

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF DECEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.43930 OF 2012 (LR)

BETWEEN:

1 . RADHAKRISHNA GADIYAR,
S/O LATE NARASIMHA GADIYAR,
SINCE DEAD BY HIS LRS.

1A. H. SADASHIVA GADIYAR,
AGED ABOUT 49 YEARS,
S/O LATE H. RADHAKRISHNA GADIYAR,
HOUSE NO:3-25A, "CHITRAKOOT",
HEJAMADY 574 103,
UDUPI DISTRICT.

2A. H. MANJULA GADIYAR ALIAS P. MANJULA BHAT,
AGED ABOUT 45 YEARS,
D/O LATE H. RADHAKRISHNA GADIYAR,
W/O P. MANJUNATH BHAT,
HOUSE NO:5-149, "BHAT'S FARM HOUSE",
POST NARICOMBU,
BANTWAL TALUK 574 231,
DAKSHINA KANNADA DISTRICT.

3. H. MANJUNATH GADIYAR,
AGED ABOUT 43 YEARS,
S/O LATE H. RADHAKRISHNA GADIYAR,
HOUSE NO:3-25A, "CHITRAKOOT",
HEJAMADY 574 103,
UDUPI DISTRICT.

...PETITIONERS

(BY SRI.S.GANESH SHENOY, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
DEPARTMENT OF REVENUE,
M.S.BUILDINGS,
DR.AMBEDKAR VEEDHI,
BANGALORE-560 001,
REPRESENTED BY ITS PRINCIPAL SECRETARY.

2. ADDITIONAL LAND TRIBUNAL,
UDUPI TALUK, UDUPI,
BY ITS SECRETARY.

3. H ACHUTHA GADIYAR,
SINCE DECEASED BY HIS LRS:

A) H.KRISHNA GADIYAR,
S/O LATE ACHUHA GADIYAR,
HINDU, AGED ABOUT 78 YEARS,
R/O NEAR VENKATARAMANA TEMPLE,
DONGERKERI,
MANGALORE-575003.

B) M. SULOCHANA KAMATH,
D/O LATE ACHUTHA GADIYAR,
HINDU, AGED ABOUT 76 YEARS,
W/O KESHAHA KAMATH,
R/O SHIVAKRUPA,
OPP. SAHAYOGA COMPLEX, ALIKE,
MANGALORE-575003.

C) MUKTHA BAI,
S/O LATE ACHUTHA GADIYAR,
HINDU, AGED ABOUT 72 YEARS,
R/O SANKEY APARTMENTS,
SANKEY ROAD, BANGALORE-560080.

D) SHARADA KAMATH
S/O LATE ACHUTHA GADIYAR,
HINDU, AGED ABOUT 68 YEARS,
W/O M. RAMAKRISHNA KAMATH,
C/O MAROLI COMPOUND, CAR STREET,
MANGALORE-575001.

4. SHAMBHU PUJARI,
S/O LATE KUKRA PUJARI,
HINDU, AGED-ADULT,
R/O HEJAMADY,
UDUPI TALUK, UDUPI – 574 103.
SINCE DECEASED BY HIS LRS.

4A. SMT. INDIRA,
W/O LATE SHAMBU POOJARI,
HINDU, AGED ABOUT 60 YEARS,

4B. PREMALATHA,
D/O LATE SHAMBU POOJARI,
HINDU, AGED ABOUT 32 YEARS,

4C. HEMALATHA,
D/O LATE SHAMBU POOJARI,
HINDU, AGED ABOUT 30 YEARS,

4D. PRAMOD,
S/O LATE SHAMBU POOJARI,
HINDU, AGED ABOUT 28 YEARS,

4E. JETHESH
S/O LATE SHAMBU POOJARI,
HINDU, AGED ABOUT 26 YEARS,

ALL RESIDENT OF "KOPPALA HOUSE",
HEJAMADY POST - 574 103,
UDUPI DISTRICT.

...RESPONDENTS

(BY SRI.V SESHU, HCGP FOR R1 & R2;
SRI.PRASANNA V R, ADVOCATE FOR R4(A-E);
R3(A),R3(B),R3(C),R3(D) ARE SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
ANNX-N ORDER DATED 27.12.11 ON THE FILE OF THE R2.

THIS PETITION COMING ON FOR FINAL HEARING, THIS
DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner-landlords seeks to lay a challenge to the Land Tribunal order dated 27.12.2011 whereby, occupancy has been granted in favour of the private Respondents u/s 48A of the Karnataka Land Reforms Act, 1961 *inter alia* in respect of the land in Sy.No.161/2B to the extent of 35 cents and land in Sy.No.10/4B to the extent of 2 cents in Hejamady village of Mulki taluk.

2. Learned counsel appearing for the Petitioner argues that there is absolutely no evidence to support claim for the grant of occupancy and therefore, the impugned order is liable to be voided. He points out that in Form 7, the claim for occupancy was specifically made only to the extent of 17.5 cents in Sy.No.161/28 and therefore, the Tribunal had no jurisdiction to grant occupancy beyond the land that was not the subject matter of claim. Learned HCGP appearing for the State and the Land Tribunal and learned Advocate appearing for the private Respondent-tenants, oppose the Writ Petition making submission in

justification of the impugned order and the reasons on which it has been structured.

3. Learned counsel appearing for the private Respondents argues that although the claim in respect of land in Sy.No.161/2B was specified as 17.5 cents, it was only by mistake that such a figure was mentioned and however, in the course of evidence, the extent of land is already spoken of and therefore, there was no interdiction for the Tribunal to grant occupancy in respect of the entire 35 cents, the claim being 17.5 cents, notwithstanding. However, in respect of the land in Sy.No.10/4B, he graciously agrees that the grant of occupancy be set at naught so that the same can be made use of by the Petitioner. To that effect, he has also filed a Memo.

4. Having heard the learned counsel for the parties and having perused the Petition Papers, this Court is inclined to grant a limited indulgence in the matter as under and for the following reasons:

(a) The claim in respect of the land in Sy.No.161/2B as mentioned in the application in Form 7 was 17.5 cents, is true. However, what has been mentioned by figures in the applications of the kind cannot be construed as the gospel truth of the matter. There is a catena of decisions of this court supporting this view especially when the evidentiary material on record supports the claim for the larger extent. That being the position, the justice of the case warrants that the challenge so far as this land is concerned, has to be negated.

(b) The land in Sy.No.10/4B to the extent of 2 cents which is the subject matter of claim for occupancy, is shown to be in the possession of the Petitioner himself by virtue of certain registered partition deeds. There is no other evidentiary material supportive of the claim of the Respondent-tenants for the grant of occupancy in respect of this land. Where the evidence is frugal, the divestation of the title even under the law relating to agrarian reforms cannot happen, right to property being guaranteed by Article 300A of the Constitution. Therefore, the impugned

order to the extent it lays to this piece of land, needs to be voided. However, so much reason is not necessary since the private Respondent-tenants have filed a Memo giving up their claim in respect of this land. The said Memo reads as under:

"The Respondents No.4(a) to (e) respectfully submit that they does not claim any right on the land measuring 0.02 acre in Sy.No.10/4 of Hejamady village which is in possession of the Petitioner.

Wherefore the order of the Land Tribunal to that extent may be set aside, in the ends of Justice."

In the above circumstances, this Writ Petition is allowed in part; a Writ of Certiorari issues quashing the Land Tribunal orders only to the extent it comprises the land admeasuring 2 cents in Sy.No.10/4B of Hejamady village, Mulki taluk, Dakshina Kannada district. It is made clear that in respect of other lands, the Tribunal's order is sustained.

The jurisdictional authorities shall restore the names of Petitioner-landlords in respect of the said land within

eight weeks. Delay if brooked may entail heavy costs on day to day basis and the said costs shall be personally payable by lapsing officials concerned.

Costs made easy.

**Sd/-
JUDGE**

cbc