

(2011) 02 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 39144 of 2010

Shri George Thomas

APPELLANT

Vs

Shri K.P. Krishnappa

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Constitution of India, 1950 — Article 15 (4), 17, 38, 39 (b), 39A
Karnataka Land Revenue Code, 1988 — Section 43 (5), 43 (8)

Citation : (2011) 02 KAR CK 0046

Hon'ble Judges : D V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Raghavan for Ganapathi Hegde, for the Appellant; R. Bhadrinath, for C/R1 and R. Om kumar, AGA for R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

D V. Shylendra Kumar, J.—This writ petition was heard extensively, at some length on earlier occasions and today and I have heard Sri K.G. Raghavan, learned senior advocate, who has appeared for the Petitioner and also his colleague Sri Ganapathi Hegde, who has made elaborate further submissions today.

2. In the present writ petition, writ Petitioner, who is son of one C.I. Thomas, claims interest in an agricultural land located in Old Sy No. 28 (New No. 127) of Byrathi village, Bidarahalli hobli (formerly Hoskote taluk, now Bangalore east taluk, to an extent of 2 acres of land in this particular survey number, and is aggrieved by the order dated 22-11-2011 (copy at Annexure-A to the writ petition), where under the right, title and interest, if any claimed by the writ Petitioner as successor to late C.I. Thomas, has been extinguished by invalidating the sale deed dated 9-1-1995 executed by one Ms Dipika Elizabeth Fernandes, who, as per this sale deed, had conveyed 2/3rd share in the property in question in favour of the father of writ Petitioner and of course under the very order, the Deputy Commissioner having given a like treatment to another sale

deed of even date, under which Mr. C.I. Thomas had acquired the remaining 1/3rd undivided share in the agricultural land in the very survey number, as per conveyance deed executed by one Mr. Wilson Christy Luther in favour of the father of Petitioner and this order is the cause for the above writ petition.

3. I have also heard Sri R. Om kumar, learned AGA and Sri R. Bhadrinath, learned Counsel for first Respondent.

4. Sri Ganapathi Hegde has placed considerable reliance on Annexure-B to the writ petition, an extract from the mutation register indicating the change of entries in the revenue records, particularly showing the nature of right that has accrued in favour of persons whose names figure in the revenue records and the source of such right. In this document, the source of title/right indicated as per RR No. 246 to 256 dated 8-6-1947, indicating the names of as many as 11 persons and the first name being of one Thayappa, a person belonging to adi-karnataka community and in whose favour an extent of 2 acres of land in Block-II of Sy. No. 28 of Byrathi village, Bidarahalli hobli, Bangalore East Taluk, K.R. Pura, Bangalore had been granted. The very register having also showed the name of one Pooja as the last but one name, and in whose favour land was granted to the same extent in the very survey number, but in block No. 2.

5. However, reliance is placed on the following endorsement at the bottom of the mutation register:

6. It is this endorsement which is relied upon very strongly by learned Counsel for the Petitioner to submit that the land in question being a land which had been sold in a public auction, which, in turn, implies that it is sold for a price and being an absolute sale, it does not carry any condition with it and therefore the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 for short, the Act, are not attracted and for such submission, reliance is placed on the judgment of the Supreme Court in the case of B.K. Muniraju Vs. State of Karnataka and Others, Strong reliance is placed on the paragraphs 10, 11 and 16 of this judgment.

7. Submission of Sri Ganapathi Hegde, learned Counsel for the Petitioner, is that if the land, assuming it to be a granted land, it cannot be construed as a granted land for the purpose of Sub-rule (3) of Rule 43 of Rules under Karnataka Land Revenue Code, 1888 [for short, the KLRC Rules and while the grant is governed by the condition occurring in Sub-rule (1) of Rule 43, if at all the condition which is incorporated in the grant order may operate and nothing more.

8. However, learned Counsel for the Petitioner does not dispute that with the writ petition is placed a copy of the saguvali chit which had been issued in favour of the said Thayappa, way back in the year 1947, which is part of the records of the proceedings under the Act and the learned AGA appearing for the statutory authorities has pointed out that the saguvali chit does not indicate that the land was sold in public auction or any price collected from the purchasers and it is conspicuously absent and therefore while reliance should be placed only on the

copy of saguvali chit, which, the Petitioner himself had produced before the authorities and as Annexure-B to the writ petition, which is only an extract from the mutation register and sought to contend that the entry as extracted above, made by the person who has copied the contents of the mutation register, appears to be not true to the original saguvali chit.

9. However, submission of Sri Hegde is that the endorsement at the bottom of Annexure-B indicating being in the handwriting of the same person, who has also mentioned the source of title and the persons in whose favour the land is granted, and as the particular document appears to be an old document, which is, undoubtedly, very significant, as the extract from the mutation register is not either xerox copy or true copy of the original, but something which is prepared in hand by the person who has prepared the copy and which has been certified as true copy by the taluka Shirestedar, Bangalore east taluk, K.R. Pura on 6-6-2007.

10. Sri G.S. Naik, Special Deputy Commissioner, Bangalore Urban District, is present before the court, accompanying the records in the proceedings.

11. Very strangely, none of the original grant records from the revenue side, which had been specifically called for by this Court, are forthcoming in the records so brought before the court and only the records in the proceedings under the Act and not the original revenue records are placed before the court.

12. It is of some significance that the special Deputy Commissioner has become very aware of the entire case and he was directed to be present on 27th January, 2011 at 2.30 pm when the dictation, which was started at the fag end of the day's proceedings on 25th January, 2011, was resumed and the special Deputy Commissioner was also directed to place before this Court all such records on which he can lay his hands on and if there is any explanation forthcoming in the context of the discrepancy noticed by this Court with regard to the contents of Annexure-B to the petition.

13. When dictation was continued on 28th day of January, 2011, Sri. K.G. Raghavan, learned senior counsel appeared on behalf of the Petitioner and made a request to hear further submissions in the matter and also to supplement the submissions already made in the first instance, by himself and later by his colleague Mr. Ganapathi Hegde, Advocate.

14. As I am dictating the order, I do not find the need for hearing further. However, Mr. Raghavan, learned senior counsel appearing for the Petitioner requests permission to place synopsis of arguments with supporting case laws etc.,.

15. It will not be possible for this Court to refer to all these written submissions and the plethora of case law appended to the written submission while this Court is in the midst of dictation. The matter is proceeded for dictation and orders only after the matter is heard.

16. At every stage of the dictation, as in this case, the dictation could not be

completed for want of time on the day it began. If lawyers keep supplementing with further submissions and come up with synopsis of arguments and further case laws, there will not be any end to hearing. A case law is relied upon to support a submission, indicating the ratio of that case and as to in what manner it has a bearing on the particular case on hand. This is all part of the arguments and if a matter is to be heard, re heard, and re re heard, there will not be an end to the time consumed by a matter whether or not the matter merits so much of attention, deserve so much of time.

17. It has become a malady of our times that each and every time a litigant whether has a bona fide cause or otherwise even without any bona fides, should jump into the High Court, particularly, while invoking writ jurisdiction and who has the capacity to engage a senior counsel, a resourceful counsel at that thinks, has the right that the case should be heard and heard and heard.

18. Court's time is public time. It is the time to be distributed and apportioned amongst all litigants before the court. We have thousands and lakhs of litigants waiting in the queue for their case to be taken up. Unfortunately, in our judicial system, for the kind of litigating system we have in this country, which is one inherited from the British, following the English legal system, is a system which is not necessarily tested or examined for its suitability to our people and society. It had been imposed on us while we were under the shackles of the colonial rule. Though we attained independence in the year 1947, became a Republic in the year 1950, the very Anglo Saxon adversary English legal system has merrily continued and even seeks to invade the constitutional jurisdiction of this Court.

19. A writ petition is a right given to a citizen of this country, a person who has a grievance, to seek redressal from the High Courts or the Supreme Court of India, if the citizen or person complains violations of fundamental rights or even statutory rights by a public authority which is to be understood as "State". The concept of "State" having expanded to include all public authorities, statutory authorities and other authorities who exercise powers of the State, who are controlled by the State, who are financed by the State, scope for examination of causes in writ jurisdiction has vastly increased. Basically, writ jurisdiction is one providing for judicial review of administrative and legislative actions.

20. In the scheme of our Constitution, the sovereign power of the State is distributed amongst the three organs - legislature, executive and judiciary. The scheme is also so envisaged and prepared, that each organ, as far as possible, functions independently and is not necessarily made answerable or accountable to the other organ of the State. It is also a scheme where checks and balances are provided for to ensure that each organ performs in its own sphere and even while so performing, a special place is provided to judiciary, particularly, to oversee or scrutinize the functioning of the other two organs, namely, Executive and Legislature, by providing the power of judicial review, where under the High Courts and the Supreme Court can examine the action of the executive and the laws made by the legislature to ascertain as to whether it is within the limits of

the constitutional provisions, whether the authorities are acting within their domain and jurisdiction, whether a power or authority given to the one exercising it, is being used for the proper purpose and in a bona fide manner. If it is found otherwise, judiciary is conferred with the power to invalidate the action and to compel the erring authority or organ to perform its duty/function in accordance with law and in accordance with Constitution.

21. Such is the role provided to the judiciary which is more often than not misunderstood as a special or superior power conferred on the judiciary. It is a specific role assigned to the judiciary under the Constitution of India, to ensure that the other two organs of the State function within their limits and do not overstep their limits. This is all part of the checks and balances envisaged under the Constitution.

22. It is expected of the judiciary that it always functions within the parameters of the constitution and the laws. It is in such jurisdiction, the present matter is being examined. With judiciary performing the role of acting as an Arbiter in respect of private disputes and also in respect of disputes between the individual or the citizen on the one side and the State and the special power or jurisdiction of judicial review having been conferred, this is a constitutional jurisdiction vested in the superior courts of the country.

23. Even while so, with writ litigation having proliferated over the past years, particularly, as activities of the State has vastly increased and unfortunately as the quality and manner of functioning of the State authorities, having deteriorated over a period of time and it having taken a nose dive in recent times, the courts should respond to this need and that is how the concept of scope and exercise of writ jurisdiction has been expanding to keep pace with the growing demands made on judiciary. But, at the same time, there is no commensurate expansion of the infrastructure provided to the judiciary and the manner and method of constitution of courts, particularly, the Judges being appointed to the courts, have all taken its toll on the quality and level of performance of the judiciary. With sub-standard Judges and even corrupt Judges having invaded Judiciary through suspect appointments, the confidence of the people and of the citizens of this country in judiciary is gradually getting eroded. While this is one aspect, docket explosion is another aspect.

24. A situation of this nature, while cries for immediate attention and corrective measures, a weak, self centered executive and an irresponsible legislature, have been very slow to respond to such needs of the society. In this state of affairs, the number of cases that are being filed and remain pending keep increasing, number of Judges being limited and not all Judges functioning at optimum level, there is more and more pendency In a situation of this nature, if one were to go by the constitutional mandate, our constitution having adopted a socialistic pattern of governance, it will be necessary that the available time in judiciary should be apportioned amongst all aspiring litigants.

25. While writ jurisdiction is undoubtedly an expensive, quick remedy provided to a citizen, more often than not, it will only be the rich, undeserving and persons with muscle power and money power, who are occupying time and space of the courts and the poor, helpless, weak, more often than not are neglected, do not get noticed and as a result suffer endlessly.

26. Writ litigants who can afford to engage counsel of eminence or senior counsel, naturally occupy more time of the courts! Unfortunately, a case is not decided by the appearance of a particular counsel but only on the merits. Insofar as lawyers are concerned, their duty is to present facts of a particular case in accordance with the statutory provisions and insofar as Judges are concerned, their duty is to apply the applicable laws to the facts of the case and to render a decision. Neither the lawyer nor the Judge can change facts. Law is made by the legislature. The duty of the Judge is only to apply the relevant law to the facts and render a decision and corrective measures are provided by way of appeal. In such state of affairs, if every lawyer thinks that he must be heard to the satisfaction of his clients, that what all he submitted whether relevant or not so relevant, whether is productive or otherwise, are all to be taken note of and as in this case, if arguments are to be supplemented, added even when the Judge is in the midst of dictation, it is nothing but an unreasonable demand on the time of the court at the cost of other litigants. When such request is declined, learned senior counsel appearing for the Petitioner seeks to place before the court synopsis of arguments filed on behalf of the Petitioner.

27. In any case before the court, unless is to the awareness and understanding of the Judge who has to pass orders, the whole exercise becomes a farce and is nothing but a waste, which again reflects on the bona fides of a litigant to prepare grounds elsewhere. It is not the function of a Judge as to what happens elsewhere, but to decide a case in accordance with law after making a genuine and bona fide attempt to understand the facts of the case and then to proceed to orders. Any interference in this course of action is nothing but interference in the course of justice. It is for this reason, I do not propose to look into the so called synopsis of arguments filed on behalf of the Petitioner nor the decisions referred to in the said synopsis.

28. This matter had been heard at some length and in my considered opinion, has been heard much more than what it actually deserves! It is only because learned Counsel for the Petitioner keep representing that they have not completed their submission, they have something more to add, they are banking on their senior counsel to come and bail them out, matter gets prolonged. Unfortunately for the system, every senior counsel appearing before the court, thinks, it is a matter of right of the counsel to hear and re hear and to his satisfaction than what merits of the matter deserve.

29. As already observed, it is not the counsel who matters, but the facts and the law of a particular case. It is not the counsel or even a senior counsel who comes before this Court for redressal of their grievance, but it is only the grievance of

the Petitioner before the court which the court is examining.

30. Of late, there is a tendency on the part of the learned members of the Bar, to make it an issue, if their case is not examined to their hearts content or their version does not pass through! Inevitably, counsel try, even to the extent of accusing Judges that Judges are not giving them sufficient opportunities; that their arguments are not heard fully etc. Opportunity is only to the litigant and not to the lawyers. It is not personal cause of the lawyer that is being examined before the court. It is not the personality of the lawyer that matters before the court. It is only the cause of the litigant that matters. Unfortunately, lawyers though are professional people, permit their ego to surface and project it to the forefront and try to assert even to the extent of unreasonably accusing a Judge or if one may use the word to the extent of blackmailing a Judge saying that their client can work out their rights and remedies elsewhere! Fortunately, it is not such an attitude which is exhibited in the present case. But, it has become quite common of late. This again is a tendency which is most undesirable, not conducive for a healthy legal system and at any rate, while a poor litigant may go with a feeling that his case will not be heard because he has not been able to engage senior counsel, a rich, affluent, powerful litigant may gloat that by availing the services of a senior counsel he has been able to achieve success. That again will be a very sad reflection on the legal/judicial system. The result of a case can never be dependent on the lawyer who appears before the court. The role of a lawyer is only to present the facts of the case, draw attention of the Judge to the relevant laws applicable and if in a given situation, there are two possible views to commend to the acceptance of the Judge, that view which perhaps may sub-serve the interest of his client. A lawyer can neither change facts nor can change law.

31. Even here, scope for the courts and the public is only in a situation where in a particular statutory provision, there is scope for interpretation and if two views are possible. Even while there is scope for interpretation, interpretation is always to be guided by the statutory provisions, the purpose and object of the particular law and to adopt an interpretation, to advance the purpose and object of the law that should always be resorted to.

32. It has become necessary for this Court to make all these observations, as the present case is a classic example of a rich powerful litigant who is trying to make use of the process of the court and that too not necessarily with bonajides, to ensure that a property which had been purchased, an extent of two-third share of two acres of land in Sy. No. 127, Block-XI of Byrathi Village, Bidarahalli Hobli, Hoskote Taluk, now Bangalore East Taluk is sustained or retained at any cost, notwithstanding the authorities functioning under the Act, particularly, the appellate authority, the Special Deputy Commissioner, Bangalore District - third Respondent in the petition, having reversed the order passed by the Assistant Commissioner, Bangalore North Sub-Division, Bangalore, who while enquiring u/s 5 of the Act, had rejected the claim of the first Respondent before him for

annulling the sale transaction that had taken place in respect of 2 acres 1 gunta of land that had been granted to his father late Poojappa @ Poojiga, as a person belonging to schedule caste or depressed caste community, way back in the year 1947 as per the grant order dated 8.6.1947, being of the view that the subject grant in favour of said Poojappa being a grant on collecting the upset price and with a condition that it should not be alienated for a period of ten years from the grant order and the transaction of sale by father of the first Respondent by name Poojappa @ Poojiga having taken place after the expiry of the prohibitory period, the provisions of Sections 4 and 5 of the Act does not apply etc., as opined in his order dated 26.6.1999 passed in Proceedings No. KSC.ST.52/1998-99.

33. It is this order of the Assistant Commissioner which had been appealed against by the third Respondent as son of Poojiga and had been allowed by the Deputy-Commissioner holding that the subject land had been granted free of cost in favour of said Poojiga in the year 1947 and therefore was saddled with a condition that it should not be alienated (permanently) for good and transactions in respect of this land starting from sale deeds dated 14.7.1967, 4.3.1975, 24.2.1983, 11.9.1989 as well as a sale deed under which the present writ Petitioner claims to have purchased two-third of the subject land in terms of a sale deed dated 9.1.1995 executed by Mrs. Deepika Elizabeth Fernandes in favour of father of the Petitioner by name C.I. Thomas as per the registered sale deed, are all void and to be invalidated.

34. With all these transactions being characterized as null and void by the operation of the provisions of Section 4 of the Act, the Deputy Commissioner having set aside the transactions the aggrieved purchaser of the year 1995, now by his son is before this Court in the present writ petition, questioning the legality of the order of the Deputy Commissioner.

35. This writ petition has considerable history. Writ petition at the instance of the Petitioner claiming title under a person who had purchased another extent of 2 acres of land, also a land that had been granted in favour of another person as a person belonging to scheduled caste community under the very grant order, namely, 8.6.1947 and also comprised in the same survey number, but described as a different block, had come up before this Court in WP Nos. 8142 and 8141 of 2003.

36. The very grant order while recited that an extent of 2 acres refers to the grant order said to have been made in the mutation register while quoting the common order in Darkhast DD 2/1946-47 dated 8.6.1947 indicated that an extent of 2 acres had been granted to the father of the first Respondent by name Poojiga in Block-II of Sy. No. 28, it had recited that an extent of 2 acres in Block-XI of the very Sy. No. 28 had been granted in favour of Thayappa and it had been indicated against the names of all persons in whose favour grant had been made, that they belonged to Adi Karnataka community.

37. While the original grantee Poojiga is shown as one Applicant, another grantee

by name Thayappa is shown as another Applicant in the proceedings before the Assistant Commissioner for the purpose of the record as the proceedings had been initiated suo motu by the Assistant Commissioner in the exercise of his powers u/s 5 of the Act, significance of the proceedings in respect of these two persons is that the Petitioner's father had purchased the extent of two acres of land from said Thayappa and said to be land referable to Block-XI of Sy. No. 28.

38. Significance of this proceedings initiated by the Assistant Commissioner and with names of Thayappa and Poojiga being shown on the Applicants side and the name of C.I. Thomas being shown on the Respondent side is that the Respondent was a person found to be in possession of the land which had been originally granted in favour of a person belonging to scheduled caste community and therefore the provisions of the Act are attracted to the particular land as it was a granted land within the meaning of Section 3-B of the Act and therefore the Assistant Commissioner had initiated proceedings suo motu, showing the name of the original grantees on the Applicants' side. However, notice had been issued to the parties i.e., the father of the first Respondent - said Thayappa and also Petitioner's father. But, the order recites that it is only the present writ Petitioner's father who had appeared before the Assistant Commissioner through his Advocate Mr. Hanumantharaju, while neither grantee appeared nor was there any representation for them.

39. Mr. Ganapathi Hegde, learned Counsel for the Petitioner, after perusing the original register regarding issue of saguvcdi chit to different persons, submits that this is no document as it is only a register incorporating the names of persons in whose favour saguvcdi chits have been issued and even as per the ruling of this Court, it is not a document to indicate the terms of the grant and on perusal of the mutation register maintained for the period 1940 to 1959, entries appearing in this register appear to be more authentic as there is a reference to the original grant order in this register and with the entry made in the mutation register as indicated earlier and submits that it lends credence to the version of the Petitioner and the Assistant Commissioner has rightly inferred in the wake of this factual position, that the condition that can operate in respect of a grant of this nature can only be non-alienation for a period of ten years and that the order of the Assistant Commissioner could not have been reversed by the Deputy Commissioner.

40. Submission of Sri. Ganapathi Hegde, learned Counsel for the Petitioner by laying specific stress on the portion figuring at the bottom of the entry in column No. 3 of the mutation register indicating the nature of right and reading as is for the purpose of submitting that if the subject land had been sold in an auction, it cannot be characterized as a land granted in favour of a person belonging to depressed class and more importantly would contend that the condition on a grant of this nature is, non-alienation of the granted land for a period of ten years and this position has been rightly noticed by the Assistant Commissioner, but the Deputy Commissioner has on other considerations, upset the order of the

Assistant Commissioner and therefore the order passed by the Deputy Commissioner in appeal is not sustainable in law.

41. Considerable reliance is also placed on the judgment of this Court in Pedda Reddy Vs. State of Karnataka, with the pointed submissions that in terms of the ruling of the division Bench in Pedda Reddy's case [supra], the Assistant Commissioner can declare that the sale transaction in respect of a granted land under the provisions of sub-rule(8-A) of Rule 43 of Code as amended by Notification dated 6.7.1955 published in the Mysore Gazette dated 14.7.1955 can be made only after the Assistant Commissioner had recorded a findings on three aspects, namely, [a] that the grant was made in favour of a person belonging to scheduled caste or scheduled tribe [b] that the grant was made either on upset price or a free grant or for a price less than upset price and [c] that the alienation had taken place within the period of prohibition prescribed under the Rules.

42. Submission is that while the Assistant Commissioner recorded a finding that in terms of the sagiwal chit, prohibitory period being of a duration of ten years from the date of the grant and having noticed that the first transaction by the grantee was on 14.7.1967 whereas the grant was on 8.6.1947 and the period of ten years having already elapsed by the time the grantee sold the subject land, there was no violation of the condition imposed on the grantee and therefore the provisions of the Act are not attracted and the Assistant Commissioner had rightly noticed this position, but the Deputy Commissioner unless has recorded the three ingredients as indicated in Pedda Reddy's case [supra], could not have reversed the well considered order passed by the Assistant Commissioner and assuming that the Deputy Commissioner had some doubts about the findings based on any material that the legal heir of the first Respondent had placed before him, the matter should have been remanded to the Assistant Commissioner for a proper enquiry on these aspects which would have given an opportunity for the Petitioner also to put forth his case and the Deputy Commissioner not having taken recourse to this manner of disposal of the appeal, but having allowed the appeal, to deny an opportunity to the Petitioner, the order is not sustainable as the Deputy Commissioner has not recorded a finding on the three aspects as per the law as laid down in the decision of the division Bench of this Court in Pedda Reddy's case [supra].

43. It is also submitted that the only document, if at all placed on behalf of the Applicant before the Assistant Commissioner and the Deputy Commissioner was copy of the saguvali chit and nothing else was placed and if the condition of non-alienation therein itself was non-alienation for a period of ten years, that should have concluded the issue for dismissing the appeal.

44. Sri. Ganapathi Hegde also submits that even additional documents placed before the Deputy Commissioner by the present writ Petitioner in the form of copy of the mutation register indicating that the subject land had been sold in public auction which had a vital bearing, particularly, to support the condition of

ten years non-alienation mentioned in the saguvali chit having not been considered, to that extent, the order passed by the Deputy Commissioner suffers from the vice of non-consideration or non-examination of the relevant material.

45. Before submissions can be examined and in the light of the submissions on behalf of the Respondents, narrating a few undisputed facts will be useful.

46. Petitioner is a person who is claiming right, title and interest in terms of two sale deeds both dated 9.1.1995 executed in favour of the father of the Petitioner and two-third interest claimed under sale deed executed by one Deepika Elizabeth Fernandes and Wilson Christy Luther and thereby claims interest in the entire extent of two acres of land which without dispute is a land that had been, according to learned Counsel for the Petitioner, granted originally in favour of one Thayappa and as referable to Block-XI in Sy. No. 28 of Byrathi village, Bidarahalli Hobli, Bangalore East Taluk, K.R. Pura, Bangalore, and therefore proceedings at the instance of the first Respondent claiming to be heir of Poojiga in whose favour had been granted an extent of 2 acres in the same survey number, but in Block-II cannot make any difference to the transaction of the Petitioner as the land purchased by the Petitioner has nothing to do with the land in respect of which the first Respondent had put forth his claim before the Assistant Commissioner.

47. Submission is that at the instance of the first Respondent, the Deputy Commissioner could not have invalidated the sale transactions in favour of the Petitioner.

48. Petitioner has traced title through the first transaction of the land belonging to the Government, having been purchased by Thayappa as per Government auction dated 8.6.1947. Said Thayappa having sold the land to P.V. Kuruvilla under the sale deed dated 14.7.1967. Said P.V. Kuruvilla having sold this extent of land in favour of A B Lalwani & A A Lalwani jointly under the sale deed dated 4.3.1975 and the Lalwanis having sold this land as per sale deed dated 24.2.1983 in favour of Deepika Elizabeth Fernandes, Aloysius Prakash Fernandes and Wilson Christy Luther, each having one-third interest and said Aloysius Prakash Fernandes having released one-third share in favour of Deepika Elizabeth Fernandes as per release deed dated 11.9.1989 and Petitioner's father having purchased from Deepika Elizabeth Fernandes two third share of 2 acres and one-third share from Wilson Christy Luther as per two separate sale deeds both dated 9.1.1995 and the Petitioner's father having left a Will dated 28.4.1995 in favour of the Petitioner, the Petitioner having got title and possession to the property and therefore submission is that the proceedings in respect of land that had been granted in favour of Poojiga and by a person claiming to be son of Poojiga cannot affect title of the Petitioner.

49. It is for this reason, the Petitioner has raised this ground in paragraph-20 of the writ petition pleadings, reading as under:

20. At the outset, it is submitted that the 1st Respondent did not have locus

standi to file appeal before the 3rd Respondent The said property was purchased by Sri Thayappa whereas the 1st Respondent is claiming to be a son of one Sri. Poojiga @ Poojappa who did not have any manner of right over the said property. Significantly, the entire appeal memo does not explain as to how the 1st respondent is related to late Thayappa. The 3rd Respondent ought to have appreciated the said fact and rejected the appeal in limine.

50. While this is the first and the most formidable ground urged in the petition, supplementing this, submission of Sri. Ganapathi Hegde, learned Counsel for the Petitioner is that, on the basis of the endorsement found as contained in the extract or copy of the mutation register that the land in question had been sold through public auction, a condition that gets attached to a transaction of this nature, even in terms of the then Mysore Land Revenue Code is sub-rule [1] of Rule 43 of the Code and condition stipulated in sub-rule [8] of Rule 43 of the Code as this sub-rule is attracted only in cases of lands granted to the Applicants belonging to depressed class under sub-rule [5] of Rule 43 of the Code and that too when land is granted by the Government free of upset price or reduced upset price to poor and landless people of other communities. It is for this reason it is submitted that the grant was one in terms of sub-rule [1] of Rule 43 of the Code and therefore if there is any condition, it is as mentioned in the saguvali chit which was non-alienation for a period of ten years.

51. Sri. Ganapathi Hegde, learned Counsel for the Petitioner has also placed reliance on the judgment of the Supreme Court in "Munjraju"s case [supra], particularly, with reference to paragraphs 10, 11 and 16 of this judgment to submit that the land sold in public auction for a price, is not a granted land within the meaning of sub-rule [8] of Rule 43 of the Code for attracting the condition of permanent non-alienation.

52. On the other hand, Sri. Om kumar, learned Additional Government Advocate appearing for Respondents 2 and 3, with reference to the record, has submitted that there cannot be any dispute about two aspects in this matter, namely, that the subject land was one granted in favour of as many as eleven persons belonging to Adi Karnataka community in terms of both the saguvali chit as well as all registers, whether it is a mutation register or a register containing the particulars of issue of saguvali chits as also Index of Lands.

53. In fact, the original records had been summoned and the learned Additional Government Advocate has placed before the court the register containing the entries relating to issue of saguvali chits which has clearly mentioned that the saguvali chit has been issued in favour of as many as eleven persons, Thayappa being first person in the series of eleven persons in whose favour has been granted an extent of 2 acres in Block-XI of Sy. No. 28 which is the very land which the Petitioner has laid claim and subject matter of proceedings before the authorities, particularly, the Deputy Commissioner; that Poojiga"s name figured as tenth person in whose favour had been granted an extent of 2 acres in the same survey number but in Block-H and significantly all eleven persons

belonging to Adi Karnataka community [indicated as Adi Karnataka against each name] and the order being passed under Depressed Class Rules, This fact cannot be disputed either as the very sale deeds referred to and relied upon by the Petitioner recites this source as source of title from Thayappa onwards.

54. It is only in the entries as found in the mutation register, the endorsement, after name of Muniswamy to the effect that is found.

55. Sri. Om kumar, learned Additional Government Advocate appearing for Respondents 2 and 3, has also placed the original record relating to Index of Land and Record of rights wherein also figures the entries against the names of persons to indicate that the grant is Darkhast grant in favour of persons belonging to depressed classes.

56. Sri. Om kumar, learned Additional Government Advocate appearing for Respondents 2 and 3, has pointed out with reference to the register of Record of Rights that the land of 2 acres land granted in favour of Poojiga at the time of re-surveying has been assigned new survey No. 127 and it is therefore submitted that the first Respondent has interest even by claiming as son of Poojiga in an extent of 2 acres of land that had been granted to his father undisputedly as a person belonging to Adi Karnataka community and in Sy. No. 28 irrespective of the block number and under the common grant order dated 8.6.1947.

57. Sri. Om kumar, learned Additional Government Advocate appearing for Respondents 2 and 3, has also drawn my attention to the notification to submit that as per the notification sub-rule [8] of Rule 43 of the Code is applicable even in respect of lands granted free or upset price shall not be alienated and therefore submits that irrespective of the subject grant having been characterized assuming that to be so, but not conceded that it was sold in public auction; that the condition operates as it is a grant in favour of persons belonging to scheduled caste community i.e., Adi Karnataka community under the Depressed classes Darkhast Rules and the endorsement as it figured, only in the extract of mutation register also quoting the Depressed Darkhast Rules, but no supporting material being found to indicate as to at what price it had been sold, whether it is collected or not collected etc., that endorsement has no significance or value, but the undisputed factum of the grant being in favour of a person belonging to Adi Karnataka community under the Depressed Class rules ensures that the condition as stipulated in sub-rule [8] of Rule 43 of the Code operates as it is one which is a grant in favour of a person belonging to depressed class irrespective of the endorsement which is expressly found in all registers and therefore being a grant under sub-rule [5] of Rule 43 of the Code, it inevitably attracts sub-rule [8] of Rule 43 of the Code with a condition of permanent non-alienation irrespective of the grant being either after collecting an upset price or on being sold by public auction and collecting a price.

58. Learned Additional Government Advocate has made a distinction of the judgment of the Supreme Court in Muniraju's case [supra], by pointing out that

it was a case of a grant of the year 1948 and the very sagiwali chit which was subject matter of examination before the Supreme Court, had indicated that the land had been granted after collecting a sum of 408.12/- being the cost of the land and that also having recited that there was public auction, the Supreme Court took the view that it cannot be characterized as a granted land within the meaning of sub-rule [8] of Rule 43 of the Code, but the fact situation in the present case, even on admitted facts is totally different; that the grant does not mention anywhere that it was after collecting any particular price and if it is so, it is in respect of all the eleven grantees and not merely in respect of any one grantee; that it undisputedly recites that the grant is to persons belonging to Adi Karnataka community under the Depressed classes Darkhast Rules and therefore with such undisputed facts as evidenced in all records while sub-rule [8] of Rule 43 of the Code is clearly attracted in the present case, on facts, the Supreme Court having found in Muniraju's case [supra], that was not a grant but something else and therefore the ratio of the said decision does not get attracted to the present situation and therefore the judgment has no bearing on the present order passed by the Deputy Commissioner.

59. On the other hand, Sri. Omkumar, learned Additional Government Advocate appearing for Respondents 2 and 3 has placed reliance on the judgment of the Supreme Court in the case of State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, to submit that not all observations made in the judgment of the Supreme Court becomes law declared within the meaning of Article 141 of the Constitution of India; that the ruling in Munulaju's case [supra] by the Supreme Court, cannot be termed as law declared within the meaning of Article 141 of the Constitution of India, but the Supreme Court on the particular facts and circumstances, having found that the subject land was not one which can be characterized as a granted land within the meaning of sub-rule [8] of Rule 43 of the Code, the judgment in Muniraju's case [supra], does not govern the present situation and therefore submits that the Deputy Commissioner having rightly applied this rule and there being no dispute that the land is a granted land, the order passed by the Deputy Commissioner was a proper order and with ample material on record and such material being in the nature of intrinsic material on record, there was no need for the Deputy Commissioner to go in search of an outside material and therefore the order sustains and there is no need for this Court to disturb the order in the exercise of writ jurisdiction under Article 227 of the Constitution of India.

60. Sri R. Bhadrinath, learned Counsel for first Respondent, on the other hand, submitted that the first Respondent is a person claiming as legal heir of Poojiga; that the subject land which the Petitioner claims though one tracing title to Thayappa, description of the subject land in the schedule and describing it as 2 acres in present Sy. No. 127 is a land which corresponds to the land that had been originally granted to the father of the first Respondent - Poojiga and therefore the first Respondent has definite interest in the subject land and when there is no dispute with regard to the grant being in favour of person belonging

to scheduled caste community i.e., Adi Kcanataka community a depressed class and as rightly submitted by learned Additional Government Advocate when once sub-rule [81 of Rule 43 of the Code is attracted, the statutory condition that the land should not be alienated for good gets incorporated in the grant and the even assuming that saguvali chit mentioned that the prohibitory period is only for a period of ten years, that cannot make any difference as it is the statutory condition that prevails and operates and not merely a condition mentioned at the time of issue of saguvali chit.

61. Sri R. Bhadrinath, learned Counsel for first Respondent has also drawn the attention of the court to the precondition in saguvali chit saying that the saguvali chit is also issued subject to the conditions in terms of the grant order and subject to the conditions as imposed by law under the relevant rules and it is therefore submitted that even assuming that the conditions as are available under sub-rule [8] of Rule 43 of the Code are not expressly mentioned, all such conditions are automatically incorporated by the residuary condition of grant which is recited in the saguvali chit and therefore the permanent non-alienation condition inevitably operates and the period of ten years is not of much significance, even assuming that it is so found in the saguvali chit.

62. It is very significant to notice that this condition very clearly mentions that it is only enjoyment of the land that is given and not the entire right, title and interest in the land, in favour of the grantee, to attract the principle of sale or auction sale and therefore no condition operates. The saguvali chit also makes it amply clear that it is only grant subject to the condition and not at all an absolute sale or sale in a public auction or even an absolute grant.

63. It is in the background of such submissions, while the matter is being examined, on the second day of dictation, Sri. Raghavan, learned senior counsel appeared for the Petitioner and sought permission of the court to supplement the submissions already made as learned senior counsel wanted to draw my attention to few more aspects.

64. When it was pointed out that hearing had already been concluded and dictation was in progress, learned senior counsel sought permission to place before the court synopsis of arguments to be filed on behalf of the Petitioner along with as many as nine authorities mentioned and copies of the same furnished along with the synopsis. This was as a substitute for further submissions to be made on behalf of the Petitioner!

65. A proceeding of the present nature, the present writ petition being essentially one under Article 227 of the Constitution of India, is a proceeding to oversee the manner of functioning of the courts and the Tribunals within the State by the High Court, in the exercise of the power of superintendence and to peruse if need be the record of the proceedings and examination in writ jurisdiction is not either as an appellate authority or even as a revisional authority, but only one to oversee that the Presiding Officers in the courts and

Tribunals function within their limits. The petition though is styled as one under Articles 226 and 227 of the Constitution of India, is basically a petition under Article 227 of the Constitution of India. It can also be under Article 226 of the Constitution of India, if the orders passed by public authorities or administrative authorities are basically without jurisdiction or blatantly contrary to statute or laws or even the Constitution and for issue of a prerogative writ and in the instant case, the writ sought for, being one for issue of a writ of certiorari, to examine as to whether the Deputy Commissioner is acting within his jurisdiction in passing the order.

66. Insofar as this aspect is concerned, the Deputy Commissioner is acting as an appellate authority u/s 5(A) of the Act which is the jurisdiction conferred statutorily on the Deputy Commissioner in respect of the orders passed by the Assistant Commissioner in an enquiry u/s 5 of the Act. The Appellant before the Deputy Commissioner was the first Respondent in the writ petition - person claiming to be the heir of Poojiga. The proceedings before the Assistant Commissioner had been initiated suo motu and not at the instance of the first Respondent, was one which was required to be conducted after issue of notice to all persons interested in the land.

67. In a proceeding u/s 5 of the Act, the Assistant Commissioner who has suo motu powers to initiate the proceedings, has to necessarily ascertain all to who all the persons, who are interested in the subject land and in the instant case, while the writ Petitioner claims to have purchased an extent of 2/3rd share of 2 acres of land, and traced title to one Thayappa and the other extent of two acres of land was one in respect of which traced title to Muniyappa and if one should look at the cause title to the proceedings before the Assistant Commissioner, it is in respect of the land which had been granted in favour of Thayappa and Poojiga. A proceeding of this nature is a statutory duty enjoined on the Assistant Commissioner and is definitely not a proceeding in the nature of adversary litigation.

68. Even when a person interested in the land claiming under the original grantee has not applied to the Assistant Commissioner, the duty is enjoined on the Assistant Commissioner to look into all such lands and transaction which had been granted in favour of persons belonging to scheduled caste and scheduled tribe community [earlier known as depressed class] and to take action to ensure that if the transfer of such lands are in violation of the conditions of the grant or in violation of the provisions of the Act, such transactions are all invalidated, land resumed to the State and restored to the original grantee or his legal heirs.

69. It is of significance to notice that the land originally belonged to the State and in the instant case even as per the saguvali chit, what is transferred to the grantee is only anubhava i.e., possession and enjoyment of the land and nothing more. A land of this nature continues to remain a Government land at all points of time and the Act enjoins the Assistant Commissioner to identify all such transactions which might have taken place in respect of such lands and under

which a person currently in possession claims right, title and interest etc., to invalidate such transactions, resume the land to the State and restore it to the legal heir of the original grantee. In a proceeding of this nature, expecting either the original grantee or his legal heirs to place material before the Assistant Commissioner to make good any position is nothing short of asking such persons to perform the impossible, but more importantly it is nothing short of carrying coal to New castle.

70. It is the Assistant Commissioner who is the custodian of all revenue records and material should be forthcoming in the revenue records and not from outside. At the best, the grantee would have been favoured with a saguvali chit and nothing else. Even a grant order would not have been issued to the grantee, but the grant is made in favour of several persons under the general proceedings of the Deputy Commissioner.

71. In the instant case, the first Respondent had in fact placed a copy of the saguvali chit before the authorities and while that was good enough for the Assistant Commissioner to infer the conditions of non-alienation for a period of 10 years in terms of condition No 8 and therefore thought it convenient to drop the proceedings in respect of the land granted originally in favour of Thayappa and Poojappa. The Deputy Commissioner found it the other way in his order in the appeal, particularly after noticing that the subject land was one which had been granted in favour of persons belonging to adi karnataka community, as per the grant order dated 8-6-1947 and therefore was a grant subject to the provisions of Rule i.e. Rules under the Karnataka Land Revenue Code, 1888, as notified in terms of government notification dated 27-6-1938, whether this is the relevant notification or not, it cannot be disputed that the rule as amended in terms of the government notification dated 28-11-1931 and as revised from time to time, held the field up to the notification dated 4-8-1953. The subject grant being dated 8-6-1947, the Rules as they prevailed in the interregnum, governed all grants and the grant being in favour of a person belonging to adi karnataka community, it is inevitably a grant even in terms of Sub-rule (5) of Rule 43 of the KLRC Rules and applies. For the purpose of convenience Rules 43(1), 43(5) and 43(8) of KLRC Rules are extracted as under:

43.(1) All the lands shall be sold by public auction after observing the prescribed formalities, But it shall be in the discretion of the Deputy Commissioner in Special cases to grant an occupancy at an upset price to any bonafide Applicant who is agriculturist or proposes to cultivate the land himself, when he is satisfied that, in the event of a public auction being held, advantage may be taken of the needs of the Applicant to force up the price, lands so granted shall not, however, exceed 20 acres in extent of Rs. 400/- in value. If it is proposed to give lands exceeding this extent or value to any Applicant for upset price, the previous permission of the Revenue Commissioner shall be obtained in cases where the extent does not exceed 50 acres and the market value of the land is within Rs. 1000/-. In cases exceeding these limits, the sanction of Government shall be

necessary for the grant of lands at an upset price. These concessions are not to be shown to absentees and to people speculating in lands.

xxx

5. Notwithstanding anything hereinbefore stated, the Deputy Commissioner may, at his discretion, grant to Applicants belonging to the depressed classes who are bonafide agriculturists or propose to cultivate the land themselves, lands at half the upset value, the amount being recovered in not more than five annual instalments. Where half the upset price is below Rs. 200/- the price to be recovered from the grantee may be limited to the excess, if any, of the estimated value of the land over Rs. 100/- in cases where the upset value does not exceed Rs. 100/- he may waive the recovery of price altogether.

xxx

8. Occupancies granted to Applicants belonging to Depressed classes under Rule 43(5) above and those granted by Government free of upset price or reduced upset price to poor and landless people of other communities or to religious or charitable institutions, shall not be alienated and the grantees shall execute Mutcalikas in the form prescribed by Government. This shall not however, prevent lands granted to Depressed classes under Rule 43(5) being accepted as security for any loan which they may wish to obtain from Government or from a cooperative Society for the bonafide purposes of improving the land.

72. It is also some significance to notice here that in terms of Rule 43(8), all occupancies granted to Applicants belonging to depressed classes under Rule 45(5) carry a condition of permanent non-alienation.

73. Though Sri Ganapathi Hegde, learned Counsel for the Petitioner, contends that this is not a grant under Rule 45(5) of the KLRC Rules, for the reason that the notings below the last name amongst the 11 grantees as is found in the extract of the mutation register indicates this is an endorsement which has no legs to stand on the basis of the contemporaneous records and more importantly as pointed by the learned AGA, there is no mentioning of any amount collected by way of auctioning the subject land, but if one should go by all other contemporaneous record as indicated above, grant is only a grant in favour of a person belonging to depressed class not one or two, but 11 persons and therefore the endorsement, assuming that it found place only in the mutation register, is of no significance or of no value, though such endorsement is also found in one of the records of the year 1947 or 1948.

74. The Deputy Commissioner has very correctly appreciated this position of law and has allowed the appeal.

75. The attach on the order of the Deputy Commissioner on all the grounds referred to above as urged by Sri Ganapathi Hegde, learned Counsel for the Petitioner, does not bear scrutiny for more than one reason. The grant is not one on the basis of any public auction as is sought to be made out in terms of the

endorsement found in the mutation register, as it is not supported by any other contemporaneous records and even from the endorsement it does not indicate as to what price collected or at what amount it was auctioned. But, more importantly, the grant being in favour of depressed classes, it is only the provisions of Rules 43(5) and 44(8) of KLRC Rules which are attracted and reliance placed on by the learned Counsel for the Petitioner on Rule 43(1) is not based on material, but is totally based on an isolated noting found in the mutation register!

76. During the course of dictation, when permission for supplementary arguments was declined, Sri K.G. Raghavan, learned senior advocate appearing for the Petitioner, has sought to place before the court a synopsis of argument filed on behalf of the Petitioner.

77. As noticed earlier, the present examination is not an examination in the nature of an order or judgment as a result of an adversary litigation system, which we have inherited from the British, but is an examination in the exercise of the jurisdiction of judicial review of administrative action and supervisory jurisdiction of the functioning of courts.

78. Lawyers and judges are steeped in the conventional adversary system of litigation, initiated in such legal system, which is conventional legal work in this country, initiated, trained and immersed in such conventional adversary litigation and it is for the judges and lawyers to tune themselves differently to the constitutionally mandated writ litigation, where scrutiny by superior courts is only about the manner of functioning of the administration; by executive and legislative wings of the state and if at all to some extent of the courts under Article 227 of the Constitution of India.

79. A writ petition is not in the nature of an appeal, but lawyers steeped in conventional adversary litigation tend to treat every writ petition as though it is a first appeal and if stakes for the litigant is high, arguments become prolix, time consuming, unending and any and every point is urged to find some lacuna or loopholes or defect in the order sought to be reviewed and is sought to be made a ground for allowing the writ petition and to set aside an order. It is nothing short of a drowning person clutching at straw, A writ petition never gets converted into an appeal.

80. But the manner in which present writ petition has been presented and pushed through, it is virtually like a regular first appeal and with the learned Counsel for the parties having huge stakes, no effort is spared, no stone is unturned. A matter which should receive attention at the best for about 5 to 10 minutes has consumed 5 to 10 days of this Court's time! This definitely is a very sad reflection on our legal and judicial systems.

81. Judicial time comes at a premium. State spends considerable amount of money on the maintenance of judicial system, which is a mandate under the Constitution and a good amount is invested for providing infrastructure. A

percentage of the budgetary sanction is earmarked for expenditure of judicial wing of the state. But with all available facility for redressal of grievance of the citizens, -both in the conventional adversary litigation as well as on the current constitutional writ litigation, is found to be totally inadequate, as with the demand on the judicial time being unending and the system being not able to cope with the demand on it, more and more cases have remained pending in courts and while there are more institutions at all levels, disposal of cases always fall short of the number of cases instituted and thereby pendency keeps on increasing! If the present trend continues, one day or the other, the system will collapse under its own weight.

82. In a situation of this nature, it definitely calls for innovation, updating the system and for reformative measures. Though Law Commission after Law Commission has been set up by the central government, good number of reformative changes are suggested, what is happening is, its implementation is too less and too inadequate in the form of suitable legislation. One possible answer to such a problem can be for rationing of judicial time to litigants, as otherwise a litigant who gets an opportunity to receive attention to his/her case and who is financially capable of can occupy time and space of the court far disproportionate to the needs of the case!

83. In our country, judicial system has not been rationed or apportioned. In fact, more often than not, judicial time occupied for a case is directly proportionate to the status, reputation and quality of the lawyer who appears in the case for the Petitioner than having any correlation to the merits of the matter! Every counsel of eminence or prominence or senior counsel appearing in a case expects more weightage and attention to the case because of his or her appearance. If such counsel are not heard at such length or to their satisfaction, there are allegations made against the members of judiciary that their case has not received proper or due attention or no proper hearing is given to a particular lawyer and that a particular lawyer has not been heard with any degree of satisfaction etc. Such tendency of late has been growing.

84. While the members of the Bar continue to remain steeped in the methods of conventional adversary system and shift over to the system of constitutional writ litigation is slow, in so far as good conventions and customs that were in vogue amongst the members of the Bar in the earlier days are all given a go bye and more often than not court atmosphere is charged with emotions and bickerings than paying due attention to the merits of the matter and it is the say of the lawyer as to what aspect should receive, what amount of attention and duration that assumes importance than merits of the matter. In such a system of litigation, a litigant who has the ability or capacity to engage a senior lawyers, to engage lawyers who can bulldoze their way to make themselves heard at any right they choose, inevitably occupy time and space not necessarily proportionate to the requirements of the merits of the case but even grossly disproportionate. In a system providing an hierarchy of appeals, the first ground

urged in any litigation is "not providing adequate opportunity" by the presiding officer at the lower tier when the matter is taken up in an appeal!

85. In the present case also, such a ground is inevitably urged to submit that the Assistant Commissioner had not given proper attention to the materials, so also the Deputy Commissioner and therefore the order of the Deputy Commissioner has to be set aside and the matter remanded to the Assistant Commissioner.

86. An order of remand is not as a matter of course and definitely not as a matter of right in writ jurisdiction. As already observed, a writ petition is not an appeal for remanding the to the lower court/authority. It is the prerogative and the jurisdiction of the appellate court to remand the mater to the lower court, when the appellate court is unable to dispose of the appeal before it in a satisfactory manner for want of relevant evidence or material, which is not available on record, but can be secured by providing an opportunity to the parties, to lead evidence and where it is found such evidence cannot be received before the appellate forum. Otherwise, there is no question of remand by an appellate authority, as the appellate authority can examine the matter and opine within its jurisdiction and as is well known, the jurisdiction of the appellate authority being coextensive with the original authority, it is the duty of the appellate authority to dispose of an appeal without resorting to the evasive and convenient course of remand. A remand without justification is nothing short of shirking of responsibility and dereliction of duty on the part of the appellate authority.

87. If the Deputy Commissioner has found sufficient material for a satisfactory disposal of the appeal before him on the basis of the material as found in the record and which, in my opinion, is more than sufficient in an enquiry of the present nature u/s 5 of the Act, it was his duty to dispose of the appeal and not simply remand the matter to the Assistant Commissioner, just because a request to this effect was made by the counsel appearing for the Respondent-purchaser. In my opinion, the Deputy Commissioner has rightly disposed of the appeal by himself exercising his appellate authority and he is also fully justified in declining to remand the matter to the Assistant Commissioner, who did not care to look into the record in a proper manner but found it an easy way or rather a flimsy ground to close the proceedings, merely by reciting a condition in the saguvali chit!

88. In fact, there was more responsibility on the Assistant Commissioner in the present case, as proceedings were initiated suo motu and not at the instance of any interested person and while it is the version of first Respondent that the first Respondent had never been put on notice, as submitted by Sri R Badrinath, learned Counsel for first Respondent, submission of Sri Hegde, learned Counsel for the Petitioner is that the order recites that notice had been issued.

89. The order while may recite so, it is not even known as to whom notice had been issued and at any rate, the father of first Respondent having expired as on

15-3-1986, as submitted by Sri Badrinath, and the order passed by the Assistant Commissioner being on 26-10-1999, unless the Assistant Commissioner had some device to send notice to a dead person, it is obvious that no notice had been issued to either the first Respondent or to the said Poojiga. In fact, the only person who was present before the Assistant Commissioner was the purchaser of the land by name C.I. Thomas and represented by his counsel.

Therefore, it is obvious that the Assistant Commissioner found it convenient to conduct the proceedings only in the presence of the purchaser and not necessarily by inviting the persons who might have had interest, claiming under the original grantees.

90. The Assistant Commissioner appears to have initiated the proceedings culminating in the order dated 26-10-1999 [copy at Annexure-L to the writ petition] simultaneously with the proceedings in respect of an extent of 2 acres of land in the very survey number under the very grant order, which had been granted to one Muniswamappa and also in respect of another extent of 2 acres of land in the very survey number, which had been granted in favour of one Muniyappa. In the proceedings in respect of these two other extents of land, the land was granted along with Thayappa under whom the writ Petitioner claims and also Poojappa under whom first Respondent claims interest, but the common grant order dated 8-6-1947 and granting an extent of two acres in favour of as many as 11 grantees in this order, all in Sy. No. 28 of the village, but in different blocks.

91. The subject grant originally in favour of Muniswamappa and Muniyappa were also subject matter of proceedings before the Assistant Commissioner, but proceedings had been dropped by the Assistant Commissioner and had also been affirmed in appesd before the Deputy Commissioner, but had reached this Court in the form of WP No. 8142 of 2003 at the instance of the legal heirs of the said Muniswamappa and in WP No. 8141 of 2003 at the instance of legal heir of Muniyappa, questioning the proceedings of the Assistant Commissioner as well as Deputy Commissioner. A copy of the order passed by this Court in common on 9-11-2005 in these two writ petitions is produced as Annexure-R10 to the statement of objections filed by the first Respondent herein and in this context submission of Sri Badrinath, learned Counsel for first Respondent, with reference to the order passed by this Court, is that the result cannot be any different, in respect of the present petition i.e. it can only to be for affirmation of the order of the Deputy Commissioner, as this Court in terms of this order dated 9-11-2005, having considered the matter, has allowed the writ petitions, set aside the orders passed by the authorities and noticing the legal position as applicable to the fact situation, had directed the Assistant Commissioner to issue notice to the occupants for resumption of the land in favour of the state for repossessing the land for further examination for re-grant in favour of such persons who may be entitled to as legal heirs of the original grantee.

92. Sri Badrinath, learned Counsel for first Respondent has also drawn my

attention to Annexure-11, the order passed in WP Nos. 8142 and 8141 of 2003 was challenged and in terms of the judgment of a Division Bench of this Court dated 31-8-2006 passed in WA Nos. 489 and 439 of 2006. WA No 439 of 2006 was preferred by the present writ Petitioner, who had staked claim in respect of another extent of two acres of land claiming under late Muniswamappa, which is a land which was granted as per the very grant order and as the writ appeal has been dismissed in terms of this judgment and the present writ petition has to be inevitably dismissed, following the judgment of the division bench.

93. However, Sri Ganapathi Hegde, learned Counsel for the Petitioner, submits that in so far as the judgment in WA No. 439 of 2006 is concerned, the Petitioner had carried the matter to Supreme Court by filing SLP No. 7781 of 2007 and the Supreme Court while has issued notice on the SLP, has granted an interim order to maintain status quo in relation to possession of the subject land as it existed on the date, pending further orders etc., and therefore the submission that it amounts that the Supreme Court has stayed the operation of the order passed by this Court with regard to taking of possession etc.

94. While I am of the view that on an examination of the entire material on record and after giving due consideration to submissions made at the Bar, this writ petition only deserves to be dismissed and to leave the order passed by the Deputy Commissioner undisturbed, support to this result is also to be found in the statutory provisions of Sub-section (3) of Section 5 of the Act, reading as under:

5. Resumption and restitution of granted lands:

XXX

(3) For the purposes of this section, where any granted land is in the possession of a person, other than the original grantee or his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer which is null and void under the provisions of Sub-section (1) of Section 4.

95. The land in question is originally granted to persons belonging to adi karnataka community considered as depressed class at the time of grant. Such a grant inevitably carry a condition as stipulated in Sub-rule (8) of Rule 43 of KLRC Rules, as discussed above. In so far as the proceedings under the Act are concerned, while it is as noticed above not adversary in nature, proceedings are in respect of lands and not in respect of persons.

96. Persons if at all can claim a right or privilege given to a person, who was originally granted and any person claiming under the original grantee can at the best put forth a claim or right on par with the rights or privileges given to the original grantee and nothing more. It is axiomatic that no person can convey or confer a better title than what he himself had. All grantees under the grant order dated 8-6-1947 got the land for possession and enjoyment and nothing more. No

title was ever conveyed in favour of any of the grantee. All 11 parcels of 2 acres each of land are like grants made in favour of like persons carrying like conditions, whether imposed under the saguvali chit or statutorily imposed under Sub-rule (8) of Rule 43, all lands were granted lands and the grants were subject to conditions of permanent non-alienation. In a situation of this nature, when even based on records, there was no scope for disputing this position, no wonder the Petitioner has laid great emphasis on the flimsy, isolated endorsement found only in the mutation register, while indicating the basis of change of khata and indicating there in, that as a formidable ground to invalidate the order of the Deputy Commissioner.

97. Though Sri Ganapathy Hegde, learned Counsel for the Petitioner, has vehemently urged that the Petitioner in fact can be said to have discharged the burden placed on a purchaser in terms of the provisions of the Act, it is only an argument without any basis or foundation, as no material in fact was placed by the Petitioner before the original authority, but the original authority was rest content to look into a copy of the saguvali chit produced by the present Petitioner. The quality of this material has already been examined. An extract from the mutation register which was placed before the Deputy Commissioner while is a copy as produced by the Petitioner did contain an endorsement and it was so found in the original mutation register also. This aspect has already been discussed. As this was an isolated noting only in the mutation register not supported by any contemporaneous records, while the reason for such noting can only be a matter of speculation at this point of time, it does not make any difference either to the grant order or conditions stipulated or got incorporated statutorily to the grant order.

98. The effort on the part of the learned Counsel for the Petitioner obviously is one to fit the present case into a fact situation as had been found by the Supreme Court in the case of B.K. Muniraju [supra], but unfortunately for the Petitioner, it is not so, even as factually found by the Deputy Commissioner and which this Court on a detailed examination has found to be the correct legal position also.

99. With the Petitioner undoubtedly being in possession of the land which had been originally granted in favour of a person belonging to depressed class [now known as scheduled caste/tribe], a presumption in terms of Sub-section (3) of Section 5 of the Act inevitably operates to presume that the Petitioner has acquired the land by transfer, which is. only void, as the mandate in terms of Sub-section (1) of Section 4 of the Act, reading as under:

4. Prohibition of transfer of granted lands. - (1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or Sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

Even as discussed above, the right, title and interest, if at all the original grantee had got under the grant order itself, being only for possession of land, while in law, the present Petitioner has never acquired any right, title or interest, on the other hand, the mandate of law under the Act to the Assistant Commissioner is to resume such lands to the state by repossessing the land but after issue of notice and then restore it to the original grantee of his/her legal heir/s.

100. This legal position also takes care of the argument of learned Counsel for the Petitioner that the first Respondent has no interest in the subject land as claimed by the Petitioner tracing title under Thayappa. The further grievance of the Petitioner as submitted by learned Counsel for the Petitioner during the conclusion of this order is that in a most preemptive manner, the Assistant Commissioner has in a great haste, mutated the revenue record to the name of first Respondent, who cannot lay claim to the subject land as a person under the said Thayappa or legal heir of Thayappa.

101. The enquiry and the proceedings under the Act being in respect of a granted land and the enquiry and proceedings being, assuming that in respect of two acres of land now in the possession of the Petitioner and claimed under the original grantee Thayappa and assuming that the first Respondent is not a person who claims as legal heir of said Thayappa, such a factual position does not make any difference to the legal position as ordered by the Deputy Commissioner in terms of the impugned order. This is for the reason that all the 11 parcels of land granted under the common grant order dated 8-6-1947 are all lands granted in favour of persons belonging to depressed class and attracting the provisions of Sub-rule (8) of Rule 43 and if such lands are found in possession of any person other than the original grantee or persons claiming as grantees legal heirs, action for resumption of such land to state and for restitution in favour of the grantee or legal heir is inevitable. Therefore, the legal position in so far as sale transaction under which the Petitioner claims cannot be different in respect of subject land irrespective of the fact that first Respondent has put forth a claim for restitution of the said land in his favour in the capacity as legal heir under Poojappa. Examination is with reference to the granted land and when once it is found that a granted land had been transacted in violation of the terms of the grant, whether expressly imposed or statutorily incorporated provisions of Sub-rule (1) of Rule 4 of the Act operates and the transaction gets invalidated. The legal position is not any different in respect of any granted land under the common grant order dated 8-6-1947. There is no dispute that the Petitioner claims only one such land in the present proceeding and therefore irrespective of the factual position in so far as first Respondent is concerned, the legal position is to invalidate the sale transaction under which the Petitioner claims and for resumption of the land to the state, which even otherwise was only one belonging to the state always.

102. The question assuming as to whether the first Respondent is really a legal heir of said Poojiga and as to whether subject land is one referable to the land

which had been granted in favour of Poojappa/Poojiga or some one else, and to say who are the legal heirs, is a matter that has to be examined by the Assistant Commissioner after resumption of the land and after taking possession of the land only at the stage of restitution of the possession to a person who puts forth his claim as legal heir of the original grantee. That question will not in any way detract from the correctness or legal position of the order passed by the Deputy Commissioner, which, in my considered opinion, is the right order.

103. That only leaves me to opine on the aspect of the so-called synopsis of arguments on behalf of the Petitioner. In my considered view the synopsis and the authorities cited, it is neither necessary nor possible or feasible for this Court to examine such so called synopsis of argument placed before the court during the course of dictating orders after conclusion of the arguments. As observed elsewhere in this order, it is not possible nor feasible for this Court to satisfy all counsel appearing for the parties and more so a counsel who has a feeling that his client is on the losing side and therefore inevitably arguments become prolix! One counsel, another counsel, one senior advocate and yet another counsel may appear in the matter if the hearing prolongs and if the counsel is still not satisfied even a written argument may follow, synopsis of argument may be given and yet again more authorities added to it. In the scheme of things, scope for scrutiny in a petition under Article 227 of the Constitution of India being very limited proceedings being not in the nature of an appeal, it is not necessary for this Court to advert to all facts pleaded or submitted by a party and it is not necessarily to examine all and sundry judgments cited at the Bar and it is sufficient for this Court to examine the relevant aspect and examine the legal position that arises or as prevails in the context of relevant applicable judgments, whether on the basis of the principle of precedent or on the basis of the law declared by the Supreme Court under Article 141 of the Constitution of India. I am of the view that this exercise has been done much more than necessary in this case and in fact I am of the clear view that it is only because the Petitioner has invested considerable amount and may lose it; if the order of the Deputy Commissioner remains in tact, all such unending efforts on behalf of the Petitioner!

104. As observed earlier, rich and powerful litigants occupy most part of the court proceedings. Judicial proceedings are hijacked by the rich and powerful, whether or not their causes deserve that amount of time. With judicial time being limited and if more judicial time is occupied by unnecessary or undeserving or insignificant matters, it will be only at the cost of other litigants before the court and it is inevitable a poor, weak and helpless litigant, always suffers. This is the malady of our legal system, which calls for immediate attention at the hands of legislature and law reformers. It is for this reason I strongly suggest that the legislators may consider rationing of judicial time and put a ceiling on the amount of time a particular lawyer representing a cause can consume before the court, as otherwise, pendency [of cases] only increases and poor and helpless and other deserving litigants may not receive the attention for redressal of their

grievances at the hands of the courts.

105. In a democratic republic, as mandated under our Constitution, in a country wedded to social objectives/Justice, such a thing cannot happen. In fact it is the poor and helpless who definitely deserve due consideration at the hands of the courts, as they are even otherwise helpless and courts are the only a solace for such people, as rich and powerful can always find relief and solutions outside courts also!

106. Karnataka Scheduled Caste and Scheduled Tribe (Prohibition of Transfer of Certain Lands) Act, 1978, is undoubtedly a revolutionary piece of social welfare legislation, incorporating in itself the avowed object and purpose of Article 15(4) read with Articles 17, Articles 38, 39(b) and 39A of the Constitution of India and with the main purpose of protecting the interest of economically and socially backward scheduled caste and scheduled tribe communities and for ensuring that they are provided a source of sustenance, so that their social status and level rises and they can also attain parity with other sections of the society.

107. In this background, Karnataka Act No. 2 of 1979 while is a boon and is a gift given by the State, to members of these communities, should have worked to their betterment and advantage. More often than not, it has, on the other hand, resulted in the opposite, has resulted in virtual harassment and misery to such persons, particularly, because of the manner of implementation of the provisions of the Act.

108. In the first instance, the statutory functionaries under this enactment who are required to implement and effectuate the provisions of the Act by identifying the granted lands, having been lost due to transactions in violations of the terms of the grant and in violation of the provisions of the Act, are officials of the revenue department, in the first instance, the Assistant Commissioner who heads the revenue subdivision in the District and a District CollectorKarnataka known as Deputy Commissioner], who functions as one appellate authority and the scheme of the Act being to ensure that the decisions attain finality quickly so that the matter is not prolonged endlessly.

109. Civil courts have been debarred from enquiring into the orders/decisions passed or taken by the authorities in terms of the provisions of the Act. The litigation, as noticed earlier, being not adversary in nature and duty being enjoined on the revenue authorities to act for the implementation of provisions of the Act and this being for the specific reason that persons belonging to such weaker sections of the society who have already lost their granted land or even their legal heirs and who most of the time did not have any independent source of income, will definitely be not a match to the rich and powerful who would have purchased the lands and it is to ensure that the disputes which can arise in the context of implementation of the provisions of the Act are brought to a quick end such provisions are incorporated in this Act.

110. But, more often than not. the proceedings under the Act has resulted in

harassment, misery, in the first instance, due to the erratic manner of functioning of the superior revenue officers and what with corruption being rampant in the revenue department and land though agricultural land, when it is located in the vicinity of an urbanized area and very specifically in and around Bangalore city, commanding astronomical prices and what with human nature being to sustain and to cling on to whatever one has acquired, the orders passed by the revenue authorities even if they are legally valid etc., such purchasers who are faced with the grim situation of losing the purchased lands and perhaps who might have effected improvements with vast investments, will not leave any stone unturned try in every possible way to sustain the land and if not possible at least to prolong the litigation as long as is possible, so that they continue to enjoy the benefits from the land.

111. In such a scenario, a grantee or his legal heir is not a match for fighting litigation and being in the first instance, more often than not, an illiterate, ignorant and even otherwise poverty stricken will never be able to afford the kind of legal services which affluent and many a times socially, politically powerful purchaser of the land can command.

112. A busy appellate authority like the Deputy Commissioner who is saddled with the responsibility of foreseeing not only the administration of the District, but also being a statutory functionary under different enactments, including the Karnataka Land Revenue Act, 1964, and many other agrarian reformatory legislations and in the instant case, under the very enactment, and many such other provisions of law, while can hardly spare time to bestow their attention and more often than not, find it an easy way out to set aside the order of the Assistant Commissioner whether warranted or otherwise, and many a times, yielding to the pressures and incentives provided by the rich and powerful purchasers, tend to remand the matter to the Assistant Commissioner for one more round of fresh enquiry, hearing etc.

113. The poor grantee or his legal heir gets worn out and even may not be capable of affording the travel expenses to attend a hearing before the authorities every time. Unfortunately, the first authority and later the appellate authority, being essentially administrative functionaries, not necessarily well versed in legal methods, not being judicial officers who have training in manning the courts or the Tribunals, while passing orders under the Act, can commit many technical mistakes and orders may not be as foolproof as orders passed by a judicial officer.

114. With interference by the civil courts being barred in terms of Sub-section (2) of Section 5 of the Act, the disgruntled or disappointed purchaser inevitably when suffers an adverse order at the hands of the authorities definitely will prolong the matter by invoking writ jurisdiction of the High Court, in the first instance, and even if necessary will approach the highest Court of the land seeking special leave etc.

115. Even when the revenue authorities, many a times, lose sight of the real purpose and object of the enactment and on many occasions being controlled and directed by the orders passed by the superior courts in this country can pass orders to the detriment of the persons for whose benefit legislature has enacted the law, superior courts are not far behind in committing such mistakes.

116. It is, particularly, so when a Judge in the High Court or the Supreme Court looks into the orders passed by the revenue authorities and with the Judges in the superior courts having been trained in legal methods and more often than not, acting as appellate authorities being well trained to notice an error or mistake or an illegality instantly, by both training and experience, can inevitably find good number of loopholes in the orders passed by the revenue authorities and for a skilled, qualified, efficient lawyer, such orders are mincemeat to point out one or the other short coming in the order, many a technical defects, though ultimately the conclusion arrived at by the revenue authorities may be one which was inevitable and which in consonance with the provisions of the Act and one which furthers the object and purpose of the legislation!

117. Unfortunately, even the Judges in the superior courts, losing sight of the purpose and objective of the social welfare legislation and being guided more by the pedestrian, sympathetic attitude towards a person who tends to lose what one has gained perhaps by bonajide transaction and may be even by investing his hard earned money etc., would rather prefer to view matters highly technically, in the sense, of bestowing deep scrutiny into the quality of the orders and if such is the scrutiny and examination, by the Judges in the superior courts assisted by very eminent counsel, senior counsel not merely possessed with exemplary legal acumen, but also having a very high reputation in the profession and persuasive skills, perhaps no order passed by the Assistant Commissioner even if affirmed by the Deputy Commissioner can sustain such a searing incisive scrutiny and even minor mistakes may appear like craters when viewed through the microscopic vision of the trained minds of the Judges in the superior courts.

118. The appellate courts and Judges in the appellate courts find this an easy way out for a quick disposal by setting aside the order and remanding the matter to the authorities under the Act, as nothing is decided conclusively and as both parties get an opportunity yet again for one more round of litigation, both go content and happy and this course of action would definitely please the parties and their counsel appearing for the rival parties! The factum is a litigant who is a rich and powerful litigant, perhaps makes it a habit of litigating and is a court bird may enjoy this result and in the instant case, a person belonging to depressed class or his legal heir find this nothing short of a virtual harassment and in this scheme of legal proceedings and judicial proceedings, the very purpose and the intent and object of the statute is lost and the benefit sought to be conferred, a boon sought to be given to the socially deprived classes on the other hand turns out to be a curse.

119. Even senior members of the Bar who appear in such matters and who are

relatively engaged by the rich and powerful purchasers, try to flex their muscle before the court and try to dictate terms to the Judge in the court; that a Judge cannot overlook the mistakes committed by the revenue authorities, to simply affirm the order and to dismiss the writ petition!

120. The tendency has grown of late both amongst the Members of the Bar and the Members of the Bench to view every matter in writ jurisdiction as though it is an appeal against the orders passed by the administrative authorities or quasi judicial Tribunals.

121. Writ jurisdiction, as observed earlier, is not an appellate jurisdiction. It is judicial review of administrative action and in the instant case, while examining the order passed by the statutory functionary like the Assistant Commissioner and Deputy Commissioner, it is one in the exercise of superintendence jurisdiction under Article 227 of the Constitution of India. Examination is essentially one as to whether the authorities are acting within their jurisdiction are conforming to the statutory provisions and are passing orders in consonance with the purpose and object of legislation. The High Court does not act as an appellate authority.

122. By the time the matter reaches the High Court in a petition under Article 227 of the Constitution of India, it would have received scrutiny and attention at the hands of the Assistant Commissioner as the original enquiring authority and the Deputy Commissioner acting as an appellate authority and the High Court if at all is looking into such orders in the exercise of writ jurisdiction under Article 227 of the Constitution of India.

123. If one should consider the stage before the High Court from the context of the Code of Civil Procedure, even in matters involving property rights where rights can be examined by the civil courts between rival parties in adversary litigation, while the code provides for one regular appeal with the appellate authority having jurisdiction both on facts and law when the matter reaches the High Court in a second appeal u/s 100 of the Code of Civil Procedure, it is only the examination on a question of law and that too a substantial question of law, if such question is involved in the decision making process and if such question has been decided erroneously by the first appellate authority or the original authority and affirmed in appeal.

124. Otherwise, even in matters originating as a suit at the instance of interested party, the High Court does not interfere acting as the second appellate authority and does not interfere on erroneous facts or on other considerations when the second appeal does not involve a substantial question of law decided erroneously. If such is the limitation sought to be imposed by the general law in respect of adversary litigation to ensure that litigation attains finality, at the earliest it should be afortiori so in the context and background of a social welfare legislation like the present enactment and where the jurisdiction of civil court is expressly excluded and the High Court is only exercising the jurisdiction of

judicial review under Article 227 of the Constitution of India.

125. In matters of such nature, the scope for interference by the High Court in a petition under Article 227 of the Constitution of India, is minimal and until and unless the court notices a clear illegality, a blatant arbitrary action or a misuse and abuse of the powers by the statutory functionaries either to victimize one person or to favour another and are acting in a biased manner, there is no scope for interference with the orders passed by the revenue authorities, more so when the orders are for restoration of the granted land in favour of a original grantee or his legal heirs and the authority having recorded a finding that the transaction under which the present purchaser presently claiming possession are hit by the conditions of grant.

126. In the present case, the Deputy Commissioner on examining the facts on the touchstone of the statutory provisions relevant and applicable at the time of the grant and on the touchstone of the provisions of this Act, has arrived at a legal inference that the transaction is hit. There is ample material on record, not only to show that the land in question is a granted land, granted in favour of the person belonging to scheduled caste community and being a grant made on 8.6.1947 inevitably carries a condition of permanent non-alienation in terms of the statutory conditions imposed on such grants at the time of the grant, a transaction for transfer of any interest in such land at any point of time whether before the present Act has come into existence or after that will never sustain and all such transactions in respect of lands governed by statutory conditions of grant made prior to 4th August, 1953 in terms of Notification No R.7594-604-LR.266-53-2 are to be inevitably voided in terms of the provisions of the Act.

127. The order passed by the Deputy Commissioner has only recognized this result in law and the Deputy Commissioner has inevitably set aside the order passed by the Assistant Commissioner and directed resumption of the land to the State and restoration to the legal heir of the original grantee.

128. The scrutiny being in respect of the land and irrespective of the dispute or controversy as to whether the survey number concerned is one relating to the original grant in favour of Thayappa or relating to original grant in favour of Poojiga under whom the present first Respondent claims, the result will be the same as none of the lands granted under the common grant order dated 8.6.1947 if had been transferred by the original grantee or their legal heirs, if had been purchased by way of transfer or otherwise by any other person, can remain in possession of such person but has to be inevitably resumed in favour of the State and restored in favour of the grantee or his legal heirs in terms of the provisions of the Act. That exactly is the position achieved by the order passed by the Deputy Commissioner.

129. It is also for this reason, this Court does not feel compelled to examine all such, other incidental technical grounds urged by the learned Counsel for the Petitioner including learned senior counsel Mr. Raghavan who undoubtedly with

all his legal acumen and brilliance has projected many a technical grounds seeking for invalidation of the order passed by the Deputy Commissioner and to remand the matter either to the appellate authority or the original authority.

130. In a situation where the order passed by the statutory functionary is one in consonance with the statute and has achieved the purpose and object, of legislation but nevertheless, setting aside such order on some technicality or otherwise by this Court in the exercise of writ jurisdiction under Article 227 of the Constitution of India, and directing one more round of enquiry on appellate orders while is undoubtedly a grave injustice meted out to a grantee or his legal heir and results in harassment, it only achieves the opposite to the purpose and object of the social welfare legislation and results in further misery to persons for whose benefit the law is enacted.

131. What with standards in the Bar as well as the Bench going down day by day, equipment, competence being scarce both amongst the Members of the Bar and the Bench and judiciary also not lagging behind with the present trend in the society where corruption rules roost, it is only the Goddess of Justice who suffers and is weeping in silence. However, such a thing should not happen in a democratic republic and in a country wedded to socialism, equality to all it's citizens and is a welfare State.

132. It is the duty of the courts and Judges to be sensitive to the purpose and object of the legislation. No decision can be taken independent or de hors the purpose and object of the legislation and it is the duty even of the superior courts to effectuate the purpose and object of the legislation. It is only because I am quite conscious of this mandate of law, I am not exercising the discretionary jurisdiction under Article 227 of the Constitution of India to interfere with the orders passed by the Deputy Commissioner and for passing a remand order.

133. Yet another peculiar situation in the present case is that the particular revenue officer who has acted as an appellate authority has no good reputation and if one may say so, has even a bad reputation and with the Deputy Commissioner having reversed the order passed by the Assistant Commissioner, one normally tends to jump to the conclusion that such orders are to be doubted and if some technical lacunae or defect is found the order is to be set aside!

134. One should bear in mind that scrutiny in judicial review is not of the conduct or the quality of the person, passing an order, but it is only the sustainability of the order on the touchstone of statutory provisions and the constitutional provisions. Unfortunately, the malady of the orders being interfered based on the reputation of the person passing the order has not spared even the Judges in the superior courts and more often than not, the orders passed at the lower levels by an officer even judicial officer whose reputation is low are automatically and inevitably set aside and the matter remanded for fresh enquiry and a decision afresh.

135. Though learned senior counsel Mr. Raghavan and his colleague Mr.

Ganapathi Hegde, Advocate, have made valiant efforts and urged many grounds for passing a remand order, this Court finds no justification or reason to set aside the order passed by the Deputy Commissioner on such other considerations, but on an examination of the order on the parameters of the statutory provisions, the order being found to be a proper order, conclusion being the right conclusion, no interference is warranted and this is precisely why this writ petition is dismissed.

136. In fact, a matter of this nature should not have received attention to this great extent and should not have occupied time of this Court for more than at the maximum thirty minutes or so, but has prolonged for more than five to six days. This order has become so prolix and I have been compelled to examine the legal provisions in such vivid details as it is noticed that casual laconic mindless remand orders have only resulted in misery and agony to persons belonging to scheduled caste community for whose benefit the social welfare legislation had been ushered in by the legislature. It is nothing short of a sin committed by the members of the judiciary if such a development should take place in the name of judicial review of administrative action under Article 226 of the Constitution of India or even when the jurisdiction of superintendence exercised over all courts and Tribunals under Article 227 of the Constitution of India.

137. As long arguments, many grounds and points are urged by learned senior counsel of eminence, of standing of weight and what with the risk of the Judge being accused of not considering all points urged by the counsel! No wonder such matters consume time and space in writ jurisdiction. Many writ petitions occupy much longer time than perhaps a second appeal occupies and if the stakes are bigger, if the counsel appearing in a matter is a counsel of eminence and reputation, a general tendency has developed that the matter should receive longer attention though otherwise the matter may not really merit such prolonged attention.

138. It is because of this, I am of the definite view that there is need for the legislature to step in to ensure that judicial proceedings are not highjacked by the rich and powerful at the cost of the poor and helpless victims who might have suffered many an injustice and hardship. It is therefore necessary for the legislature to examine as to whether the available judicial time which is very limited, should be apportioned amongst seekers of justice in an equitable and proportionate manner so that available judicial time is not unnecessarily wasted over matters not deserving commensurate attention and other persons waiting in the queue do not suffer.

139. Therefore, while this writ petition is dismissed, levying exemplary cost of 50,000/- (Rupees fifty thousand only) on the Petitioner, in favour of the first Respondent, as I am of the considered opinion that this case has received and occupied much more time than it otherwise deserves, only by the muscle flexing attitude/conduct of the learned Counsel for the Petitioner than for any worthwhile, cause or reason and in such a situation, costs are levied more as a

deterrent than as a compensatory cost in favour of a litigant, as the message should go to litigants that unnecessary causes, frivolous causes, unreasonable causes cannot receive undue attention at the hands of the courts, just because such litigants are able to command quality legal services.

140. Writ petition is dismissed with costs as stated above. Cost should be paid or to be deposited before this Court by the Petitioner within four weeks from today and on such deposit, the first Respondent is permitted to withdraw the amount through his counsel, failing which, the registry is directed to issue a certificate in favour of the first Respondent, for recovery of the cost, as though it is a decree passed by a civil court.

141. Rule discharged.

142. Registrar General to ensure copies of this order are forwarded:

1. The Secretary to the Government, Ministry of Law and Justice, Government of India, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi 110 001,
2. The Chief Secretary, Government of Karnataka, Vidhana Soudha, Bangalore -560 001,
3. The Secretary, Ministry of Law, Vidhana Soudha, Bangalore -560 001.