HC-KAR

NC: 2026:KHC:65296
WP No. 53553 of 2016

CNR: KAHC010122912016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF NOVEMBER, 2026

BEFORE

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

WRIT PETITION NO. 53553 OF 2016 (LR)

BETWEEN:

SMT. PHILOMINA DOMINGO
SINCE DECEASED BY LRS.

1. SMT.REGINA,
AGED ABOUT 57 YEARS,
W/O MR. R.M. FELIX,
PRESENTLY RESIDING AT NO.2344,
KAMALA NILAYAM,
3RD CROSS, KODANDARAMA REDDY LAYOUT,
RAMAMMURTHY NAGAR,
BENGALURU-560016.

...PETITIONER

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

(BY SRI. ABHINAV R., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY,
REVENUE DEPARTMENT,
M.S. BUILDING,
BENGALURU-560001.

2. THE LAND TRIBUNAL
BANGALORE NORTH TALUK,
BENGALURU-560064.
REPRESENTED BY ITS CHAIRMAN.

3. THE TAHSILDAR
BANGALORE NORTH TALUK,
BENGALURU – 560064.

4. GOPALAPPA
S/O LATE SRI MUNISWAMAPPA
SINCE DECEASED BY LRS.

R/AT AGRAHARA VILLAGE,
YELAHANKA HOBLI,
BANGALORE NORTH TALUK,
BENGALURU-560064.

4(a). MR. RAJU K.
S/O LATE GOPALAPPA @ PATEL GOPALAPPA
AGED ABOUT 56 YEARS
R/AT NO.26, AGRAHARA VILLAGE
JAKKUR POST
BENGALURU – 560 064.

4(b). MR. NAGARAJ A.G.
S/O LATE GOPALAPPA @ PATEL GOPALAPPA
AGED ABOUT 52 YEARS
R/AT NO.38, DR. RAJ YOUVAKARA ROAD
4TH CROSS, AGRAHARA WARD NO.5
BENGALURU – 560 064.

4(c). MR. CHANDRASHEKAR A.G.
S/O LATE GOPALAPPA @ PATEL GOPALAPPA

AGED ABOUT 50 YEARS
R/AT NO.37, DR. RAJ YOUVAKARA ROAD
4TH CROSS,
AGRAHARA WARD NO.5
BENGALURU – 560 064.

4(d). MS. ANASUYA
D/O LATE GOPALAPPA @ PATEL GOPALAPPA
AGED ABOUT 48 YEARS
R/AT NO.213, 4TH MAIN
5TH CROSS, AGRAHARA LAYOUT
BENGALURU – 560 064.

4(e). MR. LOKESH A.G.
S/O LATE GOPALAPPA @ PATEL GOPALAPPA
AGED ABOUT 46 YEARS
R/AT DR. RAJ YOUVAKARA ROAD
4TH CROSS,
AGRAHARA WARD NO.5
BENGALURU – 560 064.

5. SRI. CHANDRAPPA
S/O SRI. MASIYAPPA,
AGED ABOUT 60 YEARS,
R/AT NO.48, 3RD CROSS,
PURAJI LAYOUT,
ASHWATHNAGAR,
RMV II STAGE,
BENGALURU – 560092.

6. SRI. LOKESH
S/O SRI. GOPALAPPA,
AGED ABOUT 49 YEARS,
R/AT AGRAHARA VILLAGE,

YELAHANKA HOBLI,
BANGALORE NORTH TALUK,
BENGALURU – 560 064.

…RESPONDENTS

(BY SMT. SHARADA H.V., AGA FOR R1 TO R3;
SRI. D.R. RAVISHANKAR, SENIOR COUNSEL FOR
SRI. SHARATH S. GOWDA, ADVOCATE FOR R4 (b), (d) & (e), R5 AND R6;
SRI. R.S. RAVI, SENIOR COUNSEL FOR
SRI. M.V. NAVEEN REDDY, ADVOCATE FOR R4 (a), (c))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED ORDER AS PER ANNEXURE-F BEARING LRF NO.3037/76-77 DATED 21.05.2005 PASSED BY THE LAND TRIBUNAL, BENGALURU NORTH TALUK, BANGALORE AND REMIT THE FILE BACK TO THE LAND TRIBUNAL, BANGALORE NORTH TALUK FOR FRESH DISPOSAL OF THE CASE IN ACCORDANCE WITH LAW.

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

CNR: KAHC010122912016

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

CAV ORDER

1. In this petition, the petitioner is challenging the order dated 21.05.2005 (Annexure-F) passed by the respondent No.2-Land Tribunal in Case No.LRF.3037/1976-77, inter alia, sought for remitting the matter to the respondent No.2-Land Tribunal for fresh consideration.

2. The relevant facts for adjudication of this petition are that the petitioner-Regina D/o Smt. Theressa D'souza who was the sister of the original petitioner *viz.*, Smt. Philomina Domingo and being a legal heir of the said Philomina Domingo, the petitioner is challenging the impugned order passed by the respondent No.2-Land Tribunal. It is stated in the Writ Petition that the land bearing Survey No.70 of Agrahara Village, Yelahanka Hobli, Bengaluru North Taluk to an extent of 4 acre 39 guntas belonged to one F.X.Domingo (father of Philomina Domingo) having acquired the same on 19.01.1941 in the Public Auction. The said F.X.Domingo died on 13.04.1955.

After the death of the said F.X.Domingo, the subject land was in cultivation by his children.

3. It is also stated that the subject land was not tenanted and was personally cultivated by the Mrs.Philomina Domingo. It is further stated that the respondent No.4 claims to be the Patel of Agrahara Village, got his name entered as Tenant in column No.12 of the RTC from the year 1976-77 onwards. It is also stated that the respondent No.2 initiated the proceedings in Case No.LRF.3037/1976-77 based on the application in Form No.7 filed by the respondent No.4 as to register him as occupant of the land bearing Survey No.70 of Agrahara Village on the ground that the respondent No.4 was a tenant under late F.X.Domingo. It is the case of the petitioner that, the respondent No.2-Land Tribunal, without issuing notice to the petitioner, passed the order dated 12.03.1987(Annexure-A) and same was challenged before this Court in Writ Petition No.656/1993 and this Court, by order dated 04.03.1997(Annexure-B), set-aside the order of the respondent No.2 and remitted the matter to the respondent No.2-Land Tribunal. Thereafter, the Land Tribunal by order dated

03.12.2001 (Annexure-C), conferred occupancy right of the land in question in favour of respondent No.4. The aforementioned order was questioned before this Court in W.P.No.549/2002 and further, Mrs. Philomina Domingo, filed W.P.No.37808/2002 and this Court by order dated 18.02.2003 (Annexure-D) set aside the order of the Land Tribunal and remanded the matter to the Tribunal for fresh consideration. Thereafter, the Land Tribunal, by order dated 21.05.2005(Annexure-F), conferred occupancy right in favour of respondent No.4. It is the case of the petitioner that, the impugned order dated 21.05.2005 (Annexure-F) passed by the Land Tribunal suffers from infirmity and therefore, presented this Writ Petition.

4. Heard Sri. Abhinav R., learned counsel appearing for the petitioner, Smt. Sharada H.V., learned Additional Government Advocate appearing for respondent Nos.1 to 3, Sri. D.R. Ravishankar, learned Senior Counsel appearing on behalf of Sri. Sharath S. Gowda, learned counsel for respondent Nos.4(b,d,e) and respondent Nos.5 and 6 and Sri. R.S. Ravi, learned Senior

Counsel appearing on behalf of Sri. M.V. Naveen Reddy, learned counsel for respondent No.4(a & c).

5. Sri. Abhinav R., learned counsel appearing for the petitioner, invited the attention of the Court to the order dated 21.05.2005 (Annexure-F) and argued that, all the Members of the Land Tribunal have not signed the impugned order of the Land Tribunal at Annexure-F and therefore, places reliance on the Judgment of this Court in the case of VIJAYA BANK BY ITS CHIEF MANAGER Vs. THE SECRETARY TO THE GOVERNMENT OF KARNATAKA, REVENUE DEPARTMENT AND OTHERS reported in ILR 2008 KAR 1481 and in W.A.No.100221/2023 disposed of on 29.07.2026 and contended that, as the impugned order of the Land Tribunal is not signed by all the Members of the Land Tribunal who have heard the matter, and therefore, the impugned order is nullity in law.

6. It is further contended by the learned counsel appearing for the petitioner, that the land bearing Sy.No.56 of Agrahara Village is a service-Inam land and Sy.No.70 is not a tenanted land and as such, there is no finding recorded by the Land Tribunal on this aspect and therefore, sought for interference of

this Court. It is further argued that, the respondent No.4 has filed Form No.7 on 30.11.1976 beyond the cut-off date and therefore, sought for interference of this Court. It is also argued that spot inspection was not conducted by the Land Tribunal and accordingly, sought for interference of this Court. It is also argued that, the respondent No.4 has sold the land in question which is in contravention of law and therefore, sought for interference of this Court.

7. Per contra, Sri. D.R. Ravishankar, learned Senior Counsel appearing for respondent Nos.4 (b),(d),(e) and 5 & 6, argued that the petitioner has no locus standi to file the Writ Petition on the sole ground that one Margaret Domingo, claims to be the legal representative of Mrs. Philomina Domingo has filed W.P.No.18052/2005 against the order dated 21.05.2005 which is challenged in the present Writ Petition and thereafter, she has withdrawn the said Writ Petition and therefore, submitted that the Writ Petition is barred by res judicata as no leave to file fresh petition was granted by this Court. In this regard, learned Senior Counsel referred to the Judgment of the Hon'ble Supreme Court in the case of SARGUJA TRANSPORT SERVICE

Vs. STATE TRANSPORT APPELLATE TRIBUNAL, M.P., GWALIOR, AND OTHERS reported in (1987) 1 SCC 5 and argued that the Writ Petition itself is not maintainable before this Court. It is further argued by Sri.D.R. Ravishankar, learned Senior Counsel, that, as the order dated 21.05.2005 has reached finality in the aforementioned order and therefore, the contentions raised by the petitioner cannot be accepted based on the Judgment of the Hon'ble Supreme Court in the case of A.V. PAPAYYA SASTRY AND OTHERS Vs. GOVT. OF A.P. AND OTHERS reported in (2007) 4 SCC 221. Sri. D.R. Ravishankar, learned Senior Counsel, argued that civil suits are pending consideration as to the legal heirs of Smt. Philomina Domingo and therefore, sought for dismissal of the Writ Petition. It is finally argued that, as third party rights have been created in respect of the subject land, and in view of the fact that the applicant-tenant has sold the land in question as per the registered Sale Deed dated 12.04.2010 and therefore, sought for dismissal of the Writ Petition.

8. Sri. R.S. Ravi, learned Senior Counsel appearing on behalf of respondent Nos.4(a) and 4(c), submitted that the

petitioner has falsely stated in the Writ Petition that the petitioner came to know about the filing of the Writ Petition in W.P.No.18052/2005 and the order dated 26.03.2010 only after the statement of objections filed by respondent No.5, however, the said statement is untrue as this Court, while disposing I.A.1/2017 and I.A.2/2017 on 17.04.2018, while bring the legal representatives of deceased respondent No.4 on record, has directed Registry to put up the records in W.P.No.18052/2005 and therefore, contended that, the petitioner has approached this Court having knowledge about the earlier proceedings in W.P.No.18052/2005, and therefore, sought for dismissal of the Writ Petition.

9. Learned Additional Government Advocate appearing for the respondent – State sought for dismissal of the Writ Petition.

10. Having taken note of the submissions made by the learned counsel appearing for the parties, though several grounds have been urged by the learned counsel appearing for the petitioner, it is relevant to mention here that the impugned order dated 21.05.2005 was challenged before this Court in W.P.No.18052/2005. I have perused the record in

W.P.No.18052/2005. This Court vide order dated 26.03.2010, at the instance of the petitioner therein, permitted the petitioner to withdraw the Writ Petition and the Memo for Withdrawal reads as under:

Memo for Withdrawal

The petitioner respectfully submits as under;

The petitioner seeks leave of this Hon'ble Court to withdraw the instant Writ Petition and this Hon'ble Court may be pleased to permit the petitioner to withdraw the same and dismiss the said petition as withdrawn in the interest of justice and equity.

BENGALURU
Date: 25.03.2010

Petitioner
(MargaretDomingo)

Advocate for the petitioner:

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11. On careful consideration of the order sheet of this Court in the above Writ Petition, the petitioner – Philomina Domingo challenged the very same impugned order passed by the Land Tribunal and after the death of said Smt.Philomina Domingo,

one Mrs.Margaret Domingo, represented as a legal representative as per the order of this Court on 03.03.2008. In that view of the matter, as the petitioner herein – Smt. Regina, wife of R.M.Felix claims to be the daughter of Smt. Theresa D'souza who was the sister of Mrs. Philomina Domingo has no legal right to challenge the very same order, as this Court has not granted leave to challenge the order while passing the order on 26.03.2010 in W.P.No.18052/2005. It is relevant to extract para 6 to 9 in the case of SARGUJA TRANSPORT SERVICE (supra) which reads as under:

> 6. It may be noted that while in sub-rule (1) of the former rule 1 of Order XXIII of the Code the words 'withdraw his suit' had been used, in sub-rule (1) of the new rule 1 of Order XXIII of the Code, the words 'abandon his suit' are used. The new sub-rule (1) is applicable to a case where the Court does not accord permission to withdraw from a suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. In the new sub-rule (3) which corresponds to the former sub-rule (2) practically no change is made and under that sub-rule the Court is empowered to grant subject to the conditions mentioned therein permission to withdraw from a suit with liberty to institute a fresh suit in respect of the

subject-matter of such suit. Sub-rule (4) of the new rule 1 of Order XXIII of the Code provides that where the plaintiff abandons any suit or part of claim under sub-rule (1) or withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he would be liable for such costs as the Court might award and would also be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.

7. The Code as it now stands thus makes a distinction between 'abandonment' of a suit and 'withdrawal' from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in subrule (3) of rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit. Invito benificium non datur. The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will loose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the

Court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of rule 1 of Order XXIII. The principle underlying the above rule is rounded on public policy, but it is not the same as the rule of res judicata contained in section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudication of a suit. or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the Court.

8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very often after a writ petition is heard for some time

when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in Daryao and Ors. v. The State of U.P. and Ors., [1962] 2 S.C.R. 575 in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in Daryao's case (supra) is to be found at page 593 and it is as follows:

> "If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Art. 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has

been argued as a preliminary issue in these writ petitions and no other."

9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdraw- al does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was fight in holding that a fresh writ petition was not maintainable before it in

respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however. make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental fight guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We however leave this question open."

12. Following the declaration of law made by the Hon'ble Supreme Court, I am of the view that the present writ petition is not maintainable and barred by res judicata. That apart, it is pertinent to mention here that the original tenant – respondent No.4, after the order of the Land Tribunal has sold the land in question in favour of one Chandrappa as per the registered Sale Deed dated 12.04.2010 and also one acre of land as per registered Sale Deed dated 25.01.1993 in favour of one Radhamma and subsequently, two more registered instruments namely, registered Sale Deed dated 15.12.2010 and the Gift Deed dated 12.04.2010 and therefore, as third party rights have been created in respect of the subject land way back in

2010 and therefore, interfering with the impugned order at this juncture does not arise and the Writ Petition deserves to be dismissed. At this juncture, it is relevant to cite the Judgment of the Hon'ble Supreme Court in the case of STATE OF MADHYA PRADESH AND OTHERS Vs. NANDLAL JAISWAL AND OTHERS reported in (1986) 4 SCC 566, wherein, para 24 reads as under:

> " 24. Now, it is well settled that the power of the High Court to issue an appropriate writ under article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is excercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ

jurisdiction of the High Court is invoked, unexplained delay coupled With the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions or this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decision of this Court one in Ramana Dayaram Shetty v. International Airport Authority of India [1979] 3 SCC 489 and the other in Ashok Kumar Mishra v. Collector, [1980] 1 SCC 180. We may point out that in R.D. Shetty's case (supra), even though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs.1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar of course, this rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where

> the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex-hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."
>
> (underlined by me)

13. It is also pertinent to mention here that, Hon'ble Supreme Court in the case of MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION Vs. K.S. GANDHI AND OTHERS reported in (1991) 2 SCC 716, wherein it is held that if the conclusion arrived at by the quasi judicial authority is supported by evidence, no interference is called for in respect of the impugned order. It is also argued at Bar that two civil suits are pending consideration in respect of the subject land as to ascertainment of legal heirs of the deceased Philomina Domingo and therefore, I am of the view that in view of the declaration of law made by the Hon'ble Supreme Court in the case of A.V. PAPAYYA SASTRY(SUPRA), the arguments advanced by the learned counsel appearing for the petitioner

cannot be accepted and therefore, the submission made by the learned counsel appearing for the petitioner that there is infirmity in the order of the Land Tribunal cannot be accepted.

14. In the result, the Writ Petition is accordingly, dismissed.

SD/-
(E.S.INDIRESH)
JUDGE

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List No.: 1 Sl No.: 64