

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE R DEVDAS

WRIT PETITION NO.39522 OF 2010 (SC-ST)

C/W

WRIT PETITION NO.50680 OF 2013(SC-ST)



IN W.P. NO.39522/2010

BETWEEN

**SRI AMAVASAIAH
SINCE DEAD BY HIS LR**

- 1 . SRI A THIMMAIAH
AGED 58 YEARS,
R/O GADIKOPPA,
SHIMOGA TALUK.
- 2 . SRI C KALLAPPA
SINCE DEAD BY LRs
 - a) SMT. RATHNAMMA
W/O LATE L. CHANDRAPPA
AGED ABOUT 50 YEARS
R/AT GADIKOPPA VILLAGE
SHIMOGA TALUK AND DISTRICT.
 - b) SRI L. JAYARAM
S/O B.G. LAKSHMAN
AGED ABOUT 45 YEARS
R/AT GADIKOPPA VILLAGE
SHIMOGA TALUK
SHIMOGA DISTRICT.
 - c) SRI RAJAIAH
S/O LATE HANUMAIAH
AGED ABOUT 56 YEARS

R/AT GADIKOPPA VILLAGE
SHIMOGA TALUK
SHIMOGA DISTRICT.

- 3 . SMT NIRMALA
W/O MAHALINGA
AGED ABOUT 40 YEARS
R/AT MILLAGHATTA
SHIMOGA TOWN.
- 4 . SRI H.D. SRINIVASA GOWDA
S/O DUGGAPPAGOWDA
AGED ABOUT 55 YEARS
R/AT MILLAGHATTA
SHIMOGA TOWN, SHIMOGA.
- 5 . SRI E.P. SANNI
SINCE DEAD BY HIS LRS.
 - a) SMT. REENA SUNNY
W/O LATE E.P. SANNI
AGED ABOUT 59 YEARS
R/AT NO.750/5, VIJAYANAGAR
HINDALGA, BELGAUM
KARNATAKA – 591108.
 - b) SMITHA D SOUZA
D/O LATE E.P. SANNI
AGED ABOUT 40 YEARS
R/AT NO.202, KARASWADA
ASMAS ARCADE
TIVM LE, NORTH GOA
GOA – 403526.
 - c) SAUMYA SUNNY
D/O LATE E.P. SANNI
AGED ABOUT 37 YEARS
R/AT NO.549, VIJAYANAGAR
HINDALGA, BELGAUM
KARNATAKA – 591 108.
 - d) SAMSON S. EZHAMALY
S/O LATE E.P. SANNI
AGED ABOUT 32 YEARS

R/AT SHAIKH BUILDING
2ND CROSS, VIJAYANAGAR
HINDALGA, BELGAUM
KARNATAKA – 59110.

- 6 . SRI HYDER SHARIFF
S/O ABDUL KHADER
AGED ABOUT 42 YEARS
R/O BHARATHI COLONY
SHIMOGA TOWN, SHIMOGA.
- 7 . SMT K.M. BHARATHI
W/O K.N. MANJAPPA
AGED ABOUT 45 YEARS
R/O KUMBARAKERI
SHIMOGA TOWN, SHIMOGA.
- 8 . SRI T.S. VENKATESH
S/O T.B. SIDDAPPA
AGED 50 YEARS
R/AT MILLAGHATTA
SHIMOGA TOWN, SHIMOGA.
- 9 . SRI SYED SIRAJUDDIN
S/O SYED YOUSUFF
AGED ABOUT 55 YEARS
R/O MILLAGHATTA, SHIMOGA TOWN,
SHIMOGA.

...PETITIONERS

(BY SRI. K.N. NITISH., ADVOCATE FOR
SRI. K.V.NARASIMHAN., ADVOCATE)

AND

- 1 . HOSURAPPA
S/O NAGAPPA
SINCE DEAD BY LRs
- A) SMT. YELLAMMA
W/O LATE HOSURAPPA
AGED 60 YEAS.
- B) SRI H. NAGESHAPPA
S/O LATE HOSURAPPA
AGED ABOUT 38 YEARS.

- C) SMT. LAKSHMAMMA
D/O LATE HOSURAPPA
AGED ABOUT 40 YEARS.
- D) SMT. SAVITHRI
D/O LATE HOSURAPPA
AGED ABOUT 36 YEARS.
- E) SMT. SHEELA
D/O LATE HOSURAPPA
AGED ABOUT 30 YEARS.

ALL ARE R/O GOPALA
RANGANATH EXTENSION
SHIMOGA TOWN, SHIMOGA DISTRICT.

- 2 . THE ASSISTANT COMMISSONER
SHIMOGA SUB-DIVISION
SHIMOGA.
- 3 . THE DEPUTY COMMISSONER
SHIMOGA DISTRICT, SHIMOGA.
- 4 . THE COMMISSIONER
SHIMOGA URBAN DEVELOPMENT
AUTHORITY, SHIMOGA.

...RESPONDENTS

(BY SRI. SHAMANTH NAIK, HCGP., FOR R2 & R3
SRI S.V. PRAKASH, ADVOCATE, FOR R1A TO R1E
SRI A.V. GANGADHARAPPA, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDERS AT ANNEXURE J DATED 3.4.2007 PASSED BY THE RESPONDENTS NO.2, AND ANNEXURE K, DATED 28.10.2010 PASSED BY THE RESPONDENT NO.3 AND GRANT AN INTERIM ORDER TO STAY THE OPERATION OF THE ORDERS AT ANNEXURES-J, DATED 3.4.2007 PASSED BY THE RESPONDENTS NO2, AND ANNEXURE K, DATED 28.10.2010 PASSED BY THE RESPONDENT NO.3, IN CASE NO. SC/ST/1/2007-08 AND SC/ST/4/2007-08 AND ETC.

IN W.P. NO. 50680/2013

BETWEEN

SHIMOGA URBAN DEVELOPMENT AUTHORITY
SHIMOGA, REP. BY ITS COMMISSIONER
COMMERCIAL COMPLEX, 100 FEET ROAD
VINOBA NAGAR, SHIMOGA – 577 204.

...PETITIONER

(SRI A.V. GANGADHARAPPA, ADVOCATE)

AND

- 1 . THE DEPUTY COMMISSIONER
SHIMOGA DISTRICT
SHIMOGA – 577 201.
- 2 . THE ASSISTANT COMMISSIONER
SHIMOGA SUB DIVISION
SHIMOGA - 577 201.

AMAVASIAH S/O GUJJARAI AH
SINCE DEAD BY LEGAL REPRESENTATIVE

- 3 . SMT THIMMAMMA
W/O LATE AMAVASIAH
AGED ABOUT 70 YEARS
R/O MILLAGHATTA
SHIMOGA TALUK AND
DISTRICT – 577 201.
(RESPONDENT NO.3 IS DELETED
VIDE ORDER DATED 26/08/2015)
- 4 . THIMMAIAH
S/O LATE AMAVASIAH
AGED ABOUT 47 YEARS
C/O H RAJANNA
R/A NO.E-135, 2ND CROSS
GOPALAGOWDA LAYOUT
SHIMOGA – 577 201.

5 . SMT YELLAMMA
W/O LATE HOSURAPPA
AGED ABOUT 68 YEARS.

6 . H NAGESHAPPA
S/O LATE HOSURAPPA
AGED ABOUT 45 YEARS.

RESPONDENTS NO.5 AND 6
ARE RESIDING
BEHIND SHANIDEVARA TEMPLE
KORAMARA BEEDHI, GOPALA
SHIMOGA TOWN -577 201.

7 . SMT LAKSHMAMMA
D/O LATE HOSURAPPA
AGED ABOUT 48 YEARS.

8 . SMT SAVITHRI
D/O LATE HOSURAPPA
AGED ABOUT 44 YEARS.

9 . SMT SHEELA
D/O LATE HOSURAPPA
AGED ABOUT 42 YEARS.

RESPONDENTS NO.7 TO 9
ARE RESIDING
OPPOSITE TO PADMA TALKIES
KORAMARA KERI, GOPALA
SHIMOGA TOWN – 577 201.

10 . KALLAPPA
S/O LATE GUJJARAIHAH
SINCE DEAD BY LR.s.

10(A) SMT. RATHNAMMA
W/O LATE L. CHANDRAPPA
AGED ABOUT 50 YEARS
RESIDING AT GADIKOPPA
VILLAGE, SHIMOGA TALUK
SHIMOGA DISTRICT.

10(B) L. JAYARAM
S/O B.G. LAKSHMAN
AGED ABOUT 45 YEARS
RESIDING AT GADIKOPPA VILLAGE
SHIMOGA TALUK
SHIMOGA DISTRICT.

10(C) SRI RAJAIAH
S/O LATE HANUMAIAH
AGED ABOUT 56 YEARS
RESIDING AT GADIKOPPA VILLAGE
SHIMOGA TALUK
SHIMOGA DISTRICT.

...RESPONDENTS

(BY SRI SHAMANTH NAIK, HCGP FOR R1 & R2
R3 DELETED V/O/D.26.08.15
R4 SERVED - UNREPRESENTED
SRI S.V. PRAKASH, ADVOCATE FOR R5 TO R9
SRI. K.N. NITISH., ADVOCATE FOR
SRI. K.V.NARASIMHAN., ADVOCATE FOR R10(A) TO
R10(C))

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS QUASH THE ORDER DT.3/4/2007 PASSED BY THE R-2 VIDE ANNEX-E AND THE ORDER DT.28.10.10 PASSED BY THE R-1 VIDE ANNEX-F RESPECTIVELY IN SO FAR AS THEY RELATE TO THE DIRECTION FOR PAYMENT OF COMPENSATION IS CONCERNED AND ETC.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 09.04.2026 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 in respect of the impugned orders passed by the respondent-Assistant Commissioner, Shivamogga Sub-Division and the Deputy Commissioner, Shivamogga District. Therefore, these two writ petitions were clubbed, heard together and are being disposed of by this common order.

2. Brief facts which are germane for consideration of these writ petitions are that 3 Acres 19 Guntas of land in Sy.No.88 of Gadikoppa village, Shivamogga Taluk and District were granted in favour of one Sri.Nagappa in the year 1952. Saguvali Chit was issued in favour of Sri.Nagappa on 09.01.1953. Part of the land measuring 1 Acre 29 ½ Guntas were sold by Smt. Yallamma, wife of Sri.Nagappa in favour of the 1st petitioner - Sri.Amavasaiah on 27.09.1967. The remaining extent of 1 Acre and 29 ½ Guntas were sold by Smt.Yallamma in favour of the 2nd petitioner -

Sri.Kallappa on 26.11.1967. It should be noticed here that during the course of these proceedings, petitioners No.1 and 2 died and their legal representatives have been brought on record. Respondent No.1, Sri.Hosurappa, the son of the original grantee Sri.Nagappa, filed a petition before the Assistant Commissioner on 01.02.1989, invoking Sections 4 and 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short, 'the PTCL Act'). The petition was allowed on 28.03.1989, while directing resumption and restoration of the lands in favour of the legal heirs of the original grantee. Aggrieved by the said order, petitioners No.1 and 2 filed an appeal before the Deputy Commissioner. In the meanwhile, part of the lands were notified for acquisition at the hands of the 4th respondent-Shivamogga Urban Development Authority (which has also filed the connected writ petition in W.P.No.50680/2013). The Deputy Commissioner allowed the appeals and set aside the orders passed by

the Assistant Commissioner. Aggrieved by the order, the contesting respondent No.1 herein filed W.P.No.14550/1992. This Court held that the Assistant Commissioner was required to find out whether the land was granted for upset price or a price lesser than the upset price or whether it was a free grant. The Assistant Commissioner was required to state the rule applicable, having regard to the date of the grant and the nature of the grant. This Court found that there were contradictory opinions in this regard at the hands of the Assistant Commissioner and the Deputy Commissioner. Therefore, the writ petition was allowed while quashing the orders passed by the Assistant Commissioner as well as the Deputy Commissioner and the matter was remanded back to the Assistant Commissioner for fresh consideration.

3. On remand, the Assistant Commissioner recorded a finding that as per the grant records, the lands were granted in favour of Sri.Nagappa on 17.07.1952 in terms of order bearing No.DSA 4 DD

48/1951-52 and Saguvali Chit was issued on 09.01.1953. It was found that the land was granted freely and therefore, the non-alienation clause applicable was 15 years. However, the Assistant Commissioner was of the opinion that commencing from 17.07.1952, the date on which the grant was made, 15 years would elapse on 16.07.1967 and the sale transactions happened on 27.09.1967 and 26.11.1967 and therefore, the provisions of the PTCL were not attracted in the present case. Accordingly, the petition filed by respondent No.1 was dismissed. In appeal, the Deputy Commissioner upheld the orders of the Assistant Commissioner. Respondent No.1 filed writ petition No.22094/1998 and this Court found that the relevant rule applicable as on the date of the grant viz., 17.07.1952 was sub-rule(8) of Rule 43 of the Mysore Land Revenue Rules, framed under Section 233 of the Mysore Land Revenue Code and according to the said Rule, the period of non-alienation was forever and therefore, on facts, it was found that the findings of the

authorities were incorrect. Further, it was also found that only 1 Acre 06 Guntas were notified and acquired and compensation of Rs.69,000/- was paid to Smt.Thimmamma wife of the 1st petitioner, R.Amavasaiah. This Court therefore held that 2 Acres 13 Guntas remained at the hands of the petitioners No.1 and 2 and in that regard, the matter was to be reconsidered by the Assistant Commissioner. This Court held that since 1 Acre 06 Guntas were notified and acquired, the said lands are no more agricultural lands and therefore, the claim of respondent No.1 herein to that extent cannot be sustained.

4. Aggrieved by such an observation, respondent No.1 herein filed W.A.No.4982/1998 and the Hon'ble Division Bench, by order dated 24.07.1999 accepted the contention of respondent No.1 herein and held that the land was notified and acquired during the pendency of the proceedings before the Assistant Commissioner, in the year 1992 and therefore, it cannot be held that the provisions of the PTCL Act are not

attracted in respect of the acquired lands. For that reason, the observations made by the learned Single Judge was set aside while directing the Assistant Commissioner to reconsider the matter in respect of the entire extent of 3 Acres and 19 Guntas.

5. Pursuant to the remand, the Assistant Commissioner found on verification of the grant records, that the lands were granted in favour of Sri.Nagappa on 17.07.1952 and Saguvali Chit was issued on 09.01.1953 and that it was a free grant. Therefore, in terms of the prevailing rules, the lands which were granted in favour of Sri.Nagappa, a person belonging to the depressed classes, could not be alienated forever. It was also found that the original grantee belonged to Korama community, which was listed in the Scheduled Castes List. The Assistant Commissioner also held that the Shivamogga Urban Development Authority (for short, SUDA) was required to deposit the compensation amount before the civil court, after having come to know that a petition was filed by respondent No.1

before the Assistant Commissioner, invoking the provisions of the PTCL Act. At any rate, it was found that respondent No.1 and the other legal heirs of the original grantee were entitled to receive compensation at the hands of SUDA in respect of 1 Acre 06 Guntas of land. Nevertheless, the Assistant Commissioner directed resumption and restoration of the entire extent of 3 Acres 19 Guntas of lands in favour of the legal heirs of the original grantee. The petitioners No.1 and 2 herein, aggrieved by the order of the Assistant Commissioner preferred an appeal before the Deputy Commissioner. The Deputy Commissioner dismissed the appeals filed by petitioners No.1 and 2. It should be noticed here that though SUDA, being a party before the Assistant Commissioner and suffering adverse orders at the hands of the Assistant Commissioner, it did not prefer an appeal before the Deputy Commissioner.

6. Learned Counsel Sri.K.N.Nitish, for Sri K.V.Narasimhan, appearing for petitioners No.1 to

9 submitted, while pointing out to orders passed in W.P.No.14550/1992 dated 25.08.1995, that while remanding the matter back to the Assistant Commissioner, this Court had directed the Assistant Commissioner to verify from the records as to whether the original grantee belonged to Scheduled Caste community; whether the grant was for an upset price, less than upset price or a free grant and what was the rule applicable having regard to the said facts. But, the Assistant Commissioner has not looked into the original grant orders. It is contended that the findings given by the Assistant Commissioner cannot be accepted on the face of it. It is further contended that in terms of the acquisition notification dated 05.11.1992, as found at Annexure-A in Writ petition No.50680/2013, the total extent of land held by petitioners No.1 and 2 in Sy.No.88 was 3 Acres and 19 Guntas, out of which 05 Guntas were kharab and the remaining extent was 3 Acres and 14 Guntas, and what was notified for acquisition is 3 Acres and 04 Guntas. In terms of the

request made by the petitioners, SUDA passed a resolution on 25.04.1994 accepting to delete 50% of the acquired land from acquisition and accordingly, the writ petition filed at the hands of petitioner No.1 – Sri.Amavasaiah in W.P.No.2158/1993 was disposed of in terms of the memo filed by the petitioner. Thereafter, award was passed only in respect of 1 Acre and 06 Guntas at the rate of Rs.69,000/- and the remaining land was given up by SUDA in favour of the petitioners. It is therefore contended that the petitioners acquired independent title in respect of the remaining extent of land and the provisions of the PTCL Act cannot be applied to the lands retained by the petitioners, in accordance with law. In this regard, learned Counsel places reliance on ***M.Narasimha Murthy and Others Vs. The Deputy Commissioner, Bangalore District and Others*** reported in **ILR 2015 Kar 954**.

7. Learned Counsel further submitted that although the PTCL Act came into force on 01.01.1979, the petition before the Assistant Commissioner was filed

on 01.02.1989, after delay of 10 years and therefore, the Assistant Commissioner should have dismissed the petition on the ground of delay and laches alone. Learned Counsel sought to place reliance on a decision of the Hon'ble Supreme Court in the case of ***Ningappa Vs. Deputy Commissioner & Ors. (2020) 14 SCC 236*** and the subsequent judgments of the Hon'ble Supreme Court in the case of ***Nekkanti Rama Lakshmi Vs. State of Karnataka and Others (2020) 14 SCC 232.***

8. Learned Counsel Sri.A.V.Gangadharappa, appearing for SUDA, submitted there is no bar in law to acquire lands granted to persons belonging to SC/ST community. It is submitted that the lands were notified for acquisition on 05.11.1992 and the acquisition notification was issued in the name of Sri.Amavasaiah and Sri.Kallappa, whose names were reflected in the RTCs. Challenge was raised by Sri.Amavasaiah before this Court in Writ Petition No.2158/1993. Since SUDA was not able to proceed on account of the writ petition

filed before this Court, the authority accepted the proposal given by the land owners and passed a resolution on 25.04.1994 to delete 50% of the acquired lands from acquisition. Accordingly, the writ petition was disposed of. Thereafter, 06 Guntas of the land were required for formation of a road in the layout. Therefore, the said 06 Guntas were requisitioned from the owners and they agreed to give up 06 Guntas on condition of allotment of a site in lieu of compensation. Accordingly, the 06 Guntas were utilized by SUDA, after allotment of an alternative site in favour of the land owners. SUDA has already paid compensation of Rs.69,000/- for acquisition of 1 Acre 06 Guntas and therefore, no further claim can be made against SUDA.

9. Per contra, learned Counsel for the contesting respondent No.1 submitted that the Hon'ble Division Bench has already held in W.A.No.4982/1998 dated 24.07.1999, that the provisions of the PTCL Act would be applicable even in respect of the notified lands, since the notification was issued during the pendency of the

proceedings before the Assistant Commissioner. The Hon'ble Division Bench set aside the findings of the learned Single Judge, who had held in Writ Petition No.22094/1998 that 1 Acre and 06 Guntas which were notified and acquired for the benefit of SUDA was no more agricultural land and therefore, the provisions of the PTCL Act would not attracted. The decision of the Hon'ble Division Bench is binding on the parties and on this Court. Neither the petitioners nor SUDA raised a challenge to the orders passed by the Hon'ble Division Bench. In that view of the matter, it is submitted that all such contentions raised by the learned Counsels for the petitioners and SUDA cannot be considered, having regard to the decision of the Hon'ble Division Bench, in the earlier round of litigation. Learned Counsel would further submit that the writ petition filed by SUDA in Writ Petition No.50680/2013 is required to be dismissed on the ground that SUDA did not file an appeal before the Deputy Commissioner, challenging the orders passed by the Assistant Commissioner. SUDA cannot be

permitted to file a writ petition challenging the orders passed by the Assistant Commissioner and the Deputy Commissioner.

10. Heard learned Counsel Sri.K.N.Nitish, for Sri K.V.Narasimhan, appearing for petitioners in W.P.No.39522/2010, learned Counsel Sri.A.V. Gangadharappa, for the petitioner-SUDA in W.P.No.50680/2013, learned Counsel Sri.S.V.Prakash for the contesting respondent No.1, learned High Court Government Pleader Sri.Shamanth S.Naik, and perused the petition papers.

11. Having regard to the chronology of events, it is clear that the petition under Sections 4 and 5 of the PTCL Act was filed by respondent No.1-Sri.Hosurappa on 01.02.1989 and orders were passed by the Assistant Commissioner on 28.03.1989, directing resumption and restoration of the lands. Matter was remanded back to the Assistant Commissioner in terms of the orders passed by this Court on 25.08.1995 in W.P.No.14550/1992. Subsequently, the matter was

once again remanded back to the Assistant Commissioner by order dated 17.08.1998, in W.P.No.22094/1998. Further, orders were passed by the Hon'ble Division Bench in W.A.No.4982/1998 on 24.07.1999, clarifying the orders passed in W.P.No.22094/1998. At no point of time, did the petitioners raise the question of delay and laches. When the matters are remanded by this Court with specific directions, the authority is required to consider the matters in terms of the directions issued by this Court. The petitioners cannot be permitted to urge the question of delay and laches before this Court at this length of time. Accordingly, the submissions made by the learned Counsels for the petitioners, regarding the delay and laches, is hereby rejected.

12. The learned Counsel for the petitioners also contended that the Assistant Commissioner did not comply with the directions issued by this Court, inasmuch as, he did not verify from the original Grant records as to whether the grant was for an upset price;

lesser than upset price or a free grant. These directions which were issued earlier by this Court in W.P.No.14550/1992 is in consonance with the judgment of the Division Bench in the case of ***Pedda Reddy Vs. State of Karnataka* ILR 1993 KAR 551**. However, the Hon'ble Supreme Court, in the case of ***Guntaiah and Others Vs. Hambamma and Others* (2005) 6 SCC 228** has watered down the said judgment and overruled the judgment of the Full Bench of this Court in the case of ***Smt.Hambamma Vs. The State of Karnataka & Ors.* ILR 1999 KAR 261**. The Hon'ble Supreme Court held at paragraph Nos.12, 13 and 14 as follows:

"12. When the Rule itself says that where the grant is made free of cost or at a price which is less than the full market value, such grant shall be subject to the condition that the land shall not be alienated for a period of 15 years from the date of the grantee taking possession of the land after the grant, such conditions could be imposed on any grant made to the party.

13. In any case, the High Court failed to take into account the clear language employed in Section 4, according to which any transfer of granted land made either before or after the commencement of this Act 'in contravention of the terms of the grant of such land' shall be null and void (emphasis supplied). The violation of the terms of grant itself gives rise to the action under Section 4 read with Section 5. So long as the terms of the grant prohibiting transfer are not opposed to any specific provision of law, they cannot be violated and the transferee gets no rights by virtue of such invalid transfer. That is the sum and substance of Section 4 which has not been duly considered by the High Court.

14. It is also pertinent to note that the prohibition regarding alienation is a restrictive covenant binding on the grantee. The grantee is not challenging that condition. In all these proceedings, challenge is made by the third party who purchased the land from the grantee. The third party is not entitled to say that the conditions imposed by the grantor to the grantee were void. As far as the contract of sale is concerned, it was entered into between the Government and the grantee and

at that time the third-party purchaser had no interest in such transaction. Of course, he would be entitled to challenge the violation of any statutory provisions but if the grant by itself specifically says that there shall not be any alienation by the grantee for a period of 15 years, that is binding on the grantee so long as he does not challenge that clause, more so when he purchased the land, in spite of being aware of the condition. The Full Bench seriously erred in holding that the land was granted under Rule 43-J and that Authorities were not empowered to impose any conditions regarding alienation without adverting to Section 4 of Act 2 of 1979. These lands were given to landless persons almost free of cost and it was done as a social welfare measure to improve the conditions of poor landless persons. When these lands were purchased by third parties taking advantage of illiteracy and poverty of the grantees, Act 2 of 1979 was passed with a view to retrieve these lands from the third-party purchasers. When Act 2 of 1979 was challenged, this Court observed in Manchegowda v. State of Karnataka² (SCC pp.310-11, para17).

"17. xxxx xxx xxxx" ..."

(Emphasis supplied)

13. Therefore, it is clear that the petitioners cannot raise such a contention that the Assistant Commissioner was required to find out whether the grant was for an upset price, lesser than upset price or a free grant. On the other hand both the authorities have found after remand that lands were granted in favour of Sri Nagappa on 17.07.1952 in terms of order bearing No.DSA 4 DD 48/1951-52 and saguvali chit was issued on 09.01.1953. The finding of this Court in W.P.No.22094/1998 that sub-rule (8) of Rule 43 of the Mysore Land Revenue Rules, would apply to a grant made in the year 1952-53 and according to the said Rule, the granted land cannot be alienated forever and it is the said Rule that prevails. The grantee could not have sold the property to any person. The petitioners have not challenged the said finding and the same has attained finality.

14. The contention of the petitioners is that pursuant to the acquisition notification, 3 Acres and 09 Guntas, out of 3 Acres and 14 Guntas were notified and the lands stood vested with the State Government. Pursuant to a resolution passed by SUDA, 50% of the notified lands were deleted from acquisition and therefore, an independent title came to be vested with the petitioners. The provisions of the PTCL Act cannot therefore be invoked in respect of the said properties. This submission also cannot be accepted for the reason that the Hon'ble Division Bench in W.A.No.4982/1998 dated 24.07.1999 held that the lands were acquired during the pendency of the proceedings before the Assistant Commissioner. It was therefore held that the nature of the land has to be considered as on the date of the grant or on the date of filing the petition before the Assistant Commissioner. In that view of the matter, the observations of the learned Single Judge to that extent was set aside and directions were issued to the Assistant Commissioner to reconsider the case in

respect of the entire extent of lands, including the lands acquired by SUDA. This finding of fact and the decision of the Hon'ble Division Bench has attained finality. Neither the petitioners nor SUDA questioned the orders passed by the Hon'ble Division Bench. The findings and the decision of the Hon'ble Division Bench are binding on the parties, the respondent authorities and on this Court. The said issue cannot be re-opened.

15. Even otherwise, this Court is of the considered opinion that it would be futile on the part of the petitioners to argue that they acquired independent title from SUDA or the State Government pursuant to the deletion of 50% of the notified lands, in favour of the petitioners. The argument of acquisition of a fresh title may hold good insofar as the alternate site allotted in favour of the petitioners, pursuant to the utilization of 06 guntas of land. For the same reason, this Court is also of the considered opinion that having regard to the eminent domain power of the State Government in acquiring lands of private individuals in accordance with

the statutes governing land acquisition, any allotment made by the statutory body such as SUDA cannot be disturbed, even if the provisions of the PTCL Act are applicable and have an overriding power on other statutes.

16. To that extent, although the writ petition filed by SUDA, without challenging the orders passed by the Assistant Commissioner before the Deputy Commissioner/appellate authority can be dismissed on that ground alone, nevertheless, taking into consideration the allotments of sites made by SUDA in favour of the various persons in terms of the provisions of the rules of allotment, the impugned orders passed by the Assistant Commissioner and Deputy Commissioner are required to be read down, insofar as the lands acquired by SUDA. However, the legal heirs of the original grantee, including respondent No.1 herein are entitled for payment of compensation at the hands of SUDA.

17. It is required to be noticed that SUDA was a party to the proceedings in W.P.No.22094/1998. Though SUDA suffered adverse orders at the hands of this Court commencing from 1998, it has taken no steps to protect itself in the matter of payment of compensation. SUDA should have issued notice to the petitioners herein in the matter of payment of compensation. SUDA, in its writ petition has clearly stated that the Deputy Commissioner passed an order directing SUDA not to disburse the compensation in respect of the lands in question till 05.06.1997. It is stated in the petition that compensation was paid to Smt.Thimmamma on 23.12.1995. Nevertheless, SUDA could have issued notice to Smt.Thimmamma or her legal heirs to re-deposit the compensation amount, having regard to the directions issued by the Deputy Commissioner. Further, a vacant site was allotted in favour of Smt.Thimmamma on 20.05.1999, much after the orders were passed by the Deputy Commissioner.

This shows that SUDA has ignored the claim raised by respondent No.1, at its own peril.

18. Insofar as the claim of the petitioners that the same principles as are applicable to the allottees at the hands of SUDA should be applied to the purchasers of the sites at the hands of the petitioners, in the layout formed by them in the property in question, this Court is of the considered opinion that the petitioners have failed to place any material either before the respondent-authorities or before this Court to show that the layout was formed in accordance with law. No information is placed before this Court regarding conversion of the lands, sanction and permissions obtained at the hands of the competent authority to form the layout. Therefore, the benefit given to the allottees at the hands of SUDA, cannot be given to the other petitioners who claim to be purchasers of sites at the hands of petitioners No.1 and 2.

19. For the reasons stated above, this Court proceeds to pass the following:

ORDER

- i) W.P.No.39522/2010 stands ***dismissed***.
- ii) W.P.No.50680/2013 is ***partly allowed*** while modifying the orders passed by the respondent-Assistant Commissioner, Shivamogga Sub-Division at Annexure 'E' dated 03.04.2007.
- iii) 1 Acre and 06 guntas of lands in Sy.No.88 of Gadikoppa Village, Shivamogga Taluk and District, which was acquired by SUDA for formation of a residential layout shall not be resumed or restored to the legal heirs of the original grantee. However, SUDA is hereby directed to pay compensation of Rs.69,000/- along with simple interest calculated at the rate of 6% per annum commencing from the date of the award i.e., 21.12.1995 till the date of payment, to the legal heirs of the original grantee Sri Nagappa. The payment shall be made as expeditiously as possible and at any rate within a period of six months from the date of receipt of a certified copy of this order.

Pending I.As., if any stand disposed of.

**Sd/-
(R DEVDAS)
JUDGE**

DL/JT
CT:JL