

(2011) 01 KAR CK 0250

In the Karnataka High Court

Case No : Writ Petition No. 28203/04 C/w W.P. No. 27528/05

Lokayya Poojary and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-01-2011

Acts Referred:

Citation : (2011) 01 KAR CK 0250

Hon'ble Judges : S.N. Satyanarayana, J.;B.S. Patil, J.;N. Kumar, J.

Bench : Full Bench

Judgement

N. Kumar, J.—Three Division Benches of this Court in

(1) Hosabayya Nagappa Naik and Ors., Vs. State of Karnataka and Ors., 2002 (3) KLJ 53;

(2) S.C. Chandrappa Vs. State of Karnataka and Others, ; and

(3) Sri. Aboobakkar Vs. The Authorised Officer (H.Q. Assistant to the Deputy Commissioner D.K.) and Another,

have held that the Government records should reflect the factum of vesting of the land in the State, to attract the provisions of Section 77A of the Karnataka Land Reforms Act (for short hereinafter referred to as the "Act") as amended by Act 1997. The correctness of the interpretation placed on Section 77A by the aforesaid three Division Benches is doubted by the learned single judge. The learned Single Judge has expressed the view that this aspect requires reconsideration by a Larger Bench of this Court. Accordingly, this reference is made to the Full Bench by the learned Chief Justice. It is not necessary to advert to the facts of any of these cases, as we are concerned with only the question of law. It is clear from the order of reference that the learned single judge did not agree with the observation in Hosabayya's case, that the aspect of vesting of the land in the State Government should find place in some official record and that in the absence of any such record, the factum of vesting becomes a disputed fact

and an enquiry in to the same is not within the scope of Section 77A of the Act. In other words, the Division Bench has held that the Government records should reflect the position that the land has been already vested in the State Government so as to enable the authority to grant land in favour of the tenant. It is in this context, the learned single judge has felt that the aforesaid judgments require reconsideration by the Larger Bench in view of the settled legal position that vesting of the land either under Section 44 or for the purpose of Section 77-A of the Karnataka Land Reforms Act, is automatic. If the land is tenanted land as on 1.3.1974 there need not be any specific order to that effect nor there need be any Government records to show vesting of the property in the State. Vesting of the tenanted land as on 1.3.1974 in the State Government is by operation of law. The same is clear from looking to the scheme of the Land Reforms Act. The plain language employed in Section 44 of the Act also makes it clear that the vesting of the tenanted land as on 1.3.1974 with the State Government is automatic and by operation of law. There need not be any official Government record evidencing vesting of the land in the State. This, the learned single judge opines has been the understanding of this Court right from the year 1974 till very recently i.e., till the pronouncement of the judgments in the aforesaid matters by the Division Benches. The tenanted properties vest the title with the Government and consequently, the right, title and interest of the owners over the properties shall cease to exist with effect from 1.3.1974. In support of the above observations the learned single judge has referred to various judgments of this Court. It is in this background, we are called upon to decide the correctness or otherwise of the observations made by the Division Benches of this Court in the aforesaid Hosabayya Nagappa Naik's case, which is followed in the other two judgments.

2. It is not disputed and it cannot be disputed that in view of the passing of the Karnataka Land Reforms Amendment Act, by virtue of Section 44, all the lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under Section 5, shall with effect on and from the said date, stand transferred to and vested in the State Government. Therefore, the vesting of the tenanted land is by operation of law. No written order is needed under the provisions of the Act for completion of vesting. Once vesting takes place, the right of the owner of the land stands extinguished and the property vests in the State Government free from all encumbrances. Notwithstanding such vesting the tenant may continue in possession of the property. In fact the condition precedent for vesting is, the land in question must be a tenanted land. Even if the tenant is not in possession, but if it is a tenanted land, land vests in the Government. Therefore, there is no difficulty in holding that law does not prescribe any written order for giving effect to the intention of the legislation. In the aforesaid judgment, in Hosabayya's case, nowhere it is stated that unless there is a written order of vesting, the land

cannot be said to have vested in the State. In this context it is necessary to refer to the observation in Hosabayya's case for which exception is taken. The same is as under:

7. Having indicated the sweep and the extent of Rule 26-C let us now consider the scope of the Rule. Sub-rule (5) of the Rule is only to be understood in the context of Section 77-A and this is where the main provision of Section 77-A takes control of the situation. The procedure envisaged under Rule 26-C for the purposes of granting of land under Section 77-A of the Act cannot go beyond the purpose for which the section is provided for. As noticed earlier the object of the section is to provide an opportunity to those who might have been truly and lawfully tenants of the land, who were in possession and cultivation and continued to be in possession and cultivation, who might have missed the bus by not making an application within the stipulated period which in fact had come to be extended from time to time and to ensure that their possession and cultivation is continued without being disturbed any farther. It is very essential to point out that an application under Section 77-A is not the same as an application under Section 45, and the enquiry contemplated under Section 77-A cannot be the same as an enquiry conducted by the Land Tribunal under Section 48-A of the Act. Whereas on an application under Section 45, enquiry by the Land Tribunal is for grant of conferment of occupancy rights, an application under Section 77-A to the Deputy Commissioner or other officer authorised by the State Government is for the purpose of granting of land on satisfaction of certain conditions namely, three conditions mentioned therein. It is to be noticed that conditions (1) and (2) are conditions which should have been satisfied and foregone in respect of the land. It is not an enquiry to ascertain whether a person can be granted land being a tenant as on the appointed date: such an enquiry was within the scope of Section 48-A and not for the purposes of condition (1) of Section 77A. Here the enquiry is only for a limited purpose to find out the accomplished fact as to whether the person was in actual possession and cultivation of the land on the appointed date. It is not as though the authorities are to hold an enquiry for the purpose of conferment of occupancy rights on the premise that the applicants were lawful tenants on the appointed date and the enquiry was for such purpose. The factum of applicant being a lawful tenant on the appointed date and was in cultivation as on the appointed date is not to be established now for the present enquiry, but it should have been concluded fact and the scope of the present enquiry is to let in evidence to satisfy or prove the existence of such a concluded fact. It is for the applicant to show that it was an undisputed fact and on record and that without anything furthermore he was a tenant lawfully in possession and cultivation of the land on the appointed date. The second condition is also of significance and importance in the context of considering the application i.e., the land should have been vested in the State Government as on the appointed date as it was a tenanted land. This again is an event which should have been already taken place and as such the evidence that is required to be placed by the applicant to show that this

is an event that has taken place already. Obviously it should find a place in some official record, as vesting of the land is in favour of the state government. In the absence of any such record it again becomes a disputed fact which again is not within the scope of an enquiry under Section 77-A of the Act. If these two conditions are fulfilled then there is the necessity and scope for inquiring with regard to the third condition, namely, as to whether the applicant has continued to be in possession and cultivation of such land as on the date of commencement of the amending Act i.e., 1.11.1998. 3. It is the words "Obviously it should find a place in some official records, as vesting of the land is in favour of the State Government" is understood to mean that there should be an order in writing of vesting of the land or in the records of the Government there should be an entry to the effect that this land is a vested land. We are afraid, we will be reading too much into the said sentence, as the language employed therein is very plain. What the learned judges in the aforesaid observation meant was, in a proceeding under Section 77-A no enquiry regarding vesting of the land is contemplated. The condition precedent for application of Section 77-A is, the land in respect of which application is made is a vested land. If that is not in dispute, then the enquiry contemplated under Section 77-A is to find out firstly, whether the applicant was, immediately before the first day of March, 1974 in actual possession and cultivation of the said land; secondly, whether the said land does not exceed one unit; thirdly, whether the said person was entitled to be registered as an occupant of such land under Section 45 or 49; fourthly, whether such a person has failed to apply for registration of occupancy rights in respect of such land under sub-section (1) of Section 48A within the period specified therein and lastly, whether the said person has continued to be in actual possession and cultivation of such land on the date of commencement of the Karnataka Land Reforms (Amendment) Act, 1997. In this context it has been held that unless the applicant placed before the authority such evidence in the form of some official record to show that the land in question was a vested land he cannot succeed as, an enquiry as contemplated under Section 48-A is not permissible. It is in this background, in order to put at rest there exists any doubt, it would be appropriate to interpret the said Section keeping in mind the object with which this amendment was brought to the Karnataka Land Reforms Act and the procedure which is prescribed for "grant of land" in certain cases as the head note of the Section makes it explicitly clear.

77-A Grant of land in certain cases: (1) Notwithstanding anything contained in this Act, if the Deputy Commissioner, or any other officer authorised by the State Government in this behalf is satisfied after holding such enquiry as he deems fit, that a person.

(i) was, immediately before the first day of March, 1974 in actual possession and cultivation of any land not exceeding one unit, which has vested in the State Government under section 44 and

(ii) being entitled to be registered as an occupant of such land under section 45

or 49 has failed to apply for registration of occupancy rights in respect of such land under sub-section (1) of section 48A within the period specified therein, and

(iii) has continued to be in actual possession and cultivation of such land on the date of commencement of the Karnataka Land Reforms (Amendment) Act, 1997. he may grant the land to such person subject to such restrictions and conditions and in the manner, as may be prescribed.

Provided that the land so granted together with the land already held by such person shall not exceed 2 hectares or D class of land or its equivalent thereto.

(2) The provisions of sub-sections (2A) and (2B) of section 77 and the provisions of section 78 shall apply mutatis mutandis in respect of the grant of land made under sub-section (1).

4. It is contended before us that while interpreting this provision, the Courts ought not to have read into the Section what is not contemplated by the legislature, as has been done by the learned Judges in the aforesaid Division Bench rulings. Secondly, it is contended that as it is a Social Welfare Legislation, the object of the Act. has to be kept in mind and even if there is any discrepancy in the legislation, the Courts should stretch the meaning of those words so as to achieve the object, namely the grant of land to a tenant who continues to be in occupation and who did not make an application for grant within time. In this connection reliance is placed on the decisions of the Apex Court. A Constitution Bench of the Apex Court in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, has held as under:

13. While interpreting a provision the court only interprets the law and cannot legislate it If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd., . The legislative casus omissus cannot be supplied by judicial interpretative process. Language of S. 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case (supra). In Nanjundaiah's case (supra), the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of S. 6(1). If the view is accepted it would mean that a case can be covered by not only Cls.(i) and / or (ii) of the proviso to S. 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

14. Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and

other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result." Said Danckwerts. L.J., in *Artemiou v. Procopiou* (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available. "Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in *Luke v. I.R.C* (1966 AC 557) where at p.577 he also observed; "this is not a new problem, though our standard of drafting is such that it rarely emerges.")

5. In the case of *Sant Ram Vs. Rajinder Lal and Others*, , regarding the rules to be remembered while interpreting statutes, at paragraph 7 it is held as under:

7. Two rules must be remembered while interpreting deeds and statutes. The first one is (2):

In drafting it is not enough to gain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand." The second, one is more important for the Third World countries. Statutory construction, so long as law is at the service of life, cannot be divorced from the social setting. That is why, welfare legislation like the one with which we are now concerned, must be interpreted in a Third World perspective. We are not on the Fifth Avenue or West End of London. We are in a hilly region of an Indian town with indigents struggling to live and huddling for want of accommodation. The law itself is intended to protect tenants from unreasonable eviction and is therefore, loaded a little in favour of that class of beneficiaries. When interpreting the text of such provisions- and this holds good in reading the meaning of documents regulating the relations between the weaker and the stronger contracting parties- we must remember what in an earlier decision of this Court, has been observed (3):

Where doubts arise the Gandhian talisman becomes a tool of interpretation "Whenever you are in doubt..... apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him. If we remember these two rules, the conclusion is easy that there is no exclusiveness of purpose that can be spelt out of the lease deed. That knocks at the bottom of the case of the landlord.

6. The Apex Court in the case of *Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others*, has held as under:

9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having

ascertained the intention, the court must then strive to so interpret the statute as to promote/advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary. 7. In the case of *Bhatia International Vs. Bulk Trading S.A. and Another*, the Apex Court has held as under:

The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the court has to choose that interpretation which represents the true intention of the legislature. This task often is not an easy one and several difficulties arise on account of variety of reasons, but all the same, it must be borne in mind that it is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its applications may be called for. It is in such a situation the court's duty to expound arises with a caution that the court should not try to legislate. While examining a particular provision of a statute to find out whether the jurisdiction of a court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the court arrives at the same when such a conclusion is the only conclusion. Notwithstanding the conventional principle that the duty of Judges is to expound and not to legislate, the courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and, since interpretation always implied a degree of discretion and choice, the courts would adopt, particularly, in areas such as, constitutional adjudication dealing with social and defuse (sic) rights. Courts are therefore, held as finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing" (see *Corocraft Ltd. v. Pan American Airways*, All ER at p. 1071D. WLR at p.732. *State of Haryana v. Sampuran Singh*, AIR at p. 1957). If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. (See *Johnson v. Moreton and Stock v. Frank Jones (Tipton) Ltd.*) In selecting out of different interpretations, the court will adopt that which is just, reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. In *Shannon Realities Ltd.*

v. Ville de St Michel AC at pp. 192-93, Lord Shaw stated:

Where words of a statute are clear, they must, of course, be followed, but in Their Lordships' opinion where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system. This principle was accepted by Subba Rao, J. while construing Section 193 of the Sea Customs Act and in coming to the conclusion that the Chief of Customs Authority was not an officer of Customs. (*Collector of Customs v. Digvijaysinhji Spg. and Wvg. Mills Ltd.*,)

8. Again the Supreme Court in the case of *The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another*, at paragraph 14 has held as under:

The next question which falls for consideration is what is the nature of the "financial interest" contemplated by the said subsection. The expression financial interest is capable of a narrower as well as a wider meaning. In the narrower sense, it implies direct personal benefit of an economic nature. In the wider sense, it may include any interest direct or indirect which a person has in relation to the finances of the undertaking. Such an interest may be the interest of an official who manages the finances of the undertaking or on whom rests the burden of financial accountability. It is trite to say that the intention of the legislature must be found by reading the statute as a whole. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. The rule is of general application as even the plainest terms may be controlled by the context. The expressions used in a statute should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the legislature. Therefore, when two interpretations are feasible, the court will prefer that which advances the remedy suppress the mischief as the legislature envisioned. Keeping these principles in mind, we shall now consider what meaning has to be given to expression "financial interest" in sub-section(2) of section 68 of the Act. 9. From the aforesaid judgments, it is clear that, the conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the court has to choose that interpretation which represents the true intention of the legislature. The duty of Judges is to expound and not to legislate. The primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote/advance the object and purpose of the enactment. If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting

from adopting the alternative constructions. In selecting out of different interpretations, the court will adopt that which is just, reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. It is trite to say that the intention of the legislature must be found by reading the statute as a whole. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. The rule is of general application as even the plainest terms may be controlled by the context. The expressions used in a statute should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the legislature. While interpreting a provision the Court only interprets the law and cannot legislate it.

10. It is in the background of the said well established rules of interpretation, let us see the setting in which Section 77-A to be interpreted occurs, bearing in mind the intention of the legislature, the object and purpose of the enactment and the amendment brought about by Act 23 of 1998.

11. Though the Karnataka Land Reforms Act was enacted in the year 1961, radical amendments were brought to the said Act only in the year 1974 by Act 1/1974 by which by a stroke of pen all the tenanted lands were declared to have vested with the Government. The whole object of the said amendment was to see that the Tiller of the land gets occupancy rights in respect of the land and also to discourage absentee landlordism. After making a declaration that such tenanted land vested with the Government, the Act provided for grant of occupancy rights to those tenants who were cultivating the land immediately prior to the appointed date i.e., 1.3.1974. Chapter III of the Act deals with conferment of ownership of tenants. All lands held by or in the possession of tenants prior to the date of commencement of the Amendment Act, i.e., 01.03.1974 stood transferred to and vested in the State Government. The effect of such vesting was, all rights, title and interest vesting in the owners of such lands ceased and vested absolutely in the State Government free from all encumbrances. The only right to which the landlord was entitled to, was to receive the amount from the State Government as provided under Section 47 of the Act. The landlord was not given the right to claim the land. However, the tenant was given a right to be registered as occupant in respect of such land. Section 45 conferred a right on tenants to get themselves registered as occupants of land subject to their satisfying the conditions mentioned therein. The tenant who wanted occupancy rights under Section 45 of the Act has to make an application to the Tribunal. In order to adjudicate the claims of such persons, a machinery was also created under the Act in the form of Land Reforms Tribunals. The power to confer occupancy rights on such tenants was vested with the Tribunal constituted under Section 48 of the Act. If a tenant filed an application claiming occupancy rights, then Section 48-A provided for an

enquiry by the Tribunal, which is constituted under Section 48 of the Act. As is clear from the provisions of Section 48-A, as soon as the Tribunal received an application from a tenant requesting for registration of occupancy rights in his favour within the time prescribed, the Tribunal was under an obligation to issue individual notices to the persons mentioned in the application and also to such others as may appear it to be interested in the land. If any objection is filed disputing the validity of the applicant's claim or setting up rival claim, an enquiry was contemplated. The Tribunal shall hold an enquiry. After enquiry, if the Tribunal was satisfied that the applicant was a tenant and the land in question was a tenanted land, it would grant occupancy rights in favour of such applicant. If there was no objection, the Tribunal may at once pass orders granting the application. Initially, a time limit was prescribed for filing such applications. However, from time to time it came to be extended. The last of such extension came to an end on 30.6.1979. Thereafter, the Tribunals were denuded with the power to entertain any such applications claiming occupancy rights. When an application had been filed by the tenant, seeking for occupancy right, it was open to the landlord to whom notice was sent to contest the claim and show that the applicant was not a tenant of the land in question under him and the land in question was never a tenanted land and was in his self occupation. On such contention being taken, a duty was cast upon the Tribunal to go into the question whether the land in question was a tenanted land and thereafter, to record a finding whether the applicant was a tenant of the land in question and depending upon the material placed before it, to grant the land or reject the application. If it recorded a finding that the land in question was not a tenanted land, then such a land would not vest with the Government. The applicant had no right to seek for occupancy rights. The Tribunal had no jurisdiction to grant any occupancy rights. As a time limit was prescribed, even if a tenant was in cultivation of the lands and the land had vested with the Government, the tenant could not have enforced his right after the expiry of the said time. There were also cases where the land in question was a tenanted land and the tenant continued in occupation of the tenanted land and was cultivating the same, consequently, the same vested with the Government, but the said tenant could not be granted occupancy rights because he had not filed an application within the prescribed time.

12. Chapter IV deals with Ceiling on Land Holdings. Section 63 and 64 provides for such ceiling. The land which is in excess of ceiling laid down in Section 63 and 64 shall be surrendered to the State Government and a separate procedure is prescribed for adjudicating the excess of ceiling land and such excess land vest with the Government free from all encumbrances. Section 67 provides for surrender of lands in certain cases and such surrendered land also vest with the Government. Similarly, the lands which are acquired contrary to the provisions contained in Chapter V, namely 79-A, 79-B and 80 also vest in the Government. Section 77 of the Act deals with disposal of surplus land. It provides for grant of such surplus land in favour of dispossessed tenants who are not registered as occupants, displaced tenants having no land, landless agricultural labourers,

landless persons and released bonded labourers. The said provision specifically did not provide for grant of lands to tenants who were in occupation of the land prior to 01.03.1974 vested with the Government, because they did not make an application for grant of land. Insofar as grant of the vested land to certain persons is concerned, it is the provisions of the Land Grant Rules, 1969 which are to be applied. In this background, in the year 1997, the legislature felt that some of the tenants who continued to cultivate the land, which was vested with the Government and for various reasons could not file the applications, if they had to stand in the queue probably they might not get the said land granted. It is in those cases, as they had missed the bus and as they were actually cultivating the land prior to vesting and continued to cultivate the land from the date of vesting till 1997, a provision was thought of for grant of such land. It is to meet such a situation, Section 77-A has been introduced by the Karnataka Legislature by Act No. 23 of 1998. It is in the nature of a preferential treatment for grant of tenanted lands. Which are vested with the Government, in favour of the tenant subject to his satisfying the conditions stipulated therein.

13. It is clear from the language used while describing Section 77-A that the legislature described it as grant of land in certain cases" and not in all cases. The heading of the Section makes it clear that it is not a case of grant of occupancy rights or registering them as occupants of land. On the contrary, it is a case of grant of land. The said provision applies to lands which are vested in the State Government under Section 44. In other words, it is a land which is a tenanted land which is vested with the Government under Section 44, in respect of which the tenant who was entitled to grant of occupancy rights under Section 45, has not made an application within the time prescribed and therefore he has lost his right for registering him as occupant of the said land. When such a tenant, if he is continued in actual possession and cultivation of such land, on the date of commencement of the Karnataka Land Reforms Amendment Act, the authority under the said provisions may grant the land to such person, subject to the conditions stipulated therein being fulfilled.

14. By virtue of the powers conferred by Section 137 of the Act, the Government of Karnataka has made the Karnataka Land Reforms Rules, 1974, (for short, hereinafter referred to as the "Rules"). Rule 17 of said Rules prescribes the procedure to be followed by the Tribunal. It in turn provides for the procedure as specified for a summary enquiry under Section 34 of the Karnataka Land Revenue Act, 1964. Therefore, the procedure to be followed by the Land Reforms Tribunal is prescribed. Section 77-A also provides for holding an enquiry before such grant. The enquiry to be held under Section 77-A is not an enquiry under Rule 17 of the Rules. The intention of the legislature is very clear when the Government introduced Rule 26-C by way of notification dated 31.10.1998 which came into effect from 02.11.1998. The authority to grant land under Section 77-A is the Deputy Commissioner or the other Officer authorised by the State Government in this behalf. In other words, the power to grant land under Section 77-A is not conferred on the Tribunal. The application under Section 45 is to be

filed in Form No. 7, while an application under Section 77-A is to be filed in Form No. 7-A.

15. Interestingly, as in the case of Rule 17, for conducting enquiry, the procedure prescribed under Section 34 of the Karnataka Land Revenue Act, 1964, is not made applicable to enquiry under Section 77-A of the Act. In an enquiry under Section 77-A read with Section 26-C, the question of the authority going into the question whether the land in question is a tenanted land or not, would not arise, which question, the Tribunal constituted under the Act alone is competent to go into under Section 48 of the Act. No such power or jurisdiction has been conferred under Section 77-A on the Deputy Commissioner or the Assistant Commissioner. The enquiry contemplated under Section 77-A is to be confined only to the following:

(1) Whether the person who has made an application under Section 77-A was in actual possession and cultivation of any land before the first day of March 1974;

(2) Being entitled to be registered as occupants of such land under Section 45 or 49, has failed to apply for registration of occupancy rights in respect of such land under sub-Section (1) of Section 48-A within the period specified therein. In other words, if such an application had been filed, which claim is adjudicated upon by the Tribunal and if it is negated, then such a person is not entitled to file an application under Section 77-A;

(3) Whether such a person is continued to be in actual possession and cultivation of such land on the date of commencement of the Karnataka Land Reforms Amendment Act, 1977.

16. Proviso makes it clear that the land so granted together with the land already held by such person shall not exceed 2 Hectares of "D" class of land or its equivalent thereto. In other words, if the applicant held land in excess of 2 Hectares of "D" class of land or its equivalent thereto, he was not entitled to grant of land under Section 77-A of the Act, even if he was a tenant of the land in question prior to 01.03.1974 and continued to be in possession of the land and cultivating the land till the introduction of Section 77-A of the Act. Though such land vested with the Government as on 01.03.1974, he was not entitled to grant of land.

17. If we keep the above principle and the legislative intent in mind, what emerges is while amending the Act and introducing Section 77-A, the legislature was very clear in its mind that by the said amendment, they were not intending to have one more forum for registration of occupancy rights under Section 45 of the Act. These two provisions were intended to cover two independent fields. Similarly, if a person has availed the benefit of Section 45A and lost the battle. Section 77-A was not meant to give him one more opportunity, a second innings. The power to grant occupancy rights under Section 45 was vested with a quasi-judicial authority like a Tribunal. On the day the amendment introducing Section 77A came into force, the Tribunals were in existence and functioning. The

intention of the legislature was not to give them jurisdiction to decide the claims under Section 77-A. A separate machinery is now contemplated under Section 77-A. The enquiry that was contemplated under Section 45 is totally different from the enquiry under Section 77-A. as is clear from the fact that corresponding to Section 77-A Rule 26(c) was enacted and the claim under Section 77-A had to be adjudicated in terms of the procedure prescribed under section 26(c). A reading of Section 77-A makes it very clear this provision has a limited application. It applies to only certain cases. It is necessary to bear in mind the context in which Section 77-A is introduced. This provision finds a place in Chapter IV, where under as per Section 77 a provision is made for disposal of surplus lands on such land being vested with the Government and also other lands which are vested in the State. Therefore, in a proceeding under Section 77-A, the enquiry that was contemplated under Section 48-A is excluded. This is a provision that enables a person who is in occupation of a land, of which he was a tenant and continues to be in possession as a tenant to apply for grant of such land, if he had failed to make an application for grant of occupancy rights within the time stipulated. Such a person is given an opportunity to make an application for grant of land provided he continues to cultivate the land and he was not holding land in excess of 2 Hectares of land. Therefore, in the said proceedings the question whether the said land is a tenanted land or not, cannot be gone into, as is clear from the language used in Section 77-A. The entire enquiry contemplated under Section 77-A is in respect of a land, which is vested in the State Government under Section 44, as on 01.03.1974. It should be an undisputed fact. If the said fact is disputed, then Section 77-A has no application. The jurisdiction under Section 77-A is attracted only in respect of undisputed tenanted lands. Vesting of the land as on 01.03.1974 with the Government, which fact is not in dispute, is a condition precedent for application of Section 77-A. If a tenant makes an application, the question that arises for consideration is how he proves that it is a vested land. The vesting of the land is by operation of law. No order of vesting need be passed. There cannot be an order declaring the vesting of the land. Therefore, production of order of vesting is not the requirement of law and it is not possible and it cannot be insisted upon. However, it is for the applicant who comes to the Court to establish, that the land in question is a vested land. While establishing such fact, it is necessary that he should rely on undisputed documents and such undisputed documents may be in the nature of some official record showing vesting of the land in favour of the State Government. The Government record referred to in the judgment is not an order of vesting. It is a record in proof of vesting. It may vary from case to case and depends upon the stand taken in each case. But, unless there is some official record evidencing the vesting of the land, the authorities under Section 77-A would get no jurisdiction to hold an enquiry and grant land under Section 77-A to the applicant. The official record referred to therein may be in the form of Land Revenue receipts, record of rights, index of land, mutation orders, consequent mutation entries or any other record which is maintained by a public officer as opposed to private documents. It is in this context, the learned judges in the aforesaid judgments have stated that the

land should have been vested in the State Government as on the appointed date. The said event should have already taken place. The evidence is required to be placed by the applicant to show that this is an event that has already taken place. In that context the observations to the effect that "obviously it should find a place in some official record as vesting of the land is in favour of the State Government" are made. This amendment came into force in 1997 roughly 18 years after the last date prescribed for filing applications under Section 45. For 18 long years after the vesting of the land if the tenant has continued in possession, there must be some evidence by way of a public record to show his possession, cultivation and enjoyment as recognised by the Government, because after the vesting he has to deal with the Government and not with the erstwhile owner. How the Government as well as the applicant have dealt with this property during these 18 years assumes importance. In this context the observations made in the said judgments cannot be read as new conditions prescribed by the judges in Section 77-A by the process of judicial interpretation as sought to be urged by the counsel for the petitioner. The judges do not legislate. They only interpret the provisions. Therefore, the argument that under the guise of interpretation, the judges have re-written the Section is not well founded. It is a case of misreading the judgment. Under these circumstances, the interpretation placed by the Division Benches is proper and legal. We do not find any need to clarify what has been already said.

Accordingly, the reference is answered. The matters shall be placed before the learned single judge for decision in the light of the answer given herein above.