

**(2003) 02 KAR CK 0083**

**In the Karnataka High Court**

**Case No : L.R.R. No's. 2330, 3673 and 5333 of 1990**

Ramaiah

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

**Date of Decision : 28-02-2003**

**Acts Referred:**

Constitution of India, 1950 — Article 31 (2)

Mysore (Religious and Charitable) Inams Abolition Act, 1955 — Section 6, 9

**Citation :** AIR 2003 Kar 296 : (2003) ILR (Kar) 1385 : (2004) 2 KarLJ 45 : (2003) 2 KCCR 1097

**Hon'ble Judges :** Tirath S. Thakur, J;H. Rangavittalachar, J;D.V. Shylendra Kumar, J

**Bench :** Full Bench

**Advocate :** Aravinda Kumar, D. Sreenivasa Murthy, A.S. Mahesh and M. Sivappa, for the Appellant; K.P. Ashok Kumar, G.A. for R1 to R3, Padmarajaiah, S. Chennaraya Reddy, for R4 and M. Shivappa, for R4, for the Respondent

## Judgement

Tirath S. Thakur, J.—The short but important question of law that falls for consideration in this case is whether Orders passed by the Land Tribunal u/s 9 of the Mysore (Religious and Charitable) Inams Abolition Act, 1955 can be saved on the doctrine of de-facto Court-the enactment by which the Tribunal exercised its jurisdiction to adjudicate upon the matters having been declared ultra vires of the Constitution. The question arises in the following backdrop;

2. An area measuring 8 acres 27 guntas situated in Village Chikkabanavara was endowed as a religious inam in favour of Channarayaswamy temple being managed by the Muzarai Department. After the abolition of the Inams under what is known as Mysore [Religious and Charitable] Inams Abolition Act, 1955, the petitioner Sri Ramaiah and his three brothers who happen to be the "Archaks" of the temple applied u/s 6 of the Act for grant of occupancy rights qua the land in question in their favour. Respondent No. 4 also approached the Land Tribunal for grant of occupancy rights as the protected tenant in cultivating possession of the disputed piece of land. The Land Tribunal after holding an

enquiry passed an Order by which it declared respondent No. 4 to be ineligible to claim any right qua the disputed land since he was already holding an area exceeding 10 acres. By the same order, the Tribunal granted occupancy rights in favour of the petitioner.

3. Aggrieved by the view taken by the Tribunal, Respondent No. 4 filed Writ Petition No. 1976/1982 in this Court. The said petition was allowed and the matter remanded back to the land tribunal for a fresh disposal in accordance with law. The Tribunal pursuant to the said Order recorded the evidence adduced by the parties and once again rejected the claim made by respondent No. 4. By its Order dated, 9.4.1987 the Tribunal held that respondent No. 4 was not eligible for the grant of occupancy rights as Section 27A of the Act was a bar to any such grant. It found that the respondent was holding more than 10 acres of land and that eksal and panchasal Guttedars could not be recognised as tenants eligible for conferment of rights under the Act. Aggrieved by the said Order, Respondent No. 4 appealed to the Appellate Authority under the Act. The Appellate Authority permitted the parties to adduce additional evidence and eventually allowed the appeal holding that respondent No. 4 was a protected tenant of the land in dispute and that the provisions of Section 27A of the Act were not applicable to such tenants as was clarified by a circular issued by the Government on the subject. The Appellate Authority accordingly set aside the Order passed by the land tribunal, rejected the claim made by the petitioners for grant of occupancy rights in their favour and granted the said rights in favour of respondent No. 4.

4. The order passed by the Appellate Authority was assailed by the petitioners in a Revision Petition which came up for hearing before Prasad Rao, J., who dismissed the same by an Order dated 26.6.2000. The said Order was subsequently recalled by the learned Single Judge in terms of an Order dated 17.7.2000. While doing so, the learned Single Judge noticed a conflict between the decisions of two Division Benches of this Court in ESWARAPPA v. THE STATE OF KARNATAKA AND ORS. ILR 1997 KAR 3335 and West Coast Paper Mills Ltd. Vs. Indira Rao, . In Eshwarappa's case supra one of the questions that arose for consideration was whether the decision rendered by the land tribunal u/s 9 of the Mysore [Religious and Charitable] Inams Abolition Act, 1955 could be saved on the doctrine of de-facto Judge, since the amendment by which the power to adjudicate upon the claims arising under the said Act had been declared unconstitutional in " Shri Kudli Sringeri Maha Samsthanam Vs. State of Karnataka, . Relying upon the decision of the Supreme Court in Gokaraju Rangaraju Vs. State of Andhra Pradesh, the Division Bench held that the decisions rendered by the tribunal before the Judgment of this Court in "SHRI KUDLI SRINGERI MAHA SAMSTHANAM v. STATE OF KARNATAKA" (Supra) were on the doctrine of de facto Judge valid and binding upon the "parties to the dispute. The contrary view referred to by the learned Single Judge in WEST COAST PAPER MILLS LTD., v. INDIRA RAO" declared that any change in the law must be applied to the pending proceedings also. It was it appears argued before the learned Single Judge that if the law as declared by the Division Bench in

Sringeri Maha Samsthanam's case supra was to be held applicable to all pending matters, the constitution of the Tribunal and consequently all the decisions rendered by it shall have to be treated as incompetent and without jurisdiction. The present reference made to us is aimed at resolving the said conflict.

5. We have heard learned Counsel for the parties at considerable length. The seminal question that falls for consideration is whether the decisions rendered by the Land Tribunal u/s 9 of the Mysore (Religious and Charitable) Inams Abolition Act, 1955 can be saved on any Juristic principle having regard to the fact that the enactment by which the Tribunal was conferred with the jurisdiction to adjudicate upon the matters stood declared as ultra vires of the Constitution. In order to appreciate the rival contentions that were urged before us, it is essential to briefly set out the background in which the issue that falls for consideration has arisen.

6. Section 6 of the Karnataka (Religious and Charitable) Inams Abolition Act, 1955, inter alia provides that every tenant of the Inamdar shall with effect from the date of vesting be entitled to continue as a tenant under the Government in respect of the land of which he was a tenant under the Inamdar immediately before the date of vesting. Section 9 of the Act before its amendment empowered the Deputy Commissioner to examine the nature and history of all lands in respect of which the person claims to be registered as an occupant and in respect of which any person claims to be continued as a tenant. By Karnataka Inams Abolition Laws (Amendment) Act, 1979, the words "Deputy Commissioner" appearing in Section 9 of the Mysore [Religious and Charitable] Inams Abolition Act, 1955 were substituted by the word Tribunal". The term Tribunal" was defined u/s 2 (15) introduced by the said amendment to mean a "Tribunal" constituted u/s 48 of the Karnataka Land Reforms Act, 1961. The net effect of the amendment therefore was that from the date the 1979 Amendment Act came into force in place of "Deputy Commissioner", the power to adjudicate upon the claims for registration of occupancy and continuation of tenancy u/s 9 was exercisable by the Tribunal constituted u/s 48 of the Land Reforms Act, 1961 and not the Deputy Commissioner as was originally provided.

7. In "SHRI KUDLI SRINGERI MAHA SAMSTHANAM v. STATE OF KARNATAKA, the constitutional validity of the Karnataka Inams Abolition [Amendment] Act, 1979 under which the change aforementioned among other changes was introduced was assailed. A Division Bench of this Court declared that the impugned Amendment Act 1979 was stillborn, void and unconstitutional for want of legislative competence and because the provisions of the Act violated Article 31(2) of the Constitution. The correctness of the said decision has not been assailed before us nor is it necessary for this Court to make any observation about the conclusion arrived at by the Court especially when the decision has survived a challenge to its correctness in appeal before the Hon'ble Supreme Court. All that we need mention is that the Division Bench did not while striking down the amendment examine whether any part of the amendment could on the

doctrine of severability be saved and declared to be valid. The Division Bench did not in particular examine whether the amendment to Section 9 of the Mysore [Religious and Charitable] Inams Abolition Act, 1955, whereby the forum for adjudication of the dispute was shifted from the Deputy Commissioner to the Tribunal constituted under the Land Reforms Act, 1961 could be severed from the rest of the provisions that suffered from the vice of unconstitutionality referred to in the Judgment. We are inclined to believe that, had that aspect been considered, the innocuous amendment with which we are concerned here may well have been severed from the rest of the provisions of the amending enactment and held to be valid. We say so because if the legislature was competent as indeed it was to provide that the rights and obligations under the Act would be adjudicated upon by the Deputy Commissioner, there was no reason why it would lose the competence to provide for another adjudicating Authority in place of the Deputy Commissioner like the Tribunal constituted under another enactment which was in itself a valid piece of legislation. That however was not to be. The Division Bench as noticed earlier did not advert itself to the question of severability with the result that the entire enactment including those that simply shifted the forum for adjudication of the disputes was declared to be unconstitutional. The question whether the decisions of the Tribunal rendered before the declaration of law in Shri Kudli Sringeri Maha Samsthanam's case can be saved on any juristic principle arises in the above background.

8. As mentioned earlier in "ESHWARAPPA v. THE STATE OF KARNATAKA AND ORS." also the challenge to the Order passed by the land Tribunal was based on the decision of this Court in "SHRI KUDLI SRINGERI MAHA SAMSTAHANAM v. STATE OF KARNATAKA", The challenge was mounted in a Writ Petition filed years after the decision of the Tribunal was rendered on the ground that the petitioner had no knowledge about the Order as he had no notice of the proceedings before the Tribunal. It was contended that the amendment by which the Tribunal acquired jurisdiction to adjudicate upon the disputes having been declared honest, stillborn and void ab initio, the decision of the Tribunal was liable to be set aside as incompetent. The Division Bench did not however find any merit in that contention which was repelled on the Authority of the decision of the Hon"ble Supreme Court in "GOKARAJU RANGARAJU v. STATE OF ANDHRA PRADESH". The Division Bench held that a subsequent declaration by which the establishment of the adjudicating body was held to be illegal could not tell upon the validity of the adjudication. That line of reasoning was followed by a Single Bench of this Court in "MATADA BASAIAH v. GOWDARA NANJAPPA AND ORS. ILR 2000 KAR 2070

9. In "GOKARAJU RANGARAJU v. STATE OF ANDHRA PRADESH" the question that arose for consideration was whether Judgments delivered and orders passed by District and Sessions Judges whose appointment was struck down by the Supreme Court as violative of Article 233 of the Constitution could be saved and held valid on the doctrine of Defacto Judge. The Supreme Court traced the history of the doctrine in England and found that the same had acquired wide

acceptability in England by the mid fifteenth century. The Court extracted with approval the observations made by Lord Denning M.R. in *Re-James* (1977 2 WLR 1) to the following effect.

"He sits in the seat of a judge. He wears the robes of a Judge. He holds the office of a judge. May be he was not validly appointed. But, still, he holds the office. It is the office that matters, not the incumbent..... so long as the man holds the office and exercises it duly and in accordance with law, his orders are not a nullity. If they are erroneous they may be upset on appeal. But if not erroneous they should be upheld."

10. The doctrine the Court observed has been recognised and applied even by Courts in the United States of America. The following passage from *State v. Gardner* (cases on Constitutional Law by Me. Gonvey and However Third Edn. 102) was in that connection extracted with approval.

"We think that principle of public policy, declared by the English Courts three centuries ago, which gave validity to the official acts of persons who intruded themselves into an office to which they had not been legally appointed, is as applicable to the conditions now presented as they were to the conditions that then confronted the English Judiciary. We are not required to find a name by which officers are to be known, who have acted under a statute that has subsequently been declared unconstitutional, though we think such officers might aptly be called *de facto* officers."

11. The doctrine and its implication was then summed up by the Court in the following words.

"A. Judge, *de facto*, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a Judge *de jure*. Such is the *de facto* doctrine, born of necessity and public policy to prevent needless confusion and endless mischief."

12. Judicial recognition of the doctrine apart the decision in *Gokaraju's* case, is important for having authoritatively settled two propositions of law. The first is that a Judge's appointment cannot be questioned in collateral proceedings like an appeal against his judgment. The dangers arising from any such challenge were indicated thus.

"There is yet another rule also based on public policy. The defective appointment of a *de facto* Judge maybe questioned directly in a proceeding to which he may be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the Judge except as a Judge. Two litigants litigating their private titles cannot be permitted

to bring in issue and litigate upon the title of a Judge of his office. Otherwise so soon as a Judge pronounces a Judgment a litigation may be commenced for a declaration that the judgment is void because the Judge is no Judge. A Judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments. To question a Judge's appointment in an appeal against his judgment is of course, such a collateral attack."

13. The second and an equally important aspect that was laid to rest by the judgment is that it matters not whether the invalidity attached to the Judge's appointment arises from the violation of a constitutional provision or otherwise. The doctrine, observed the Court, was not a stranger to the Constitution, the Parliament or the Legislatures of the State. The contention that invalidity in the appointment arising from the violation of a constitutional provision was rejected in the following words.

"We do not agree with the submission of the learned Counsel that the de facto doctrine is subject to the limitation that the defect in the title of the Judge to the office should not be one traceable to the violation of a constitutional provision. The contravention of a constitutional provision may invalidate an appointment but we are not concerned with that. We are concerned with the effect of the invalidation upon the acts done by the Judge whose appointment has been invalidated. The de facto doctrine saves such acts. The de facto doctrine is not a stranger to the Constitution or to the Parliament and the Legislatures of the States."

14. Learned Counsel for the petitioners strenuously contended that the ratio of Gokaraju's case had no application to situations where the defect invalidating the decision was attached not to the appointment of the incumbent to the office but to the creation of the office itself. It was urged that the division bench of this Court in Eswarappa's case fell in error in applying the doctrine of defacto Judge to cases where the defect pointed out related to the establishment of the Court or Tribunal as distinguished from the individual appointed to preside over the same. While the doctrine could save the orders passed by a defacto judge it could not do so where the establishment or creation of the Court or the tribunal which delivered the judgment was itself unconstitutional. The Court had in Gokaraju's case made a distinction between the two situations, which was accordingly to the petitioners enough to exclude the application of the doctrine of defacto judge in cases where the defect lay not in appointment of the incumbent to the office but to the creation of the office itself.

15. Learned Counsel for the respondents per contra argued that while the doctrine of defacto judge may not be applicable *stricto sensu*, the orders passed by the tribunal, the creation whereof was found to be unconstitutional, could be saved on the doctrine of defacto Court which was a legitimate extension of or corollary to the doctrine of defacto judge. The Compulsions which gave birth to the well recognised doctrine of defacto judge were common to situations where

the defect related not to the appointment of the judge so much as it did to the creation of the Court to which he was appointed.

16. In Gokaraju's case the Supreme Court was dealing with a situation where those who acted as judges were not mere usurpers or intruders but were persons who discharged the functions and duties of judges under the colour of lawful authority. The Court held that so long as the office was validly created it mattered not that the incumbent was not validly appointed. A person appointed as a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, would be exercising jurisdiction in the Court of Session and his judgments and orders would be those of the Court of Session. They would continue to be valid as the judgments and orders of the Court of Session, notwithstanding that his appointment to such Court might be declared invalid. Having said so, the Court made the following observation:

"On that account alone, it can never be said that the procedure prescribed by law has not been followed. It would be a different matter if the constitution of the Court itself is under challenge. We are not concerned with such a situation in the instant cases. We, therefore, find no force in any of the submissions of the learned Counsel."

17. The above lines according to the petitioners makes a distinction between situations in which incumbent to the office is not qualified to hold the same on the one hand and the illegality attached to the creation of the office on the other. It according to them implies that if the constitution of the Court itself is held to be bad, the Orders passed by it cannot be saved on any juristic principle. We do not think the observations extracted above can be understood to state any such proposition of law. A careful reading of the passage would show that the Court was not concerned with whether the doctrine of defacto judge or for that matter the doctrine of defacto Court was applicable to a situation where the constitution of the Court was itself under challenge or had been declared invalid. It was on the contrary a case where the challenge was to the appointment of the Presiding Officers to a Court validly established. The observations relied upon by the petitioners cannot therefore be understood to mean that the Court has excluded the application of the rationale underlying the doctrine to cases where the constitution of the Court or the tribunal was itself found to be unconstitutional or invalid. The issue whether orders made by a Court or tribunal, the creation whereof was itself found to be illegal could also be saved never fell for consideration of the Court.

18. That brings us to the question whether the Division Bench in Eshwarappa's case was right in applying the doctrine of de facto Judge while saving the Orders passed by the Tribunal. That is because the invalidity in that case was not attached to the appointment of the incumbent members of the Tribunal but to the establishment of the Tribunal itself. The doctrine of defacto Judge as stated in Gokaraju's case is attracted in cases where the invalidity attached to the orders passed by the Court arises out of an illegality in the appointment of the

incumbent to an office validly created. A Judge who does not occupy the office as a mere intruder or usurper but one who holds office under colour of lawful authority, is a judge defacto even when his appointment may be discovered to be defective at a subsequent stage. Regardless of the nature of the defect in his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a Judge lawfully appointed. That was not the position in Eshwarappa's case where the question related not to the validity of the appointment of any incumbent member constituting the Tribunal but to the establishment of the Tribunal itself. The doctrine of defacto judge had therefore no application to the said case. Inasmuch as Eshwarappa's case relied upon doctrine of defacto judge it was wrongly decided.

19. The question then is whether analogous to the doctrine of defacto judge, there is a doctrine of defacto Court and if so, whether the same can be invoked in the instant case.

20. A Court or Tribunal meant to transact judicial business can be created only in exercise of the sovereign power of the State. The power or authority to create Courts is an attribute of sovereignty. No person can on his own establish and exercise the powers of a Court and so long as there is no law establishing such a Court or Tribunal its proceedings are totally void and honest in the eye of law. That is the established legal position in this country as also in England and America. The present, however, is not a case where the land Tribunal that has passed the Orders impugned in the Revision Petitions was established without any legislative sanction behind the same. On the contrary, the tribunal was established under the colour of law and in terms of a legislative enactment passed by the State legislature. It functioned as a Tribunal competent to determine matters within its jurisdiction under the Act till the enactment under which it was given the power to exercise that jurisdiction was held unconstitutional. Dealing with the Courts so established, 14 Am. Jur., Courts in Chapter 10 reads as follows:

"Nevertheless, decisions are not wanting to the effect that there may be de facto Courts the validity of the acts of which cannot be questioned in collateral proceedings, and that a Court organized under colour of law is a de facto Court and its judge and clerk are de facto officers even though the proceedings for its organization are in some respects irregular. Thus, where a Court has been established by a legislative act apparently valid and has gone into operation, it is regarded as a de facto Court and its jurisdiction cannot be questioned by third parties, even though it is claimed that the act did not become a law because of failure to receive enough votes in the legislature."

Corpus Juris Secundum defines and recognises a de facto Court and their acts and Judgments to be as valid as they would have been had the Court been properly created under the law. It says,

"When a Court is organized under colour of law, that is, when its creation is authorized by law, but the proceedings creating it are irregular or defective, it is a de facto Court, and its acts and Judgments are as valid as they would be had the Court been properly created under the law."

21. There is considerable authority based on the pronouncements of the Courts in America that the Courts established by a Statute apparently valid but subsequently declared to be unconstitutional can be recognized as de facto Courts.

In "MARCKELL CO. v. ZITSOW, 15 N.W. 2d 777 Minn. 305 the Court observed:

"Where a Court has been established by a statute apparently valid, and the Court has gone into operation under the statute, it is a "de facto Court" notwithstanding the statute is subsequently declared unconstitutional."

Similarly in GILDEMEISTER v. LINDSAY, 180 N.W. 633 Mich. 299 the Court described a de facto Court as under:

"A de facto Court is one established and exercising judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional or may be afterwards so adjudged."

To the same effect is the decision in BURT v. WINONA AND St. P.P. CO., 118 N.W. 285 Minn 472, where a de facto Court was described as under:

"A de facto Court is a Court that has been established by an act of legislature apparently valid, which has gone into operation, and the office is filled and authority as a Court exercised under the statute."

22. Reliance was however placed by M/s. Kumar and Shivappa upon the Judgment of the American Supreme Court in EXTEIN NORTON v. SHELBY COUNTY, STATE OF TENNESSEE 118 U.S. 178, in support of their submission that in a country with a written constitution, there can be nothing like a de facto Court. It was contended that Norton's case had been noticed and relied upon even by the Supreme Court in Gokaraju's case supra. The ratio of the said decision could therefore, it was submitted, be taken as having been approved by their Lordships not only in so far as the same elicited the doctrine of de facto Judge but also to the extent the same did not approve de facto Courts. That argument cannot in our view be accepted for more than one reasons. In the first place, the decision in Norton's case was referred to with approval by the Supreme Court only to the extent the latter was examining the doctrine of de facto Judge and its application. The passage relied upon by the Supreme Court from Norton's case explained the wisdom underlying the doctrine of de facto Judge and recognised the same to avoid endless confusion that would follow if the title of the Officer presiding over a Court was allowed to be called in question. Approval of the view taken in Norton's case to that extent is far from holding that the decision rendered therein was adopted or approved even in so far as the same dealt with other points referred to therein. The proposition

propounded by learned Counsel for the petitioners is too broad to be true or worthy of acceptance.

23. Secondly, because there is considerable development of law on the subject even in America, since Norton's decision was delivered in the year 1886. Subsequent decisions of Courts in America have recognized the doctrine of de facto Courts provided such Courts are created under the colour of authority of law. A reference in this connection can be gainfully made to the decision of Minnesota Supreme Court in *STATE OF MINNESOTA EX REL. DON BALES v. THOMAS BAILEY* 1908 Minn. 118 N.W. 676 where Norton's decision is so far as the same did not recognise de facto Courts was held to be not fully supported either on principle or authority. That was a case where the relator was convicted in a Municipal Court and sentenced imprisonment in the county jail. His conviction and sentence was challenged in a writ of Habeas Corpus on the ground that the Municipal Court which convicted him was not legally created or established. Upon dismissal of the Writ Petition by the Court below, the relator appealed to the Supreme Court. The question was whether the Municipal Court was a de facto Court and whether the conviction of the relator could be questioned in collateral proceedings. Minnesota Supreme Court held that the right of a person to exercise the functions of a public office under the colour of authority even if his title be not good in point of law cannot be called in question collaterally upon a Habeas Corpus or other indirect method. That being so, the Court did not see any reason why the same rule could not be applied to de facto Municipal Corporations and de facto Courts. It also held that the decision in Norton's case was not supported either on principle or authority. The Court observed:

"No reason occurs to us why the same rule should not apply to de facto municipal corporations and de facto Courts. The authorities maintaining that the legal existence of the Court may thus be inquired into proceed on the theory that there can be no such thing as a de facto Court. *Re Norton*, 64 Kan. 842, 91 Am. St. Rep. 255, 68 pae. 639. But that doctrine is not fully supported either on principle or authority, at least it is not without exceptions."

24. The Court further observed that the Municipal Court which convicted the relator having been organized under the colour of law even if the proceedings were irregular, the Court was a de facto Court and its Judge and clerk de facto Officers. The general rule that the title of the de facto Officer cannot be attacked collaterally was accordingly extended to a de facto Court and the relator's grievance against the establishment of the Municipal Court rejected. In doing so, the Court made an exception to the rule comprising cases where Courts are created without the colour of authority.

25. The third and an equally compelling reason why the doctrine of de facto Court must apply with the same force as the doctrine of de facto Judge is the fact that the philosophy or the rationale underlying both the doctrines is common. The Orders passed by de facto Judges are held valid and are saved

from collateral attacks to prevent endless confusion and needless chaos that may be caused if such orders are not recognized. That arguments is applicable even to de facto Courts. So long as the Court has been constituted in exercise of the sovereign power of the State and so long as the Court has functioned and discharged the duties assigned to it, the validity of its decisions cannot be allowed to be assailed in collateral proceedings such as appeals challenging the validity of the Orders delivered by it. Litigants who had fought their cases before such a Court or tribunal had no option but to agitate the matter before the said Court which was conferred with the jurisdiction to decide the same. Any subsequent declaration that the Court or the Tribunal was not validly constituted could not affect the validity of such decisions or affect matters that stood concluded by the Court or the Tribunal. Any other view would create avoidable and endless confusion apart from causing serious prejudice to innocent parties who were in no way responsible of the defect that rendered the Courts creation illegal or unconstitutional.

26. We may at this stage deal with the submission made by the learned Advocate General who was requested to assist us and Counsel appearing for the respondents that the de fact doctrine arises and applies only when there is an office existing under the law, but, the Holder of the Office is not qualified to hold the same. The proposition that an Office can be created by any legislative enactment howsoever invalid is according to them fallacious, for the same overlooks the well settled legal position that an unconstitutional enactment affords no rights, impose on duties and affords no protection nor does it create any Office. An unconstitutional enactment is according to them void ab initio and any Judgment or Order passed by any Court established under any such enactment is honest and void except as saved by the doctrine of de facto Judge.

27. The question whether the de facto doctrine is subject to any limitation like the one suggested by Counsel appearing for the respondents and the learned Advocate General is in our opinion no longer res Integra, such an exception was in fact pleaded before the Supreme Court in Gokaraju's case itself. It was contended that the de facto doctrine must be held to be subject to the limitation that the defect in the title of the Judge to the Office should not be one traceable to the violation of a constitutional provision. That contention was specifically noticed and over ruled. The Court held that the contravention of a constitutional provision may invalidate an appointment, but the reason for the invalidation was not so much important as the effect of the invalidation upon the acts of a person whose appointment was invalidated. The relevant portion of the Judgment has already been extracted by us in the course of this Judgment, hence need not be extracted again. All that we need to mention is that in Gokaraju's case also the defect in the title to the office held by the persons concerned was relatable to the provisions of Article 233 of the Constitution. If the submission made by Counsel for the respondents was to be accepted, the appointment was honest and void ab initio and its existence could never have been recognized at any point of time. That is not how the Supreme Court looked at the issue. The Court did not attach

any importance to the nature of the defect or the provision of law under which the same arose. It was the effect of the defect upon the acts done by the Officer that was held to be relevant for purposes of application of the doctrine. We do not see any material difference between what the Supreme Court held in Gokaraju's case and the situation with which we are dealing. The only difference is that in the said case it was a defect arising from the violation of the constitution in relation to incumbent of the office whereas in the instant case, the defect relates to the creation of the office itself. If violation of the constitutional provision for purposes of a de facto Officer was found inconsequential, we see no reason how it can assume any significance when it comes to application of the doctrine qua the creation of the Office or the establishment of the Court itself, we have therefore no hesitation in rejecting the submission made by Counsel for the respondents that the nature of the defect in the establishment of the Court or creation of the Office will itself make any difference.

28. In conclusion we hold that the Orders and the Judgments delivered by the land tribunal before the declaration of Karnataka Inams Abolition Laws (Amendment) Act, 1979, to be ultra vires are saved from any challenge to the validity of the same on the doctrine of de facto Court. While the correctness of the said Orders and decisions may be examined on the merits of each case so decided in appellate or revisional proceedings, the same cannot be set aside or quashed merely because they had been delivered by a tribunal established under an enactment which was by a subsequent Judgment declared to be unconstitutional.

The reference is answered accordingly. The petitions shall now come up for hearing before the appropriate Single Bench.

Shylendra Kumar J.

1. I have had the benefit of reading the opinion rendered by my learned brother Justice T.S. Thakur and I fully agree with the opinion and the reasons mentioned for the same. Having read the main opinion in draft, I have fully associated myself with the same and have subscribed to it.

2. However, having regard to the importance of the question that fell for our consideration and the question having been considered in the absence of almost any direct binding precedent or any precedent evolved on this question by the Courts in our Country, I wish to add a few sentences supplementing the main opinion expressed by our learned brother Justice T.S. Thakur.

3. The factual matrix in the context of which the question had come up for our opinion, the legal aspects involved in the cases in which the question arises and the conflict noticed by the learned Single Judge of this Court, in the decisions of the two Division Benches of this Court in ESWARAPPA v. THE STATE OF KARNATAKA AND ORS. and WEST COAST PAPER MILLS LTD. v. INDIRA RAO have all been narrated in the main opinion rendered by my learned brother Justice Thakur and I do not wish to repeat the same. Suffice it to say that the Division

Bench of this Court in SHRI KUDLI SRINGERI MAHA SAMSTHANAM v. STATE OF KARNATAKA having declared the Karnataka Inams Abolition Laws (Amendment Act), 1979 (Karnatka Act No. 26 of 1979) to be unconstitutional, still-born, void ab initio and as a consequence the jurisdiction to consider applications of claims for registration of occupancy and continuation of tenancy which had been conferred on the Land Tribunal having been taken away, as to whether the validity of the order passed by the Tribunal in the interregnum in respect of the claim applications for registration of occupancy and continuation of tenancy rights between 1.5.1979 and 24.4.1992, the date on which the Division Bench of this Court declared the invalidity of the law in the case of SHRI KUDLI SRINGERI MAHA SAMSTHANAM v. STATE OF KARNATAKA and as to whether such orders become automatically void ab initio in the light of ratio of the decisions in West Coast Paper Mills" case referred to supra or as to whether such decisions do not become ipso facto bad and as a consequence of the mere declaration of law in Shri Kudli Sringeri Maha Samsthanam Vs. State of Karnataka, in the light of the line of decisions in Eswarappa's case and MATADA BASAIAH v. GOWDARA NANJAPPA AND ORS., is the conflict noticed and referred to for the opinion of a larger Bench by the learned Single Judge.

4. The Division Bench of this Court in Eswarappa's case (supra) sought to save the order passed by the Tribunal, which order had been passed before the provisions of the Karnataka Inams Abolition Laws (Amendment) Act, 1979 (Karnataka Act No. 26 of 1979) was held to be unconstitutional by this Court in Kudli Sringeri Maha Samsthanam's case by referring to and relying upon the decision of the Supreme Court in GOKARAJU RANGARAJU v. STATE OF ANDHRA PRADESH and by applying the doctrine of de facto judge.

5. The real controversy as noticed by the learned Single Judge and in the light of the submissions of the learned Counsel for the revision petitioner and respondents is, as to whether the order passed by the Tribunal granting occupancy rights to the applicants during the period referred to earlier have automatically become bad and nothing more is required by persons who had not accepted such orders of the Tribunal and had carried the matter further in appeal or the revision, than to merely point out the decision of this Court is Sringeri Mahasamsthanam's case. While the learned Counsel appearing for the petitioners in the revision petitions who wanted to get over such orders of the Tribunal would contend that the order is a nullity in law and no rights etc. flowed from it, the learned Counsel for the respondents, on the contrary contended, that such a result did not follow automatically; that though the law had been declared to be unconstitutional by this Court in Kudli Sringeri Maha Samsthanam's case, decisions rendered by the Tribunal prior to this date does not automatically become null and void particularly if they are not suffering from any infirmity on the merits of the claims of the parties before the Tribunal; that such orders does not become ipso facto bad and on the other hand, its validity cannot be attacked apart from the merits/claims of the rival applicants and in the light of the doctrine of de facto Courts. It is this controversy which consumed our attention

and on which the learned Counsel had addressed arguments.

6. The doctrine of de facto judge was employed by the Supreme Court in Gokaraju's case for the purpose and with the object of preventing needless confusion and endless controversies that may otherwise result if judgments pronounced by persons clothed with the authority and insignia of a judge are to be held bad due to a subsequent discovery of the de feet in the Office of the Judge or due to his disqualification to hold the Office. The de facto Judge doctrine is a doctrine which had gained recognition even in Indian Courts by the time the Supreme Court employed this doctrine in Gokaraju's case supra. The thinking of the Supreme Court and the extent to which the doctrine is applicable, has already been discussed in the main opinion of my learned brother Justice Thakur. What is essential is that the doctrine was invoked to save the judgments rendered by a de facto Judge and in larger public interest to prevent the confusion and the mischief. What I would like to highlight here is the occasions which give rise to such possibilities such as an incumbent holding the Office of a Judge being found disqualified are far and few and Judgments that are required to be saved by the application of de facto judge doctrine are far less in comparison to the number of judgments which may get invalidated if Courts/ Tribunals which had rendered such judgments are found to be improperly constituted or found to have been constituted under a law which is later on found to be ultra vires or unconstitutional. The confusion and mischief that may be unveiled in such situations will be far too great. This will be particularly so because of the frenzy of legislative activity in our country, the prolific turn out of new statutes by the ligislatures, the constant shifting of forums adjudicating lis between the private parties or between citizen and the State being frequent and the challenges to the validity of such enactments under which such forums are created being often and the legislation under which such forums are created being suspect and the possibilities of such laws being declared as ultra vires and unconstitutional when challenged by citizens being a potential possibility. In view of such possibilities, it is all the more necessary that Courts should employ a doctrine which can prevent and alleviate the confusion and mischief that may be created by the possibilities indicated above. As already expressed in the main opinion by my learned brother Justice Thakur, when once the doctrine of de facto Judge is accepted and employed for the purpose of preventing the larger confusion and mischief that may result as a consequence of judgments rendered by a de facto judge being automatically rendered bad and leaving the judgment open to attack in collateral proceedings, the principle applies a-fortiori so in the case of de facto Courts. The doctrine is developed and employed for the purpose of preventing a mischief by saving the judgment/order from attack on that ground. If that can be achieved in a situation created by the incumbent to the office of the Judge, being found to be disqualified or his title to the office being defective, it should equally apply to situations where a Court which is constituted by a legislature competent to so create a Court, is subsequently found to be not so by the invalidation of the very legislation. The need and the necessity for

saving judgments rendered by Courts and Tribunals whose constitution under the particular statute under which it is created and which statute is subsequently held to be otherwise unconstitutional, should also be accepted on the settled legal principle that a law enacted by a competent legislature is presumed to be valid until it is declared otherwise by a competent Court. In this conundrum of laws creating Courts and Courts declaring laws as valid or otherwise, the interest of innocent third parties who have approached the Court for a decision to resolve disputes inters between those parties should not suffer. This is required in the larger public interest and as a matter of public concern. It is therefore that we have found it fit that the doctrine of de facto Courts should be called in aid for saving such orders and judgments rendered by the de facto Courts. It is also a matter of reassurance for us that the doctrine of de facto Courts has already been recognised to certain extent in the American Courts.

7. The main arguments that has been advanced on behalf of the respondents to invalidate the orders that has been passed by the Tribunal on 1.5.1979 and for opposing saving of such orders of the Tribunal by resorting to the doctrine of de facto Courts is that when once the very enactment under which the Tribunal had been constituted has been held to be unconstitutional void ab initio and still-born nothing flows from such a statute and it is as good as the Tribunal which had been constituted under such statute also was never in existence and if that is the legal position the question of recognising any orders that could have been passed by such Tribunal does not arise at all. Learned Counsel canvassing this view has also referred to the decision of the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, wherein it has been categorically laid down that any decree or judgment passed by the Courts without jurisdiction is a nullity in the eye of law and its validity or enforcement can be challenged whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. It is accordingly submitted that the Tribunal itself not having been created by a valid statute it had no jurisdiction to function as such and any order passed by it is an order without jurisdiction and the consequences as enunciated by the Supreme Court in Kiran Singh's case should necessarily follow. Learned Counsel also submits that there is no occasion or possibility in law to resuscitate such an order of the Tribunal. It is no doubt true that Supreme Court has indicated the consequences of functioning of a Forum without jurisdiction. In fact it is precisely for this reason a legal principle is sought to be invoked to save such orders and to alleviate potential of unending confusion and vast mischief. It is precisely for getting over such legal effect the doctrine of de facto Courts is sought to be invoked to save such orders from collateral attacks on the validity of the order in the sense that the order should not be declared to be bad by the mere reason of the constitution of the Tribunal being illegal even without referring to the merits or the correctness of the orders passed by the Tribunal. Laws are made for public good for the common well being of the society and to promote organised system in the society. Courts are constituted under Statutes of under the Constitution for resolving disputes,

conflicts between individual and individual, between individual and the State and the like. The objects and purpose of the Courts is to resolve differences in an orderly manner and to promote peace and well being in the society, to prevent injustice, to protect the weaker and helpless from the try any of powerful, affluent and the like and to ensure even handed justice to all by applying laws, and enforcement of law. The system succeeds so long as this purpose and object is achieved. When innocent parties go before a Forum for resolving their disputes accepting the authority and jurisdiction of a Forum to adjudicate their disputes and render a decision, subsequent to such a decision one of the party who might have suffered an adverse order should not be permitted to attack the order not on the merits but on collateral consideration such as the validity of the constitution of the very Forum. The Supreme Court has clearly indicated in Gokaraju's case on accepted and settled legal principles that attacks on the validity of the Constitution of the Forum cannot be permitted by persons who were before the Forum for resolving their private disputes and for getting over an adverse order until and unless the question had arisen in the context of the very validity of the constitution of the Forum. In the present situation, the attack on the very validity of the constitution of the Forum being collateral, it is all the more necessary to invoke the doctrine of de facto Courts to sustain the orders passed by the Tribunal during the interregnum referred to earlier from attacks by considerations other than on merits of the decision rendered by the Tribunal. It is in such circumstances we have been encouraged to call in aid the doctrine of de facto Courts to save orders of the Tribunal from attacks in collateral proceedings and on the ground of infirmity in the Constitution of the Tribunal for want of jurisdiction. A legal principle is required to be accepted and adopted if it had been evolved elsewhere and found to be apt and applicable for a situation in the context of a decision to be rendered by a Court or the Tribunal in respect of a case at its hand. In the present case we have noticed that the doctrine of de facto Courts has already been evolved by some of the Courts in the United States. We find no difficulty in accepting and adopting this doctrine. Even if it should not have been evolved and adopted elsewhere we could have perhaps ourselves evolved and applied in the present situation which warrants it. It is in such circumstances and for the situation as indicated that the doctrine of de facto Courts is necessarily to be applied for rescuing the orders of the Tribunal from collateral attacks and it is open to the parties to contend before the learned Single Judge only on the merits of the decision and not beyond.

8. I have expressed my view supplementing the views expressed by my learned brother Justice Thakur for all of us, particularly having regard to the fact that the doctrine of de facto Courts is being called in aid and employed by the Courts in our Country for the first time and as we did not come across any earlier judicial pronouncements where Courts had occasion to recognise this doctrine of de facto Courts.