

(2015) 01 KAR CK 0503

In the Karnataka High Court

Case No : Writ Petition No. 12249 of 2003 (LR)

M. Lingappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Evidence Act, 1872 — Section 74
Karnataka Land Reforms Act, 1961 — Section 66
Karnataka Land Revenue Act, 1964 — Section 133, 136(2), 136(3)
Limitation Act, 1963 — Section 5

Citation : (2015) 3 KarLJ 199 : (2015) 4 KCCR 3508

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : Pramila Nesargi, Senior Advocate and H.P. Leeladhar, for the Appellant; Vasant V. Fernandes, Government Pleader, Madhusudhana Rao and S.N. Sudha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

H.G. Ramesh, J.—Petitioners are said to be children of one Muni Nagappa. They have filed this petition seeking for issuance of mandamus directing the respondent to hold an inquiry in respect of the application filed for grant of occupancy rights at Sl. No. 756, dated 26-12-1974 pertaining to Sy. Nos. 259, 263/1, 25, 26, 73 situate at Begur Village, Bangalore South Taluk insofar as land bearing Sy. No. 25 measuring 8.5 acres and for a further direction to the respondents to hold an inquiry and dispose of the application filed in Form 7 after recording the statement of the parties and after giving opportunity to the petitioners, in accordance with law. According to the petitioners, land bearing Sy. No. 25 measuring 8.5 acres situate at Begur Village, Bangalore South was a shanbogh inamthi land and the holders of the village office have executed a lease deed on 9-5-1951 - Annexure-A. The revenue records - Annexure-B series, stand in the name of the father of the petitioners. The petitioners' father died in the

year 1983 and he had all original documents including Form 7, dated 26-12-1974 which was filed and registered at Sl. No. 756. A copy of the extract which has been issued to the petitioners evidencing the filing of Form 7 for grant of occupancy rights is at Annexure-C. It is the case of the petitioners that they have not been issued with notice. The statement of the father of the petitioners or the petitioners were not recorded. Their father was in a serious condition and he was not in a position to speak anything or understand for a period of 3 to 4 years prior to his death. Under these circumstances, there is no proceedings which came to be disposed of, as such, it is wrong and illegal on the part of the respondents in recording a finding that the application came to be disposed of in the year 1981. If it is disposed of, the respondents be directed to give a certified copy of the order passed by the Land Tribunal in this regard. It is further averred, after the death of the petitioners' father, petitioners have filed an application for entering their names in the revenue records. The Tahsildar has mutated the names of the petitioners and also directed, if any rights are to be established, the same can be agitated before the Civil Court. Against this order, appeal came to be filed by the contesting respondents before the Assistant Commissioner which came to be allowed and the revision filed by the petitioners before the Special Deputy Commissioner came to be dismissed. The proceedings under Section 136(2) and 136(3) of the Karnataka Land Revenue Act, 1964 is a separate subject-matter and would be challenged at the appropriate time. In the writ petition, petitioners confine only for a direction to the Land Tribunal to place Form 7 before the Land Tribunal for disposal in accordance with law.

2. According to the petitioners, land has been regranted in favour of the holders of the village office on 19-3-1975 by the Assistant Commissioner and after the regrant right of the petitioners has to be adjudicated as such, they are before this Court. The petitioners made an application that if any proceedings of the Land Tribunal was conducted or any order has been passed, the same may be given to them and an application for certified copies also came to be filed. However, an endorsement dated 19-3-2003--Annexure-D has been issued by the Tahsildar that there are no such proceedings and no such orders have been passed by the Land Tribunal and the file is not available. But the application filed by the petitioners' father came to be registered and has been entered in the Register and therefore, respondents should produce the proceedings about the disposal of said application filed by their father. The land is an inamthi land and valuable land and petitioners suspect that there must be collusion between the contesting respondents and the authorities so far as non-availability of the records and the authorities may not give the certified copies of the order and the proceedings or hold an inquiry. Hence, this petition raising several grounds stating that petitioners are in possession and enjoyment of the property in question. It has not come to the knowledge of the petitioners that Form 7 filed by their father came to be disposed of but petitioners were under the impression that records may be summoned by the Deputy Commissioner. A memo has been filed in this regard however, the Revisional Authority without passing any order,

has rejected the same. Since Form 7 filed by their father has not been disposed of, petitioners are seeking a direction to the respondent-authority to maintain status quo between the parties regarding the property in question. It is their case, if status quo is not granted till the inquiry is conducted, respondents may part with the property.

3. Statement of objection is filed by respondent 10(a) who is the legal representative of deceased respondent 10. She is brought on record on the death of the 10th respondent who died during pendency of the writ petition. She has also filed additional statement of objections along with the statement of objections already filed.

4. According to the statement of objections filed, petition is not maintainable either in law or on facts. Petitioners have not approached the Court with clean hands and have suppressed several material facts and misrepresented the facts. The writ petition is highly belated and the same suffers from delay and laches. As such, it is liable to be dismissed. Petitioners have sought a mandamus directing the respondent to hold an inquiry in respect of the application filed in Form 7 said to have been filed by their father seeking grant of occupancy rights in respect of land in Sy. Nos. 259, 263/1, 25, 26 and 73 all situate at Begur Village, Bangalore South Taluk. The averments in the entire writ petition is only in respect of land in Sy. No. 25. There is absolutely no reference to the claim in respect of other lands. Except filing Form 7 extract - Annexure-C, petitioners have not filed copy of Form 7 said to have been filed by their father or any other document in respect of the same.

5. So far as land in Sy. No. 25, it is stated, it is a shanbogh inamthi land. Under the provisions of the Karnataka Village Offices Abolition Act, 1961 order has been passed by the Assistant Commissioner, Bangalore Sub-Division, Bangalore and the land in Sy. No. 25 measuring 8.5 acres was regranted in favour of one B. Suryanarayana Rao, father-in-law of respondent 10(a), on 19-3-1975 in Case No. HOA(S) 66/68-69. It is further averred that the holders of village office executed a registered lease deed in 1951 is false. The document produced at Annexure-A is fabricated and is created for the purpose of the case. The record of rights produced at Annexure-B series clearly indicate that so far as Sy. No. 25 is concerned, though the name of Muni Nagappa, father of the petitioners is shown in Column 12, the mode of cultivation is shown as (a) which means to say that the land is under the personal cultivation of the owner. It is not the case of the petitioners that their father Muni Nagappa was the owner of the land and it is their case that their father was a tenant of the land in question. The mode of cultivation shown as (1) would not have been indicated as such, if it were otherwise. In that view, the entries which are sought to be relied upon by the petitioners in respect of Sy. No. 25 do not reflect the correct state of affairs and no presumption whatsoever can be drawn in respect of the said entries as per Section 133 of the Karnataka Land Revenue Act, 1964. The father of the petitioners died in the year 1983 and he had all original documents including

Form 7, petitioners were not issued with notice and the statement of their father was not recorded and he was not in a position to speak of understand three to four years prior to his death are false. Also the allegation that there was no proceedings and the finding given by the respondent that the application came to be rejected in the year 1981 is not correct. This respondent 10(a) has produced the copy of the extract of the villagewar register in respect of Form 7 which is a public document as per Section 74 of the Indian Evidence Act, 1872. The said extract pertaining to the application filed in Form 7 clearly indicate that the application entered at Sl. No. 756 has been rejected on 17-10-1981 - Annexure-R2. The averment made by the petitioners in respect of the revenue records which have culminated in the order passed in W.P. Nos. 20737 and 20738 of 2003 on 14-12-2005 are all matters on record and both the Assistant Commissioner and Deputy Commissioner have given a finding that the application filed by the father of the petitioners has been rejected on 17-10-1981 and the averment of the petitioners since the land in Sy. No. 25 was regranted in favour of the holders of village office under the provisions of the Karnataka Village Offices Abolition Act and as such, the claim of the petitioners has to be adjudicated and therefore, they are before the Court is false in view of the fact that the claim of the petitioners' father had been rejected as early as 17-10-1981 as per Annexure-R2. The allegation made that the endorsement issued by the Tahsildar to the effect that there is no proceedings and no order has been passed by the Land Tribunal and the file is not available is false and the same is contrary to the recitals of Annexure-D. Annexure-D only states that file is not available in the office of the Tahsildar, hence a copy of the same cannot be given. The endorsement does not state that no such proceedings are there and no such orders are passed by the Land Tribunal. It is stated, this is a clear case of deliberate misrepresentation of facts and the stand of the petitioners that there must be collusion between the contesting respondent and the authorities in respect of non-availability of the records, does not stand to reason. It is submitted, petitioners who claim that the application filed by their father is still pending notwithstanding the entries at Annexure-R2 to the effect that the application is rejected, are the one who would stand to gain by the non-availability of the records. The stand of the petitioners that they are under the impression that since there is a regrant in favour of the holders of village office, petitioners title has been protected and they came to know about the application filed by the respondent only in the mutation proceedings are all false. The application filed by the petitioners' father in the year 1974 is pending is inconsistent with the statement in the grounds raised for interim relief wherein petitioners have stated that they have come to know of the disposal of the application Form 7 filed by their father. Form 7 is filed in the year 1974 and petitioners' father died in the year 1983. Except stating that petitioners were not aware of the fate of the application filed by their father and they came to know only during mutation proceedings and that they were not issued with notice by the Land Tribunal much less petitioners have not given any sufficient cause for not approaching this Court for more than two decades after the death of their

father. Accordingly, the writ petition is belated and has to be dismissed only on the ground of delay and laches. Only recently on inquiry respondent 10(a) has come to know that Muni Nagappa father of the petitioners was involved in various proceedings before the Land Tribunal, Bangalore South Taluk and involved in various litigation. The 1st petitioner-M. Lingappa has been closely associated with his father in all proceedings right from the year 1979. The fact is, the father of the petitioners executed a special power of attorney in favour of the 1st petitioner authorising him to appear in the matter listed as LRF 756/74-75 which is the subject-matter of the present writ petition. The said power of attorney has been sworn to before the II Munsiff, Bangalore on 25-10-1979 - Annexure-R3 and has been filed before the Land Tribunal and is a part of the records in LRF 4020, 3459, 4021, 756, 4740 and 4739/75-76. The 1st petitioner has also given evidence on the basis of the power of attorney executed. Since the power of attorney refers to LRF 756 also, it is clear that 1st petitioner was fully aware of the proceedings in LRF 756 and he cannot plead ignorance of the application filed by his father and the contention that he came to know of the fact only during mutation proceedings and that they were not issued with notice is false. The father of the petitioner had also filed an application in respect of land in Sy. Nos. 259, 73 and 26 in LRF INA 1883, 1884, 1885 and 1886/79-80 - Annexure-R6. The power of attorney which is produced at Annexure-R3 refers to LRF 4739, 4740, 756, 4021, 3459 and 4020. Further, notices of the proceedings pertaining to LRF 1883/1884/1885/1886/79-80 sent to the father of the petitioners were received by the father and also 1st petitioner himself which are at Annexures-R7 to R11. Annexure-R7/notice dated 20-11-1981 fixing the date of inquiry on 4-12-1981 has been signed by the father of the petitioner himself. When the order has been passed by the Land Tribunal rejecting the claim of the petitioners' father in respect of Form 7 at Sl. No. 756, the father of the petitioners was very much available and contention put forth to the effect that he was unwell and would not have been served with notice are all false. It is stated, these material facts has been suppressed and the petitioners have not approached the Court with clean hands and the explanation offered by them are false and the petition is bad for delay and laches, petition has to be dismissed in limine with exemplary costs.

6. With respect to the case dairy is concerned, it is stated there is an entry on 17-10-1981 pertaining to the cases dealt by the Land Tribunal and the contention that in respect of LRF 756 no orders could have been passed by the Land Tribunal, is false and untenable. As per the case dairy, LRF 756 connected with LRF 755 and 757/74-75 was posted before the Land Tribunal on 10-5-1979 and on subsequent dates on 5-6-1979, 4-7-1979, 18-8-1979, 23-8-1979 and 6-10-1981 which clearly indicate that in addition to the aforesaid cases, from 6-10-1981 other cases such as LRF 2566, 2606, 256 B/75, 660/74-75, 171/79-80 were posted on 17-10-1981. On 17-10-1981 only 660/74-75 is shown to be adjourned to 24-10-1981 and this goes to show that the other cases which were listed on 17-10-1981 were disposed of on 17-10-1981. It is further stated,

in the case dairy pertaining to 17-10-1981 the concerned official has only entered those cases which were adjourned from that date to the next date of hearing and such of those cases which were disposed of on 17-10-1981 were not entered even though the same was decided the very same day. Similarly, LRF 755, 756 and 757/74-75 are also rejected on 17-10-1981 as indicated in the extract of villagewar register - Annexure-R2. As such, according to respondent 10(a), it cannot be contended that merely because the said case has not been entered in the case dairy on 17-10-1981 the same was not disposed of and the entry made in the villagewar register is not correct. Annexure-R2 being a public document has presumption attached to it and petitioners have not placed any material to dislodge the same. It is averred that this respondent came to know that Muni Nagappa had filed declaration in Form 11 in respect of the lands held by him as required under Section 66 of the Karnataka Land Reforms Act, 1961. In the said declaration which is dated 18-12-1975, Muni Nagappa has stated that he is in possession of 3.20 acres in Sy. No. 25. It is stated, without prejudice to the contention of respondent 10(a), father of the petitioners was not in possession of any portion of Sy. No. 25 and the aforesaid declaration in Form 11 - Annexure-R15 is contrary to the case which is sought to be put forth by the petitioners that their father was in possession of 7.24 acres and petitioners are guilty of misrepresentation of facts and suppression of material facts and they are not entitled for the relief sought for.

7. In the rejoinder filed by the petitioners, they have denied the statement of objections as absolutely false except which are admitted. It is stated, what is stated in the petition is true and correct. The holder of village office had executed a registered lease deed on 9-10-1951 is patently false is denied. The agreement executed at Annexure-A is fabricated and created for the purpose of the case is false is denied. It is stated, so far as Sy. No. 25 is concerned, the name of Muni Nagappa is shown in Column 12 and the mode of cultivation as (1) i.e., cultivation by the owner. It is not the case of the petitioners that their father was the owner of the land it is their case that their father was a tenant of the land in question and if that were so, the mode of cultivation would not have been shown as (1) as such, the very entries relied upon by the respondent would not reflect the correct state of affair and no presumption whatsoever can be drawn under Section 133 of the Karnataka Land Revenue Act. Denying the averments made in the statement of objections in paras 6 to 10, it is stated, the claim of the petitioners has to be adjudicated and hence they have approached this Court and it is false to say that the case of the petitioners" father is rejected on 17-10-1981. Annexure-R2 is false and there is an endorsement issued by the Tahsildar to the effect that there was no proceedings in which such orders are passed and the file is not available is patently false. The entire averments of the statement of objections is denied. Even the power of attorney said to have been executed by the father of the petitioners in favour of 1st petitioner is false. According to them, the alleged power of attorney found in the Court file is not the genuine one. Accordingly, they have sought dismissal of the claim of the

respondents with costs.

8. Amendment application is also filed and also for the application filed by the respondent regarding maintainability, there are objections filed. In 2006, the amendment application is filed seeking quashing of the entries in the village war register - Annexure-R2 and also to order for fresh inquiry, for which objection is filed by the respondent which are pending consideration. An order has been passed by my predecessor who took up this application along with the main matter.

9. Heard the Counsel for the respective parties for several days in piecemeal and the Additional Government pleader who represents the Government with regard to the position. To make it specific, all the parties have been requested to submit their written arguments and that is also done.

10. At the outset it is pertinent to mention that when the writ petition was filed during 2003 with the original prayer for a mandamus, it was found the relevant records of the Land Tribunal were missing. Initiation was taken by the Court itself suo motu to preserve the land records throughout the State. As such, a special drive was initiated by appointing the then Principal Secretary to Revenue Department Mr. Rajiv Chawla and huge amount had been released in this regard for indexing and scanning of the revenue records, to preserve the same permanently at various levels so as to avoid missing of the records in future. In this regard, substantial development has taken place on allocation of funds in various districts of the State and reports were also called for and Justice D.V. Shylendra Kumar had taken a painful task to see that the entire records in the Revenue Department are preserved in tact, having regard to the difficulties faced by the parties for want of original records as the original records are relevant to avoid mischief of missing records at various levels. This matter was dealt by my learned predecessor for a long time from 2003 onwards and during April 2012 the matter was posted before me as per the roster. The State had not filed statement of objections. After the matter is made over to this Court on roster, substantial progress has been made by the Revenue Department in various Districts requesting the Deputy Commissioners of various Districts to be present, to take up the work on war-footing basis regarding indexing, scanning and digitization of the revenue records on a permanent basis. Almost 90% of the work has been done. However, the matter is of the year 2003. As there was substantial delay from 2003 to 2014, the main matter is taken up for disposal. The parties also have been given sufficient time to substantiate their case by oral as well as written arguments. It appears, in between, for loss of records, departmental inquiry is also shown to have been initiated against some officials and even some criminal case is also shown to have been registered. Be that as it may, but ultimately, effort is made as part of the requirement that the records have to be maintained for all practical purposes in its original form by way of indexing, scanning and digitization. That has been done. Even the Government has also co-operated for this task of maintaining permanent records scientifically.

11. Coming to the case on hand, in the arguments submitted on behalf of the State referring to the claim of the petitioners with respect to filing of the application for grant of occupancy rights and other prayer, it is stated, the application is filed by way of seeking certified copy of the order of the Land Tribunal, they were expected to get the same and they are before this Court seeking for a direction for issuance, etc., for which it is replied that the records pertaining to the application of the petitioners' father was not traceable following which criminal proceedings are also initiated against the case worker who was in charge of the file. It is stated, Government is not in a position to reconstruct the records as per the direction of this Court to maintain the records in tact by way of scanning and computerization. Only upto a particular level Government is able to reconstruct the records but is unable to fill up the details as to the submission made by the petitioners and such other things which are specific and personal to the party appearing before the Tribunal. So far as the records which are available with the petitioners, they pertain to an undisputed point of time, no grievance can be made by any of the parties to the petition as to the veracity of the same. It is further stated, petitioners admit that Form 7 was filed by their father and that the proceedings as per the records available, concluded very definitely while their father was still alive and he had more than sufficient time to challenge the proceedings as such it is submitted, they did not intend to take up the contention at this stage that their late father had failed to take up while he was still alive. Even assuming that their statement as to their alleged date of knowledge is correct, it is to be noted that they have waited for a further period of over three years even for applying for a copy of the proceedings. There is unexplained delay and laches on the part of the petitioners in approaching this Court. Petitioners have produced photocopy of the alleged lease deed before this Court. It is settled law that if in fact, the land was tenanted, the property vests with the Government unless occupancy rights were regranted to the tenants as such, owing to the unexplained delay and laches on the part of the petitioners, petition deserves to be dismissed and land would vest in the Government. Further, respondents claim that they have a right over the property since it was regranted to them, subject to tenancy rights. It is also contended, the question of genuineness or otherwise of the alleged lease deed ought not to have been gone into by this Court but the parties need to be referred to the Civil Court for adjudication as to the genuineness or otherwise of the said document. If the document is genuine, land vests with the Government, if not respondent would be entitled for the same, according to law. Accordingly, it is prayed that the writ petition be dismissed.

12. Respondent 10(a) also filed written arguments. It appears, one of the applicant has filed impleading application to come on record, which is allowed and vakalath is filed and arguments were addressed by the respective parties.

13. According to the petitioners, there is a registered lease deed executed by B. Suryanarayana Rao, father-in-law of respondent 10(a) on 9-5-1951. The RTCs are standing in the name of petitioners father from 1968-1969 to 2002-2003 and

this Muni Nagappa had filed Form 7 on 26-10-1974 which is registered at SI. No. 756. The land is a shanbogh inamthi land regranted in favour of this Suryanarayana Rao on 19-3-1975. After his death during April 1978, the father of the petitioners Muni Nagappa also died. In the year 1997 when B.S. Subbarama Rao-10th respondent filed application for change of katha - Annexure-A, objection was filed. In the statement at K, L, and M there was no whisper regarding LRF proceedings and even in the application dated 6-1-2000, the 10th respondent has stated about the order passed by the Land Tribunal. Also review petition was filed by 10th respondent. Appeal was also filed before the Assistant Commissioner by the late Subbaramarao-respondent 10. There is an order passed directing entry of the name of the appellant in column 12(2) in the RTC against which petitioner filed a revision before the Deputy Commissioner which came to be dismissed against which, W.P. Nos. 20737 and 20738 of 2003 came to be filed. According to the petitioners, they came to know of the proceedings in the appeal before the Assistant Commissioner and till then they were not aware of the proceedings. Also, stating that when they approached the Tahsildar seeking copy of the order/proceedings it was stated that records are not traced. As such, the present writ petition is filed by the petitioners. Petitioners also made inquiry with the Special Tahsildar that this LRF 756 proceedings was posted on various dates from 1979 to 17-10-1981 as per the case dairy but those records are not forthcoming. Also during 2006 after remanding the matter, IA was filed for amendment of the prayer in addition to the prayer mentioned in the main petition. Those applications were kept pending for disposal along with the main matter for/after final hearing. Of course, subsequent event is, during March 2006, 10th respondent is reported to have died and his legal representative came on record by making an application which was permitted. It is stated, during March 2007, respondent 10(a) sold the property to a third person who is also an impleading applicant and the application so filed for impleading is now allowed.

14. It is the submission of the Counsel for the impleading applicant who sought to come on record that as there was no interim order, he has purchased the property.

15. The quintessence of the arguments advanced by the petitioners by way of written argument is, land in Sy. No. 25 originally is a shanbogh inamthi land. One B. Suryanarayana Rao had executed a registered lease agreement on 9-5-1951 which was registered with a vara (geni) and the said land measuring 12.24 acres was in personal cultivation of their father and brother of their father. After the partition between the brothers of Muni Nagappa, petitioners' father was in cultivation of 7.24 acres and Keeru Basappa was given 4.00 acres including 16 guntas pot kharab. The respondent's father-in-law had applied for regrant which was regranted in his favour. It was subject to tenancy rights if any, as such, on the application filed by the father of the petitioners during 1974, all revenue records are in the name of the petitioners' father with respect to the property in question. The main prayer of the petitioners is, for a mandamus directing the

respondent-authority to dispose of the matter which is still pending consideration and also in the alternative, to rebuild the records and to remand the matter to the Land Tribunal for reconsideration on treating the alienation by respondent 10 as lis pendens.

16. At the outset, according to the stand of the respondents, in the written arguments submitted in detail, petitioners have not produced any copy of Form 7 said to have been filed by their father. Annexure-C which is produced is the extract of Form 7 which indicates that application was filed on 26.12.1974 in respect of the land in Sy. Nos. 259, 263, 25 measuring 7.25 acres. It is stated, Muni Nagappa also filed Form 7 and Mallappa had also filed Form 7 which was numbered in LRF 755, 757 and 756/74-75. The contention that Form 7 filed by their father has not been disposed of by the Land Tribunal and it is till pending and the Tribunal ought to have held an inquiry is baseless. As per the village war register maintained, the matter in respect of Sy. No. 25 was disposed of during 1981 itself, question of issuing a writ of mandamus for holding an inquiry much less contending that the application is pending consideration does not arise. Specifically it is stated that the writ petition is liable to be dismissed on the ground of delay and laches and petitioners are guilty of suppressing material facts and mis-representing the facts and they are the beneficiaries by the missing of records as the application filed by them is dismissed. It is stated, even there is an exhibit/endorsement produced on behalf of the respondent in the form of cancellation of the lease deed. The author of the document are the petitioners and that itself indicates that the lease deed was cancelled and there was a regrant in favour of the respondent, however, it was subject to tenancy rights. Looking into the records and also the relevant records as on 1-3-1974, in column (12) the mode of cultivation is shown as (1) which indicates that it is self-cultivation, there is no question of there being a tenancy and all the records by way of a case diary maintained in respect of other proceedings which were pending consideration before the Land Tribunal at that point of time wherein 1st petitioner who was representing the father in other proceedings, do indicate that during 1979-1980 there was a power of attorney executed in favour of the 1st petitioner by his father and parties were very much aware of the proceedings before the Land Tribunal which was concluded along with other matters during 1980. The say of the petitioner that they were not aware of the proceedings before the Land Tribunal and they came to know only in the year 2000 is unbelievable as there are records to substantiate that they had knowledge. By no stretch of imagination, according to them, the delay could be condoned. The very fact of execution of the special power of attorney in favour of 1st petitioner in respect of the proceedings before the Land Tribunal which includes the present proceedings, has been suppressed by the petitioners. The petitioners father not only filed application in respect of Sy. No. 25, he had filed application for several other survey numbers in Form 7 on the basis of which the Land Tribunal had issued a notice to him. They are reflected at Annexures-R7 to R11 and the signature found on the reverse side of these annexures show that the date of

hearing fixed is endorsed by the petitioners father. Further the entries found in the official record of the Land Tribunal, the villagewar register - Annexure-R2 indicates that the application in LRF 755, 757 have also been rejected on 17-10-1981. Thus, based on other supplementary document/authentic documents, it is contended that petitioners were very much aware of the proceedings and disposal of the case in respect of Sy. No. 25 in LRF 756/74-75 as such, they cannot plead ignorance of the date of knowledge pertaining to Sy. No. 25 the application in respect of which was disposed of on 17-10-1981. It is stated, petitioners being beneficiaries have resorted to misplace the records in connivance with the officials contrary to their stand that the respondents are involved in misplacing the records in collusion with the officials of the Revenue Department. By misplacing the records of the Land Tribunal which culminated in rejection of their application, the petitioners would be benefited to have a fresh proceedings by seeking for rebuilding the records in stead of preferring an appeal. It is also submitted, after a lapse of 22-23 years petitioners have approached this - Court, the very prayer initially made for a mandamus for directing to dispose of the case itself shows that they have suppressed the very fact of disposal of the case which has taken place during October 1981 itself and even the disposal of Form 7 is reflected in the villagewar register-Annexure-R2.

17. Counsel has referred to the judgment rendered by this Court in W.P. No. 20737 of 2003, decided on 14-12-2005 wherein in para 21 it is stated that it is for the parties to approach the Civil Court in respect of the matter not covered by the decision of the Land Tribunal and seek for appropriate declaration and relief and also seek for making the entries in the revenue records, to contend that the claim of the respondent has not been done away with, rather parties are directed to approach the Civil Court on other than the matters which fall within the purview of the Land Tribunal and accordingly, contended that the disposal of the writ petition does not in any way affect the right of the respondent. However, the petitioners are before this Court to make out a new case as if they are not aware of the proceedings which culminated in the dismissal of Form 7 as if the matter is pending before the Land Tribunal and the further prayer to build up the records and remand the matter to the Tribunal cannot be considered at this length of time as it is barred by delay and laches.

18. In the light of the arguments advanced by both the parties, the points that arise for consideration is whether the records need to be reconstructed and matter needs to be remanded to the Land Tribunal; whether the writ petition is barred by limitation. Both the points are taken together for disposal.

19. At the outset what is seen is, proceedings had been initiated during 1974 itself by the father of the petitioners by filing Form 7. Also it is demonstrated that notice has been issued regarding filing of Form 7 and regarding commencement of enquiry, in the Annexure-R series produced on behalf of the respondent. Further, it is pertinent to note that as per the case dairy available, apart from the case in respect of Sy. No. 25 over which claim is there, records show that claim

by the petitioners father is in respect of 7.20 acres, and in other records as set forth by the petitioners father, the extent is 3.25 acres and there appears to be controversy as to the extent of land available in Form 7, available in the possession of the petitioners. Of course, there is variation in the claim made in Form 7 and the entries reflected in other records. It appears, originally it was 12.24 acres. According to the petitioners, some extent i.e., to an extent of 7.24 acres was assigned in the partition. Property being agricultural land, it appears father-in-law of respondent 10(a) had made an application for regrant and it was regranted. However, it was subject to tenancy rights. Thereafter, it appears the proceedings was terminated during October 1981 for which there is a entry in the villagewar register. Be that as it may, now the records are sought to be rebuilt and in support of their contention, petitioners' Counsel has relied upon the ruling of Apex Court and also of the Madras High Court. So far as construction of records are concerned, it is pertinent to note, it was not during pendency of the matter records were lost or destroyed. These records were lost after the disposal of the case during October 1981 and application is shown to have been made by the petitioners seeking certified copy of the records nearly after twenty years of the proceedings which had culminated in dismissal of the application filed in Form 7 for which there are entries made in the villagewar register which has to be treated as authentic for the purpose of Evidence Act. So far as limitation aspect is concerned, as pleaded by the petitioners, during 2000, during revenue proceedings initiated for mutation of entries, they came to know of the fate of the application. But other records which they have placed and other records available do indicate the 1st petitioner's participation. Of course, it was disputed as to the execution of the special power of attorney is concerned but the fact remains that there is a power of attorney executed in favour of the 1st petitioner on which he has acted upon. Also the presence of the petitioners in several other parallel proceedings by filing application for occupancy rights also depict the fact that the parties were aware of the same way back from the year 1979-1980 itself. Of course, records have been destroyed. Might be for the benefit of one or the other parties. Such missing of records may be due to dismissal of the very application - that possibility cannot be ruled out. Of course, the application filed for issuance of certified copy after a belated period of two decades and for refusing to give a copy of the proceedings the Government cannot be blamed. May be Rule 17 and any other rule provided in the Karnataka Land Reforms Act, 1961 do provide for issuance of order copy but so far as seeking for certified copy, the compliance of the Rules provided in the Karnataka Land Reforms Act would be mandatory, nonetheless petitioners admit to seeking such copies nearly after two decades, as such Government cannot be faulted. For now the Form 7 which culminated in dismissal of the application as is entered in the villagewar register-Annexure-R2 indicates that the proceedings has terminated and is not pending. As regards re-trial as sought by the petitioner is concerned, they have relied upon the decision of the Madras High Court in the case of Marakarutti and Others v. Veeran Kutti and Others ILR V 46 Mad. 679 (FB), wherein exercising appellate jurisdiction, the three Judges Bench held with

regard to records of Court lost in rebellion, it was ordered to the District Judge to hear the appeal and if necessary to reconstruct the records and in the event it was unable to reconstruct the record, the onus was on the appellant therein to establish his grounds of appeal. In the case on hand, the very Tribunal being a quasi judicial body in the first instance, an attempt to rebuild the records though made, but did not yield result as there are no basic records available in Form 7. In the said, it is also observed, for reconstruction of the record, the onus is on the appellant to establish ground of delay and on the cross-objection, if any of the respondent. What is stated is, for such a reconstruction, the other party has to consent and it should not be prejudicial to the respondent. In the case on hand, respondent is reluctant to go for such reconstruction to rebuild the records and it may not be advisable for the parties to go for reconstruction at this stage that too after two decades the petitioners have approached this Court.

20. Several judgments are cited by the petitioners regarding delay and laches is concerned. In the case of Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others, AIR 1984 SC 971 : (1984) 2 CompLJ 59 : (1984) 40 CTR 184 : (1984) 2 ECC 208 : (1984) 16 ELT 171 : (1985) 155 ITR 560 : (1984) 1 SCALE 480 : (1984) 3 SCC 362 : (1984) 3 SCR 180 : (1984) 16 UJ 539 , the Apex Court has held that there may be cases even where delay of short period would be sufficient to refuse relief under Section 226 of the Constitution of India; there may be circumstances which may persuade the Court to grant relief even though the petition may have been filed beyond the period of limitation. Each case has to be judged on facts and circumstances touching the conduct of the parties, the change in situation, the prejudice would be caused to the opposite party or to the general public. In the case of Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, (1999) 3 JT 61 : (1999) 2 SCALE 584 : (1999) 4 SCC 450 , referring to limitation, while exercising power under Article 226, it is stated, delay by itself may not defeat the petitioner's case for the relief unless position of the respondent is irretrievably altered or he has been put to hardship. In the judgment of the Apex Court in Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others, (2013) 1 ABR 558 : AIR 2013 SC 565 : (2013) 2 CTC 222 : (2013) 1 RCR(Civil) 293 : (2012) 11 SCALE 4 : (2013) 1 SCC 353 , it is observed, delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating circumstances and that apart, if the whole thing shocks the judicial conscience of this Court to exercise discretion then the Court should exercise the discretion. Counsel has referred to the case of State of Rajasthan and Another Vs. Bal Kishan Mathur (D) through L.Rs. and Others, (2013) 4 RCR(Civil) 698 : (2013) 11 SCALE 549 : (2014) 1 SCC 592 , where while condoning the delay of six days, the High Court dismissed the appeal but however, the Apex Court has remanded the matter condoning the delay. But here is a case where there is twenty-two years delay. In the case of Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, AIR 1974 SC 259 : (1974) LabIC 165 : (1974) 1 LLJ 221 : (1974) 1 SCC 317 : (1974) 2 SCR 216 , referring to Article 32 of the

Constitution on the point whether the delay and laches bars the relief, it is held that whenever there is delay, the Court must absolutely refuse to entertain the petition. But each case must be dealt on its facts.

21. On the other hand, on the point of delay and laches, Counsel for the respondent and also the impleading applicant has relied upon the judgment of the Apex Court in respect of acquisition of land under the Land Acquisition Act, 1894 i.e., in the case of State of Rajasthan and Others Vs. D.R. Laxmi and Others, (1996) 7 AD 562 : (1996) 9 JT 327 : (1996) 7 SCALE 316 : (1996) 6 SCC 445 : (1996) 6 SCR 221 Supp : (1997) 1 UJ 445 , wherein it is held a void order need not be set at naught if the party does not approach the Court within a reasonable time. In the case of JSW Steels Limited v. State of Karnataka and Others, W.P. No. 17945 of 2007, decided on 13-4-2012 (DB), on the ground of delay of more than ten years, the petition came to be dismissed. Counsel has also relied on the case of Dalip Singh Vs. State of U.P. and Others, (2009) 15 JT 201 : (2009) 14 SCALE 473 : (2010) 2 SCC 114 : (2009) 16 SCR 111 : (2010) AIRSCW 50 : (2009) 8 Supreme 485 , wherein it is observed that litigants who resort to unethical means by stating falsehood for achieving their goals ought to be deprecated. The contention of the respondents is, there is inordinate delay of more than two decades which cannot be condoned. Discretion has to be exercised by the Court as a matter of responsibility and not on whims and fancies to condone undue delay.

22. The sum and substance of these rulings cited on behalf of the petitioners vis-a-vis the respondents is, each case has to be dealt in accordance with the provisions of Section 5 of the Limitation Act, 1963 and also taking into consideration the factual situation in the case on hand. What is pleaded by the petitioners is, they came to know of the proceedings only during 2001 during the mutation proceedings before the Tahsildar. However, they are unable to explain away the execution of the power of attorney in favour of the 1st petitioner by virtue of which they were very much aware of the proceedings. Even otherwise, their conduct and signatures on record do show that they were aware of the proceedings during 1980. The stand taken by the petitioners that there is non-compliance of certain of the mandatory provisions of the Karnataka Land Reforms Act with regard to service of notice for disposal of the case may be a fact. But the fact remains that they approached this Court nearly after 20 to 22 years after the disposal of the application filed by their father. Even with respect to the claim in respect of Sy. No. 25 is concerned, by and large petitioners' claim is to the extent of 7.24 acres but various records depict that petitioners' father was in possession of 3.25 acres but claimed occupancy rights to an extent of 7.24 acres. Apart from that, even the revenue records as on 1-3-1974 does not show that they were the owners of the land and that the registered lease deed said to have been executed by the father-in-law of respondent 10(a), has been cancelled which is the document produced by the petitioners themselves. But what is on record is, there was a regrant order in favour of the father-in-law of respondent 10(a). Of course, it was subject to tenancy rights. In the application

filed in Form 7, the mode of cultivation is shown as (1) which itself establishes the fact that it was the respondents in whose favour there was a regrant and that they were in possession and cultivation. Of course, there is an entry in the record of rights viz., the villawar register-Annexure-R2 regarding culmination of the proceedings and dismissal of the application filed. However, petitioners are seeking a writ of mandamus nearly after two decades the order is passed by the Tribunal. Apart from that, they are seeking for reconstruction of the record. That could have been considered only if the other side has no objection. When the respondents are beneficiaries of the order and the proceedings have already ended by way of dismissal of the application, rebuilding the records would essentially be detrimental to their interest. It is also seen, in the first instance the petition was filed as if petitioners were unaware of the disposal of the proceedings and they approached this Court nearly after two decades. The exercise of discretion by this Court has to be done reasonably in the factual background and circumstances of the case. Discretion cannot be exercised in favour of the petitioners for the inordinate long delay and laches. Responsibility is also on the Court while exercising discretion either to condone the delay or otherwise. It is not on the whims and fancies, it is a settled principle. The Apex Court in the case of Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, AIR 2011 SC 1199 : (2011) 112 CLT 152 : (2011) 2 RCR(Civil) 880 : (2011) 2 SCALE 703 : (2011) 4 SCC 363 : (2011) 3 SCR 217 : (2011) AIRSCW 1459 : (2011) 2 Supreme 174 with regard to this aspect has held while considering application for condonation of delay under Section 5 of the Limitation Act, 1963 Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers especially judicial powers, have to be exercised in a systematic manner informed by reason.

23. In view of the above, petition is dismissed for delay and laches. The prayer for rebuilding the records cannot be considered as it would be detrimental to the interest of the respondents and is accordingly rejected. The impleading application filed by the respondent, is allowed as stated above as it may be necessary that he be on record in the event, proceedings is taken in any other manner by either of the parties. So far as the progress made in respect of computerising the revenue records by way of indexing, scanning and digitization, report has to be submitted by the respondent-State by registering a separate miscellaneous application in this regard. Till compliance of the directions, it may be posted on such report being submitting to the Court. Further, the records be kept in the safe custody for future purpose, if needed.