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**(1996) 07 KAR CK 0044**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 18893 of 1996**

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|--------------------------------|----|------------|
| Sharanagouda and Another       | Vs | APPELLANT  |
| State of Karnataka and Another |    | RESPONDENT |

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**Date of Decision :** 08-07-1996

**Acts Referred:**

Constitution of India, 1950 — Article 31A

**Citation :** (1997) 1 KarLJ 390

**Hon'ble Judges :** B. Padmara, J

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## Judgement

1. The principal reliefs claimed in the writ petition are:-

(A) Struck down Section 122-A of Karnataka Land Reforms Act as amended by Karnataka Act No. 9 of 1992 as per Annexure-C.

(B) A writ in the nature of certiorari quashing the notice dated nil in No. /724/75-76 issued by the 2nd respondent as per Annexure-B.

2. Heard, the Counsel appearing for the petitioners and carefully perused the case papers with the assistance of the learned Counsel. It was contended on behalf of the petitioners that the authorities concerned have to make out a ground for reopening the matter under Section 122-A of the Act and in that regard they should issue a notice specifying the grounds. He also contended that there is a limitation put on the authorities concerned to reopen the case and the authorities were competent to reopen the case before 30-6-1984. Learned Counsel for the petitioners has also contended that the petitioners have challenged the vires of the Amendment Act issued under Annexure-C and he has sought for striking down Section 122-A of the Karnataka Land Reforms Act as amended by Karnataka Act No. 9 of 1992. He also contended that there are several other writ petitions filed before this Court, challenging Section 122-A of the Act.

3. Learned Counsel for the petitioners has relied on an unreported judgment of this Court in Writ Petition No. 17587 of 1984 disposed on 20-2-1991 on the

principle that the notice issued under Section 122-A of the Act should state the grounds for reopening the case.

4. It is required to be stated at the outset that even according to the petitioners the matter has been reopened in the year 1979 itself and at that time the father of the petitioners was alive and he appeared before the Tribunal and sought for adjournment. It is specifically stated in para 11 of the writ petition as under:

"In the meanwhile, the Act came to be amended by empowering the Tribunal to consider the matter. Further Section 122-A came to be amended and substituted giving powers to the Tribunal to reopen the case on the ground that if the declarant obtained an order by misrepresentation, fraud, incorrect declaration etc. Accordingly, the Tribunal acting under Section 122-A of the Act reopened the case and issued notice in the year 1979, at that time the father of the petitioners was alive and he appeared and sought for adjournment. Thereafter the father of the petitioners died in the year 1984".

It is thus, clear from the above averments made in the writ petition that the matter was reopened as far back as in the year 1979 itself when the father of the petitioners was alive. That being so, it is not the case, where the matter is sought to be reopened in the year 1995. Even according to the submissions made by the learned Counsel for the petitioners the concerned authorities were entitled to reopen the case before 30-6-1984. Therefore, in the instant case, the matter being already reopened in the year 1979 itself, the authorities concerned had jurisdiction at that time to reopen the matter. It is further required to be stated that when the matter was reopened in the year 1979, father of the petitioners had appeared and sought for adjournment. Admittedly, the father of the petitioners died in the year 1984. It is not the case of the petitioners that the father of the petitioners had challenged the said order of reopening the matter, during his life-time. Therefore, the petitioners cannot have any complaint.

5. Annexure-C has come into force in the year 1992. It stood the test of time all these days. The petitioners have challenged Annexure-C by preferring the present writ petition in the month of July 1996. Therefore, there is a delay in challenging Annexure-C. In this connection a reference may be made to the decision of the Patna High Court, rendered by the then Chief Justice of the Patna High Court, his lordship, Justice Sri K.S. Paripoornan, in the case of Sanjiv Kumar and Others v Union of India and Others, AIR 1995 Pat. 47, wherein it is observed in para 7 as under:

"In the light of the statement of the law as stated by Durga Das Basu, the decisions of the Supreme Court and of the Rajasthan High Court, hold that in view of inordinate and unexplained delay in filing this writ petition attacking the vires of Act No. 2 of 1981 and the consequential notifications, the writ petition cannot be entertained. In the totality of the circumstances, I am not inclined to exercise the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. It is neither expedient nor practical to do so at this distance

of time. The writ petition deserves to be dismissed. I hereby do so".

6. In the light of the above ruling and on the facts and circumstances of this case, I am not inclined to exercise the discretionary jurisdiction of this Court. That apart there is one more reason. The petitioners have challenged Annexure-C, whereby the Karnataka Land Reforms Act was amended by Act No. 9 of 1992. In my view, it cannot be challenged as the Karnataka Land Reforms Act is included in the IX Schedule and Annexure-C formed a chain in the agrarian reform and as such it is protected by Article 31-A of the Constitution. In this regard a reference may be made to the decision in the case of Patel Ambalal Gokalbhai v State of Gujarat and Others, AIR 1982 SC 1090. I am therefore of the view that the first relief sought for by the petitioner is not capable of being granted for two reasons, namely, there is an inordinate delay in challenging the vires of the said Amended Act and secondly, Annexure-C which forms a chain in the agrarian reform, it is protected by Article 31-A of the Constitution. That apart, as I have already stated, when the matter had already been reopened under Section 122-A in the year 1979 itself, it is not open to the petitioners to file the present writ petition seeking the above said reliefs. So far as Annexure-B is concerned, it is only a hearing notice, directing the petitioners to appear before the Competent Authority on 29-6-1996. The present writ petition was filed on 5-7-1996. That means it was filed after the expiry of the date mentioned in Annexure-B. It would further show that, in a matter which has already been reopened and pending, the present petitioners have been called upon to appear on 29-6-1996, so as to make a representation before the Competent Authority. Therefore, Annexure-B is in the nature of providing an opportunity to the petitioner to make his representation before the Competent Authority, where the matter has been pending. As I have already stated even according to the petitioner the case was reopened under Section 122-A in the year 1979 itself, and his father having died in the year 1984, obviously Annexure-B has been issued to the petitioners to appear before the Tribunal and make his representation in the pending matter.

7. Therefore, having regard to the facts and circumstances of the case, I do not find merit in any of the contentions urged by the learned Counsel for the petitioners and I am of the view that the writ petition is liable to be dismissed in limine. In fact, it is always open to the petitioners to appear before the Tribunal and make such representation, which are open to them in law. This is the purpose of notice at Annexure-B.

Therefore, for the foregoing reasons the writ petition filed by the petitioners is dismissed in limine.

Learned Government Pleader is permitted to file memo of appearance within two weeks.