



**CONSTITUTIONAL VALIDITY OF KARNATAKA LAND GRABBING
PROHIBITION ACT, 2011 UPHELD**

**UPDATE ON JUDGMENT OF HON'BLE HIGH COURT OF KARNATAKA
DATED 19 JANUARY 2021**

A specially constituted Division Bench of the Hon'ble High Court of Karnataka, in *vide* its judgment dated 19 January 2021 upheld the constitutional validity of Karnataka Land Grabbing Prohibition Act, 2011 ("**KLGP**"), while reading down certain provisions therein, in a batch of Writ Petitions before it.

The judgment delivered by the Hon'ble High Court was uploaded on 14 February 2021. The notable highlights from the judgment are set out below:-

Primary grounds of challenge to constitutional validity of KLGP

The constitutional validity of the KLGP Act, which came into effect from 20/10/2014 having received the assent of the President on 09/10/2014, came to be challenged before the Hon'ble High Court of Karnataka on the grounds that:-

- a) provisions of the KLGP Act which fix criminal liability are made applicable retrospectively. (**Section 2(e)**)
- b) manifest arbitrariness of the KLGP Act (**Section 9**)
- c) right of appeal and revision not being available under the unamended KLGP Act, takes away the legal right of an aggrieved individual.

- d) reverse onus clause or burden of proof on the accused is erroneous and opposed to canons of criminal jurisprudence. **(Section 11)**
- e) KLGP Act provides for criminal trial before the Special Court to be summary trial, whereas punishment to be imposed under Section 4 of the Act being not less than one year, which may extend to three years would be contrary to the provisions of Code of Criminal Procedure, 1973 (“**CrPC**”) which stipulates warrant trial for such matters.
- f) Vicarious liability is fixed on a Director of company wherever company has been accused without application of mind. **(Section 6)**
- g) absence of *mens rea* not mandated as a suitable defence.
- h) transfer of cases from Civil Court to Special Court under Section 20 takes away jurisdiction of Civil Court. **(Section 20)**
- i) the amendment Act is discriminatory in nature.
- j) non constitution of additional benches across the State. **(Section 7)**

HIGHLIGHTS OF THE JUDGEMENT:

➤ **Legislative competence**

- **Contentions:** The State lacks legislative competence to enact the KLGP.
- **Ruling of the Court:** Relying on the Hon’ble Supreme Court’s decision in ***State of AP and ors. v. K. Mohanlal and anr. (1998) 5 SCC 468*** where the constitutionality of special court constituted in Andhra Pradesh was upheld, the Hon’ble High Court rejected the argument on legislative competence and upheld the authority of the State to enact the KLGP as being within the State List in Schedule VII of the Constitution.

➤ **Retrospective operation**

- **Contentions:** The inclusion of *bona fide* purchasers under the ambit of the definition of land grabbing who had purchased land when the KLGP Act was not enacted, would give retrospective operation to the provisions of KLGP Act, violating Article 20 of the Indian Constitution.
- **Ruling of the Court:** The act of land grabbing is a continuing offence. No person should commit or cause to be committed land grabbing by himself or through any other person **and** having committed, if continues with the possession of the grabbed land or if it is sold or possession is parted with, **successors-in-interest would also be liable**. The Court interpreting the language found in Section 3, sub-section of (1) of Section 4 of KLGP Act and Section 5 held that the provision is clear and unambiguous to include only those persons who commit the act of land grabbing or causes to commit through any other person, the act of land grabbing would be liable to penal consequences, thereby rejecting the arguments contending retrospectivity of operation of provision of KLGP Act.

➤ **Manifest arbitrariness in the enactment**

- **Contentions:** The KLGP Act suffers from manifest arbitrariness on account of the following:
 - There is no precise definition of activities connected with or arising out of land grabbing and therefore, KLGP suffers from vagueness.
 - Complex questions of fact cannot be tried summarily and therefore the provision for summary trial is manifestly arbitrary.
 - Private person complaints afford unguided discretion.

- Right to make application to Special Court *suo moto* and being delegated to any person is erroneous.
 - Inordinate and unguided power to Chairman of Special Court for sequencing proceedings.
 - No statutory responsibility to pass a reasoned *prima facie* order before taking cognizance.
 - Section 20 dealing with transfer does not require any speaking order to be passed.
 - Vagueness of utility of evidence while determining civil liability and criminal liability.
 - By creation of statute, person cannot be presumed to be owner of land on one hand (recovery as “arrears of land revenue”) and as a criminal or land grabber on the other hand.
- **Ruling of the Court:**
- Mere possibility of abuse of a provision granted for taking cognizance through various means does not imply unbridled power and would not render the same unconstitutional, particularly when read with Regulation 29 which states that *suo moto* cognizance shall be taken cautiously depending on facts and circumstances of each case.
 - The language of Section 9 is clear that there should be judicial application of mind in line with the provisions of the CrPC and a recording of satisfaction about the *prima facie* case is a sine qua non for initiating criminal action against an accused.
 - The Chairman being one who is or was a judge of the High Court necessarily exercises due discretion for sequencing of proceeding.

- Language employed in Section 9(4) and 9(5) about utility of additional evidence and adoption of summary trial are vague and arbitrary. Both of those provisions were read down as follows:

Provision	As the provision stood	Provision read down to
9(4)	<i>"..But additional evidence, if any adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability"</i>	<i>"The evidence admitted in criminal proceedings may be made use of while trying the civil liability and not vice versa"</i>
9(5)(b)	<i>"Every offence shall be tried summarily"</i>	<i>"The Special Court may try every offence under the Act as if it is a warrant case and only in exception circumstances try in a summary manner for reasons to be recorded"</i>

➤ **Right of appeal and revision not being available**

- **Contentions:** Absence of provision for appeal under the KLGP Act violative of Article 14 of the Indian Constitution.
- **Ruling of the Court:** In light of amendment to the KLGP incorporating an appeal provision, and Section 17-A (1) and 17-A (2) as notice for appeal against order of the Special Court before the Hon'ble High Court

determining civil liability and appeal against Order of acquittal or conviction by the Special Court before High Court, the contention of Petitioners citing omission of appeal provision not hold any water.

➤ **Reverse onus clause or burden of proof**

- **Contentions:** The initial burden of proof on the alleged offender for the alleged act of land grabbing is violative of right of fair trial of an accused as adumbrated in Article 21 of the Constitution of India.
- **Ruling of the Court:** Reliance was placed on catena of judgment of the Apex Court in holding that presumption of reverse burden in certain penal statutes is not violative of Article 20(3) and 21 of the Constitution of India and the initial presumption is always a rebuttable presumption which cannot be construed as onerous.

➤ **Adopting summary trial proceedings to criminal proceedings before Special Court is contrary to CrPC**

- **Contentions:** Section 4(3) and Section 5 of the KLGP Act provides for imprisonment up to **three years** for the offence under the KLGP Act. Therefore, summary trial under Section 9(5) for offences under the KLGP Act would run contrary to Section 260 (1)(i) of the Code of Criminal Procedure (“**CrPC**”), which provides that summary trial is applicable only in respect of offences not punishable with death, life imprisonment or **imprisonment for a term not exceeding 2 years**.
- **Ruling of the Court:** Harmonious reading of amended clause (b) of sub-section (5) of Section 9 and Section 10 of KLGP Act clearly indicate

that an overriding effect has been provided under Section 10 empowering the Special Court to be a Court of Session, empowering the Special Court to exercise power vested under Section 259 of CrPC to convert summons case to warrant cases.

➤ **Trial procedure susceptible to abuse and therefore unworkable**

- **Contentions:** Unguided power and discretion afforded to the Special Court in terms of procedure, and therefore, it suffers from vice of arbitrariness.
- **Ruling of the Court:** Mere possibility of abuse of a provision would not affect its constitutionality (***Sanjay Dutt v. State (1994) 5 SCC 410***); however, Special Court always expected to apply provisions of the statute in a fair and reasonable manner.

➤ **Vicarious Liability**

- **Contentions:** Merely because a person is a director, vicarious liability fixed on him if the company has committed an offence is arbitrary.
- **Ruling of the Court:** A mere bald statement that accused is a Director in the complaint or FIR, would not suffice to constitute the offence against such person. The statement/complaint has to be adduced with material records/documents that such person against whom the prosecution has been launched is or was in charge of the company in conducting its business.

➤ **Absence of requirement of *mens rea* (guilty mind)**

- **Contentions:** Absence of requirement of *mens rea* to constitute an offence under the KLGP Act is unconstitutional.
- **Ruling of the Court:** The use of expression “with a view to” found at Section 2(f) of the KLGP Act clearly indicates the requirement of *mens rea* as an ingredient for the offence of land grabbing.

➤ **Transfer of cases from other courts**

- **Contentions:** Transfer of Civil suits, ousting the jurisdiction of civil suits on the mere say of the State under Section 20 of the KLGP Act, attacked on the ground of being arbitrary.
- **Ruling of the Court:** The Petitioners who were contesting transfer of cases from different courts to Special Courts were afforded liberty to move the Special Court for reconsideration in light of the decision rendered in W.P. No. 51187/2019 (KLGP) wherein a coordinate division bench of the Hon’ble High Court of Karnataka had clearly laid down various parameters before which a matter pending before the Civil Court could be transferred to the Special Court. This primarily includes:
 - i. proper application of mind,
 - ii. a clear positive action taken by relevant authorities wherein positive proceedings are initiated against a person who should fall within the definition of land grabbing within the meaning of the KLGP Act,

iii. recording a reasoned finding that the land in question is indeed Government land and that the person has indeed committed land grabbing within the meaning of the KLGP Act, i.e., activity of grabbing of Government land is without any lawful entitlement and with a view to illegally take possession of such land.

➤ **Non-constitution of additional Special Court benches across the State**

- **Contentions:** Even though Section 7 empowers State to constitute additional benches, no such benches constituted.
- **Ruling of the Court:** Directions issued to State to constitute Special Courts at the District level by taking into relevant facts like number of cases, feasibility, necessity, etc. since persons alleged or accused of land grabbing would otherwise face onerous and financially burdensome task of travelling to Bengaluru.

➤ **Abatement of proceedings**

- The amended Act 30 of 2020 indicates that all proceedings pending before the Special Court would stand abated where the application seeking regularisation under the provisions of Karnataka Land Revenue Act, 1964 or Karnataka Land Grant Rules or the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 etc., before various authorities and said applications have been either accepted by the Committee or it is yet to be adjudicated by the appropriate authority. Consequently, the Hon'ble Court allowed certain petitions where this was the case.

➤ **Other directions/ruling**

- The Special Court has been directed to individually examine the claims of various petitioners whose cases were not individually disposed by the Hon'ble High Court, for dismissing or dropping of the proceedings by examining their claims in light of the judgement passed herein; till such adjudication is complete, any interim orders preventing precipitative action shall continue.

ROLE OF SANCTUM LAW

We are pleased to inform you that our Founder and Principal Attorney, Mr. Sammith S., appeared on behalf of the Petitioners in **W.P. No. 32121-122/2018, 40311/2018, 13737/2019 and W.P. No. 52134/2019**, which were part of the batch of the above petitions. The Hon'ble Court heard arguments of Mr. Sammith S. at length on violation of basic structure of the Constitution in light of the Supreme Court judgments in *Roger Mathews* and *Madras Bar Association* cases about constitution of the Special Court, requirement of constitution of special benches of Special Court across the State for access to justice, unfettered discretion to Chairman of Special Court, non-declaration by the State of Government lands, no settled guidelines on how to take cognizance and non-application of mind in transfer of cases from other courts, prior acquiescal under existing legislation and deemed title by creation of statute and arbitrariness therein.



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