

(2007) 03 KAR CK 0018

In the Karnataka High Court

Case No : Regular Second Appeal No. 2166 of 2006, Writ Petition No's. 39159 of 2002, 12895 of 2005 and 4335 of 2006 and CRP No. 62 of 2005

The State of Karnataka

APPELLANT

Vs

H.B. Munivenkatappa (Since dead by his L.Rs. A. Shakuntala and Others) represented by GPA holder Sri M. Mohansundar

 The State of Karnataka Vs H.B. Munivenkatappa (Since dead by his L.Rs. Shakuntala and Others)
 Smt. Shakunthala and Others Vs The Special Deputy Commissioner and The Tahsildar
 Shri Boraiah Vs H.B. Munivenkatappa (Since dead by his L.Rs. Shakuntla and Others)

RESPONDENT

Date of Decision : 08-03-2007

Acts Referred:

Karnataka (Personal and Miscellaneous Inams Abolition) Act, 1954 — Section 3 (1) (b), 9, 9 (1) (i)
Limitation Act, 1963 — Section 5

Citation : (2007) 4 KarLJ 439

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : R.K. Hatti, HCGP, for the Appellant; C.B. Srinivasan and K.G. Sadashivaiah for S and S Associates, for the Respondent

Judgement

N. Kumar, J.—This second appeal is preferred by the State of Karnataka and its officials challenging the Judgment and Decree passed by the Lower Appellate Court in R.A. No. 38/2004 wherein it declined to condone the delay in preferring the appeal and consequently dismissing the appeal.

2. The only substantial question of law that arise for consideration in the second appeal is:

Whether the Lower Appellate Court has properly exercised the discretion in refusing to condone the delay in preferring the appeal in the light of the law declared by the Supreme Court and consequently dismissing the appeal?

3. The facts leading to the present litigation are as under:

The subject matter of these proceedings is land bearing Sy. No. 54 measuring 11 acres 20 guntas situated at Pattandur Agrahara village. As per the survey records it is shown as Sarkari Kere (halla), Jodi inam village from the year 1860 itself, One Gundu Rao, the jodidhar of this land sold the same to Sri. Muniswamappa son of Muniyellappa who in turn sold the same to another Sri. Muniswamappa son of Siddanna. Subsequently, it was conveyed to one Shamanna Gowda who in turn sold to Thimmaiah @ Thimmareddy. It is from him Captain Armugam Pillai Thyagarajan purchased on 7.11.1947. The said jodi inam village including the subject matter of these proceedings vested with the Government of Karnataka under the provisions of the Karnataka (Personal and Miscellaneous) Inams Abolition Act, 1954, for short hereinafter referred to as "the Act" with effect from 1.2.1959. It is after vesting that H.B. Munivenkatappa, the original plaintiff purchased the aforesaid land under a registered sale deed dated 27.12.1960 from Captain Armugam Pillai Thyagarajan.

4. One Smt. Ramakka wife of Shikari Muniyappa and Sri. T. Venkatappa son of Thimmareddy had filed Cases No. 121/1959-60 and 131/1959-60 claiming occupancy rights in respect of the aforesaid land before the Special Deputy Commissioner for inams. The said applications were dismissed on the ground that the said land is a tank bed and also reserved land. Captain Thyagarajan also filed an application claiming occupancy rights before the Special Deputy Commissioner which was numbered as case No. 34 of 1976. The same was also rejected on the ground that the schedule land is a tank bed which cannot be re-granted. All these orders rejecting the claims have become final.

5. By Act 26 of 1979 which came into force from 1.5.1979 the power to grant occupancy rights in respect of claims under the Act was conferred on the Tribunal constituted under the provisions of Karnataka Land Reforms Tribunal. The case of the plaintiff late H.B. Munivenkatappa is, that he filed an application for grant of occupancy rights before the Tribunal, The tribunal considered the said claim and by an order dated 27.12.1980 granted occupancy rights in respect of the schedule land under the provisions of the Act. In terms of the order, when a request was made by H.B. Munivenkatappa for mutating his name in the revenue records the authorities declined to enter his name. Therefore he was constrained to file a suit in O.S. No. 394/1993 on the file of the Addl. Second Munsiff, Bangalore, for the relief of declaration and permanent injunction declaring that the report and endorsement issued by the second and third defendants respectively are null and void ab initio and to declare that the suit schedule property is a hiduvali land and not a tank bed as alleged by the defendants and also declare that the plaintiff has perfected his title by way of adverse possession in respect of the schedule land and to grant permanent injunction restraining the defendants, their agents, supporters or any other person on their behalf from interfering with the plaintiffs possession and enjoyment of the suit schedule property.

6. After service of notice, the suit was contested by the defendants. In the written statement filed by the Government after admitting the alienations referred to in the plaint it was specifically contended that the applications filed by persons claiming to be interested in the land for grant of occupancy rights was rejected by the Special Deputy Commissioner (Inams) Bangalore. Even the application filed by Captain Thyagarajan Pillai was also rejected. As the land vested with the Government as on 4.10.1950 Captain Thyagarajan Pillai had no title or interest to alienate as on the date of the sale i.e., 26.12.1960. The application filed by Thyagarajan Pillai was rejected since occupancy rights cannot be conferred in respect of communal land, waste land, gomal land, tank bed etc. However, they admit grant of land by the Land Reforms Tribunal in favour of the plaintiff, and contend that steps are taken to challenge the said order. As the suit land was a "Sarkari Kere" they assert that the suit schedule property is a Government land and not a hiduvali land. It is a Government property. Therefore they sought for dismissal of the suit.

7. Trial court framed as many as eight issues. On behalf of the plaintiff, his power of attorney holder was examined as P.W-1 and a witness was examined as P.W-2 and produced 30 documents which were marked as Exts. P-1 to P-30. On behalf of the defendants, the Tahsildar was examined as D.W-1. No documents were produced. The trial court on appreciation of the oral and documentary evidence on record held that the suit schedule property is hiduvali land and not a tank bed. Plaintiff is the owner of the suit schedule property by virtue of the order of the Land Tribunal and therefore the defendants were restrained by an order of permanent injunction from interfering with the plaintiff's possession and enjoyment of the suit schedule property. The suit in respect of other reliefs was dismissed. This judgment was delivered on 24.1.1995.

8. The legal heirs of late Munivenkatappa on 7.2.2001 addressed a letter to the Tahsildar requesting for change of katha in their favour as their father H.B. Munivenkatappa had died leaving behind them as the legal heirs. In the said letter they clearly referred to the judgment and decree referred to supra on the basis of which their father H.B. Munivenkatappa had been declared to be the owner. Again on 9.4.2001 a reminder was sent by them demanding action in accordance with the representation made by them. When the respondents did not comply with the said demand, the legal heirs of H.B. Munivenkatappa filed Writ Petition No. 17217/2001 for a writ of mandamus directing the respondents to consider their application for mutating their names in the revenue records in terms of the aforesaid decree. The said writ petition was allowed by order dated 20.4.2001 issuing direction to the authorities to consider their representation. On 9.8.2001 one more reminder was issued by the legal heirs of H.B. Munivenkatappa enclosing a copy of the judgment and decree in O.S. No. 394/1993 and also the order in W.P. No. 17217/2001. The Tahsildar who considered the said representation after referring to the aforesaid judgments and orders rejected their request and declined to change the katha in their name. In those circumstances, the L.Rs. of H.B. Munivenkatappa filed Execution Petition No.

84/2001 for execution of the decree passed in O.S. No. 394/1993. The judgment debtors contested the matter. The trial court held an enquiry. Thereafter on 19.9.2003 the Executing Court passed an order to the effect that the judgment and decree passed in O.S. No. 394/93 has become final. There was no reason for the judgment debtors to violate the decree. It amounts to disobedience of a lawful decree passed by a competent Civil Court. Therefore it ordered for arrest of the judgment debtors for violation of the decree. Challenging the aforesaid order Writ petition No. 45240/2003 was filed before this Court. On 28.10.2003 the Divisional Commissioner, Special Deputy Commissioner and the Tahsildar were present before court. They undertook to comply with the terms of the decree. On their undertaking the arrest warrant issued was stayed.

9. In the meanwhile, this Regular Appeal No. 38/2004 was preferred. On 27.8.2004 taking note of the subsequent event, namely, preferring an appeal challenging the judgment and decree of the trial court, final orders were passed in W.P. No. 45240/2003 and a direction was issued to the lower Appellate Court to dispose of the appeal expeditiously. W.P. No. 12895/2005 is filed for setting aside the judgment and decree and execution of arrest warrant arising out of O.S. No. 394/1993 and is pending consideration and the same is also listed along with this appeal. CRP No. 62/2005 was filed by the appellants herein challenging the judgment and decree of the lower Appellate Court dismissing the appeal on merits which is also listed along with this appeal. W.P. No. 4335/2006 is the writ petition filed by Shri. Boriah, Special Tahsildar of K.R. Puram, challenging the arrest warrant issued against him in disobedience of the judgment and decree in O.S. No. 394/1993, which is also listed along with this appeal. W.P. No. 39159/2002 is the writ petition filed by the L.Rs. of the plaintiff seeking to set aside the order of the Tahsildar as well as the Deputy Commissioner by which they declined to give effect to the judgment and decree in O.S. No. 394/93, which is also listed along with the appeal. As the disposal of all these writ petitions is dependant on the order to be passed in this second appeal, the second appeal was taken up for consideration first.

10. At the time of hearing of the appeal and the connected writ petition from time to time certain directions were issued by this Court. First of such orders was passed on 13.12.2006 directing the respondent in the appeal to produce the certified copy of the order of the Land Reforms Tribunal on which he relies on. The learned Government Advocate was directed to produce the affidavit of the Chief Secretary stating that there was no such proceedings at all which culminated in the order of the Land Reforms Tribunal, the book maintained by the Tribunal showing the number of cases dealt by them during the relevant period and also to furnish particulars of Chairman and Members of the Land Tribunal on the day the said order was passed. They were also directed to produce the legal opinion issued by the learned Government Advocate who handled the matter in the trial court and the decision taken by the higher authorities, if any, with copies. On 18.12.2006 in pursuance of the aforesaid order the learned Government Advocate has filed the affidavit of the Chief

Secretary informing the court that there is no order passed by the Land Tribunal on 27.12.1980 conferring occupancy rights as contended by the respondents. Time was granted to produce the other materials. On 20.12.2006 the learned Government Advocate along with the memo produced certain documents and also produced the original ledger of Form No. 7, Respondents" counsel filed an affidavit denying the allegations made by the Chief Secretary in her affidavit. They also filed a memo producing certain certified copies and requesting the court to call for the records in RSA No. 421/2002 and Execution No. 84/2001. The Court office was directed to put up these records. The learned Government Advocate was directed to file an affidavit of a responsible officer stating, who has made entries in the register of Form No. 7 filed from pages 100 onwards. The Government Advocate was also directed to find out whether there is any separate register under the Inams Abolition Act and also to produce the said records.

11. I have heard the learned Counsel for the parties, perused the records and also the records produced in pursuance of the orders passed by this Court.

12. Learned Counsel for the appellant contended that the present appeal is one of those rare cases where, by inaction, collusion, a valuable public property measuring 11 acres 20 guntas is sought to be deprived to the public. Though there is a sale deed, alleged order of the Land Reforms Tribunal granting occupancy rights, decree of the Civil Court and several orders were passed by this Court in various writ petitions, still it is apparent that a public property is sought to be snatched away by abuse of the process of the court. The very persons who were to protect the interest of the State, namely, officers and officials when they do not act as they were expected to and collude, the property belonging to the public has suffered and therefore this case has to be considered in the back ground of those circumstances. He submits the entire claim rests on the order of the Land Reforms Tribunal. Firstly, there is no such order at all. Secondly, the order passed is without jurisdiction, as such it is void ab initio and honest in the eye of law. That being the case, in view of the law laid down by the Supreme Court, if the impugned judgment and decree is allowed to stand it would result in grave injustice to the public. Though there is a delay of nine years seven months, in the facts and circumstances of the case, a case for condonation of delay is made out, and the regular appeal is to be heard on merits.

13. Per contra, learned Counsel appearing for the respondents contended that the material on record discloses though the schedule property was a tank bed at distant point of time, by its cultivation by H.B. Munivenkatappa and his predecessor in title for over a period of 60 years it has changed its character. The Land Reforms Tribunal on appreciation of the material on record has clearly held that the schedule land ceased to be a tank bed and it is a hiduvali land. The said finding till today is not challenged and thus it has become final. Acting on the said order, after contest the Civil Court has granted a declaration declaring that H.B. Munivenkatappa is the owner of the schedule property, it is a hiduvali land

and it ceases to be a tank bed and that defendants have no manner of right, title or interest over the same. The said order also has become final. Learned Government Advocate has opined no case is made out for appeal which opinion is affirmed by the Director of Public Prosecution (Civil). Government accepted the said opinion and did not rightly prefer any appeal. It is only when arrest warrant was issued in execution of the aforesaid decree and after giving an undertaking to this Court that they are going to obey the orders, Government has chosen to prefer a regular appeal. Because of the pendency of the appeal, all proceedings have come to a stand still. Under the circumstances there cannot be a different yardstick for the Government. Delay of 9 years 7 months is not properly explained. It is a criminal negligence on their part for which the respondents cannot be made to suffer and therefore he submitted relying on several judgments of the Supreme Court that the lower Appellate Court was justified in dismissing the appeal on the ground of limitation and not condoning the delay of 9 years 7 months. Therefore he prayed for dismissal of the appeal on merits.

14. Before I advert to these rival contentions and the other material on record, it is necessary to have a look at the few provisions of the Act and the admitted facts in this case.

15. Admittedly the schedule land was a service inam land. With the passing of the Act the schedule land vested with the Government as on 1.2.1959. The effect of the said vesting is contained in Section 3(1)(b) of the Act, which reads as under:

All rights, title and interest vesting in the inamdar including those in all communal lands, uncultivated lands, whether assessed or not, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries shall cease and be vested absolutely in the State of Karnataka free from all encumbrances.

As per Sub-clause (c) the inamdar shall cease to have any interest in the inam which reads as under:

The Inamdar shall cease to have any interest in the inam other than the interests expressly saved by or under the provisions of this Act.

What is saved to the inamdar under the Act is contained in Section 9 of the Act which reads as under.

SECTION 9. LANDS AND BUILDINGS TO VEST IN THE INAMDAR (1) Every inamdar shall, with effect on and from the date of vesting, be entitled to be registered as an occupant of all lands other than-

(i) communal lands, waste lands, gomal lands, tank beds, quarries, rivers, streams, tanks and irrigation works;

(ii) xxxx

(iii) xxxx

Underlining by me

16. Though Section 9 recognized the right of an inamdar and he has been conferred a right to be registered as occupant of all lands which are vested with the Government, such a right is not extended to the lands which are mentioned in Clause (i) of Sub-Section (1) of Section 9 of the Act. One such land to which, the said right do not extend is a "tank bed". In other words, if the schedule land is tank bed with the vesting of the said land in the Government, the inamdar did not have any right to get the same granted to him by way of occupancy rights. A tank bed by its proximity to the tank is a very fertile land. Only when the tank is full, the tank bed is also covered with water. When the tank bed is not covered with water, it is quite common that the villagers do cultivate the said land. Merely because such cultivation is done, it does not cease to be a tank bed. There is no provision in the Land Revenue Code or under any of the statute which declares that a tank bed by continuous cultivation for over a period ceases to be a tank bed. Therefore by mere cultivation of a tank bed, the character of the tank bed never ceases. If it is a tank bed, in spite of it being cultivated as on 1.2.1959 it vested with the Government free from all encumbrances and as is clear from Section 9 of the Act the inamdar has no right to seek for re-grant of the said land. It is a public property. Therefore, the legislature in its wisdom expressly made it clear that such public property cannot be granted to the Inamdar and it vests with Government for public use. In other words after vesting of the land under the Act the inamdar loses his right to that tank bed for all time to come. Correspondingly, when the Act expressly states that after vesting, the said property vests with the Government free from all encumbrances and the inamdar had no right to seek for such grant, the authority constituted under the Act has no jurisdiction even to entertain the said application, let alone grant occupancy rights in respect of such lands.

17. The records produced by the Government show that Smt. Ramakka w/o Shikari Muniyappa and T. Venkatappa s/o Thimmareddy had filed applications for grant of occupancy rights in respect of the aforesaid land before the Special Deputy Commissioner for Inams. Cases were registered at No. 121/59-60 and 131/59-60. The said applications were dismissed on the ground that the said land is a tank bed and also reserved land and it cannot be re-granted. Then Captain Thyagarajan Pillai filed an application before the Special Deputy Commissioner which was registered as Case No. 34/76 for grant of occupancy rights. He contended that by constant use as agricultural land, the schedule land has ceased to be a tank bed and is under his cultivation and therefore he is entitled to be registered as an occupant u/s 9 of the Act. The Deputy Commissioner after considering the said contention has rejected the claim by holding that merely because it is cultivated, it does not cease to be a tank bed and therefore in view of Section 9 of the Act the inamdar was not entitled to re-grant a tank bed. Last of such application was by the Chairman of the Village Panchayat, Whitefield, for grant of the said land which was also numbered as 52/93 and it also came to be rejected. All the said orders have become final.

18. It is not in dispute that Capt. Thyagarajan whose claim was rejected as aforesaid, has sold the schedule land on 26.12.1960 in favour of Munivenkatappa, the plaintiff, after the vesting of the land in Government. Therefore it is clear on 26.12.1960 when Capt. Thyagarajan sold the schedule land to the said H.B. Munivenkatappa, he was not the owner of the schedule land. The schedule land had vested with the Government, free from all encumbrances as on 1.2.1959. The jurisdiction of the Special Deputy Commissioner for inams to adjudicate the claims under the Act was vested with the tribunal constituted under the Land Reforms Act by Amendment Act 26 of 1979, which came in to force from 1-5-1979. Taking advantage of this provision, the said K.B. Munivenkatappa filed an application for grant of occupancy rights before the Land Reforms Tribunal, Bangalore South Taluk. By an order dated 27.12.1980 in Case No. LRF/5063/79-80 the land tribunal granted occupancy rights in favour of the said K.B. Munivenkatappa. The Land Reforms Tribunal in its order has categorically stated that Munivenkatappa has filed an application in Form No. 7 u/s 48-A(1) of the Karnataka Land Reforms Act, 1961 before the Land Tribunal, Bangalore South Taluk requesting for registration of occupancy rights in respect of land in sy. No. 15 (Old) and 54 (New) of Patandur Agrahara Village, K.R. Puram Hobli, Bangalore South Taluk. The recitals in the said order shows that the said H.B. Munivenkatappa purchased the suit land from one Capt. Thyagarajan for a monetary consideration of Rs. 4000/- in 1960. He is cultivating the Land personally since so many years. He had applied before the Special Deputy Commissioner very recently because of lack of knowledge and he has also applied before the tribunal. He examined four persons as his witnesses and they have no objection for grant of the land. It is further stated in the said order as per RTC Col. No. 9, the schedule land is shown as "Sarkari Kere" and in Col. No. 12 - for the year 1974-75 it is seen that the applicant is the cultivator. The order also shows the number of sale deeds which have been executed prior to the said Munivenkatappa acquiring the same and also with reference to the acquisition proceedings and the purchase of the land by Cap. Armugam Pillai Thyagarajan, the tribunal records a finding that the said Munivenkatappa has been raising crops in the schedule land and even earlier to that his vendors were in possession and enjoyment of the same which is also clear from the documents produced, the schedule land in question has lost the characteristics of the tank bed about 60 years back and hence there is no impediment for registration of the occupancy rights in the name of the said Munivenkatappa and therefore they proceeded to grant occupancy rights in respect of the schedule land under the provisions of the Act in favour of H.B. Munivenkatappa. It is on the basis of the aforesaid grant, H.B. Munivenkatappa filed the suit for declaration of title in OS 394/93. The said suit after contest was decreed on 24.1.1995. The learned Government pleader who conducted the case has opined that it is not a fit case for appeal. It appears the said opinion was placed before the Director of Public Prosecution (Civil) who was also of the opinion that it is not a fit case for appeal. Therefore no appeal was filed and the judgment and decree passed became final. On the basis of the said decree, applications were filed for mutating the name in

the revenue records. The revenue authorities declined to mutate the name of the decree holder in the said suit in respect of the schedule land on the ground that it is a Government property and the Government revenue records show it as "Sarkari Kere". Therefore the request was rejected. Then the decree holder filed an execution case in Ex. No. 84/01. In the aforesaid execution proceedings, after enquiry the objections raised by the State was rejected and the concerned authorities viz., Divisional Commissioner, Special Deputy Commissioner and the Tahsildar were ordered to be arrested for disobeying the order passed by a competent Civil Court. Those orders are challenged by the Government officials in this Court in the connected writ petitions. The legal representatives of Munivenkatappa have also challenged the order passed by the Tahsildar rejecting the request to mutate their names in the revenue records.

19. In this Court, when the learned counsel for the appellant contended that the order passed by the Land Reforms Tribunal which is the basis for the claim of the respondents in this appeal do not exist, it is a concocted document, this Court by an order dated 13.12.2006 directed the Government Advocate to produce the affidavit of Chief Secretary clarifying the position, the book maintained by the Land Reforms Tribunal showing the number of cases dealt by them during the relevant period and also to furnish the particulars of Chairman and Members of the Land Tribunal on the day the said order was passed. He was also asked to produce the legal opinion issued by the learned Advocate who argued the matter in the trial Court and the decision taken by the higher authorities if any, with copies. In pursuance of the said order, the Chief Secretary has filed her affidavit which reads as under:

AFFIDAVIT

I, Dr. Malati Das D/o P. Sitaram Rau, aged 60 years, working as Chief Secretary, Government of Karnataka, Vidhana Soudha, Bangalore-01, do hereby solemnly affirm and state on oath as follows:

1. I am working as Chief Secretary, Government of Karnataka, Vidhana Soudha, Bangalore-1. In am swearing to this affidavit as per the direction of this Hon''ble Court dated 13.12.2006 and also on the basis of the available records.

2. I further submit that as per the registry maintained by the office of the Special Tahsildar, Bangalore South Taluk, Bangalore, the Sl. No. 5063 is written as follows:

Date of receipt - 16.05.1979, Name of the applicant - H.B. Munivenkatappa, age 60 years, occ: Agriculture, Pattandur Village, Sy. No. 54 measuring 11 acres 20 guntas of land and in the name of the landlord's column, it is mentioned as H.B. Munivenkatappa.

But, the ink written by the concerned officer differs from the registry maintained by the office of the Tahasildar, Bangalore South Taluk, Bangalore. I further submit that I have enquired into whether Form - No. 7 filed by the applicant is

available or not? Thereafter, the Tahsildar, Bangalore South Taluk has searched the file and come to the conclusion that the file No. LRF 5063:79-80 is not available in the office of the Land Tribunal. Thereafter, I have also carefully verified the records maintained by the Land Tribunal and there is no such order passed by the Land Tribunal as on the date of passing of the order of the land Tribunal dated 27.12.1980.

3. I further submit that in view of bifurcation of Bangalore South Taluk, the files have been transferred to Bangalore East Taluk, K.R. Puram. At that time, the charge and files have been sent from the Bangalore South Taluk and the same were received by the Bangalore East Taluk. But, in that list also this file number is not mentioned. Therefore, it clearly shows that no such order is available in the office of the Land Tribunal nor proceedings have taken place before the Land Tribunal.

Hence, this affidavit.

20. In the counter affidavit filed by the respondents, in reply to the said affidavit, they rely on an observation made by this Court in WP 7908/79 which reads as under:

The petitioner has produced the certified copy of the order of the Land Tribunal, Bangalore South Taluk, Bangalore (Exhibit -S) showing that, in respect of an area of 11 acres 20 guntas of the staid land, occupancy rights have been conferred on the petitioner holding that the said land is not a tank bed and that it was purchased by the petitioner from the previous inamdars. The Government Pleader, after verifying the records of the Land Tribunal, Bangalore South Taluk, in ease No. LRF 5063/79-80, admitted the said position. The order Exhibit - S also shows that as some portion of the land was acquired for the purpose of sinking borewells and constructing a road in view of Exhibit - S, the order Exhibit - Q cannot be sustained.

21. The learned Government Advocate has produced the original ledger Book where Form No. 7 is noted by the Tahsildar, Bangalore. I have gone through the entries made in the said ledger. It is also submitted that no separate ledger is maintained by the Tahsildar office for receiving the applications filed under the provisions of the Inams Abolition Act. All the applications filed either under the Karnataka Land Reforms Act or under the provisions of the Inams Abolition Act are entered in the same ledger Book. The relevant entry shows that H.B. Munivenkatappa has filed an application which is found at page 121, Sl. No. 5063, date of receipt of the application is 16.5.1979 as stated by the Chief Secretary in her affidavit. The ink written by the concerned officer differs from the ink written in respect of the other entries. The application said to have been filed by H.B. Munivenkatappa is not available. A bare perusal clearly shows that particular entry is in a different ink when compared to the remaining entries. It is to be remembered that the time prescribed for filing applications in Form No. 7 under the Land Reforms Act expired on 30-6-1979. From the aforesaid book it is

clear that the number of entries have been made, they are rounded off, dates are re-written, Sl. NOS. are re-written and the entries are not in order. It appears to me that there appears to be an attempt to bring claims within the period of limitation and the way the entries are made in the last 70 pages shows prima facie that the concerned officials have tampered with the said book. The said entries appear to have not been made in the regular course of transactions. The disputed entry in the instant case appears to be a tip of the iceberg. In fact, when a request was made by the Government to the Karnataka Lokayukta to investigate into the circumstances under which no appeal was filed against the judgment and decree in OS 394/93, the Lokayukta has issued an endorsement which reads as under:

NOTE

There is a Government Order dated 7.1.2004 by which sanction has been accorded to prefer an appeal against the judgment and decree passed in OS No. 394/1993. There after there have been no correspondence or receipts. Notes have also been recorded subsequently to write letter to the Government Advocate to know the present stage of the appeal. It appears that there are no laches on the part of any Government servant. It also appears that no loss has been caused to the State.

22. A clean chit has been given to the Government servants and according to the Lokayukta, no loss has been caused to the State. It is to be noticed that the jurisdiction of the Land Reforms Tribunal, Bangalore South Taluk pertains to the lands situated in the outskirts of Bangalore. On a complaint and agitation by the public, the Government of Karnataka was constrained to appoint a committee to go into these encroachments of Government lands in and around Bangalore City. A preliminary report submitted by the said committee discloses thousands of acres worth crores of rupees of Government land has been encroached. The officials of the Government, the advocates who are conducting the cases on behalf of the Government and others have let down the interest of the Government and public. Under these circumstances, I am of the view it would be appropriate to refer the entries in the original ledger book where Form No. 7 is noted and orders passed by the Land Reforms Tribunal, Bangalore South Taluk in all those cases at any rate as contained in this book, for enquiry to the aforesaid committee which may throw some light on the way the tribunal, the Government officials and others have discharged their duties in protecting public property, and if illegalities are found to take steps to restore the land to the Government.

23. It was contend on behalf of respondents that the schedule land was never a Kere Angela or tank bed and only the survey records which have come into existence from 1955 onwards shows that the schedule land is a Kere Angala. In the alternative it was argued that the schedule land ceases to be a tank bed much prior to its vesting with the Government and therefore the inamdar had a right of grant of occupancy right when it vested with the Government. In fact, the Land Reforms Tribunal as well as the Civil Court have recorded a finding that

it ceased to be a tank bed as it has been continuously cultivated by H.B. Munivenkatappa for a considerable length of time. It is on that basis occupancy rights has been granted and the Civil Court has granted declaration sought for. It is further contended that in the schedule land an extent of 20 guntas was notified for acquisition by the State Government and it was acquired and compensation has been paid to the inamdar. Similarly in the year 1955 another extent of 30 guntas out of the schedule land has been acquired by the State of Mysore for the formation of a road and compensation has been paid. The acts show that the land ceases to be a tank bed and it was a hiduvali land.

24. The acquisition of 20 guntas of land by the State Government was in the year 1931. The second acquisition of 30 guntas of land by the State Government was in 1955. The schedule land vested with the Government as on 1.2.1959. In other words, the acquisition of the land was prior to the vesting. As the inamdar was the owner of the land and the Government had no right over the land, if the Government wanted the said land for the formation of road, it could be only by way of acquisition. This is how in 1931, 1955 when the Government wanted a portion of the land held by the inamdar, acquisition proceedings were initiated. There is no dispute regarding title to the property prior to vesting. In those circumstances, the initiation of the aforesaid acquisition proceedings by the State Government would in no way indicate that they had no right to this property after it vested with the Government from 1.2.1959 - the date of vesting.

25. The material on record discloses, the respondents contend that the land in dispute was not a tank bed and it was so shown for the first time in the village map in the year 1956. However, the survey and revenue records produced in the case shows it is a tank bed since 1860 itself. The order of the Land Reforms Tribunal makes it clear that it was a tank bed. Similarly, the order passed by the Special Deputy Commissioner in four cases which has become final shows that the land is a tank bed. Similarly, the Civil Court also has proceeded on the assumption that it is a tank bed on the date of the vesting. The revenue authorities refused to enter the name of the respondents in spite of the decree of the Civil Court on the ground that it is a tank bed. In the light of these material on record, it is clear that the land in dispute is a tank bed and the question is whether as contended by the respondents by constant use for agricultural purposes it has ceased to be a tank bed.

26. Be that as it may, three important questions do arise for consideration.

(1) Whether the suit schedule land which is "kere angala" could have been granted to inamdar at all?

(2) Whether it could have been granted to a person who has purchased the schedule land after the schedule land vested with the Government?

(3) Whether there is any such grant at all?

These are the questions which require decision on merits. It cannot be said that

there was no merit in the appeal before the lower appellate Court. It is in the background of these facts the question that arise for consideration in this second appeal is whether the appellants have made out sufficient cause for condoning the delay of 9 years and 7 months in preferring the Regular Appeal, u/s 5 of the Indian limitation Act of 1963.

27. The Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, held as under:

The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of Justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

Ordinarily a litigant does not stand to benefit by lodging an appeal late.

Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

28. Again the Supreme Court in the case of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , held as under:

In litigations to which Government is a party there is yet another aspect which perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of a decisions of private individuals.

29. Following these judgments, the Supreme Court in the case of State of Haryana Vs. Chandra Mani and others, , has held as under:

It is notorious and common knowledge that delay in more than 60 per cent. of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and

passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officer/agencies proverbially as slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and require adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for the lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

From the aforesaid pronouncement of the Apex Court, the law on the point is well settled.

30. The judiciary is respected not on account of its power to regularize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. If appeals brought by the Government are lost on account of delay, no person is individually affected, but what in the ultimate analysis suffers is, the public interest. The law of Limitation is no doubt the same for private citizen as well as for Governmental authorities. Government, like any other litigant must take the responsibility for the acts or omissions of its officers. But some what different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to the acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. On account of impersonal machinery, no one incharge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal and the inherited bureaucratic methodology imbued with the note-making, file pushing and passing on the buck ethos, delay

on its part is less difficult to understand though more difficult to approve. In any event, the State which represent collective cause of the community, does not deserve a litigant-non-grate status. The Courts therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Refusing to condone the delay can result in a meritorious matter being thrown out, at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a case would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. The technicalities of procedure should yield to considerations which would promote public interest and substantial justice. The Courts should decide the matters on merits, unless it is hopelessly without any merit.

31. It is also a fundamental principle, that a decree passed by the Court without jurisdiction is a nullity. Its validity can be set up whenever and where ever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. The defect of jurisdiction whether it is technical or territorial or whether it is in respect of subject matter of action, strikes at the very authority of the Court to pass any decree and such defect cannot be cured even by consent of parties. Nullity has to be understood in the sense that it is ultra vires the power of the court passing the decree and not merely avoidable decree. If the decree strikes at the jurisdiction of the Court or the Court lacks jurisdiction, it strikes at the very root of the authority to pass the order or the decree. The decree passed by such a Court is a nullity and non est.

32. In the background of these legal principles, it is to be seen whether any sufficient cause is made out for condoning the delay in the instant case.

33. The material on record discloses at every stage the persons who were entrusted with the responsibility of protecting the public property have let down the Government. The way the litigation has been fought and the way the Government representatives and their counsel have let down the public interest, is shocking. When the matter was brought to the notice of the Lokayuktha, it issued a clean chit to those officials saying that the public interest has not suffered. There cannot be a worst situation than this. A mighty Government rendered helpless by such advise and breach of trust. If the order of the Land Reforms Tribunal exists as contended by the plaintiff, it is clear that the Assistant Commissioner who is the Chairman of the Tribunal has failed to notice the aforesaid statutory provisions which confers no right to the vested land in the inamdar and the Tribunal to grant occupancy rights in respect of a tank bed. He is a party to this order of grant granting public property to the plaintiff. When the suit was filed for declaration of title on the basis of the said document though appropriate defence were taken in the written statement, the same is not pursued as they were expected to and in the result a decree came to be passed. Though it was stated in the written statement filed in the suit, steps would be

taken to challenge the order of the Land Tribunal, no writ petition was filed, a serious lapse. The learned Government Advocate who conducted the case on behalf of the Government instead of advising suitably the Government to prefer an appeal, gave his opinion that it is not a fit case for an appeal. The Director of Public Prosecution (Civil) who was expected to apply his mind and take an independent decision has failed to discharge his duties and he has concurred with the opinion given by the learned Government Advocate not to prefer an appeal. It appears thereafter the concerned file did not reach the Law Department nor any opinion was sought from the Law Department. Even when the matter was being agitated in this Court in writ proceedings, advocate who was incharge of these matters appears to have not applied his mind properly. On the contrary, in the proceedings in W.P. No. 7908/79 this Court has recorded that the Government Pleader after verifying the records of the Land Tribunal, Bangalore South Taluk, in Case No. LRF. 5063/79-80 admitted the grant of land. However, it is heartening to note that there are some officials still left in the administration who have a commitment in life and who think about public good. The said officiate at the relevant point of time did notice that the schedule land is a Government land and it is a "sarkari kere" and mutation entries cannot be made in the name of the decree holder. They resisted the attempt to get the mutation entries made. It is only when arrest warrants were issued against them for disobeying the decree of a Civil Court, the Government realised the blunder they have committed and the Law Officers who betrayed its trust. Then they have approached the Law Department, sought for their opinion and on consideration of the entire material the Law Department gave its advice on 22.12.2003 to the effect that it is a fit case for preferring the appeal. On 7.1.2004 the Government accorded sanction to prefer the appeal. When Lokayukta was requested to investigate the circumstances in which no appeal was filed earlier, the Lokayukta had issued an endorsement to the effect that there are no laches on the part of any Government servant and that it appears that no loss has been caused to the State. It is thereafter the appeal is filed with an application for condonation of delay. When the lower Appellate Court declined to condone the delay and consequently dismissed the appeal, against the said judgment and decree a revision petition is filed before this Court in CRP No. 62/2005. A beginner in the legal profession would know, that against a judgment and decree of declaration of title, an appeal lies and not a revision. This is the type of legal advise which has been given to the Government over a period of nearly ten years. "It is a case of salt having lost its savour". The judicial process is used to acquire rights over the Government property, a clear case of abuse of judicial process.

34. Karnataka being one of the progressive State in the Union of India, Bangalore being the center of attraction to the whole world, unfortunately, the professional legal advise given to the Government is of this nature. It is no wonder that the value of landed property in Bangalore is more than gold and the real estate business is the most thriving business in the city of Bangalore. The State Legislature has to appoint a Committee to go into this problem of grabbing

of Government lands which runs to thousands of acres involving crores of rupees. The said Committee has submitted an interim report blaming the officials and lawyers in-charge of the case and others being a privy to these illegal activities right under the nose of the seat of power. Now that multinational companies are competing with each other to have a foot hold in Bangalore, with the liberalization, globalization and privatization, having its impact on all walks of life in the society, whether the Government is capable of meeting the challenges in the field of law and in protecting its people and its properties, with the kind of legal assistance they have. There is no dearth for legal talent in the State. The problem is the mind to utilise the said talent. This case should be an eye opener to the Government. It is for them to take appropriate steps to overhaul their revenue, and legal department, including the quality of the Advocates they choose to represent them in Courts, if the Government is sincere in protecting the public and its properties.

35. The suit schedule land is an inam land. If it is a "kere angala", or "tank bed" notwithstanding the same being cultivated, it vested with the Government on 01.02.1959 and the inamdar has no right of re-grant. The said property vested with the Government free from all encumbrances. The Special Deputy Commissioner for Inams, the authority constituted under the Inams Abolition Act, has rejected four applications seeking for grant on the ground that it is a "kere angala" and that it cannot be granted. One such application is that of a vendor of H.B. Munivenkatappa. H.B. Munivenkatappa claims title to the property under a registered sale deed which has come into existence subsequent to the vesting of the land. The order rejecting the request of the vendor is fully binding on the said H.B. Munivenkatappa. Suppressing the said fact, application is filed before the Land Reforms Tribunal and occupancy right is granted. If it is "kere angala" and the land vested with the Government, the Land Reforms Tribunal had no jurisdiction to grant the said land to H.B. Munivenkatappa. It is that grant which is made the basis for the suit for declaration of title. If on enquiry, it is found that there was no application filed by the respondent, no enquiry was held, no grant was made and the documents on which the respondent relies on is wholly concocted and fabricated documents, then, it is a case of fraud being perpetuated by abusing the process of Court, in seeking declaration on basis of the said fraudulent document. In either event, a valuable public property is sought to be appropriated by a person who has no right whatsoever. If by condoning the delay, if the matter is remitted back to the Lower Appellate Court to go into these disputed questions, all that happens is, the respondent has to show to the Court, that in law, he has right to this land and the proceedings on which he relies on are all legal and valid. He should not feel shy. But, on the contrary, if he fails to do so, the property belonging to the public is restored. A person who has had no right to the property cannot complain of any right vested in him is being taken away. The suit schedule property is situated within the city of Bangalore, and is worth crores of rupees. That is how public interest has suffered at the hands of these revenue officials and the advocates engaged by

the Government from time to time. The lower Appellate Court has not considered the case from this angle and thus committed serious error in refusing to exercise the discretion which is vested in it to condone the delay even if it meant 9 years 7 months. When what is involved is a public property the loser would be the public and if the case of the State has to be accepted, it has a meritorious case, and in the aforesaid circumstances. I am satisfied that the cause shown by the State for condoning the delay of 9 years 7 months in preferring the regular appeal do constitute a sufficient case as held by the Supreme Court in the aforesaid judgments. Therefore the order refusing to condone the delay and consequential dismissal of the appeal on merits requires to be set aside.

36. The subject matter of this appeal was only whether the lower Appellate Court was justified in not condoning the delay and not the merits of the claim. In order to find out whether a case for condonation of delay is made out or not, incidentally the court has to look into the merits of the case and some observations have been made in this order on merits. However it is to be understood that those observations on merits are only in the nature of a prima facie finding for the purpose of finding out whether a meritorious case has been thrown out by the lower Appellate Court without condoning the delay. But it is made clear, as the matter is now remanded back to the lower Appellate court, while deciding the case on merits, the lower Appellate Court shall ignore all the observations made by this Court in this judgment and decide the case on merits and in accordance with law, however taking note of the provisions of law which are set out in this judgment, without being in any way influenced by the observations made by this Court on merits. Hence, I pass the following order.

[1] RSA No. 2166/2006 is allowed. The application filed by the appellant in the court below for condoning the delay of 9 years 7 months in preferring the appeal is allowed. Delay is condoned.

[2] The lower Appellate Court is directed to restore the Regular appeal No. 38/2004 to its original file and hear and dispose of the appeal on merits in accordance with law in the light of the observations made in the last para of this judgment.

[3] The judgment and decree of the trial court which is impugned in the said appeal stands stayed pending disposal of the appeal on merits.

[4] Office is directed to send a copy of this order to the Chief Secretary, Government of Karnataka to enable him to monitor the prosecution of the regular appeal by a competent advocate.

[5] Office is directed to send a copy of this order to Sri. A.T. Ramaswamy, Chairman, Legislature Committee for Encroachment of Government Land, Vidhana Soudha, Bangalore, constituted by the Karnataka State Legislature, to take appropriate action in respect of lands covered in the ledger book maintained in the Land Reforms Tribunal, Bangalore South Taluk, in particular, the last 70 pages, which is full of over-writings, cancellations, insertions and manipulations.

[6] High Court Office is directed to send a copy of this order to the Karnataka Lokayukta to have a re-look in the light of the facts set out in this order in so far as the role of Government officials at all stages in prosecution of this case.

In the light of the aforesaid judgment the connected matters are disposed of in the following manner:

[a] CRP No. 62/2005 is dismissed as not maintainable.

[b] In W.P. No. 12895/2005 the petitioners have sought for setting aside the judgment and decree dated 24.1.1995 passed in O.S. No. 394/1993 by the II Additional Munsiff, Bangalore District, as well as the alleged order of the Land Reforms Tribunal, dated 27.12.1980 passed under the provisions of the Inams Abolition Act and also issue of arrest warrants for disobedience of the aforesaid orders. As the petitioners have already preferred a regular appeal challenging the order in the said suit, this writ petition challenging the very same order is not maintainable. However, as they have challenged the order of the Land Reforms Tribunal in this petition also, as they contend that there is no such order at all, the said question also has to be gone into by the lower Appellate Court in the pending appeal and for the said reason petitioners have to await the decision of the lower Appellate Court. Accordingly, it is dismissed.

[c] W.P. No. 4335/2006 is filed by Sri. Boraiah, Special Tahsildar, who was ordered to be arrested for disobedience of the Civil Court decree. It is submitted that the order of arrest warrant which was challenged in this writ petition has already been recalled by the trial court. In that view of the matter, this writ petition has become infructuous.

[d] W.P. No. 39159/2002 is filed against the orders passed by the revenue officials declining to enter the name of the petitioners in respect of the suit schedule property in spite of the Civil Court decree. Now that the Civil Court is seized of the matter and it is the subject matter of the appeal, the revenue officials have to make out entries in the revenue records on the basis of the ultimate decision of the Civil Court. Under the circumstances, the impugned orders in this writ petition are also ordered to be set aside awaiting the decision of the Civil Court in this matter. Accordingly the writ petition is allowed.

[e] RSA No. 421/2002 which was ordered to be summoned, be de-linked.

[f] Original register where all Form No. 7 have been entered which was produced by the learned Government Advocate in pursuance of the directions issued by this Court is returned to the learned Government Advocate to be made available to the Committee at their request.