

**(1986) 09 KAR CK 0033**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 11384 of 1979**

Kallappa Sangappa Salagatti

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

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**Date of Decision :** 01-09-1986

**Acts Referred:**

Karnataka Land Reforms Act, 1961 — Section 138, 95  
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10 (3), 42

**Citation :** (1987) 1 KarLJ 250

**Hon'ble Judges :** Doddakale Gowda, J

**Bench :** Single Bench

**Advocate :** W.K. Joshi, for the Appellant; B.J. Somayaji, HCGP for R-1 and K.S. Savanur, for R-3 and 4, for the Respondent

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## Judgement

Doddakalegowda, J.—Validity of the notification issued u/s 10(3) of Urban Land (Ceiling and Regulation) Act, 1976, notice, dated 23-7-1979 calling upon petitioner to surrender possession and order dated 15-2-1974 of Special Deputy Commissioner, Dharwar, passed u/s 95 of the Karnataka Land Revenue Act, are questioned in this Writ Petition.

2. Contention of petitioner is that he is a tenant to an extent of 6 acres 8 guntas in old S. No. 129 (New S. No. 312) situate at Gamanagatti Village, Hubli Taluk ; land owner was unsuccessful in resuming land u/s 14 (as it then stood) of the Karnataka Land Reforms Act and application filed by him in Form No. 7 is pending consideration by Land Tribunal, Hubli ; having regard to all these circumstances action taken to acquire, treating it as belonging to contesting respondent by Competent Authority under Urban Land (Ceiling and Regulation) Act (hereinafter referred to as the "Ceiling Act") and also order of Special Deputy Commissioner according sanction for converting this land into a non-agricultural land, are illegal and without jurisdiction

3. Contention of contesting respondents is that petitioner was unsuccessful in Appeal No. 755 of 1975 before Karnataka Revenue Appellate Tribunal to get the

order of Special Deputy Commissioner, Dharwar, permitting conversion, set aside and on such conversion, land is rightly and properly, classified as vacant land, as per provisions of the Ceiling Act ; petitioner who is bound by order of conversion, not having filed any objections for determination of extent of holding under Ceiling Act, cannot be allowed to agitate, at this distance of time, correctness of these orders.

4. Thus, points that arise for consideration are-(1) Whether there can be simultaneous proceeding in respect of land in question both under Ceiling Act and Land Reforms Act? (2) Whether there could be a determination in respect of this land under Ceiling Act treating it as vacant land and as that of contesting respondent, without adjudicating rights of petitioner under Land Reforms Act ?

5. There is no necessity to trace the history of these legislations as all are familiar with the scope and object of these enactments as explained by several decisions of this Court as well as Supreme Court, Hence, I proceed to determine these issues with reference to facts over which there is very little controversy.

Sri W. K. Joshi, learned Counsel for petitioner, relying on an order, dated 15th September 1972 passed in RLC No. 155/70 on the file of the III Additional Munsiff, Hubli. dismissing application filed by owner for resumption u/s 14 of the Land Reforms Act, contended that it is declared to be a non-presumable land and petitioner is entitled to conferment of occupancy right u/s 48-A(1) of the Land Reforms Act. The effect of this order, it is submitted will "extinguish his proprietary right except to claim compensation as provided under the Land Reforms Act. It is further contended that during his tenure as tenant, Special Deputy Commissioner could not have permitted conversion to use this land as non-agricultural land u/s 95 of Karnataka Land Revenue Act and order, if any, is non est so far as he is concerned.

Undisputedly, application filed for resumption is earlier as said proceeding was started immediately on promulgation of Act 10 of 1965. It is only after the termination of proceeding u/s 14, land owner has filed application u/s 95 of Land Revenue Act seeking permission to use this land as a non-agricultural land. u/s 95 of Land Revenue Act, a person in occupation of the property can alone seek conversion. A Division Bench of this Court in Smt. Puttamma v. Mysore Revenue Appellate Tribunal 1969 (2) Mys. LJ. 184 has held that when a property is in possession of a tenant, no permission can be granted in favour of an owner permitting him to convert agricultural land into non-agricultural land.

However, Sri Savanur, learned Counsel for respondents 3 and 4, relying on a decision of learned single Judge in Narasimha Shetty v. State of Karnataka 1978 (1) K.L.J 208 contended that land in respect of which permission is granted, to use it as a non-agricultural land, has ceased to be a land as defined u/s 2(18) of Land Reforms Act and thereby provisions of Karnataka Land Reforms Act are not attracted. In this view, it is submitted that there is no prohibition for competent authority to determine extent of holding of owner considering land in dispute as

a "vacant land."

6. It is not in dispute that it was a land as defined u/s 2(18) of the Land Reforms Act as on the date Act 10 of 1965 came into force. In the latter case, whether Deputy Commissioner could or could not have exercised power u/s 95 of Land Revenue Act when property in respect of which conversion is sought for, is in possession of tenant, did not arise ; hence, no sustenance can be derived from the principles enunciated in Narasimha Shetty case 1978 (1) K.L.J 208. Decision in Smt. Puttamma case 1969 (2) Mys. LJ. 184 being a direct decision on the point may squarely apply to the facts of present case.

7. It is contended for contesting respondents that as Appeal No, 755 of 1975 has been dismissed by Karnataka Revenue Appellate Tribunal on 11-9-1975 confirming order of Special Deputy Commissioner, according permission for conversion, petitioner is estopped from questioning correctness of said order and in addition, Writ Petition is liable to be dismissed on the ground of laches. Submission of learned Counsel for petitioner, is that so long as there was an order in his favour by the then Land Tribunal (Munsiff's Court) declaring that it is a non resumable land and there was no disturbance whatsoever regarding his peaceful possession and enjoyment of the property, threat or apprehended threat of dispossession, hence, there was no necessity to approach this Court or any authority for any relief, except approaching Land Tribunal for conferment of occupancy right by filing application in prescribed Form No. 7 which he asserts to have done.

It is unnecessary to probe deep into this matter further, as it is open to Land Tribunal to decide, whether property in dispute is a land as defined in Section 2(18) of the Land Reforms Act or not, in exercise of its power u/s 112, having regard to finding that it is a non-presumable land as declared by III Additional Munsiff and bearing in mind principles enunciated in Smt. Puttamma's case 1969 (2) Mys. LJ. 184 which is binding on this Court as well as Courts below.

8. Sri W.K. Joshi, Learned Counsel for petitioner, contended that at no time competent authority exercising power under Ceiling Act notified him or called upon him to file declaration. It is only on declaration furnished by owner, competent authority has declared that property in dispute exceeds his ceiling limit and excess vacant land, particulars of which are set out in schedule annexed to notification, is deemed to have been acquired and intended to be taken possession. It is only in Annexure-D, notice, dated 23-7-1979, petitioner's name finds a place through which authority has called upon to surrender possession.

Gravamen of petitioner is that declaration made declaring that it is a vacant land, without notifying him though held to be non-presumable from him or calling upon him to file declaration, being opposed to principles of natural justice, is void. Validity of declaration by a competent authority declaring that holding of owner exceeds ceiling limit including this survey number depends upon success

or failure of petitioner before Land Tribunal. It is needless to state that in case petitioner succeeds in establishing his right for conferment of occupancy right, declaration made, declaring it to be excess holding, will not bind petitioner and in case of his failure to secure necessary order in his favour, competent authority can proceed in accordance with law.

9. Nextly, Sri Savanur, learned Counsel for contesting respondent, relying on Section 42 of Ceiling Act, submitted that provisions of Ceiling Act will prevail over Land Reforms Act; hence, there is no necessity for competent authority to await the decision of Land Tribunal, Sri W.K. Joshi, with equal vehemence submitted that in view of Section 138 of Land Reforms Act, provisions of that Act will prevail over all other laws and rights of the parties must be first adjudicated under Land Reforms Act. For proper appreciation of these rival contentions, Sections are quoted :-

Section 42 of Ceiling Act

Section 138 of Land Reforms Act

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage or agreement or decree or order of a Court, tribunal or other authority.

This Act and any rule, order or notification made or issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other enactment with respect to matters enumerated in List II and List III of the Seventh Schedule to the Constitution of India or in any instrument having effect by virtue of any such other enactment.

The effect of non-obstinate clause, as largely understood, enactment will have its full operation or provisions embraced in that clause will not be an impediment for the operation of enactment. Question is, whether on account of these two non-obstinate clauses in these two enactments, whether provisions of Ceiling Act would prevail over Land Reforms Act or vice-versa? If not, can there be simultaneous proceedings under these two enactments. Instances of overlapping may or may not arise. However, this Court, in Balasaheb Venkatesh Khasbagh alias Kulkarni Vs. Land Tribunal, while dealing with a question as to whether in respect of land lying within the urban agglomeration area provisions of Land Reforms Act are excluded or rights of parties are governed by Land Reforms Act, has stated thus :-

"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 the 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."

"So far as the relationship between the landlord and the tenant and the conferment of ownership rights on the tenant are concerned, they are not dealt with by Urban Ceiling Act. The word "tenant", as is found in Section 2(1) of the Urban Land Ceiling Act, who is also entitled to vacant land, must be understood to mean the person who was a tenant as defined by the K.L.R. Act...."

Ratio of the above authority is that Ceiling Act deals with Urban property and Land Reforms Act deals with agricultural property. Thus, proceedings under these two enactments are different. But proceedings under Ceiling Act cannot be proceeded with, without determining the interest of a person from whom authorities intend to acquire. Solution is found in Conflict of Laws. Graveson in his book on Conflict of Laws, IV Edition, has stated thus :

"Where actions in personam are started in two Courts of concurrent authority of the same country, the plea *Us alibi pendens* is a good defence to the second action "

(Underlining is of mine)

Dealing with inherent jurisdiction to stay an action or to restrain by injunction to institute or continuance of proceeding, to prevent administration of justice being perverted for an unjust end, two tests have been laid down : --

(A) The actions must relate generally to the same subject matter, though the type of proceedings brought in relation to it, and various remedies available, may differ .....

(B) The party objecting to the continuance of both sets of proceedings must show that the dual proceedings are vexatious or oppressive ; that is, that the second set of proceedings has been instituted merely with the purpose of embarrassing him in the conduct of the first set of proceedings, or that the double proceedings place upon him a burden which he cannot fairly be expected to bear. Furthermore, he must also show that the continuance of both sets of proceedings would cause him "serious, if not irreparable damage."

Applying principles of *Us alibi pendens*, it can safely be held that latter proceeding would be oppressive, perverted to an unjust end. Proceedings before Land Tribunal being earlier than the proceedings under Ceiling Act, in all fairness, Authority should have awaited result or outcome of the proceeding of Land Tribunal. Hence, conclusion of competent authority, under these circumstances, must be declared to be void and illegal.

10. Lastly, Sri Savanur, Learned Counsel, submitted that pursuant to declaration and notice issued to surrender, Authorities have already taken possession of property and there remains nothing for Land Tribunal to decide. Records made available by Sri B J. Somayaji, Learned High Court Government Pleader, disclose that authorities have not taken possession of the property as there was an

interim order of this Court, staying proceeding for two weeks and there is nothing in record to establish that authorities have taken possession of the property thereafter.

11. For reasons stated above, Writ Petition succeeds. It is hereby declared that notification marked as Annexure-B and C are void and not binding on petitioner and to revive proceedings depending upon success or failure. Rule made absolute.