

(2011) 08 KAR CK 0119

In the Karnataka High Court

Case No : Writ Petition No"s. 11589-11591 of 2011 (SC/ST) A/w Misc W. No"s. 4150 and 6402 of 2011 in Writ Petition No"s. 11589-11591 of 2011 (SC/ST)

Sri G. N. Ramachandra and Others

APPELLANT

Vs

State of Karnataka and Jagadish

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Karnataka Land Revenue Code, 1988 — Section 3 (12), 3 (14), 3 (16)
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 3 (1) (b), 4 (2), 5

Citation : (2011) 08 KAR CK 0119

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

Bench : Single Bench

Advocate : S.K.V. Chalapathy for Sri Sangamesh R. Bharsetty, for the Appellant; R. Omkumar AGA for R1-R3 and Sri S.P. Kulkarni, for R4, for the Respondent

Judgement

D.V. Shylendra Kumar

1. These writ petitions, though had been listed for passing orders on application in Misc W No 4150 of 2011 filed on behalf of respondents 1 to 3 for vacating the interim order of stay granted in these petitions and another application in Misc W No 6402 of 2011 tiled on behalf of petitioners, has been heard on merits very extensively and while the application for amendment is formally ordered, the application for vacating stay need not be ordered separately, as writ petitions are being disposed of as under.

2. I have heard Sri S K V Chalapathy, learned senior advocate appearing for Sri Sangamesh R Bharsetty, learned counsel for the petitioners, Sri R Omkumar, learned AGA for respondents 1 to 3 and Sri S P Kulkarni, learned counsel for fourth respondent at some length and in some detail.

3. Writ petitions are basically directed against the order dated 9-9-2010 [copy at Annexure-R to the writ petition], passed by the Assistant Commissioner,

Bangalore North Sub-division, Bangalore and the affirming order dated 17-3-2011, a copy of which was produced by the petitioners subsequent to the filing of the writ petitions along with a memo dated 12-4-2011, passed by the Special Deputy Commissioner, Bangalore Urban District, dismissing the appeal.

4. The subject orders of the Assistant Commissioner and the Deputy Commissioner are passed under Sections 5 and 5A respectively of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 [for short, the PTCL Act] and the Assistant Commissioner passing the order at the instance of the fourth respondent, who had claimed that he is son of one Yallappa, who is in turn claimed to be a legal heir of Smt Siddamma and Smt Gundamma, both said to be wives of one Ramaiah and in whose favour two parcels of land, one measuring an extent of 1 acre 36 guntas and the other measuring 2 acres 37 guntas of land in Sy Nos 77/1, 77/2 and 77/3 of Agrahara Dasarahalli, now at 3rd Block, IV Stage, West of Chord Road, Bangalore-73, had been granted as per grant order dated 4-8-1962 evidenced by endorsement dated 16-9-1964, issued by the additional special Deputy Commissioner for inams abolition, as applicants, who had made their applications u/s 5 of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 [for short., abolition Act].

5. It appears, even before these orders u/s 5 of the Abolition Act being passed by the special Deputy Commissioner, under two sale deeds dated 28-6-1962, predecessor-in-title of the present writ petitioners by name G Nanjusa, had acquired interest in respect of the entire land covered under the two regrant orders dated 4-8-1962, one sale deed said to have been executed by the grantee Smt Gundamma and her husband Ramaiah, transferring an extent of 3 acres 11 guntas of land and another sale deed said to have been executed by one Papaiah, transferring interest in respect of 371/2 guntas of land, and the said Papaiah having in turn acquired interest in respect of this extent of land under an earlier sale transaction dated 17-7-1961, said to have been executed in his favour by Smt Siddamma or Gundamma, one of the grantees.

6. It is the version of the petitioners that ever since they have been in possession and enjoyment of the subject property and according to learned counsel for the petitioners, the two sale deeds in fact conveyed a total extent, of 4 acres 13 guntas of land, a few guntas in excess of the land as it measured even by adding up the extent of lands regranted in terms of the regrant orders dated 4-8-1962 passed in favour of Smt Gundamma and Smt Siddamma.

7. However, it appears, proceedings had been initiated before the Assistant Commissioner u/s 5 of the PTCL Act at the instance of fourth respondent, who claimed to be a legal heir under the original grantees Smt Gundamm and Smt Siddamma, it is on such premise for invalidating the sale transactions in terms of Section 4 of the FFCL Act and resumption of the land to the state and for restoration in his favour etc.

8. The proceedings ended in passing order dated 9-9-2010, whereunder the Assistant Commissioner opined that the subject transactions were all hit by the provisions of Section 4 of the FFCL Act and therefore liable to be resumed to the state and to be restituted to the legal heir of late Ramaiah's wives namely Smt Gundamma and Siddamma.

9. This order was appealed against by the present writ petitioners before the Deputy Commissioner invoking Section 5A of the PTCL Act.. The appeal before the Deputy Commissioner having expedited in the wake of the order dated 30-9-2010 passed in WP No 31493-95 of 2010 at the instance of the present writ petitioners and the matter was heard and disposed of in the presence of learned counsel appearing for the petitioners and the learned counsel for fourth respondent herein, and for a good measure, written arguments were also placed before the Deputy Commissioner. The net result of all this was dismissal of the appeal by the Deputy Commissioner, finding no occasion or scope for interference with the order passed by the Assistant Commissioner. It is aggrieved by this order of the special Deputy Commissioner, the present writ petitions seeking for quashing of both orders of the Assistant Commissioner and the Deputy Commissioner, the matter is before this court.

10. Appearing on behalf of the writ petitioners, Sri S K V Chalapathy, learned senior advocate, has mainly contended that in the first instance, assumption of authority by the Assistant Commissioner for acting in terms of Section 5 of the PTCL Act is one without jurisdiction; that the subject lands which were subject matter of re-grant orders passed by the special Deputy Commissioner for inams abolition under the provisions of Section 5 of the Abolition are not lands which come within the scope of the phrase "granted land" as is defined in Section 3(1) (b) of the PTCL Act and therefore none of the provisions of PTCL Act including Section 5 are attracted; that there is no question of the Assistant Commissioner holding an enquiry and recording a finding that the subject transactions are hit by the provisions of Section 4 of the PTCL Act and therefore on this ground alone, the impugned orders are liable to be quashed.

11. It is alternatively contended that assuming for argument" sake, but without conceding, that the subject lands are to be treated as granted lands within the meaning of Section 3(1)(b) of the FFCL Act. nevertheless, the subject transactions - two sale deeds dated 28-6-1962 - are not one which attract the provisions of Section 4 of the FFCL Act; that there is neither any violation of any of the conditions of grant, is the requirement for attracting the provisions of Section 4(1) of the PTCL Act for invalidation of the transactions if it was in violation of the conditions of grant and likewise, provisions of Section 4(2) of FFCL Act are also not attracted, as the subject transfer is not a transaction subsequent to the coming into force of the FFCL Act i.e. on or after 1-1-1979; that in law the sale transactions were not affected and therefore the finding recorded by the Assistant Commissioner and as affirmed by the Deputy Commissioner that the transactions are hit by the provisions of FFCL Act is a

finding not sustainable in law and it is at variance with the provisions u/s 4 of the PTCL Act and it is for this reason also, the impugned orders are not sustainable. For the sake of convenient, Sections 4, 5 and 5A of PTCL Act are all extracted 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.

(2) No person shall after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a Civil Court or of any award or order of any other authority.

5. Resumption and restitution of granted lands:-

(1) Where, on application by any interested person or on information given in writing by any person or suo motu, and after such enquiry as he deems necessary, the Assistant Commissioner is satisfied that the transfer of any granted land is null and void under sub-section (1) of Section 4, he may :-

(a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;

(b) restore such land to the original grantee or his legal heir. Where it is not reasonable practicable to restore the land to such grantee or legal heir, such land shall be deemed to have vested in the Government free from all encumbrances. The Government may grant such land to a person belonging to any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land.

(1-A) After an enquiry referred to in sub-section (1) the Assistant Commissioner may, if he is satisfied that transfer of any granted land is not null and void pass an order accordingly.

(2) Subject to the orders of the Deputy Commissioner u/s 5-A, any order passed under sub-sections (1) and (1-A) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Assistant Commissioner in pursuance of any power conferred by or under this Act.

(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.

5-A. APPEAL TO THE DEPUTY COMMISSIONER: Any person aggrieved by an order passed after the commencement of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act 1984 by the Assistant Commissioner to take possession of land under clause (a) of Sub-section (1) of section 5 or to restore the land under clause (b) of the said sub-section may prefer an appeal to the Deputy Commissioner, having jurisdiction, within a period of three months from the date on which the order was communicated to him.

Provided that the Deputy Commissioner may admit an Appeal preferred against such order after the period referred to in sub-section (1), if satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

Provided further that the Deputy Commissioner shall admit an appeal against an order passed by the Assistant Commissioner before the date of such commencement, if on the said date, a writ petition preferred against such order or an appeal preferred against the order passed in such writ petition is pending in any court

1A - Any person aggrieved by an order passed after the commencement of the Karnataka Scheduled Castes and Scheduled Tribes (prohibition of Transfer of certain lands) (Amendment) Act, 1992, by the Assistant Commissioner under sub-section (1A) of section 5, may prefer an appeal to the Deputy Commissioner having jurisdiction within a period of three months from the date on which the order was communicated to him.

Provided that the Deputy Commissioner may admit an appeal preferred against such order after the period to in subsection (1A), if satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

Provided further that the Deputy Commissioner shall admit an appeal against an order passed by the Assistant Commissioner holding that transfer of any granted land is not null and void before the date of such commencement, if, on the said date, a writ petition preferred against such order or an appeal preferred against the order passed in such writ petition is pending in any court.

(2) The Deputy Commissioner shall dispose of the appeal in the prescribed manner and the order passed by him shall be final.

12. Elaborating the submissions and with reference to decided cases, Sri S K V Chalapathy submits that the transactions were one prior to the re-grant orders is a fact not in dispute; that under the two regrant orders dated 28-6-1962, the grantees did not acquire any interest of the state other than the recognition of their subsisting interest in terms of the regrant orders; that their earlier right in

respect of the land is only reiterated in terms of the orders passed u/s 5(1) of the Abolition Act and therefore the subject land can never be understood as one coming within the scope of the expression "granted land" u/s 3(1)(b) of PTCL Act, reading as under:

3, Definitions:

(1) In the Act, unless the context otherwise requires:

(a) xxx

(b) "granted land" means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such person under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word "granted" shall be construed accordingly;

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that even the orders of the nature of regrant orders passed u/s 5 of the Abolition Act do not come within the scope of "granted land", has received recognition and support in the case of lands which were subject matter of like orders under the provisions of the Karnataka Land Reforms Act, 1961 for short, Land Reforms Act] as per the opinion of the Full Bench of this court in the case of Mohammed Jaffar and Another Vs. State of Karnataka and Others, ; that though this decision was rendered in the context of the provisions of Land Reforms Act vis-?-vis provisions of PTCL Act, the reasoning and the principle enunciated therein is equally attracted to regrant orders passed under the provisions of Abolition Act; that this position has also been noticed by a single Bench of this court in the case of M. Munikenchappa vs The Special Deputy Commissioner 2004 (2) KCCR 1025; that the principle as had been enunciated in the case of MOHAMMED JAFFAR [supra] in respect of regrant orders made under the provisions of Land Reforms Act have been extended to regrant orders made under the provisions of the Abolition Act, to hold that the subject lands, which are subject matter of regrant orders, under the Abolition Act, also do not come within the definition and meaning of the phrase "granted land" u/s 3(1)(b) of PTCL Act and applying the ratio of this decision, it has to be necessarily held that the provisions of PTCL Act themselves are not attracted to the transactions in the present situation, as the land in question is not a land as defined in Section 3(1)(b) of the PTCL Act.

13. Reliance is also placed on the decision of a single judge of this Court in the case of Sri. Abdul Haq Shamshuddin Saheb Vs. Deputy Commissioner and Others, , a decision rendered in the context of examination of question of applicability of the provisions of the PTCL Act to lands which had been granted under the provisions of Land Reforms Act, particularly for registration of occupancy rights u/s 48A of the Land Reforms Act; that a Single Bench of this court had opined that such lands do not come within the purview of the

provisions of the PTCL Act; that there is considerable distinction between the land granted or regranted under the provisions of Land Reforms Act and those lands granted under the Karnataka Land Revenue Act, 1964 [for short, KLR Act] and the distinction was to hold that the provisions of PTCL Act are applicable only in respect of lands granted under the provisions of KLR Act and not in the case of other grants, such as lands granted under the provisions of Land Reforms Act and like reasoning is equally applicable to the present situation, as the subject land, which is one regranted u/s 5 of the Abolition Act, cannot be constructed as a land granted under the provisions of KLR Act and therefore on the basis of the ratio enunciated in this decision, lands regranted u/s 5 of the Abolition Act do not come within the scope of definition u/s 3(1)(b) of PTCL Act.

14. One other contention urged on behalf of the writ petitioners is that unless the subject land is one expressly made in favour of persons belonging to SC/ST and a grant for such reason, the provisions of PTCL Act are not attracted; that the regrant orders passed under the provisions of Section 5 of the Abolition Act being an order to reiterate or recognize the rights which a tenant already had in the land and irrespective of the factum of the tenant belonging to SC/ST community, a regrant order being possible, the land, which is subject matter of order u/s 5 of the Abolition Act, can never be termed as a "granted land" in favour of a person belonging to SC/ST community and therefore the provisions of the PTCL Act are not attracted in respect of land of the nature which was subject matter of an order u/s 5 of the Abolition Act. In support of this submission, reliance is placed on a decision of another Single Bench in the case of Krishnamurthy Vs. The Deputy Commissioner and Others, .

15. An alternative submission on behalf of petitioners is that assuming for argument's sake, writ petitioners, who had purchased the lands under the two sale transactions, were entitled to only such of those rights their vendors had at the time of executing the sale deeds and even assuming that at that time the vendors of petitioners had only a limited right in respect of subject land, in the sense, tenancy rights, and to be in occupation of the land, that limited right, in fact, has later blossomed into a full ownership right in the wake of the principles of feeding the title by estoppel as enshrined in Section 43 of the Transfer of Property Act. 1882 [for short. TP Act], a principle which has received judicial recognition in several decided cases, especially in the case of Syed Bhasheer Ahamed & Others vs State of Karnataka JLR 1994 KAR 159] and though the subject arose in the context of the provisions of Karnataka Village Offices Abolition Act, 1961, the legal principle is the same and therefore submits that the purchasers in terms of the two sale transactions of the year 1962 though had acquired limited right under the sale transactions, but, nevertheless, the vendors under the two sale transactions holding out that they are the owners of the subject land and through the sale deeds are conveying full right, title and interest in favour of the vendee and if on passing of regrant orders u/s 5 of the Abolition Act and on the payment of amount of assessment as indicated in Section 5(3) of the Abolition Act could become the full owners of the granted

lands and therefore the benefit of the orders passed u/s 5(3) of the Abolition Act, enuring to the benefit of the regrantees automatically should enure to the benefit of the purchasers by the operation of principle of feeding the title by estoppel and as such acquisition of full title to the lands in question, as per law, is not in violation of any of the terms of the regrant order, while the purchasers have become full owners much prior to the PTCL Act coming into force and without violating any terms of the regrant order and for this reason also, the provisions of Section 4 (1) of the PTCL Act are not attracted.

16. A corollary of these submissions is that when petitioners or their predecessors-in-title were in possession and also acquired full and valid title to the subject lands much prior to the PTCL Act coming into force and without violating any of the terms of the grant, which submission is based on the premise that under the regrant orders, no conditions were imposed subjecting the grantee to abide by the conditions and in the absence of any condition, question of violation of condition not arising and if before the PTCL Act came into force, possession coupled with full title was with the purchasers, there is no question of the provisions of Section 4(2) of the PTCL Act also being attracted and therefore it is submitted that there was never any occasion for the Assistant Commissioner to invalidate the two sale transactions of the year 1062 or to hold that the transactions are voided by operation of the provisions of sub-sections (1) and/or (2) of Section 4 of PTCL Act and for this reason, submission is that the impugned orders are required to be quashed and the legal position clarified that the transactions are not one attracting the provisions of PTCL Act.

17. Yet another contention urged on behalf of the writ petitioners by Sri S K V Chalapathy, learned senior counsel is that writ petitioners were not accorded a full and proper opportunity before the authorities; that while they were not even favoured with notices by the Assistant Commissioner and the orders passed were in their absence and behind the back of petitioners; that even before the Deputy Commissioner in their appeal, they did not have sufficient opportunity and therefore the matter warrants remand to the Assistant Commissioner for a full and proper enquiry in the matter and for passing orders afresh.

18. Such submissions on the part of the petitioners are strongly refuted and countered by the very forceful submissions not only by Sri R Omkumar, learned AGA, who has made a thorough examination of the statutory provisions, as they prevail not only under the Abolition Act but also under the Karnataka Land Revenue Code, 1888 [for short, KLR Code] an aspect of the matter, which, according to learned AGA, had totally missed the attention of learned judges who had examined the matters on earlier occasions in the context of the provisions of the PTCL Act, particularly very important relevant statutory provisions having been not noticed and therefore in the first Instance, independent of the decided cases an in-depth examination of the provisions of the Abolition Act read with provisions of KLR Code, is required to be undertaken and on such scrutiny, inevitably shows that a land which is regranted u/s 5 of the Abolition Act is one

which is squarely covered within the definition of the phrase "granted land" u/s 3(1)(b) of the Act; that this is obvious on an examination of the consequences of abolition of inams as was the intendment of the Abolition Act and as indicated in Section 3(1)(a) of the Abolition Act, reading as under:

3. Consequence of the vesting of an inam in the State:

(1) When the notification under sub-section (4) of Section 1 in respect of any inam has been published in the Mysore Gazette, then notwithstanding anything contained in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting, and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely -

(a) the provisions of the Land Revenue Code relating to alienated holdings shall except as respects minor inams to which this Act is not applicable, be deemed to have been repealed in their application to the inam; and the provisions of the Land Revenue Code and all other enactments applicable to unalienated villages shall apply to the said inam:

that the provisions of Section 3(1)(b) of this Act. also further indicates that there is vesting of whatever interest the inamdar had held in the subject land prior to the Act in the state and a further examination of Section 5(2) of the Abolition Act read with Sections 10(3)(b) and 14, makes it abundantly clear that a regrant order u/s 5 does confer a good amount of right, title and interest in favour of the grantee much more than the interest a tenant perhaps had earlier in respect of the subject land as a tenant under the inamdar, that while the rights of the tenant which had been saved under the Abolition Act even as a tenant are always subject to the other provisions of the Abolition Act and with the inamdar losing all his right, title and interest in the land in favour of the state and in terms of the regrant order, followed up by payment of one time land revenue on the land, the Act conferring full title on the grantee, a grant of this nature is nothing short of a grant under the provisions of Rule 43 of the Rules framed under the KLR Code, which result is achieved, when one looks at the provisions of Section 3(1) (a) of the Abolition Act, as extracted above, when read in the light of the definition of tenant u/s 3(12) of the KLR Code and the definition of superior holder u/s 3(14), occupant u/s 3(16) and the definition of registered occupant u/s 3(17) as also definition of holder u/s 3(10) of the KLR Code, reading as under:

3(10) Holder - "Holder" or "landholder" signifies the person in whom a right to hold land is vested, whether solely on his own account or wholly or partly in trust for another person or for a class of persons or for the public. It includes a mortgagee vested with a right to possession.

3(12) Tenant: "tenant" signifies a person who holds by a right derived from a superior holder called his "landlord" or from his landlord's predecessors-in-title, and is, or, but for a special contract, would be liable to pay rent for such land to his landlord;

3(14) Superior Holder - "Superior holder" signifies a holder entitled to receive from other holders rent or land revenue on account of lands held by them, whether or not such holder pays land revenue to government on account of such lands.

3(16) Occupant - "Occupant signifies a holder of unalienated land or when there are more holders than one, the holder having the highest right in respect of any such land, or where such highest right vests equally in more holders than one, any one of such holders;

3(17) Registered occupant - "Register occupant" signifies a sole occupant or the eldest or principal of several joint occupants whose name is authorisedly entered in the government records as holding unalienated land whether in person or by his co-occupant tenant, agent, servant or other legal representative.

read with Rule 43 of the Rules framed u/s 233 of the KLR Code, very clearly indicate the rest of the fortunes of a tenant in terms of regrant order u/s 5 of the Abolition Act and it is not as though a tenant is only restored his preexisting right under an order passed u/s 5 of the Act, by registering him as occupant, but the consequences of recognizing a tenant as registered tenant in terms of Section 5 of the Abolition Act, ultimately makes him the owner of the land, but with the provisions of the KLR Code being automatically made applicable in respect of all alienated holdings including inam lands and on the abolition of inams under the Abolition Act, provisions of the KLR Code in its entirety is made applicable to lands granted under the provisions of the Abolition Act and fixation of occupancy price at 20 times of the assessment under Rule 43-C(3)(iv), reading as under:

43-C. Ordinary grants of lands:-

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(3) In respect of land granted, under this rule -

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(iv) The occupancy price of any other land shall ordinarily be not less than six times and not more than twenty times the assessment of the said land.

being in between six times and not more than 20 times of the assessment of the land is based on the object of conveying title or ownership to the grantee on collection of a nominal amount and not on collecting the market value for acquiring ownership of the land; that the tenant who, at the best, had become a holder of the land in turn becomes the owner after going through this exercise and all such development being possibilities in terms of the KLR Code, it is nothing short of a grant made under the provisions of the KLR Code itself and therefore the grant is always subject to conditions as are applicable in respect of grants made under the KLR Code; that at the relevant point of time, there was a condition of non-alienation for a period of 15 years from the date of grant and if so, it cannot be said that the subject transactions which are prior to the grant

order, are not in violation of the conditions of grant and therefore submits that even assuming for argument's sake that the principles of feeding title by estoppel as enshrined in Section 43 of the TP Act and as recognized in the case of SRI ABDUL HAQ SHAMSHUDDIN SAHEB [supra] is sought to be called in aid and when such being the possibility for such application only after passing of the regrant order, the claim of the petitioners for full title being hit by the conditions even for on operation of law in terms of Section 43 of TP Act and if so the transactions clearly attract the provisions of Section 4(1) of PTCL Act; that the provisions of this Act have an overriding effect on other provisions, the other consequences automatically follow.

19. It is also pointed out by the learned AGA that even assuming that the definition u/s 3(1)(b) of the PTCL Act is only one to rope in a grant made in respect of any land under the provisions of Abolition Act i.e. under the provisions of Sections 4, 5, 6, 7 and 8 of this Act and in fact there being no other type 4 of grant made under the Abolition Act provided for, except for grants made under the provisions of Sections 4, 5, 6, 7 and 8 of this Act and if one has to attribute some meaning and purpose to the definition of "granted land" as it occurs in the PTCL Act, which is a legislation subsequent to the Abolition Act, the intendment and object of defining "granted land" in the context of the lands granted under law relating to abolition of Inams, it is inevitable to rope in such a land covered by a regrant order passed under Sections 4, 5, 6, 7 and 8 of the Abolition Act within the meaning of the phrase "granted land" as it occurs in Section 3(1)(b) of FFCL Act and for this reason also, submits that the provisions of the FFCL Act squarely attract and the subject transactions are one invalidated by operation of Section 4 of FFCL Act and accordingly there is no need for interfering with the orders passed by the Assistant Commissioner and the affirming order passed by the Deputy Commissioner and the writ petition should be dismissed.

20. In the background of such legal position, learned AGA submits that the ratio in the decision of Full Bench of this court in the case of MOHAMMED JAFFAR [supra] does not constitute a binding authority, as the Full Bench was seized with a question arising for examination in the context of the provisions of the Land Reforms Act for the purpose of answering as to whether the land granted under the provisions of the Land Reforms Act also comes within the scope of the definition of "granted land" u/s 3(1)(b) of the PTCL Act; that the provisions of Abolition Act are not in pari materia with the provisions of Land Reforms Act and therefore submits that in the present examination, decision in the case of MOHAMMED JAFFAR [supra] does not constitute an authority.

21. With regard to the Single Bench decision in the case of M MUNIKENCHAPPA [supra], submission of Sri Omkumar, learned AGA is that the decision in the case of M MUNIKENCHAPPA was rendered on an assumption that the ratio in the case of MOHAMMED JAFFAR [supra] is applicable in the ease of a like case arising under the Abolition Act; that while rendering the decision in the case of M MUNIKENCHAPPA [supra], no notice has been taken of statutory provisions such

as Section 3(1)(a) of the Abolition Act, scope and impact of this section in the context of corresponding phrase and terminology used in the KLR Code, having not been examined; that in fact no attention had ever been paid at all, to the meaning to be attributed to several phrases and words such as holder, tenant etc., as they occurred in the definition Section of the KLR Code; that in fact, the decision in the case of M MUNIKENCHAPPA [supra] is in ignorance and at any rate not examining the statutory provisions of Section 3(1)(a) of the Abolition Act with the relevant statutory provisions of the KLR Code and therefore it is a decision rendered per incuriam of these statutory provisions and does not constitute an authority for application of the ratio, if any, therein, in the present situation and the present exposition of law and the legal provisions under the provisions of PTCL Act having already been submitted even in the background of the principle of feeding the title by estoppel, as expanded decision in the case of in MOHAMMED JAFFAR [supra], the consequences as they result due to the operation of Section 4(1) of the PTCL Act cannot be avoided and therefore submits that the decision relied on by the learned counsel for the petitioners does not advance the case of the petitioners to the extent of seeking for invalidation of the order passed by the Assistant Commissioner and the affirming order passed by the Deputy Commissioner.

22. Sri S P Kulkarni, learned counsel for fourth respondent apart, from adopting the submissions made by Sri R Omkumar, learned AGA, on behalf of the state and the statutory authorities, submits that the writ petitioners have not discharged the burden of proving that the petitioners' present occupation is under a valid transaction not voided by the provisions of PTCL Act and they failed in getting over the fiction of law created by Section 5(3) of the Abolition Act and there is nothing further to be examined in respect of the orders passed by the authorities-below; that the impugned orders are only for achieving the purpose and the object of the PTCL Act; that there is no occasion for this court to interfere with the impugned orders and urges for dismissal of the writ petitions.

23. It is also the contention of Sri Kulkarni that on a proper examination of the provisions of Abolition Act read with Section 5(3) and 11 of the PTCL Act, it is obvious that the provisions of PTCL Act for invalidation of the sale transactions u/s 4 for violations as mentioned in the section is inevitable, if such is the consequences in law and recognized by authority, then no need for interference.

24. Sri Kulkarni also reiterates that the submission to the effect that regrant order does not confer any additional right, title and interest in favour of the grantee is not a sound or proper contention and on a cogent examination of the provisions of Section 3(1)(a), 3(1)(b), 5, 10 and 14 of the Abolition Act, it is obvious that the state is conferring or granting all such rights which had vested in the state due to the operation of the provisions of this Act, particularly the rights of the inamdar which had vested in the state, and then are all conveyed to the grantee and therefore it is not proper to contend that the grant orders do not result in any additional benefit in favour of the grantee.

25. Sri Kulkarni points out that while there was a possibility under the provisions of the Abolition Act for purchasers like the writ petitioners, even to apply under Sections 5 and 10 of the Abolition Act and having not made use of the statutory provisions, cannot now turn round to either claim the benefit of the principle of feeding the title by estoppel or even to contend that the fourth respondent has not got anything in addition and over and above what was transferred under the sale deed prior to the regrant.

26. Based on such legal premise, further submission of Sri Kulkarni is that when once it is found that a person who gets a regrant order has become entitled to rights in the nature of ownership in the subject land under the regrant order and that right having not been conveyed to the petitioners by the grantee in any manner known to law and to that extent if the petitioners are found to be in possession of the subject land, even after the PTCL Act has come into force, it is a clear case of attracting Section 4(2) of this Act, as the petitioners obviously are persons without any authority of law to be in physical possession and enjoyment of the land over which the regrantee has the ownership right and this having not been in any way rebutted or countered by the writ petitioners, the consequences u/s 4 of the PTCL Act inevitably follow and therefore the impugned orders are valid in law and no occasion for interference.

27. Sri Kulkarni has also placed reliance on the following decisions:

1. Manchegowda and Others Vs. State of Karnataka and Others,
2. Smt Shantamma Si Others v. Deputy Commissioner, Shimoga & Others 1990 (3) KLJ 495
3. Sri M Mohammad Ismail v. State of Karnataka And Others 2002 (2) KCCR 1527
4. Bhemanna v. Deputy Commissioner, Chitradurga District & Others ILR 2010 KAR 5011
5. Waheed Baig v. Bangi Lakshmamma AIR 2008 SCW 4176
6. Veeraswamy Vs. Special Deputy Commissioner,
7. Mudalappa (Deceased) by L.Rs Vs. State of Karnataka and Others,
8. Ni. Pra Channabasava D.S. Matadhipathigalu and Kannada Mutt Vs. C.P. Kaveeramma and Others,

to urge that the petitioners have not either acquired any valid undefeatable title to the property, whether by continuous adverse possession or even by an instrument recognized in law and having not fulfilled the criterion as stipulated in the case of MANCHE GOWDA [supra] for acquiring title by prescription, cannot claim any better title other than what had been derived under the sale transactions prior to the regrant order; that the subject land being inevitably a granted land as per the contentions noticed above, the FFCL Act applies and the legal consequences in terms of Section 4 of the FFCL Act follow; that the position

of the petitioners, which is adverse to the interest of the grantees under the regrant orders, and even assuming for argument's sake that whatever interest that had been conveyed earlier was not in violation of any terms and conditions, such possession subsequent to the regrant and particularly after the PTCL Act coming into force being adverse to the interest and to that extent, a violation of the provisions of the PTCL Act based on the ratio of a decision of a learned Single Judge in the case of VEERASWAMY [supra]; that there is no way to protect the possession of the petitioners and therefore orders by the Assistant Commissioner and the Deputy Commissioner are sustainable orders and no need for interference and the writ petitions should be dismissed.

28. Reliance is also placed by Sri Kulkarni on the decision of a Single Bench of this court in the case of MUDALAPPA [supra] in support of the submission relating to the effect of the provisions of Section 5(3) of the PTCL Act and the matter of its operation.

29. Last but not the least, strong reliance is placed by Sri Kulkarni on the decision of the Supreme Court in the case of NI PRA CHANNABASAVA D S MATHADHIPATIGALU KANNADA MUTT [supra] to submit that that even the principle of feeding the title by estoppel is not attracted in the present set of facts and circumstances and submits that the possession of the purchasers who had purchased the subject land from the vendor, who was only a tenant under the inamdar, neither improved nor can claim any better right, title or interest than what their vendor has had at the time of the transaction and therefore this legal position in turn does affect the continued possession of the petitioners on the day and more so after the PTCL Act coming into force and Section 5(3) of the PTCL Act springing into the picture after the PTCL Act coming into force and that presumption having not been rebutted in a manner recognizable in law, no scope for interference and the writ petitions should be dismissed.

30. It is in the background of such facts, which are more or less not disputed, especially with regard to the transactions, the different legal contentions urged on behalf of the writ petitioners and the respondents are required to be examined.

31. The basic submission which is urged with some vehemence and seriousness by Sri S K V Chalapathy, learned senior advocate appearing for the petitioners is that the subject land is in the first instance not a granted land and though on a cursory glance, it appears that a land covered by regrant order u/s 5 of the Abolition Act, is one which can come within the definition of "granted land" u/s 3(1)(b) of the PTCL Act, submission is that such a granted land is only one for which the state had acquired full ownership as is the situation only when Section 10(3)(b) operates and the present situation being not of this type in the present case, the subject land does not come within the scope of "granted land".

32. To get over the expression, which includes land allotted or granted to such a person under relevant law relating to abolition of inams, as it occurs in Section

3(1)(b) of PTCL Act, reliance is placed on the decision in the case of MOHAMMED JAFFAR [supra] and two single bench decisions of this court in the cases of M MUNIKENCHAPPA [supra] and SRI ABDUL HAQ SHAMSHUDDIN SAHEB [supra] and in the background of law as has emerged based on these decisions. Submission is that a regrant order does not confer anything more than the recognition of preexisting rights by a tenant. Alternative submission being that assuming that it is a granted land, there is no violation, because there was no condition, and last but not the least, submission is that assuming what was transferred under the subject transactions prior to the regrant order was limited interest, it has blossomed into full interest by application of principles of feeding the title by estoppel.

33. One aspect, which should always be borne in mind by courts while examining any proceedings under a statutory provision, and particularly if there is a situation and scope for statutory interpretation, the need to examine, understand and to interpret the statutory provision in the background of the object and purpose of the particular statutory enactment. Every enactment provides a definition section and the purpose of definition section is to ensure that the meaning attributed to the words used in the enactment, should not be examined as a word in the general context, but it should be restricted to the meaning as is provided in the definition section in the particular enactment and to understand and interpret the provisions on such premise.

34. In this background, if there is any scope for interference by judicial process, the scope, in my understanding, is only for the purpose of achieving the object of the PTCL Act for ensuring that the intent and purpose of the legislature is subserved/achieved by the process of interpretation and wherever there is scope for understanding a particular word or phrase in more than one way. to prefer such understanding and interpretation which advances the cause sought: to be served under the statutory provisions and achieves the object/purpose of the enactment. This is the task of judicial interpretation. To quote Sri Nani A Palkhivala, celebrated constitutional and tax expert, as mentioned in his introduction to Kanga and Palkhivala's the Law and Practice of Income Tax, seventh edition, reading under:

The wise have said that the problem of judicial interpretation is to hold a just middle way between excess of valour and excess of caution. In income tax cases, there is too often an unfortunate tendency to incline towards excess of caution, - to hold a principle in fetters and stunt its development There is need in our time and land to recall the words of Sir Frederick Pollock, "Those who make no mistakes will never make anything, and the judge who is afraid of committing himself may be called sound and safe in his own generation, but will leave no mark on the law.

A few cardinal principles of interpretation of statutes as recognized by celebrated authors on this topic are that It is always necessary to keep in background the intention of the legislature i.e. the purpose for which the law is made and the

cause which is sought to be advanced and the mischief which is sought to be suppressed. If one examines the present enactment in this background, the purpose and object of the PTCL Act is very clear - to protect the interest of persons belonging to SC/ST community to save such of those lands which had been granted in their favour for their use and cultivation etc., and to ensure the land is retained for them by saving them from transactions involving violations of the conditions of grant and defeating the purpose of the grant.

35. The PTCL Act, which can be considered to be a very revolutionary or even aggressive piece of legislation, depending on the perceiver's angle, has been blessed by the Supreme Court, for its constitutionality in the case of *MANCHE GOWDA* [supra] and as of now beyond the kiln of any challenge, but the only possibility is to examine the operation of the provisions and for their implementation whenever and wherever occasion arises.

36. Yet another principle of construction is that the statute should be so constructed to make it effective and workable and not to fail the statute.

37. If these two principles are applied in combination to the present situation, it is inevitable that the examination and understanding of the provisions should be from the angle of achieving the purpose of the legislation i.e. to invalidate the sale transactions which deprive a grantee of the granted lands and to ensure that the words and phrases used in the Act particularly in the definition section, do not go waste or become otiose. It should be so understood as to make the Act workable for the purpose for which the law is made. It is in this background that the most important definition of "granted land" should be examined.

38. In so far as the decision in the case of *MOHAMMED JAFFAR* [supra] is concerned, I am of the clear view that it does not constitute a binding authority for the purpose of interpreting or understanding any of the provisions of the Abolition Act in the context of the provisions of the PTCL Act, in the sense for understanding the meaning and effect of the phrase relating to Abolition Act, the decision in the case of *MOHAMMED JAFFAR* [supra] cannot be stated to be an authority.

39. However, two decisions of Single Benches in the case of *SRI ABDUL HAQ SHAMSHUDDIN SAHEB* [supra] and later in the case of *M MUNIKENCHAPPA* [supra] are decisions directly involving the examination of the question arising under the Abolition Act.

40. Even examination in the case of *SRI ABDUL HAQ SHAMSHUDDIN SAHEB* [supra] was in the context of the manner of application of the provisions of the PTCL Act to land granted under the Land Reforms Act, which was also the subject matter of in the case of *MOHAMMED JAFFAR* [supra] and therefore this decision cannot be put on a higher pedestal than the Full Bench decision of this court in the case of *MOHAMMED JAFFAR* [supra].

41. However, reliance placed on a decision of Single Judge in the case of *M*

MUNIKENCHAPPA [supra], which was a decision directly examining the scope of phrase "granted land" as occurring in the PTCL Act vis-?-vis provisions of Abolition Act: is of considerable significance and it is here that the submission made by Sri R Omkumar, learned AGA to the effect that this is a decision rendered more on an assumption and not on an examination of the relevant statutory provisions and therefore has to be characterized as a decision rendered per incuriam, the provisions of Section 3(1)(a) read with the relevant provisions of the KLR Code and also the provisions of Section 10(3)(b) of the Abolition Act, assumes considerable significance and importance.

42. On a detailed examination of the order in the case of M MUNIKENCHAPPA [supra] in the background of the submissions made at the Bar, I am of the clear view that the decision in the case of M MUNIKENCHAPPA [supra] is a decision rendered per incuriam the statutory provisions noticed above.

43. However, that also still leaves this court for examining the submission made on behalf of the petitioners that on the basis of the decision of a Single Judge in the case of Doddamma Vs. Muniyamma and Others, , what one can infer even from the angle of the object and purpose of the FFCL Act is to save such of those lands which are per se granted lands in favour of persons belonging to depressed class or SC/ST community or to put in other words, the submission is that when the grant is made intentionally, consciously in favour of a person belonging to depressed class or SC/ST community, then alone the grant should be understood to be a grant within the meaning and the scope of the PTCL Act to treat the granted land as to be one within the meaning of Section 3(1)(b) of the PTCL Act.

44. This submission though no doubt has some argumentative value, when once examined the question is from an overall perspective, for saving the lands granted in favour of persons belonging to depressed class or SC/ST community, the premise on which the law is made is more due to social and economic backwards of these people and therefore ignorance and gullibility and also the tendency of other sections of the society who are, perhaps, better placed, both in economic and social terms, to take advantage of ignorance and helplessness of such people and to relieve them of the granted land and if one examines the question from this perspective, the purpose of the PTCL Act is more to save the land granted to persons belonging to depressed class or SC/ST community and even at the time of grant it was not so consciously intended, it does not in any way detract the object of the PTCL Act, because, in the context of Abolition Act and the PTCL Act, PTCL Act being a later legislation and having consciously mentioned the subject lands as granted under the provisions of the Abolition Act and in fact there being no scope for regrant of a land under the Abolition Act, on the basis or on the recognition of persons belonging to depressed class or SC/ST community and if on applying the rule of interpretation as noticed above i.e. to effectuate the statutory provisions and to achieve the intendment of the Act, one has to necessarily accept the interpretation that irrespective of the intention at the time of the grant in favour of persons belonging to depressed class or SC/ST

community, the provisions of PTCL Act operates by the mere factum of the grant so happening to be in favour of persons belonging to depressed class or SC/ST community.

45. An understanding in this manner, in fact, definitely achieves the object of the PTCL Act and even assuming for arguments sake, it can expand the scope of the PTCL Act, it is in consonance/furtherance of the object of the PTCL Act, with an interpretation of this nature and with this possibility, necessarily one has to prefer an interpretation which can in some way ensure the operation of the statutory provisions.

46. In this background, it is also very important to notice a significant legal submission made by Sri R Om Kumar, learned AGA that no provisions of the Abolition Act, if contention as is urged on behalf of the petitioners to the effect that it is only a land which had absolutely vested in the state u/s 10(3)(b) of the Abolition Act, when in turn granted by the state, can come within the scope of definition of the "granted land" as defined in the PTCL Act to be accepted, then it again virtually defeats the conscious and intended purpose of the legislation in providing the precise definition to the phrase "granted land" u/s 3(1)(b) and also that on a combined operation of Sections 3(1)(a) and 10(3)(b), it also becomes obvious that such a land can be disposed of in terms of the rules relating to the grant of land under the general law i.e. KLR Code and there is not a grant which can come out of the scope of the Abolition Act. It is, therefore, that some meaning is to be attributed for inclusion of the expression "granted land" in. this Act or law relating to abolition of inams, and if so, it can only be to such of those lands which have been granted under Sections 4, 5, 6, 7 and 8 of the Abolition Act, and not which have been taken over to the state under to Section 10 of this Act.

47. To put in other words, two things become clear on a combined reading of Sections 3(1)(a), 3(1)(b), 4, 5, 6, 7, 8, 10(3)(a), 10(3)(b) and 14 of the Abolition Act, in the light of the contentions as urged by Sri R Om Kumar, learned AGA.

48. Firstly, a regrant order u/s 5 of the Abolition Act, as in the present case, achieves much more than a mere recognition of an existing right of a tenant on registering, a tenant as occupant under the provisions of the Abolition Act, unlike the legal position as is inferred by the Full Bench of this Court in the case of MOHAMMED JAFFAR [supra] under the provisions of Land Reforms Act.

49. Secondly, it becomes clear that the subject land granted under a regrant order u/s 5 of the Abolition Act, is a grant to which all the provisions of the KLR Code as they prevailed on the date of the Abolition Act coming into force are applicable.

50. It should be borne in mind this understanding and interpretation of the provisions of the Abolition Act and as observed earlier, about the principles of statutory interpretation is only keeping in view the purpose and object of the

Abolition Act.

51. This legal position has already emerged under the provisions of the Abolition Act. PTCL Act being a later enactment and when the legislature consciously has in the definition section of this Act defined a "granted land" to include a land granted under the law relating to abolition of inams and the object of the PTCL Act being to ensure that certain benefits which had been conferred on people or persons who belong to SC/ST communities should be retained and restituted, if the benefits had been lost in the interregnum, the understanding of the phrase "granted land" as it occurs and as explained in the definition section should receive a construction to achieve this object and purpose of the PTCL Act and if need be by so interpreting the section even in a manner as to achieve the object if the statutory provision by itself had not explicitly achieved it. On such examination and keeping in view that the only possibility of land being granted under the provisions of Abolition Act being such of those lands which form subject matter of regrant orders under Sections 4, 5, 6, 7 and 8 of the Abolition Act, it becomes very clear that a land, subject matter of an order u/s 5 of the Abolition Act, is a land which squarely fits into the definition of "granted land" u/s 3(1)(b) of the PTCL Act.

52. In so far as the legal position of a defective/imperfect title getting perfected by application of the principle as recognized u/s 43 of the TP Act is concerned, assuming that it is achieved on and after the tenant had attained the other parts of the ownership in the land by remitting an amount 10 or 12 times the assessment on the land, the moment this legal position emerges and as on that day, if conditions for non- alienation and prohibitory period as is stipulated in the Rules relating to grant of lands under the KLR Code has not. expired, the transaction automatically gets voided u/s 4 of the PTCL Act being a transaction in violation of the conditions regarding non-alienation.

53. This legal position is very obvious, as, when even in a situation of a person acquiring valid title by a recognized mode on transfer such as sale deed, loses his/her right, title and interest in the land, if the transaction is in violation of the conditions of the grant, it is a fortiori so in the case of a situation where the transfer of interest in the land takes place by operation of law i.e. due to the provisions of Section 43 of the T P Act.

54. This position or understanding is fortified even in the background of submission made by Sri Kulkarni, learned counsel for fourth respondent, that a regrant order confers additional rights in favour of a tenant, in the sense, a tenant becomes a full owner and on such factual position also, it has to be taken as a grant made under the provisions of the Abolition Act, as considerable interest of the state passes in favour of a person who is a tenant and who had made an application u/s 5 of the Abolition Act on collecting assessment.

55. The other consequences, as pointed out by the learned AGA, being that when once the inams are abolished and the provisions of the KLR Code applies to all

unalienated villages and the lands located in such villages, the consequence is only that the conditions in respect of grants made under the rules framed u/s 233 of the KLR Code, all is automatic and by operation of law gets imbedded into the grants under the Abolition Act also and for this reason, the conditions restricting scope for alienation are automatically to be read into the grants made under the Abolition Act also.

56. On facts, though in the present case, the transactions were prior to the grant order and there is no other transaction subsequently, that, in my considered opinion, is not a mitigating factor in favour of the petitioners to contend that there is no violation of any of the conditions, as no conditions had ever been imposed under the grant orders, because, while a statutory condition automatically gets incorporated and even assuming that prior transaction is not one violating any condition after the grant, the moment the regrant order results in full vesting in favour of the grantee and assuming some part of it had earlier been parted with in favour of the petitioners under the sale transaction prior to the grant orders, the rest of the ownership of the land continues to remain in favour of the grantee and with the statutorily imposed conditions regarding sale etc., and therefore so long as that interest is being enjoyed by the petitioners, adverse to the interest of the grantee, whether it is by a transaction in the nature of sale or other transaction, it amounts to a violation of condition, as the petitioners remain in possession and continue to enjoy the land as full owner, which is definitely detriment to the interest of the grantee.

57. It is, therefore, I am unable to accept the contention urged on behalf of the petitioners by Sri S K V Chalapathy, learned senior counsel, to the effect that there is no violation of condition at all to attract the provisions of Section 4 of the PTCL Act. In fact, it is much more violation has continued even after the PTCL Act coming into force and therefore this is a situation where even Section 4(2) is attracted.

58. In fact, the argument that the title of the purchasers is perfected by principle of feeding the title by estoppel u/s 43 of the TP Act is an argument that is counterproductive for the petitioners, as in the instant case, an improvement in title, assuming that it happened by operation of law is found to be in violation of the condition of grant order as statutorily recognized and the provisions of Section 11 of PTCL Act, having an overriding effect on other statutes, a possibility in law on the basis of Section 43 of TP Act, which is only to ripen a title to fullness, also gets voided because of the provisions of Section 4 read with Section 11 of the PTCL Act and therefore the argument of feeding the title by estoppel while, perhaps, could have been productive in any other situation or under any other enactment, does not work when one is examining the provisions of PTCL Act.

59. It should be borne in mind that the pre-embedded provision of Section 43 of TP Act is a general principle which can have a universal application depending upon the fact situation, but can fail in a situation where the provisions of PTCL

Act operate, as the manner of its operation is to override other statutory provisions.

60. If, in fact, a transaction in violation of the condition is voided even when it is a transaction through a court order or decree etc., it is a fortiori so in the present case, as a person like petitioners in this case is claiming right, title and interest only under the sale transactions executed by the grantees albeit prior to the grant.

Therefore, the argument that the land is neither a granted land nor there is any violation of condition does not merit acceptance. Even the argument of feeding the title by estoppel does not enure to the benefit of the petitioners.

61. It is for this reason, notwithstanding the decisions relied upon on behalf of the petitioners, I am of the view that the present writ petitions do not merit interference with the impugned orders passed by the authorities under the PTCL Act, under which orders they have only ensured the purpose of the PTCL Act being served, the object of the Act being achieved and the land being enabled to be resumed to the state and restituted to the legal heir of the original grantees.

62. However, one peculiar development which is noticed by the special Deputy Commissioner in his appellate order and even as submitted at the Bar that the subject land which was in the possession of the purchasers ever since the year 1962 had been later permitted to be converted for non-agricultural use i.e. for industrial purpose and it is being put to such use even as of now. Though this position is disputed by the learned counsel for the respondents that in fact cannot make much difference to the legal position, nevertheless the whole object of granting lands in favour of persons belonging to depressed class or SC/ST community being to ensure that they have a source of livelihood by cultivating the land etc., and if the factum is that the land is no more a cultivable land as an agricultural land, any order or direction in this regard to sub-serve the original intentment and purpose of grant of land in favour of persons belonging to depressed class or SC/ST community for their benefit and sustenance can only be in furtherance of the object and in the facts and circumstance of this present case.

63. However, for issue of consequential direction to sub-serve such object and purpose of the PTCL Act, in the wake of the land being not available for cultivation at this point of time, having got merged in an urbanized metropolitan city like Bangalore, to hear the learned counsel for the parties on this aspect and for issuing such directions, list the matter on 25-7-2011.

64. Learned AGA is directed to ensure the presence of a responsible higher officer of the Bangalore Development Authority and also a higher official in the urban development department, to explore the possibilities of the subject land being handed over to their possession with the responsibility of putting up residential accommodation in favour of the families of legal heirs of original grantees and in the rest of the extent of land to provide accommodation to the

writ petitioners, as they are as of now in possession of the property, and for distributing the rest of the area by developing it a residential area to allot the sites in favour of persons who may be waiting for such allotment in the order of priority and whose applications are pending before BDA.

[NOTE; The above portion of the order was dictated in the open court on 20th and 21st July, 2011 and the matter was posted for issuing further direction as stated above]

65. Accordingly, the matter had come up on 25-7-2011 as had been directed earlier, but was adjourned to 28-7-2011 and on that day, the following order was passed:

List this matter on 4-8-2011 for concluding the dictation and for the purpose of issuing of desirable consequential directions pursuant to the order for ensuring the purpose and object of the Act is a best sub-served not only from the angle of legal heirs of the grantees, but also taking into consideration the present developments in the land in question, which is now within the fully urbanized metropolitan area of Bangalore city and there being no possibility of the land being cultivated any further by the grantees or legal heirs.

and as per this order the matter was again listed on 4-8-2011 resulting in passing the following order:

Sri R Omkumar, learned AGA, appearing for the state government submits that BDA has come up with a plan and scheme for rehabilitation of the legal heirs of the grantees and has suggested that certain residential apartments can be constructed as per the plan prepared by the authority and units commensurate to the interest of the legal heirs of grantees can be earmarked or allotted to them and in respect of rest of the residential units, court can examine other possibilities.

Learned AGA submits that the plan and the scheme as prepared by the authority is ready, and while a formal statement in regard to entire proposal can be placed before this court by next Tuesday, as of now a memo is placed before the court and to this annexed a plan and rough estimate about the proposal.

Learned AGA also submits that copies of the memo and the enclosures have been furnished to the learned counsel for the petitioners and other respondents.

While the memo is received for the present, list the matter for passing orders on the statement to be filed by the respondent-state on 9-8-2011, as requested by learned AGA.

Accordingly, the matter was listed on 9-8-2011.

66. On behalf of the state government Ms Geetha Ramesh, Joint Secretary, Revenue Department, Government of Karnataka is present before the court and so also Sri Ayyappa, IAS, Deputy Commissioner, Bangalore urban district.

67. Sri R Om Kumar, learned AGA, with reference to memo dated 4-8-2011 placed before the court, both on behalf of the state government and also signed by Sri N S Shamanna, Deputy Director of Town Planning, Bangalore Development Authority, with the BDA having been requested to give a proposal as to the manner of development of subject land for a proper use, having regard to the fact that it is now located within a totally urbanized residential area, and with reference to the memo placed before the court, points out that if either the commissioner, BDA or the state government is required to be involved in the development project for developing the land and for putting up dwelling units and then to allot commensurate number of dwelling units to the legal heirs of original grantees to subserve the purpose of the PTCL Act and also to utilize the rest of the flats for preferential allotment in favour of aspirant applicants who are waiting in the queue and some flats may be earmarked for allotment in favour of petitioners etc., the matter will have to be placed before the cabinet and necessary approval elicited etc., needful can also be done even without such cabinet approval if there are consequential directions issued by this court in these writ petitions.

68. However, learned AGA submits that attachments to the memo dated 4-8-2011, particularly the unit cost for affordable housing at Agrahara Dasarahalli, Bangalore north taluk with break up figures in a tabulated column, sketch of the subject land, proposal for putting up dwelling units in the form of flats to be built on a total site area and spread over ground + four floors, resulting in construction of as many as 340 [85 x 4] number of dwelling units and management and the area occupied as indicated in the tabulated column will be adhered to etc.

69. However, on an enquiry as to how the number of flats to be constructed is only 340 and the manner of utilization of the ground floor, Sri Om Kumar, learned AGA submits that the ground floor will be left vacant and to be utilized for parking space etc.

70. Though it is not per se indicated so, it should be indicated in the form of a further memo or statement on behalf of BDA to be placed before the court and to be filed in the registry and along with should be filed a sketch and the plan of the entire area of construction.

71. At this stage, learned AGA submits that plan as had already been filed along with the memo dated 4-8-2011 will have to be reworked out if some facilities to be accommodated for a playground for the children, a park and other common facilities for the residence in the apartment block, and requests the matter to be taken up on 16-8-2011.

72. List the matter for such purpose on 16-8-2011.

[NOTE: The above portion of the order was dictated in the open court on 9th August 2011 and the matter was posted for issuing further direction as stated above)

73. The matter is taken up for further hearing on the aspects of possible and plausible manner of ensuring that the purpose and object of the PTCL Act is achieved and at the same time the legal heirs of the original grantees are not deprived or denied of their entitlement and in fact a little more in these writ petitions to ensure that such benefits are not frittered away, but are really made useful, certain unconventional possibilities in law are also required to be explored.

74. It is said "that law is an ass", only because of its virtue to remain steadfast and not because of wavering. But at the same no great harm will come to this concept if law assumes the role of a horse and started moving a little fast and swift.

75. It is from this angle, all possibilities were explored as indicated in the earlier portion of this order and Sri R Om Kumar, learned AGA, pursuant to the direction issued by this court, has placed before this court an improved version of the sketch/plan that has been prepared by the officials of the BDA, which not only indicates that from out of the total extent of land that is available, which is 4 acres 13 guntas, and in turn the area measures an extent of 17509 sqmtrs, apart from retaining an extent of 2633.72 sqmtrs as park area and open space, as a lung space for the residents in this apartment complex to be developed by BDA, which is shown and marked in green colour in the sketch/plan, an extent of 1751 sqmtrs is indicated to be retained for the purpose of civic amenities and marked in red colour, which is on the south-eastern corner, whereas major part of the park shown as park-II is on the north-western corner and a small part of it is just above the civic amenity area on the north-eastern corner.

76. It is also indicated that construction of individual apartments will be in the four upper floors comprising of as many as 340 residential units and 85 units will be in each floor and the entire ground floor will be retained as vehicle parking area. It is also indicated that each flat will cover a built-up area of 87.875 sqmtrs, in which does not include the common area. It is indicated that FAR is 2.25 and the coverage is 50%.

77. The logistics of cost for financing the project and distributing the number of flats in favour of legal heirs of original grantees free of cost, the number is mentioned as 80 flats and while retaining as many as 12 residential units on preferential allotment basis in favour of the petitioners, rest of the flats are to be made available in favour of general public in accordance with seniority basis on the number of attempts etc., and regulated by the Bangalore Development Authority (Allotment of Sites) Rules, 1982 and each person being allotted at a cost of Rs. 28,60,780/- and allot rest of the units from out. of total 340 units, excluding 80 flats to be given free of cost to the legal heirs of original grantees, will finance the entire project and of course the services for construction with the expertise and infrastructure facilities of the BDA is a benefit to the parties in these writ petitions and others.

78. Unit cost as worked out and indicated in the tabulated column appended to the memo dated 4-8-2011 is as under:

Unit cost for Affordable Housing at Agrahara Dasarahalli Village, Bangalore North Taluk

17509 Sqm

Area of project = 188471 Sqft

Sl. No.

No of Blocks

No of units per Floor

No of Units

Area per Unit (Sqm) (Excluding common area)

Area per Unit (Sqm) (Including common area)

Total carpet Area per unit (Sqm)

Total Builtup Area

1

10

85

340

87.875

105.45

73.815

35853.00

Sqm

385931.01

Sqft

Details

Sub registered guidance

BDA Allotment Value

BDA EWS allotment Value

At Rs 1500 per Sqft

At Rs 375 per Sqft

At Rs 250 per Sqft

Cost of Construction

656082723

656082723

656082723

Developmental Cost

20000000

20000000

20000000

Dual Piping cost

13878241

13878241

13878241

Land Cost

282707212

70676803

47117869

TOTAL

972668176

760637767

737078833

Cost per Unit with Land cost

2860789

2237170

2167879

Cost per Unit without Land cost

2029297

2029297

2029297

Note; Rates are as per the Current PWD Schedule of Rates, Bangalore Circle

79. It is submitted by Sri R Om Kumar, learned AGA that the entire project will be overseen by not only senior officials of BDA and state government viz., Ms Geetha Ramesh, Joint Secretary, Revenue Department, Government of Karnataka, who was present, before the court on the previous date of hearing and is aware of the role to be played by the state government in this matter and Sri Iyyappa, IAS, Deputy Commissioner, Bangalore Urban District, who was also present on the previous occasion and he is another person who will oversee the implementation of the project in accordance with the proposal and as per the directions of this court.

80. It is also submitted by the learned AGA that the entire construction will be under the direct supervision and control of BDA and on behalf of the authority, Sri N S Shamanna, Deputy Director of Town Planning, Bangalore Development Authority, who has in fact prepared the entire plan and sketch, and who has been attending court for the last couple of hearings, not only ensures that the entire construction of project is completed within a time range of 18 to 24 months, but will also personally supervise the work for its satisfactory completion.

81. Sri R Om Kumar, learned AGA submits that the officials of the state government and also of the BDA will adhere to this plan and proposed construction, if they are directed as such by this court, as otherwise, they will have to obtain necessary approval from the state government etc.

82. The proposal and the manner of implementation of the scheme, as indicated above, being part of the order passed in the proceeding arising under the PTCL Act and the consequential direction is only to effectuate the purpose of the PTCL Act in a meaningful manner and to ensure that the writ petitions are disposed of in a satisfactory manner, the following consequential directions are issued:

i) Deputy Commissioner of the district, who is also the head of revenue department in the district, is directed to ensure that the possession of the subject land is resumed from the existing occupants viz., the petitioners through due process of law under the provisions of the PTCL Act and after issuing all necessary notices in this regard forthwith;

ii) In the wake of submission made by Sri Sangamesh R Bharsetty, learned counsel for the petitioners, that as petitioners are carrying and operating some manufacturing units, the Deputy Commissioner is directed to ensure the implementation of the resumption of the land to the state government for further action within an outer time limit of six months from today, It is made clear that the outer time limit does not necessarily mean completion of construction, but resumption of the land should be not later than six months from today;

iii) On the resumption of the land, instead of restoring it to the possession of the legal heirs of original grantees, the Deputy Commissioner, through the statutory functionary - Assistant Commissioner - to ensure that possession is handed over

to BDA for the implementation of the construction project as indicated above, which, as per the assurance of Sri Om Kumar, learned AGA, appearing for the state government, under whose supervision and guidance BDA also functions, that should be implemented within an outer time frame of 18 to 24 months from the date possession of the land is handed over to BDA;

iv) The deputy director of planning, BDA, who has to supervise the construction, to keep submitting periodic reports not only to the commissioner, BDA but also to the Deputy Commissioner, Bangalore urban district and also to the joint secretary, revenue department, government of Karnataka, for information and if need be for supervision/direction from their ends;

v) If there are any inter se disputes amongst the legal heirs of original grantees as to the entitlement etc., it is hereby directed that they can all get those disputes resolved by taking the matter to the Bangalore Mediation Centre, which is functioning under the supervision and guidance of High Court of Karnataka, so that their inter se disputes are amicably resolved once and for all and they do not fritter away their time, effort and resources on any further unproductive litigation. It is made clear that entitlement of legal heirs is only vis-?-vis those persons who constitute the legal heirs of original grantees and who are entitled for a share in accordance with law governing them.

vi) It is also made clear that the whole object and purpose of the PTCL Act being to ensure that a benefit which had been extended to persons belonging to SC/ST community, but which had been lost by them due to transactions in violation of conditions and the laws, are voided and the land resumed and restored to them and the above order being only to achieve this object and purpose, it is made clear that at the time of allotment of residential units in favour of the legal heirs of original grantees, commensurate conditions should be imposed with regard to sale or transfer or otherwise parting of the subject, units by the legal heirs of original grantees and the minimum condition that may be imposed is that the subject residential flats should not be alienated or transferred for a minimum period for which the other allottees from BDA are restrained from alienation or transfer and having regard to the object of the PTCL Act, even more onerous conditions may be imposed on such legal heirs of original grantees; and

vii) It is also made clear that the number of residential flats to be allotted in favour of the legal heirs of original grantees has been worked out on an approximate calculation of land value and cost of construction and before actual allotment, if need be it can be reworked for better precision and also apportioned amongst the legal heirs of original grantees in accordance with their entitlement and if need be by recourse to the mediation centre, as indicated above.

83. It is for this reason, I find no need to interfere with or up set the orders passed by the authorities below under the provisions of the PTCL Act, but though technically writ petitions are to be termed as dismissed, in view of further directions issued as above, these writ petitions are disposed of in terms of the

above orders and directions.

84. Ordered accordingly. Parties to bear their respective costs.

85. Before parting with this case, I would like to place on record my appreciation of the very extensive and quality legal assistance I received from all the learned members appearing for the parties and in the first instance by Sri S K V Chalapathy, learned senior advocate, appearing for the petitioners, who had explored all legal possibilities and all legal angles to ensure that the petitioners succeed and also equally spirited and elaborate exposition of law embarked upon by Sri S P Kulkarni, learned counsel for fourth respondent, and who, undaunted by the weighty authorities with which he was confronted, by examining the legal authorities put in valiant efforts to sustain the orders of the authorities below, but Sri R Om Kumar, learned AGA, has put the icing on the cake by the very lucid and comprehensive exposition of law relating to Inams Abolition Act, in juxtaposition with the Land Revenue Code and the Karnataka Land Reforms Act, whose efforts are really worthy of mentioning as such effort is not common amongst government advocates. I wish other government advocates to emulate it and raise to such levels in the interest of justice and development of law.