IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

WRIT APPEAL NO.755 OF 2022 (KLR-RES)

BETWEEN:

SRI SANTHOSH THAZHATHU
S/O DR. MATHEW THAZHATHU
AGED ABOUT 51 YEARS
R/A VILLA NO.9, CHAITHANYA RAKUEN
SWAMI VIVEKANANDA ROAD
NEAR HOPE FARM JUNCTION
WHITEFIELD, BENGALURU-560066

...APPELLANT

Digitally signed by PAVITHRA N
Location: High Court of Karnataka

(BY SRI. SWAROOP S., ADV. FOR
SRI. SUDHINDRA MURTHY V., ADV.)

AND:

1. STATE OF KARNATAKA
   REP. BY PRINCIPAL SECRETARY
   DEPARTMENT OF REVENUE
   VIKASA SOUDHA
   BENGALURU-560 001

2. THE COMMISSIONER
   DEPARTMENT OF SURVEY
   SETTLEMENT AND LAND RECORDS
   K R CIRCLE
   BENGALURU-560 001

3. THE REGIONAL COMMISSIONER
BENGALURU DIVISION
2ND FLOOR, BMTC BUILDING
K H ROAD
SHANTI NAGAR, BENGALURU
KARNATAKA -560 027

4. THE ASST. DIRECTOR OF LAND RECORDS
BENGALURU EAST TALUK
K R PURAM, BENGALURU-560 036

5. THE TAHSILDAR
BENGALURU EAST TALUK
K R PURAM, BENGALURU-560 036

6. SURVEY SUPERVISOR
O/O. THE ASSISTANT DIRECTOR OF LAND RECORDS
BENGALURU EAST TALUK
K R PURAM, BENGALURU-560 036

7. SURVEYOR
O/O. THE ASSISTANT DIRECTOR OF LAND RECORDS
BENGALURU EAST TALUK
K R PURAM, BENGALURU-560 036

8. TECHNICAL ASSISTANT TO
DEPUTY COMMISSIONER AND EX OFFICIO
DEPUTY DIRECTOR OF LAND RECORDS
(DDLR), O/O. THE DEPUTY COMMISSIONER
BENGALURU URBAN DISTRICT
KANDAYA BHAVAN
K G ROAD, BENGALURU-560 001

9. CONGREGATION OF THE SONS OF THE IMMACULATE
HEART OF MARY
(CLARETIAN FATHERS)
CLARET BHAVAN, CARMELARAM POST
BENGALURU-560 035

REP. BY ITS AUTHORISED SIGNATORY
REV. FR. VINSENT KIRAN

10. REV. FATHER KURIAKOSE THEKILAKKATTIL
AGED ABOUT 77 YEARS
S/O LATE SRI V T KURIAKOSE
R/A THEKILAKKATTIL HOUSE
CLARET BHAVAN
KURAVILANGAD, KOTTYAM DIST.
KURAVILANGADU, KERALA-686 633

11. DAUGHTERS OF DIVINE PROVIDENCE
SARJAPUR ROAD, CARMELARAM POST
BENGALURU-560 035
REP. BY SR. MARY THUMBALAN
AGED ABOUT 55 YEARS
D/O SOURIAR

12. SRI K V PRASAD
S/O VENKATESHULU
AGED ABOUT 50 YEARS
NO.128, I BLOCK, RAILWAY PARALLEL ROAD
KUMARA PARK WEST

13. SMT. ANJANAMMA N
W/O LATE SUBBAPPA
MAJOR IN AGE
R/A NO.70/2, AGRA VILLAGE
NEAR YELLAMMA TEMPLE STREET
SARJAPUR ROAD, DODDAKANNAHALLI
CARMELARAM POST, BENGALURU-560 035

14. AVI THOMAS VERGHESE
S/O LATE MAJOR THOMAS VARGHESE
R/A OPP. TO DECATHLON
SARJAPUR ROAD, DODDAKANNAHALLI
CARMELARAM POST
BENGALURU-560 035

15. SRI PAUL MATHEWS
S/O UNKNOWN
AGED ABOUT 49 YEARS
L134, 4TH MAIN, HSR LAYOUT
6TH SECTOR, BENGALURU-560 102

16. SRI BORIS MATHEWS
S/O UNKNOWN
AGED ABOUT 47 YEARS
L134, 4TH MAIN, HSR LAYOUT
6TH SECTOR, BENGALURU-560 102

17. SRI PRABHAKAR REDDY
MAJOR IN AGE
S/O UNKNOWN
R/A OPP. TO DECATHLON
SARJAPUR ROAD, DODDAKANNAHALLI
CARMELARAM POST, BENGALURU-560 035

18. SRI SRINIVASA REDDY
MAJOR IN AGE
S/O UNKNOWN
R/A OPP. TO DECATHLON
SARJAPUR ROAD, DODDAKANNAHALLI
CARMELARAM POST, BENGALURU-560 035

…RESPONDENTS

(BY SRI. VIKAS ROJIPURA, AGA FOR R1 TO R8;
SRI. A. RAVISHANKAR, ADV. FOR C/R9 TO R10;
SRI. MANJUNATH S., ADV. FOR R11;
SMT. SOBHA BHAVIKATTI, ADV. FOR R15 TO R16;
SRI. P.N.NANJA REDDY, ADV. FOR R17 & R18)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 11.07.2022 PASSED BY THE LEARNED SINGLE JUDGE IN WP No.9353/2022 AND ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 01.09.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

The writ appeal is filed challenging an Order dated 11.07.2022 passed by the learned Single Judge in W.P.No.11901/2016 (KLR-RES) connected with W.P.No.9353/2016 (KLR-RES).

2. We have heard Shri. Swaroop S learned counsel appearing for Shri. Sudhindra Murthy V learned counsel appearing for the appeallant, Shri. Vikas Rojipura learned Additional Government Advocate appering for respondents No.1 to 8, Shri. Ravishankar learned counsel appearing for caveator respondent No.9 and 10, Shri. Manjunath learned counsel appearing for respondent No.11, Smt. Sobha Bhavikatti learned counsel appearing for respondents No.15

and 16 and Shri. P. N Nanja Reddy learned counsel appearing for respondent No.17 and 18.

3. The learned counsel appearing for the appellant submits that the subject matter of these proceedings is land bearing Sy.No.49 consisting of Block I, II, and III situated in Mullur Village, Varthur Hobli, Bengaluru East Taluk, measuring in all 12 acres 5 guntas. Sy.No.49 is stated to have been purchased in a court auction held in the year 1945 by one Shri Nagesh Rao, and by successive registered Sale Deeds dated 12.11.1962 and 21.05.1977, the entire extent came to be held by respondent No.9 - the Claretian Fathers/Congregation, acting through its procurator, respondent No.10.

4. Conversion of the land for commercial purposes was accorded by the competent authority on 04.05.1982 in respect of Sy.No.49/I and on 08.06.1982 in respect of Sy.No.49/II and III. The appellant entered into two agreements of sale dated 04.01.2016 for purchasing 4 acres out of Sy.No.49 from respondents No.9 and 10. A portion of Block III of Sy.No.49 measuring 3 acres was sold by

respondent No.9 to respondent No.1 by a registered Sale Deed dated 03.01.2001. The sale agreement imposed an obligation on the vendors to secure phodi and the connected revenue records before the sale could be concluded. Pursuant thereto, phodi proceedings were undertaken and by order dated 16.09.2019, Block-I of Sy.No.49 (Sy.No.49/7), measuring 4 acres 2 guntas, was assigned a new Sy.No.114, upon which a fresh akharband and RTC came to be drawn up. It was thereafter that the appellant, by registered sale deed dated 04.12.2019, purchased Sy.No.114 for a consideration of Rs.15,85,75,000/-.

5. It is further submitted that within five days of the sale, on 09.12.2019, two persons professing to be members associated with respondents No.9 made a representation to the Regional Commissioner questioning the genuineness of the grant and the phodi. By order dated 10.12.2019, respondent No.3 directed the Deputy Commissioner to hold an enquiry, and that direction was challenged before this Court in W.P.No.52508/2019, which was permitted to be withdrawn on 19.12.2019 and the learned Single Judge

clarified that the direction did not affect the appellant's rights. The enquiry so directed is stated to be still pending. During the same period, the appellant's request for issuance of e-khatha before the Kodathi Grama Panchayat was refused by an endorsement and the refusal was challenged in W.P.No.7474/2020 and on appeal in W.A.No.372/2020, in which a Division Bench of this Court, by order dated 27.07.2020, directed that an enquiry be conducted and upon the appellant being found to be the transferee, the khatha be registered in his name. It is submitted that E-khatha has since been issued and property tax is being paid to the local authority.

6. It is further submitted that on 16.07.2021 nearly twenty-two months after the phodi order, respondents No.9 and 10, preferred a revision under Section 56 of the Karnataka Land Revenue Act, 1964, assailing the order dated 16.09.2019, that is, the phodi Order. The revision proceeded on the contention that the vendors had never subscribed to the phodi proceedings, which had been secured by the appellant based on a power of attorney. By

order dated 16.04.2022, respondent No.2 - Commissioner, Department of Survey, Settlement and Land Records, set aside the phodi order dated 16.09.2019. Aggrieved by the Order of the Commissioner, the same was challenged by the appellant in W.P.No.9353/2022, in which an interim order of stay came to be granted on 10.05.2022. The learned Single Judge, having heard the writ petition along with W.P.No.11901/2016 filed by respondents No.9 and 10 seeking conduct of the phodi, dismissed W.P.No.9353/2022 by the impugned order dated 11.07.2022 and disposed of W.P.No.11901/2016 as not surviving for consideration in so far as Sy.No.49 was concerned.

7. The learned Single Judge held that respondent No.2 - Commissioner was justified in setting aside the phodi of 16.09.2019 because respondents No.9 and 10 had *locus* to challenge the phodi even after selling a portion, since land was not intended to be sold could have been included in the durasthi and the seller was therefore, entitled to be notified and the revision was within limitation, as the phodi order had not been communicated in the manner required

by the proviso to Section 36(1) of the Karnataka Land Revenue Act, 1964, and the vendors came to know of it only on receipt of the Haddubast notice dated 08.06.2021, having filed the revision on 16.07.2021.

8. It was further held that the challenge to the phodi did not amount to resiling from the sale deed as the vendors had expressly admitted the sale deed and had confined their grievance to the manner of the durasthi was conducted and since the vendors did not plead that the sale deed failed to reflect the true intention of the parties, Section 26 of the Specific Relief Act had no application, and they were not required to be relegated to a civil suit. The Commissioner having also found that Government land was included in Sy.No.114 and neighbours including respondent No.11 were not notified, the direction for a fresh durasthi in accordance with law was upheld. Aggrieved by the order dated 11.07.2022, and consequentially by the order of the respondent No.2 dated 16.04.2022 that stood reaffirmed, the appellant is in appeal.

9. The learned counsel appearing for the appellant contends that respondents No.9 and 10, being the vendors under the registered sale deed dated 04.12.2019, do not have the *locus standi* to assail the phodi order dated 16.09.2019. Having received a consideration of Rs.15,85,75,000/-, delivered possession, and secured the phodi and the new survey number as a condition precedent to the sale, the vendors cannot be permitted to challenge the very phodi they were bound to procure. It is contended that one who accepts the benefit under an instrument cannot selectively challenge its correctness. Further, it is contended that any error occasioned by mutual mistake or fraud can be redressed only in a proceeding brought for that purpose, and not through revision under the Karnataka Land Revenue Act. The learned Single Judge having himself observed that the sale deed is not under challenge and that any grievance touching fraud lies before the civil court has proceeded upon findings that are mutually inconsistent, since the phodi and the assignment of Sy.No. 114 form part of the contents of that sale deed.

10. On the question of limitation, it is further contended that Section 56(3) of the Karnataka Land Revenue Act prescribes four months from "the date of such order" and confers no explicit power to condone delay. Even assuming the Limitation Act, 1963 is attracted, the burden of explaining the delay arises upon expiry of the four months. It is contended that the phodi order was passed at the instance of respondent No.10 himself on an application dated 30.08.2019, the sale deed dated 04.12.2019 refers to Sy.No.114 with its boundaries and the representation dated 09.12.2019 admitted that the persons who moved the Regional Commissioner were "competent persons associated with respondent No.9" which establishes knowledge of the phodi in December 2019 itself. Notwithstanding this, the revision was preferred only on 16.07.2021, unaccompanied by any application for condonation of delay. Reliance is placed on ***Durgappa v. Deputy Commissioner and Others*** passed in ***W.P.No.36228/2011,*** by Order ***dated 09.04.2012*** to contend that revisional jurisdiction under Section 56 of the Karnataka Land Revenue Act cannot be

assumed unless the delay is first condoned. Respondent No.9's plea of knowledge only upon service of the haddubasth notice dated 24.06.2021, in any event relates to a date nearly eighteen months after the order and does not save the revision. The learned Single Judge's reliance on Section 36 of the Karnataka Land Revenue Act is misconceived, since the drawing up of a phodi in the absence of objection is not a quasi-judicial exercise falling within Sections 34 and 35 of the Karnataka Land Revenue Act.

11. It is further contended that the order of respondent No.2 - Commissioner dated 16.04.2022 rests upon the report of the Regional Commissioner dated 10.12.2019, which had directed the Deputy Commissioner to hold an enquiry, a direction which this Court had observed while permitting the withdrawal of W.P.No.52508/2019 on 19.12.2019, stating that it does not affect the rights of the appellant. It is contended that the learned Single Judge treated these observations as finding on the merits, which is unsustainable. It is further contended that respondent No.2

has not, by the order dated 16.04.2022, directed a fresh phodi at all, but has merely required that any future phodi be undertaken in accordance with the departmental circulars. To that extent, the observation of the learned Single Judge that a direction by a revisional authority for a fresh durasthi cannot be faulted is unsustainable, since the impugned order contains no such direction.

12. The learned counsel appearing for respondents No.9 and 10 contends that the order of respondent No.2 - Commissioner dated 16.04.2022 enumerates multiple infirmities that vitiate the phodi of 16.09.2019 including the RTC of Sy.No.49 not tallying with the extent shown in the Akarbandh, the violation of Government Circulars dated 21.08.2008, 23.06.2012 and 20.06.2016, the carving out of Sy.No.114 in disregard of the mandate to refer the matter to the District Level Missing File Rebuild Committee, the taking in of the lands of adjoining owners and of a portion of the road formed by the BBMP, the absence of any notice to the neighbouring landowners as required by Section 39 of the Karnataka Land Revenue Act, and the circumstance that the

very phodi had earlier been declined by the respondent No.5 by endorsement dated 04.05.2015. Further, the earlier endorsement, together with the report of the Joint Director of Land Records dated 24.12.2019 which records "cut and paste, manipulation, insertions, omissions and commissions" by revenue officials, and the further report dated 04.09.2021 of the Deputy Director of Land Records, Tumkur and the Assistant Director of Land Records, Pandavapura disclose fraud that vitiates the phodi. It is also contended that the Assistant Commissioner has filed a criminal complaint in this regard, against the erring revenue officials in which investigation is stated to be pending.

13. It is further contended that the assertion in the sale deed dated 04.12.2019 that the schedule property stood converted for commercial purposes by an order dated 04.05.1982 is incorrect. It is contended that neither respondent No.9 nor any authorised representative of respondent No.9 had at any point applied for conversion in 1982. It is further contended that the property continued in its agricultural state is borne out by entries in the revenue

records in the name of the respondent No.9, the order of the Karnataka Appellate Tribunal dated 20.02.2006 which had in setting aside the resumption ordered by the Assistant Commissioner, expressly proceeded upon the footing that the land was agricultural, the two registered agreements of sale dated 04.01.2016, which describe the schedule property as agricultural and casts on the appellant the obligation to pay the balance sale consideration only after "phodi" and "conversion of the schedule property from agricultural purpose to non-agricultural purpose" and the general power of attorney executed in favour of the appellant on 31.05.2016, being subsequent to the agreements of sale, likewise authorises him to secure the alienation order and the phodi, and describes the property as agricultural. It is contended that the appellant, cannot rest his purchase upon a conversion said to have taken place in 1982 and take on the burden of securing that very conversion in 2016.

14. It is further contended that the challenge in the instant case is confined to the correctness of the phodi and to the consequential revenue-record entries, both of which

lie within the exclusive domain of the revenue authority under the Karnataka Land Revenue Act. It is contended that to challenge an illegal phodi is not to annul the sale deed. On the question of limitation, it is contended that the revision was preferred well within time and that, in any event, the reliance placed by the appellant on ***Durgappa v. Deputy Commissioner***'s case (supra) is misconceived, the phodi in that case were challenged after a lapse of thirty years. Respondent No.9 gained the knowledge of the phodi only upon service of the haddubasth notice dated 24.06.2021.

15. It is further contended that the observations of the Regional Commissioner in the order dated 10.12.2019 have not been set aside by any Court. This Court, in permitting the withdrawal of W.P.No.52508/2019 on 19.12.2019, recorded that the direction for the enquiry did not affect the rights of the appellant, and the enquiry so directed continues to be pending before the Deputy Commissioner. Therefore, it is prayed that the appeal be dismissed. The learned counsel appearing for respondents

No.9 and 10 places reliance on the case of this Court in the ***Special Tahasildar and Others v. Sri. Krishnadevaraya Educational Trust and Others*** by Order ***dated 19.08.2026*** passed in ***W.A.No.442/2025 (KLR-RES).***

16. The learned counsel appearing for respondent No.11 contends that respondent No.11 is a charitable society running "Providence Home," a home for aged and infirm senior citizens, on 3 acres of land purchased under registered sale deed dated 03.01.2001 from respondent No.9 in the revision. It is contended that respondent No.11 came to learn of the phodi only in the early part of 2021, when persons claiming to be agents of the appellant approached it with a demand that it part with a portion of its property. On obtaining certified copies of the phodi record on 21.06.2021, respondent No.11 discovered that Sy.No.49/I had been independently phodified and assigned the new Sy.No.114 without any notice to respondent No.22, and that the mahazar did not bear its signature though it was an adjoining owner.

17. Thereafter, when the haddubast notice dated 10.04.2021 was received, respondent No.11 submitted its objections on 27.04.2021 and, upon the haddubast having been proceeded with, respondent No.11 filed the Statement of Objections dated 16.08.2021 in the revision, praying that the phodi of 16.09.2019 and the consequential haddubast be struck down and that the appellant be restrained from acting upon them.

18. On the merits of the phodi, it is contended phodi ought to have been conducted for the whole of Sy.No 49 and not piecemeal for Sy.No.49/I alone, particularly when W.P.Nos.11901/2016 and 12499/2016, filed by respondent No.11 along with the Congregation seeking phodi of Sy.Nos.49 and 50, were then pending before this Court. It is further contended that the phodi has taken in an extent of about 15 guntas from within respondent No.11's own 3-acre property, of which it has been in settled possession for over twenty years and which stands enclosed by a compound wall. The applications for the phodi, though ostensibly made in the name of respondent No.10, have in fact been made by

the appellant himself, as appears from the appellant's own statement in the haddubast proceedings. Further, respondent No.11's earlier complaint to the Regional Commissioner dated 06.12.2019 has resulted in disciplinary proceedings against the concerned revenue officials and in their suspension, and, further, in the Deputy Commissioner registering a suo motu complaint under Section 136 of the Karnataka Land Revenue Act both of which are stated to be pending.

19. Having heard the learned counsel appearing on all sides and having considered the contentions advanced, we notice that the Sale Deed dated 14.12.2019 specifically conveys an extent of 4 acres and 2 guntas of undeveloped land in Survey No.49/2 of Mullur Village, Varthur Hobli, Bengaluru East Taluk. The description of the property in the schedule, is as follows:

- ***East by:*** *Land bearing Sy No. 111 (old No. 48) and Sy No. 92;*
- ***West by:*** *Doddakannelli Village Border & Sy.No 49*
- ***North by:*** *Lands in Sy. No. 49; and*
- ***South by:*** *Lands in Sy No 49 and Sy.No 113 (old Sy No 49/6)*

Therefore, the contention that the land stood converted by an order dated 04.05.1982 appears to be unsupported. The complaint raised by the private respondents is apparently to the phodi and durasthi conducted without reference to the other holders of land in Sy.No.49/I. The conduct of the phodi and durasthi is a matter which falls completely within the jurisdiction of the Revenue Department and does not involve any civil dispute as contended by the appellant. It was on the specific finding that the persons who were affected by the phodi, that is, the other holders of the land in the same unified Survey Number, had not been notified before conducting the phodi. It was also found that in the erroneous conduct of the phodi, certain Government lands were also sought to be included in the new Sy.No.114. The learned Single Judge had considered the contentions and found that all that has been done in the impugned order was to direct a fresh durasthi to be done, after taking into consideration the claims of all other landowners as well as the Government.

20. It was also found that the controversy before the Commissioner was confined to the phodi and the durasthi. The order of the Commissioner states the facts of the matter and the contentions raised by all parties in considerable detail. However, it is clear from the operative portion of the order that what was considered was only the question whether the phodi and durasthi was properly conducted. The learned single judge has also considered the contents of the order and has found that the execution of the sale deed in respect of 4 acres 2 guntas in Survey No.49 is not the dispute which was considered by the Commissioner. The controversy before the Commissioner was confined to the durasthi that was conducted and the assignment of a new survey number to a portion of Survey No.49. The Commissioner specifically found that the phodi and durasthi were not proper and that there was a further contention that a portion of Government land had also been wrongly included in the newly formed Survey No.114. It was in the said circumstances that the Commissioner had come to the conclusion that a fresh durasthi had to be conducted. The

learned Single Judge after considering these aspects found that the order of the Commissioner was perfectly legal and valid and required no interference.

21. Having considered the order of the Commissioner which was under challenge before the learned Single Judge as well as the judgment under appeal, we are of the opinion that there is no error in the exercise of jurisdiction by the learned Single Judge. No grounds have been raised in the appeal to interfere with the findings of the learned Single Judge.

22. In the result:-

(i) The appeal is ***dismissed.***

(ii) The directions issued by the learned Single Judge shall be complied with without further delay at any rate, within three months from the date of receipt of copy of this judgment.

All pending Interlocutory Applications shall stand *disposed of.*

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(T.P.VIVEKANANDA)
JUDGE

CP*/PN