALA,
SINCE DEAD BY HIS LEGAL HEIRS

2. SMT. NAGARATHNA,
W/O. LATE S. GOPALA BHATTA,
AGED ABOUT 60 YEARS,
HOMEMAKER.
RESIDENTS BEESU VILLAGE,
POST ARGHA,
THIRTHAHALLI TALUK,
SHIVAMOGGA DISTRICT-577414.

Digitally signed
by CHAYA S A
Location: HIGH
COURT OF
KARNATAKA

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REPRESENTED BY THEIR POWER OF ATTORNEY
SRI. S. SUBRAMANYA BHAT I.E.,
THE PETITIONER NO.1.

3. SMT. MAHIMA,
D/O. LATE S. GOPALA BHATTA,
AGED ABOUT 34 YEARS,
HOMEMAKER.

RESIDENTS BEESU VILLAGE,
POST ARGHA,
THIRTHAHALLI TALUK,
SHIVAMOGGA DISTRICT-577414.

4. SRIPADA,
S/O. LATE S. GOPALA BHATTA,
AGED ABOUT 32 YEARS,
AGRICULTURIST.
RESIDENTS BEESU VILLAGE,
POST ARGHA,
THIRTHAHALLI TALUK,
SHIVAMOGGA DISTRICT-577414.

5. S. KRISHNAMURTHY,
S/O. LATE SRINIVASA BHAT,
AGED ABOUT 60 YEARS,
AGRICULTURIST,
R/O. SOULI ALGERI VILLAGE,
DOORVASAPURAM POST,
THIRTHAHALLI TALUK-577432,
SHIVAMOGGA DISTRICT.

6. S. SHANKARAN
S/O. LATE SRINIVASA BHAT,
AGED ABOUT 58 YEARS,
AGRICULTURIST,
R/O. SOULI ALGERI VILLAGE,
DOORVASAPURAM POST-577432,
THIRTHAHALLI TALUK,

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SHIVAMOGGA DISTRICT.

PETITIONERS NO. 2, 4, 5 AND 6 ARE
REPRESENTED BY THEIR
POWER OF ATTORNEY
SRI. S. SUBRAMANYA BHAT I.E.,
THE PETITIONER NO.1.

...PETITIONERS

(BY SRI. S V PRAKASH.,ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
REVENUE DEPARTMENT,
M.S. BUILDING,
DR. B.R. AMBEDKAR VEEDHI,
BENGALURU-560001.
2. THE ASSISTANT COMMISSIONER AND
PRESCRIBED AUTHORITY,
SHIVAMOGGA SUB DIVISION,
SHIVAMOGGA-577201.
3. SRI. RAMACHANDRA DEVARU
BHIMANAKATTEMATA
REPRESENTED BY
SHREE RAGHUMANYA THIRTHA
SREEPANDANGAL,
RESIDENT OF BHIMANAKATTE
DOORVASAPURAM POST,
THIRTHAHALLI TALUK,
SHIVAMOGGA DISTRICT-577432.

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4. SRI. S.R. KRISHNAMURTHY,
S/O. LATE RAMACHANDRA ITHAL,
AGED ABOUT 56 YEARS
AGRICULTURIST,
R/O. SOULI, ALGERI VILLAGE,
DOORVASAPURM POST,
THIRTHAHALLI TALUK,
SHIVAMOGGA DISTRICT-577432.

5. SRI. S.B MANJAPPA
S/O. LATE BELLAIAH GOWDA,
AGED ABOUT 64 YEARS,
AGRICULTURIST,
R/O SOUIL,
ALGERI VILLAGE,
DOORVASAPURAM POST
THIRTHAHALLI TALUK,
SHIVAMOGGA DISTRICT-577432.

SIDDAPPA GOWDA,
SINCE DECEASED BY HIS LRS

6. PRAKASH,
S/O. LATE SIDDAPPA GOWDA,
AGED ABOUT 54 YEARS,
AGRICULTURIST,
R/O. SOULI, ALGERI VILLAGE,
DOORVASAPURAM POST
THIRTHAHALLI TALUK,
SHIVAMOGGA DISTRICT-577432.

...RESPONDENTS

(BY SRI. SPOORTHY HEGDE N., HCGP FOR R1 AND R2;
SRI. ARUN SHYAM M., SENIOR COUNSEL FOR
SRI. KESHAV M. DATAR, ADVOCATE FOR R3;
R4 TO R6 ARE DISPENSED WITH)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 29.07.2024 PASSED BY THE KARNATAKA APPELLATE TRIBUNAL, BENGALURU IN APPEAL NO.851/2007 PRODUCED AS PER ANNEXURE-J TO THE WP CONFIRMING THE ORDER DATED 07.06.2007 PASSED BY THE RESPONDENT NO.2 IN PROCEEDINGS NO.LRT(7A) KSB:ALG 2, 3, 6 AND 8/99-2000 PRODUCED AS ANNEXURE-H TO THE WRIT PETITION; AND ETC.

IN WP NO.27322/2024

BETWEEN

1. S.B. MANJAPPA
S/O LATE BELLAIAHGOWDA
AGED ABOUT 64 YEARS
AGRICULTURIST.
2. PRAKASH
S/O LATE SIDDAPPAGOWDA
AGED ABOUT 54 YEARS
AGRICULTURIST.

PETITIONERS ARE RESIDENTS OF
SOWLI, ALAGERI VILLAGE
KASABA HOBLI
THIRTHAHALLI TALUK
SHIVAMOGGA DISTRICT - 577 432.

....PETITIONERS

(BY SRI. N.K.RAMESH, ADVOCATE)

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AND

1. STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
REVENUE DEPARTMENT
M.S. BUILDING
DR. B.R. AMBEDKAR VEEDHI
BENGALURU - 560 001.
2. THE ASSISTANT COMMISSIONER
AND PRESCRIBED AUTHORITY
SHIVAMOGGA SUB- DIVISION
SHIVAMOGGA-577 201.
3. SRI. RAMACHANDRA DEVARU
BHEEMANAKATTE MATA
REPRESENTED BY
SHREE RAGHUMANATHHEERTHA SRIPANDANGAL
R/OF BHEEMANAKATTE
POST: DOORVASAPURAM
THIRTHAHALLI TALUK
SHIVAMOGGA DISTRICT - 577 432.
4. SRI. S. SUBRAMANYA BHAT
S/O LATE SRINIVASA BHAT
AGED ABOUT 76 YEARS
AGRICULTURIST
R/O SOULI, ALGERI VILLAGE
KASABA HOBLI,
THIRTHAHALLI TALUK
DOORVASAPURAM POST
SHIVAMOGGA DISTRICT -577 432.

SRI. S. GOPAL
SINCE DECEASED REP. BY LRS.
5. SMT. NAGARATHNA
W/O LATE S. GOPALA BHATTA
AGED ABOUT 72 YEARS

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HOMEMAKER.

6. KUM. MAHIMA
D/O LATE S. GOPALA BHATTA
AGED ABOUT 41 YEARS
HOMEMAKER.

7. SRIPADA
S/O LATE S GOPALA BHATTA
AGED ABOUT 39 YEARS
AGRICULTURIST.

RESPONDENTS NO.5 TO 7 ARE
R/AT BEESU VILLAGE
AGRA POST
THIRTHAHALLI TALUK
SHIVAMOGGA DISTRICT - 577414.

8. S. KRISHNAMURTHY
S/O LATE SRINIVASA BHATTA
AGED ABOUT 70 YEARS
AGRICULTURIST
R/O SOULI ALGERI VILLAGE
DOORVASAPURAM POST - 577432
THIRTHAHALLI TALUK
SHIVAMOGGA DISTRICT.

9. S. SHANKARAN
S/O LATE SRINIVASA BHAT
AGED ABOUT 61 YEARS
AGRICULTURIST
R/O SOULI ALGERI VILLAGE
DOORVASAPURAM POST - 577432
THIRTHAHALLI TALUK
SHIVAMOGGA DISTRICT.

10. S. KRISHNAMURTHY
S/O LATE RAMACHANDRA ITHAL
AGED ABOUT 60 YEARS
AGRICULTURIST

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R/O SOULI ALGERI VILLAGE
DOORVASAPURAM POST - 577432
THIRTHAHALLI TALUK
SHIVAMOGGA DISTRICT.

....RESPONDENTS

(BY SRI. ARUN SHYAM M., SENIOR COUNSEL FOR
SRI.KESHAV M. DATAR, ADVOCATE FOR R3;
SRI. SPOORTHY HEGDE N., HCGP FOR R1 TO R2;
NOTICE TO R4 TO R10 DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ORDER DATED 29.07.2024 PASSED BY THE
KARTNATKA APPELLATE TRIBUNAL, BENGALURU IN APPEAL
NO.850/2007 PRODUCED AS PER ANNEXURE - Q TO THE WRIT
PETITION CONFIRMING THE ORDER DATED 07.06.2007
PASSED BY THE 2ND RESPONDENT IN PROCEEDINGS
NO.LRT(7A) KSB: ALG 2, 3, 6, 8:99-2000 PRODUCED AS
ANNEXURE-P TO THE WRIT PETITION.

THESE WRIT PETITIONS 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

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CAV ORDER

In WP No.28247 of 2024 the petitioners are assailing the order dated 29.07.2024 (Annexure- J) in Appeal No. 851 of 2007 on the file of Karnataka Appellate Tribunal, Bengaluru, and order dated 07.06.2007 (Annexure-H) passed by the respondent No.2 in LRT (7A) KSB: ALG: 2,3,6,8 OF 1999-2000 (Annexure- H) *inter-alia* sought for direction to the respondent No.2 to grant, 11 guntas of wet land and 01 acre, 36 guntas of dry land in favour of the petitioners, in Sy Nos.8 and 9 of Algeri Village, Kasaba Hobli, Thirthahalli Taluk, Shivamogga District in terms of Section 77A of the Karnataka Land Reforms Act, 1961.

2. In W.P.No. 27322 of 2024, the petitioners are assailing the order dated 29.07.2024 (Annexure-Q) in Appeal No. 850 of 2007 on the file of Karnataka

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Appellate Tribunal, Bengaluru, and order dated 07.06.2007 (Annexure-P) passed by the respondent No.2 in LRT (7A) KSB: ALG: 2,3,6,8 : 1999-2000 *inter-alia* sought for direction to the respondent No.2 to grant 1 acre, 8 guntas and 1 acre, 36 guntas in favour of the petitioner No.1 and 2 respectively, in Sy No.8 of Algeri Village, Kasaba Hobli, Thirthahalli Taluk, Shivamogga District in terms of Section 77A of the Karnataka Land Reforms Act, 1961.

3. These writ petitions were heard together and clubbed with the consent of the learned counsel appearing for both the parties and disposed of by this Common order.

4. Relevant facts for the adjudication of these writ petitions are that the land bearing Sy.No. 8, of Algeri village, Thirthahalli Taluk, belong to the respondent-Mutt. The father of the petitioner Nos.1

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and 2 in W.P.No.27322 of 2024, was in cultivation of the land in question as tenant, in respect of the land stated in writ petitions and as such, the tenants were paying rent (Gutta) to the respondent No.3-Mutt every year.

5. The petitioners in W.P.No.28247 of 2024 claim to be in cultivation of the land belonging to the respondent-Mutt and were paying rent and has entered into Rent Kararu/Chit dated 13.11.1923 (Annexure-A).

6. In these writ petitions it is the case of the petitioners that, the petitioners were in cultivating of the land in question and have constructed the residential house in the land in question. It is also stated that, the petitioners were paying tax to the Government. It is further submitted that, the petitioners and their ancestors have made an

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application under Section 48-A of the Karnataka Land Reforms Act, 1961 (for short, the 'Act'), before the Land Tribunal, Thirthahalli, despite they were cultivating the land as tenants and as further, filed applications in Form No.7-A in terms of Section 77-A of the Act. It is further stated in the writ petitions that, spot inspection was conducted and report was made by the Taluk Surveyor that the petitioners were in cultivation of the land in question. It is also stated in the writ petition that, proceedings were initiated by the Assistant Commissioner as to conferment of occupancy rights in respect of the subject land and the Assistant Commissioner, after considering the material on record has passed the impugned order dated 07.06.2007, rejected the applications made by the petitioners and feeling aggrieved by the same the petitioners have approached the Karnataka Appellate Tribunal in Appeal Nos. 850 and 851 of 2007

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questioning the Land Tribunal order dated 29.07.2024, which came to be dismissed by the Karnataka Appellate Tribunal and feeling aggrieved by the same, the petitioners have presented these writ petitions.

7. I have heard Sri. S.V. Prakash and N.K. Ramesh, learned counsel appearing for the petitioners; Sri. Aruna Shyam, learned Senior Counsel appearing on behalf of Sri. Keshav M. Datar, learned counsel for the respondent-Mutt and Sri. Spoorthy Hegde N., High Court Government Pleader appearing for the respondent-State.

8. It is argued by the Sri. S.V. Prakash, learned counsel for the petitioners in W.P.No. 28247 of 2024 that, the petitioners as well as their ancestors were in cultivation of the land in question and they were paying gutta in favour of respondent-Mutt and said aspect of the matter was ignored by both the

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authorities and accordingly, sought for interference of this Court. Learned counsel appearing for the petitioners further contended that, the finding recorded by the respondent-authorities that, the land was not vested with the State as on 01.03.1974 and the land was not cultivable as on that day, is contrary to the records, as the petitioners were cultivating the land in question and accordingly, sought for interference of this Court. It is further argued by the learned counsel for the petitioners that, the Rent Karar/Chit, executed by the respondent No.3-Mutt in favour of ancestors of the petitioners was ignored by both the respondent-authorities and name of the petitioners finds place in the revenue records and the said aspect of the matter was not considered by both the authorities. It is also argued that, the finding recorded by the respondent-authorities that, the petitioners were in excess of the land in question is

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contrary to law and the report submitted by the Taluk Surveyor was ignored by the respondent-authorities and therefore, sought for interference of this Court.

9. It is argued by Sri. N.K. Ramesh, learned counsel for the petitioners in W.P.No.27322 of 2024 that, the order passed by the Tribunal is not a speaking order and Tribunal has not appreciated the fact that, the petitioners and their ancestors were cultivating the land in question and payment of gutta as per Annexures-A and B has been ignored by the Tribunal and accordingly, sought for interference of this Court. It is also argued by the learned counsel for the petitioners that, both the authorities have misconstrued the copy of the Hiduvali Certificate issued by the Village Accountant and Spot Inspection conducted by the Taluk Surveyor would indicate that the petitioners are in possession of the land in

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question and therefore, sought for interference of this Court. It is the principal submission of the learned counsel that, the petitioners were in cultivation of the land as on 01.03.1974 and said aspect has been ignored by the respondent-authorities and accordingly, sought for interference of this Court.

10. Per Contra, Sri. Aruna Shyam, learned Senior Counsel appearing for the respondent-Mutt, contended that, the finding recorded by the both the authorities is just and proper as the name of the applicants/petitioners is not found place in the record of rights as on 01.03.1974 and that apart, the land in question was Beelu, between 1972 and 1973 for a period of two years and same has been considered by the Tribunal and accordingly, and sought for dismissal fo the petitions. It is also submitted by the learned Senior Counsel that, the land in question was in

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possession of the respondent-Mutt, during the years 1969 to 2021 and the said aspect of the matter was considered by the Tribunal, and therefore, sought for dismissal of the petitions.

11. It is the principal argument of the Learned Senior Counsel for the respondent-Mutt that the land in question was not vested in favour of the State and therefore, learned Senior Counsel referred to the judgment of the this Court in the case of ***Lokayya Poojary and another vs. State of Karnataka*** reported in ***ILR 2012 KAR 4345*** and submitted that the petitioners have failed to prove the ingredients, laid down by the Full Bench of this Court in the aforementioned case and accordingly, submitted that the petitioners have failed to fulfill the conditions stipulated under Section 77-A of the Act, and therefore, sought for dismissal of the writ petitions. It

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is also argued by the learned Senior Counsel for the respondent-Mutt that, the constructive res-judicata is applicable to the quasi-judicial authorities also and therefore, sought for dismissal of the writ petitions.

12. Sri. Spoorty Hegde N, High Court Government Pleader sought to justify the impugned orders passed by the respondent-authorities.

13. In the light of the submission made by the learned counsel appearing for the parties and on careful consideration of the writ papers would indicate that, in respect of the petitioners in W.P.No.28247 of 2024, wherein, the claimants, were late Srinivasa Bhatta, and S. R. Krishnamurthy, who were the applicants Nos. 1 and 2 before the Assistant Commissioner and in this regard, the finding recorded by the Assistant Commissioner that, the land bearing Sy.Nos. 8 and 9 of Algeri village, has already been

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granted in favour of the applicant Nos. 1 and 2 and therefore, consideration of further grant, does not arise and same has been rejected by the Assistant Commissioner, that, those applicants are not entitle for the further grant. Insofar as the applications made by petitioner No.1-S.B. Manjappa, and father of the petitioner No.2-Late Siddappagouda, in W.P.No.27322 of 2024, there is a finding by both the authorities that, the land in question claimed by these applicants, was not cultivable land as on 01.03.1974 and the land in question was 'Beelu', and no cultivation is being made in the land claimed by these applicants and therefore, rightly, rejected the applications made by these applicants. It is relevant to mention that the applicants have to prove that, the applicants are in possession and cultivation of land in question as on 01.03.1974 and also as per the provisions under Land Reforms (Amendment) Act, 1997. That apart, no

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document have been produced by these applicants that they are in cultivation of the land in question on 01.03.1974 and therefore, the finding recorded by the respondent-authorities is just and proper. In this regard, the Full Bench of this Court in **Lokayya Poojary** at paragraphs 13 to 19 reads as under:

" 13. Chapter IV deals with Ceiling on Land Holdings. Sections 63 and 64 provides for such ceiling. The land which is in excess of ceiling laid down in Sections 63 and 64 shall be surrendered to the State Government and a separate procedure is prescribed for adjudicating the excess of ceiling land and such excess land vest with the Government free from all encumbrances. Section 67 provides for surrender of lands in certain cases and such surrendered land also vest with the Government. Similarly, the lands which are acquired contrary to the provisions contained in Chapter V, namely 79-A, 79-B and 80 also vest in the Government. Section 77 of the Act deals with disposal of surplus land. It provides for grant of such surplus land in favour of dispossessed tenants who are not registered as occupants, displaced tenants having no land, landless agricultural labourers, landless persons

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and released bonded labourers. The said provision specifically did not provide for grant of lands to tenants who were in occupation of the land prior to 01.03.1974 vested with the Government, because they did not make an application for grant of land. Insofar as grant of the vested land to certain persons is concerned, it is the provisions of the Land Grant Rules, 1969 which are to be applied. In this background, in the year 1997, the Legislature felt that some of the tenants who continued to cultivate the land, which was vested with the Government and for various reasons could not file the applications, if they had to stand in the queue probably they might not get the said land granted. It is in those cases, as they had missed the bus and as they were actually cultivating the land prior to vesting and continued to cultivate the land from the date of vesting till 1997, a provision was thought of for grant of such land. It is to meet such a situation, Section 77-A has been introduced by the Karnataka Legislature by Act No. 23 of 1998. It is in the nature of a preferential treatment for grant of tenanted lands, which are vested with the Government, in favour of the tenant subject to his satisfying the conditions stipulated therein.

14. *It is clear from the language used while describing Section 77-A that the Legislature described it as 'grant*

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of land in certain cases' and not in all cases. The heading of the Section makes it clear that it is not a case of grant of occupancy rights or registering them as occupants of land. On the contrary, it is a case of grant of land. The said provision applies to lands which are vested in the State Government under Section 44. In other words, it is a land which is a tenanted land which is vested with the Government under Section 44, in respect of which the tenant who was entitled to grant of occupancy rights under Section 45, has not made an application within the time prescribed and therefore he has lost his right for registering him as occupant of the said land. When such a tenant, if he is continued in actual possession and cultivation of such land, on the date of commencement of the Karnataka Land Reforms Amendment Act, the authority under the said provisions may grant the land to such person, subject to the conditions stipulated therein being fulfilled.

15. *By virtue of the powers conferred by Section 137 of the Act, the Government of Karnataka has made the Karnataka Land Reforms Rules, 1974, (for short, hereinafter referred to as the 'Rules'). Rule 17 of said Rules prescribes the procedure to be followed by the Tribunal. It in turn provides for the procedure as specified for a summary enquiry under Section 34 of*

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the Karnataka Land Revenue Act, 1964. Therefore, the procedure to be followed by the Land Reforms Tribunal is prescribed. Section 77-A also provides for holding an enquiry before such grant. The enquiry to be held under Section 77-A is not an enquiry under Rule 17 of the Rules. The intention of the Legislature is very clear when the Government introduced Rule 26-C by way of Notification dated 31.10.1998 which came into effect from 02.11.1998. The authority to grant land under Section 77-A is the Deputy Commissioner or the other Officer authorised by the State Government in this behalf. In other words, the power to grant land under Section 77-A is not conferred on the Tribunal. The application under Section 45 is to be filed in Form No. 7, while an application under Section 77-A is to be filed in Form No. 7-A.

16. *Interestingly, as in the case of Rule 17, for conducting enquiry, the procedure prescribed under Section 34 of the Karnataka Land Revenue Act, 1964, is not made applicable to enquiry under Section 77-A of the Act. In an enquiry under Section 77-A read with Section 26-C, the question of the authority going into the question whether the land in question is a tenanted land or not, would not arise, which question, the Tribunal constituted under the Act alone is competent to go into under Section 48 of the Act. No*

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such power or jurisdiction has been conferred under Section 77-A on the Deputy Commissioner or the Assistant Commissioner. The enquiry contemplated under Section 77-A is to be confined only to the following:

(1) Whether the person who has made an application under Section 77-A was in actual possession and cultivation of any land before the first day of March, 1974;

(2) Being entitled to be registered as occupants of such land under Section 45 or 49, has failed to apply for registration of occupancy rights in respect of such land under sub-Section (1) of Section 48-A within the period specified therein. In other words, if such an application had been filed, which claim is adjudicated upon by the Tribunal and if it is negatived, then such a person is not entitled to file an application under Section 77-A;

(3) Whether such a person is continued to be in actual possession and cultivation of such land on the date of commencement of the Karnataka Land Reforms Amendment Act, 1977.

17. *Proviso makes it clear that the land so granted together with the land already held by such person shall not exceed 2 Hectares of D' class of land or its equivalent thereto. In other words, if the applicant*

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held land in excess of 2 Hectares of 'D' Class of land or its equivalent thereto, he was not entitled to grant of land under Section 77-A of the Act, even if he was a tenant of the land in question prior to 01.03.1974 and continued to be in possession of the land and cultivating the land till the introduction of Section 77-A of the Act. Though such land vested with the Government as on 01.03.1974, he was not entitled to grant of land.

18. *If we keep the above principle and the Legislative intent in mind, what emerges is while amending the Act and introducing Section 77-A, the Legislature was very clear in its mind that by the said amendment, they were not intending to have one more forum for registration of occupancy rights under Section 45 of the Act. These two provisions were intended to cover two independent fields. Similarly, if a person has availed the benefit of Section 45-A and lost the battle, Section 77-A was not meant to give him one more opportunity, a second innings. The power to grant occupancy rights under Section 45 was vested with a quasi-judicial authority like a Tribunal. On the day the amendment introducing Section 77-A came into force, the Tribunals were in existence and functioning. The intention of the Legislature was not to give them jurisdiction to decide the claims under Section 77-A. A*

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separate machinery is now contemplated under Section 77-A. The enquiry that was contemplated under Section 45 is totally different from the enquiry under Section 77-A, as is clear from the fact that corresponding to Section 77-A Rule 26(c) was enacted and the claim under Section 77-A had to be adjudicated in terms of the procedure prescribed under Section 26(c). A reading of Section 77-A makes it very clear this provision has a limited application. It applies to only certain cases. It is necessary to bear in mind the context in which Section 77-A is introduced. This provision finds a place in Chapter IV, whereunder as per Section 77 a provision is made for disposal of surplus lands on such land being vested with the Government and also other lands which are vested in the State. Therefore, in a proceeding under Section 77-A, the enquiry that was contemplated under Section 48-A is excluded. This is a provision that enables a person who is in occupation of a land, of which he was a tenant and continues to be in possession as a tenant to apply for grant of such land, if he had failed to make an application for grant of occupancy rights within the time stipulated. Such a person is given an opportunity to make an application for grant of land provided he continues to cultivate the land and he was not holding land in excess of 2 Hectares of land. Therefore, in the said proceedings

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the question whether the said land is a tenanted land or not, cannot be gone into, as is clear from the language used in Section 77-A. The entire enquiry contemplated under Section 77-A is in respect of a land, which is vested in the State Government under Section 44, as on 01.03.1974. It should be an undisputed fact. If the said fact is disputed, then Section 77-A has no application. The jurisdiction under Section 77-A is attracted only in respect of undisputed tenanted lands. Vesting of the land as on 01.03.1974 with the Government, which fact is not in dispute, is a condition precedent for application of Section 77-A.

19. *If a tenant makes an application, the question that arises for consideration is how he proves that it is a vested land. The vesting of the land is by operation of law. No order of vesting need be passed. There cannot be an order declaring the vesting of the land. Therefore, production of order of vesting is not the requirement of law and it is not possible and it cannot be insisted upon. However, it is for the applicant who comes to the Court to establish, that the land in question is a vested land. While establishing such fact, it is necessary that he should rely on undisputed documents and such undisputed documents may be in the nature of some official record showing vesting of the land in favour of the State Government. The*

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Government record referred to in the judgment is not an order of vesting. It is a record in proof of vesting. It may vary from case to case and depends upon the stand taken in each case. But, unless there is some official record evidencing the vesting of the land, the authorities under Section 77-A would get no jurisdiction to hold an enquiry and grant land under Section 77-A to the applicant. The official record referred to therein may be in the form of Land Revenue receipts, record of rights, index of land, mutation orders, consequent mutation entries or any other record which is maintained by a public officer as opposed to private documents. It is in this context, the Learned Judges in the aforesaid judgments have stated that the land should have been vested in the State Government as on the appointed date. The said event should have already taken place. The evidence is required to be placed by the applicant to show that this is an event that has already taken place. In that context the observations to the effect that "obviously it should find a place in some official record as vesting of the land is in favour of the State Government" are made. This amendment came into force in 1997 roughly 18 years after the last date prescribed for filing applications under Section 45. For 18 long years after the vesting of the land if the tenant has continued in possession, there must be some evidence

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by way of a public record to show his possession, cultivation and enjoyment as recognised by the Government, because after the vesting he has to deal with the Government and not with the erstwhile owner. How the Government as well as the applicant have dealt with this property during these 18 years assumes importance. In this context the observations made in the said judgments cannot be read as new conditions prescribed by the Judges in Section 77-A by the process of judicial interpretation as sought to be urged by the Counsel for the petitioner. The Judges do not legislate. They only interpret the provisions. Therefore, the argument that under the guise of interpretation, the Judges have re-written the Section is not well founded. It is a case of misreading the judgment. Under these circumstances, the interpretation placed by the Division Benches is proper and legal. We do not find any need to clarify what has been already said.

Accordingly, the reference is answered. The matters shall be placed before the Learned Single Judge for decision in the light of the answer given herein above.

14. A perusal of the aforementioned judgment would indicate that, it is the duty of the tenant to

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establish that the land had vested in the Government and, further, they were in cultivation of the land as on the relevant date so as to prove their tenancy in respect of the subject land. It is pertinent to mention here that, as the documentary evidence available on record before the Tribunal satisfies that the land in question was 'Beelu' land and was not under cultivation by the applicants as on the relevant date, the Tribunal is justified in recording such a finding on the basis of the documentary evidence itself, as there is no vesting of the land in question with the State and as such, no enquiry under Rule 17 of the Karnataka Land Revenue Rules, 1966 is required. In such circumstances, any amount of oral evidence adduced by the applicants in an enquiry under Rule 17 of the Rules would not assist them in establishing that they were in cultivation of the land in question as the land was 'Beelu'. In the present case, the documentary

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evidence on record clearly indicates that the land in question is 'Beelu' land and was not under cultivation by the applicants on the relevant date. Further, there is no material on record to establish that the land was vested in the Government. Therefore, the Tribunal was justified in recording its findings on the basis of the documentary evidence without conducting an enquiry under Rule 17 of the Karnataka Land Revenue Rules. Therefore, I am of the opinion that, there is no necessity to conduct the enquiry by the Tribunal, based on the documentary evidence. Since, the land is not vested with the Government, and therefore, conducting an enquiry under Rule 17 of the Rules, is an empty formality and therefore, following the declaration of law made by the Hon'ble Supreme Court in the case of ***Aligarh Muslim University and others vs. Mansoor Ali Khan***, reported in **(2000) 7 SCC 529**, I am of the view that, there was no

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necessity of conducting an enquiry and therefore, the submission made by the learned counsel appearing for the petitioners cannot be accepted. In this regard, it is relevant to cite the declaration of law made by this Court in the case ***Basawa and another vs. Tangevva and others*** reported in ***ILR 2013 KAR 5449***, wherein it is stated that, it is the duty of the applicant to fulfill condition that he was in actual possession and cultivation of the land in question immediately prior to 01.03.1974, which was vested in the State government, and further continued to be in cultivation on the date of commencement of amendment Act. Therefore, I am of the opinion that, the contentions raised by the learned counsel for the petitioners cannot be accepted. It is also to be noted that, as the Tribunal has arrived at a conclusion that the grant of land in Sy.Nos.8 and 9 of Algeri village, has been made in favour of the petitioners in

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W.P.No.28247 of 2024, and therefore, both the authorities have rightly rejected the applications made by these applicants.

15. Having regard to the declaration of law made by the Hon'ble Supreme Court as well as this court, and taking into consideration the material available on record, I am of the considered view that the findings recorded by the authorities are based on cogent documentary evidence. Accordingly, no perversity, illegality, or jurisdictional error is made out in the impugned order passed by the Tribunal warranting interference under Articles 226 and 227 of the Constitution of India. Consequently, the writ petitions are liable to be dismissed and are, accordingly, ***dismissed***.

Sd/-
(E.S.INDIRESH)
JUDGE