IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 26TH DAY OF MARCH, 2019

BEFORE

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

WRIT PETITION NOS. 19137 & 29329-29335 OF 2018 (LR-RES)

L.S.NARAYANAPPA (PRIEST BY OCCUPATION)

v/s.

THE STATE OF KARNATAKA

ORDER

The petitioners herein are the appellants in appeal No.531/2014 on the file of the Karnataka Appellate Tribunal (' the KAT ' for short), Bengaluru where the order of the second respondent – the Deputy Commissioner in proceedings No.LRF:INM (MLR) 8/2006-07 dated 25.02.2014 was confirmed.

2. Brief facts leading to these writ petitions are as under:

The first etitioner-L.S.Narayanappa, his brother second petitioner-L.S.Narasaraju and their one more brother, third petitioner-L.S.Hanumanth Raju are said to be Archaks of Sree Madduramma temple, Lakkur Village and Hobli, Malur Taluk, Kolar District. The said temple had inam of 5 acres and 1 gunta of land in survey No.300 of Lakkur Village, Malur Taluk, Kolar District.The said land is subject matter of these writ petitions and earlier litigation.The petitioners herein would state that an application was filed by petitioner Nos.1, 2 and their brother seeking occupancy rights in respect of aforesaid land as Archaks of aforesaid temple under Section 6A of the Karnataka (Religious and Charitable) Inams Abolition Act, 1955 (' the Act ' for short).

3. It is seen that the said application filed on 16.12.1974 was rejected by order dated 19.07.1982 on the ground; that the application which was filed by respondent Nos.3 and 4 herein under Section 6 of the Act is allowed; land has already been granted in favour of respondent Nos.3 and 4; as such the application of the petitioners does not survive for consideration was the sum and substance of order dated 19.07.1982 by the Land Tribunal, Malur.

4. The petitioners did not challenge the said order.Instead they challenged the order passed by the Tribunal in granting saguvali chit in favour of respondent Nos.3 and 4 on the premise that the said order is erroneous inasmuch as when there is already an application seeking occupancy rights in respect of the same property, the Tribunal ought to have considered both applications together and to pass appropriate orders on the same.In the instant case, since the same not being done, there is an error which calls for redressal in setting aside the order of the Tribunal in granting the occupancy rights in favour of respondent Nos. 3 and 4 herein and thereafter to take up the applications of the petitioners as well as respondent Nos.3 and 4 together and to dispose of the said applications on merits.

5. The appeal which was filed by the petitioners herein before the Appellate Authority of the Land Tribunal came to be decided with divergent views, where the judicial member of the Tribunal was in favour of the grounds urged by the petitioners herein whereas other members of the Tribunal were in support of the earlier order which was already passed by the Tribunal in recognising respondent Nos.3 and 4 as tenants.In this background, the Appellate Authority of the Land Tribunal is said to have taken the matter to the Civil Court under Section 116 (b) of the Karnataka Land Reforms Act, 1961 (' the KLRA Act ' for short) which is numbered as DLRA.433/1986 on the file of the Civil Judge, KGF, where the learned Civil Judge by an order dated

08.08.1988 accepted the view of the judicial member and rejected the view taken by other members in confirming the occupancy rights made in favour of respondent Nos.3 and 4.

6. It is seen that the order of the Civil Judge, KGF in DLRA.433/1986 was the subject matter of challenge before the Coordinate Bench of this Court in LRRP.No.354/1989 where the Coordinate Bench of this Court by its order dated 07.11.1997 set aside the order dated 08.08.1988 passed by the learned Civil Judge in DLRA.433/1986 and remanded the matter back to the Deputy Commissioner of Kolar for reconsideration. The said remanded matter, which was taken up before the Deputy Commissioner in proceedings No.LRRP (INM) (HNM) 08/2006-07 came to be disposed of by an order dated 25.02.2014 in confirming the order of the Land Tribunal granting occupancy rights in favour of respondent Nos. 3 and 4 with reference to survey No.300 of Lakkur Village measuring to an extent of 5 acres 1 gunta.The said order of the Deputy Commissioner was subjected to challenge by the petitioners herein in appeal No.531/2014 on the file of the KAT, where the KAT by its judgment dated 24.01.2018 confirmed the order of the Deputy Commissioner, which is the subject matter of challenge in these writ petitions.

7. The sum and substance of the arguments of the petitioners herein right from the time of their appeal before the Appellate Authority of the Land Tribunal, which was referred to the Civil Judge in DLRA.433/1986 are that they relied upon the judgment rendered by the Division Bench of this Court in the matter of Krishna Setty Vs. Land Tribunal, Somwarpet reported in 1979 KARNATAKA SERIES 1681, wherein under similar circumstance i.e. when more than one application was there before the Tribunal, the manner in which the said applications will have to be decided is considered as under:

" 5. Sri Gowri Shankar, did not dispute that the application made by the sons of T. K. Pappu in Form No. 7 was within the extended time for making such applications.Once, such an application was duly made, it was the duty of the Land Tribunal to consider that application.The Land Tribunal could not refuse to consider that application on the ground that it had already disposed of the earlier application made by some other person in respect of the same land. The only way in which the Land Tribunal can consider the later application under section 48- A, would be, to re-open its earlier decision on the earlier application and to consider both those applications together and decide the matter afresh. " 8. Relying on the said judgment, the petitioners herein contended that though they did not independently challenge the order of rejection of their application dated 16.12.1974 by the KAT in its order dated 19.07.1982, they were justified in challenging the order of granting the land in favour of respondent Nos.3 and 4 without taking into consideration the application which was filed by them and which was rightly considered by the Civil Court in a matter which was referred to under Section 116 (b) of KLRA Act which is not followed by other authorities.Even though the Coordinate bench of this Court in LRRP remanded the matter for fresh consideration, this judgment is not looked into either by the Deputy Commissioner or by the KAT.

9. Learned Counsel appearing for respondent Nos.3 and 4 tried to assert that once the order of rejection of the petitioners ' application has reached finality and the same has not been challenged, it is open for the Land Tribunal to pursue grant which is made in an application filed by respondent Nos.3 and 4 under Section 6 of the Act. Therefore, the order of the Deputy Commissioner vide Annexure- G, which is confirmed by the the KAT vide Annexure- J does not call for interference of this Court.

10. In the meanwhile, learned Additional Government Advocate representing the State would submit that, there is another angle to this litigation, which is not looked into by any of the authorities in series of proceedings right from the Land Tribunal to the KAT, which is that, the land in question is a Government land.According to him, the said land was never leased or subjected to geni by the State. Admittedly, Sree Madduramma temple of Lakkur Village is mujarai temple and the status of the said temple is recognised as mujarai temple way back in the year 1917.Therefore, when the amended provision of the Act came into force

on 01.07.1970, the land was was already vested with the Government as admittedly as mujarai temple.As in the year 1917, there was no entries in RTC recognising either respondent Nos.3 and 4 as tenants or the Archaks as cultivators of the said land.When that being the case the same is not looked into by any of the authorities which has resulted in chaos leading to different findings being given without touching core aspect with reference to title of the land.

11. Therefore, the submission of the learned Additional Government Advocate that question question of considering the application filed by respondent Nos.3 and 4 under Section 6 of the Act and by the petitioners under Section 6A of the Act does not arise for consideration inasmuch as the said land was not under cultivation of anybody. The revenue entries with reference to said land could be traceable in RTC from the year 1971-72 which is subsequent to the land being vested in the Government and the said entries are not supported by any order much less the lease or authorization by the State in favour of either the petitioners-Archaks or respondent Nos.3 and 4 2 the so called tenants.

12. After giving careful consideration to the arguments by the learned Counsel for the petitioners, contesting respondent Nos.3 and 4 and the learned Additional Government Advocate representing the State, it is clearly seen that a serious error is committed by the Tribunal initially while dismissing the application of the petitioners filed under Section 6A of the Act on 16.12.1974 in not clubbing the same along with the application of respondent Nos.3 and 4 which was filed under Section 6 of the Act. Even when the said applications were taken up for consideration independently, it is seen that neither the Tribunal nor the Appellate Authority or any of the authorities which has looked into this matter, has seen title of the land in noticing whether it vested with the Government or with temple.

13. Admittedly, the temple is mujarai temple.The land could not have been in the name of temple since it is a Government land.If it is a Government land unless there is an authorisation by the Government granting cultivation rights in favour of respondent Nos.3 and 4, they could not claim that they are the tenants of said land. In fact the RTC also would support in indicating that though the tenancy rights is traceable only from the year 1971-72, the same is not supported by any order granting tenancy right to respondents 3 and 4. In that view of the matter, this Court would notice that serious error is committed in deciding the applications filed by the petitioners as well as by respondent Nos.3 and 4.

14. In view of the above, this Court would set aside not only the order of the Deputy Commissioner in proceedings No.LRRP (INM) (HNM) 08/2006-07 dated 25.02.2014 but also the judgment of the KAT in confirming the same in its judgment dated 24.01.2018 and thereby remand this matter back to the Deputy Commissioner to reconsider the same in the background of the land being Government land and to ensure whether any authorization was there to respondent Nos.3 and 4 to cultivate the same on tenant to consider granting occupancy right. So far as Archaks are concerned, this Court would categorically observe that there is nothing on record to demonstrate the Archaks were in fact in cultivation of the said land at any point of time.

15. Therefore, in the facts situation, this Court is of the considered opinion that the question of considering petitioners ' application under Section 6A of the Act may not arise.If respondent Nos.3 and 4 fail to demonstrate their tenancy rights, the Deputy Commissioner shall consider retaining the land for the benefit of temple.

With such observation, this writ petition is disposed of.