

**THE
KARNATAKA
SCHEDULED CASTES AND SCHEDULED TRIBES (PROHIBITION
OF TRANSFER OF CERTAIN LANDS) (AMENDMENT) ACT, 1992**
KARNATAKA ACT No. 8 OF 1992

(First published in the Karnataka Gazette, Extraordinary, on the Thirteenth day of April 1992)

(Received the assent of the Governor on the Eleventh day of April, 1992)

An Act further to amend the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978.

Whereas, it is expedient further to amend the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Karnataka Act 2 of 1979), for the purposes hereinafter appearing.

Be it enacted by the Karnataka State Legislature in the Forty-Third Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1992.

(2) It shall come into force at once.

2. Amendment of Section 5.—In Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Karnataka Act 2 of 1979) (hereinafter referred to as the principal Act):—

(i) after sub-section (1), the following shall be *inserted* namely:—
“(1-A) After an enquiry referred to in sub-section (1) the Assistant Commissioner may, if he is satisfied that transfer of any granted land is not null and void pass an order accordingly.”

(ii) in sub-section (2), for the words, brackets, and figure “sub-section (1)”, the words, brackets, figures and letter “sub-sections (1) and (1A)”, shall be *inserted*.

3. Amendment of Section 5-A.—In Section 5-A of the principal act, after sub-section (1), the following shall be *inserted* namely:—

“(1-A) Any person aggrieved by an order passed after the commencement of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1992, by the Assistant Commissioner under sub-section (1-A) of Section 5, may prefer an appeal to the Deputy Commissioner having jurisdiction within a period of three months from the date on which the order was communicated to him:

Provided that the Deputy Commissioner may admit an appeal preferred against such order after the period referred to in sub-section (1-A), if satisfied that the appellants had sufficient cause for not preferring the appeal within that period:

Provided further that the Deputy Commissioner shall admit an appeal against an order passed by the Assistant Commissioner holding that transfer of any granted land is not null and void before the date of such commencement, if, on the said date, a writ petition preferred against such order or an appeal preferred against the order passed in such writ petition is pending in any Court.”

**THE
KARNATAKA
SCHEDULED CASTES AND SCHEDULED
TRIBES (PROHIBITION OF TRANSFER OF
CERTAIN LANDS) RULES, 1979**

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(As amended by GSR 50, dated 18-2-1985)

S.O. 559.—In exercise of the powers conferred by Section 10 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, (Karnataka Act 2 of 1979), the Government of Karnataka hereby makes the following rules, namely:—

1. Published in the Karnataka Gazette, Extraordinary, dated 26-2-1979, vide Notification No. RD 187 LCP 75 (P), dated 23-2-1979

1. Title and commencement.—(1) These rules may be called the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Rules, 1979.

(2) They shall come into force at once.

2. Definitions.—In these rules, unless the context otherwise requires.—

(a) "Act" means, the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Karnataka Act 2 of 1979).

(b) "Form" means, a form appended to these rules.

(c) "Prescribed Authority" means, the Assistant Commissioner in charge of a revenue sub-division.

(d) "Section" means, section of the Act.

3. Resumption and restitution of granted lands.—(1) Every application by any interested person under Section 5 shall be in Form I.

(2) On receipt of an application or information under sub-section (1) of Section 5, the Assistant Commissioner may direct the applicant or informant, as the case may be, to furnish such further particulars or information as may be required and fix a date for furnishing the same.

(3) After receipt of the particulars or information if any, called for under sub-rule (2), the Assistant Commissioner shall, by a notice in Form II, require the person or persons in possession of the granted land to file objections, to the claim with documentary evidence, if any, within such reasonable time, as the Assistant Commissioner may think fit in the circumstances of the case.

(4) The Assistant Commissioner shall fix a date for hearing notice of which shall be given to the applicant or the informant as the case may be, other interested persons and persons objecting the claim. A copy of the notice shall also be affixed on the notice Board of the Office of the Assistant Commissioner and the concerned Taluk Office.

(5) Save as otherwise provided in these rules, the Assistant Commissioner shall for the purpose of an enquiry under Section 5, follow the procedure for a formal enquiry under Section 33 of the Karnataka Land Revenue Act, 1964.

(6) After enquiry, the Assistant Commissioner shall consider all the objections raised and pass an order giving reasons for his conclusions. Thereafter he may take possession of such land after evicting the persons in possession thereof in the manner specified in Section 39 of the Karnataka Land Revenue Act, 1964 and take further action as provided in Section 5.

(7) The provision of sub-rules (2) to (6) shall *mutatis mutandis* apply to *suo motu* action, if any taken by the Assistant Commissioner.

CASE LAW

R. 3 — Enquiry by Assistant Commissioner — Failure of party to appear after due service of notice — Whether authority should issue another notice.

M. Ramakrishna, J., Held.—Admittedly, the petitioner was served with notice of hearing by the Assistant Commissioner and accordingly he did appear before him; but returned as there was no sitting on the assumption that he would be informed the next date of hearing. But Rule 3 makes it clear that if a person fails to appear after due service of notice, the authority holding the enquiry can proceed with the case in his absence. The provisions do not contemplate another notice on the failure of the person concerned, to appear on the date of hearing. Therefore, in the instant case, the Assistant Commissioner rightly passed the order in the absence of the petitioner. — *Ninggowda v State and Others, 1991(3) Kar. L.J. 170B : ILR 1992 Kar. 2602.*

Rule 3(3) — Death of transferee — Legal representatives to be brought on record and be provided an opportunity of being heard. — *M.G. Kalegowda v Assistant Commissioner, Chickmagalur and Others, 1990(1) Kar. L.J. 53.*

Rule 3(5) — Assistant Commissioner to consider all the objections raised and pass order giving reasons for his conclusions — Where an order was passed without considering the fact whether person claiming a benefit belonged to SC or ST, held, order is liable to be quashed. — *Smt. Bathal Guramma alias Guramma v Deputy Commissioner and Others, 1989(1) Kar. L.J. 22.*

Rule 3(6) — Karnataka Land Revenue Act, 1964, Section 39(i) — Granted land — Manner of evicting person in wrongful possession of — Issue of notice, as contemplated in Land Revenue Act, requiring person to vacate and deliver possession of land within time specified in notice is mandatory — Time given must be reasonable — Where notice served on person gives him no time and calls upon him to vacate "Thakshan", i.e., very moment notice is received by him — Held, unreasonable and liable to be set aside.

Hari Nath Tihari, J., Held.—Section 39 of the Karnataka Land Revenue Act provides and specifies the manner of evicting any person who is wrongfully in possession of the land and it provides that the Deputy Commissioner shall evict the person who is in the wrongful possession of the land where an order to deliver the possession of the land has been passed against the person. . . . Clause (1) of Section 39 provides for service of notice on the persons concerned requiring the persons and person concerned within such time as may appear reasonable, after receipt of said notice to vacate the land. This clause clearly specifies that some reasonable time must be given to the person concerned to vacate the land in wrongful possession. So, what is required under Section 39 of the Karnataka Land Revenue Act is that notice must specify the period during which, the person is in unauthorised occupation of the granted land, should vacate the land and hand over the possession. It is not that it should be that party, or the person concerned may be required to hand over possession "Thakshan". "Thakshan" means immediately, forthwith, just the next moment of receiving the notice. Such notice definitely runs counter to and breach of the requirement of Section 39(1) which says reasonable time must be given. Thakshan vacate itself tantamounts asking to vacate forthwith or instantaneously in time. Authority had no jurisdiction to issue notice directing the person concerned to vacate "Thakshan" that is forthwith instead it should have directed that it should be vacated within some specified reasonable time from the date of service of notice. — *Bhemaiah alias Isaranyya v Assistant Commissioner, Shimoga Sub-Division, Shimoga and Another, 1999(6) Kar. L.J. Sh. N. 1.*

14. Manner of presenting appeal.—(1) Every appeal preferred under Section 5-A of the Act shall be in the form of a Memorandum and shall be accompanied by a certified copy of the order appealed from and by as many copies of the memorandum of appeal as there are respondents.

(2) Every such appeal shall be signed by the appellant or by his authorised agent and presented in person or by an agent or pleader or Advocate during office hours on any working day or sent by registered post. An appeal presented by the holder of a power of attorney shall be accompanied by the power of attorney.

(3) Every such memorandum of appeal shall.—

- (a) be either typewritten or written in ink in clearly legible hand;
- (b) specify the name, father's name and postal address of the appellant and of the respondent or opponent, as the case may be;
- (c) contain a brief statement of the facts of the case;
- (d) state the grounds of objection to the order appealed from and the provisions of the law under which it is presented; and
- (e) clearly state the grounds of appeal and the relief claimed.

(4) Every appeal preferred after the expiry of the period specified in Section 5-A, of the Act shall be accompanied by a separate application for condonation of delay supported by an affidavit sworn to by the appellant.

(5) Every such affidavit shall set forth the cause title of the appeal and shall briefly state the facts relied upon as sufficient cause for not preferring the appeal within the specified period.

(6) The appellant shall pay a process fee of Rupees 5 (Rupees Five) for service of notices on each respondent while preferring the appeal or within such further time if any as the Deputy Commissioner may allow.

(7) In case of non-compliance with sub-rules (1) to (6) or any of them, the appeal may be summarily rejected.

5. Manner of disposal of appeal by the Deputy Commissioner.—(1) The Deputy Commissioner shall issue a notice, to the parties informing them that the appeal shall be heard on such date and at such time and place as specified therein.

(2) If the appellant does not appear on the date fixed for hearing or any other date to which the hearing may be adjourned, the Deputy Commissioner may make an order that the appeal be dismissed.

(3) Where the appellant appears and the respondent does not appear on such date as specified in the notice, the appeal may be heard *ex parte*.

(4) The appellant or respondent as the case may be aggrieved by an order passed under sub-rule (2) or sub-rule (3) may prefer an application along with an affidavit within thirty days from the date of said order to set aside the same. If the Deputy Commissioner is satisfied that the appellant or the respondent as the case may be, was prevented by sufficient cause from appearing before him on the said date, he shall as the case may be readmit the appeal or set aside the *ex parte* order on such term as to costs as he thinks fit.

(5) The Deputy Commissioner may call for and obtain records of the case in which appeal is preferred from the Assistant Commissioner.

(6) On the date fixed or to any other date to which the appeal may be adjourned, the Deputy Commissioner shall after hearing the parties or their agents, pass such orders on the appeal, as he deems fit.]

CASE LAW

R. 5(2) — Disposal of appeal by Deputy Commissioner — Enough indulgence shown to appellant — Appeal adjourned finally — Appellant and counsel absent on date of hearing — Disposal of appeal on merits, instead of dismissing it for default — Justified.

M. Ramakrishna, J., Held:—Though the language employed in sub-rule 2 of Rule 5 makes it clear that the appellate authority may dismiss the appeal if the appellant or his counsel does not appear on the date fixed for hearing, that does not mean that the language employed therein should be construed to prohibit the Deputy Commissioner to dispose of the appeal on merits. — *S. Billi Gowda v The Deputy Commissioner, Mandya and Others, 1991(4) Kar. L.J. 116B : ILR 1991 Kar. 4369.*

R. 5(2) — Is *in pari materia* with Order 41, Rule 17 of Civil Procedure Code and to be understood in same manner — Power of Deputy Commissioner to dismiss appeal for absence of appellant should not be construed as power to dismiss appeal on merits — Disposal of appeal on merits not contemplated under Rule 5(2).

M.L. Pentse, C.J. and A.J. Sadashiva, J., Held: It is seen from Rule 5 that where the appellant fails to appear on the date fixed for hearing, the Appellate Authority has power either to adjourn the case to a next date for hearing or to dismiss the same. When sub-rule (2) provides that the appeal be dismissed for non-appearance of the appellant, it reserves no power for the Appellate Authority to decide the appeal on merits. In order to consider and understand the real purport and intent of Rule 5 of the rules, it is appropriate to consider the same in the light of a similar provision provided under Order 41 of the Code of Civil Procedure, 1908. Where the provisions of the Code of Civil Procedure in respect of any procedure relating to suits and appeals in the Courts of Civil Judicature, are interpreted and understood in any specific manner, it is just and appropriate to interpret and understand in the same manner, provisions of any special or local enactments similar to the provisions in the Code of Civil Procedure. It is, therefore, obvious that, even though sub-rule (2) of Rule 5 states that "the Appellate Authority may make an order that the appeal be dismissed", it does not empower the Appellate Authority to dismiss the appeal on merits. The appeal shall always be dismissed for default. Whether there is explanation or no explanation, the spirit and substance of sub-rule (2) of Rule 5 is that in the event of non-appearance of the appellant before the Appellate Authority, either the case may be adjourned at the discretion of the Appellate Authority to another date in order to afford another opportunity or to exercise the discretion of dismissal of the appeal for default without going into the merits of the appeal. In view of the explanation added to the provision of sub-rule (1) of Rule 17 of Order 41 of the Code which is in *pari materia* with

sub-rule (2) of Rule 5 of the rules, the power of the Deputy Commissioner to dismiss the appeal for the absence of the appellant should not be construed as empowering him to dismiss the appeal on merits. — *Assistant Commissioner, Shimoga Sub-division, Shimoga and Another v M.R. Ramachandrappa and Another, 1995(4) Kar. L.J. 460 (DB).*

Rule 5(2) — Non-appearance of appellant — Course of action to be followed by Appellate Authority in event of — Either the case may be adjourned to another date affording another opportunity of hearing to appellant or to dismiss appeal for default — Disposal of appeal on merits, not contemplated — Appellant aggrieved by order of dismissal may make application within 30 days from date of order of dismissal for readmission of appeal.

Aslok Bhan, V.P. Mohan Kumar and S.R. Venkatesha Murthy, II, Hald: Sub-rule (2) lays down the course of action available for the Deputy Commissioner to follow in the event of non-appearance of appellant on the date fixed. He can either make an order that the appeal be adjourned for any other date or dismiss the same for default. It does not say that the appeal is to be disposed of on merits because the decision on merits would include the power to allow the appeal as well. Power to allow the appeal in the absence of appellant has not been given under this sub-rule. Under sub-rule (3) where the appellant is present and the respondent does not appear, the Appellate Authority can while proceeding against the respondent *ex parte* 'hear the appeal' which would mean a decision on merit resulting in either dismissal or its acceptance. It does not say that appeal has to be allowed in case the respondent is not present and has been proceeded *ex parte*. Legislature is using different expressions in sub-rules (2) and (3). In sub-rule (2) it is 'appeal be dismissed' whereas in sub-rule (3) it is 'appeal may be heard *ex parte*'. From this the intention of the legislature is clear that under sub-rule (2) in the absence of appellant an appeal has to be dismissed or adjourned, whereas under sub-rule (3) while proceeding *ex parte* the appeal can be heard on merits resulting in either dismissal or its acceptance. The only power given to the Appellate Authority under sub-rule (2) is to either adjourn the case or to dismiss the same. The word 'may' occurring in sub-rule (2) gives the discretion to the Deputy Commissioner either to adjourn the hearing of the appeal or order that the appeal be dismissed. It cannot be read to say that discretion has been given to the Deputy Commissioner to either adjourn, dismiss or decide the appeal on merits. In sub-rule (4), it is provided that if the appellant or respondent as the case may be, is aggrieved by an order passed in sub-rule (2) or sub-rule (3) as the case may be, may prefer an application along with affidavit within 30 days from the date of the order to set aside the same. Appellate Authority has been given the power, on showing sufficient cause either by the appellant or by the respondent to 're-admit the appeal' or 'set aside the *ex parte* order' on such terms as to costs he thinks fit. The word 'readmit' refers to sub-rule (2) and 'set aside the order' to sub-rule (3). For sub-rule (2) it only talks of readmission of the appeal meaning thereby, the one which was dismissed in default without a decision on merit. In contrast for sub-rule (3) the power given to the Appellate Authority under sub-rule (4) is to 'set aside the *ex parte* order' meaning thereby that the order which had been passed *ex parte* against the respondent be set aside and to rehear the appeal. — *K. Munishamappa v State of Karnataka and Others, 1998(6) Kar. L.J. 221 (FB) ; ILR 1998 Kar. 3649.*

Rule 5(2) and (3) — Non-appearance of appellant before Appellate Authority — Either the case may be adjourned at the discretion of the Appellate Authority to another date in order to afford an opportunity of hearing or to exercise the discretion of dismissal of the appeal for default without going into merits of appeal — Rule 5(2) does not contemplate disposal on merits — Case-law discussed. — *Boregaruda v Special Deputy Commissioner, Shimoga and Others, 1989(2) Kar. L.J. 515.*

FORM I
[See Rule 3 (2)]
APPLICANT

1.	Name of the Applicant (grantee) with full address				
2.	Nature of the land <i>i.e.</i> , garden or wet or dry with assessment				Extent
3.	Details of the land	Village / Taluk	Survey Nos.	Areas	Guntas
4.	Name(s) of the purchaser or exchanger or mortgager or lessee <i>etc.</i> , as the case may be, (with full address)				
5.	Nature of acquiring the land by the grantee (<i>i.e.</i> , either granted under Dharkast rules or other special rules with order No. and date of sanction)				
6.	Total amount for which the granted land has been disposed and particulars of the registered document, if any				
7.	Brief reasons for the disposal				
8.	Any other relevant information in support of the claim				

I, the applicant above named do hereby declare that what is stated above is true to the best of my knowledge information and belief.

Place: _____ Signature of the Applicant
Dated: _____ (Grantee).

FORM II
[See Rule 3(3)]

SHOW-CAUSE NOTICE

To _____
Shri/Smt.
(Full address)

Whereas, you have purchased or mortgaged or (sic) * the land more fully described in the schedule hereunder in violation of the conditions of the grant of such land from Sri. (Full address) which was granted to him under dharkast or **

And, whereas, such transfer is null and void under Section 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Karnataka Act 2 of 1979);

Now, therefore, you are hereby required to show-cause within fifteen days from the date of service of this notice as to why the lands so purchased should not be restored to Sri. or his heirs i.e., Sriyuths.

If no reply is received from you within the time stipulated it will be presumed that you have nothing to say in the matter and action will be taken in accordance with law.

SCHEDULE

Surve No.	Extent of Land granted	Assessment
1	2	3
(to be specified)	(to be specified)	(to be specified)
Boundaries of the land.—		
EAST		
WEST		
NORTH		
SOUTH		

Place: _____ Signature _____
 Dated: _____ Assistant Commissioner.
 To _____
 Sri.

*Here specify any other mode of transfer.

**Here specify the law or rules under which the land was granted.

**THE
 KARNATAKA
 SCHEDULED CASTES AND SCHEDULED TRIBES
 (PROHIBITION OF TRANSFER OF CERTAIN LANDS)
 (AMENDMENT) RULES, 1985**

GSR 50--In exercise of the powers conferred by Section 10 read with Section 5-A of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Karnataka Act 2 of 1979), the Government of Karnataka, hereby, makes the following rules to amend the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Rules, 1979, namely:—

1. Title and commencement.—(1) These rules may be called the **Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Rules, 1985.**

(2) They shall come into force at once.

2. Insertion of new Rules 4 and 5.—After Rule 3 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Rules, 1979, the following new rules shall be *inserted*, namely:—

"4. Manner of presenting appeal.—(1) Every appeal preferred under Section 5-A of the Act shall be in the form of a Memorandum and shall be accompanied by a certified copy of the order appealed from and by as many copies of the memorandum of appeal as there are respondents.

(2) Every such appeal shall be signed by the appellant or by his authorised agent and presented in person or by an agent or pleader or Advocate during office hours on any working day or sent by registered post. An appeal presented by the holder of a power of attorney shall be accompanied by the power of attorney.

(3) Every such memorandum of appeal shall.

- (a) be either typewritten or written in ink in clearly legible hand;
- (b) specify the name, father's name and postal address of the appellant and of the respondent or opponent, as the case may be;
- (c) contain a brief statement of the facts of the case;
- (d) state the grounds of objection to the order appealed from and the provisions of the law under which it is presented;
- (e) clearly state the grounds of appeal and the relief claimed.

1. Published in the Karnataka Gazette, Extraordinary, dated 25-2-1985, vide Notification No. RD 35 LGP 84, dated 18-2-1985