

(1996) 06 KAR CK 0056
In the Karnataka High Court
Case No : Writ Petition No. 11493 of 1992

D.N. Venkatarayappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-06-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 341, 366 (5)
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 3 (1) (b)

Citation : (1997) ILR (Kar) 850

Hon'ble Judges : P. Vishwanath Shetty, J

Bench : Single Bench

Advocate : U.L. Narayana Rao, for G.R. Lakshmipathy Reddy, for the Appellant; M. Siddalingaiah, HCGP for R-1 to R-3 and Ravivarma Kumar, for R-4 to R-7, for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J

1. The petitioners, in these petitions, have challenged the order dated 23.3.1993 passed by the second respondent, the copy of which has been produced as Annexure-K, confirming the order dated 22.4.1989 passed by the third respondent, the copy of which has been produced as Annexure-G, declaring the sale of the lands bearing Survey No. 140 measuring 2 acres 16 guntas, Survey No. 141 measuring 2 acres 2 guntas, Survey No. 142 measuring 2 acres 18 guntas and Survey No. 48/11 measuring 2 acres, situated at Champalli village, Ronur Hobli, Srinivasapura Taluk, Kolar District, as null and void and directing that the possession of the said lands should be recovered from the petitioners and handed over to respondents 4 to 7.

2. Sri U.L. Narayana Rao, learned Senior Counsel appearing along with Sri G.R. Lakshmipathi Reddy, Learned Counsel for the petitioners, made three submissions in support of his contentions that the order impugned are totally

illegal and they are liable to be quashed. Firstly, he submitted that the lands in question are not granted lands as defined u/s 3(1)(b) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as "the Act"), as the said lands were not granted in favour of persons belonging to Scheduled Caste, Elaborating his argument, he submitted that the original grantees of the lands in question were not persons belonging to Scheduled Caste and therefore the lands in question are not granted lands. Secondly, he submitted that when there is a discrepancy between the terms of the grant and the law governing the grant in view of the provisions contained in the Government Grants Act, the terms provided in the order of grant would prevail over the law governing the grant made by the State; and the terms provided in the grant order prohibited alienation of the lands in question only for a period of 20 years from the date of the grant and since the lands in question were sold after the expiry of the period fixed in the grant order, there is no violation of the terms of the grant and therefore the provisions of the Act are not applicable. Thirdly, he submitted that the petitioners have perfected their title by adverse possession in respect of the lands in question and therefore the lands in question are not governed by the provisions of the Act.

3. Sri Ravivarma Kumar, learned Counsel appearing for respondents 4 to 7, and Sri M. Siddagangaiah, learned High Court Government Pleader appearing for respondents 1 to 3, supported the orders impugned in the Writ Petition. They submitted that the land bearing Survey No. 140 measuring 2 acres 16 guntas was originally granted to one Ramanna, the father of the 4th respondent; the land measuring 2 acres 2 guntas in Survey No. 121 was granted to one late Narayanappa, the father of the 5th respondent; the land measuring 2 acres 18 guntas was granted to one late Munivenkatappa, the father of the 6th respondent, on 17.8.1941; and the land measuring 2 acres in Survey No. 48/11 was granted in favour of one late Hanumappa, the father of the 7th respondent, and that the Saguvali Chits issued to all the original grantees provided a condition of non-alienation clause in respect of the said lands for ever and the said condition was incorporated in view of Rule 43(8) of the Rules framed by the State in exercise of the powers conferred on it u/s 233 of the Mysore Land Revenue Code. They further submitted that the Rules were published by means of Notification dated 27.6.1938 in No. R.5682-LR. 389-37.3. and the said Rules provided for grant of land belonging to depressed classes which include Adikarnatakas and admittedly, the original grantees are Adikarnatakas by caste and therefore it is not permissible for the petitioners to challenge the status of the original grantees as persons belonging to Scheduled Caste; and the Presidential Notification issued under Article 341 of the Constitution of India specifically notifies the persons belonging to Adikarnataka as Scheduled Castes; and that there is no truth in the claim made by the petitioners that the terms of the Saguvali Chit issued provided for alienation of the granted lands only for a period of 20 years in respect of Survey Nos.140, 141 and 14 and 10 years in respect of Survey No. 48/11; and as a matter of fact, in the original Saguvali

Chits issued to the grantees, there was a permanent non-alienation clause and the document produced before this Court providing that the alienation is for a limited period, as stated above, has been tampered with. They seriously disputed that the original grant orders prohibited alienation of the granted lands only for a limited period, as stated above; and at any event of the matter, since the Rules governing the grant prohibit the alienation of the lands in question permanently, the Rules cover the field and the same are binding on the parties. In so far as the contention advanced on behalf of the petitioners that they have perfected their title by adverse possession is concerned, it is submitted by the learned Counsel appearing for the respondents that the grants in question were free grants and further the terms of the grant would make it dear that the grants were hedged with various conditions and therefore they were not absolute grants made in favour of the grantees where the title to the lands in question passed absolutely in favour of the grantees. They also submitted that admittedly the lands in question were granted to persons belonging to depressed classes and under the circumstances, when the Rule governing the grant of the lands in question provided that the lands in question should not be alienated permanently, the intention of the State was to retain the title in itself and not to part with the same to the grantees and what is parted to the grantees is only the right to enjoy the lands in question for ever, subject to the condition that they do not violate the conditions of the grants. They further submitted that none of the three submissions advanced by the learned Counsel for the petitioners was raised before the original Authority and therefore the petitioners should not be permitted to raise the same before this Court. They further submitted that the plea raised in the pleadings will not be sufficient to support the plea of adverse possession in law as crucial facts have not been pleaded and there is not even an iota of evidence in support of the said plea; and even with regard to the status of the original grantees, there was no plea put forth by the petitioners before the original Authority that the original grantees are not persons belonging to Scheduled Caste.

4. Now, let me examine the first contention advanced by the learned Senior Counsel for the petitioners that the lands in question are not granted lands as the original grantees are not persons belonging to Scheduled Caste.

5. Section 3(1)(b) of the Act defines "granted land" thus:

"(b) "granted land" means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such persons under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word "granted" shall be construed accordingly."

6. Section 2(d) of the Act defines "Scheduled Castes" and "Scheduled Tribes" and provides that it shall have the same meaning assigned to them in the Constitution. The grant order dated 17.8.1941 produced by the petitioners as

Annexure-B to the Writ Petition pertaining to the lands bearing Survey Nos. 140, 141 and 142, referred to above, and the grant order dated 24.6.1949 produced as Annexure-A to the Writ Petition in respect of Survey No. 48/11, referred to above, show that the said grants were made to the original grantees as free grants as the original grantees belonged to depressed class. The order at Annexure-B shows that it was a free grant and it was made to persons belonging to Adikarnataka community. The Government Notification dated 11.9.1943 provided among other castes, Adikarnataka as one of the castes belonging to depressed classes. It is also not in dispute that in the Notification issued by the President in exercise of the powers conferred under Article 341 of the Constitution, persons belonging to Adikarnataka community are classified as Scheduled Castes. The plea raised with regard to the status of the original grantees in Paragraph-3 of the Statement of Objections filed before the Assistant Commissioner (respondent-3) reads as follows:

"3. This Hon"ble Authority has initiated the above proceedings without looking into the fact that whether the granted lands had been transferred in contravention of the terms of the grant or not and whether the original grantees were belonged to SC/ST as on the date of the grant and hence the entire proceedings are liable to be dosed without any second thought.

7. From what is pleaded by the petitioners, which is extracted above, it is not possible to accept the contention of the petitioners that they have denied the status of the respondents as persons belonging to Schedule Castes. On the other hand, it is admitted by the petitioners that the lands in question were granted lands. The granted lands means, according to the definition, the lands granted to the Scheduled Castes and Scheduled Tribes. Therefore, the petitioners having failed to specifically raise the plea that the original grantees were not Scheduled Castes, cannot now be permitted to urge the said contention. Whether the original grantees were persons belonging to Scheduled Caste or not, is purely a fact which has to be pleaded and proved. Therefore, the burden is on the petitioners. They have failed to discharge the said burden. There is not even a whisper in the evidence given by the first petitioner on his own behalf and on behalf of other petitioners, stating that the original grantees were not Scheduled Castes. Further, as stated earlier, in the Presidential Notification, Adikarnatakas have been notified as persons belonging to the Scheduled Caste. When the Presidential Notification has recognised Adikarnatakas as Scheduled Caste, merely because at the time of the grant of the lands in question made in the year 1941 and 1949 the Adikarnatakas were not recognised as Scheduled Castes, it is not possible to accept the contention of the learned Counsel for the petitioners that the original grantees are not persons belonging to Scheduled Caste. This contention of Sri Narayana Rao is no longer res integra. The Division Bench of this Court in the case of KRISHNAPPA v. STATE OF KARNATAKA 1982(2) KarLJ 339, has observed thus:

"64. Sri K. Shivashankar Bhat, learned Counsel for the petitioner in W.P.No.7762

of 1980, contended that since Clause (d) of Section 3 of the Act defines the term "the scheduled castes and scheduled tribes" as having the meaning respectively assigned to them under the Constitution, the provisions of the Act have no application to alienations of granted lands made prior to the commencement of the Constitution on 26.1.1950. Elaborating this contention, he submitted that the concept of the scheduled castes and the scheduled tribes came into existence only under the Constitution and that hence the Act should not have intended to invalidate alienations of lands that took place prior to 26.1.1950.

65. It is true that the terms "the scheduled castes" and "the scheduled tribes" occurring in the Act, have the meaning assigned to them in the Constitution. That does not mean the castes and tribes which are included in the list of scheduled castes and scheduled tribes under the Constitution, did not exist prior to the commencement of the Constitution. Most of those castes and tribes were known as Depressed Classes, Harijans, Tribal people and Girijans. If the Government had granted a land to any person belonging to a caste or a tribe which, after the advent of the Constitution, came to be included in the list of Scheduled castes or the list of Scheduled Tribes, there is no reason why such land should not be regarded as coming within the ambit of the term "granted lands" as defined in Clause (b) of Section 3. There is also no reason why the provisions of the Act should not apply to such lands. Thus, we have to hesitation in rejecting the contention of Shri Shivashankar Bhat that alienations of lands granted prior to 26.1.1950 cannot be invalidated under the Act nor can such lands be resumed."

Therefore, there is no merit in the said submission of the learned Counsel for the petitioners.

8. However, Sri Narayana Rao relied upon the decision of the Supreme Court in the case of State of Kerala and Another Vs. N.M. Thomas and Others, and drew my attention to Paragraphs 43 and 160 of the said decision. Having carefully gone through the said decision, I am of the view that that decision is of no assistance to the learned Senior Counsel. Admittedly, in the said case, the Supreme Court held that an enquiry whether the appellant belonged to Reghar caste, which was not recognised as a Scheduled Caste, and his declaration that he belonged to Chamar caste, which was a Scheduled Caste, could not permitted because of the provisions contained in Article 341 of the Constitution and it was further held that no Court can give a finding that any caste or any tribe is a Scheduled Caste or a Scheduled Tribe unless it is notified under Article 366(5). Similarly the decisions relied upon by the Learned Counsel reported in , Parsram and Another Vs. Shivchand and Others, , Bhaiyalal Vs. Harikishan Singh and Others, and 1996 IV AD 480 (SC) , are of no assistance to the Learned Counsel. The questions that arose for consideration in those decisions are quite different and have no bearing on the questions involved in the present case. As stated earlier, Adikarnatakas have been declared as Scheduled Castes by the Presidential Notification and the lands in question were granted to the grantees

on the ground that they belong to depressed class. and according to the Rule governing grant of lands to the depressed class. Further, it was a free grant.

9. The Learned Counsel for the petitioners then submitted that the decision of the Division Bench of this Court in Krishnappa's case (supra) has been rendered without reference to the Constitutional provisions and the Constitutional (Scheduled Caste) Order and, therefore, the contention of the petitioners will have to be examined in the light of the decisions relied upon by him. Elaborating his submission, he contended that the status given to the Scheduled Caste is only a status given to a community, which is only prospective in operation, that is, from the date of the Presidential Notification, and it cannot have any retrospective effect. I am unable to accede to this submission. The Presidential Notification recognised the fact that certain sections of the society, which were called as Adikarnatakas, Harijans, depressed class, etc., on the date of issue of the Notification, were Scheduled Caste and they continue to be so. Therefore, since the Presidential Notification had recognised Adikarnataka community as a Scheduled Caste for the benefit of the Act, it must be treated and construed that the original grantees were Scheduled Caste on the date of the grant of lands made in their favour. Further, I am also of the view that for the purpose of the Act, the recognition of various communities, like, Harijans, depressed class, Girijans, etc., by the Presidential notification relates back to the date of the grant of land to such persons and for the purpose of the Act, they must be treated as Scheduled Castes and Scheduled Tribes. Otherwise, large sections of people who have been recognised as Scheduled Castes and Scheduled Tribes by the Presidential Notification would be deprived of the benefit of the Act solely on the ground that the term "Scheduled Caste" and "Scheduled Tribe" came to be recognised only by the provisions contained in the Constitution.

10. In so far as the second submission of the Learned Counsel for the petitioners that when there is a discrepancy between the terms of the grant and the law, the terms of the grant must prevail over the law, is concerned, this question is also no longer res integra. The Division Bench of this Court in LAXMAMMA v. STATE OF KARNATAKA (1983) 1 Kar. L.J. 217, at Paragraphs 64 to 67, has observed thus:

"64. When there is a law or a general order made regulating the grants and imposition of conditions, the officer functioning thereunder willy-nilly is required to incorporate only those conditions and no other. At least one of the primary objects of law itself is to secure uniformity. The terms and conditions to be imposed must be in conformity with the law or general orders made by the competent authority. It is not open to an officer to invent or impose conditions that he considers proper. Acceptance of the contention that it is open to each granting authority to impose such conditions as he deems proper, without reference to the law or the orders that have the force of law, would create a chaotic situation and that would be the very antithesis of rule of law. We are, therefore, of the opinion that the restrictions or conditions to be imposed must

only be in conformity with the law regulating grants and imposition of conditions.

65. But, in some cases, it appears the granting authorities have imposed a longer period than the one that was contemplated by law then in force, say 15 or 20 years as against 10 or 15 years as the case may be.

66. Earlier we have found that the granting authorities should have imposed only the terms and conditions provided by law and no other.

67. Assuming that a granting authority had imposed a longer period than the one provided by law, it is difficult to hold that, that condition in its entirety would be a void condition and cannot be enforced for the period it should have been lawfully imposed. What is objectionable is the imposition of a longer period and not the condition itself. After all the condition to the extent it violates the law is clearly severable. On the foregoing discussion, we hold that any condition imposed to the extent it is in derogation of law would be void and the conditions to the extent they are permitted by law would be valid. We are of the view that Section 4 of the Act incorporates the same principles."

11. However, Sri Narayana Rao submitted that the decision in Laxmamma's case (supra) was rendered by this Court without considering the provisions of the Government Grants Act, 1895, which excludes the application of the provisions of the Transfer of Property Act or any other law. I am unable to accept this submission of the Learned Counsel for the petitioners.

12. Section 11 of the Act has a over-riding effect on all other enactments including the Government Grants Act. Section 11 of the Act reads as follows:

"11. Act to override other laws.-

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage of contract or any degree or order of a court, tribunal or other authority."

The Division Bench of this Court in Bhagi Hengsu Vs. Rocky Lasrado, and Shripad Narayan Hegde Vs. State of Karnataka, , has taken the view that the provisions of the Act has a overriding effect over other enactments. In the case of Bhagi Hengsu 4 (supra), this Court has observed thus:

"By a perusal of Section 11 of the Act, it is undoubtedly clear that the provisions of that Section will have overriding effect over all other enactments."

Further, in the case of Shripad Narayana Hegde (supra), this is what has been observed by this Court:

"11..... The provisions of the Act will have an over-riding effect over any other statutes or customs, usages or contracts or decrees or orders of any Court or any other Authority to the extent of the inconsistency of any provision or clause, as the case may be."

13. However, Sri Narayana Rao relied upon the decisions of the Supreme Court in

The State of U.P. Vs. Zahoor Ahmad and Another, and Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, .

14. The Supreme Court in the case of Zahoor Ahemd (supra), at Paragraph-16, has observed thus:

"Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of Sections 2 and 3 of the Government Grants Act is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the right, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law."

In the case of Express Newspapers Pvt. Ltd., (supra) the Supreme Court, at Paragraph-79, has observed thus:

"79. It is plain upon the terms that Section 2 excludes the operation of the Transfer of Property Act, 1882, to Government grants. While Section 3 declares that all provisions, restrictions, conditions and limitations contained over any such grant or transfer as aforesaid shall be valid and shall take effect according to their tenor, notwithstanding any rule of law, statute or enactment of the Legislature to the contrary. A series of judicial decisions have determined the overriding effect of Section 3 making it amply dear that a grant of property by the Government partakes of the nature of law since it overrides even legal provisions which are contrary to the tenor of the document."

I am of the view that the principle laid down by the Supreme Court in the two decisions referred to above, relied upon by Sri Narayana Rao is of no assistance to the petitioners as the provisions of the Act, which has received the assent of the President, has overriding effect over all other enactments. Further, the petitioners cannot also derive any assistance from Section 3 of the Government Grants Act. Section 3 of the Government Grants Act reads as follows:

"3. Government grants to take effect according to their tenor.- All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

What Section 3 of the Government Grants Act provides is that all provisions, restrictions, conditions and limitations over contained in any such grant or transfer shall be valid and take effect according to their tenor notwithstanding any rule of law, statute or enactment of the Legislature to the contrary. In other words, if there is any conflict between the terms contained in a grant or any other law, the terms contained in a grant will prevail. In the instant case, there is

no conflict between the terms of the grant or the rule governing the grant or any other law. The contention advanced on behalf of the petitioners is that the terms of the grant would prevail over the rule governing the grant. Since the terms of the grant, as laid down by this Court in *Manchegowda and Others Vs. State of Karnataka and Others*, have to be consistent with the rule governing the grant, there is no scope for any inconsistency between the terms of the grant and the rule governing the grant. Since I have taken the view that the rule governing the grant of land would cover the field, I am of the opinion that it is unnecessary for me to go into the disputed question as to whether, in the grant orders or the Saguvali Chits, non-alienation clause provided was for a limited period or not.

15. In support of the last submission that the petitioners have perfected their title by adverse possession, Sri Narayana Rao relied upon the decision of the Supreme Court in *Dr. J.N. Banavalikar Vs. Municipal Corporation of Delhi and another*, *STATE OF WEST BENGAL v. DALHOUSIE INSTITUTED SOCIETY* AIR 1970 SC 1178, AIR 1981 707 (SC), *OTTOMAN BANK v. DASCALOPOULOS* AIR 1935 PC 39 and *MANCHEGOWDA v. STATE OF KARNATAKA*. Relying upon the principles laid down in the said decisions, Sri Narayana Rao contended that admittedly, the petitioners have purchased various portions of the lands in Survey Nos.140 to 142 by means of registered sale deeds dated 24.9.1962, 16.10.1962, 12.10.1966 and 11.3.1966 and from the date of purchase of the various portions of the lands, the petitioners have been in continuous and uninterrupted possession of the said lands and the names of the petitioners also come to be entered in the revenue records and they have also effected improvements on the said lands. He further submitted that the sale deeds, referred to above, also came to be executed by the original grantees in favour of the petitioners and since the petitioners have been in continuous and uninterrupted possession as of right from the date of the respective sale deeds, they have perfected their title by adverse possession as they have been in possession of the lands in question for a period of more than 12 years from the date of purchase till the date of the Act coming into force, that is, on 1.1.1979. He submitted that the Supreme Court, in *Manchegowda's* case (*supra*), has laid down that if a person has perfected his title by adverse possession, the provisions of the Act are not applicable. He drew my attention to Paragraph-24 of the judgment, which reads thus:

24..... Also in case where granted lands had been transferred before the commencement of the Act in violation of the condition regarding prohibition on such transfer and the transferee who had initially acquired only a voidable title in such granted lands had perfected his title in the granted lands by prescription by long and continuous enjoyment thereof in accordance with law before the commencement of the Act, such granted lands would also not come within the purview of the present Act, as the title of such transferees to the granted lands has been perfected before the commencement of the Act. Since at the date of the commencement of the Act the title of such transferees had ceased to be voidable by reason of acquisition of prescriptive rights on account of long and

continued user for the requisite period, the title of such transferees could not be rendered void by virtue of the provisions of the Act without violating the constitutional guarantee. We must, therefore, read down the provisions of the Act by holding that the Act will apply to transfers of granted lands made in breach of the condition imposing prohibition on transfer of granted lands only in those cases where the title acquired by the transferee was still voidable at the date of the commencement of the Act and had not lost its defeasible character at the date when the Act came into force. Transferees of granted lands having a perfected and not a voidable title at the commencement of the Act must be held to be outside the pale of the provisions of the Act. Section 4 of the Act must be so construed as not to have the effect of rendering void the title of any transferee which was not voidable at the date of the commencement of the Act."

He also drew my attention to the Statement of Objections filed by the petitioners before the Assistant Commissioner regarding the plea of adverse possession raised by the petitioners. In Paragraph-4 of the Statement of Objections, it is stated thus:

".... Right from the date of the said purchase these respondents have been in possession and enjoyment and neither the grantees nor any body else have disturbed with the possession of the respondent."

Further, in Paragraphs 10 and 11, they have stated thus:

"10. It is submitted that the Supreme Court of India has also given the well founded decision in the like case as reported in ILR 1984 Kar.1 (Manchegowda v. State of Karnataka and Ors.) to quote the relevant finding with respect to the case on hand in Para 24:

Granted lands which had been transferred after the expiry of period of prohibition do not come within the purview of the Act, and cannot be proceeded against under the provisions of the Act. The provisions of the Act make this position dear as Sections 4 and 5 become applicable only when granted lands are transferred in breach of the conditions relating to prohibition of transfer of such granted lands. Granted lands transferred before the commencements of the Act, and not in contravention of prohibition of transfer are clearly beyond the scope and purview of the present Act.

11. In the light of the above stated facts, the transfer of the granted lands was beyond the period of prohibition as contemplated under the rule of grant, if not the respondents being transferees, have acquired the defeat able right which was not set aside at the appropriate time have perfected their rights. Therefore, the provisions of the Act do not cover the transfer in question."

Relying upon the said pleadings, he submitted that there is no basis for the submission made on behalf of the respondents that the petitioners have not raised the plea of adverse possession before the original Authority. Further, relying upon the terms of the grant orders, which have been produced as

Annexure-A and B, and also the Saguvali Chits, which have been produced as Annexure-A1 and B1 to B3, he submitted that various stipulations provided in the grant order and the Saguvali Chit would clearly show that the title to the property was absolutely transferred to the original grantees and the only conditions imposed is that the grantees should not alienate the same during the period mentioned in the grant order and the Saguvali Chit and therefore in view of the decision of the Supreme Court in K.T. HUCHEGOWDA v. DEPUTY COMMISSIONER ILR 1994 Kar 1839 at Paragraphs 10 and 11), the petitioners have perfected their title being in continuous possession and enjoyment of the lands in question for a period over 12 years from the respective dates of purchase of various portions of the lands.

16. However, Sri Ravivarma Kumar and Sri M. Siddagangaiah, relying upon the decision of the Supreme Court in R. Chandevappa and Others Vs. State of Karnataka and Others, , contended that the petitioners having specifically failed to raise the plea regarding adverse possession before the original Authority contending that they have perfected their title by adverse possession as against the original grantees, cannot now be permitted to raise that plea. They further contended that the petitioners came into possession of the lands in question by virtue of the sale deeds in question, which are voidable in law, and therefore they have come into possession by virtue of derivative title and the possession of the petitioners in respect of the lands in question can never be treated as adverse and at no point of time, the petitioners have claimed that their title to the lands in dispute is hostile to the title of the original grantees. They also contended that the first petitioner, who has been examined on his own behalf and on behalf of the other petitioner, had not even whispered in his entire evidence that the petitioners had perfected their title by adverse possession. Sri Ravivarma Kumar, relying upon Section 11 of the Act, submitted that the provisions of the Act shall have overriding effect notwithstanding anything contained in any other law for the time being in force and therefore the plea of adverse possession is not available to the petitioners to be raised.

17. The contention raised by the petitioners that they have perfected their title in respect of the lands in question by adverse possession, has to fail on two counts. Firstly, the crucial facts, which constitute adverse possession, have not been pleaded. The pleadings, extracted above, in my view, will not constitute the crucial facts necessary to claim title by adverse possession. It is not stated by the petitioners in their pleadings that the petitioners at any point of time claimed or asserted their title hostile or adverse to the title of the original grantees/their vendors. In my view, mere uninterrupted and continuous possession without the animus to continue in possession hostile to the rights of the real owner will not constitute adverse possession in law.

18. In the case of Lakshmi Reddy (supra) relied upon by Sri Narayana Rao at Paragraph-7 of the judgment, the Supreme Court, following the decision of the Privy Council in State for INDIA v. DEBENDRA LAL KHANAIK 1934 PC 23, has

observed that the ordinary classical requirement of adverse possession is that it should be *nec vi nec clam nec Presario* and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

19. In the case of *STATE OF WEST BENGAL v. DALHOUSIE INSTITUTE SOCIETY*, the Supreme Court, on the basis of the materials on record, which were referred to by the High Court, took the view that in the said case, the respondent had established his title to the site in question by adverse possession. Further, the said decision proceeds on the basis that the grant made by the Government was invalid in law. That is not the position in the present case. The alienation in question was only voidable. The petitioners came into possession of the lands in question by virtue of the sale deeds which are only voidable in law. Therefore, they have come into possession by virtue of the derivative title as observed by the Supreme Court in the case of *Chandavarappa (supra)*. Further, in the case of *Kshitish Chandra (supra)*, the observation made by the Supreme Court at Paragraph-8 of the judgment relied upon by Sri Narayana Rao in support of his contention that the only requirement of law to claim title by adverse possession is that the possession must be open and without any attempt at concealment and it is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner is concerned, I am of the view that the said observation must be understood with reference to the observations made in Paragraph-7 of the judgment. At Paragraph-7 of that judgment, the Supreme Court has observed thus:

"7.For instance, one of the most important facts which dearly proved adverse possession was that the plaintiff had let out the land for cultivatory purposes and used it himself from time to time without any protest from the defendant. During the period of 45 years no serious attempt was made by the municipality to evict the plaintiff knowing full well that he was asserting hostile title against the municipality in respect of the land."

20. Further, this Court, in the case of *Danappa Revappa Kolli Vs. Gurupadappa Mallappa Pattanashetti*, , while referring to the decision of the Supreme Court in *Kshitish Chandra's* case (*supra*), relied upon by Sri Narayana Rao in support of the plea of adverse possession, has observed that apart from the actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. The observations made in the said decision reads thus:

"5.....Apart from actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. A person who under the bonafide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all be adverse possession because it lacks necessary animus for perfecting title by adverse

possession."

Therefore, it is dear that one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner. Therefore, I am of the view that none of the decisions relied upon by Sri Narayana Rao in support of the plea of adverse possession set up by the petitioners, is of any assistance to the petitioners.

21. Further, admittedly, there is not even a whisper in the evidence of the first petitioner with regard to the claim of adverse possession set up by the petitioners. It is not stated by the petitioners that they have been in continuous and uninterrupted possession of the lands in question hostile to the rights of the vendors of the lands in question. What is stated by the petitioners, in substance, is that they came into possession of the lands in question by virtue of the sale deeds executed by the original grantees. The Supreme Court, in Paragraph-11 of the decision in Chandeverappa's case (supra), has observed thus:

"11. The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But, the crucial facts to constitute adverse possession have not been pleaded. Admittedly, the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The Counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant."

Therefore, in the absence of crucial pleadings, which constitute adverse possession, and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession and therefore the Act does not apply as laid down by the Supreme Court in Manchegowda's case (supra). The law laid down by the Supreme Court in Chandeverappa's case (supra) fully applies to the facts of the present case. In the said case, while considering the claim of adverse possession by the purchaser of a granted land" from the original grantee, the Supreme Court has observed that the person, who comes into possession under colour of title from the original grantee if he intends to claim adverse possession as against State, must disclaim his title and plead his hostile claim to the knowledge of the State and the State had not taken any action thereon within the prescribed period. It is also relevant to point out that Sub-section (3) of Section

5 of the Act provides that where a granted land is in possession of a person, other than the original grantee or his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer, which is null and void under the provisions of subsection (1) of Section 4. Since I have negated the contention of Sri Narayana Rao that the original grantees are not Scheduled Castes, it follows that the lands in question are granted lands within the meaning of Clause (b) of Sub-section (1) of Section 3 of the Act. Therefore, the burden is on the petitioners, who had admittedly come into possession of the lands in question, to establish that they have acquired title to the lands in question by a transfer, which is not null and void under the provisions of Sub-section (1) of Section 4 of the Act. In the instant case, the petitioners have failed to discharge the said burden. On this ground also, the petition should fail. Secondly, the grants made in favour of the original grantees are admittedly free grants. The Rule governing the grant prohibited alienation of the lands in question permanently. The lands in question were granted to Scheduled Caste persons taking into account their social background, poverty, illiteracy and their inherent weakness for being exploited by the affluent section of the society. Under these circumstances, the conditions were imposed that the grantees should not alienate the lands granted to them. Sections 66A and 66B of the Land Revenue Code authorise the State to resume the land for violation of the terms of the grant. Therefore, if the terms of the grants, which are hedged with conditions, and the class of persons to whom the lands are granted, are taken into account and considered, it is not possible to accept the contention of the Learned Counsel for the petitioners that the title in the lands had passed absolutely to the grantees. I am of the view that the title to the lands continued to remain in the State and what has been transferred to the grantees, is the right to continue to be in possession of the lands granted to them and enjoy the same in perpetuity subject to the condition that they do not violate the conditions of the grant. This view of mine is supported by the Division Bench of this Court in the case of Rudrappa v. Special Deputy Commissioner (Writ Appeal No. 1210/1987 decided on 17.6.1996), wherein in Paragraph-3 of the judgment, the Division Bench of this Court, while considering similar grants, has taken the view that the grantee was not given absolute title in respect of the land granted. The relevant portion of the judgment at Paragraph-8, reads as follows:

"3.....It is clear from the terms of the grant that the appellant's predecessor in title, the grantee could not alienate the land for certain period and if the land was alienated, it was open to the Government to cancel the grant and resume the land in question. If the grant was hedged in with several conditions of this nature, the same cannot be said to be absolute. Moreover, it must be noticed that the grant was made at an upset price. In the circumstances, proceedings initiated by the respondents cannot be stated to be barred by limitation or is it possible to sustain the plea of adverse possession raised on behalf of the appellant."

22. However, Sri Narayana Rao, learned Senior Counsel, sought to distinguish the

observations made in that judgment, contending that in respect of the grant, which came up for consideration in Rudrappa's case (supra), the Rule specifically provided for cancellation of the grant for violation of the condition of the grant and no such provisions is provided under Rule 43(8) of the Rules governing the grant in the instant case. I am unable to accept this submission of Sri Narayana Rao because, as stated earlier, Sections 66A and 66B of the Land Revenue Code specifically reserve power to the Authorities to cancel the grant in case of violation of the terms of the grant. Therefore, in view of my conclusion that the title in the lands in question has not been absolutely transferred to the grantees, the petitioners are required to establish that they have perfected their title by adverse possession against the State being in continuous and uninterrupted possession of the land for a period over 30 years prior to the date of coming into force of the Act. The petitioners have failed to establish this position.

23. In so far as the submission of Sri Ravivarma Kumar that the provisions of the Act has a overriding effect on other enactments and therefore the plea of adverse possession is not available to the petitioners is concerned, I am unable to accept his submission since the Supreme Court, in Manchegowda's case (supra) at Paragraph-24, has clearly observed that the provisions of the Act will not apply in cases where the purchaser has perfected his title by adverse possession.

24. Yet another submission of Sri Narayana Rao is that the Land Revenue Rules, which governed the grant of the lands in question in 1941 and 1949, were not published as required u/s 234 of the Land Revenue Code, in the official Gazette and therefore the Rules have no statutory effect. This plea was also not raised either before the Assistant Commissioner or before the Deputy Commissioner. Whether it was published in the year 1941 and 1949, is a matter of fact which cannot be decided at this length of time in the proceedings under Article 226 of the Constitution of India. Further, this Court cannot permit the petitioners to raise the said contention for the first time in this petition. Therefore, this submission of Sri Narayana Rao also falls to the ground.

25. For all the foregoing reasons, the Writ Petition fails and is accordingly dismissed.

26. After dictation of the order, Sri Narayana Rao, Learned Senior Counsel, submitted that on the strength of the order passed by me dismissing the Writ Petition, respondents 4 to 7 may withdraw the money in deposit and try to enter upon the lands in question and since the petitioner have been permitted to pluck the mango fruits on terms, the order passed by me dismissing the Writ Petition may be kept in abeyance for a period of six weeks from to-day.

27. Having regard to the facts and circumstances of the case, the status quo as regards possession and also the amount in deposit, as on the date of the passing of this order, shall continue for a period of six weeks from to-day.

28. In the facts and circumstances of the case, I direct the parties to bear their

own costs.

29. Sri M. Siddagangaiah, learned High Court Government Pleader, is permitted to file his memo of appearance within four weeks from to-day.