

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23RD DAY OF FEBRUARY 2011

BEFORE

THE HON'BLE MR. JUSTICE HULUVADI G. RAMESH

W.P.No.1702/07 C/W W.P. NO.17512/10(LR-RES)

In Writ Petition No.1702/07

BETWEEN

SRI SRIDHARAN

S/O LATE P K PANIKAR, REPRESENTED BY

SINCE DECEASED BY HIS L.RS

1. K.P. KAMALAM
W/O LATE C. SRIDHARAN,
2. K.P. SREEKALA,
D/O LATE C. SRIDHARAN,
3. SMT. K.P. SHALINI,
D/O LATE C. SRIDHARAN,
4. K.B. SREEJA,
D/O LATE C. SRIDHARAN,
W/O BALU RAJ

ALL ARE R/AT CHERIYADTH HOUSE,
POST IRIMBALASSERI, PALAKKADA DIST
KERALA

REP. BY THEIR GPA HOLDER
SRI C.PRAMOD S/O SRI C.GOPALAN
R/AT:NO.153, 5TH CROSS,

JK

SIDDAPURA 1ST BLOCK,
JAYANAGAR, BANGALORE-11.

... PETITIONERS

(By Sri S.K.V.CHALAPATHY, SR. COUNSEL FOR M/S.
CHALAPATHY & SRINIVAS, ADVs.)

AND :

- 1 SRI MOHAMMAD AMEER @ JANI SAB
S/O LATE HUSSAIN SAHEB
AGED 71 YEARS,
R/O SY.NO. 189, HODDI VILLAGE,
WHITE FIELD MAIN ROAD,
K.R.PURA HOBLI,
BANGALORE EAST TALUK.
- 2 THE ASST. COMMISSIONER
BANGALORE NORTH SUB DIVISION,
BANGALORE.
- 3 M/S GOPALAN HOMES (REGD)
A PARTNERSHIP FIRM, NO.5,
RICHMOND ROAD,
BANGALORE 25.

... RESPONDENTS

(By SRI M.S.RAJENDRA PRASAD, SR. COUNSEL FOR R1,
SRI RAMACHANDRA R.NAIK, HCGP FOR R2,
SRI A.GOPALAIAH, ADV., & SRI K.BHASKAR, FOR R3)

THIS W.P. FILED UNDER ARTICLES 226 & 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
ORDER DT. 30.11.2006 VIDE ANNEX.B. PASSED BY THE
KAT IN APPEAL NO.154/2006.

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In Writ Petition No.17512/10

BETWEEN:

1. SMT. K.P. KAMALAM
W/O. LATE C. SRIDHARAN,
AGED 60 YEARS.
2. SMT. K.P. SREEKALA,
D/O. C. SRIDHARAN,
AGED 27 YEARS
3. SMT. K.P. SHALINI,
D/O LATE C. SRIDHARAN,
AGED 25 YEARS.
4. SMT. K.B. SREEJA,
D/O. LATE C. SRIDHARAN,
AGED 23 YEARS.

ALL ARE R/AT CHERIYADTH HOUSE,
POST IRIMBALASSERI, PALAKKADA DIST
KERALA REP. BY THEIR GPA HOLDER
SRI C. GOPALAN,
W/O. LATE K.P. PANIKER,
AGED ABOUT 67 YEARS, NO.153, 5TH
CROSS, SIDDAPURA 1ST BLOCK, JAYANAGAR,
BANGALORE-11.

5. SRI C. PRAMOD,
S/O. SRI C. GOPALAN, AGED 37 YEARS,
R/AT NO. 153, 5TH CROSS, SIDDAPURA,
1ST BLOCK, JAYANAGAR, BANGALORE-11.
6. M/S. GOPALAN HOMES,
NO. 5, RICHMOND ROAD,
BANGALORE
REP. BY ITS PARTNER SRI C. GOPALAN.
... PETITIONERS

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(BY SRI S.K.V.CHALAPATHY, SR. COUNSEL FOR M/S.
CHALAPATHY & SRINIVAS ADVs.)

AND

1. SRI MOHAMMAD AMEER @ JANI SAB
S/O LATE HUSSAIN SAHEB
AGED ABOUT 59 YEARS,
R/O. SY.NO. 189, HODDI VILLAGE,
WHITE FIELD BANGALORE MAIN ROAD,
K.R.PURA HOBLI,
BANGALORE EAST TALUK.
- 2 THE ASSISTANT COMMISSIONER
BANGALORE NORTH SUB DIVISION,
BANGALORE.

... RESPONDENTS

(BY SRI M.S. RAJENDRA PRALAD, SR. COUNSEL FOR R.1
SRI RAMACHANDRA R. NAIK, HCQP FOR R.2)

THIS W.P. FILED IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH
THE ORDER DT. 4.12.2009, PASSED BY THE R2, IN CASE
NO. LRF (83) (BE) 33/05-06 PRODUCED AT ANN-H.

THESE W.PS. ARE COMING ON FOR FURTHER
HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In W.P.No.1702/2007, petitioners are challenging
the order passed by the Karnataka Appellate Tribunal
dated 30.11.2006.

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2. In W.P.17512/10, petitioners-1 to 4 who are the legal representatives of the petitioner in W.P.No.1702/2007 have filed this petition along with two other petitioners seeking quashing of the order dated 4.12.2009 at Annexure-H.

3. The proceedings initiated by the 3rd respondent before the Assistant Commissioner, Bangalore North, alleging violation of Section 79(A) and (B) of the Land Reforms Act, against the petitioner came to be dismissed. Against which, in the appeal filed, the Karnataka Appellate Tribunal (for short 'KAT') allowed the appeal remanding the matter to the Assistant Commissioner to dispose of the matter on merits after affording opportunity to the parties. Against the said order, the petitioner is before this Court.

4. It is stated, the KAT has not considered the grievance of the petitioner with regard to the Certificate issued by the Tahsildar of Kerala and also the Income



Tax returns with regard to Agricultural income out of the agricultural properties.

5. After having heard the learned counsel for the petitioners and the learned counsel for the respondents, what is being noticed is, there is non-consideration of material evidence on record. According to the petitioners, in similar situation, this Court and the Apex Court have considered the reasonableness of time to invoke proceedings suomoto or otherwise and also according to him, without considering the limitation available under law, the contesting respondent has filed the application/appeal against the impugned order of the Assistant Commissioner dismissing the application. Therefore, the impugned order passed by the KAT on 30.11.2006 needs interference. However, to afford sufficient opportunity to the petitioner once again to canvass his argument and, also on the point of limitation, the impugned order is set aside and the matter is remitted



to the Assistant Commissioner for disposal in accordance with law.

6. Learned counsel for the respondents in W.P.No.17512/10 has filed a memo for dismissal stating that the order dated 4.12.2009 at Annexure-H does not survive for consideration as the order is passed against a dead person.

7. In so far as W.P.No.17512/2010 is concerned, the petitioners are the legal representatives of the petitioner in W.P.No.1702/2007 the original owner of the land. According to the learned counsel for the petitioners, the Assistant Commissioner, without bringing the legal representatives on record, passed an order on 4.12.2009 vide Annexure-H. Hence, the same needs interference in view of the fact that the order passed by the Assistant Commissioner is against a dead person. As such, the impugned order is set aside with liberty to the contesting respondent to pursue the

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matter in accordance with law. All contentions are left open to be urged.

Accordingly, the writ petitions are allowed.

Sd/-
JUDGE

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