

(2012) 05 KAR CK 0004

In the Karnataka High Court

Case No : Writ Appeal No. 1736 of 2009 (SC/ST) C/W WA No's. 15448-55 of 2011 (SC/ST) , WA No. 2128 of 2011 (SC/ST) , WA No. 4574 of 2011 (SC/ST) , WA No. 213 of 2011 (SC/ST) , WA No. 214 of 2011 (SC/ST) , WA No. 215 of 2011 (SC/ST) , WA No. 216 of 2011 (SC/ST) and

Sri. G.M. Venkatareddy

APPELLANT

Vs

The Deputy Commissioner, Kolar District, Kolar, The Assistant Commissioner, Kolar Sub-Division, Kolar and Sri. Kambojappa

RESPONDENT

Date of Decision : 23-05-2012

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 11, 3 (b), 4, 4 (1), 5 A
Mysore Land Revenue Code, 1888 — Section 43 (8), 43 (a), 43 G (4)

Citation : (2012) ILR (Kar) 3168

Hon'ble Judges : Vikramajit Sen, C.J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : G. Papi Reddy in Writ Appeal No. 1736/2009 SC/ST, Sri S.P. Shankar for M/s V. Rangaramu and Associates in Writ Appeal Nos. 15448-15455/2011 SC/ST, Sri N. Shankaranarayana Bhat, in Writ Appeal No. 2128/2011 SC/ST, Sri D.N. Nanjunda Reddy for Sri G.S. Prasanna Kumar, in Writ Appeal No. 4574/2011 SC/ST, Sri Vishnu Hegde, in W.A. No. 213/2011 SC/ST, Sri Vishnu Hegde, for Sri V.S. Reddy and Sri M.T. Nanaiah Assts. in WA Nos. 214, 215, 216, 217 of 2011 SC/ST, Sri Satish M. Doddamani and Sri. Sagar, in Writ Appeal Nos. 5565-66/2011 SC/ST, Shri. Jayakumar S. Patil in Writ Appeal No. 4428/2011 SC/ST, Sri R.V. Jayaprakash, in Writ Appeal No. 996/2011 SC-ST and Sri Vighneshwar S. Shastri and Sri Vinod Gowda, in Writ Appeal No. 4853/2011 SC/ST, for the Appellant; R. Devidas, Additional Govt. Advocate for R-1 and R-2 in Writ Appeal No. 1736/2009 (SC/ST), Sri B. Veerappa, AGA for R1 and R2 Sri C.H. Jadhav, for R3 [a to d] in Writ Appeal Nos. 15448-15455/2011 (SC/ST), Sri B. Veerappa, AGA for R1 to R3, Sri Mahantesh S. Hosmath, for R4, Sri Syed Akbar Pasha, for R5 (a)(b) in Writ Appeal No. 2128/2011 (SC/ST), Sri K.S. Narayanaswamy, for C/R3, Sri B. Veerappa, AGA for R1 and R2, Sri B. Prakash J. Hebbar, for R10, Sri Ganesh Shenoy, for R10-11 and R13, Sri H.R. Narayana Rao, Adv for R12 in Writ Appeal No. 4574/2011 (SC/ST), Sri H.N.M. Prasad and Sri R. Mohan Kumar, for C/R4, Sri B. Veerappa, AGA for R1 to R3 in W.A. Nos. 213, 214, 215, 216, 217/2011 (SC/ST), Sri B. Veerappa, AGA for R1 to R3 in Writ Appeal Nos. 5565-66/2011 (SC/ST), Shri. B. Veerappa, Additional Government Advocate for R2-4 in Writ Appeal No. 4428/2011 (SC/ST), Sri B. Veerappa, AGA for R1 and R2 in Writ Appeal No.

Judgement

Vikramajit Sen, C.J.—The common question which arises in all these appeals is whether the decisions declaring the sale transaction in favour of the Appellants violates the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as "the PTCL Act" for the sake of brevity).

While we deal with the specific facts and contentions of each case later, at the outset, we preface this judgment with the legal framework within which the aforesaid question arises.

Succinctly stated, the lands in question had been allotted by the Government to persons belonging to the Scheduled Caste and Scheduled Tribe (earlier compendiously termed as the "depressed classes") on Grants which contained covenants prohibiting the transfer or alienation of such land in perpetuity or for a term of years. The Hon'ble Supreme Court has rejected a challenge to the constitutional validity of the PTCL Act and instead has lauded its objects namely, the alleviation of the plight of the Depressed sections of our society. Section 3(b) contains an encompassing definition of the term "granted lands". Section 4 contains the prohibition of transfer of these granted lands on any contravention of the terms of the Grant or the law providing for such Grant and further requires that permission from the Government be obtained before alienation/transfer of any granted lands. Section 5 firstly empowers the Assistant Commissioner with suo motu powers to take possession of granted lands on his satisfaction that the transfer is null and void u/s 4, and thereafter empowers this Authority to restore the land to the original grantee or his legal heirs in certain circumstances or to other of the Scheduled Caste and Scheduled Tribe community. No period of limitation to initiate such proceedings has been stipulated in the statute. Section 5(A) was introduced in 1984 and provides for an appeal to the Deputy Commissioner, to be filed within three months, but condonation of delay can be ordered. Sub Section (3) of Section 5 creates a fiction that where any granted land is in the possession of a person other than the original grantee, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer which is null and void, as envisaged under the provisions of sub-section (1) of Section 4. Section 11 prescribes that the provisions of the PTCL Act shall override all other laws. Since these provisions of the PTCL Act pervade our entire consideration, they are reproduced for ease of reference:

Section 3(b): "Granted Land" means any land granted by the Government to a person belonging to any of the Scheduled Casts 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 words "Granted" shall be construed accordingly.

Section 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.

Section 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 moto, 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 reasonably 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.

11. ACT TO OVERRIDE OTHER LAWS:

The provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or any decree or order of a Court, Tribunal or other authority.

SYNOPSIS:

1. OVERRIDING EFFECT OF THE ACT :

The Act has the overriding effect over the other laws. As a result the Assistant Commissioner will not be bound to consider the effect of an order made by the Land Tribunal, registering a person as occupant of the land, if the lease has been obtained contrary to the terms of grant.

In Siddoji Rao - Vs - State of Karnataka and others (1983 (1) Kar. LJ 478), the facts were as follows:

Respondent No. 3 was a member of Scheduled Caste. The land had been granted to him with a condition that he shall not alienate the same within a period of 15 years. He sold the granted land within the said period to one Doddahalappa, some time in the year 1973. Doddahalappa leased the land to the Petitioner Siddoji Rao. Petitioner filed application in Form No. 7 before the Land Tribunal and obtained an order of confirmation of occupancy rights from the Land Tribunal.

Respondent No. 3 moved the Assistant Commissioner for restoration of possession of the land u/s 5 of the Act. The Assistant Commissioner allowed the application. The petitioner challenged the order before the High Court. The High Court held that the Act had overriding effect over all other laws, therefore, the Assistant Commissioner was not bound by the order of the Land Tribunal. The Assistant Commissioner is bound to give effect to the Act by declaring the transaction as void.

Section 11 : Dyamappa -vs- State ILR 1993 Kar. 1984 it was held that the Act would prevail over any other law or enactment. Therefore the provisions of Karnataka Land Reforms Act were inapplicable where the transaction in question attracted the provisions of the Act.

The objective of the statute

2. When interpretation of any statute is made it is to be noted that, it is always governed by the object that Parliament or the Legislature, as the case may be, intended to achieve. Very recently, in C.B.I. and Others Vs. Keshub Mahindra etc. etc., the Constitution Bench has opined that the decision of every Court, including the Supreme Court, cannot nullify the express provisions of an Act or

the Code. The purpose of the PTCL Act has been considered by the Apex Court on several occasions. Spanning several decades, the Apex Court has taken chance to emphasize and elucidate the salutary character of distribution of land to Scheduled Caste/Scheduled Tribe communities. In Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, their Lordships were called upon to interpret the Maharashtra Restoration of Lands to Schedule Tribes Act, and in that regard observed that:

16. The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprebents know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed "distributive justice". The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle: "From each according to his capacity, to each according to his needs". Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargaining should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements.

These observations are tellingly apposite to grants made in the State of Karnataka prior to and after the PTCL Act.

In 1991, in Manchegowda the Court stated that "The Legislature is undoubtedly competent to pass an enactment providing that transfers of such granted lands will be void and not merely voidable for properly safeguarding and protecting the interests of the Scheduled Castes and Scheduled Tribes for whose benefit only these lands had been granted.....Prolonged legal proceedings will undoubtedly prejudicial to the interests of the members of the Scheduled Castes and Scheduled Tribes for whose benefit the granted lands are intended to be resumed..... Any person who acquires such granted land by transfer from the original grantee in breach of the condition relating to prohibition on such transfer must necessarily be presumed to be aware of the prohibition imposed on the transfer of such granted land. Anybody who acquires such granted land in contravention of the prohibition relating to transfer of such granted land cannot be considered to be a bona fide purchaser for value; and every such transferee acquires to his knowledge only a voidable title to the granted land..... Granted lands were intended for the benefit and enjoyment of the original grantees who

happen to belong to the Scheduled Castes and Scheduled Tribes.....The Act has undoubtedly been passed for the benefit of members of Scheduled Castes and Scheduled Tribes who are recognized as backward citizens and weaker sections in the country. There cannot be any manner of doubt that persons belonging to Scheduled Castes and Scheduled Tribes cannot be considered to be separate and distinct classes, particularly in the matter of preservation and protection of their economic and educational interests. In view of the peculiar plight of these two classes, the Constitution under Article 15(4) makes specific mention of these two classes and under Article 16(4) speaks of backward classes of citizens. One of the directive principles as contained under Article 46 of the Constitution enjoins that the "State shall promote that with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitations". The object of this Act is to protect and preserve the economic interests of persons belonging to Scheduled Castes and Scheduled Tribes to prevent their exploitation. For the purpose of the present Act, the classification is a clear nexus to the objects sought to be achieved. We are, therefore, of the opinion, that special provisions made for the resumption of the granted land, originally granted to the members of the Scheduled Castes and Scheduled Tribes and restoration of the same to the original grantees or their heirs and legal representatives and failing them to other members of these communities do not infringe Article 14 of the Constitution".

In 1996, in *Papaiah Vs. State of Karnataka and others*, their Lordships drew attention to Article 39(b) and Article 46 of the Constitution and observed that "Economic justice is a facet of liberty without which equality of status and dignity of person are teasing illusions". Similar observations are contained in *Harishchandra Hegde Vs. State of Karnataka and Others*, where the Bench observed as follows:

The Act was enacted with the object enshrined in the preamble of the Constitution including the directive principles of State policy viz. for improving the social and economic conditions of persons belonging to weaker sections of the society and in particular, those belonging to SC and ST categories. The State by reason of the provisions of the Act has been empowered to resume the land and restore the same to the grantees in the event it is found that any transfer thereof has taken place in violation of the terms of the grant. Such order of resumption is required to be passed with a view to avoid unnecessary delay or protracting the proceedings.

3. In this analysis, we are bound to read and construe the PTCL Act in a manner that conduces and continues the enjoyment of granted land by the backward sections of Indian society. Benefit of doubt or of construction of the statute should enure to the advantage of the grantee/seller even though it may appear to be oppressive to the purchaser. The task is considerably lightened when we remind ourselves that the purchaser has the wherewithal to ascertain the legal

permissibility of transfer of such lands.

The concept of "adverse possession"

4. In several of these appeals one of the contentions that has been raised is that the Appellants, having enjoyed possession of the granted lands for several years after purchase are eligible for the legal benefits that flow from the doctrine of adverse possession, which we think requires to be discussed in detail. The decision in Papaiah Vs. State of Karnataka and others, really sounds the death knell to the Appellant's cause. The facts of the said case are that five acres of land were allotted on 13.02.1940 under Rule 43(8) of the Mysore Land Revenue Code. The application under Sec. 4 and 5 of the PTCL Act for restoration of the land was filed after 45 years of the grant on 22.04.1985, and after 28 years of the execution of the Sale Deed on 19.12.1958. The ratio squarely applies to the controversy in these Appeals. We can do no better than rely on these paragraphs of the decision:

8. It is seen that Article 46 of the Constitution, in terms of its Preamble, enjoins upon the State to provide economic justice to the Scheduled Castes, Scheduled Tribes and other weaker sections of the society and to prevent their exploitation. Under Article 39 (b) of the Constitution, the State is enjoined to distribute its largess, land, to sub-serve the public good. The right to economic justice to the Scheduled Castes, Scheduled Tribes and other weaker is a fundamental right to secure equality of status, opportunity and liberty. Economic justice is a facet of liberty without which equality of status and dignity of person are teasing illusions. In rural India, land provides economic status to the owner. The State, therefore, is under constitutional obligation to ensure to them opportunity giving its largess to the poor to augment their economic position. Assignment of land having been made in furtherance thereof, any alienation, in its contravention, would be not only in violation of the constitutional policy but also opposed to public policy u/s 23 of the Contract Act. Thereby, any alienation made in violation thereof is void and the purchaser does not get any valid right, title or interest thereunder. It is seen that Rule 43 (a) specifically prohibits alienation of assigned land. It does not prescribe any limitation of time as such. However, it is contended that the Appellant has obtained land by way of sale in 1958 long before the Act came into force and thereby he perfected his title by adverse possession. We find no force in contention. this Court had considered this question in similar circumstances R. Chandavarappa's case and had held thus:

"The question then is whether the Appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the Appellant having remained in possessions from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly the Appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the Appellant intends to

plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the within the State had not taken any action thereon within the prescribed period. Thereby, the Appellant's possession would become adverse. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the Appellant.

9. The ratio therefore squarely applies to the facts of this case.

10. "In K.T. Huchegowda's case [supra] neither this question was considered nor the validity of the Rule has been gone into. Therein, this Court had gone into the question of adverse possession as against the purchaser but not as against the State. Unless the purchaser derives valid title, the question of title does not arise. If he remained to be in possession in his own right *de hors* the title, necessarily he has to plead and prove the date from which he disclaimed his title and asserted possessory title as against the State and perfected his possession to the knowledge of the real owner, viz., the State, in this case. Such a plea was neither taken nor argued nor was any evidence adduced in this behalf. The plea of adverse possession as against the State does not arise even otherwise as the proceedings were laid before the expiry of a period of 30 years. The question of estoppel against the respondent does not arise as the Act voids the sale and thus there would be no estoppel against the Statute.

5. A person in possession of property without the authorisation or permission of the title holder/owner of that property for the period prescribed by law, attains recognition and protection of his possession on equitable considerations comes to enjoy the rights of adverse possession. This possession must be (a) continuous, (b) exclusive and (c) open, in the sense of being obvious and not covert, and most importantly (d) hostile to the title owner. In *Thakur Kishan Singh (dead) Vs. Arvind Kumar*, , their Lordships have clarified that "possession for howsoever length of time does not result in converting permissive possession into adverse possession". A tenant or licensee cannot claim adverse possession; but if he sets up a claim rivalling and challenging the title of the lessor/licensor and deliberately stops payment of rent/fee, his initial legal possession transforms into the illegal occupation of a trespasser. If the period of prescription, twelve years for a citizen and thirty years for the Government, elapses without the title owner initiating legal action for regaining possession from the trespasser, the latter's adverse possession is protected. This doctrine may appear to favour the transgressor, but it is arguable that in actuality it respects the human right to enjoyment of property possessed, improved and developed by the transgressor, against an indolent and careless owner. A presumption can also be drawn that the title holder is not interested in the property any longer. It need not be equated with stealth, since the possession of the trespasser has to be open and hostile to the title owner. As has been explained in *Taylor -vs- Twinberrow* (1930) All ER 342 and *Fair Weather -vs- St Marlebone Property Co*, (1962) 2 All ER 288, adverse possession "is a negative and consequential right effected only because

somebody else's positive right to access the Court is barred by operation of law". Such rights are protective in character and akin to the doctrine of "part performance" can be employed only as a shield and not as a sword. Expectedly therefore, a suit for declaration of ownership cannot be predicated on a plea of adverse possession, as has been held in *Prem Nath Wadhawan -vs- Inder Raj Wadhawan*, 1993 (3) PLR 70 (Delhi Section). *State of Haryana Vs. Mukesh Kumar and Others*, contains a detailed debate on the equities which arise whenever adverse possession is pressed into service. The preponderance of opinion is that the operation of adverse possession protects a trespasser or transgressor of the law and therefore ought not to be made available. References to the modern jurisprudence in America, United Kingdom and European Commission of Human Rights prefers the abolition or non-application of this principle.

6. In AIR 1935 53 (Privy Council) the Privy Council perspicuously opined that "a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed." *S.M. Karim Vs. Mst. Bibi Sakina*, concerned the efficacy of a benami transaction and upon its failure, the availability of the plea of adverse possession. The Court clarified that such a claim "must be adequate in continuity, in publicity and extent and a plea is required at least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found." This enunciation of the law has been restated in *Gaya Parshad Dikshit Vs. Dr. Nirmal Chander and Another*, *Vidya Devi alias Vidya Vati (Dead by L.R's) Vs. Prem Prakash and others*, *R. Chandevappa and Others Vs. State of Karnataka and Others*, *D.N. Venkatarayappa and another Vs. State of Karnataka and others*, *Karnataka Board of Wakf Vs. Government of India and Others*, *T. Anjanappa and Others Vs. Somalingappa and Another*, *P.T. Munichikkanna Reddy and Others Vs. Revamma and Others*, *Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbai Harijan and Others*, *State of Haryana Vs. Mukesh Kumar and Others*, and *G. Krishnareddy Vs. Sajjappa (D) by L.Rs. and Another*,

7. *D.N. Venkatrayappa* covers not only the doctrine of adverse possession but also how it has to be applied to the PTCL Act. Their Lordships observed that:

3. The petitioners, admittedly, had purchased the property in the years 1962-63 from the original allottees. The Government have allotted those lands as per Saguvali Chit containing prohibition of alienation of the land. Subsequently, the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 was enacted totally prohibiting the alienation up to a particular period. The proceedings were initiated against the petitioners for ejectment under said Act. All the authorities have concurrently held that the alienation in favour of the petitioners was in violation of the above rules and the said Act and hence the sales are voidable. When the case had come up before this Court, this Court while upholding the constitutionality of the Act directed the

authorities to go into the question of adverse possession raised by the petitioners. The learned Single Judge has extracted the pleadings on adverse possession of the petitioners. Therein, the High Court had pointed out that after the purchase of the lands made by them, they remained in possession and enjoyment of the lands. What requires to be pleaded and proved is that the purchaser disclaimed his title under which he came into possession raised by the petitioners. The learned Single Judge has extracted the pleadings on adverse possession of the petitioners. Therein, the High Court had pointed out that there is no express plea of adverse possession except stating that after the purchase of the lands made by them, they remained in possession and enjoyment of the lands. What requires to be pleaded and proved is that the purchaser disclaimed his title under which he came into possession, set up adverse possession with necessary animus of asserting open and hostile title to the knowledge of the true owner and the latter allowed the former, without any let or hindrance, to remain in possession and enjoyment of the property adverse to the interest of the true owner until the expiry of the prescribed period. The classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario*. After considering the entire case-law in that behalf, the learned Single Judge has held thus:

The contention raised by the petitioners that they have perfected their title in respect of the lands in question by adverse possession, has to fail on two counts. Firstly, the crucial facts, which constitute adverse possession have not been pleaded. The pleading extracted above, in my view, will not constitute the crucial facts necessary to claim title by adverse possession. It is not stated by the petitioners in their pleadings that the petitioners at any point of time claimed or asserted their title, hostile or adverse to the title of the original grantees/their vendors. In my view, mere uninterrupted and continuous possession without the animus to continue in possession hostile to the rights of the real owner will not constitute adverse possession in law.

In the case of *P. Lakshmi Reddy v. L. Lakshmi Reddy*, relied upon by Shri Narayana Rao at para 7 of the judgment, the Supreme Court, following the decision of the Privy Council in *Secretary of State v. Debendra Lal Khan*, has observed that the ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario* and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

In the case of *State of West Bengal v. Dalhousie Institute Society*, the Supreme Court, on the basis of the materials on record, which were referred to by the High Court, took the view that in the said case, the respondent had established his title to the site in question by adverse possession. Further, the said decision proceeds on the basis that the grant made by the Government was invalid in law. That is not the position in the present case. The alienation in question was only voidable. The petitioners came into possession of the lands in question by virtue

of the Sale Deeds which are only voidable in law. Therefore, they have come into possession by virtue of the derivative title as observed by the Supreme Court in the case of *R. Chandevappa v. State of Karnataka*. Further, in the case of *Kshitish Chandra Bose v. Commissioner of Ranchi*, the observation made by the Supreme court at para 8 of the judgment relied upon by Shir Narayana Rao in support of his contention that the only requirement of law to claim title by adverse possession is that the possession must be open and without any attempt at concealment and it is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner concerned, I am of the view that the said observation must be understood with reference to the observations made in para 7 of the judgment. At para 7 of the judgment, the Supreme Court has observed thus:

7. For instance, one of the most important facts which clearly proved adverse possession was that the plaintiff had let out the land for cultivatory purposes and used it himself from time to time without any protest from the defendant. During the period of 45 years, no serious attempt was made by the municipality to evict the plaintiff knowing fully well that he was asserting hostile title against the municipality in respect of the land.

Further, this Court, in the case of *Danappa Revappa Kolli v. Gurupadappa Mallappa Pattana Shetty*, while referring to the decision of the Supreme Court in *Kshitish Chandra's* case, *supra*, relied upon by Shri Narayana Rao in support of the plea of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. The observations made in the said decision reads thus:

"5. Apart from actual and continuous possessions which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. A person who under the bona fide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all be adverse possession because it lacks necessary animus for perfecting title by adverse possession."

Therefore, it is clear that one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner. Therefore, I am of the view that none of the decisions relied upon by Shri Narayana Rao in support of the plea of adverse possession set up by the petitioners, is of any assistance to the petitioners.

Further, admittedly, there is not even a whisper in the evidence of the first petitioner with regard to the claim of adverse possession set up by the petitioners. It is not stated by the petitioners that they have been in continuous and uninterrupted possession of the lands in question. What is stated by the petitioners, in substance, is that they came into possession of the lands in question by virtue of the Sale Deeds executed by the original grantees. The

Supreme Court, in para 11 of the decision in Chandavarappa's case *supra*, has observed thus:

"11. The question then is whether the Appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the Appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly, the Appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from the original grantee, if the Appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the Appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in his behalf. The Counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the Appellant.

Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession and therefore, the Act does not apply as laid down by the Supreme Court in *Manchegowda v. State of Karnataka*. The law laid down by the Supreme Court in Chandavarappa's case, *supra* fully applies to the facts of the present case. In the said case, while considering the claim of adverse possession of the purchaser of a granted land from the original grantee, the Supreme Court has observed that the person who comes into possession under colour of title from the original grantee, if he intends to claim adverse possession as against the State, must disclaim his title and plead his hostile claim to the knowledge of the State and the State had not taken any action thereon within the prescribed period. It is also relevant to point out that sub-section (3) of Section 5 of the Act provides that where a granted land is in 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. Since I have negated the contention of Shri Narayana Rao that the original grantees are not Scheduled Castes, it follows that the lands in question are granted lands within the meaning of clause (b) of sub-section (1) of Sec. 3 of the Act. Therefore, the burden is on the petitioners, who had admittedly come into possession of the lands in question, to establish that they have acquired title to the lands in question by a transfer, which is not null and void under the provisions of sub-section (1) of Section 4 of the Act. In the instant case, the petitioners have failed to discharge the said burden. On this ground also, the petition should fail. Secondly, the grants made in favour of the original grantees are admittedly free grants. The

rule governing the grant prohibited alienation of the lands in question permanently. The lands in question were granted to a Scheduled Caste person taking into account their social backgrounds, poverty, illiteracy and their inherent weakness for being exploited by the affluent section of the society. Under these circumstances, the conditions were imposed that the grantees should not alienate the lands granted to them. Sections 66-a and 66-B of the Land Revenue Code authorise the State to resume the land for violation of the terms of the grant. Therefore, if the terms of the grants, which are hedged with conditions, and the class of persons to whom the lands are granted, are taken into account and considered, it is not possible to accept the contention of the Learned Counsel for the petitioners that the title in the lands had passed absolutely to the grantees. I am of the view that the title to the lands continued to remain in the State and what has been transferred to the grantees is the right to continue to be in possession of the lands granted to them and enjoy the same in perpetuity subject to the condition that they do not violate the conditions of the grant. This view of mine is supported by the Division Bench decision of this Court in the case of Rudrappa v. Special Deputy Commissioner, where in para 8 of the judgment, the Division Bench of this Court, while considering similar grants, has taken the view that the grantee was not given absolute title in respect of the land granted. The relevant portion of the judgment at para 8, reads as follows:

8. It is clear from the terms of the grant that the Appellant's predecessor-in-title, the grantee could not alienate the land for certain period and if the land was alienated, it was open to the Government to cancel the grant and resume the land in question. If the grant was hedged in with several conditions of this nature, the same cannot be said to be absolute. Moreover, it must be noticed that the grant was made at an upset price. In the circumstances, proceedings initiated by the respondents cannot be stated to be barred by limitation nor is it possible to sustain the plea of adverse possession raised on behalf of the Appellant.

4. In that view, it was held that the title of the land in question has not been absolutely granted to the petitioners. Their title by adverse possession against the State was for a period over 30 years prior to the date of coming into force of the Act. The petitioners failed to prove their claim for adverse possession. This finding was upheld by the Division Bench in para 3 of its judgment thus:

It is no doubt true that when the grant of land is made, depending on the terms thereof, the land may vest in the grantee with full right, but if the terms of the grant itself spell out certain conditions which restrict the rights that are available in respect of the land which had been granted, the fine-tuned arguments addressed by the Learned Counsel for the Appellants would pale into insignificance for admittedly the title is clogged with the resumption of land in the event of violation of the terms of grant and would necessarily mean that the grantee cannot give a better title than what he had, to be purchaser and that title has the burden of non-alienation either for a particular period or for all

period to come. If any sale is effected contrary to those provisions, the same would enable the authorities to resume the lands in question. Thus, the terms of grant itself cannot be understood to be absolute right. Such title necessarily cuts down the capacity or the power to alienate the lands. Therefore, it is unnecessary to refer to the various decisions relied upon by the Learned Counsel for the Appellants in this regard for this aspect did not arise for consideration much less considered in the aforesaid decisions. The context in which those provisions were interpreted were only cases of simple grants unhindered by the enactment like the one with which we are presently concerned. In such cases what rights would flow or arise are entirely different. The Act clearly sets out that any transfer or grant of land made either before or after the commencement of the Act in contravention of the terms of grant of such land, would be null, void and no right, title or interest in such land shall be conveyed nor deemed to have ever been conveyed by such transfer. When the provisions of the Act clearly spell out to destroy such transactions to argue that the parties concerned had clear title fully in respect of the same would not stand to reason.

8. Krishnareddy is also directly apposite; the Assistant Commissioner and thereafter the Deputy Commissioner in appeal had accepted the plea of adverse possession in favour of the vendee. The view of this Court, which was upheld by their Lordships, was that no alienation could have been legally effected as it was prohibited by the grant and that "adverse possession" was not available as a defence since the claim of ownership was derived from the sale and manifestly no hostile claim could have or had been set up.

9. In the wake of the plentitude of precedents in which the law has been discussed in detail we are unable to apply mere observations made in an Order dated 14.07.2011 of a 2 Judge Bench in Ningappa -vs- Deputy Commissioner, Civil Appeal No. 3131 of 2007, to which his Lordship Katju. J, was privy, which has been palpably pronounced en passant If this order is to be accorded precedential status, it is facially per incurrium, ironically to the elaboration and enunciation of law available in P.T. Munichikkanna Reddy and Others Vs. Revamma and Others, to which His Lordship Katju. J., was a party. In Munichikkanna the Bench explained that the proposition mandates that;

Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (wilful) or omission (negligent or otherwise) of right to defend or care for the integrity of property on the part of the paper owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that does not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.

10. Reliance is invariably placed on the extracted observations of the Supreme Court in Manchegowda and Others Vs. State of Karnataka and Others, to posit

the proposition that on the efflux of the period of prescription prescribed for claiming adverse possession the vendee would become insulated from dispossession. Their Lordships did not think it necessary to reiterate the well-entrenched concomitants of such a defence, and clarified that only if the claim stood substantiated would it be available as a shield to dispossession of the Vendee. The Court did not state that a mere passage of twelve/thirty years would ipso facto, with more, establish such a defence. This is our comprehension of the oft relied upon passage from Manchegowda.

24. Though we have come to the conclusion that the Act is valid, yet, in our opinion, we have to make certain aspects clear. Granted lands which had been transferred after the expiry of the period of prohibition do not come within the purview of the Act, and cannot be proceeded against under the provisions of this Act. The provisions of the Act make this position clear, as Sections 4 and 5 become applicable only when granted lands are transferred in breach of the condition relating to prohibition on transfer of such granted lands. Granted lands transferred before the commencement of the Act and not in contravention of prohibition on transfer are clearly beyond the scope and purview of the present Act. Also in case where granted lands had been transferred before the commencement of the Act in violation of the condition regarding prohibition on such transfer and the transferee who had initially acquired only a voidable title in such granted lands had perfected his title in the granted lands by prescription by long and continuous enjoyment thereof in accordance with law before the commencement of the Act, such granted lands would also not come within the purview of the present Act, as the title of such transferees to the granted lands has been perfected before the commencement of the Act. Since at the date of the commencement of the Act the title of such transferees had ceased to be voidable by reason of acquisition of prescriptive rights on account of long and continued user for the requisite period, the title of such transferees could not be rendered void by virtue of the provisions of the Act without violating the constitutional guarantee. We must, therefore, read down the provisions of the Act by holding that the Act will apply to transfers of granted lands made in breach of the condition imposing prohibition on transfer of granted lands only in those cases where the title acquired by the transferee was still voidable at the date of the commencement of the Act and had not lost its defeasible character at the date when the Act came into force. Transferees of granted lands having a perfected and not a voidable title at the commencement of the Act must be held to be outside the pale of the provisions of the Act. Section 4 of the Act must be so construed as not to have the effect of rendering void the title of any transferee which was not voidable at the date of the commencement of the Act.

11. This exposition of the law can also be found in K.T. Huchegowda Vs. Deputy Commissioner and Others, in which the three Judge Bench spoke thus:

8. On a plain reading, granted land will mean, any land granted by the Government to a person, who is a member of the Schedule Castes or Schedule

Tribes which includes land allotted to such persons. Grant may be of different types; it may be by absolute transfer of the interest of the State Government to the person concerned; it may be only by transfer of the possession of the land, by way of allotment, without conveying the title over such land of the State Government. If by grant, the transferee has acquired absolute title to the land in question from the State Government, then subject to protection provided by the different provisions of the Act, he will be subject to the same period of limitation as is prescribed for other citizens by the provisions of the Limitation Act, in respect of extinguishment of title over land by adverse possession. On the other hand, if the land has been allotted by way of grant and the title remains with the State Government, then to extinguish the title that has remained with the State Government by adverse possession, by a transferee on the basis of an alienation made in his favour by an allottee, the period of limitation shall be 30 years. Incidentally, it may be mentioned that some of the States in order to protect the members of the Schedule Tribes from being dispossessed from the lands which belong to them and of which they are absolute owners, for purpose of extinguishment of their title by adverse possession, have prescribed special period of limitation, saying that it shall be 30 years. In Bihar, vide Regulation No. 1 of 1969, in Article 65 of the Limitation Act, it has been prescribed that it would be 30 years in respect of immovable property belonging to a member of the Scheduled Tribes as specified in Part III to the Schedule to the Constitution (Scheduled Tribes) Order, 1950.

9. There is no dispute that so far as the Act with which we are concerned, no special period of limitation has been prescribed, in respect of lands which have been granted to the members of the Scheduled Castes and Scheduled Tribes with absolute ownership by the State Government. In this background, when this Court in the case of Sunkara Rajayalakshmi -vs- State of Karnataka said that the period of limitation, which has to be taken into account for the purpose of determining, whether the title has been perfected by prescription, shall be that which runs against the State Government and therefore it would be 30 years and not 12 years, has to be read in context with the lands, the ownership whereof, has not been transferred absolutely, to the members of the Scheduled Castes and Scheduled Tribes; the lands having been only allotted to them, the title remaining with the State Government. The cases, where the transfer by the State Government by way of grant has been absolute, then unless there is an amendment so far the period of limitation is concerned, it is not possible to apply the special limitation of 30 years, so far such grantees are concerned, when the question to be determined, is as to whether a transferee in contravention of the terms of the grant, has perfected his title by remaining in continuous and adverse possession. The transferee, who has acquired the land from the grantee, in contravention of the terms of the grant shall perfect his title by adverse possession by completing the period of 12 years. When this Court said in its main judgment, in the case of Manchegowda -vs- State of Karnataka that in cases

where granted lands had been transferred before the commencement of the Act in violation of the condition, regarding prohibition on such transfer, and the transferee who had initially acquired only a voidable title, in such granted lands had perfected his title in the granted lands by prescription by long and continuous enjoyment thereof in accordance with law before the commencement of the Act, has to be read, for purpose of determining the period of limitation in respect of lands granted with absolute ownership, to mean 12 years and grant by way of allotment without transfer of the ownership in favour of the grantee, to mean 30 years.

12. In *R. Chandevappa and Others Vs. State of Karnataka and Others*, the impact of the doctrine of adverse possession on lands granted by the Government to the depressed sections of our society has been succinctly summed up in these words: -

11. The question then is whether the Appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the Appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly, the Appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantees, if the Appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the Appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the Appellant.

Two aspects are manifested from the above precis of law. Firstly, a person cannot claim adverse possession against the person from whom he avowedly derives or traces his title; a vendee cannot dispute his vendors' title especially where the former has received possession from the latter. Secondly, because of the transaction in question, adverse possession has to be pleaded and proved against the Government for which the period of limitation is thirty years. This is because the grantee/vendor has a limited interest in the land which specifically proscribes alienation either in perpetuity or for a prescribed period. The Court also adumbrated the apparent misunderstanding of Huchegowda in the context of the period of prescription. " No plea of adverse possession is tenable in respect of immovable property belonging to women, State and temple".

13. We are also not impressed by the reliance of Learned Counsel on *Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim*, In that case, mutation was carried out on the basis of two registered Sale Deeds and thus process was sought to be reversed by the mamlatdar by exercising suo moto powers. It was in that context that two Judge Bench observed that where no time limit has been prescribed for

exercising of power under statute it should be exercised within a reasonable time. Firstly, the applicability of the principle of adverse possession was not under consideration. Secondly, there was no statutory provision declaring the Sale Deeds to be null and void. Therefore the decision does not advance the case of the Appellants before us. For these very reasons we are also not persuaded to hold that an inordinate delay has resulted in the present case on the foundation of the Apex Court decision in the *The State of Gujarat Vs. Patil Raghav Natha and Others*, and *Shri Santoshkumar Shivgonda Patil and Others Vs. Shri Balasaheb Tukaram Shevale and Others*,

By way of postscript to this analysis it would be interesting to reproduce the relevant contents of Chapter-VIII from Manusmriti to the effect - "A pledge, a boundary, the property of infants, an (open) deposit, a sealed deposit, women, the property of the King and the wealth of a Srotriya are not lost in consequence of (adverse) enjoyment". Of equal vintage (3rd Century BC) and therefore worthy of serious reflection is an entry in the recommendation of Katyayana, a disciple of Lord Gautama Buddha to the effect - "No plea of adverse possession is tenable in respect of immovable property belonging to women, State and Temple". We make/build that distribution of State's largest wealth in the form of grant land would be similarly protected in the larger interest of the objective of the statute.

BURDEN OF PROOF

14. The next question to be considered is on whom the burden of proof has to be laid under the PTCL Act. As in the case of the Appellant's claim for protection of their possession by application of doctrine of adverse possession, the other common feature which runs through the rubric of these appeals is that the grantee or his legal representatives have failed to prove that the sale transaction entered into by them with the Appellants/purchasers or their predecessor in title is invalid. In other words, the Appellants' endeavour is to place the burden of proof on the seller/grantee, despite the provisions of Section 5(3) of the PTCL Act, and in this regard Learned Counsel for almost all the Appellants have relied on *Pedda Reddy -vs- State of Karnataka* 1993 (1) Kar. L.J. 328 (DB).

15. We respectfully concur with the decision of the Coordinate Bench in *Pedda Reddy* wherein our learned brothers had distilled three points which the Assistant Commissioner/Deputy Commissioner must address and answer before any sale transaction pertaining to Grant Lands can be held by them to be void. In their view, the Authorities must determine that the Grant was (i) made in favour of a person belonging to Scheduled Caste/Scheduled Tribe; (ii) was for upset price or for a price less than the upset price or without consideration and (iii) came to be alienated within the period of prohibition prescribed under the Rules or the *Saguvali chit*. In that case since conclusions had not been recorded on each of these three points, the matter was remanded to the Assistant Commissioner for fresh adjudication. The Division Bench had not been called upon to and therefore did not reflect on the conundrum of which party to the lis should prove these

three points. Therefore, without diluting in any manner the ratio of Pedda Reddy, we think it necessary to add that by virtue of Section 5(3) of the PTCL Act, the onus probandi or burden of proof is statutorily placed on the shoulders of the purchaser. This is also appreciation of the law by the Division Bench in *M. Bhoomi Reddy Vs. The Special Deputy Commissioner and Others*, wherein it has been held thus:

14. A legal fiction is enacted in sub-section (3) of Section 5 to state that if a person is found to be in possession of the granted land, then, said person should be regarded as a person who has acquired the granted land by transfer. Of course, the fiction enacted in sub-section (3) could be rebutted by a person against whom the fiction is applied by adducing evidence to show that he has not acquired the granted land despite the fact that he is in possession. In the instant case, admittedly, the Appellant was found to be in possession of the schedule land which is a granted land within the meaning of Section 2(b) of the act on the relevant date. By force of the fixation enacted in sub section (3) of Section 5 of the Act, it should be held that the Appellant has acquired the schedule land by transfer until the contrary is proved. The burden to prove the contrary is understandably placed on the Appellant. The Appellant has neither pleaded nor produced any proof to discharge that burden. Having regard to the definition of the word "transfer" and also the fiction enacted in sub section (3) of Section 5 of the Act, it could not be said that the Assistant Commissioner in directing resumption and restoration of the schedule land in favour of the 3rd respondent acted without jurisdiction or without authority of law.

16. Section 5(3) ordains that "where any granted land is in possession of a person, other than the original grantee.... it shall be presumed, unless the contrary is proved, that such person has acquired the land by a transfer which is null and void....." We affirm the conclusion in *Mudalappa (Deceased) by L.Rs Vs. State of Karnataka and Others*, ; *Veeraswamy Vs. Special Deputy Commissioner*, and *G.K. Mallikarjunappa Vs. The Deputy Commissioner and Others*, all of which are to the same effect. In our view, Pedda Reddy would be grossly and gravely misunderstood if it is construed to enunciate that the burden to prove the three points lies on the grantee/sellor. It also appears to us that *Smt. Chowdamma Vs. The Special Deputy Commissioner and Others*, and subsequent judgment by the same learned single Judge in *Nagendrappa and Another Vs. Deputy Commissioner, Davanagere and Others*, does not apply in favour of the Appellant before us, as it cannot prescribe anything contrary to Pedda Reddy. In that case, the Court was concerned with the contents of the Saguvali Chit and pithily observed that it cannot be relied upon in toto and therefore, the extant Rules would have to be considered. This enquiry pertaining to the three points that would be necessary on the instance of the purchaser. Similarly, the Single Bench decision in *S. Reddappa Vs. Sri Vijaya M.*, lays down that if Rule 43 (G) (4) of the Karnataka Land Revenue Rules, 1966 no change would have to be restored to in case the contents of the Saguvali Chit are found to be vague. Actually it is the Mysore Land Revenue Rules, 1888 which applied since the Grant before the

learned Single Judge was made by Order dated 21.09.1954; and prescribed a prohibition of sale or transfer for a period of 20 years which has been shortened in duration by amendments to those Rules i.e., to 15 years by virtue of the Mysore Land Revenue (Amendment) Rules 1960. It appears that Rules 41 to 43M came to be introduced by the Mysore Land Revenue (Amendment) Rules 1960 into the Mysore Land Revenue Rules. In Siddamma -vs- Chikkegowda 1991 (1) Kar. L.J 210, the Division Bench was called upon to apply those Rules, and it was in that context the Division Bench held that there was no question of applying Rule 43 (G), as the lands had been granted under Rule 43 (J) i.e., for a temporary lease. This decision thereafter taken to the Full Bench which affirmed it in Chikka Kukkegowda Vs. State of Karnataka and Others, The pre-eminent principle however is that it is not for the purchaser to assert that the terms of the grant were inapplicable and incorrect, as this would fall within the province of the grantee alone. It is the grantee who may plead and prove that he had paid the actual market price for the land or that he was not SC/ST and therefore no clog of resale, or clause restraining alienation, was legally warranted. A reading of Bhadrappa (D) by LRs. Vs. Tolacha Naik, is a complete answer. Their Lordships reiterated that the burden is on the person who is in possession to prove that his possession is valid and in accordance with law; and that it is impermissible for the purchaser of granted land to initiate litigation with the objective either to challenge any of the restrictive covenants in the grant or to contend that the original grantee did not belong to a Scheduled Caste/Scheduled Tribe. We say this in view of the decision in Siddegowda Vs. Assistant Commissioner and Others, Chinde Gowda Vs. Puttamma, and Guntaiah and Others Vs. Hambamma and Others, which overruled the Full Bench decision of this Court. All controversy on these aspect has been set to rest in Guntaiah which explicitly holds that the purchaser has no locus standi to challenge any of the terms of a grant and that the intendment of the PTCL Act did not infringe Article 19 (1) (f) of the Constitution. We can do no better than extract the following paragraphs from this three Judge Bench decision.

12. When the Rule itself says that where the grant is made free of cost or at a price which is less than the full market value, such grant shall be subject to the condition that the land shall not be alienated for a period of 15 years from the date of the grantee taking possession of the land after the grant, such conditions could be imposed on any grant made to the party.

13. In any case, the High Court failed to take into account the clear language employed in Section 4, according to which 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" shall be null and void (emphasis supplied). The violation of the terms of grant itself gives rise to the action u/s 4 read with Section 5. So long as the terms of the grant prohibiting transfer are not opposed to any specific provision of law, they cannot be violated and the transferee gets no rights by virtue of such invalid transfer. That is the sum and substance of Section 4 which has not been duly considered by the High Court.

14. It is also pertinent to note that the prohibition regarding alienation is a restrictive covenant binding on the grantee. The grantee is not challenging that condition. In all these proceedings, challenge is made by the third party who purchased the land from the grantee. The third party is not entitled to say that the conditions imposed by the grantor to the grantee were void. As far as the contract of sale is concerned, it was entered into between the Government and the grantee and at that time the third-party purchaser had no interest in such transaction. Of course, he would be entitled to challenge the violation of any statutory provisions but if the grant by itself specifically says that there shall not be any alienation by the grantee for a period of 15 years, that is binding on the grantee so long as he does not challenge that clause, more so when he purchased the land, in spite of being aware of the condition. The Full Bench seriously erred in holding that the land was granted under Rule 43-J and that the Authorities were not empowered to impose any conditions regarding alienation without adverting to Section 4 of Act 2 of 1979. These lands were given to landless persons almost free of cost and it was done as a social welfare measure to improve the conditions of poor landless persons. When these lands were purchased by third parties taking advantage of illiteracy and poverty of the grantees, Act 2 of 1979 was passed with a view to retrieve these lands from the third-party purchasers. When Act 2 of 1979 was challenged, this Court observed in *Manchegowda v. State of Karnataka 2*: (SCC pp. 310-11, para 17)

"17. Granted lands were intended for the benefit and enjoyment of the original grantees who happen to belong to the Scheduled Castes and Scheduled Tribes. At the time of the grant, a condition had been imposed for protecting the interests of the original grantees in the granted lands by restricting the transfer of the same. The condition regarding the prohibition on transfer of such granted lands for a specified period, was imposed by virtue of the specific term in the grant itself or by reason of any law, rule or regulation governing such grant. It was undoubtedly open to the grantor at the time of granting lands to the original grantees to stipulate such a condition the condition being a term of the grant itself, and the condition was imposed in the interests of the grantee. Except on the basis of such a condition the grantor might not have made any such grant at all. The condition imposed against the transfer for a particular period of such granted lands which were granted essentially for the benefit of the grantees cannot be said to constitute any unreasonable restriction. The granted lands were not in the nature of properties acquired and held by the grantees in the sense of acquisition, or holding of property within the meaning of Article 19(1) (f) of the Constitution. It was a case of a grant by the owner of the land to the grantee for the possession and enjoyment of the granted lands by the grantees and the prohibition on transfer of such granted lands for the specified period was an essential term or condition on the basis of which the grant was made. It has to be pointed out that the prohibition on transfer was not for an indefinite period or perpetual. It was only for a particular period, the object being that the grantees should enjoy the granted lands themselves at least for the period

during which the prohibition was to remain operative. Experience had shown that persons belonging to Scheduled Castes and Scheduled Tribes to whom the lands were granted were, because of their poverty, lack of education and general backwardness, exploited by various persons who could and would take advantage of the sad plight of these poor persons for depriving them of their lands. The imposition of the condition of prohibition on transfer for a particular period could not, therefore, be considered to constitute any unreasonable restriction on the right of the grantees to dispose of the granted lands. The imposition of such a condition on prohibition in the very nature of the grant was perfectly valid and legal.

17. The two Judge Bench of the Supreme Court in *Ningappa vs. Deputy Commissioner*, Civil Appeal 3131 of 2007 decided on 14.07.2011, has observed that if considerable delay occurs action under the PTCL Act cannot be taken. Heavy reliance has been placed on this order by the counsel for the Appellants. Since the dismissal order remains unreported, we reproduce the entire order below:

ORDER

Heard the Learned Counsel for the parties.

This Appeal has been filed against the impugned judgment dated 09.11.2005 passed by the High Court of Karnataka in Writ Appeal No. 7727 of 2003.

The facts have been set out in the impugned judgment and hence we are not repeating the same here.

Admittedly, respondent Nos. 3 to 7 had sold the land in question to the Appellant in the year 1972. This was done by respondents Nos. 3 to 7 voluntarily and of their own free volition. It is only in the year 1988 that they filed an application before the Assistant Commissioner u/s 4 read with Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 inter alia praying for cancellation of the sale transaction and also restoration of the land in question.

Civil Appeal No. 3131 of 2007

In our opinion, the application of the respondents should have been rejected on the short ground that there was considerable delay in filing the same and thus it was not maintainable. Even if no limitation is prescribed by the statute, all acts have to be done within a reasonable period of time.

In the result, the Appeal is allowed and the impugned judgment is set aside. No costs.

The Judicial Discipline of Precedent and Stare decisis and the term per incuriam:

18. It appears to us that the position that principles of laches may be available to and may be taken advantage of by a purchaser is irreconcilable with the

elaboration and enunciation of the law of adverse possession made previously by larger Benches. We would therefore briefly discuss what stare decisis connotes and how it differs from the discipline behind applying precedents. This is best brought out in *Waman Rao and Ors Vs. Union of India (UOI) and Others*, by the Constitution Bench in the following extracts -

.....It is also true to say that for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of longstanding should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis.....A deliberate judicial decision made after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent; and the precedent by long recognition may mature into stare decisis.....In fact, the full form of the principle, stare decisis et non quieta movere which means to stand by decision and not to disturb what is settled", was put by Coke in its classic English version as: Those things which have been so often adjudged ought to rest in peace".....The principle of stare decisis is regarded as a rule of policy which promotes predictability, certainty, uniformity and stability. The legal system, it is said, should furnish a clear guide for conduct so that people may plan their affairs with assurance against surprise. It is important to further fair and expeditious adjudication by eliminating the need to relitigate every proposition in every case..... (It is important) for judges to conform to a certain measures of discipline so that decisions of old standing are not overruled for the reason merely that another view of the matter could also be taken.

19. In *Union of India -vs- Raghubir Singh* (1989) 2 SCC in which the following elucidation can be perused:

26. It is not necessary to refer to all the cases on the point. The broad guidelines are easily deducible from what has gone before. The possibility of further defining these guiding principles can be envisaged with further juridical experience, and when common jurisprudential values linking different national systems of law may make a consensual pattern possible. But that lies in the future.

27. There was some debate on the question whether a Division Bench of Judges is obliged to follow the law laid down by a Division Bench of a larger number of Judges. Doubt has arisen on the point because of certain observations made by O. Chinnappa Reddy, J. in *Javed Ahmed Abdulhamid Pawala Vs. State of*

Maharashtra, Earlier, a Division Bench of two Judges, of whom he was one, had expressed the view in *T.V. Vatheeswaran Vs. State of Tamil Nadu*, that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle a person under sentence of death to invoke Article 21 of the Constitution and demand the quashing of the sentence of death. This would be so, he observed, even if the delay in the execution was occasioned by the time necessary for filing an appeal or for considering the reprieve of the accused or some other cause for which the accused himself may be responsible. This view was found unacceptable by a Bench of three Judges in *Sher Singh and Others Vs. State of Punjab*, where the learned Judges observed that no hard and fast rule could be laid down in the matter. In direct disagreement with the view in *T.V. Vatheeswaran (supra)*, the learned Judges said that account had to be taken of the time occupied by proceedings in the High Court and in the Supreme Court and before the executive authorities, and it was relevant to consider whether the delay was attributable to the conduct of the accused. As a member of another Bench of two Judges, in *Javed Ahmed Abdul Hamid Pawala (supra)* *O. Chinnappa Reddy, J.* questioned the validity of the observations made in *Sher Singh (supra)* and went on to note, without expressing any concluded opinion on the point, that it was a serious question "whether a Division Bench of three Judges could purport to overrule the judgment of a Division Bench of two Judges merely because three is larger than two. The court sits in divisions of two and three Judges for the sake of convenience and it may be inappropriate for a Division Bench of three Judges to purport to overrule the decision of a Division Bench of two Judges. *Vide Young v. Bristol Aeroplane Co. Ltd. (1944) 2 All ER 293.* It may be otherwise where a Full Bench or a Constitution Bench does so." It is pertinent to record here that because of the doubt cast on the validity of the opinion of *Sher Singh (supra)*, the question of the effect of delay on the execution of a death sentence was referred to a Division Bench of five Judges, and in *Triveniben Vs. State of Gujarat*, the, Constitution Bench overruled *Vasanta Vs. State of Maharashtra*,

28. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the Courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and, by such other

considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In *John Martin Vs. State of West Bengal*, a Division Bench of three Judges found it right to follow the law declared in *Haradhan Saha Vs. The State of West Bengal and Others*, decided by a Division Bench of five Judges, in preference to *Bhut Nath Mete Vs. The State of West Bengal*, decided by a Division Bench of two Judges. Again in *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, Beg, J held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen Judges in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, In *Ganapati Sitaram Balvalkar and another Vs. Waman Shripad Mage (Since Dead) through Lrs*, this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three Judges of the Court. And in *Mattulal Vs. Radhe Lal*, this Court specifically observed that where the view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. this Court also laid down in *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and Others Vs. The State of Gujarat and Others*, that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was re-affirmed in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, which noted that a Division Bench of two Judges of this Court in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, had differed from the view taken by an earlier Division Bench of two Judges in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later Bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.

20. In *Krishena Kumar and Others Vs. Union of India and others*, , the Apex Court relied on *Raghubir Singh* which was applied once again by the Constitution Bench in *Chandra Prakash -vs- State of U.P.*, AIR 2002 SC 1652 and their Lordships explained these concepts in this manner - "policy of courts is to stand by precedents and not to disturb settled point".

22. Almost similar is the view expressed by a recent judgment of a five-Judge Bench of this Court in *Parija's case* (supra). In that case, a Bench of two learned

Judges doubted the correctness of the decision of a Bench of three learned Judges, hence, directly referred the matter to a Bench of five learned Judges for reconsideration. In such a situation, the five-Judge Bench held that judicial discipline and propriety demanded that a Bench of two learned Judges should follow the decision of a Bench of three learned Judges. On this basis, the five-Judge Bench found fault with the reference made by the two-Judge Bench based on the doctrine of binding precedent.

23. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of Raghbir Singh held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. It is in furtherance of this enunciation of law, this Court in the latter judgment of Parija (supra) held that-

But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.

21. In order to avoid prolixity we shall go no further than mention Union of India (UOI) and Another Vs. K.S. Subramanian, and M/s. Indian Petrochemicals Corporation Ltd. and Another Vs. Shramik Sena, An entire and complete discussion on this subject is now to be found in Shanker Raju Vs. Union of India (UOI), In this analysis, the principle of precedents, of stare decisis and of per incuriam, is that when a Bench is faced with a decision of a previous Bench of equal strength it is expected to follow the previous decision and apply its ratio. Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., followed in M/s. Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd., cogitated on the principle of per incuriam. Their Lordships held that "Certainty of law, consistency of rulings and comity of courts - all flowering from the same principle - converge to the conclusion that a decision once rendered must later bind like cases.....a

prior decision of this Court on identical facts and law binds the court on the same points in a later case. Here we have a decision admittedly rendered on facts and law indistinguishably identical, and that ruling must bind". The same maxim has been considered in detail in the decision reported as *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, . We think that the following paragraphs call for reproduction:

40. *Incuria*" literally means "carelessness". In practice "*per incuriam*" appears to mean *per ignoratium*. English courts have developed this principle in relaxation of the rule of *stare decisis*. The "*quotable in law*" is avoided and ignored if it is rendered, "*in ignoratium of a statute or other binding authority*". Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu -vs- Rajdewan Dubey* this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's *Laws of England* incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law?. Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of *sub-silentio*. "A decision passes *sub-silentio*, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., P. 153). In *Lancaster Motor Company (London) Ltd. -vs- Bremith Ltd.* the Court did not feel bound earlier decision as it was rendered "*without any argument, without reference to the crucial words of the rule and without any citation of the authority*". It was approved by this Court in *Municipal Corporation of Delhi -vs- Gurnam Kaur*. The bench held that, "*precedents sub-silentio and without argument are of no moment*". The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article-141. Uniformity and consistence are core of judicial discipline. But that which escapes in the Judgment without any occasion is not *ratio decidendi*. In *B. Shama Rao -vs- Union Territory of Pondicherry* it was observed, "*it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein*". Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

22. If the freedom to pick and choose between two decisions of the Supreme

Court of India is bestowed on subordinate courts, it would run counter to Article 141 of the Constitution of India which simply and concisely states that - "the law declared by the Supreme Court shall be binding on all Courts within the territory of India". In *Government of Andhra Pradesh -vs- A.P. Jaiswal*, AIR 2001 SC 499 it has been enunciated that "consistency is the corner stone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedence, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice". *S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others*, reminds and reiterates that a "coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement."

23. *Union of India (UOI) and Another Vs. Major Bahadur Singh*, concerned the question of whether the decision of the Apex Court in *U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others*, established a binding precedent. Their Lordships clarified that the Court should abjure expounding the law without any discussion on the subject. The passages extracted above were once again reiterated. In *U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey*, the Court opined that where a decision is rendered merely on the factual matrix of the case it would not constitute a declaration of the law and would therefore not form a precedent. So very often the difference between an Order and a Judgment is lost sight of by us. Orders are restricted to the facts obtaining in that case alone and unlike Judgments have no significance in rem. Quite recently the three Judge Bench has condensed law on the subject succinctly in *Pyare Mohan Lal Vs. State of Jharkhand and Others*, to be that "in case there is a conflict between two judgments of this Court, the judgment of the larger Bench is to be followed." While so doing their Lordships had harkened back to the observations in the Seven Judge Bench decision reported as *A.R. Antulay Vs. R.S. Nayak and Another*, wherein the term "per incuriam" was explained to be those "decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong".

24. In *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, , the Constitution Bench has yet again clarified that non-reference to decisions of earlier Benches renders the decision per incuriam if they are in conflict with each other. This enunciation is also to be found in *V. Kishan Rao Vs. Nikhil Super Speciality Hospital and Another*,

25. In *Official Liquidator Vs. Dayanand and Others*, , the three Judge Bench had

to contend with the observations in U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, to the effect that the ratio in Secretary, State of Karnataka and Others Vs. Umadevi and Others, (Constitution Bench) "should not be applied by Courts mechanically as if it were an Euclid's formula without seeing the facts of a particular case..... as a little difference in facts can make Umadevi's case inapplicable to the facts of that case." In Dayanand, the Bench thereafter analysed several judgments of the Apex Court and eventually scathingly stated that the two Judge decision in Pooran Chandra Pandey "should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench." This homily is sufficient for disregarding the opinions of Benches which have not given due regard to decisions of larger Benches. It is in these circumstances that the decision in Ningappa has relevance and application to the facts of that case alone.

26. Reverting back, we are unable to appreciate the reliance on the decision of the Supreme Court in State of Rajasthan and Others Vs. D.R. Laxmi and Others, and B.K. Muniraju Vs. State of Karnataka and Others, In D.R. Laxmi, a writ petition came to be filed assailing the acquisition of land which had become final. It was in that context that the Court felt that there was inordinate delay in filing of the writ petition. Therefore, their Lordships observed that "After the possession of the land was taken..... the land stands vested in the State Government free from all encumbrances. Thereafter, there is no provision under the Act to divest the title which was validly vested in the State." These observations in fact militate against the case of the Appellants, inasmuch as, it is they who have failed to take legal recourse asserting their title or that they are immune to dispossess because of benefits of adverse possession. The ratio in Muniraju is the simpler that the terms of Grant must be looked at to determine alienability and it would be fallacious to raise only on the nomenclature adopted in the title. In this somewhat detailed discussion, which has relevance to the several appeals before us, we shall now consider and decide each of them.

27. In W.A. 1736/2009, the Appellants are the sons of Munivenkatappa who had purchased land measuring two acres, which had been granted to Kambojappa by an order dated 24.10.1949. This was effected through a registered Sale Deed dated 20.07.1966. The three Appellants herein have been in possession of the property since then, and state that they have carried out various improvements and erections thereon including a bore well and a pump house. The third respondent is the grandson of the original grantee Kambojappa and the son of his daughter Smt. Seethamma who had conveyed the said property to Munivenkatappa. The petition before the Assistant Commissioner was allowed and the sale was declared to be null and void with the further order for restoration of possession of the granted land. The appeal to the Deputy Commissioner came to be dismissed.

ii) Before the Writ Court, the Appellants contended that the grant was absolute

and unconditional; that the Authorities had not perused the certified copy of the grant order; that sub-rule (8) of Rule 43 of the Mysore Land Revenue Code (for brevity, "the Code") was amended on 04.08.1953 which provided for non-alienation for a period of 20 years only and by further amendment dated 06.07.1955, this period was further reduced to 15 years; that the Division Bench decision in Shripad Narayan Hegde Vs. State of Karnataka, was not followed and similarly the Division Bench decision in Pedda Reddy Vs. State of Karnataka, was also not applied by the Authorities.

iii) The writ Court noticed the ratio in Smt. Gangamma and Others Vs. The Deputy Commissioner and Others, to the effect that the onus of proof lies on the alienee to prove that the transfer of such land is not null and void. This conclusion was arrived at by the Division Bench in Gangamma keeping in perspective Section 4(1) and Section 5 of the PTCL Act. We affirm that the amendments mentioned above, in terms, saved the conditions of the Grant and did not have the effect of removing the embargo of non-alienation contained therein. We are also of the opinion that Shripad Narayan Hegde has no application since the present Grant was made on 24.10.1949. Rule 43 (8) of the Code, as it originally existed, was applicable and therefore, the granted lands were non-alienable. Placed in these circumstances, the Appellants canvassed that the doctrine of adverse possession insulated them from dispossession. This plea was also correctly rejected by the writ Court. We note that the Appellants have failed altogether to plead and prove the necessary ingredients of adverse possession. Most significantly, since the Appellants have relied on the conveyance deed executed in their favour by the daughter of the original grantee, they in fact seek to derive title from the Grantee and in such circumstances, cannot rely on adverse possession. Furthermore, once the Grantee himself had violated the terms of the grant, the consequential effect would be that the subject land would revert back to the State and adverse possession would have to be pleaded and proved against the State. This aspect of the case has not even been addressed by Appellants before any of the Authorities below.

The concurrent findings are affirmed and the Appeal is dismissed.

28. In W.A. No. 15448-55/2011 the factual matrix is not in dispute. On 19.01.1942 land measuring 02 acres 23 guntas was granted in favour of Bangaraiah, the grandfather of respondents 3 (a) to 3 (d) with a permanent non-alienation clause. The Appellant however, asserts that the Grant stipulated non-alienation for a period of 10 years only. Rule 43 (8) of the Mysore Land Revenue Code was amended on 04.08.1953 prescribing that the granted land could not be alienated in perpetuity. Therefore, the assertion of the Appellant that moratorium was 10 years only is not correct. However, in the facts and circumstances of the case, this controversy is irrelevant for the reason that, admittedly, the lands were mortgaged by Bangaraiah in favour of Guruvaiah on 13.03.1948; the mortgage appears to us to be irrelevant for the reason it is the common case that Bangaraiah, the original grantee, had sold the lands in favour of Mariappa on

13.11.1951. Therefore, even if we accept the version of the Appellant that the non-alienation period was for a period of 10 years only, the sale to Mariappa was in contravention of the terms of the grant. It appears that Mariappa sold the land on 16.12.1974 to Y. Gangadharaiah who thereupon formed a Layout. On 14.09.1979, an application was filed by the 3rd respondent-Kuppaiah, the son of original grantee which, after detailed enquiry, was allowed by the Assistant Commissioner who held that both the mortgage deed as well as the Sale Deed were null and void, as contemplated in Section 4(1) of the PTCL Act. The Deputy Commissioner rejected the appeal on 23.11.2010 and in the writ petition filed thereafter, the writ Court by its order dated 25.07.2011 confirmed the concurrent findings of the Deputy Commissioner and the Assistant Commissioner. So far as the facts of the case are concerned therefore, we are presented with the concurrent findings recorded at three stages of consideration.

ii). Shri. S.P. Shankar, learned Senior Counsel seeks to rely on Huchegowda, which we have already discussed above. We reiterate that in order to fall within the parameters of that judgment, it is essential for the Appellants to specifically plead and prove that their possession was continuous, exclusive, open and hostile to the title owner. The position in the present case is entirely contrary inasmuch as, the Appellants have claimed that they have derived title from the Sale Deed dated 13.11.1951 by which the land was transferred from the son of the originally grantee namely Kuppaiah to the vendee Mariappa after which Mariappa sold the land to Gangadharaiah who in turn sold it to the Appellants. If the initial sale was itself void and in contravention of the terms of Grant, all subsequent sales would also be contrary thereto and therefore, the land would revert to the State and plea of adverse possession would have to be pleaded and proved against the State. Mere occupation for howsoever long the period may be, would not establish adverse possession. Therefore, Huchegowda is of no assistance to the Appellants.

iii) It is next contended that the application for restoration of the land was filed by the heirs of Bangariah, the original grantee should have been dismissed on the ground of laches. We must immediately clarify that the concept of laches apply to writ petition and application seeking temporary injunction. The defence of adverse possession fructifies only if the continuous, exclusive, open and hostile possession is for a period of 12/30 years. The concept of laches has no application where a period of limitation has not been prescribed and therefore while it may be open to the writ Court to dismiss a writ petition on the grounds of laches even within a few months or a year, etc. of arising of the cause of action, or to reject the application seeking temporary injunction on the ground that it is belated and equities have arisen in favour of the opposite parties, it is impermissible to apply laches, and thereby ignore the period of prescription. The matter has already been discussed threadbare above and repetition would make the judgment avoidably prolix.

iv) At all the three stages of consideration it has been concurrently found that

the transaction of sale executed by the original grantee Bangariah on 13.11.1951 is completely violative of the terms of the grant and therefore, void. We affirm the findings as also the reliance placed on Section 4 and 5 of the PTCL Act. The appeals are accordingly devoid of merit and are dismissed.

29. In WA. No. 2128/2011, the factual matrix is not in dispute. Learned Counsel for the Appellant has contended that on 31.05.1995 the Appellant had purchased the subject land through a registered Sale Deed for valuable consideration from the original grantee Giriyaiah, and having immediately been put in possession, has invested huge sums of money on its betterment. The application filed by the Venkatachalamurthy, the son of the original grantee was allowed by the Assistant Commissioner on 16.05.2006 and this Authority had ordered for restoration of the land to his heirs of the original grantee. In the Appeal filed before the Deputy Commissioner the findings of the Assistant Commissioner were upheld by the Order dated 18.10.2010. However, the Deputy Commissioner rightly observed that since the granted land had been repeatedly sold, it should now vest with the State Government. The challenge by way of writ petition No. 36858/2010 was also futile in terms of the impugned order of the Writ Court dated 03.01.2011. We affirm the order of the learned single Judge holding that since the sale of the land had taken place in 1995, the provisions of the PTCL Act 1978 had been infringed and therefore, the sale was per se bad in law. It has also been pithily observed in the impugned Order that whenever the sale is set aside the purchaser is no longer concerned whether the land reverts to the grantee or his heirs, or is resumed by the State Government. Added to this, it is just and necessary to note that the Tahsildar, Maddur has on 07.02.2011 entered the name of the State Government in the revenue records for the year 2011-12. Reliance has been placed on the Order passed by the Apex Court dated 14.07.2011 in Ningappa -vs- Deputy Commissioner (Civil Appeal No. 3131 of 2007), which we have already discussed herein above. There are a series of decisions of the Hon"ble Supreme Court clarifying that the period of prescription for adverse possession against the State Government, assuming that the concomitants have been pleaded and proved, is 30 years and therefore, the doctrine of laches has no application. There are concurrent findings against the Appellant all throughout and no arguments have been raised before us/for us to arrive at a different conclusion. The appeal ought to be dismissed with exemplary costs, but considering the fact that we are not imposing any costs in other cases, we desist ourselves from doing so. The concurrent findings are affirmed. The appeal is devoid of merit and is dismissed.

30. In WA. No. 4574/2011, a parcel of land admeasuring 04-00 acres in Survey No. 22/2 of Chennasandra village, Uttarahalli hobli, Bangalore South Taluk was granted to Shettappa son of Kariyappa on 18.09.1944 by Grant Order No. DCD.1/44-45/SDO No. DIS, B-4/Dar.18/44-45. The survey records mention that "land out of this survey number was granted by darkasht for dry cultivation by Hon"ble Sub-Divisional Officer vide SDO. No. B4. Dar. 18/44-45. Measurements are made to the extent of the grant and recorded in the original copy". The

entries made in Mutation Register No. 1/67-68 is to the effect that "land is granted to Shettappa, S/o. Kariyappa, resident of Channasandra, vide No. DIS.B4/DAR.18/44-45, 18.09.1944." Despite these facts, the say of the Appellant is that the land was "originally belonging to Shri Shettappa". It is not in dispute that Shettappa had executed a Sale Deed on 21.08.1967 in favour of 4th respondent to an extent of 02 acres 05 guntas; thereafter by Sale Deed dated 07.01.1970 in favour of 5th respondent to an extent of 0-06 guntas; then by Sale Deed dated 22.05.1974 to an extent of 02-00 acres in favour of 6th respondent. These respondents thereafter executed Sale Deeds on 29.10.1976, 28.11.1984 and 30.08.1988 and eventually in favour of the Appellant on 17.12.1994, whereafter the Appellant is in possession and enjoyment of the entire land of 04.00 acres. The Assistant Commissioner, Bangalore south taluk, suo motu initiated proceedings under the PTCL Act and issued notices to all the persons including the Appellant's predecessor in interest namely, H.S. Rama Rao. The first salvo of litigation included a challenge to the vires of the PTCL Act which was unsuccessful in terms of *Manchegowda*. The Appellants have purchased the land after these events transpired and could not but had complete knowledge of the various transactions vis-a-vis the land. On 23.07.2007, the Assistant Commissioner, acting on the entries in the survey records as well as the mutation records, ordered the resumption of the land in favour of the original grantee or his legal heirs, because of violation of Section 4 and 5 (1) (b) of the PTCL Act. The Appeal to the Special Deputy Commissioner, Bangalore District was dismissed by an Order dated 16.03.2011. The Appellate Authority noted that there was no denial that the land in question was "granted land" in favour of Shettappa who belonged to a Scheduled Caste, and further that the Saguvali Chit came to be issued on 18.09.1944. On the strength of these contemporaneous documents, and in view of the Rule 43(8) of the Mysore Land Revenue Code 1888 (revised upto 13.02.1940), it was held that the grant enjoined and mandated non-alienation in perpetuity. The Deputy Commissioner applied the law in *Smt. Ramamma -vs- Deputy Commissioner, 1991 (3) Kar. L.J 24*. Violation of Section 4(1) of the PTCL Act was reiterated and it was concluded that since the first alienation itself was null and void, all the subsequent alienations during 1974, 1976, 1984, 1988 and 1994 were also void. These findings of fact have attained finality and no error of law or perversity can be detected. In the impugned order, the Writ Court has upheld the concurrent findings recorded by the Authorities below and consequently had dismissed the writ petition with costs of Rs. 10,000/-.

ii) The PTCL Act came into force on 01.01.1979. While it is arguable that the transactions which occurred prior thereto and which did not offend any of the terms of the grant were beyond the purview of the said statute, the transfers after 01.01.1979 must conform to Section 4(2) of the PTCL Act which mandates the obtainment of the Government's prior permission for transfer of any granted land. In the case in hand, the Sale Deeds are dated 28.11.1984, 30.08.1988 and 17.12.1994 and facially violate Section 4(2) of the PTCL Act, and are

consequently null and void. The Appellant should have applied for permission from the Government u/s 4(2), since it is beyond dispute that it was purchasing granted land under any of the sub rules of Rule-43. The arguments which have been addressed before us would then have been proffered before the Government and answered by it. Having failed to apply for permission u/s 4(2) of the PTCL Act; as was the statutory requirement, the Appellant is precluded from advancing these arguments before any of the authorities or Court below. The Appeal deserves dismissal on this short/primary ground alone.

iii) Learned Senior Counsel for the Appellant has argued extensively and in detail on the interpretation that has to be given to Rule 43 of the Mysore Land Revenue Rules framed u/s 233 of the Mysore Land Revenue Code 1888. These Rules have been amended from time to time including by the Mysore Land Revenue (Amendment) Rules 1960 which completely changed Rules 43 (1) to 43 M. The Karnataka Land Revenue Act 1964 repealed the Mysore Land Revenue Code 1888 and thereupon the Karnataka Land Revenue Rules 1966 and the Karnataka Land Grant Rules 1969 etc., came into force which is to be found in fascicule titled "Grant of Occupancy" [Section 58, 60 and 233 (h) and (n)]. It is necessary to reproduce Rule 43 as it existed at the relevant time i.e., as amended by the Government Order No. R2433-L.R. 104-30-7, dated 28th November 1931 for facility of reference -

43 (1) All 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 bona fide applicant who is an 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 ten acres in extent or RS. 200 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 twenty acres and the market value of the land is within Rs. 500. 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.

(2) The "upset price" shall not be arbitrarily fixed but shall represent the actual market value of the land as nearly as it can be ascertained by local enquiries and by the examination of records of sales of similar lands in the neighbourhood, and if necessary, of the registration statistics relating to them.

Amildars are empowered to sanction either free or for upset price to landless members of the Depressed classes, two acres of cultivable dry land, though the entire extent including the phut kharab when phoded may be in excess of two acres provided the value of the land does not exceed Rs. 25. The Sub-Division Officers may similarly grant lands not exceeding four acres in extent to landless members of the Depressed classes provided the value does not exceed Rs. 50.

(3) The Amildars should invariably obtain the orders of his superior officers in regard to the disposal of lands irrigated or likely to be irrigated by large irrigation projects. The Department of Public Works should, as soon as possible, after any project is taken up for investigation or consideration, notify to the Revenue Department either generally or specially, the land which will be affected by the project.

(4) In all cases of grant of occupancies whether for a price or not, a sum equivalent to the cost of the boundary marks which have been or may have to be constructed on the land shall be invariably collected from the grantees in accordance with instructions issued by Government from time to time. The Deputy Commissioner will, however, be allowed to waive this charge in cases of extreme poverty of the applicants.

(5) Notwithstanding anything hereinbefore stated, the Deputy Commissioner may, at his discretion, grant to applicants belonging to the depressed classes who are bona fide agriculturists or propose to cultivate the land themselves, lands at half the upset value, the amount being recovered in not more than five annual installments. Where half the upset price is below RS. 75 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. 75. In cases where the upset value does not exceed Rs. 75, he may waive the recovery of price altogether.

(6) Grant of lands to applicants of the depressed classes may be made on the following Shraya rates, as a further concession.

First year

:

Free of assessment

Second year

:

One-fourth

do

Third Year

:

Half

do

Fourth year

:

Full

do

(7) No single applicant or family shall be ordinarily given land exceeding five acres in extent or Rs. 100 in value, but where it is proposed to grant a larger extent or lands of a higher value, the sanction of the Revenue Commissioner or Government shall be obtained as in the case of lands given for upset price under other circumstances.

N.B - The concessions contemplated in the rule should be granted only to the members of the depressed classes who are regarded as Hindus.

Note - Depressed classes in the above paras include Adikarnatakas, Adidravidas, Banajaras, Voddars, Korachars, Koramars, Hill Tribes, Animists and members of the Pishari, Mochi, Iruliga, Dombar, Handijogi and Budubudike Communities.

(8) Occupancies granted to applicants belonging to Depressed classes under Rule 43 (5) above and those granted by Government free or 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 mutchalikas 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 Co-operative Society for the bona fide purposes of improving the land.

(9) (a) Lands containing ten or more sandal trees of over 12" in girth per acre should be reserved to Government or disposed of only in consultation with the Forest Department.

(10) Lands containing smaller number of such developed trees may be granted for cultivation under the Orders of the Deputy Commissioner, who before passing orders should get a complete list of both trees and plants of sandal in the land and consider the desirability or otherwise of granting the said land keeping in view the intention of Government to reserve all lands containing thick sandal growth.

In the case of grants to poorer classes, this condition may be relaxed by the Deputy Commissioners with the concurrence of the Conservator or the Chief Conservator of Forests, as the case may be, and the recovery of the present value of the bonus waived, on the grantee executing a mutchalika to the effect that he will have no claim to any bonus on account of sandal trees on the land and that he will take proper care to maintain the trees growth in good condition.

N.B.- The Sub-Division Officers are empowered to sanction either free or for upset price to landless members of the Depressed classes, two acres of cultivable dry land, though the entire extent including phut kharab when phoded may be in excess of 2 acres, provided the value of the land does not exceed Rs. 25.

iv) The argument of learned Senior Counsel for the Appellant is that since the Grant had been made by the Sub Divisional Officer it would fall under Rule 43 (2)

in respect of which no moratorium for transfer has been prescribed. It is contended that unlike Rule 43(1) and 43 (5), the land envisaged under sub-rule (2) is cultivable dry land, and the grant can be made even for free. Further, an attempt had been made by the learned Senior Counsel for the Appellant to unravel the rational behind these three provisions and his endeavour is to draw the distinction that so far as grants made under Rule 43 (2) are concerned they pertain to dry land which, theoretically would therefore not be freely and easily sellable. We are unable to appreciate this submission since Rule 43(8) clearly states that where a grant is made free of upset price or reduced upset price to poor and landless people, it shall not be alienated and could have exempted from its sweep foregoing sub Rule (2), but conspicuously does not do so. We therefore, find no merit in the contentions urged by the learned senior counsel. The writ Court has found no foundation for assuming that the Grant was made under Rule 43 (2) and has rightly rejected the arguments, as the Appellate Authority, had also done. The learned Single Judge rejected this as the only possible assumption, only because grant has been made by the Sub Divisional Officer. The emphasis on the other hand has been laid on the original grantee belonging to the depressed class (now the Scheduled Caste).

v) The decision in Papaiah Vs. State of Karnataka and others, really sounds the death knell to the Appellant's cause.

Five acres of land were allotted on 13.02.1940 under Rule 43(8) of the Mysore Land Revenue Code. The application under Sec. 4 and 5 of the PTCL Act for restoration of the land was filed on 22.04.1984, i.e., after 45 years of the Grant, and after 28 years of the execution of the Sale Deed on 19.12.1958. We can do no better than rely on paragraphs 8 to 10 of the decision extracted supra (See pp 33-35 above).

vi) An argument of desperation has then been raised founded on an overwriting on the date i.e., 23.03.2011 or 23.02.2011. Based on this it is contended that the hearing was preponed and was concluded behind the back of the Appellant. It seems to us that the original date must have mentioned the month of February which was changed to the month of March; Order is dated 16.03.2011. Therefore, no credence could be attached to the said submission.

vii) As has been repeatedly held by us, the burden on proving the alienable character of the Grant land lies on the purchaser; there is a rebuttable presumption to the contrary. The Assistant Commissioner, the Deputy Commissioner being the Appellate Authority, and the learned single Judge have concurrently concluded that the burden of proof has not been discharged by the Appellant. No material has been placed before us to persuade us to the controversy. It has also been argued that the observations in the Order passed in Ningappa -vs- Deputy Commissioner, Civil Appeal No. 3131 of 2007 would enure to the benefit of he Appellant. In the wake of the plentitude of precedents in which the law has been discussed in detail we are unable to apply mere observations made in an Order dated 14.07.2011 of a two Judge Bench, to which

his Lordship Katju. J, was privy, which has been palpably pronounced en passant. If this order is to be accorded precedential status, it is facially per incuriam, ironically to the elaboration and enunciation of law available in P.T. Munichikkanna Reddy and Others Vs. Revamma and Others, to which His Lordship Katju. J., was a party. Our attentions has been drawn to Kunhayammed and Others Vs. State of Kerala and Another, to bring home the difference between the dismissal of the SLP before and after the grant of leave, regardless of whether it is a non-speaking order or a judgment. Assuming that Ningappa is a judgment, we hasten to clarify that it is not reconcilable to a series of earlier judgments and is therefore per incurrium.

The Appeal is devoid of merit in view of the concurrent findings against the Appellant. Costs should be imposed in the normal course but we desist from doing so.

31. In WA. No. 213/2011 & connected cases, the Appeals have a common set of facts leading understandably to similar if not identical legal posturing. The Assistant Commissioner has noted from the Saguvali Chit dated 27.07.1979, preceded by an allotment order dated 19.06.1979, that the land in Survey No. 6 measuring 01 acre 20 guntas situated in Singohalli village, Kundana Hobli, Devanahalli Taluk had been granted to ten persons, including Kadeerappa and Erappa. Writ Appeal No. 213/2011 has been filed by Kimji Patil whose case is that he had purchased a parcel of this land from the grantee and predicated on this conveyance, he has been in possession ever after. Kadeerappa the legal heir of the original grantee had initiated proceedings under the PTCL Act for redemption/restoration of the land complaining that it has been sold/purchased in violation of the provisions of that statute. Writ Appeal No. 214/2011 has also been filed by Kimji Patil against the legal representatives of Smt. Mudduramma who was similarly granted land by an order dated 19.06.1979 followed by Saguvali Chit dated 27.07.1979 contending inter alia that there was covenant of non-alienation for a period of 15 years only. The same Appellant namely Kimji Patil has also filed Writ Appeal No. 215/2011 inter alia, against the legal representative of the original grantee namely, Muniyappa. In all these appeals, the Appellant has himself pleaded that the grantees belonged to the Scheduled Caste of Karnataka, and that the grant prohibited alienation of the land for a period of 15 years. This is also the position obtaining in Writ Appeal No. 216/2011 with slight difference that the 4th respondent Muniyappa is the son of the original grantee late Yellappa, and in Writ Appeal No. 217/2011, the 4th respondent is the legal heir of the original grantee late Sathyamma.

ii) In all these matters, the Assistant Commissioner, Doddaballapur Sub-Division, Bangalore allowed the restoration application filed by the original grantees, holding that the transfer had indeed violated Section 4 of the PTCL Act, 1978 and therefore, was null and void; that the grantees/petitioners belonged to the Scheduled Caste of Karnataka; and that the grant made by the State was in the nature of free disposition of land. The appeal before the Deputy Commissioner,

Bangalore Rural district came to be allowed, reversing the finding of the Assistant Commissioner. On application of the law enunciated in Nagendrappa -vs- Deputy Commissioner ILR 2002 KAR 2670 to the effect that if the original order granting the land was not available then, contemporaneous documents such as the register maintained for the purpose have to be looked into; and that the validity of the sale cannot be decided on presumptions and restoration of the land to the State or the original grantee ought not to be automatically made. Reliance was also placed on Chowdamma which had concluded that since only a Xerox copy of the Saguvali Chit has been produced, the Assistant Commissioner's verdict was not sustainable. This led to filing of the Writ Petition Nos. 369/2010, 370/2010, 376/2010, 376/2010 and 372/2010 by the heirs of the grantees which came to be allowed by the writ Court, giving rise to these writ appeals.

iii) Having heard the Learned Counsel for the parties, we find ourselves in complete agreement with the impugned decision of the writ Court which in effect affirms the Order of the Assistant Commissioner, which was set aside on what we see as spacious and legally unsustainable grounds by the Deputy Commissioner. The Learned Counsel for the Appellant has relied on (i) G.N. Vemareddy Vs. State of Karnataka and Others, (ii) Basappa Vs. Special Deputy Commissioner, (iii) G.S. Virupakshappa Vs. Sri Hanumantha and Others, (iv) Smt. Chowdamma Vs. The Special Deputy Commissioner and Others, (v) Nagendrappa and Another Vs. Deputy Commissioner, Davanagere and Others, (vi) Pedda Reddy Vs. State of Karnataka, and (vii) G.K. Mallikarjunappa Vs. The Deputy Commissioner and Others, each of which has been duly discussed hereinabove. We are of the considered view that the Appeals are totally devoid of merit. In all of them admittedly the transfers were sought to be achieved by several Sale Deeds of 1995, 1996, 1997 and 2005 i.e., after the PTCL Act 1978 had come into force. This being the position, Section 4 (2) has been conspicuously ignored and on this short ground, all the sale transactions are in contravention of Section-4 of the PTCL Act and have to be struck down. It has been contended that duty is cast on the seller to obtain prior permission of the Government, a bare reading of the provisions makes it manifestly clear that requirement/obligation also rests on the seller.

iv) There cannot be any cavil that the three stipulations in Pedda Reddy have to be complied with, but with the caveat that this action is not the responsibility of the seller alone. The onus of proof was on the Appellant to prove all three points and there is no iota of evidence in that respect in the case on hand. As has been held by the Supreme Court, the legality of the restrictions or covenants contained in the Grant or Saguvali Chit can be questioned or challenged by the grantee alone. The Assistant Commissioner has presumed, as he must do, that the possession as also title of the Appellant was not in consonance with the law. In Dharma Naika -vs- Rama Naika (2008) 14 SCC 517, it has been held by the Supreme Court that an agreement of sale of granted land executed even after the period of embargo stipulated in the condition of grant, albeit before the commencement of the Act followed by the execution of the Sale Deed after the

commencement of the Act would be null and void by operation of Section 4 of the PTCL Act, if the prior permission of the Government had not been obtained. We must immediately refer to the decision of the Division Bench in Bhemanna Vs. Deputy Commissioner, Chitradurga District and Others, to the effect that obtainment of permission u/s 4(2) is necessary even though the transfer takes place beyond the non-alienable period. A fortiori where the transfer is contrary to the terms of the grant Section 4 cannot be ignored.

v) Left with no other arguments, the Learned Counsel for the Appellant endeavours to argue that the Appellant had not been served with notice in the case covered in W.A. No. 213/2011. However, there is a clear recording in Writ Appeal No. 215/2011 to the effect that notices had been refused. In any event, the Appellant is the common factor in the entire litigation and therefore it is specious to contend that he was ignorant of the claim covered in Writ Appeal No. 213/2011, whilst he was aware of and prosecuted all the others.

The Appeals are devoid of merit and are dismissed. The concurrent findings are affirmed. Costs should be imposed, but we refrain from doing so.

32. In WA. No. 5565-66/2011, the facts in these Appeals are that land measuring 1 acre 32 guntas in Sy. No. 65, was granted to Kadirappa on 02.05.1951 followed by issuance of Saguvali Chit on 31.05.1951. The Appellants contend that this Grant was made under the "Grow More Food" scheme ("GMF" Scheme). This land was purchased by the second Appellant, Ramakrishnaiah from Kadirappa vide Sale Deed dated 18.08.1967. Another parcel of land bearing Sy. No. 50/4, measuring 2 acres was subsequently granted to Kadirappa on 17.04.1962. These lands were in Chikkanahalli Village, Sira Taluk, Tumkur District. This parcel of land was purchased by the first Appellant, Doddathimmaiah from Kadirappa by registered Sale Deed dated 02.09.1968. The widow of Kadirappa namely Lingamma, initiated action under the PTCL Act before the Assistant Commissioner in respect of both the parcels of land and both the Sale Deeds. By order dated 27.04.2002, the application was dismissed. Lingamma thereafter, filed PTCL No. 10/2007-08 before the Deputy Commissioner, Tumkur, which came to be allowed by Orders dated 29.10.2010. The submission of the Appellants before us that appeal was time barred did not find favour with the Deputy Commissioner. The writ Court, in the impugned order has rightly observed that the order of the Deputy Commissioner is laconic and fails to articulate the reasons which persuaded him to accept the appeal, save a bare mention of citations. Nevertheless, while affirming the order of the Deputy Commissioner, the writ Court has taken note of the fact that the lands have been granted in Karnataka to persons belonging to the depressed classes belonging to the SC/ST who have been exploited from time immemorial. The learned Single Judge has also observed that the object of the PTCL Act is to ensure that these grantees, largely illiterates, are not once again exploited by inducing them to sell their lands. Keeping these facts in mind, the writ Court had not considered it necessary to go into the objections of the Appellants (a) that the appeal was

time barred and sufficient reasons have not been disclosed by the Deputy Commissioner for condoning delay and (b) that the Deputy Commissioner had not adequately disclosed the reasons which prevailed upon him to allow the appeal. We may reiterate that the PTCL Act bestows suo motu powers on the Authorities to initiate action for resumption of possession in all cases where the transfer of granted land is in the teeth of the terms thereof.

ii) The matter has been argued before us in detail. Firstly it is contended that since the transfer of the lands covered by the Saguvali Chit is from Scheduled Caste to Scheduled Caste, the provisions of PTCL Act are not attracted. In this regard, reliance has been placed on the Single Judge Judgment in Shivalingamma vs. Deputy Commissioner 1991 (2) KLJ 421. The learned Judge has made reference to a similar order passed by him earlier which came to be approved by the Division Bench in Siddamma vs. Chikkegowda & Others 1991 (1) KLJ 210. It is no doubt true that Shivamma was approved by the Division Bench in Siddamma but not on the proposition that granted land can be freely transferred/sold to another person belonging to SC/ST. In Chandra Naik vs. State of Karnataka (Writ Appeal No. 16380/2011) decided on 10.11.2011, this very argument was rejected by reference to Rule 29-A of the Karnataka Land Grant Rules, 1969 which clarifies that a conveyance/alienation inter vivos or between persons of Scheduled Castes/Scheduled tribes would not be protected with effect from 26.09.1974. Shivalingamma therefore does not declare the correct position of law.

iii) So far as the first grant is concerned, since it occurred on 2.5.1951, it was covered by a non-alienation clause in perpetuity. The second grant carried an embargo of alienation for a period of 15 years as per Rule 43-G(4) of the Mysore Land Revenue Code, 1988. Both the transactions therefore, offend the terms of the Grant.

iv) We may also highlight that Sec. 3(1)(b) of the PTCL Act explicitly states that "granted land" means any land granted by Government to a person belonging to any 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. In any event, the Appellants do not have requisite locus standi to challenge any of the terms of the grant as has been clarified in Guntaiah by the Supreme Court. We therefore, affirm the conclusions of the Deputy Commissioner as well as the writ Court in impugned order.

The appeals are accordingly dismissed.

33. In WA. No. 4428/2011, the Appellant before us has concurrent findings against him rendered by the Assistant Commissioner, thereafter by the Deputy Commissioner and finally even by the learned single Judge exercising writ jurisdiction, and accordingly the finding of facts have attained finality. Two acres nine guntas of land in Sy. No. 143 (new no. 197) and 02 acres in Survey No. 143 (new No. 174) situated at Seekallu village, Kasaba hobli, Chinthamani taluk of

Kolar district was granted in favour of A.K. Muniveeriga on 16.06.1928 and 08.04.1933 respectively. These lands were sold by his daughter Lakshmamma during the minority of his grand daughter Shanthamma. Before the expiry of three years from the date of sale, Shanthamma filed an application under PTCL Act for redemption and restitution of the granted land which came to be allowed by the Assistant Commissioner on 11.04.2008 on the grounds that the transaction violated Section 4 (2) of the PTCL Act. The appellate authority has noted that on examination of the documents, indisputably indicates that the land was granted to Muniveeriga who belonged to a Scheduled caste. He further held that since the sale took place subsequent to the PTCL Act coming into force on 01.01.1979, it was void by operation of the statute. Accordingly, as per Section 5(1)(b) of the PTCL Act, the Assistant Commissioner ordered restoration of these lands to the applicant being the legal heir of the original grantee. In appeal the Deputy Commissioner was not persuaded that the subject land does not fall within the meaning of "granted land" as defined in Section 3(b) of the PTCL Act; that the revenue records for the year 1970-71 recorded that they had been obtained "through purchase". Reliance was placed on 1991 (2) Kar. L.J 449, 2001 KCCR 104 and 2003 (3) Kar. L.J 158 rendered by a single Judge of this Court, which, however, failed to persuade the Deputy Commissioner to accept the Appeal. The finding that the grant prohibited alienation for a period of 10 years and 20 years respectively was confirmed. These finding of facts are final and in any event copies of the grant certificates were filed in the writ Court by the respondent and testifies to this position. In the impugned order the writ Court found no reason whatsoever to disturb the finding of facts recorded by the authorities.

ii) We have heard the learned Senior Counsel for the Appellants who has however failed to persuade us to take a view contrary to the three forums below. We may reiterate that the Supreme Court has clarified in Dharma Naika that the provisions of the PTCL Act apply even in those cases where granted lands have been sold even after the expiry of the non-alienation period after the enforcement of the Act. In this case, the sale in favour of the Appellant was executed on 12.08.1993 much after coming into force of the PTCL Act. The Appellant ought to have obtained prior permission of the Government for the transfer by virtue of Section 4(2) of the PTCL Act. Paragraph-19 of the said Judgment which completely demolishes the argument proffered on behalf of the Appellant which reads thus:

19. Having heard the Learned Counsel for the parties and after examining the objects and reasons and the relevant provisions of the Act, as noted herein earlier, in depth and in detail, we have no hesitation to hold that the submissions of the Learned Counsel for the Appellant cannot at all be accepted. It is true that the agreement for sale in respect of the granted land was executed before the commencement of the Act. It is also an admitted position that "transfer" under the Act includes an agreement to sell as well. Keeping this fact in mind, let us now see whether in view of Section 4 of the Act, the transfer of the land, in

respect of which the agreement for sale was executed before the commencement of the Act but which was effected after the commencement of the Act by execution and registration of the Sale Deed, could be said to be null and void. Section 4(1) of the Act in clear terms provides that notwithstanding anything contained in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of the Act in contravention of either (a) the terms of grant of such land; or (b) the provisions of the law providing for such grant; or (c) sub-section (2) of Section 4 of the Act, 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. Therefore, u/s 4(1) of the Act, it can be safely concluded that this provision declares any transfer of granted land made either before or after the coming into force of the Act, to be null and void if it is in contravention of the conditions specified therein.

In *Harishchandra Hegde Vs. State of Karnataka and Others*, applying the law enunciated by the Apex Court in paragraph-21 in *Manchegowda*, the Supreme Court opined that "the consequences contained in Section 5 of the Act apply automatically in the event an order u/s 4 of the PTCL Act is passed. Section 4 of the Act contains a non obstante clause. The said provision would, thus, apply notwithstanding anything contained in any agreement or any other Act for the time being in force. The Act is a special Act whereas the Transfer of Property Act is a general Act and in that view of the matter also Section 51 of the Transfer of Property Act will have no application and the consequences contained in Section 5 would prevail, particularly having regard to Section 11 of the Act.

iii) As has been discussed threadbare herein above, the burden of proving that the sale was not of granted land lies on the purchaser, in the light of Section 5(3) of the PTCL Act. The appeal is also devoid of merit, in view of the concurrent finding against the Appellant. Costs should be imposed in the normal course but we desist from doing so.

34. In WA. No. 996/2011, the appeal seeks to assail the concurrent findings of the Assistant Commissioner and the Deputy-Commissioner in appeal, as also of the learned single Judge, exercising writ jurisdiction. After perusal of the records the Assistant Commissioner recorded that 02 acres of land in Sy. No. 7, Block No. 8 of B.K. Palya village, Jala Hobli, Bangalore North Taluk was granted in favour of P.G. Narayanaswamy who belonged to Adi Karnataka caste which has been duly accorded the status of a Scheduled caste. It has also been noted that different survey numbers have been allotted to this land as well as the adjoining parcels of land. On 06.04.1992, Narayanaswamy sold the grant land to Siddaraju who in turn further sold it to Shashishekhar on 07.03.1995. It is not in dispute that on 15.04.1996, the granted land was converted into non-agricultural purposes. The Learned Counsel for the Appellant has contended that notice had not been issued to the Appellant; but it has conceded that the notices were issued to Shashishekar through paper publication and that at the relevant point of time, the revenue records were standing/containing in the name of Shashishekar and

not the Appellant company, which is a Developer. It would be fair to assume and draw an inference that the Appellant being a Developer would have knowledge of the pendency of the proceedings; and in any case it must be held to have constructive notice thereof. It is also worthy of emphasis that even in the appeal before the Deputy Commissioner, the stand of the Appellant was not that there was no grant in favour of Narayanswamy. We also underscore the finding of the Deputy Commissioner to the effect that the Saguvali Chit had been produced by the respondent but reject the contention that the original grant records had not been produced. It is clear that the existence of Saguvali Chit itself is adequate and strong proof that the land in question were grant lands, especially in view of undisputed position that the contesting respondent belonging to Adikarnataka community which has been duly recognized as a Scheduled Caste. We reiterate that in consonance with the provisions of Section 5(3) of the Act the burden of proving the three factors mentioned in Pedda Reddy lies on the purchaser-Appellant. In the absence of discharging that burden by the Appellant by adducing evidence, a presumption will follow in favour of the original grantee. An attempt was also made before us to plead the question of latches. In view of the detailed discussion on this aspect of the law, we are unable to accept it.

The appeal is devoid of merit, in view of the concurrent finding against the Appellant. Costs should be imposed in the normal course but we desist from doing so.

In WA. No. 4853/2011, the litigation has been pending since 30.09.1993. A parcel of the land was granted to Thimmabovi by issuance of a saguvali chit dated 7.11.1957. At that time alienation was prohibited for a period of 15 years as per Rule 43(8)(a) of the Mysore Land Revenue Rules as amended by Notification dated 06.07.1955. It is no longer open to argue in view of the Division Bench observations in G.S. Virupakshappa Vs. Sri Hanumantha and Others, holding that Bhovi/Bovi caste is included as a Scheduled Caste in Karnataka and that if the original grantee has been treated as such, "it would not be proper to reopen that issue and give a different finding". A single Bench Decision in Basappa -vs- Special Deputy Commissioner is overruled since it holds that the purchaser can assail/assert that the upset price in the grant was in actuality, the market price. This exercise can be undertaken by the grantee only. There are concurrent findings to the effect that Thimmabovi belonged to the Bovi community which has been duly accorded Scheduled Caste status; his widow Dasamma and son Dasa Bovi sold this land to Chikkamma on 19.03.1965 and possession was duly transferred. On 30.09.1993 Dasa Bovi initiated legal recourse for repossession/restoration of the land under the provisions of the PTCL Act. On 03.08.1995 the Assistant Commissioner rejected the application by applying the principles of adverse possession and the Appeal to the Deputy Commissioner was dismissed on 21.01.1996. Thereupon, the grantee's son filed a writ petition which came to be allowed on 28.01.1997 by remanding the dispute for fresh consideration. Thus, started second phase of the litigation. This time around, the Assistant Commissioner passed an order dated 28.03.2010

holding that since the sale had taken place within the non-alienation period of 15 years, there was a clear infraction of Section 4(1) of the PTCL Act and the land was ordered to be returned to the heirs of the original grantee by virtue of Section 5 of the PTCL Act. While the application for restoration of land was pending before the Assistant Commissioner, Chikkamma, the purchaser/Appellant died on 14.06.2010. The Deputy Commissioner has noted this contention but did not think it necessary to remand the matter back to the Assistant Commissioner. In essence, all the conclusions arrived at by the Assistant Commissioner were affirmed by the Deputy Commissioner, by his order dated 04.01.2011. The second writ petition, this time by the purchaser, turned out to be futile exercise, as it was dismissed on 24.05.2011, affirming the conclusion of the two authorities below. Hence, the present appeal.

ii) The first contention is that since the Appellant Chikkamma died during the pendency of the restoration application filed by the heirs of the original allottee and before it came to be allowed on 28.03.2010 by the Assistant Commissioner, the order has to be set aside. This contention had been rejected by the Deputy Commissioner as well as by the writ Court on the ground that the provisions of the CPC do not apply in their full rigour to the proceedings under the PTCL Act. We find no error in this conclusion especially keeping in perspective the fact that u/s 5 of the PTCL Act suo motu powers have been conferred on the Assistant Commissioner for taking possession of the land, after evicting all persons in possession thereof, if the said Authority is satisfied that transfer of any granted land is null and void and alienated in contravention of the terms of the grant. So far as the suo motu power is concerned, no period of limitation has been prescribed. The legal position is that the true owner, in this case the State, can always take appropriate steps for resumption of possession unless this relief is barred. The relief becomes barred only in the event that adverse possession is established. The Appellants who are the heirs of the purchaser have neither pleaded nor proved the essential ingredients of adverse possession. It is significant that the dispute was already sub judice before the expiry of the thirty years from the date of purchase. We hasten to reiterate that the legal position is not that after the expiry of thirty years, the plea of adverse possession is automatically established. The second ground advanced before us is that the application filed by the heirs of the original allottee for restoration of land was barred by delay and laches. We have already observed that these principles are not attracted to annihilate the provisions prescribing the period of prescription. The learned Government counsel is fully justified in placing reliance on paragraph-8 of Huchegowda, which we have already extracted above.

The appeal is devoid of merit and is accordingly dismissed.