

(1985) 09 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 4474 of 1978

Balasaheb Venkatesh Khasbagh alias Kulkarni

APPELLANT

Vs

Land Tribunal

RESPONDENT

Date of Decision : 24-09-1985

Acts Referred:

Constitution of India, 1950 — Article 249, 250, 252

Karnataka Land Reforms Act, 1961 — Section 133, 48, 48 A, 5, 68

Citation : (1985) ILR (Kar) 3898 : (1985) 2 KarLJ 569

Hon'ble Judges : Murlidher Rao, J

Bench : Single Bench

Advocate : G.D. Shirgurkar and Ujjannavar, B.J. Somayaji, HCGP for R 1 and R 2, for the Appellant; N.A. Mandagi, for R 3, 4(a) and 5, for the Respondent

Final Decision : Dismissed

Judgement

Murlidher Rao, J.—In this Writ Petition, the petitioner has challenged the order of the Land Tribunal, Belgaum, dated 10-6-1976, by which occupancy rights have been granted in favour of Yellappa Tippanna Ramannavar in Survey No. 48 of Khasbag village and in favour of Mallikarjuna Balappa Ramannavar in Survey No. 16 of Khasbag village, Belgaum Taluk. Respondent-3 filed Form No. 7 for grant of occupancy rights in Survey No. 48 of Khasbag village and respondent-5 filed Form No. 7 in respect of Survey No. 16 of Khasbag village. There have been some litigations in the past between the owners of the lands and the present Respondents 3 and 4. One of those proceedings, pertaining to resumption of land u/s 14 of the Karnataka Land Reforms Act, (hereinafter referred to as "the KLR Act"), was initiated by Lakshmi Bai, mother of the petitioner.

2. It is the case of the petitioner that in a family partition dated 30-1-1961, these two lands have fallen to his share and, therefore, he has become the owner of these lands and, as such, he is entitled to challenge the order of the Land Tribunal.

3. Before the Land Tribunal, the tenants impleaded Lakshmi Bai, the mother of

the petitioner, as the respondent. The petitioner filed an application and got himself impleaded as a respondent before the Land Tribunal and filed objections, a copy of which is produced at Annexure "E". In the objection statement filed before the Land Tribunal, the petitioner, inter alia, contended that he has been serving in the Military and, hence, the lands in question cannot be given to the tenants. He also contended that in view of the Urban Land (Ceiling and Regulation) Act, 1976, (herein after referred to as "the Urban Land Ceiling Act"), the proceedings before the Land Tribunal for grant of occupancy rights were not maintainable. This contention was raised since the lands were sought to be included under the Urban Land Ceiling Act, though on 25-11-1975, the date of filing of the objection statement, the Urban Land Ceiling Act had not been promulgated. The fact that Respondents 3 to 5 are the tenants is not in dispute.

4. Secondly, on 22-4-1976, additional objection statement was filed by the petitioner stating that the entire Survey No. 48 of Khasbag village is covered by the provisions of the Urban Land Ceiling Act and is earmarked under the Master Plan. The copy of the additional objection statement is produced at Annexure "F".

5. Before the Land Tribunal, respondents 3 and 5 produced the copies of the orders passed by the Third Additional Munsiff, Belgaum, the Records of Rights, the copies of the depositions and a few other documents. Since the status of Respondents 3 to 5 as tenants was not in dispute, the Land Tribunal, considering the material, has held that they were the protected tenants of the lands in question and, therefore, they were entitled to the grant of occupancy rights. It is the correctness of this order that is challenged in this Writ Petition. On behalf of respondent-3, statement of objections has been filed.

6. In this Court, the petitioner confined his Writ Petition to only one ground, namely, that in view of the coming into force of the Urban Land Ceiling Act, the order of the Land Tribunal granting occupancy rights was without jurisdiction. Though, in the objection statement filed before the Land Tribunal, the petitioner had stated that he was in Military service, no such plea is taken in the Writ Petition.

7. In view of the contentions, urged in the pleading in this Court, the questions that arise for consideration in this Writ Petition are :

(1) Whether the KLR Act in its entirety becomes inoperative in the areas covered by Urban Land Ceiling Act ?

(2) Whether the Land Tribunal functioning under the KLR Act had jurisdiction to grant occupancy rights in respect of agricultural lands which, for the purpose of ceiling under the Urban Land Ceiling Act, became part of urban agglomerations and was treated as an urban land or vacant land under the Urban Land Ceiling Act ?

8. Though these are the main points on which arguments were concentrated, nevertheless, Mr. G. D. Shirgurkar, appearing for the petitioner, maintained that

the petitioner was a soldier and, therefore, the Land Tribunal had no jurisdiction to grant occupancy rights. His contention was that this aspect has not been considered by the Land Tribunal and, therefore, the impugned order is liable to be set aside on that ground.

9. Mr. N.A. Mandagi, appearing for respondents 3, 4(a) & 5, raised a preliminary objection regarding the maintainability of the Writ Petition. He contended that the petitioner had no locus stand to maintain this petition as, according to him, the lands in question belonged to Lakshmi Bai, the mother of the petitioner, and, therefore, the petitioner was not the owner of the properties and, as such, he could not have filed this Writ Petition.

10. Before going to the points in controversy in this Writ Petition, it would be proper to dispose of this preliminary point. It cannot be disputed that the petitioner got himself impleaded in the proceedings before the Land Tribunal and had filed his objections. His case is that these lands have been allotted to his share in a registered partition in the year 1961 and that he has an interest in these lands. The fact that the previous litigations between the parties were conducted by Lakshmi Bai, the mother of the petitioner does not preclude the petitioner from maintaining this Writ Petition. It appears to me that the petitioner has a vital interest in these proceedings and he is entitled to maintain this Writ Petition.

11. The important question that arises for consideration is the one relating to the applicability of the KLR Act and the jurisdiction of the Land Tribunal to deal with the matter after the coming into force of the Urban Land Ceiling Act.

12. The KLR Act was first framed in 1961 and subsequently it has been amended several times. The validity of the KLR Act has been upheld by this Court in *Bhaskar Krishnaji Vs. The State of Karnataka and Others*, In *Khatija Bi -v.- State of Karnataka and Others* 1975 (2) KarLJ 157 the provisions of Section 48 & 48A of the KLR Act, as amended by Act No.1 of 1974, were held to be valid. It has to be mentioned that the grant of occupancy rights is traceable to Section 48 & Section 48A of the KLR Act.

13. The KLR Act has been included in the Ninth Schedule of the Constitution of India. The source of power for the Legislation is Entry 18 in List II of the Seventh Schedule to the Constitution of India. It reads thus :

"Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents ; transfer and alienation of agricultural land ; land improvement and agricultural loans ; colonization."

14. On 19-12-1972, the Karnataka Legislature passed a Resolution under Clause (1) of Article 252 of the Constitution of India. The Preamble and the Resolution read thus :

"Whereas imposition ceiling on urban immovable property and the acquisition of such property in excess of the ceiling limit with a view to utilising such excess for

public purposes is a matter of general importance and the problems relating thereto are common to all the States :

And whereas legislation for the purpose mentioned above is relatable to matters enumerated in Entry 18 of List 11 of the Seventh Schedule to the Constitution of India with respect to which Parliament has no power to make a law for the States except as provided in Articles 249 and 250 thereof ;

And whereas for the purpose of securing uniformity in legislation, it is desirable that such legislation should be undertaken by Parliament ;

Now, therefore, in pursuance of Clause (1) of Article 252 of the Constitution of India, this Assembly hereby resolves that the imposition of ceiling on urban immovable property and acquisition of such property in excess of the ceiling limit with a view to utilising such excess for public purposes and all other matters connected therewith or incidental thereto shall be regulated in this State by Parliament by Law."

15. Similar Resolutions were also passed by other State Legislatures. Therefore, on 28-1-1976, Bill No. 25 of 1976, pertaining to the Urban Land Ceiling Act was introduced in the Parliament. It received the assent of the President on 17-2-1976. The Preamble of the Urban Land Ceiling Act reads thus :

"An Act to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good."

16. The Resolution passed by the State Legislature makes it abundantly clear that though the topic of legislation was within the competence of the State Legislature, it had surrendered that power to the Parliament as provided in Article 252 of the Constitution of India. In other words, the State Legislature was denuded of that power, to make legislation in that respect. The surrender by the State Legislature is only to the limited extent of imposition of ceiling on certain lands in urban agglomerations and for the acquisition of the lands in excess of the ceiling limit. This being the object of the legislation, the various provisions of the legislation must be understood in the light of the Resolution passed by the State Legislature and the preamble of the Urban Land Ceiling Act.

17. The KLR Act, which came into force on 2-10-1965, is a comprehensive legislation providing for most of the topics covered by Entry 18 in List II of the Seventh Schedule to the Constitution of India. It consists of 11 Chapters.

18. Chapter II of the KLR Act deals with the tenancy which include recovery of rent; liability to pay land revenue; failure to cultivate; eviction of tenant for default; rights of tenant to be heritable; surrender of land by tenant; tenant's

right to trees planted by him ; tenant's right in respect of dwelling house; his right to purchase the dwelling house; right of compensation for the improvement made by the tenant and the procedure for taking possession etc.

Chapter III, with which we are concerned in this Writ Petition, covers the conferment of ownership on the tenants. Section 44 of this Chapter deals with the vesting of lands in the State Government. It provides that all lands held by or in the possession of tenants, including tenants against whom a decree or order for eviction is made prior to 1-3-1974, shall, with effect from that date, stand transferred to and vest in the State Government.

Section 45 of the KLR Act provides that every person, who was a tenant as defined in the KLR Act, would be entitled to-be registered as an occupant if certain conditions are fulfilled by him.

Section 46 of the KLR Act gives an option to the tenant to choose the area and the location of the land of which he wishes to be a registered occupant.

Section 47 of the KLR Act provides for the compensation to be paid to the land-owners for the extinguishments of the right, as a consequence of the vesting of the land in the State Government.

Section 48 of the KLR Act deals with the Constitution of Tribunals which the State Government has to constitute for the purpose of dealing with certain matters which have been entrusted to the Land Tribunals.

Section 48A deals with the mode of enquiry by the Land Tribunals.

Section 48B authorises the Tahsildar to determine the amount payable u/s 47 and to prepare a statement showing the apportionment of the amount.

Section 48C enables the Land Tribunals to pass interim orders during the pendency of the proceedings.

Section 49 of the KLR Act deals with the rights of the sub tenants.

The other Sections in this Chapter are not of much relevance, for the matter in issue.

Before going to Chapter IV, it would be necessary to mention yet another Section, namely, Section 112 of the KLR Act by which the duties of Tahsildar and Tribunal are enumerated.

Section 132 of the KLR Act bars the jurisdiction of the Civil Courts to decide the matters which are to be settled or decided by the Land Tribunals or the Deputy Commissioners.

Section 133 of the KLR Act provides for a procedure regarding the matters in which the Land Tribunal is given the exclusive jurisdiction.

19. Thus, the matters dealt with by the above provisions are clearly traceable to

"rights in or over land; land tenures including the relation of landlord and tenant, and the collection of rents" which occur in Entry 18 in List II of the Seventh Schedule to the Constitution of India.

20. The Resolution of the State Legislature, referred to above, does not deal with this aspect of the matter. There-fore, it cannot be said that the State has surrendered its right of legislating these aspects in the said Entry.

21. Chapter IV of the KLR Act deals with ceiling on land holdings. This Chapter, which consists of Sections 63 to 79, provides for filing of declaration by the land-holders; maximum ceiling limit which a person is entitled to hold; determination by the Land Tribunals of the surplus lands; surrender of surplus lands in favour of the state and it also provides for the vesting of land in the State Government.

So far as this is concerned, it is necessary to note that u/s 68 of the KLR Act the land which is surplus and surrendered u/s 67 of the KLR Act shall thereupon vest in the State Government free from all encumbrances.

Section 69 of the KLR Act also provides for vesting in respect of the surrender by limited owners.

Section 71 of the KLR Act which also occurs in this Chapter, provides for vesting of the land by a tenant u/s 67 of the KLR Act.

In all these cases, the land vests in the State Government only when it is surrendered by the owner or by the limited owner or by the tenant. Till then, there is no vesting of the land. Unlike Section 44 of the KLR Act under which the vesting takes place on 1-3-1974 as a consequence of the introduction of the Amendment Act, the vesting under Sections 68, 69 and 71 of the KLR Act takes place only after surrender.

Section 74 of the KLR Act provides for prohibition of alienation and other Sections provide for the disposal of surplus land etc.

22. Chapter V of the KLR Act provides for the restrictions on holding or transfer of agricultural lands. Chapter VI provides for the cultivation of uncultivated lands. Chapter VII prescribes the formation of co-operative farms and its registration etc. Chapter VIII deals with exemptions. Chapter IX deals with the procedure to be adopted by the Land Tribunals. Chapter X deals with the offences and penalties for contravention of the provisions of the Act. Chapter XI deals with the miscellaneous matters like application of the Act to inams, legal assistance to be provided etc.

23. The Urban Land Ceiling Act, which received the assent of the President on 17-2-1976, provides for ceiling on vacant land; and other provisions in the said enactment deal with declarations to be filed by the landholders; the determination of the surplus land and the compensation to be paid etc. The Urban Land Ceiling Act has defined the words "ceiling limit" as provided in Section 4 of the said Act. It has also defined certain other terms which I shall

deal, when it becomes necessary in the context.

24. Schedule I of the Urban Land Ceiling Act mentions the urban agglomerations in the State of Karnataka. Belgaum Municipality and Belgaum Cantonment are included in this urban agglomerations. We are not concerned with other cities that are mentioned in the Schedule.

25. To appreciate the contention of the petitioner, it becomes necessary to refer to certain definitions in the KLR Act as also in the Urban Land Ceiling Act.

The word "land" as defined in the KLR Act, reads thus:

" "Land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non-agricultural purposes."

The word "tenancy" has been defined to mean the relationship of landlord and tenant.

The word "tenant" has been defined thus:

" "Tenant" means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes,-

(i) a person who is deemed to be a tenant u/s 4 ;

(ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961 ;

(ii a) a person who cultivates personally any land on lease under a lease created contrary to the provisions of Section 5 and before the date of commencement of the Amendment Act ;

(iii) a person who is a permanent tenant ; and

(iv) a person who is a protected tenant.

Explanation : - A person who takes up a contract to cut grass, or to gather the fruits or other produce of any land, shall not on that account only be deemed to be a tenant."

26. In Urban Land Ceiling Act, the words "to hold" are defined thus:

" ""To hold" with its grammatical variations, in relation to any vacant land, means -

(i) to own such land ; or

(ii) to possess such land as owner or as tenant or as mortgage or under an irrevocable power of attorney or under a hire-purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or

capacities.

Explanation :- Where the same vacant land is held by one person in one capacity and by another person in another capacity, then, for the purposes of this Act, such land shall be deemed to be held by both such persons."

"Urban Land" is defined thus :

" "Urban Land" means - (i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan ; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat,

but does not include any such land which is mainly used for the purpose of agriculture.

Explanation:- xxx xxx xxx"

"Vacant land" is defined thus:

" "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated ;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building :

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this Clause."

27. Though the word "tenant" occurs in the definition of the words "to hold" in the Urban Land Ceiling Act, the said Act has not defined the word "tenant." u/s 6 of the Urban Land Ceiling Act, every person holding vacant land in excess of the ceiling limit is required to file a statement before the Competent Authority

specifying the location, extent, value and such other particulars as may be prescribed. For the purpose of this Section, the persons to hold the lands are those who are enumerated in the definition, namely, (i) the owner ; (ii) the owner in possession, (iii) the tenant; (iv) the mortgagee, (v) the irrevocable power of attorney holder and (vi) the person in possession under a hire purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities. The Explanation makes it clear that where the same vacant land is held by one person in one capacity and by another person in another capacity, both the said persons shall be deemed to hold the land.

28. This being the provisions of the Urban Land Ceiling Act, the question which is debated is whether, after the coming into force of the Urban and Ceiling Act, the Tribunal functioning under the KLR Act loses its jurisdiction to deal with the tenancies existing as on 1-3-1974.

29. On reading the Resolution, as quoted above, and the preamble of the Urban Land Ceiling Act, it appears to me that the State Legislature, which had an exclusive power to legislate in respect of matters occurring in Entry 18 of List II of the Seventh Schedule to the Constitution of India, had surrendered its limited right to legislate on the imposition of ceiling on vacant land in urban agglomerations and for the acquisition of such land in excess of the ceiling limit. Therefore, it is difficult to accept the contention on behalf of the petitioner that the effect of the Resolution was that on and after the date of the passing of the Resolution, the State Legislature had no competence or that even if an Act is passed, it becomes inoperative in respect of the land or the area which has become part of the urban agglomerations or the part of the Urban Land Ceiling Act, in all respects.

30. Strong reliance was placed by the Learned Counsel for the petitioner on a Full Bench decision of the Andhra Pradesh High Court in Tumati Rangayya Vs. The State of Andhra Pradesh and Others, In the said case, a Full Bench of the Andhra Pradesh High Court was dealing with a legislation of that State pertaining to the ceiling on agricultural holdings. The legislation was called "Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act (Act, 1 of 1973).

The contention, urged before the Full Bench was that on and after the coming into force of the Urban Land Ceiling Act, the provisions of the Andhra Pradesh Act became void and inoperative. The said contention was rejected by the Full Bench. But, it was clarified that the Andhra Pradesh Act was inapplicable to vacant land in urban agglomerations within the meaning of the explanation as defined in the Urban Land Ceiling Act. This conclusion had to-be derived because the provisions regarding the ceiling matter, both in the Andhra Pradesh Law and the Urban Land Ceiling Act, was occupying the same field and it was impossible to give effect to both the legislations.

Para -12 of the said Full Bench judgment reads:

" Thus both the Central and the State laws with which we are concerned have

been enacted pursuant to the power given under the head "land, that is to say, rights in or over the land etc." specified in Entry 18 of List II of the Seventh Schedule to the Constitution. Both the enactments purport to impose a ceiling on the holding of land of the specie covered by each of the enactments. The State Act applies, broadly, to all land which is used or is capable of being used for agricultural and allied purposes. The Central Act applies to all vacant land in an urban agglomeration barring land mainly used for purpose of agriculture, shown in the revenue or land records as such and not specified in the master plan for a purpose other than agriculture. The two Acts, both of which are intended to impose a ceiling on the holding of land, apply, as we have already pointed out simultaneously to the same land in an urban agglomeration which is capable of being used but is not actually used for the purpose of agriculture of which is not shown in the revenue or land records as used for the purpose of agriculture or which though used for the purpose of agriculture is specified in the master plan for a purpose other than agriculture or which is used for the purposes of raising of grass, etc. How is this land which is covered by both the Acts to be dealt with ? Is it to be subject to the ceiling imposed by the State Act or is it, to be subject to the ceiling imposed by the Central Act ? What alienations of the land are not to be recognised and from what date From what date is the land to vest in the Government ? What is the compensation to be awarded for the land ? The two Acts enjoin different procedures, provide for different dates of applicability, prescribe different dates from which alienations are not to be recognised, impose different ceiling limits, stipulate different dates for vesting in the Government and award compensation at different rates. In relation to the land to which both the Acts apply there is therefore a clear conflict ; the two Acts cannot stand together ; the State Act certainly alters, impairs or detracts from the operation of the Central Act to the extent of the land covered by both the Acts. To that extent the State Act must be held to be repugnant or inconsistent with the Central Act."

31. The correctness of the above judgment was challenged by the land owners in the Supreme Court. The Supreme Court dismissed their appeals and the case is *Thumati Venkaiah and Others Vs. State of Andhra Pradesh and Others*, The Supreme Court, after dealing with the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act (1 of 1973) and the Urban Land Ceiling Act, pointed out in para 6 of the judgment thus :

"Now, as we have already pointed out above, the Andhra Pradesh Legislature had, at the time when the Andhra Pradesh Act was enacted, no power to legislate with respect to ceiling on urban Immovable property. That power stood transferred to Parliament and as a first step towards the eventual imposition of ceiling on Immovable property of every other description. Parliament enacted the Central Act with a view to imposing ceiling on vacant land; , other than land mainly used for the purpose of agriculture, in an urban agglomeration. The argument of the landholders was that the Andhra Pradesh Act sought to impose ceiling on land in the whole of Andhra Pradesh including land situate in urban agglomerations and since the concept of urban agglomeration defined in Section

2(n) of the Central Act was an expansive concept and any area with an existing or future population of more than one lakh could be notified to be an urban agglomeration, the whole of the Andhra Pradesh Act was ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature. This argument, plausible though it may seem, is in our opinion, unsustainable. It is no doubt true that if the Andhra Pradesh Act seeks to impose ceiling on land falling within an urban agglomeration, it would be outside the area of its legislative competence, since it cannot provide for imposition of ceiling on urban Immovable property. But the only urban agglomerations in the State of Andhra Pradesh recognised in the Central Act were those referred to in Section 2(n)(A)(i) and there can be no doubt that, so far as these urban agglomerations are concerned, it was not within the legislative competence of the Andhra Pradesh Legislature to provide for imposition of ceiling on land situate within these urban agglomerations. It is, however, difficult to see how the Andhra Pradesh Act could be said to be outside the legislative competence of the Andhra Pradesh Legislature in so far as land situate in the other areas of the State of Andhra Pradesh is concerned. We agree that any other area in the State of Andhra Pradesh with a population of more than one lakh could be notified as an urban agglomeration u/s 2(n)(A)(ii) of the Central Act, but until it is so notified it would not be an urban agglomeration and the Andhra Pradesh Legislature would have legislative competence to provide for imposition of ceiling on land situate within such area. No sooner such area is notified to be an urban agglomeration, the Central Act would apply in relation to land situate within such area, but until that happens, the Andhra Pradesh Act would continue to be applicable to determine the ceiling on holding of land in such area. It may be noted that the Andhra Pradesh Act came into force on 1st January 1975 and it was with reference to this date that the surplus holding of land in excess of the ceiling area was required to be determined and if there was any surplus, it was to be surrendered to the State Government. It is therefore clear that in an area other than that comprised in the urban agglomerations referred to in Section 2(n)(A)(i), land held by a person in excess of the ceiling area would be liable to be determined as on 1st January 1975 under the Andhra Pradesh Act and only land within the ceiling area would be allowed to remain with him, It is only in respect of land remaining with a person, whether an individual or a family unit, after the operation of the Andhra Pradesh Act, that the Central Act would apply, if and when the area in question is notified to be an urban agglomeration u/s 2(n)(A)(ii) of the Central Act. We fail to see how it can at all be contended that merely because an area may possibly in the future be notified as an urban agglomeration u/s 2(n)(A)(ii) of the Central Act, the Andhra Pradesh Legislature would cease to have competence to legislate with respect to ceiling on land situate in such area, even though it was not an urban agglomeration at the date of enactment of the Andhra Pradesh Act. Undoubtedly, when an area is notified as an urban agglomeration u/s 2(n)(A)(ii), the Central Act would apply to land situate in such area and the Andhra Pradesh Act would cease to have application, but by that time the Andhra Pradesh Act would have already operated to

determine the ceiling on holding of land falling within the definition in Section 3(j) and situate within such area, it is therefore not possible to uphold the contention of the landholders that the Andhra Pradesh Act is ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature."

32. The above enunciation of law by the Supreme Court makes it clear that when the subject-matter of the legislation by the State Legislature and the Parliament are one and the same, in those cases "ceiling on agricultural holdings," the law of the Parliament should prevail over that of the law made by the State Legislature. That is because the two enactments cannot hold the same field and further because by passing a Resolution under Article 252 of the Constitution of India, the State Legislature has abdicated its power in favour of the Parliament, on the subject so mentioned in the Resolution. This being the clear effect of the above decision, since, in this case, I am concerned with the determination of the tenancy rights of Respondents 3, 4(a) and 5, it is difficult to see how the said power given by Chapter III of the KLR Act is affected by passing the Urban Land Ceiling Act. The Urban Land Ceiling Act does not deal with the tenancy rights in Karnataka. That enactment is confined to the fixation of the ceiling limit in urban agglomerations and the determination of certain lands in that area and the acquisition thereof. In fact, the definition of the words "to hold" as occurring in the Urban Land Ceiling Act makes it clear that any land in possession of a tenant would be construed as the land held by such a tenant and u/s 6 of the Urban Land Ceiling Act even a tenant is entitled to file a declaration before the Competent Authority.

33. Indeed, in the instant case, it is asserted by Shri Mandagi, appearing for Respondents 3, 4(a) & 5, that Respondent-3 has filed a declaration before the Competent Authority u/s 6 of the Urban Land Ceiling Act and that the same is pending. But the argument constructed by Shri Ujjannavar, appearing in the companion matter, was that on the promulgation of the Urban Land Ceiling Act, the KLR Act was void in respect of the lands included in the urban agglomerations. Developing this argument, he contended that on and after 19-12-1972, the KLR Act became inoperative in respect of all matters with regard to such lands which are included in urban agglomerations. He sought to derive support, for this argument, on the basis of the definition of "urban land" in Section 2(o) and "vacant land" in Section 2(q) of the Urban Land Ceiling Act.

34. It was the say of Shri Ujjannavar that since the agricultural land, whether used for the purpose of agriculture or not, if it is included in the urban land or in the vacant land in urban agglomerations, the only Act dealing with the rights of the parties in respect of such land would be the Urban Land Ceiling Act and, therefore, the KLR Act becomes inoperative.

35. It is difficult to accept this contention. As mentioned above, the KLR Act is a comprehensive legislation dealing with various subjects in Entry 18 of List II of the Seventh Schedule to the Constitution of India.

36. In the present case, the order that is challenged is the order of the Land Tribunal granting occupancy rights in favour of Respondents 3, 4(a) & 5. The provisions dealing with the grant of occupancy rights is provided in Chapter III of the KLR Act. So far as the relationship between the landlord and tenant and the conferment of ownership rights on the tenant are concerned, they are not dealt with by the Urban Land Ceiling Act. The word "tenant", as is found in Section 2(1) of the Urban Land Ceiling Act, who is also entitled to hold vacant land, must be understood to mean the person who was a tenant as defined by the KLR Act. Therefore, in respect of an agricultural land, which was tenanted prior to 1-3-1974 and which stood vested in the State Government on that date, the person so claiming as a tenant had to file an application in Form No. 7 for grant of occupancy rights. If the Land Tribunal, which is the Competent Authority to consider that application, holds that he was a tenant of the said lands as on 1-3-1974 it has to grant occupancy rights. The result of such adjudication by the Land Tribunal was to confer right of ownership on the tenant. Since the subject, as covered by Chapter III of the KLR Act is not one of the subjects dealt with by the Urban Land Ceiling Act, there is no repugnancy so far as this aspect of KLR Act is concerned with that of the provisions contained in the Urban Land Ceiling Act.

37. In this context, it would be useful to refer to the judgment of the Supreme Court in *R.M.D.C. (Mysore) Private Ltd. Vs. The State of Mysore*. In that case, by a Resolution passed by the Legislative Assembly on 23-2-1956, the Prize Competitions Act, 1955, Central Act 42 of 1955 was adopted by the State of Mysore. The Mysore Act 26 of 1957 dealing with the Prize Competitions Control and Tax Amendment was challenged on the ground that in view of the Central Act dealing with the prize competitions, the State Legislature had surrendered its rights of legislation in favour of the Parliament and, therefore, the Mysore Act was void. The argument was repelled by the High Court and, on appeal, the judgment of the High Court was confirmed.

37 (A). It was pointed out by the Supreme Court that the Central Act was with respect to betting and gambling under Entry 34 and the taxation section of the Mysore Act was with respect to tax on betting and gambling under Entry 62 in List II of the Seventh Schedule to the Constitution of India.

38. Mr. Ujjannavar, however, maintained that both the legislations, namely, that of the State and the Parliament, were dealing with the subject of land and, therefore, there is a clear repugnancy between the Central Enactment and the State Enactment.

39. The KLR Act is applicable to the entire State of Karnataka in respect of the agricultural lands whereas the Urban Land Ceiling Act is applicable only in respect of urban lands or vacant lands in urban agglomerations and in places which are included in this Schedule. While the subject-matter of the KLR Act covers several aspects and rights in respect of the land, the only aspect covered by the Urban Land Ceiling Act is the ceiling in respect of the lands within urban

agglomerations. Therefore, in my view, there is no repugnancy at all so far as the provisions in Chapter III of the KLR Act, which deal with the conferment of occupancy rights on tenants, and those provisions which are found in the Urban Land Ceiling Act. In fact, the tenant is one of the persons who is entitled to file a declaration u/s 6 of the KLR Act. Hence, it is not possible to accede to the contention of Sri Ujjannavar and Shri Shirgurkar that there is repugnancy between the provisions of the KLR Act and the Urban Land Ceiling Act. I make it clear that since I am concerned only with the provisions contained in Chapter III of the KLR Act, I have examined the matter only in that context and my conclusions regarding the repugnancy are confined to the conferment of occupancy rights by the Land Tribunals on tenants.

40. I abstain myself from expressing any opinion regarding the topic pertaining to "Ceiling" occurring in Chapter IV of the KLR Act. As and when occasion arises for examination with regard to those provisions, it shall be appropriately dealt with. But, so far as this petition is concerned, since the order that is challenged by the petitioner/land- owner is the order passed by the Land Tribunal conferring occupancy rights on the tenants, I am clearly of the view that those provisions are not in any way repugnant to the provisions of the Urban Land Ceiling Act and the Tribunal had jurisdiction to deal with those applications. Therefore, my answer to the first two questions is that the provisions of Chapter III of the KLR Act remain unaffected by the provision of the Urban Land Ceiling Act.

41. The next contention urged by Shir Shirgurkar was that the petitioner was a soldier and, therefore, the land held by him does not vest in the State Government. Though this objection was raised before the Land Tribunal, it appears to me that it was abandoned and was not pressed before the Land Tribunal. The petitioner had not produced any material in this behalf and did not request the Land Tribunal to adjudicate on this issue. In the Writ Petition filed by the petitioner, no such plea is taken and no documents are filed to show that the petitioner was a soldier who comes within the category of Section 5 of the KLR Act and the lease comes under sub - section (2) of Section 5 of the KLR Act.

42. Sub-section 21 of Section 5 of the KLR Act, which deals with prohibition of leases, is made inapplicable in respect of creation or continuance of lease by a soldier. In other words, while sub-section (1) of Section 5 of the KLR Act prohibits creation or continuance of a lease in general, sub-section(2) of Section 5 of the KLR Act enables a soldier or a seaman to create or continue a lease while he is serving as a soldier or a seaman within three months before he became a soldier.

Section 15 of the KLR Act enables a soldier or a seaman who had created or continued the lease to resume the land from a tenant or a protected tenant, provided he establishes that he bona fide requires the land to cultivate personally and he had issued a notice in that regard.

These provisions in the KLR Act deal with the lease created by a soldier or a

seaman and his right to resume the same in the prescribed manner. This can be done if the lease is in writing.

Sub-section (3) of Section 5 of the KLR Act makes it clear that whenever a lease is granted by a soldier or a sea-man it should be in writing.

43. It was contended by Sri Mandagi, appearing for Respondent 3, 4(a) and 5, that the contention put forward by the petitioner is not applicable to the facts of the case. Firstly, it t's because the lease is not in writing and secondly because it is not a proceeding for resumption u/s 15 of the KLR Act and thirdly because the petitioner has not placed any material to show that he was a soldier.

44. As mentioned above, the petitioner has, in his objection statement before the Land Tribunal, stated that he was a soldier. But, for reasons best known to him, he did not place any material and did not take this plea in this Writ Petition. Virtually, he has abandoned his claim as a soldier. It is not disputed that the lease is not in writing.

45. However, it was argued by Shri Shirgurkar, appearing for the petitioner, that the requirement, of a lease being in writing, is applicable only to the first lease and not to leases which are continued by a soldier. This argument was developed because the facts and circumstances in this case show that the original lease was by the family and, thereafter, in a family partition in January 1961, the lands were allotted to the petitioner. It was for this reason that Sri Shirgurkar argued, that so far as the petitioner is concerned he had only continued the lease and the requirement of the lease being in writing is not necessary for continuing lease. It is difficult to accept such a contention.

46. Sub-section (3) of Section 5 of the KLR Act makes it mandatory for every lease that is created under sub-section (2) to be in writing. Sub-section (2) of Section 5 of the KLR Act contemplates the leases that are created or the leases that are continued. In either case, whether the lease is created or continued, it only results in the grant of a lease. Therefore, on the wording of sub-section (3) of Section 5 of the KLR Act, the only construction that is possible is that a lease granted by a soldier or a seaman, whether it is created or continued, must be in writing.

47. Shri Shirgurkar, appearing for the petitioner, however maintained that the Land Tribunal has not dealt with this aspect of the matter and, since it requires an investigation on facts, the matter should be remitted to the Land Tribunal.

48. I would have acceded to this request, provided some material had been placed by the petitioner to justify that this plea has some substance. As stated above, barring mentioning in the objection statement before the Land Tribunal, there is nothing to indicate that the petitioner has pursued this stand. The Writ Petition is silent about the petitioner being a soldier. Respondent-3 has vehemently contended that the petitioner was not a soldier and he had been discharged by the Department. I express no opinion on this factual issue since

the petitioner had not invited the Land Tribunal to give an adjudication and no material has been placed by the petitioner in this Court to establish that he was a soldier or a seaman on the date on which the application for grant of occupancy rights was filed by Respondents 3 & 5.

49. In this view of the matter, I am of the view that this Petition has to fail. Accordingly, I make the following :

The rule is discharged. The Writ Petition is dismissed.