IN THE HIGH COURT OF KARNATAKA AT BENGALURU

R

DATED THIS THE 16TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.3420 OF 2013 (LR)

BETWEEN:

1. SMT. NAFEEZA,
   W/O MOHAMMED,
   SINCE DIED,
   VIDE ORDER DATED 1.04.2021
   THE LR'S OF THE 1ST PETITIONERS
   ARE PETITIONERS NO.2 TO 10
   ARE IMPLEADED

2. SMT.KHATEEJA,
   W/O MOHIDEEN,
   AGED 54 YEARS,

3. SMT.SAFIYA,
   W/O LATE YOUSUF,
   AGED 52 YEARS,

4. SMT.FATHIMA,
   W/O LATE YOUSUF,
   AGED 50 YEARS,

5. SMT.AYESHA,
   W/O ABOOBAKER,
   AGED 47 YEARS,

6. SRI.UMAR FARQOOQ,
   W/O MOHAMMED,
   AGED 43 YEARS,

7. SMT.SAKEENA,
   W/O RAVOOF,
   AGED 40 YEARS,

8. SRI.ABDUL KAHDER,
   S/O MOHAMMED,
   AGED 38 YEARS,

9. SRI.YAHYA,
   S/O MOHAMMED,
   AGED 36 YEARS,

10. SRI.ABDUL BASHEER,
    S/O MOHAMMED,
    AGED ABOUT 34 YEARS,

PETITIONERS NO.1 TO 10 ARE
R/AT VEERAKAMBA VILLAGE,
BANTWAL TALUK,
DAKSHINA KANNADA DISTRICT.

11. SRI.ABBAS BEARY,
    S/O UMAR BEARY,
    AGED 76 YEARS,
    R/AT KUKKILA HOUSE,
    VITTALAPADNUR VILLAGE,
    BANTWAL TALUK,
    DAKSHINA KANNADA DISTRICT.

12. SMT.AVAMMA,
    W/O LATE IBRAHIM BEARY,
    AGED 69 YEARS,

13. SMT.SELMA,
    D/O LATE IBRAHIM BEARY,
    AGED 48 YEARS,

14. SMT.B.FATHIMA,
    D/O LATE IBRAHIM BEARY,
    AGED 47 YEARS,

15. SMT.NABISA,
    D/O LATE IBRAHIM BEARY,
    AGED 45 YEARS,

16. SMT.ALIYAMMA,
    D/O LATE IBRAHIM BEARY,
    AGED 39 YEARS,

17. SRI.MOHAMMED HANEEF,
S/O LATE IBRAHIM BEARY,
AGED 39 YEARS,

18. SRI.UMAR FAROOQ,
S/O LATE IBRAHIM BEARY,
AGED 38 YEARS,

19. SMT.MOHAMMED JAMAL,
S/O LATE IBRAHIM BEARY,
AGED 28 YEARS,

20. SRI.USMAN,
S/O LATE IBRAHIM BEARY,
AGED 33 YEARS,

PETITIONERS NO.12 TO 22 ARE
R/AT VITLA PADANUR VILLAGE, KODAPADAVU,
BANTWAL TALUK,-574 222,
DAKSHINA KANNADA DISTRICT.

21. SRI.SHEKALI BAVUDDIN,
SINCE DECEASED BY HIS LRS
AS PER THE V.C.O DATED 14-11-2019,
THE LR'S 21(A) TO (H) ARE IMPLEADED,

(A) SMT.BEFATHUMMA,
W/O SHEKALI BAVUDDIN, 65 YEARS,

(B) SMT.JAMEELA,
D/O SHEKALI BAVUDDIN, 50 YEARS,

(C) SMT.ASMA,
D/O SHEKALI BAVUDDIN, 48 YEARS,

(D) SRI.UMAR FAROOQ,
S/O SHEKALI BAVUDDIN, 46 YEARS,

(E) SRI.YUSUF HYDER,
S/O SHEKALI BAVUDDIN, 40 YEARS,

(F) SMT.RAHAMTH BIBI,
D/O SHEKALI BAVUDDIN, 38 YEARS,

(G) SRI.ABUBEKKAR SIDDIQUI,
S/O SHEKALI BAVUDDIN, 30 YEARS,

(H) SMT.ZEENATH BBI,
D/O SHEKALI BAVUDDIN, 28 YEARS,

PETITIONERS 3(A)TO (H) ABOVE ARE ALL
RESIDENTS OF VEERAKAMBA VILLAGE,
BANTWAL TALUK, DAKSHINA KANNADA DISTRICT

22. SRI.YOUSUF SHAFFI,
S/O UMAR BEARY,
SINCE DECEASED BY HIS LRS
AS PER THE ORDER DATED 22.06.2022
THE LR'S 22(A) TO (J) ARE IMPLEADED.

(A) JAINABI,
W/O YOUSUFF SHAFFI,
AGED ABOUT 68 YEARS,

(B) UMMAR SHAFFI,
AGED ABOUT 50 YEARS,

(C) MAHAMMED RAFFIQ,
S/O YOUSUFF SHAFFI,
AGED ABOUT 50 YEARS,

(D) SALMA
D/O YOUSUFF SHAFFI,
AGED ABOUT 47 YEARS,

(G) YAS ILIYAS,
S/O YOUSUFF SHAFFI,
AGED ABOUT 44 YEARS,

(F) MAHAMMAD MUSTAFF,
S/O YOUSUFF SHAFFI,
AGED ABOUT 42 YEARS,

(G) MUNEERA,
D/O YOUSUFF SHAFFI,
AGED ABOUT 40 YEARS,

(H) AMRATH,
D/O YOUSUFF SHAFFI,
AGED ABOUT 39 YEARS,

(I) KALANDAR SHAFFI,
S/O YOUSUFF SHAFFI,
AGED ABOUT 37 YEARS,

(J) KAMARUNNISA,
D/O YOUSUFF SHAFFI,
AGED ABOUT 35 YEARS,

PETITIONER NO.22(A) TO (J) ARE
RESIDENTS OF VITLA PADANUR VILLAGE,
KODAPADAVU, BANTWAL TALUK,
DAKSHINA KANNADA DISTRICT.

23. SMT.ISAMMA,
D/O LATE UMAR BEARY,
AGED 70 YEARS,
R/AT BARIMARU VILLAGE,
BANTWAL TALUK-574 222,
DAKSHINA KANNADA DISTRICT.

…PETITIONERS

(BY SRI.T.I.ABDULA, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REP.BY PRINCIPAL SECRETARY,
REVENUE DEPARTMENT,
MULTISTOREYED BUILDING,
DR.AMBEDKAR VEEDHI,
BANGALORE-560 001.

2. THE ASSISTANT COMMISSIONER
MANGALORE SUB-DIVISION,
MANGALORE.

3. THE TAHSILDAR
BANTWAL TALUK-574222,
DAKSHINA KANNADA DISTRICT.

4. LT.COL.DIWANA GOPALA KRISHNA BHAT
S/O SUBRAYA BHAT,
AGED 70 YEARS,
R/AT DOOR.NO.1-191/1,
ARADHANA, DARBE, PUTTUR-574202,
DAKSHINA KANNADA DISTRICT.

…RESPONDENTS

(BY SRI.V SESHU, HCGP FOR R1-R3;
SRI.SRIDHAR PRABHU, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN PROCEEDINGS ON THE FILE OF THE R2/ASST. COMMISSIONER AND ALSO IN PROCEEDINGS ON THE FILE OF THE R3/TAHSILDAR; QUASH THE ORDER PASSED BY THE R3/TAHSILDAR IN PROCEEDINGS DATED 30.6.01 VIDE ANNX-C AND THE ORDER PASSED BY THE R2/ASST. COMMISSIONER DATED 15.11.12 VIDE ANNX-E.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The tone for this judgment can be set by adverting to the following observations made in the Thirty Third Report on *'Resettlement of Ex-Servicemen'* by the Standing Committee on Defence, Ministry of Defence, (August 2017)[1]:

> *"…welfare of Ex-Servicemen (ESM) is of utmost importance and has a direct impact on the serving personnel in view of their dedicated services to the nation under most difficult and inhospitable environment and conditions. In*

[1] Ministry of Defence, Standing Committee on Defence, '*Resettlement of Ex-Servicemen'*, Thirty Third Report, Sixteenth Lok Sabha 2016-2017, Part I, (2017)

> *war and peace, on hostile frontiers and family stations from Siachen to Indira Point and from Tawang to Bombay High, their arduous duties for national security require comparable service benefits, if not more. As regards the Ex-Servicemen, considering their problems and genuine grievances, the issue of their welfare also assumes greater significance and concern of the entire country. Most of the service personnel retire at such a stage of life when their financial and domestic responsibilities are maximum...Thus, the issue of...welfare is of utmost importance and necessitates a great deal of initiative not only from the government but also from the entire society on various fronts to resolve the gigantic problems of Ex-Servicemen and dependents and widows of Defence Personnel killed in wars/operations..."*

This ignominious case involves a series of long drawn battles waged by the tenants to resist a soldier's claim for resumption of agricultural land in question. This is a classic instance of how poorly a section of society can treat the very soldiers risk their lives & limbs to protect the frontiers of our country. Petitioner-tenants are before the Writ Court for assailing the Assistant Commissioner's order dated 15.11.2012 (Annexure–E) whereby their appeal wherein a challenge was laid to Tahsildar's order dated 30.06.2001 (Annexure–C) directing resumption of land in favour of the 4th respondent Ex-Serviceman, has been negatived.

2. After service of notice, the official respondents are represented by learned HCGP and the Ex-Serviceman has entered appearance through the private counsel. Both the HCGP and the private counsel vehemently oppose the writ petition making submission in justification of the impugned orders and the reasons on which they have been constructed. The Ex-Serviceman has filed his Statement of Objections resisting the petition. Both the sides have filed a catena of decisions in support of their rival submissions.

3. FACTS IN BRIEF:

(a) The Petitioners ancestor Mr.Umar Beary was a tenant of the subject land that belonged to the ownership of father of Ex-Serviceman, allegedly since 1940 or so. The 4th respondent having retired from the defence service on 31.07.1993 had applied on 28.06.1994 u/s.15(4) of the Karnataka Land Reforms Act, 1961 seeking resumption of the land in question contending that during his defence service, he had continued the tenancy created by his father. This was preceded by a Notice dated 11.01.1990 calling

upon the petitioners to deliver back the subject land on or before 31.03.1992. Another Notice dated 27.09.1993 followed prescribing 31.05.1994 as the cut-off date for giving back the land. Petitioners did not yield to these notices.

(b) In the meanwhile, the Land Tribunal had registered occupancy in favour of the petitioners which came to be set at naught by a Co-ordinate Bench of this Court in W.P.No.25227/2000 disposed off on 21.07.2000 directing the Tahsildar to decide on the resumption application first and thereafter on the basis of such a decision, whether occupancy should be granted or not, should be left to the Tribunal.

(c) The Tahsildar accordingly had issued notice to both the sides, who were represented by the lawyers; they had also produced huge evidentiary material in support of their rival claim. Having considered the same, in the light of original records that were traced, the Tahsildar passed the subject order directing resumption of land in favour of

Ex-Serviceman. The Assistant Commissioner negatived petitioners' appeal against the same. That is how this writ petition has arisen.

4. Having heard the learned counsel for the parties and having perused the petition papers and also the LCR, this Court declines indulgence in the matter for the following reasons:

(a) The 4th respondent had entered the Army Service way back in the year 1967 and earned several promotions, the last being to the post of Lt.Colonel. He retired from the service on 31.07.1993. The father of Petitioner Nos. 13 to 20, namely Mr.Ibrahim Beary i.e., son of original tenant Mr.Umar Beary has admitted these facts in his deposition before the Land Reforms Appellate Authority vide Exhibits P 40 & P 41. He has also admitted about the creation of tenancy. Such a stand as well was taken in their Statement of Objections filed resisting W.P.No.4275/1982 filed by the 4th respondent herein. Virtually, it is a case of *estoppel in pais* and therefore, Petitioners cannot be permitted to contend to the contrary,

changing their stance now & then to suit to their advantage and to the disadvantage of the other side.

(b) The family of this Ex-Serviceman orally partitioned the properties on 31.03.1972 and a Memorandum of Partition dated 19.06.1973 came to be registered on 10.10.1974. This aspect has been mentioned in the notices dated 11.01.1990 & 27.09.1993 at Exs.P-1 & P-13 respectively whereunder the subject land along with other fell to the share of Ex-Serviceman. Therefore it was he who had rightly sought for resumption of the land. As on the date the tenancy was created, the Ex-Serviceman was already born and the lands being joint family properties, each one of the coparceners including the petitioner herein, as the law then was, had a vested interest therein by birth since it was presumptively a Joint Hindu Family governed by customary Law of *Mitakshara*, which provides that each of the members of such a family would be owner of the entire property, till partition takes place. That being the position, the tenancy created in respect of the subject land by the father/karta shall be

deemed to have been created for & on behalf of all those who had interest by birth therein. Mayne on Hindu Law[2] writes:

> *"The author of the Mitakshara enters into an elaborate disquisition as to whether property in the son arises for the first time by partition, on the death of the previous owner or exists previously by birth. He quotes two anonymous texts, 'the father is master of gems, pearls, corals, and of all other (movable property), but neither the father nor the grandfather is of the whole immovable estate'…In another portion of Mitakshara… 'the ownership of father and son is the same in land which was acquired by the grandfather, or in a corrody, or in chattels which belonged to him…'"*

(c) The further contention of the Petitioners that the 4th Respondent is not the owner of petition land and therefore, he could not have not sought for resumption, cannot be agreed with. It is a specific case of the Petitioners that their ancestor had taken the family land of the fourth Respondent as a tenant. Apparently, there were several lands with the joint Hindu family. This particular land fell to the share of Ex-Serviceman in a partition that was followed by a registered instrument decades ago. If a tenanted land

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[2] '*Mayne's Treatise on Hindu Law & Usage'*, Eighteenth Edition, pp 913 – 14 (2020)

is allotted to the share of a member of the joint family, the allottee becomes the landlord, hardly needs elaboration. In an almost identical factual matrix, what a Division Bench of this Court in W.P.No.24925/1990 between *NINGAPPA AVANNA ASTEKAR VS. STATE AND OTHERS,* disposed off on 5.8.1993, has observed comes to the rescue of the respondent-Ex-Serviceman:

> *"6. It is rather difficult to appreciate the contention urged on behalf of the petitioner that the property in question does not belong to the 4th respondent and at any rate after 1970 when necessary mutation entries had been made partitioning the properties. Admittedly, the property in question belongs to a joint family. If that is so, respondent No.4 also had a share in the said properties. The character of a joint family property is that no individual member thereof will have a definite share in the said properties unless there is a partition in the family and therefore, each member of the joint family will have some interest in the property. If that is so, the property in question could fall to any one or the other thereto including a person who is in the Armed force. Proceeding thus, one cannot predict that such relationship of landlord and tenant as created by the fore-fathers of the 4th respondent in respect of certain land at any time, would not fall to the share of a person who is in the Armed forces. If that cannot be ruled out, petitioner cannot contend that the tenancy does not continue in the hands of the Soldier on whom the property devolves in a partition…"*

Therefore, the contention that the Ex-Serviceman had not created the tenancy indubitably falls to the ground.

(d) The next contention of the petitioners that the continuation of the tenancy by the Ex-Serviceman has to be by a written instrument is not supported by the legal position, namely the texts of Sections 5 & 15 of 1961 Act. Section 5(1) enacts an absolute embargo on leasing of agricultural land, and clause (a) of sub-section (2) carves out an exception to this when tenancy is created or continued by defence personnel. This sub-section is enacted to facilitate resumption of land by the soldiers & seamen under section 15 of the 1961 Act, who run the risk of sacrificing their limbs or lives in protecting frontiers of the country. These provisions have to be construed consistently with this underlying philosophy, as rightly argued by learned advocate, Mr. Sridhar Prabhu. What a Division Bench of this Court in *GURUSHANTAPPA vs. VENKATESH* [3] observed echoes the same view. Paragraph 4 of the judgment reads as under:

[3] MANU/KA/2523/2012

> *"…the 1st respondent was an Ex-serviceman, he retired from service and within one year he issued notice and sought for possession of the land which is the subject matter of the lis. When the Legislature consciously protected the rights of these Ex-serviceman and the provisions of the Karnataka Land Reforms Act providing for grant of occupancy rights on the principle that the tiller of the land should be conferred occupancy rights was not applicable to the lands held by the Ex-serviceman, the Court while interpreting this provision has to take a broader view and should be liberal in interpreting this provision…"*

(e) Section 5(2)(a) and section 15(1) of the 1961 Act employ the expression '*created or continued';* what is significant is the word '*or'* used as a disjunction between creation of tenancy and its continuance, as contradistinguished from the conjunctive word '*and'* . Lord Halsbury in *MERSEY DOCKS AND HARBOUR BOARD vs. HENDERSON BROS*[4]*.*observed: "*the reading of 'or' as 'and' is not to be resorted to, unless some other part of the same statute or the clear intention of it requires that to be done".* Even otherwise, reading '*or'* as '*and'* or *vice versa* is done ordinarily to give effect to the manifest intention of the Legislature as disclosed from its text & context. In other

[4] (1888) 13 AC 595

words, the Legislature differentiates between the creation of lease and its continuation when it comes to the intended resumption of tenanted land in favour of ex-serviceman; this intent of the Legislature is as clear as Gangetic waters. Sub-section (3) of section 5 reads as under:

> "*Every lease [created] under sub-section (2) shall be in writing*"

It only speaks of creation of tenancy being in writing and not the continuation of tenancy; however, Sub section (2) speaks of both creation and continuation of tenancy. If the legislature in its wisdom intended that both the creation and continuation of tenancy should be in writing, it would have worded sub-section (3) accordingly. An argument to the contrary amounts to manhandling the text of sub-section (3) of section 5. This view gains support from the maxim *expressio unius exclusio alterius*. It would be pertinent to refer to Maxwell on the Interpretation of Statutes[5], as under:

> "*Expressio unius exclusio alterius:*

[5] P ST J Langan, '*Maxwell on The Interpretation of Statutes'*, Twelfth Edition, Eighteenth Reprint, pp 283 – 84 (2010)

> *By the rule usually known in the form of this Latin maxim, mention of one or more things of a particular class may be regarded as silently excluding all other members of the class: expressum facit cessare tacitum. Further, where a statute uses two words or expressions one of which generally includes the other, the more general term is taken in a sense excluding the less general one: otherwise there would have been little point in using the latter as well as the former".*

At page 294[6], what Maxwell's editor Mr.P.St.J.Langan writes is illustrative:

> *"Where section 2(2) of the Rating and Valuation (Apportionment) Act 1928 provided definitions of both "agricultural land" and "agricultural buildings", the definition of the former including "land exceeding one quarter of an acre used for the purpose of poultry farming", it was held by the Court of Appeal that a broiler house fell outside the definition of agricultural land. "The Act", said Lord Denning M.R., "draws a clear distinction between 'buildings' and 'land' and those terms are mutually exclusive here…. I have no doubt that the whole of a broiler house, including the earth on which it stands, is a 'building' and not 'land'."*

(f) Though the 1961 Act was extensively amended, the text of sub-section (3) of section 5 was not altered to support the contention of the Petitioners as to the continuation of lease being required of writing. What a

[6] *Id*.

Division Bench of this court in *NARSING GOPAL RAO DESAI VS. LAND TRIBUNAL*[7], at paragraphs 17 & 18 has observed throws light on this aspect:

> *"17. This takes us to the next question urged by Mr. B. V. Krishnaswamy Rao. He urged that the petitioner cannot invoke the provisions of S. 15(3) for resumption of the land, since the tenancy in question has not been evidenced by a written lease as required under S. 5(3). Section 5(3) provides that every lease granted under sub-section (2) shall be in, writing. In other words, the lease granted by a soldier or seaman shall be in writing. Does this requirement in writing also apply to a lease continued by a soldier or seaman is the question herein to be, considered.*
>
> *18. We have earlier pointed out that Section 5(3) did not undergo any corresponding change when S. 5(2) was amended by Karnataka Act 3 of 1982. By S. 3 of Karnataka Act 3 of 1982 the words 'created or continued' were substituted for the word 'created' in S, 5(2). The effect of the amendment is that a soldier or seaman could create a fresh tenancy or continue the existing tenancy. Otherwise, there appears to be no other reason to leave S. 5(3) untouched when s. 5(2) was amended by Karnataka act.No.3 of 1982. That means, the existing tenancy could be continued by a soldier or seaman either by express terms or by implied understanding. Acceptance of rent coupled with an assent of the soldier or seaman may be sufficient to continue the tenancy. The document evidencing the same may not be necessary. That again is a concession to soldiers and seaman."*

[7] (1984) 1 KLJ 387

The above observations are a complete answer to the contention raised by the Petitioners as to the requirement of the continuance of lease to be in writing. Law does not mandate any writing for continuation of the tenancy at all and that itself is a concession accorded to the protectors of the Nation.

(g) The vehement submission of learned counsel for the Petitioners that after the appointed day i.e., 01.03.1974, all tenanted lands vested in the State by virtue of provisions in sections 44 & 45 of the 1961 Act and therefore, there was nothing to be partitioned and as a consequence, the so called Partition Deed was *non est*, is bit difficult to countenance. All tenanted lands vest in the State by operation of law, is true. However, for fructification of such a deeming, there has to be some formal proof of land being tenanted as on the appointed day, i.e., 01.03.1974 and this ordinarily would happen on adjudication by the Land Tribunal or by the competent authorities functioning under the 1961 Act. Right to resume

land is an incidence of ownership, cannot be denied. If the legislature in its wisdom grants such a right to Ex-Servicemen, the arguable fact that the tenanted land has vested in the State, does not cut it short. When tenanted lands that arguably vest in the State by operation of law are partitioned, the allottee would at least get the compensation under this Act itself. Therefore, there is no prohibition for partitioning of tenanted lands at least to the extent of exercising the right of resumption by the Ex-Serviceman to whom certain lands are allotted on partition. In fact, in L.R.R.P.No.1619/1990 filed by the family of 4th Respondent and L.R.R.P.No.2026/1990 filed by the Petitioners herein, a Coordinate Bench of this Court vide common judgment dated 25.08.1997, has directed as under:

> *"(iv) In view of the peculiar circumstances, the matter is remanded to the respondent No.1-Land Tribunal, Bantwal with a direction to consider the claims of the revision petitioners as set out in their respective Form No.7 after issue of vesting the subject lands in State is decided by the jurisdictional Tahsildar as contemplated under Sec. 15 of the Act.*
>
> *(v) The Land Tribunal is further directed to consider the said applications thereafter in*

> *strict compliance with Rule 17 of the Land Reforms Rules after issuing notices to all the parties concerned."*

These directions are structured on and support the above view. Otherwise, the LRRP of tenants would have been allowed and that of the landlords would have been dismissed, hardly needs to be explained.

(h) The next submission of learned counsel for the Petitioners that the claim for resumption made by the Ex-Serviceman lacked *bonafide* inasmuch as he had sold certain other lands that had fallen to his share in the partition, is liable to be rejected, and reasons for this are not far to seek: Firstly, as on the date, these lands were disposed off, the right to property was constitutionally guaranteed under Article 19(1)(f) as a fundamental right, although it came to be relegated to be non-fundamental vide 44th Amendment, continues to be a Constitutional right enshrined under Article 300 A as has been reiterated by the Apex Court in *BAJRANGA vs. STATE OF MADHYA PRADESH*[8] . The ownership consists of a bundle of rights

[8] 2021 SCC Online SC 27

such as the right to possession, the right to enjoyment, the right to alienate, etc vide *INDAR SEN vs. NAUBAT SEN*[9]. Unless the law interdicts, a citizen is free to alienate his property in whatever way and whenever he wants. Secondly, such sales do not rob away otherwise extant *bonafide* of the transferor. Ordinarily, law requiring *bonafide* on the part of a landlord for claiming resumption of property whether land or building, is construed liberally in favour of the landiord and therefore, *bonafide* has to be presumed in the absence of *malafide*, as rightly contended by Mr.Sridhar Prabhu. Absence of *malafide* would ordinarily lead one to presume *bonafide*, in a matter like this, consistent with the statutory policy of benefiting the Ex-Servicemen. What a Coordinate Bench of this court decades ago had observed in *PANCHAPPA vs. STATE*[10]*,* needs to be kept in view while construing these provisions of the Act:

> *"…It is the 1st petitioner who filed Form No.7 in respect of the land in question under Section 48A of the Act. The 4th respondent was a soldier as defined in the Act and was entitled to avail the benefits of Section 15 of the Act. When the law itself gives benefit to such persons and*

[9] (1885) ILR 7 All 553
[10] ILR 1998 KAR 979

the object of the law in providing such benefit is that the attention of a person who is engaged in the defence of the Country should not be diverted towards protecting his rights in the properties possessed by him. Defence of the Country must be uppermost in his mind and it must receive highest priority and no other matter should interfere and divert his attention. It is with this object, the law has protected the rights of such persons, as otherwise such lands would have been vested in the State and would have become liable to be registered in favour of the tenants cultivating them personaliy as on 1-3-1974. That being the object of the law, the Court must endeavour and ensure that such an object of the law is not defeated in any matter…"

(i) There is a lot of force in the vehement contention of Mr.Sridhar Prabhu appearing for the Ex-Serviceman that though Article 226 is also employed in the pleadings of the Petitioners, the petition has to be treated as being only under Article 227 of the Constitution which vests a limited supervisory power in this court and therefore, a deeper examination of the impugned orders unlike in appeal, gains support from Apex Court decision in *SADHANA LODH VS. NATIONAL INSURANCE COMPANY LIMITED*[11].The Tahasildar vide order dated 30.06.2001 running into twenty one and half pages has appreciably considered all aspects of the

[11] (2003) 3 SCC 527

matter in the right perspective. Most of these contentions are factual and they are founded on evidentiary material on record. Even legal aspects have been meticulously addressed. The challenge to this order by the Petitioners in appeal before the Assistant Commissioner came to be negatived on 15.11.2012 by powerful reasoning. In matters like this, always there are some arguable points this side or that side, by razor sharp brains. What this court has to see is the just result brought about by the impugned orders, a few insignificant lacunae therein notwithstanding. This is a case wherein a Lt. Colonel has been battling to get the land back from the tenants, since decades. The woes that the Ex-Serviceman has undergone all these decades, perplexes this court, to say the least. If a soldier who has protected the frontiers of the country for years whilst in service were to be treated this way in the evening of his life, what other defence personnel in service would think of, is left to the wild imagination of the society. *Much is not needed to specify and less is insufficient to leave it unsaid*.

In the above circumstances, this Writ Petition is liable to be rejected & accordingly, it is. A direction issues to the Petitioners to deliver back possession of the property peaceably to the 4th respondent within eight weeks, failing which, the official respondents shall remove them by the Might of State and put the 4th respondent in possession thereof.

This Court desired to levy exemplary cost; however, it retrains from doing it so that in the next level of litigation, if brought about by the petitioners' side, this aspect would be looked into.

This Court places on record its deep appreciation for the able research and assistance rendered by its official Law Clerk-cum-Research Assistant, Mr. Faiz Afsar Sait.

Sd/-
JUDGE

Snb/cbc