IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE S RACHAIAH

WRIT APPEAL NO. 147 OF 2024 (SC-ST)

BETWEEN:

SRI. N V SHANKAR
S/O LATE VARABADHRAIAH,
AGED ABOUT 47 YEARS,
RESIDING AT: NEETIMANGALA VILLAGE,
SHEELANERE HOBLI,
K.R. PETE TALUK,
MANDYA DISTRICT - 571 426.

...APPELLANT

(BY SRI. SUNIL S RAO, ADVOCATE FOR
SRI. T SESHAGIRI RAO, ADVOCATE)

Digitally signed by NARAYANA UMA
Location: HIGH COURT OF KARNATAKA

AND:

1. DEPUTY COMMISSIONER
MANDYA DISTRICT, MANDYA - 571 401.

2. THE ASSISTANT COMMISSIONER
PANDAVAPURA SUB-DIVISION,
PANDAVAPURA – 571 434.

3. SRI. RAMEGOWDA
S/O MUDDALINGEGOWDA,
AGED ABOUT 68 YEARS,
RESIDING AT: NEETIMANGALA VILLAGE

NEELANERE HOBLI
PANDAVAPURA TALUK
MANDYA DISTRICT - 571 435.

4. SRI. DEVEGOWDA
S/O MUDDALINGEGOWDA,
AGED ABOUT 65 YEARS,
RESIDING AT: NEETIMANGALA VILLAGE
NEELANERE HOBLI, PANDAVAPURA TALUK
MANDYA DISTRICT – 571 435.

5. SRI. NINGEGOWDA
S/O MUDDALINGEGOWDA,
AGED ABOUT 65 YEARS,
RESIDING AT NEETIMANGALA VILLAGE
NEELANERE HOBLI, PANDAVAPURA TALUK
MANDYA DISTRICT - 571 435.

6. SRI BORALINGEGOWDA
S/O MUDDALINGEGOWDA,
AGED ABOUT 65 YEARS,
RESIDING AT NETIMANGALA VILLAGE
NEELANERE HOBLI, PANDAVAPURA TALUK
MANDYA DISTRICT - 571 435.

…RESPONDENTS

(BY SMT. SHWETHA KRISHNAPPA, AGA FOR R1 & R2)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO CALL FOR RECORDS AND SET ASIDE THE ORDER DATED 19.07.2023 ONE PASSED BY THE LEARNED SINGLE JUDGE IN W.P No. 5981/2022, FILED BY THE APPELLANT HEREIN AND CONSEQUENTLY PASS NECESSARY ORDERS TO ALLOW THE WRIT PETITION.

THIS APPEAL, COMING ON FOR PRELIMINARY HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V KAMESWAR RAO
and
HON'BLE MR JUSTICE S RACHAIAH

ORAL JUDGMENT
(PER: HON'BLE MR JUSTICE V KAMESWAR RAO)

This appeal raises a challenge to the order of learned Single Judge dated 19.07.2023 passed in Writ Petition No.5981/2022, whereby the learned Single Judge has dismissed the appeal filed by the appellant herein, by stating in paragraph No.4 onwards as under:-

> *"4. In the present case on hand, the original grantee during the lifetime has alienated the land in 1960 and has filed an application seeking restoration in the year 1979. The said application was rejected on 31.07.1981. The present petitioner herein has filed second application seeking restoration in the year 2016. This application was also rejected.*
>
> *5. In the instant case, this Court would find that there is a delay of 56 years in filing the petition by the petitioner herein. While the original grantee suffered an order, he again moved an application after an inordinate delay of 19 years. The Hon'ble Apex Court in the above cited judgment has held that where statute does not provide for limitation, the authorities and State must act consciously and if the process of invoking the provisions of*

statute is delayed and is initiated after long lapse of time, the delay by itself would act as an impediment. Thus, without exception and coming across various rules of law, the Apex Court has categorically stated the law in respect of exercise of power/jurisdiction under statute where no limitation is stipulated. The law on the point of delay and laches to invoke the provisions of PTCL Act is well settled by catena of judgments.

6. The restoration petition filed by the petitioner herein is liable to be rejected in the light of law laid down by the Apex Court in the judgment cited supra. If original grantee has suffered an order and his application seeking restoration was rejected in the year 1981, the present petitioner, claiming to be the grandson could not have maintained the second application in the year 2016.

7. The second application seeking resumption is not maintainable as held by the Division Bench of this Court in the case of ***Sri Narayanaswamy vs. The District Commissioner, Bengaluru Urban District and Others****. The relevant paragraph of the judgment rendered by the Division Bench is as under:*

> *"11. In view of the aforesaid undisputed facts and circumstances, we are of the view that once the proceedings under Sections 4 and 5 of the PTCL Act are filed/initiated and the same are either withdrawn or dismissed on merits, a fresh petition/second petition*

> *on the same cause of action and the same subject matter under Sections 4 and 5 of the PTCL Act is not maintainable and the same is liable to be dismissed on this ground alone. The second petition is clearly barred by the principles of estoppel, acquiescence, abandonment and waiver. Accordingly, though a finding in this regard has not been recorded by either the Learned Single Judge or the authorities, having regard to the undisputed material on record, a second petition under Sections 4 and 5 of the PTCL Act would not be maintainable and the same is liable to be rejected on this ground alone."*

Therefore, I am not inclined to interfere with the concurrent orders passed by the authorities.

8. In view of discussion made supra, I proceed to pass the following:

ORDER

(i) The writ petition is devoid of merits and accordingly, stands dismissed."

2. Though the submission of learned counsel for appellant is that the subject matter of challenge before the learned Single Judge was only to an order passed by the Deputy Commissioner, not condoning the delay, learned Single Judge decided the petition by going into the merits of the case and dismissed the writ petition, which is clearly untenable.

3. We are not in agreement with the said submission made by the learned counsel for the reason that the learned

Single Judge while exercising the writ jurisdiction is within his right, to decide all aspects of the case, including the merits, if the facts are not in dispute. Surely, the aspect of limitation which is a species of delay and latches, the learned Single Judge is right to consider the main issue in the petition, and decide the same.

4. We, having seen the facts which arose for consideration of the learned Single Judge, are of the view that the learned Single Judge is right in dismissing the writ petition for the reasons stated in the aforesaid paragraphs.

5. The appeal being without merits, is *dismissed.*

Pending I.As., do not survive for consideration and they stand disposed of.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(S RACHAIAH)
JUDGE

Bss
List No.: 1 Sl No.: 61