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SLP(C)No. 11167 OF 1997
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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

S.L.P. (C) No. 11167 of 1997@@
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D.N. Venkatarayappa & Anr. ...Petitioner(s)

Versus

State of Karnataka & Ors. ...Respondent(s)

With

SLP(C) Nos. 17814/99, 12744/97, 15838/97, 20780/97, CP(C) No. 289/98, SLP(C) Nos. 18387/99, 1468/2000, 16330/97, 13813/97, 5762/2000, 6124/2000, 7301/2000, CA 6354/98, SLP(C) Nos. 10629/97, 14366/98, 7685/99, CA No. 7083/2000, SLP(C) Nos. 15379/97, 15767/99, 19075/99, 21056/97 _____/2001, 21052/97, 12292/98, 334/99, 7842/99, 15107-15109/99, 9998/2000.

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This batch of cases has been referred to a three-Judge Bench by order dated 27th of October, 1999 as the Bench, which was hearing one such matter, was of the opinion that there appears to be some inconsistency between the earlier three-Judge Bench decision of this Court since reported in 1994(3) SCC 536 and the subsequent two Judge Bench decision of this Court reported in 1995(6) SCC 309. It may be stated that out of the batch of cases, which are on board today, in many matters even the notice itself has not been complete. But in view of the fact that we are only examining the alleged inconsistency between the judgments of this Court and not deciding any of the applications on merits, which necessarily have to be placed before an appropriate Bench of two learned Judges, we do not consider it necessary to wait till the service is complete.

The entire dispute centres round the provisions of

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Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short "the Act"), and the question of prescribing title by a transferee of the 'granted land' contrary to the prohibitions contained in the very grant itself. The State Legislature enacted the aforesaid Act prohibiting transfer of certain lands granted by the Government to persons belonging to the Scheduled Castes and Scheduled Tribes and making provisions for restoration of lands granted by the Government to such persons where the appropriate authority comes to the conclusion that the granted land has been alienated in favour of a person contrary to the prohibition contained in the grant as well as in the Act. Section 3(b) of the Act defines "granted land" to mean, thus:

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"granted land" means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such persons 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 word "granted" shall be construed accordingly:"

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Section 4 contains the prohibition of transfer of granted lands and Section 5 is the provision for resumption and restitution of granted land. The validity of the aforesaid provisions came to be considered by this Court in the case of Manchegowda and Ors. v. State of Karnataka and@@
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Ors. [(1984) 3 SCC 301]. Three learned Judges of this Court@@
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considered the provisions of Sections 4 and 5 of the Act, read

down the same and came to hold that the Act in question is valid. Having said so, the Court further held that where the 'granted land' 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 a voidable title in such granted land had perfected his title in the granted lands by a prescription by alienating and continuous enjoyment thereof in accordance with law before the commencement of the Act, then such granted lands would not come within the purview of the Act; inasmuch as the title of such transferee to the granted lands has been perfected before the commencement of the Act itself. Having read down the provisions of Sections 4 and 5, as stated above, notwithstanding the fact that the Legislature in Section 4 had made all such transfers to be null and void irrespective of any law, agreement, contract or instrument and any transfer of the granted land made either before or after the commencement of the Act, the Court further held that the Act will apply to the proceedings of granted land made in breach of condition imposing prohibition on transfer of granted land only in those cases where the title acquired by the transferee was still voidable on the date of the commencement of the Act and had not lost its defeasible character on the date when the Act came into force. The Provisions of the aforesaid Act came up for consideration in the case of K.T. Huchegowda v. Dy.@@
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Commissioner and Ors. [(1994) 3 SCC 536]@@
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In the aforesaid case, this Court examined the question as to when a transferee of the 'granted land' can be held to have perfected his title by adverse possession; and it was held that if the grantee of the granted land had an absolute title on the land in question on the very terms of the grant then in such a case the transferee of the granted land would necessarily have to prescribe a hostile title as against the grantee for which a period of limitation is 12 years. But, if the grantee of the 'granted land' had no absolute title and had merely a right of enjoyment of possession thereof and the paramount title still remains with

the State Government who is the owner of the land, then the transferee of such granted land will have to prescribe title only as against the true owner, namely, the State Government and necessarily, therefore, the period of limitation would be 30 years. The Court therefore ultimately came to the conclusion that whether the period of 12 years or 30 years would depend upon a finding as to whether the grantee of the 'granted land' had an absolute title over the land or he merely had a right of enjoyment and possession thereof, which necessarily will have to be decided upon the terms of the grant in favour of the grantee of the granted land.

There is no iota of inconsistency between the aforesaid two three-Judge Bench decisions of this Court; two operating on two different fields; the former on the question of validity of the Act and the later on the question as to when a plea of adverse possession can be entertained and what

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would be the period of prescription in such a case.

In R. Chandevaramappa & Ors. v. State of Karnataka@
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[(1995) 6 SCC 309], the question of adverse possession by a transferee of the granted land came to be considered. The Court examined the question and the effect of Rule 43(5) which prohibits alienation of the property granted to depressed class for all times to come. It then came to the conclusion that in that particular case, the crucial facts to constitute adverse possession had not been pleaded and since the transferee who was the appellant, came to possession by a derivative title from the original grantee and the grantee had no right to alienate the land; it was held that the transferee who came into possession under colour of title from the original grantee, if intends to plead adverse possession as against the State, he has to disclaim his title and plead hostile claim to the knowledge of the State. But, since such a stand had not been taken nor any evidence had been adduced to which also the counsel appearing for the grantee fairly conceded, the Court did not consider it necessary to remit the matter for any further consideration, in the light of the later judgment of this Court already referred to [(1994) 3 SCC 536]. The provisions of the Act as well as the alienation made in contravention of the terms of the grant and the plea of adverse possession by the transferee again came up for consideration in the case of Papaiah v. State of Karnataka &@
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Ors. [(1996) 10 SCC 533] and the Court re-examined the@@
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judgment of this Court in Huchegowda's case (supra) as well as@@
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Chanderappa's case (supra) and ultimately came to the conclusion that the plea of adverse possession against the State does not arise as the proceedings were led before the expiry of a period of 30 years. It is this sentence in the aforesaid judgment which probably persuaded the Bench hearing this matter on 27th October, 1999 to refer the matter to a 3-Judge Bench. But on a deeper scrutiny of the two judgments of the two learned Judges of this Court reported in 1995 (6) SCC 309 and 1996 (10) SCC 533 as well as on examining the two earlier judgments reported in 1984 (3) SCC 301 and 1994 (3) SCC 536, we really do not find any inconsistency amongst them which require any further resolution by a three-Judge Bench.

The earlier judgment of this Court in Manchegowda's@@
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case (Supra) while upholding the provisions of Sections 4 and@@
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5 of the Act by reading down the provisions, have unequivocally laid down that if on the date, the Act came into force, the grantee had an absolute title then the transferee of that grantee will have to prescribe title by adverse possession as against the grantee, and if he has prescribed that title then the Act will have no application. Obviously, therefore, the question would always depend on the fact whether by virtue of the grant in respect of the granted land, the grantee has an absolute title over the land or has merely a right of enjoyment and possession thereof. It is for this reason in the case reported in 1994 (3) SCC 536, the

subsequent 3-Judge Bench held that the question would depend upon the very grant itself and therefore, the appropriate authority while examining the matter will have to examine the terms of the grant and would come to a conclusion first; as to whether any title had been vested with the grantee of the granted land or the grantee had merely a right of enjoyment and possession. If the conclusion of the appropriate authority would be that the grantee had an absolute title over the land that had been granted and that land stood transferred to a transferee in contravention of the terms and conditions of the grant, then if such transferee had perfected his title by prescribing a period of 12 years by the date the Act comes into force, then that title cannot be divested by virtue of the provisions of Sections 4 or 5 of the Act. If that grantee, however, had got only a right of enjoyment and possession thereof, then the transferee of the granted land can only prescribe title as against the true owner namely, the State Government and in such a case period of limitation would be 30 years. The general provisions applicable for prescribing a title of adverse possession however must be complied with. In other words, unless and until the person claiming title by adverse possession pleads the necessary ingredients of the same, it would be fatal to examine the question of prescription of title by adverse possession. If, on the other hand, all the ingredients have been pleaded and the issue of prescription of title by adverse possession arise, then the appropriate authority is duty bound to examine

the original grant of the granted land and enter into the question to find out as to what was granted in favour of the grantee, namely, whether an absolute title or a right of enjoyment and possession, on which conclusion the further question of prescribing any title by adverse possession, if any, and period of 12 years or 30 years, as the case may be, would arise. We, therefore, do not find any inconsistency in the aforesaid four decisions and; if at all there is any doubt or inconsistency, the same is clarified, as stated above. The entire batch of cases may now be listed before the appropriate Bench of two learned Judges where the merits of each case will be gone into on the basis of facts found.

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(G.B. PATTANAIAK)@@
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(S.N. PHUKAN)@@
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New Delhi;

January 30, 2002

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(BRIJESH KUMAR)@@
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Item No. 101 A Court No. 3 SECTION IVA
and 101 B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

S.L.P. (C) No. 11167 of 1997@@
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(From the judgment and order dt. 21/02/1997 in WA 7354/96 of the High
Court of Karnataka at Bangalore)

D.N. Venkatarayappa & Anr. ...Petitioner(s)

Versus

State of Karnataka & Ors. ...Respondent(s)

(With applns. for ex parte stay)

With

SLP(C) Nos. 17814/99, 12744/97, 15838/97, 20780/97, CP(C) No.
289/98, SLP(C) Nos. 18387/99, 1468/2000, 16330/97, 13813/97,
5762/2000, 6124/2000, 7301/2000, CA 6354/98, SLP(C) Nos. 10629/97,
14366/98, 7685/99, CA No. 7083/2000, SLP(C) Nos. 15379/97, 15767/99,
19075/99, 21056/97, 2624/2001, 21052/97, 12292/98, 334/99, 7842/99,
15107-15109/99, 9998/2000.

Date : 30/01/2002 This petition(s)/appeal(s) was/were called
on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MR. JUSTICE S.N. PHUKAN
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s)/ Mr. Naresh Kaushik, Adv.
Petitioner (s) Mr. Sadashivappa Reddy, Adv.
Mr. D. Bharuka, Ms. Shilpa Chohan,
Mrs. Lalita Kaushik, Adv.

Mr. Varun Goswami, Adv.
Ms. Anu Mohla, Adv.

Mr. Girish Ananthamurthy, Adv.
Mr. P.P. Singh, Adv.

SLP(C) 9998/00 Mr. R.S. Hegde, Adv.
Mr. Somiran Sharma, Adv.

Mr. Shankar Divate, Adv.

Mr. Shanth Kumar V. Mahale, Adv.
Mr. P. Narasimhan, Adv.

For Respondent(s)/ Mr.Gargi Khanna, Adv.
Mr. B.K.Choudhary, Adv.
Mr. E.C. Vidya Sagar, Adv.
Mr. K. Sarada Devi, Adv.
State of Karnataka Mr. Sanjay R. Hegde, Adv.
Ms. Priya Hegde, Adv.

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Mr. S. Ravindra Bhat, Adv.
Mr. N. Ganapathy, Adv.
Ms. Minakshi Vij, adv.
Ms. V. Mohana, Adv.
Mr. K.R.Nagaraja, Adv.
Mr. G. Prakash, Adv.
Mr. P.P. Singh, Adv.
Mr. Surya Kant, Adv.
Mr.Bhaskar Y. Kulkarni , Adv.
Mr. Ajit Kumar Pande, Adv.

UPON hearing counsel, the Court passed the following
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Mr. Naresh Kaushik, Advocate commenced his arguments at 11.30 a.m. and concluded at 2.10 p.m. whereafter Mr. Sanjay R. Hegde, Advocate argued the matter for about 10 minutes. Hearing concluded.

The Court does not find any inconsistency in the decisions referred to in the signed order. The entire batch of cases may now be listed before the appropriate Bench of two learned Judges where the merits of each case will be gone into on the basis of facts found.

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(J.S. Rawat)
Court Master

(S. Malkani)
Court Master

(Signed order is placed on the file)