

(2002) 08 KAR CK 0061

In the Karnataka High Court

Case No : Writ Petition No's. 28100 of 1993, 26987 of 1998, 22025 of 1999 and 17245 of 2000

Shri B. Haleshappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Karnataka Village Offices Abolition (Amendment) Act, 1978 — Section 3 (2), 5 (2), 5 (3), 5 (4)
Karnataka Village Offices Abolition Act, 1961 — Section 5, 6, 7, 7 (1)
Transfer of Property Act, 1882 — Section 43

Citation : (2002) 4 KCCR 2113

Hon'ble Judges : N.K. Jain, C.J.;V.G. Sabhahit, J;N. Kumar, J;Kumar Rajaratnam, J;K. Bhaktavatsala, J

Bench : Full Bench

Advocate : F.V. Patil, in Writ Petition Nos. 22025 of 1999 and 17245 of 2000, A.V. Gangadarappa, in Writ Petition No. 26987 of 1998 and S.B. Heballi, in Writ Petition No. 28100 of 1993, for the Appellant; B. Anand, Additional Government in Writ Petition No. 28100 of 1993, for Respondents 1 to 4 in Writ Petition No. 22025 of 1999, for Respondents 1 to 3 in Writ Petition Nos. 26987 of 1998 and 17245 of 2000, M. Ram Bhat, for Respondents 5 and 6 in Writ Petition No. 22025 of 1999, M.V. Seshadri, for Respondents 4, 5(a) and 5(b), 7, 8(a) to 8(c), 12, 16(a), 17(a) and 17(b) and 13 in Writ Petition No. 26987 of 1998 and N. Subbashastry, for Respondents 4, 5(a), 7, 8(a) to 8(c), 12, 16(a) and 17(b), for the Respondent

Judgement

N.K. Jain, C.J.—A learned Single Judge of this Court not agreeing with the reasoning of the Full Bench has made this Reference vide order dated 7.12.1999 in Writ Petition No. 22025 of 1999 to a larger Bench observing that the Full Bench has not considered the relevant Section 3(2) of the Karnataka Village Offices Abolition (Amendment) Act, 1978 (for short "the 1978 Amendment Act") in the case of Syed Bhasheer Ahamed and others Vs. State of Karnataka and others, and the decision of the Full Bench is "per incuriam" and has therefore, requested the Chief Justice to place the matter before a Larger Bench to

reconsider the decision of the Full Bench. Thus, vide order dated 9.7.2002, passed by the Chief Justice, this Reference is placed before us on 12.8.2002.

2. The necessary facts leading to the Reference, as stated by the learned Counsel, are:

The Petitioner in Writ Petition No. 22025 of 1998 claiming to be an agriculturist and resident of Malebennur, is alleged to have purchased totally 4 acres 26 guntas of lands in Sy. No. 38, i.e., 1 acre of land in Sy. No. 38, 0.26 guntas of land in Sy. No. 38/1 and 3 acres of land in Sy. No. 38/1 of Halivana village in Harihar taluk, by registered sale deeds on 31.3.1975 in respect of the first transaction and on 13.5.1978 in respect of the other two and to be in actual possession and cultivation of the same as owner. It is alleged that the said transactions were effected after regranteeing of land on 14.12.1973 in favour of the holder, before the 1978 Amendment Act came into force on 7.8.1978 and there was no violation of any of the provisions of the Karnataka Village Offices Abolition Act, 1961 (for short "the Principal Act") in so far as purchase of land by the Petitioner is concerned.

The grievance of the Petitioner is that the Deputy Commissioner on the letter written by Assistant Commissioner has without issuing notice and without hearing the Petitioner passed an order on 7.6.1999 (Annexure-E) forfeiting the land in question to the State Government holding that there is violation of Section 5 (2), (3) and (4) of the Act and the Petitioner is an unauthorised holder of the land u/s 7 of the Act. The Petitioner submits that the order of the Deputy Commissioner is illegal and contrary to the decision of the Full Bench in Syed Basheer Ahamed's case and thus seeks for a direction to quash Annexure-E dated 7.6.1999 passed by Respondent No. 2.

Statement of objections is filed on behalf of the Respondents denying the averments and stating that the petition is not maintainable and is liable to be dismissed. It is submitted that the lands, which were purchased by the Petitioner, were originally classified as Adikarnataka Service Inam Lands and under the relevant provisions of law, the land regranted shall not be transferred for a period of 15 years. It is further stated that in Sub-section (4) of Section 5 that any transfer of land in contravention of Sub-section (3) of Section 5 shall be null and void and the land so transferred be forfeited to and vested in the State Government, hence the order passed by Deputy Commissioner is correct. It is further stated that the ground urged that no notice has been issued is untenable. It is stated that despite due notice issued by the Assistant Commissioner, the Petitioner remained absent. It is also stated that the Petitioner purchased the regranted Inam land in clear violation of Sub-section (3) of Section 5 and the land so transferred has to be forfeited by the State Government.

3. As stated, the learned Single Judge has referred this matter for re-consideration and for answering the following 6 questions:

1) Whether in view of Section 3(2) of the Karnataka Village Offices Abolition

(Amendment) Act, 1978 and especially in view of the expression used in that Sub-section "the following Sub-sections shall be and shall be deemed always to have been inserted" Sub-sections (4) to (6) of Section 5 are retrospective in operation and not prospective only?

2) Whether Full Bench in Syed Bhasheer Ahamed and others Vs. State of Karnataka and others, was justified in taking the view that Section 5(4) is prospective, without taking into consideration Sub-section (2) of Section 3 of the Karnataka Act No. 13 of 1978?

3) Whether in view of the settled principle of law as in the case of AIR 1936 253 (Privy Council) and by Supreme Court in State of Uttar Pradesh Vs. Singhara Singh and Others, referred to above to the effect that when the power is conferred or a right is given to do certain things, subject to the certain conditions or subject to the certain specific mode prescribed then other modes are closed, the sale deeds executed in respect of such lands as in this case without previously obtaining permission and sanction of the State Government as required under Sub-section (3) of Section 5 of the Act would by itself have been null and void as other modes are closed?

4) Whether sale transaction made in breach of Sub-section (3) of Section 5 of Karnataka Village Offices Abolition Act, 1961 during 1.2.1963 to 7.8.1993 including sale transactions dated 31.3.1975 and 13.5.1978 involved in this case for same reason have been null and void in view of Sub-section (4) of Section 5 of the Act, as inserted by Section 3(2) of Karnataka Act XIII of 1978?

5) Whether in view of the law laid down in decisions of the Supreme Court referred to above i.e., in the case of Ram Bhawan Singh and Others Vs. Jagdish and Others, and in the case of Kartar Singh (Dead) by Lrs. and Others Vs. Harbans Kaur (Smt), , if answer to the above question Nos. 3 and 4 is in the affirmative and the transactions of sale dated 31.3.1975 and 13.5.1978 would have been null and void whether Doctrine of estoppel feeding the grant as contained or provided by Section 43 of the Transfer of Property Act will be applicable and benefits thereof can be availed by the transferee under such transfer as referred to above?

6) Whether the Full Bench decision in Syed Bhasheer Ahamed and others Vs. State of Karnataka and others, lays down the law correctly on this aspect of the matter, particularly in view of Section 3(2) of Karnataka Act 13 of 1978 and the decision of the Supreme Court in Ram Bhawan Singh and Others Vs. Jagdish and Others, and Kartar Singh (Dead) by Lrs. and Others Vs. Harbans Kaur (Smt), referred to above?

4. In Writ Petition No. 17245 of 2000, one Seetamma was re-granted the land bearing Sy. No. 160 measuring 3 acres and 6 guntas vide order 22.12.1970. In turn, she executed a sale deed in favour of the Petitioner on 3.1.1971 prior to coming into force of the 1978 Amendment Act. The other writ petitions 26987 of 1998 and 28100 of 1993 have been requested to be placed along with Writ

Petition No. 22025 of 1999 vide reference dated 10.12.1999 and 8.1.2001 respectively as the said writ petitions also involve the same question.

5. We have heard Sri B. Anand, learned Additional Government Advocate appearing for the Respondent-State, Sriyuths F.V. Patil, S.B. Hebballi and A.V. Gangadharappa, learned Counsel appearing for the Petitioners and Sri M. Rama Bhat for other Respondents in all the writ petitions.

6. Sri B. Anand, learned Government Advocate submits that Section 3(2) of the 1978 Amendment Act states that after Sub-section (3), Sub-section (4) shall be deemed to have been inserted, and wherefore, the 1978 Amendment Act has made it clear that Sub-section introduced by it was retrospective and not prospective and therefore the observation of the learned Single Judge that the decision is per incuriam and requires reconsideration is correct.

7. Sri F.V. Patil, learned Counsel appearing for the Petitioner in Writ Petition No. 22025 of 1999 submits that the provisions of Section 3(2) of the 1978 Amendment Act, have already been considered by the Division Bench in Lakshman Gowda v. State reported in 1981 (1) KarLJ 1, and this decision which has been reiterated by the Full Bench in Syed Basheer Ahamed's case has been confirmed by the Apex Court, and therefore, it is not necessary to reconsider decision in Syed Basheer Ahamed's case. He submits that the learned single Judge has erred in holding that the decision in Syed Basheer Ahamed's case needs reconsideration referring it as per incuriam on a mistaken belief.

8. The learned Counsel appearing for the Petitioners in other writ petitions also reiterate and submit that the reference is not maintainable. They submit that a Single Judge is bound to follow the decision of the Full Bench, and the learned Single Judge should not have referred the matter holding the decision as per incuriam or otherwise also, a Single Judge is always free to distinguish the case on facts. They also submit that the observation that provisions of Section 3(2) of the 1978 Amendment Act have not been considered is wrong, as that point was fully considered by the Full Bench, and therefore, the reference is liable to be rejected.

9. Sri M. Rama Bhat, Sri M.V. Seshadri and N. Subba Shastry, learned Counsel appearing for the other Respondents, submitted that in view of the provisions of Section 3(2) of the 1978 Amendment Act, the provisions of Sub-section (4) of Section 5 could not be said to be prospective as held by the Full Bench decision in Syed Basheer Ahamed's case.

10. We have perused the material on record, also the provisions of the Principal Act and the 1978 Amendment Act and the cases cited before us.

11. This Court cannot go into the merits of the case in this reference, nor the entire case on merit has been referred. The question for consideration is to reconsider the Full Bench decision as stated and whether such reference is permissible.

12. It is settled that the Single Bench is bound to follow the decision of a co-ordinate Single Bench, so also of the Division Bench or Full Bench. The Division Bench is bound to follow the decision of Full Bench or Larger Bench. However, on the facts, a decision can be distinguished as each case depends upon the facts of its own, but if the learned Single Judge wants to differ from the view taken by a co-ordinate Single Bench, he has to refer the matter with reasons, before the Chief Justice for formation of Division Bench or a larger Bench as the case may be. But, he cannot refer the matter merely on the ground of "per incuriam". In any view of the matter, whatever may be the reason, having difference of opinion, in our view, it is not proper and correct to comment and to use the word "per incuriam". Be that as it may.

13. In the instant case, the learned Single Judge has doubted the correctness of the decision of the Full Bench that provisions of Section 5 (4) to (6) of the Act are not retrospective but prospective. The reason for doubt is that Section 3(2) of the 1978 Amendment Act which states:

after Sub-section (3) the following Sub-section shall be and shall be deemed to have been inserted.

and in view of above provisions of Section 5(4) as amended by the 1978 Amendment Act is retrospective and decision of Full Bench holding it to be prospective is per incuriam and required reconsideration.

14. The Apex Court, in *Pradip Chandra Parija v. Pramod Chandra Patnaik* reported in AIR 2002 SC 296 wherein the Division Bench doubting the correctness of the decision of Bench of three Judges has directly referred the matter to Bench of five Judges, on considering the various case of precedence has held that it was not correct and the proper course was to refer the matter before a Bench of three Judges.

15. A Full Bench of this Court while considering the case in Writ Petition No. 16496 of 2000, which was referred to it as the learned Single Judge had expressed his view that the law declared in *S and P Enterprises*, ILR 2000 Kar 121 and certain other decisions of the Division Bench were discriminatory and violative of Article 14 of the Constitution; that certain aspects were not considered in the aforesaid decisions of learned Single Judge and the Division Bench, disposed of on 21.3.2002, considering *Pradip Chandra Parija*'s decision rendered by the Supreme Court and the law and precedent on the point observed that as per the precedent, a smaller Bench routinely cannot doubt the decision of a larger Bench and refer the same to a still larger Bench and such feeling of the Single Judge is not approved. It was also observed, by the Full Bench that only course open to the learned Single Judge was to refer the matter to a Division Bench, with reasons as to why he could not agree with the Division Bench so that the Division Bench would have had the benefit of the reasoning of the learned Single Judge to consider whether the earlier judgment of the co-ordinate Bench of two Judges was incorrect, and if it was incorrect, the matter could have been

referred to Full Bench. Ultimately, they have held that the matter under reference should go back to Division Bench.

16. On consideration, we find that the Apex Court has discussed the precedents. Precedents, which enunciate rules of law, form the foundation of administration of justice. The well settled principle of precedent which has crystallized into a rule of law is that a Bench of a lesser strength is bound by the view expressed by the Bench of a greater strength and cannot take a view in departure therefrom or conflict therewith, unless it is demonstrated that the said decision by any subsequent changes in legislation or decision ceases to lay down the correct law. So also, the word "per incuriam" operates as an exception to the rule of precedents. "Incuria" literally means carelessness. The quotable law is avoided and ignored if it is rendered in ignorance of a statute or a binding authority. The rule of per incuriam can be applied where a Court omits to consider a binding precedent of the same Court or the superior Court.

17. In the facts of the given case and as stated above, we could have returned the reference, but as the learned Single Judge requested the Chief Justice to place the matter before a Larger Bench and in turn the Chief Justice has already referred the matter to a Larger Bench vide order dated 9.7.2002, and same having been placed before us we shall take up the matter even on merits.

18. The only contention of the learned Government Advocate is that the judgment of the Full Bench in Syed Basheer Ahamed's case is per incuriam as it has failed to consider the words of Section 3(2) of the 1978 Amendment Act.

19. It would be appropriate to extract the provisions of Section 5(4) of the Principal Act after amendment as well as the savings clause, so as to appreciate the contentions in the present case:

5(4): Any transfer of land in contravention of Sub-section (3) shall be null and void and the land so transferred shall, as penalty, be forfeited to and vest in the State Government free from all encumbrances and any person in possession thereof shall be summarily evicted therefrom by the Deputy Commissioner and the land shall be disposed of in accordance with the law applicable to the disposal of unoccupied unalienated lands:

Provided that if the person who has transferred the land in contravention of Sub-section (3) is not alive, while disposing of such land preference shall be given to the heirs of such person.

Explanation: For removal of doubts it is hereby declared that in Sub-section (3) and in this Sub-section transfer includes creation of a lease.

5. Savings.-All pending applications and proceedings relating to regrant of land to unauthorised holder under the proviso to Sub-section (1) of Section 7 of the principal Act as it stood prior to the commencement of this Act shall not have effect and shall abate.

20. A perusal of the above section reveals that amendment to Section 5(4) clearly shows that what has been amended will not have retrospective effect and will come into force only from the date of the Act i.e., from 7.8.1978 and as per the saving clause, all pending applications and proceedings relating to regrant of land to unauthorised holders under the proviso to Sub-section (1) of Section 7 of the principal Act as it stood prior to the commencement of this Act shall not have effect and shall abate.

21. It is also seen that the constitutional validity of the 1978 Amendment Act was considered and upheld. The relevant questions and answers necessary for considering these petitions, decided by the Division Bench in Lakshman Gowda's (decided on 3.7.1980) case which has been reiterated in the full Bench decision of Syed Basheer Ahamed's (decided on 20.12.1993) case are as follows:

QUESTIONS DECISIONS

(ii) Did the holder of the authorised holder of a Service Inam Land get title to it when that land stood resumed to the Government under Sub-section (3) of Section 4 of the Principal Act or did he get such title to that land only when it was regranted to him u/s 5 or 6 as the case may be of the Principal Act?

(ii) The holder or the authorised holder of a Service Inam Land did not get any title to it when that land stood resumed to the Government under Sub-section (3) of Section 4 of the Principal Act but he got title to it only when it was regranted to him u/s 5 or 6, as the case may be, of the Principal Act.

(iii) Did an alienee of a Service Inam Land from its holder or the authorised holder, acquire title to such land, if the alienation had taken place between the date of the coming into force of the Principal Act and the date of the regrant, after its regrant to its holder or the authorised holder u/s 5 or 6, as the case may be, of the Principal Act?

(iii) If the holder or the authorised holder of a Service Inam Land had alienated it after the Principal Act came into force and before it was re-granted to him u/s 5 or 6, as the case may be, of the Principal Act, the alienee acquired title to that land after such regrant to his alienor.

(vi) Did a transferee of a Service Inam Land from its holder or authorised holder after its regrant u/s 5 or 6 of the Principal Act, get title to or interest in, such land, if such transfer had taken place without the previous sanction of the Deputy Commissioner under the unamended Sub-section (3) of Section 5 of the Principal Act?

(vi) The omission to obtain the previous sanction of the Deputy Commissioner under original Sub-section (3) of Section 5 of the Principal Act, did not render void a transfer of a land regranted u/s 5 or 6 or 7 of the Principal Act prior to 7.8.1978, but such transfer can be regularised by paying to the Government an amount equal to 15 times the full assessment of that land.

(vii) Is Sub-section (4) of Section 5 of the Principal Act attracted at- (a) a transfer of Service Inam Land in contravention of unamended Sub-section (3) of that Section; or (b) a transfer of such land in contravention of amended Sub-section (3) of that section; or (c) both of them?

(vii) Sub-section (4) of Section 5 of the Principal Act should be construed as being applicable only to transfers made subsequent to 7.8.1978 and not to transfers which had taken place prior to that date and that Sub-section (3) occurring in that section has reference to amended Sub-section (3) and not to original Sub-section (3) of that Section;

22. It is clear from the above that in Syed Basheer Ahamed's case, the Full Bench has reiterated the decision in Lakshman Gowda's case and has further clarified the principles laid down in Lakshman Gowda's case as follows:

a) Alienation of regranted "Service Inam Land" during the period 1.2.1963 to 7.8.1978 is valid and permission for sale is only a formality as the Deputy Commissioner was bound to give permission on mere payment of an amount equal to 15 times of land assessment.

b) Under Sections 5(1) and 6 of the Act, any holder of a village office of any authorised holder, has a vested right to obtain regrant of the Service Inam Land, which was held by him immediately before 1.2.1963 (that is as at the end of 31.1.1963) subject to payment of occupancy price in terms of the Act and the Rules; the fact that the holder or authorised holder had alienated the land and divested himself of possession of the land after 1.2.1963 and before 7.8.1978 will not disentitle him, to regrant u/s 5(1) or 6 of the Act, as what is relevant for regrant is holding of such land as at the end of 31.1.1963.

c) Alienation of Service Inam Land between 1.2.1963 and 7.8.1978 by a holder or an authorised holder before regrant, is not invalid, as he had a vested right to get regrant and as there was no bar regarding alienation during that period; but the alienee will be a person with imperfect title entitled to continue in possession and when the land is regranted to the alienor, the title obtained by the alienor will enure to the benefit of the alienee;

d) the date of regrant, whether before or after 7.8.1998 will not be relevant to determine the validity of the alienation between 1.2.1963 and 7.8.1978, as what is prohibited after 7.8.1978 prospectively for a period of 15 years, is alienation and not regrant.

e) The alienee between 1.2.1963 and 7.8.1978 has no right to seek regrant in his own name and his right is only to claim the benefit of doctrine of feeding the grant by estoppel as and when regrant is made to his alienor under Sections 5(1) or 6; and for this purpose he may support or pursue any application for regrant in favour of his alienor;

f) there is no provision in the Act authorising the State Government or its authorities to evict an alienee under alienation made between 1.2.1963 and

7.8.1978. Section 7 is not applicable, as such an alienee is not an "unauthorised holder". If the land alienated between 1.2.1963 and 7.8.1978 is subsequently regranted to the alienor, the benefit of such regrant, namely, title will enure to the benefit of the alienee. If the land is not regranted to the alienor, but to some one else on the ground that the alienor is not a "holder", then the alienee will be in the position of a transferee from a person without any title; and the grantee to whom the regrant is made, will be entitled to obtain possession from the alienee and the limitation for such grantee to dispossess the alienees will commence from the date of regrant.

23. It is the contention of the learned Government Advocate that in view of the said Sub-section it is clear that the intention of the Legislature was to substitute Sub-section (4) in Section 5 from the date of commencement of the Principal Act i.e. 1.2.1963 and wherefore, Sub-section (4) of Section 5 would be retrospective in its operation as expressed in the above said Sub-section and the finding that the said Sub-section (4) is not retrospective in its operation and would apply to amended Sub-section (3) and not to Sub-section (3) of the Principal Act as held in Syed Basheer Ahamed's case is per incuriam. The argument of the learned Government Advocate that provisions of Section 3(2) of the 1978 Amendment Act, have not been taken into consideration, is incorrect which is clear from the above decisions and not acceptable. It is clear from the perusal of para-83 of the judgment in Lakshman Gowda's case that in view of the provisions of Section 3(2) of the Amendment Act, the provisions of Sub-section (4) is retrospective and not prospective was specifically raised by the learned Advocate General in the said case as observed in para-83 of the judgment and the said contention has been considered and negated by this Court in Lakshman Gowda's case in paragraphs 84, 85 and 86 of the judgment and the Division Bench ultimately in para-87 came to the conclusion that the provisions of Section 5(4) as inserted by Amendment Act is prospective and applies to amended Sub-section (3) of the Principal Act and has negated the contention of the learned Advocate General. It is also seen that the point was considered by the Apex Court. In the case of Guruputrappa Mallappa Harkuni Vs. The Tahsildar and Others, , decided on 11.8.1992, by a bench of three Judges, wherein their Lordships in para 11, considering Lakshmana Gowda's case have quoted para 87 of the Division Bench decision which reads as follows:

87. In the light of the above principles of statutory construction, we hold that Sub-section (4) of Section 5 of the Principal Act should be construed as being applicable only to transfers made subsequent to 7.8.1998 and not to transfers which had taken place prior to that date and that Sub-section (3) occurring in that section should be construed as having reference to amended Sub-section (3) and not to original Sub-section (3) of that Section.

It is also to be noted that the State of Karnataka filed an appeal challenging the decision of a Division Bench in Lakshmana Gowda's case wherein their Lordships (State of Karnataka and another etc. Vs. G. Seenappa and another, etc. etc., ,

decided on 27.2.1992, by bench of two Judges) were of the view that the judgment in Lakshmana Gowda's case deserves to be upheld and further held that transfer without obtaining previous sanction of Deputy Commissioner not void and it can be regularised and confining to the decision on questions (vi) and (vii) formulated in the aforesaid judgment have observed as under:

The High Court has taken the view that omission to obtain the previous sanction of the Deputy Commissioner under original Sub-section (3) of Section 5 of the said Act did not render void a transfer of a land re-granted effected prior to the coming into force of the aforesaid amendment of Sub-section (3) of Section 5 but that such transfer can be regularised by paying to the Government an amount equal to fifteen times of full assessment of that land.

In our view, this interpretation placed by the Division Bench of the Karnataka High Court on the provisions of Sub-section (3) of Section 5 (before its amendment) appears to be a fair and just interpretation. The only condition laid down for the grant of previous sanction appears to be payment of an amount equal to fifteen times the full assessment of the land. There is no indication as to the principles on which the sanction was to be granted or refused and hence the interpretation placed by the Karnataka High Court that the only condition of sanction was the payment of an amount equal to fifteen times of full assessment of the land appears to be a just construction. That construction has stood for the last more than ten years and transactions must have been effected on the basis of the view of the law laid down by the Karnataka High Court. There is no good reason which would lead us to take a different view, nor can it be said that the view taken is in any manner unjust and unfair.

In these circumstances, we uphold the interpretation placed by the Karnataka High Court on the provisions of Sub-section (3) of Section 5 of the said Act. The question No. (vi) therefore, must be answered against the State. As we have upheld the view of the Karnataka High Court on question No. (vi), no decision is called for on question No. (vii). In the result, the special leave petitions and appeals preferred by the State of Karnataka are dismissed. There will, however, be no order as to costs.

Further, it is to be noted that the above said Supreme Court decisions and the Full Bench decisions were decided prior to the decision of the learned Single Judge dated 7.12.1999. Though the Supreme Court cases have been referred to in Syed Basheer Ahamed's case by the Full Bench, but still learned Single Judge referred the matter to re-consider the decision of Full Bench by a larger Bench.

24. In any view of the matter, the observation of the learned Single Judge that the decision in Syed Basheer Ahamed's case is per incuriam on the ground that Section 3(2) was not considered is not correct, as already stated. It is also to be seen that once the controversy has been set at naught by the Apex Court, this Court cannot go into it, to interfere or clarify the order of the Apex Court. In view of the above, we confirm the questions answered in Syed Basheer Ahamed's

case. The questions formulated and referred for reconsideration of this Bench have to be answered in terms of the Full Bench decision of this Court in Syed Basheer Ahamed's case and Lakshman Gowda's case and accordingly, we answer the questions by reiterating them in the following manner:

Question No. 1: In the negative. The provisions of Section 5 (4) to (6) of the Act as amended by Amendment Act, 1978, are prospective and not retrospective.

Question No. 2: In the affirmative. The Full Bench in Syed Basheer Ahamed's case was justified in taking the view that Section 5(4) is prospective.

Question No. 3: In the negative. The sale deeds executed in respect of lands alienated in contravention of Section 5(3) of the Principal Act before amendment in 1978 (with effect from 7.8.1978) would not be null and void.

Question No. 4: In the negative. The sale deeds executed between 1.2.1963 to 7.8.1978 including sale transactions dated 31.3.1975 to 13.5.1978 involved in Writ Petition No. 22025 of 1999 would not be null and void.

Question No. 5: In view of the answer given to question Nos. 3 and 4 in the negative, this question does not survive for consideration.

Question No. 6: The Full Bench decision in Syed Basheer Ahamed's case has laid down the law correctly.

As already stated, and in view of the above discussion, the reference is not maintainable. However, as discussed, the Full Bench decision rendered in Syed Basheer Ahamed's case which has reiterated Lakshman Gowda's case has been confirmed by the Supreme Court *State of Karnataka v. G. Seenappa* (case supra). We fully agree with the reasonings as stated. The questions are answered accordingly. The writ petitions shall be listed before the learned Single Judge for disposal on merits, as per the roster, in accordance with law.