

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.184 OF 2020

BETWEEN:

1. SRI. K.L. RAMESH,
S/O K.R.L. SETTY,
AGED ABOUT 75 YEARS,
R/AT NO.60/38, 40TH CROSS,
8TH BLOCK, JAYANAGAR
BENGALURU-560082
(REP. BY GENERAL POWER
ATTORNEY HOLDER,
SRI. RAJAGOPAL DESU).
2. M/S. S.B.URBANSCAPES,
A PARTNERSHIP FIRM,
NO.15, SAI MANSION,
1ST CROSS, J.C.ROAD,
BENGALURU-560 002.

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

PRESENTLY HAVING
BUSINESS PLACE
AT NO.4, 1ST FLOOR, 9TH MAIN,
13TH CROSS, SECTOR- VI,
HSR LAYOUT,
BENGALURU-560102,
REP. BY ITS MANAGING PARTNER,
SRI. RAJAGOPAL DESI.

...PETITIONERS

(BY SRI. SUBRAMANYA H.V., ADVOCATE)

AND:

STATE BY BENGALURU METROPOLITAN
TASK FORCE POLICE,
BRUHAT BENGALURU MAHANAGARAPALIKE,

HEAD OFFICE, N.R.SQUARE ROAD,
BENGALURU-560 001,
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA,
BENGALURU-560001.

...RESPONDENT

(BY SRI. MOHAMMED AYUB ALI, ADDL. SPP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.PC PRAYING TO QUASH THE FIR IN CR.NO.51/2019 FOR THE OFFENCE PUNISHABLE UNDER SECTION 192(A) OF THE KARNATAKA LAND REVENUE ACT AND SECTION 341 OF IPC OF BHRUHATH METROPOLITAN TASK FORCE POLICE, BENGALURU, PENDING ON THE FILE OF THE CHIEF METROPOLITAN MAGISTRATE, BENGALURU FOR THE REASONS STATED THEREIN AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.09.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

This petition is filed praying this Court to quash the FIR registered in Cr.No.51/2019 against the petitioners for the offence punishable under Section 192(A) of the Karnataka Land Revenue Act read with Section 341 of the IPC.

2. Heard the learned counsel appearing for the respective parties.

3. Based on the complaint of the respondent - Police Inspector of Bengaluru Metropolitan Task Force Police Station, BBMP Head Office, registered a case in Cr.No.51/2019 for the offence punishable under Section 192-A of the Karnataka Land Revenue Act, 1964 (for short 'the Act of 1964') read with Section 341 of IPC. The allegation in the complaint that landlords of the land bearing Sy.No.44/1A, 44/1B and 44/2 of Yelachenahalli village, Bangalore South taluk, have encroached the pathway which leads to Government Gunduthopu situated at land bearing Sy.No.45 of Yelachenahalli village, Bangalore South Taluk and constructed the building thereon. Petitioner No.1 being the landlord of the said Sy.No.44/1A and 44/1B of Yelachenahalli village and petitioner No.2 being the developer of the said landed properties have encroached 3 guntas of karab land and thereby committed the offence under Section 192-A of the Act of 1964 and Section 341 of IPC. The copy of the complaint and the FIR were marked as Annexure-B and A respectively. The police, during the investigation, have issued the notice to petitioner No.2 as per Annexure-C. After assertion, the petitioners came to know about the registration

of the case in Cr.No.51/2019 that too without following the provisions of Section 192-A of the Act of 1964. The respondent police have registered the case and proceeded further, moreover, the respondent-police have no independent right to register the case.

4. The grounds which have been urged in the petition that petitioner No.1 and petitioner No.2 have entered into a Joint Development Agreement as per Annexure-D. A document of RTC is also produced as per Annexure-E and copy of the conversion order is produced as Annexure-F so also the sale deeds at Annexure-G and H. The properties are falls within the jurisdiction of BBMP. Petitioner No.1 has got mutated the katha in his name and after accepting the katha in the name of petitioner No.2, has approached the BBMP and got mutated the katha. Petitioner No.2 being the GPA holder of petitioner No.1 approached the BBMP and obtained the licence for the purpose of construction of the flats and relevant documents are produced as Annexure-J, J1, J2 and J3.

5. It is further contended by the counsel for the petitioners that at the time of approval of the plan, petitioner No.2 obtained the survey sketch from the ADLR in respect of

the land bearing Sy.No.44/1A and 44/1B which is not reflecting or having reference about the existence of pathway. The copy of the sketch is also produced as Annexure-K. It is contended that there is no such encroachment and even if it is assumed that there is an encroachment, it is the duty of the respondent to conduct a preliminary enquiry through revenue authority, as provided under Section 192-A of the Act of 1964. The revenue authority first has to issue show cause notice to the landlords and to conduct preliminary enquiry and after that only, can register the case. But in the case on hand, the show cause notice was issued subsequently i.e., after registration of the case.

6. The counsel in support of his arguments relied upon the judgment of this Court reported **ILR 2008 KAR 4520** in the case of **SMT. LALITHA SASTRY V. STATE OF KARNATAKA** wherein this Court has quashed the proceedings on the ground that when there was no preliminary enquiry and no opportunity was given, there cannot be any criminal prosecution for the offence under Section 192-A of the Act of 1964. Hence, the counsel also prays this Court to quash the proceedings initiated against the petitioners based on the said judgment.

7. The counsel also relies upon judgment of this Court dated **12.08.2013** passed in **CrI.P.No.1479/2013** in the case of **SMT. T S VANI vs SRI VISHWABRAHMACHAR AND ANOTHER** wherein also this Court considered the judgment of **Lalitha Sastry** case referred above and in the similar line of the said judgment, quashed the proceedings.

8. The counsel also relies upon the judgment of this Court dated **11.01.2019** passed in **W.P.No.39163/2014** in the case of **GOLDEN GATE PROPERITES LIMITD vs BANGALORE METROPOLITAN TASK FORCE AND ANOTHER** wherein also this Court relied upon the case of **Lalitha Sastry** referred above and comes to the conclusion that the opportunity is required to be afforded to the petitioner before initiating criminal prosecution for the offence punishable under Section 192-A of the Act of 1964 and quashed the petition.

9. The counsel for the petitioners relying upon these judgments would vehemently contend that the principles laid down in the said judgments aptly applicable to the case on hand and prays this Court to quash the proceedings initiated against the petitioners.

10. The counsel appearing for the State would submit that though the counsel for the petitioners relies upon the judgment of **Lalitha Sastry** case, the same will not be applicable to the case on hand. The counsel brought to notice of this Court that the offence invoked against the petitioners is under Section 192-A of the Act of 1964 and the same is with regard to the offences and penalties and this substantive provisions of law does not contemplate any such enquiry. The counsel would contend that the notification issued by the Government is contrary to the statutory provisions under Section 192-A of the Act of 1964. Hence, the said notification will not prevail over the statute. If any such notification is issued, the same should be corollary to the statutory provisions. Thus, the said notification is not valid in the eye of law in view of this particular statute since the statute of Section 192-A of the Act of 1964 is also very clear regarding whoever commits any of the offence specified in column (2) of the Table, shall on conviction by a Judicial Magistrate of the First Class for each of the offence be punishable with the sentence indicated in column (3) thereof. Hence, the Court has to take note of the very proviso of Section 192-A of the Act of 1964. The counsel would contend that when Section 192 of the Act of 1964 has

not contemplated the same, a notification relied upon by this Court in the case of **Lalitha Sastry** cannot prevail over the statute. The Court has to take note of the legislative wisdom in bringing such an enactment and the same is in respect of unlawfully enters or occupies on any Government land with the intention of holding that Government land and cheats and thereby dishonestly creates documents for the purpose of selling, mortgaging or transferring by gift or otherwise of any Government land as mentioned in column (2) of the Table of Section 192-A of the Act of 1964 and the same has to be kept in mind and also the object behind bringing such amendment to Section 192-A of the Act of 1964 to punish the persons who encroach the property of the Government.

11. Having heard the counsel appearing for the petitioners and also the counsel appearing for the State and also taking note of relevant provisions as well as the principles laid down in the judgments referred supra, the Points that would arise for the consideration of this petition are:

1. Whether the statute under Section 192-A of the Act of 1964 prescribes such procedure before initiating the criminal proceedings against the

encroachers of the Government property or committing of the offence which has been stated in column (2) of the Table of Section 192-A of the Act of 1964 and whether such substantive provisions override by issuing the notification as issued in the year 2008?

2. Whether the offence under Section 192-A of the Act of 1964 is a cognizable offence and what procedure, in case, if it is a cognizable offence with regard to the role of Investigating Officer in taking of cognizance and registering the case and investigating the matter and whether the contention of the counsel for the petitioners that without the preliminary enquiry, the proceedings initiated against the petitioners is liable to be quashed?
3. What order?

Point Nos.1 and 2:

12. Heard the learned counsel appearing for the respective parties and perused of the material on record. Before considering the factual aspects, this Court has to consider the main contention of the counsel for the petitioners

that no procedure is followed to invoke Section 192-A of the Act of 1964 to initiate the criminal proceedings against the petitioners. In this regard, this Court would like to extract substantive provision of **Chapter XIV-A - Offences and Penalties** in respect of Section **192-A of the Act of 1964** which reads as follows:

192A. Offences and Penalties. - Notwithstanding anything contained in the Act or the rules made thereunder whoever commits any of the offence specified in column (2) of the table below, shall on conviction by a Judicial Magistrate of First Class for each of such offence be punishable with the sentence indicated in column (3) thereof.-

TABLE

Sl. No.	Offence	Punishment
1	2	3
(1)	Unlawfully enters or occupies on any Government land with the intention of holding that Government land: Provided that it shall not apply to cases of Jamma, Bane lands in Coorg District or encroached government lands regularised or pending for regularization before the Committee constituted under sections 94-A, 94-B and 94-C of the Act.	Imprisonment for one year and fine of rupees five thousand.
(2)	Cheats and thereby dishonestly creates documents for the purpose	Imprisonment for three years and fine of rupees

	of selling, mortgaging or transferring by gift or otherwise of any Government land.	ten thousand.
3	Creates a forged document regarding Government lands with an intention to use it for that purpose or to grab such land.	Imprisonment for three years and fine of rupees five thousand
4	Being a Revenue Officer entrusted with the responsibility of reporting unlawful occupation of Government land or initiating action to remove such unauthorised occupiers fails to report or take action to remove such unlawful occupants: Provided that it shall not apply to cases of Jamma, Bane lands in Coorg District or encroached government lands regularised or pending for regularization before the Committee constituted under Sections 94-A, 94-B and 94-C of the Act.	Imprisonment for three years and fine of rupees ten thousand.
5	Sells any agricultural land for non-agricultural purposes without getting such land converted or without obtaining prior approval of the Competent Authority: Provided that it shall not apply to cases which are regularized by the government by formulating a special scheme in this behalf.	Imprisonment for three years and fine of rupees ten thousand.
6	Creates a forged document, regarding conversion of agricultural land for non-agricultural use or authorising the holder of agricultural land to use for non-agricultural purpose.	Imprisonment for one year and fine of rupees five thousand.
7	Being a public servant entrusted	Imprisonment for three

	with the responsibility of maintaining records or entrusted with the responsibility of reporting unlawful conversion to the Competent Authority fails to report to the Competent Authority or to initiate action against unlawful conversion of revenue lands for non-agricultural purposes: Provided that it shall not apply to cases which are regularized by the Government by formulating a special scheme in this behalf.	years and fine of rupees ten thousand.
8	Contravenes any lawful order passed under this Assistant Commissioner t.	With fine which may extend to five thousand rupees for the first offence and five times the fine for the second and subsequent offences.

13. Having perused this provision, it is very clear that rules made thereunder notwithstanding whoever commits any of the offence specified in column (2) of the table shall on conviction by the competent judge and punishment is also provided in column (3).

14. Having considered this proviso, it is very clear that this proviso does not contemplate any preliminary enquiry. The substantive provision is very clear that whoever commits any of the offences specified in column No.2 of the table of Section 192-A of the Act of 1964 are punishable for minimum one year and fine and maximum punishment is three years upto the

penalty of Rs.1,00,000/- maximum and also different fine also imposed as per column No.3. Having perused this provision, it is clear that the same not contemplates any such enquiry.

15. This Court would like to take note of principles laid down in the judgment of **Lalitha Shastry** case referred supra. No doubt, in the said judgment, discussion was made with regard to the principles of natural justice and prayer was made to quash the criminal proceedings and this Court comes to the conclusion that principles of natural justice demands that the petitioners ought to have been given an opportunity to have their say in the matter and also discussed Section 192-A of the Act of 1964 with regard to the allegation of encroachment of Government land and procedure required to be followed and held that Section 192-A of the Act of 1964 stipulates a procedure under which a show cause notice is to be given calling upon those alleged encroachers to file their objections within 15 days. The Court has to take note that this is not contemplated under Section 192-A of the Act of 1964. But only the Court relies upon the notification issued by the Government in No.RD 674 LGB 2008 dated 08.09.2008. This Court would like to extract the said notification which reads as under:

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ:ಆರ್ ಡಿ 674 ಎಲ್‌ಜಿಬಿ 2008

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ

ಬಹುಮಹಡಿಗಳ ಕಟ್ಟಡ

ಬೆಂಗಳೂರು, ದಿನಾಂಕ 08.09.2008

ಸುತ್ತೋಲೆ

ವಿಷಯ: ಒತ್ತುವರಿಯಾದ ಸರ್ಕಾರಿ ಜಮೀನನ್ನು ತೆರವುಗೊಳಿಸುವ ಬಗ್ಗೆ.

ಸರ್ಕಾರಿ ಜಮೀನುಗಳಲ್ಲಿನ ಒತ್ತುವರಿಯನ್ನು ತೆರವುಗೊಳಿಸುವ ಸಲುವಾಗಿ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆಗೆ ತಿದ್ದುಪಡಿ ತಂದು ಕಲಂ 192(ಎ) ರ ಅಡಿಯಲ್ಲಿ ಅಪರಾಧಗಳು ಮತ್ತು ಶಿಕ್ಷೆಗಳು ಎಂಬ ಹೊಸ ಅಧ್ಯಾಯವನ್ನು ಸೇರ್ಪಡೆ ಮಾಡಲಾಗಿರುತ್ತದೆ. ಸದರಿ ತಿದ್ದುಪಡಿ ಕಾಯ್ದೆಯನ್ವಯ ಸರ್ಕಾರಿ ಜಮೀನಿನಲ್ಲಿ ಅನಧಿಕೃತವಾಗಿ ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವವರ ವಿರುದ್ಧ ಕ್ರಿಮಿನಲ್ ಮೊಕದ್ದಮೆಗಳನ್ನು ದಾಖಲು ಮಾಡಲು ಅವಕಾಶ ಕಲ್ಪಿಸಲಾಗಿರುತ್ತದೆ. ಸದರಿ ಕಾಯ್ದೆಯ ಅಡಿಯಲ್ಲಿ ಕ್ರಿಮಿನಲ್ ಮೊಕದ್ದಮೆಗಳನ್ನು ದಾಖಲು ಮಾಡುವ ಮುನ್ನ ಸಂಬಂಧಿಸಿದವರಿಗೆ ಅವರು ಹೊಂದಿರುವ ದಾಖಲೆಗಳನ್ನು ಹಾಜರು ಪಡಿಸಲು ಒಂದು ಅವಕಾಶವನ್ನು (opportunity) ನೀಡುವುದು ಅವಶ್ಯವೆಂದು ಸರ್ಕಾರವು ಮನಗಂಡಿದೆ.

ಆದ್ದರಿಂದ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆಯ ಕಲಂ 192(ಎ) ರ ಅಡಿಯಲ್ಲಿ ಒತ್ತುವರಿದಾರರ ವಿರುದ್ಧ ಕ್ರಿಮಿನಲ್ ಮೊಕದ್ದಮೆಗಳನ್ನು ದಾಖಲು ಮಾಡುವ ಮುನ್ನ ಈ ಕೆಳಕಂಡ ಮಾರ್ಗಸೂಚಿಗಳನ್ನು ಅನುಸರಿಸುವಂತೆ ಸೂಚಿಸಲಾಗಿದೆ :-

1. ಸರ್ಕಾರಿ ಜಮೀನನ್ನು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವುದಾಗಿ ತಿಳಿದು ಬಂದ ತಕ್ಷಣ ಅಂಥ ವ್ಯಕ್ತಿ / ಸಂಸ್ಥೆಗೆ ಯಾವ ಆಧಾರದ ಮೇಲೆ ಆ ಸರ್ಕಾರಿ ಜಮೀನಿನ ಸ್ವಾಧೀನವನ್ನು ಹೊಂದಿರುತ್ತೀರಿ ಎಂಬ ಬಗ್ಗೆ ತಿಳಿಸಿ, ಅದಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟ ದಾಖಲಾತಿಗಳನ್ನು ಸೂಕ್ತ ವಿವರಣೆಯೊಂದಿಗೆ ಲಿಖಿತ ರೂಪದಲ್ಲಿ 15 ದಿನಗಳೊಳಗಾಗಿ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ತಲುಪಿಸಲು ತಿಳಿಸತಕ್ಕದ್ದು.

2. ನಿಗದಿತ ಅವಧಿಯೊಳಗೆ ಸಂಬಂಧಿಸಿದ ಒತ್ತುವರಿದಾರರು ಯಾವುದೇ ದಾಖಲೆಗಳನ್ನು ಒದಗಿಸದೇ ಇದ್ದಲ್ಲಿ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರವು ನಿಗದಿತ ಕಾಲಾವಧಿ ಮುಗಿದ ನಂತರ ಒತ್ತುವರಿ ಸ್ಥಳಕ್ಕೆ ಬೇಟಿ ನೀಡಿ ಗ್ರಾಮಸ್ಥರ ಸಮಕ್ಷಮದಲ್ಲಿ ತನಿಖೆ ನಡೆಸಿ ಒತ್ತುವರಿ ಎಂದು ಕಂಡುಬಂದಲ್ಲಿ ಮಹಜರ್ ಬರೆದು ಅದಕ್ಕೆ ಹಾಜರಿದ್ದ ಗ್ರಾಮಸ್ಥರ ಸಹಿಗಳನ್ನು ಪಡೆದು ತದನಂತರ ಒತ್ತುವರಿದಾರರ ಮೇಲೆ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ ಕಲಂ 192(ಎ) ರ ಅಡಿಯಲ್ಲಿ ಕ್ರಿಮಿನಲ್ ಮೊಕದ್ದಮೆಗಳನ್ನು ದಾಖಲಿಸಲು ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳತಕ್ಕದ್ದು.

3. ಒತ್ತುವರಿದಾರರು ನೋಟೀಸು ಪಡೆದ ನಂತರ ಕಛೇರಿಗೆ ಬೇಟಿ ನೀಡಿ ದಾಖಲಾತಿಗಳನ್ನು ಹಾಜರುಪಡಿಸಿದಲ್ಲಿ ಆ ದಾಖಲಾತಿಗಳ ನೈಜತೆಯನ್ನು ವಿವರಣೆಯೊಂದಿಗೆ ಕೂಲಂಕುಷವಾಗಿ ಪರಿಶೀಲಿಸಿ, ದಾಖಲಾತಿಗಳನ್ನು ನಕಲು ಅಥವಾ ಸೃಷ್ಟಿತ ಎಂದು

ಕಂಡುಬಂದಲ್ಲಿ ಒತ್ತುವರಿದಾರರ ವಿರುದ್ಧ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ ಕಲಂ 192(ಎ) ರಡಿಯಲ್ಲಿ ಕ್ರಿಮಿನಲ್ ಮೊಕದ್ದಮೆ ದಾಖಲಿಸಲು ಕ್ರಮ ಕೈಗೊಳ್ಳತಕ್ಕದ್ದು.

ಸಹಿ/-

ಡಿ. ತಂಗರಾಜ್

ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ

ಕಂದಾಯ ಇಲಾಖೆ (ಭೂ.ಮಂ.)

ಇವರಿಗೆ,

- 1) ಎಲ್ಲಾ ಪ್ರಾದೇಶಿಕ ಆಯುಕ್ತರು.
- 2) ಎಲ್ಲಾ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು
- 3) ಎಲ್ಲಾ ಉಪವಿಭಾಗಾಧಿಕಾರಿಗಳು } ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಮೂಲಕ
- 4) ಎಲ್ಲಾ ತಹಶೀಲ್ದಾರರು
- 5) ಹೆಚ್ಚುವರಿ ಪ್ರತಿ.

16. No doubt, having perused this notification, it stipulates that an opportunity has to be given. Only the notification was issued and there is no such amendment to Section 192-A of the Act of 1964 though in the notification it is referred that there is an amendment to Section 192-A of the Act of 1964. The same cannot be done by way of issuing of notification referred supra. Having perused Section 192-A of the Act of 1964, no such amendment is found. Though reference is made in the notification that an amendment is made, but only notification is found.

17. Now the question remains that whether the statute remains or notification remains. In this regard, this Court would like to rely upon judgment of the Apex Court reported in

(1984) 2 SCC 50 in the case of **BABAJI KONDAJI GARAD vs NASIK MERCHANTS CO-OPERATIVE BANK LTD., NASIK AND OTHERS** wherein, the Apex Court held that where statute prescribes procedure for doing a thing, it must be done accordingly unless there is any contrary indication and in case of conflict between the legislative enactment and subordinate legislation, the former will prevail over the latter. Administrative law amounts to ultra vires and subordinate legislation, rules and bye-laws of a co-operative society, conflict with legislative enactment amounts to ultra vires and the same is also discussed in paragraph 12, when statute requires a certain thing to be done in a certain manner, it can be done in that manner alone unless a contrary indication is to be found in the statute itself. In paragraph 15, referred the judgment of **Co-operative Central Bank Ltd. vs Additional Industrial Tribunal, Andhra Pradesh (1970) 1 SCR 205** wherein the Apex Court held that the bye-law of a co-operative society framed in pursuance of the provision of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation, it does not

require elaborate reasoning to firmly state that statute prevails over subordinate legislation and the bye-law if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with.

18. This Court also would like to rely upon the judgment of the Apex Court reported in **(2006) 4 SCC 517** in the case of **STATE OF T. N. AND ANOTHER vs P KRISHNAMURTHY AND OTHERS** wherein the Apex Court held that subordinate/delegated legislation-validity and its constitutionality is considered, burden on person challenging it to show that it is invalid and grounds for challenging validity and Court's approach and considerations while examining validity of a subordinate legislation also discussed in this judgment. The Apex Court also taken note that whether the rule is valid in its entirety or not. In paragraph 15, discussed in detail the lack of legislative competence to make the subordinate legislation; violation of fundamental rights guaranteed under the Constitution of India; violation of any provision of the Constitution of India; failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act; repugnancy to the

laws of the land, that is, any enactment; manifest arbitrariness or unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules). The Apex Court also discussed in detail referring several judgments in paragraphs 16, 17, 18 and 19. In paragraph 19, the Apex Court relied upon the judgment of **Shri Sitaram Sugar Co. Ltd. vs Union of India (1990) 3 SCC 223** and extracted paragraph 47 of that judgment wherein held that Constitution Bench of this Court reiterated that power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterized as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be 'reasonably related to the purposes of the enabling legislation'. So also, similar discussion was made in the judgment of **Leila Mourning vs family publications service (411 US 356)** wherein also held that if they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well

say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.

19. This Court also would like to rely upon judgment of the Apex Court reported in **(2004) 3 SCC 48** in the case of **ITW SIGNODE INDIA LTD., vs COLLECTOR OF CENTRAL EXCISE** wherein also the Apex Court discussed with regard to the administrative law and subordinate legislation and categorically held that if conflicts with parent Act, then it must give way to the substantive statute and so read in its context and the same is discussed in paragraph 56 that substantive law prevails inasmuch as delegated legislation must be read in the context of the primary/legislative Act and not vice versa.

20. This Court also would like to rely upon judgment of the Apex Court reported in **1992 SUPP (1) SCC 150** in the case of **STATE OF MADHYA PRADESH AND ANOTHER vs M/S G S DALL AND FLOUR MILLS** wherein also Apex Court held that Executive Instructions cannot go against the statutory provision so as to whittle down the effect of such provision and comes to the conclusion that the same amounts to an ultra vires. The same is discussed in paragraph 19 that executive instructions can supplement a statute or cover areas to which

the statute does not extend. But they cannot run contrary to statutory or whittle down their effect.

21. This Court would like to rely upon the judgment of the co-ordinate Dharwad Bench of this Court dated **02.09.2026** passed in **W.P.No.107469/2026** in the case of **MANJUNATH vs THE STATE OF KARNATAKA AND OTHERS** wherein, in paragraph 15 held that it is a well-settled principle of statutory interpretation that where a statute prescribes the authority, mode, and manner of exercise of power, the executive cannot, by administrative instruction, circular, or notification, confer such power upon an authority not contemplated by the statute. Executive instructions may supplement statutory rules where there is a gap, but they cannot override, amend, or run contrary to the express provisions of the parent statute. This principle has been consistently affirmed by the Apex Court and various High Courts, including the proposition that statutory rules and designations cannot be suppressed by executive orders. This Court also considered the judgment of Apex Court in the case of **State of U.P v. Singhara Singh (AIR 1964 SC 358)** and **Vijay Singh v. State of U.P. ([2001] 9 SCC** wherein also an observation is made that where a statute confers a power and

prescribes the manner and the authority by whom it is to be exercised, the same must be exercised only in the manner prescribed and by the authority designated, any departure, including performance by an unauthorised person, renders the act invalid. So also taken the note of the principles laid down in the judgment in **Sangeeta Suryavanshi v. State of Chhattisgarh (AIR 1991 SC 772)** wherein the Apex Court held that executive instructions or notifications cannot amend, supersede or run contrary to the express provisions of the parent statute. Applying this to Section 55 of the Karnataka Police Act, 1963, the Superintendent of Police, not being a Commissioner, District Magistrate or Sub-Divisional Magistrate as contemplated by the statute, is not a competent authority, any order of externment passed by him is without jurisdiction.

22. This Court also would like to rely upon the judgment of the Apex Court in the case of **UNION OF INDIA AND ANOTHER vs CYNAMIDE INDIA LTD. AND ANOTHER** dated **10.04.1987** wherein discussed in paragraph 3.4 with regard to legislative action, plenary and subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self evident. In the case of subordinate legislation, it may happen that Parliament may

itself provide for a notice and for a hearing, in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation. But where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity. So also made an observation that in the case of Parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing-there are several instances of the legislature requiring the subordinate legislative authority to give public notice and a public hearing before say, for example, levying a municipal rate- in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation. The right here given to rate payers or others is in the nature of a concession which is not to detract from the character of the activity as legislative and not quasi-judicial. But where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity.

23. Having perused the principles laid down in the judgments referred supra, if any such notification is issued as contended by the petitioners' counsel as the same is referred in **Lalitha Sastry's** case, the same will not prevail over the statute. The Court has to take note of the legislative intent in registering the criminal case and prosecuting for the offences under Section 192-A of the Act of 1964 and also the offences which have been tabled in column No.2 of Section 192-A of the Act of 1964 and punishment also prescribed in column No.3 of the said Act for encroaching upon the government land and also indulging in such act like creation of document or selling or mortgaging in defeating the State in respect of the right of the properties concerned and legislative wisdom while making such legislation to be taken note of and object of bringing such enactment of Section 192-A to be kept in mind while interpreting the same. Though this Court in **Lalitha Sastry's** case discussed the notification, such notification will not override the statute under Section 192-A of the Act of 1964. No doubt, there was a reference for bringing an amendment to Section 192A of the Act of 1964. But no such Amendment was made to the statute except issuing of notification. Hence, the said notification will not prevail over the statute and the statute

is very clear. Hence, the very contention of the petitioners' counsel that there was no violation of the principles of natural justice and that no notice was issued cannot be accepted. No doubt, Annexure-C discloses that after registration of the case, notice was given. While keeping the said notice also, the Court has to take note that whether Section 192-A of the Act of 1964 is a cognizable offence or not.

24. This Court would like to extract Section 192-D of the Act of 1964 and statute says about the nature of the offence. The Section 192-D of the Act of 1964 says that it is a cognizable offence.

"Section 192-D - Cognizance of offences. -

Offences under this Chapter, shall be cognizable."

25. Having read Section 192-D of the Act of 1964, it is very clear that offences under this Chapter shall be cognizable. When the offence is cognizable, it is mandatory on the part of the Investigating Officer when the complaint is received to take note that whether the offence is cognizable or not. If offence is cognizable, it is mandatory on the part of the Investigating Officer to register the case and proceed in accordance with law.

26. This Court would like to rely upon the judgment of the Apex Court in the case of **LALITA KUMARI vs GOVT. OF U.P. AND OTHERS** reported in **(2013) 14 SCR 713**. Having considered the principle laid down in the said judgment **dated 12.11.2013** itself, it is clear that if the offence is cognizable, the Investigating Officer has no option and he is bound to register the case and it is mandatory on the part of the Investigating Officer also to register the case and investigate the matter and no preliminary enquiry is required. No doubt, in the earlier judgment of this Court in **Lalitha Sastry's** case, the Court has not taken note of Section 192-D of the Act of 1964 and the same is a cognizable offence. In the judgment relied upon by the petitioners' counsel in the case of **SMT. T S VANI** referred supra which was delivered on **12.08.2013**, the judgment of **Lalita Kumari** was subsequent to the said judgment and except referring the judgment of **Lalitha Sastry's** case and not discussed anything about Section 192-D of the Act of 1964 is concerned and only taken note of Section 192-A and 192-B of the Act of 1964 and no discussion at all. In the judgment relied upon by the petitioners' counsel in the case of **Golden Gate Properties Ltd.** referred supra also, except relying upon the judgment of **Lalitha Sastry's** case, not

discussed Section 192-D of the Act of 1964 and the same is a cognizable offence. In the judgments relied by the petitioners' counsel not discussed about Section 192-D of the Act of 1964 wherein the statute says that the offence is a cognizable offence. When such cognizable offence is invoked against the petitioners, there is no option to the Investigating Officer to register the case and investigate the matter. The Apex Court also in **Lalita Kumari's** case held that it is mandatory on the part of the Investigating Officer to register the case and investigate the matter.

27. In the case on hand, having considered the factual aspects of the case, there is specific allegation against the petitioners that they have encroached the Government property to the extent of 3 guntas of Karab land and constructed the building there on in terms of the Joint Development Agreement. It is also specific allegation against the petitioners that they have encroached the pathway of Sy.No.45 and indulged in such act as shown in column (2) of the Table of Section 192-A of the Act of 1964. The police have also investigated the matter and invoked the offence of Section 192-A of the Act of 1964 as well as Section 341 of IPC. It is also to be noted that Joint Development Agreement dated 13.05.2013 is also produced at

Annexure-D. It is also to be noted that there was a Joint Development Agreement between petitioner Nos.1 and 2. Annexure-F also specifically mentioned with regard to particular Survey numbers and order of the Deputy Commissioner dated 07.05.2010 which relies upon by the petitioners. Now, it is not a question before this Court that petitioner No.1 is the owner of the property or not. Petitioner No.1 claims that he is the owner and also not disputes that he entered into the Joint Development Agreement with petitioner No.2 and developed the property. But, the specific accusation is that he encroached the 3 guntas of karab land of the Government and police have also having registered the case, given the notice as per Annexure-C. The contents of the complaint at Annexure-B is also regarding the accusation against the petitioners. The prayer sought in this petition is for quashing of the FIR. When the specific accusation is made that they have encroached 3 guntas of karab land, it is the duty of the Investigating Officer to investigate the matter when the complaint discloses committing of the offence under Section 192-A of the Act of 1964 and unearth the truth during the course of investigation. The police have not yet filed the charge sheet. The Apex Court also in the case of **DINESHBHAI CHANDUBHAI PATEL vs**

STATE OF GUJARAT reported in **AIR 2018 SC 314** taken note of scope of Section 482 of Cr.P.C in paragraph 26 and also in paragraphs 30 and 31, categorically held that the High Court should not venture to stay the FIR and allow the Investigating Officer to unearth the truth and there cannot be any quashment of FIR. When such observation is made by the Apex Court in **DINESHBHAI CHANDUBHAI PATEL's** case, this Court cannot curb the right of the Investigating Officer in investigating the matter and the same is the domain of the Investigating Officer. In the case on hand, having registered the case, the police have given the notice in terms of Annexure-C wherein directed to produce the documents on 27.05.2019 at 11.00 a.m. to substantiate the case. During the course of investigation, if no such encroachment is found and if he substantiate the same, the result would be different such as instead of filing the charge sheet, the Investigating Officer may file B-report. If such encroachment is found, may file A-report and the Court will look into the material before proceeding against the petitioners having perused the charge sheet material. When such being the case, I do not find any grounds to entertain this petition exercising the powers under Section 482 of CR.P.C to quash the FIR and the same has to be unearth

by the Investigating Officer during the course of investigation.

Hence, answered the above Points accordingly.

Point No.3:

28. In view of the discussions made above, I pass the following:

ORDER

The petition is dismissed.

**Sd/-
(H.P.SANDESH)
JUDGE**

SN