

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.1713 OF 2024 (KLR-RES)

BETWEEN:

SRI. M.S.PRAVEEN KUMAR
S/O LATE M.SHAMAIHAH
AGED ABOUT 48 YEARS
RESIDING AT NO.25/2
PUTTENAHALLI PALYA
OPP. INDIAN OIL PETROL BUNK
JP NAGARA 7TH PHASE
BANGALORE - 560 078.

....PETITIONER

(BY SRI. D.R.RAVISHANKAR, SENIOR ADVOCATE FOR
SRI RAMU S., ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS CHIEF SECRETARY
VIDHANA SOUDHA
BANGALORE - 560 001.
2. THE SPECIAL DEPUTY COMMISSIONER
BANGALORE SOUTH SUB-DIVISION
K.G.ROAD, BEHIND KANDAYA BHAVAN
BANGALORE - 560 009.
3. THE DEPUTY TAHSILDAR
UTTARAHALLI HOBLI

BANASHANKARI
BANGALORE SOUTH TALUK.

4. THE ENDOWMENT COMMISSIONER
FOR HINDU RELIGIOUS CHARITABLE
INSTITUTE/DEPARTMENT, CHAMARAJAPET
BANGALORE - 560 019.
5. ANJANEYASWAMY TEMPLE
PUTTENAHALLI
JP NAGAR 6TH STAGE
BANGALORE - 560 076.
6. SRI. V.R.RAGHURAM BHATTAR
S/O LATE RAGHAVA BHATTAR
AGED ABOUT 51 YEARS
R/AT NO.81, KONANAKUNTE CROSS
VASANTHAPURA, BANGALORE SOUTH
SUBRAMANYAPURA
BANGALORE - 560 061.
7. SRI. V.R. MUKUNDA BHATTAR
S/O LATE RAGHAVA BHATTAR
AGED ABOUT 50 YEARS
R/AT NO.1, 9TH MAIN
NEAR VEERANJEYA TEMPLE
PUTTENAHALLI, JP NAGAR 7TH PHASE
BANGALORE - 560 078.
8. SRI. V.R.SUDARSHAN BHATTAR
S/O LATE RAGHAVA BHATTAR
AGED ABOUT 46 YEARS
R/AT NO.1, 9TH MAIN
NEAR VEERANJEYA TEMPLE
PUTTENAHALLI, JP NAGAR 7TH PHASE
BANGALORE - 560 078.
9. SMT. SOWMYA LAKSHMI M.
D/O LATE RAGHAVA BHATTAR

W/O SRI M.G. VIJAYASARTHY
AGED ABOUT 45 YEARS
R/AT NO.41, SRI RANGANATHA LAYOUT
DRDO PHASE-II
BEHIND MAHADEVAPURA
BANGALORE - 560 048.

.....RESPONDENTS

(BY SRI. RAJESH MAHALE, SENIOR ADVOCATE FOR
SRI. D.KRISHNAMURTHY & SRI. SHRENIDHI L., ADVOCATES
FOR R6 & R7; SRI HARISHA A.S., AGA FOR R1 TO R4;
SRI G.S.BHAT, ADVOCATE FOR IMPLEADING APPLICANT IN
I.A.NO.3/2024)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF
THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF
APPROPRIATE NATURE TO REVIEW THE ORDERS DATED
11.03.2020 PASSED IN W.P.NO.3963/2018 (KLR-RR/SUR) AND
PASS SUCH OTHER ORDERS AS MAY BE DEEMED APPROPRIATE
IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 04.09.2024, THIS DAY ORDER WAS
PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

C.A.V. ORDER

The captioned petition is filed seeking review of the
order dated 11.03.2020 passed in W.P.No.3963/2018.

2. The background of the dispute that had arisen
for consideration in W.P.No.3963/2018 is as under:

Respondent Nos.6 to 9 feeling aggrieved by the order passed by the respondent No.2/Special Deputy Commissioner filed a writ petition in W.P.No.3963/2018. The Special Deputy Commissioner, Bengaluru initiated proceedings under Section 136(3) of the Karnataka Land Revenue Act and declined to entertain the application filed by respondent Nos.6 to 9 seeking katha change on the premise that the legal heirs of Raghava Bhattar have not produced documents indicating that their father was appointed as an Archak of Anjaneya Swamy Temple and there are no documents indicating payment of premium of Rs.175/- pursuant to grant. The Special Deputy Commissioner rejected the application on the premise that the material based on which respondent Nos.6 to 9 are asserting that there is a grant in favour of their father is a newly created file.

The order passed by the Special Deputy Commissioner under Section 136(3) was subjected to challenge before this

Court in W.P.No.3963/2018. The coordinate Bench allowed the writ petition and the order passed by the Special Deputy Commissioner under Section 136(3) was set aside. This Court while setting aside the order was of the view that proceedings initiated by respondent No.2 under section 136(3) after 38 years from the date of grant order which had attained finality is illegal.

3. The present petition is filed by the petitioner asserting title over the petition land bearing Sy.No.25. The review petitioner traces his title over the petition land on the basis of gift deed executed by one Thirumalappa to Munishami. Petitioner claims to be the grandson of Munishami.

4. Initially, review petitioner assailed the order passed by the coordinate Bench in W.P.No.3963/2018. Pending consideration of the captioned petition, petitioner by way of amendment sought leave of this Court to seek

declaration that the order of the Special Deputy Commissioner dated 30.07.1975 is null and void.

5. Learned Senior Counsel appearing for the review petitioner has vehemently argued and contended that the order of 1975 alleged to have been passed in favour of respondent Nos.6 to 9's father has never seen the light of the day and the RTC continue to stand in the name of petitioner's ancestors and the RTC's at no point was ever changed thereby showing the name of either Raghava Bhattar or any family members at any point of time. Learned Senior Counsel would point out that the State had not properly contested the petition and this Court was not apprised that the petition land is attached to a Muzurai temple and therefore, is deemed to be a Muzurai property which is under the control of Endowment Commissioner and if title documents are looked into, the petitioner is the absolute owner. He would argue and contend that if these two significant details were brought to the notice of the

coordinate Bench, effective decision would have been taken.

6. Reliance is placed on the letters sent by the Tahsildar as evidenced at Annexures-E and C to indicate that grant in favour of respondent Nos.6 to 9's father in 1975 is doubtful. Learned Senior Counsel would also highlight the order passed by the Deputy Tahsildar dated 23.03.2023 who recommended to verify the genuineness of the file itself.

7. Learned Senior Counsel for review petitioner to buttress his arguments has cited the following judgments:

1) Mahant Sankarshan Ramanuja Das Goswami vs. State of Orissa - AIR 1967 SC 59;

2) Shivdeo Singh and Others vs. State of Punjab - AIR 1963 SC 1909;

3) Ghulam Qadir vs. Special Tribunal - (2002) 1 SCC 33;

4) *State of U.P. vs. Ravindra Kumar Sharma - (2016) 4 SCC 791;*

5) *State of A.P. vs. T.Suryachandra Rao - (2005) 6 SCC 149;*

6) *A.A.Gopalakrishnan vs. Cochin Devaswom Board and Others - (2007) 7 SCC 482;*

7) *Appaji Gowda vs. Vokkaligara Sangha and Others - (2009) 17 SCC 99;*

8) *Swami Shankaranand (Dead by LRs.) vs. Mahant Sri Sadguru Sarnanand and Others - (2008) 14 SCC 642;*

9) *Pohla Singh Alias Pohla Ram (D) by LRs. and Others vs. State of Punjab and Others - (2004) 6 SCC 126.*

8. Per contra, learned Senior Counsel appearing for the respondent Nos.6 to 9, however, counters the petitioner's claim and contends that petitioner has no locus to file the present writ petition and therefore, it is contended that the present writ petition is not maintainable

at the behest of the petitioner. Learned Senior Counsel would point out that the writ petition in W.P.No.3963/2018 was primarily a challenge to the *suo motu* proceedings under Section 136(3) by the Special Deputy Commissioner. He would point out that these proceedings were initiated as a response to an application filed by the legal heirs of Raghava Bhattar i.e., respondent Nos.6 to 9 to enter their names in the revenue records. In the *suo motu* proceedings initiated by the Special Deputy Commissioner, petitioner was neither a proper nor necessary party. Learned Senior Counsel would further point out that the petitioner strangely has set up a rival title based on alleged gift deed in favour of his grandfather. Therefore, he would contend that challenge to the order of this Court by a person claiming rival title cannot be adjudicated in a writ proceedings.

9. Learned Senior Counsel referring to the scope of enquiry under Section 136(3) of Karnataka Land Revenue

Act, 1964 supports the judgment rendered by this Court in W.P.No.3963/2018. Taking this Court through the judgment rendered by the coordinate Bench which is now subjected to review, he would contend that the grant admittedly was of the year 1975 and therefore, coordinate Bench citing the law laid down by the Hon'ble Apex Court in the case of ***Joint Collector, Ranga Reddy District & Another vs. D.Narsing Rao & Others*** reported in **2015 AIR SCW 622** and the dictum laid down by the Hon'ble Apex Court in the case of ***Chhedilal Yadav vs. Hari Kishore Yadav*** reported in **(2018) 12 SCC 527** has rightly set aside the order passed by the Special Deputy Commissioner. Referring to the observations made by the coordinate Bench, he would point out that the grant order was examined by this Court. He would further contend that this Court only on examining the records and on satisfaction held that Deputy Commissioner erred in doubting the genuineness of the grant order made in 1975.

10. While there is serious objection to the declaration sought by the petitioner virtually questioning the grant made in 1975, it is contended that the challenge is made after 49 years of the grant order on the premise that the land was not Inam land and also on the ground of fraud and concoction. Learned Senior Counsel would persuade this Court that such a recourse is not permissible in a writ petition where review of the order passed by the coordinate Bench is sought, he would further rely on the quit rent register and therefore, he would try to make out a case that petition land was admittedly Devadaya Inam land and therefore, it was available to the grant under Section 6-A of the Mysore (Religious & Charitable) Inams Abolition Act, 1955. He would further contend that strangely there are no specific pleadings in regard to fraud and how it was committed. Reliance is placed on the presumption available under Section 114(e) of Evidence Act and referring to the said Section, learned Senior Counsel would contend that it

has to be presumed that the grant made in 1975 is genuine.

11. While contesting the prayer sought in the review petition, learned Senior Counsel has cited the dictum laid down by the Hon'ble Apex Court in the case of ***Shivdeo Singh & Others vs. State of Punjab & Others***¹. Citing the said judgment, he would contend that power of review under Article 226 is very limited and unless a case is made out, no indulgence is warranted. Citing the law laid down by the Hon'ble Apex Court in the case of ***Chhedi Lal Yadav (supra)***, learned Senior Counsel would vehemently argue and contend that though petitioner has failed to substantiate that his rights are adversely affected and therefore, his locus is seriously disputed by the respondent Nos.6 to 9. Citing the law laid down by the Hon'ble Apex Court in the case of ***Union of India vs. Major SP***

¹ AIR 1963 SC 1909

Sharma², it is argued that even an erroneous order requires to be challenged. Relying on the dictum laid down in the above said judgment, he would contend that the grant made in 1975 is not challenged. Relying on the judgment rendered by this Court in W.P.No.41881/2019, he would contend that the Special Deputy Commissioner lacks authority to examine the correctness of the grant order by having recourse to Section 136(3) of the Karnataka Land Revenue Act. He would conclude his arguments by contending that even a fraudulent grant order is required to be challenged and cancelled within time. The fact that petitioner is asserting right and title after lapse of over 5 decades no indulgence can be granted. The writ petition lacks merits and accordingly, prays to dismiss the same.

12. Heard learned Senior Counsel appearing for the petitioner, learned Senior Counsel for respondent Nos.6 and 7 and learned AGA. Perused the records.

² (2014) 6 SCC 351

13. The present case arises from a series of legal proceedings involving the title and rights associated with land bearing Sy.No.25. The dispute centers around an order issued by the Special Deputy Commissioner under Section 136(3) of the Karnataka Land Revenue Act in 1975, which was challenged in a writ petition (W.P.No.3963/2018). The coordinate Bench in that matter set aside the Deputy Commissioner's order, asserting that the proceedings initiated after 38 years were unlawful. The Co-ordinate Bench noted that the grant had attained finality, and the petitioners in that writ sought to rectify records based on an alleged lack of documentation regarding the grant.

14. The current review petitioner claims title to the land through a gift deed executed by Thirumalappa to his grandfather, Munishami. The petitioner contends that the grant made in 1975 in favour of the legal heirs of Raghava Bhattar is questionable, arguing that the revenue records have not been updated to reflect this supposed grant. He

also highlights that the property is affiliated with a Muzurai Temple and therefore, should fall under the purview of the Endowment Commissioner. The learned Senior Counsel for the petitioner asserts that the State's failure to contest the matter adequately led to an incomplete picture before the coordinate Bench, which could have influenced the court's decision.

15. In the present case, the grant made in favour of the private respondents has been conclusively upheld by a coordinate Bench, thereby affirming its validity and establishing a foundation of finality regarding the ownership of the disputed property. The petitioner now seeks to challenge this order through a writ petition, asserting independent rights over the land in question. However, for the petitioner to prevail in this endeavor, it is crucial to articulate specific grounds that substantiate the need for a review of the prior judgment. The burden rests on the

petitioner to demonstrate that the earlier decision was flawed in a manner that justifies revisiting it.

16. A significant point of concern arises from the petitioner's attempt to amend the original writ petition to question the legitimacy of the 1975 grant itself. This move effectively shifts the nature of the proceedings from a review of the coordinate Bench's order to an outright challenge of the original grant, which has already been validated by the Court. Such an approach raises substantial legal issues, as it blurs the lines between a review and a fresh challenge to an established order. The Court has consistently held that a review petition cannot be used as a vehicle to re-litigate issues that have already been decided, especially when the original order has attained finality.

17. The Hon'ble Supreme Court in ***K.K. Verma vs. Union of India***³, articulated the limited scope of review under Article 226, emphasizing that the power of review

³ AIR 1954 SC 98

should be exercised with caution and is confined to cases where a manifest error has occurred or when new and compelling evidence emerges. Additionally, in the case of ***Shivdeo Singh & Others v. State of Punjab & Others*** (*supra*), the Court reiterated that a review is not an appeal and cannot be utilized to correct every error or to re-examine the merits of the case. This principle underscores that under the guise of a review, the petitioner cannot be permitted to mount a fresh assault on the 1975 grant, which has been duly upheld by the coordinate Bench. Allowing such a challenge would not only undermine the established legal tenets but also threaten the stability of property rights that rely on judicial finality.

18. The 1975 grant was initially scrutinized by the Deputy Commissioner through *suo motu* proceedings under Section 136(3) of the Karnataka Land Revenue Act, leading to a determination regarding its legitimacy. The coordinate Bench subsequently upheld the genuineness of this grant,

reinforcing its validity and finality. In light of this, it is crucial to recognize that the petitioner, under the guise of seeking a review of the order, cannot be permitted to challenge the established order regarding the grant. Such a challenge would not only contravene the principles of judicial finality but also disrupt the stability of property rights that have been affirmed by the Court, thereby undermining the integrity of the legal process.

19. The Court must consider the implications of challenging a grant that has been in place for nearly five decades. The review petitioner's arguments, which suggest fraud and illegality in the original grant, lack specific details and timelines. The absence of a clear framework detailing how the alleged fraud was committed diminishes the weight of these claims. Additionally, the law presumes the validity of the 1975 grant under Section 114(e) of the Evidence Act, further complicating the review petitioner's position. The lapse of nearly half a century in contesting the grant raises

significant concerns regarding the principles of delay and laches in legal proceedings.

20. The petitioner's claim to title over the property is rooted in a gift deed, which he presents as a basis for asserting his rights. However, he simultaneously contends that the property is affiliated with a Muzurai temple, arguing that it should thus be governed by the regulations of the Endowment Commissioner. This conflicting position raises substantial doubts about the petitioner's *locus standi* to pursue a review of the coordinate Bench's order. The dual nature of the petitioner's assertions creates a complicated factual scenario that complicates the legitimacy of his claim. If the property is indeed under the control of the Endowment Commissioner due to its affiliation with the Muzurai temple, the petitioner's title based on the gift deed becomes questionable, as it may not be within his rights to assert ownership independently of the regulatory framework applicable to temple properties.

21. Moreover, the rights claimed by the petitioner, based on the gift deed, do not fall within the purview of review jurisdiction. The Supreme Court has consistently emphasized the limited scope of review in matters concerning established titles and rights. In ***Union of India vs. Major SP Sharma*** (*supra*), the Court articulated that review jurisdiction is not an avenue for re-evaluating issues of title or ownership that have been conclusively decided in prior judgments. The Court reaffirmed that a review petition is confined to addressing errors apparent on the face of the record, rather than re-litigating or challenging substantive claims.

22. Therefore, given the complexities introduced by the petitioner's assertions regarding the gift deed and the affiliation of the property with a Muzurai temple, it is evident that these matters are not amenable to review. The intertwining of these claims not only undermines the petitioner's position but also reinforces the notion that the

review petition lacks a solid legal foundation. Consequently, the petitioner's attempt to challenge the coordinate Bench's order through this review is not only misplaced but also fundamentally inconsistent with established legal principles regarding the scope and nature of review jurisdiction.

23. In light of the above considerations, the petitioner's petition for review is hereby dismissed. The order of the coordinate Bench upholding the genuineness of the 1975 grant is affirmed and remains in full force. The petitioner cannot be permitted to challenge the validity of the grant or assert independent rights based on the gift deed within the framework of this review petition.

No costs are awarded.

**SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

CA