**IN THE HIGH COURT OF KARNATAKA,**

**DHARWAD BENCH**

**DATED THIS THE 31ST DAY OF AUGUST, 2024**

**PRESENT**

**THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT**

**AND**

**THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL**

**WRIT APPEAL NO. 100171 OF 2023 (LR)**

**BETWEEN:**

UTTARADI MATH, BY ITS PEETADHIKARI,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER,
SRI RAVINDRAN C.V.,S/O VASUDEVA RAO,
AGE 61 YEARS, R/O. N.NO.3, O.NO.2, SUBBA RAO AVENUE,
1ST STREET, COLLEGE ROAD, NUMGAMBAKKAM,
GREAMS ROAD, CHENNAI,TAMIL NADU-600006.

...APPELLANT

(BY SRI. PRASHANT F. GOUDAR, ADVOCATE)

**AND:**

1. THE DEPUTY COMMISSIONER,
   BELLARY DISTRICT, BELLARY.

2. THE TAHASILDAR,
   BELLARY TALUKA, BELLARY.

3. THE STATE OF KARNATAKA,
   BY ITS SECRETARY TO REVENUE DEPT. GOVT. OF
   KARNATAKA, VIKAS SOUDHA, BANGALORE.

4. BELLARY CITY CORPORATION,
   BY ITS COMMISSIONER, BELLARY.

...RESPONDENTS

(BY SRI. V. S. KALASURMATH, HCGP FOR R1 TO R3;
SRI. SHARANABASAVARAJ C., ADV. FOR R4)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, R/W. ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL THE RECORDS AND SET ASIDE THE ORDER DATED 14/09/2022 PASSED IN WP NO.64155/2011 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT.

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

CORAM: THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT
AND
THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

**ORAL JUDGMENT**

(PER: THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT)

This intra-Court appeal calls in question a learned Single Judge's judgment dated 14.9.2022, whereby appellant's WP No.64155/2011 (LR) has been negatived. In the said petition, what was challenged was Deputy Commissioner's order dated 26.12.2008, by which pursuant to some observations made in Land Tribunal's order dated 26.7.2002, he has transferred the subject land in favour of respondent – City Corporation. He acts under a premise that the appellant holds land in excess of ceiling limit prescribed under the provisions of the Karnataka Land Reforms Act, 1961 (for short "1961 Act").

2. Learned counsel appearing for the appellant vehemently argues that: right to property is guaranteed as a fundamental right to the Religious denominations in

terms of Article 26(c) of the Constitution of India in the light of Apex Court decision in **The Commissioner, Hindu Religious Endowments, Madras Vs. Sri. Lakshmindra Thirtha Swamiar of Shirur Mutt**[1], in addition to a gurantee under Article 300-A; for land to vest in the State, there has to be surrender by the land owner of his excess holding under Articles 63 & 66 read with Schedule I of the 1961 Act. In the absence of such a finding to that effect, land cannot be taken away by any authority. Further, he hastens to add that the Tribunal had never adjudged the land to be excess holding and nor any other authority held so; the learned Single Judge has fallen in error in saying that challenge was belated; a cursory observation of the Tribunal in its order dated 26.07.2002 does not amount to determining excess holding. The land neither having vested in the State nor having been taken by the State on the ground of its being excess, the order of Deputy Commissioner that was impugned in the writ petition was liable to be quashed.

[1] AIR 1954 SC 282

This aspect having not been duly considered by the learned Single Judge, there is immense infirmity in the impugned judgment.

3. After service of notice, the official respondents are represented by the learned HCGP and the respondent – City Corporation is represented by its Panel Counsel; respondents have not filed any Statement of Objections either in the writ petition or in the writ appeal. Both they make submission in justification of the impugned judgment and the reasons on which it has been constructed. Learned HCGP with equal vehemence contends that the observation of the Land Tribunal has not been put in challenge by the appellant and therefore, at this length of time, appellant could not have knocked the doors of Writ Court after brooking enormous delay. So contending, they seek dismissal of the Writ Appeal.

4. Having heard the learned counsel appearing for the parties and having perused the appeal papers, we

are inclined to grant indulgence in the matter, for the following reasons:

4.1. The first contention of the learned AGA that the relief has been denied to the appellant rightly on the ground of delay does not impress us. The order of the Deputy Commissioner is dated 25/26th November 2008. The writ petition has filed on 29.06.2011; even Schedule to the Limitation Act, 1963 prescribes a period of three years to file a suit on cause of the kind. It has long been settled by the Apex Court that while construing delay & laches in invoking the writ jurisdiction, the provisions of 1961 Act need to be kept in view. Added the appellant being a religious denomination was complaining against the breach of its fundamental rights to hold property. The respondents had not filed any Statement of Objections taking up a contention of delay. Therefore, learned Single Judge is not right in denying relief to the appellant on the alleged ground of delay & laches.

4.2. The submission of learned counsel for the appellant that the appellant – Mutt is religious denomination in the light of **Shirur Mutt** *supra*, and therefore it has a fundamental right to own and manage its property merits acceptance. Mutt of the kind has already been held by the Apex Court in the said case as religious denomination. Article 26(c) of the Constitution of India reads as under:

> *"26. Freedom to manage religious affairs subject to public order, morality and health, every religious denomination or any section thereof shall have the right.—*
>
> *(a) & (b) XXXXX*
>
> *(c) to own and acquire movable and immovable property."*

That being the position the Deputy Commissioner could not have taken the subject property unceremoniously there being no finding by the Tribunal as to the subject land being in excess of ceiling limit. The Tribunal's one line observation at the fag end of its order dated 26.07.2002 that the Tahsildar should proceed with the matter under Section 77 of 1961 Act cannot be construed as the Tribunal determining the holding to be in excess of

ceiling limit. The contention of the learned HCGP that the said order has not been challenged therefore pales into insignificance.

4.3. It has now been well settled that unless determination of land holding in excess of prescribed limit takes place at the hands of appropriate authority, one cannot assume that the land held is in excess of ceiling limit. Schedule-I of 1961 Act classifies lands in four groups such as Class-A, Class-B, Class-C & Class-D. The appellant – Mutt is holding about 84 acres of land. Section 63(7)(a) of the Act prescribes a ceiling limit of 20 units which works out to 108 acres. The same reads as under:

> ***"63. Ceiling on land.-***
>
> *(7) (a) No educational, religious or charitable institution or society or trust, of a public nature, capable of holding property, formed for an educational, religious or charitable purpose shall hold land except where the income from the land is appropriated solely for the institution or the society or the trust concerned. Where the land is so held by such institution, society or trust, the ceiling area shall be twenty units."*

4.4. Thus, by any stretch of imagination, one cannot assume that the appellant – Mutt holds the land in excess of the ceiling limit, in the absence of other land held by it being *prima facie* shown.

4.5. The subject land was a matter of claim for the grant of occupancy by the tenants; the Tribunal negatived the claim on the specific ground that there was no landlord tenant relationship between the parties. The same was put in challenge by tenants in W.P. No.46596/2002 and a learned Single Judge of this Court vide order dated 16.01.2008 dismissed the same. Matter did not end here, it was taken in appeal in W.A. No.795/2008 and even that came to be dismissed vide order dated 26.06.2008 There was absolutely no question of vesting of the untenanted land in the State unless the triple test is satisfied vide a Coordinate Bench decision of this Court in **Neria Estates Rural Industries Vs. The State of Karnataka**[2] W.A. No.4312/2017, disposed off on

[2]

05.07.2024. We failed to understand as to how the Deputy Commissioner on his own granted the subject land in the favour of the City Corporation there being no determination of ceiling limit and excess holding by any authority.

4.6. The submission of the learned counsel for the appellant that the respondents – City Corporation should be injuncted from interfering the subject land does not merit acceptance in the absence of any material to that effect being placed before us. If there is any interference, it is open to the Mutt to take up appropriate legal proceedings. That being said, the revenue officials including the Deputy Commissioner are liable to restore entries in the revenue records in favour of the appellant since the present entries were made on the basis of his order which is unsustainable. Period for compliance is eight weeks.

In the above circumstances, this writ appeal succeeds and the impugned judgment of the learned

Single Judge is set aside. The Writ Petition No.64155/2011 is allowed; a Writ of Certiorari issues quashing the Deputy Commissioner's order dated 26.12.2008 coupled with a direction for restoration of entries in the revenue records in favour of the appellant herein within eight weeks.

Pending applications, if any, pale into insignificance.

Costs made easy.

**Sd/-**
**(KRISHNA S.DIXIT)**
**JUDGE**

**Sd/-**
**(VIJAYKUMAR A.PATIL)**
**JUDGE**

JTR/ct-an
List No.: 2 Sl No.: 1