



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MAY, 2024

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PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

WRIT APPEAL NO. 1640 OF 2016 (KLR-RES)

BETWEEN:

1. THE STATE OF KARNATAKA
DEPARTMENT OF REVENUE
M.S.BUILDING, BANGALORE-01
BY ITS SECRETARY
2. THE DEPUTY COMMISSIONER
BANGALORE URBAN DISTRICT
K.G.ROAD, BANGALORE-09.

...APPELLANTS

(BY SRI. G.S. ARUNA, (HCGP))

AND:

RAMAIAH REDDY
S/O LATE CHINPPA REDDY
AGED ABOUT 59 YEARS
R/AT RAMAIAH REDDY COLOANY
SECTOR-C, BASAVANANAGARA
MARATHAHALLI POST
BANGALORE-560 037

REPRESENTED BY HIS GPA HOLDER
D.BABU @ YUSUF SHARIFF
S/O SHRI DASTAGIR SHARIFF
AGED ABOUT 50 YEARS
R/AT NO.22/1, KAVERAPPA LAYOUT
MILLERS TANK BUND ROAD





VASANTHANAGAR,
BENGALORE-560 052.

...RESPONDENT

(BY SRI.K.N.PHANEENDRA, SR. COUNSEL
SRI. YADUPATHI G., ADVOCATE)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 2061/2016 DATED 17/02/2016 CF SUFFICIENT APPEAL OUT OF TIME.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY, **KRISHNA S DIXIT J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This intra-court appeal filed under Section 4 of the Karnataka High Court Act, 1961, seeks to call in question a learned Single Judge's order dated 17.02.2016, whereby Respondent's W.P.No.2061/2016 (KLR-RES) having been favoured, relief has been granted to him. The operative portion of the order reads as under:

"It is pointed out by the learned Counsel for the petitioner that this is not the only instance and there have been other instances where such bidders have been denied the benefit of the land and further, even without the said bidders having taken recourse to proceedings before this court, the State Government has thought it fit to convey alternative land and therefore, this is one other instance, which would indicate that the State Government is acting arbitrarily insofar as the sale transactions are concerned. Hence, the petitioner would have to be given his due.



Therefore, the stand of the learned Government Advocate that the State is not bound to pay interest or not bound to consider grant of alternative land cannot be accepted."

2. After service of notice, the respondent - bidder having entered appearance through his counsel vehemently opposes the appeal making submission in justification of the impugned order and the reasons on which it has been structured. Learned Sr. Advocate Mr. Phanindra contends that the scope for interference in an intra court appeal of the kind is restrictive; his client having suffered legal injury because of the culpable conduct of the appellant, relief needs to be granted to him, by moulding the prayer if need be. Alternatively, he seeks refund of the entire amount with interest at the commercial rates, as obtaining in the realm of banking.

3. BRIEF FACTS:

(i) The subject land was notified for public auction vide Notification dated 16.05.2005. This land accrued to the State by way of forfeiture vide orders dated 22.09.2004 and 16.05.2005 since its owner had bought



the same in violation of prohibitory sections 79A & 79B of the Karnataka Land Reforms Act, 1961. These orders were put in challenge by the land owner in Appeal Nos. 633/2005 & 647/2005 before the Karnataka Appellate Tribunal, Bengaluru.

(ii) The public auction was held on 27.05.2005 and the Writ Petitioner who happens to be the Respondent herein being the highest bidder remitted 25% of the bid amount on 28.05.2005, undertaking to pay the remainder in the specified timeline. Nothing was done in the matter presumably because land owner's appeals were pending. The said appeals came to be allowed on 11.06.2013 and the Appellate Tribunal set at naught the forfeiture orders. As a result, the land was restored to its original owner.

(iii) In view of Tribunal's order whereby the forfeiture of land was set at naught, the appellants herein had issued an endorsement dated 01.01.2016 telling that the 25% amount in deposit would be refunded to the writ petitioner that too without interest, thereby rejecting his



claim for the grant of alternate land. Therefore, the subject writ petition was moved by him. The same having been favoured, a direction for grant of alternate land came to be issued. That is how this appeal against the same is at our hands.

4. Having heard the learned counsel for the parties and having perused the appeal papers, we are inclined to grant indulgence in the matter as under and for the following reasons:

(a) Indisputably the contract brought about by the public auction has been frustrated because of unavailability of the subject land on account of its forfeiture being voided by the Karnataka Appellate Tribunal and the land being restored to its owner. The *doctrine of frustration of contract* is enacted *inter alia* in Sec.56 of the Indian Contract Act, 1872, which employs the word 'impossible'. The super meaning 'impossibility' in the performance of contract has to be construed in its practical and not literal sense vide **HIRJI MULJI vs.**

**CHEONG UYUE SS CO. LTD., 1926 All England**

Reports 51. Cheshire, Fifoot & Furmston's Law of Contract, Sixteenth Edition-Oxford at page 714 reads as under:

"After the parties have made their agreement, unforeseen contingencies may occur which prevent the attainment of the purpose that they had in mind. The question is whether this discharges them from further liability".

If the land sought to be auctioned by the State as its owner, ceased to avail because of Tribunal's order that has voided its forfeiture. Thus it is a case in which this doctrine become invocable, subject to certain conditions. That being the position, it remains ununderstandable as to how the learned Single Judge could grant relief in question to the respondent, in the absence of right to allotment of alternate land was demonstrated in law such as the Government Grants Act, 1895 or the like.

(b) Mr. Phaneendra appearing for the respondent drew our attention to a Co-ordinate Bench decision of this court in W.P.No.11246/2010 (KLR) between **R.ASWATHAPPA**



vs. STATE OF KARNATAKA & OTHERS, disposed off on 14.09.2010. There is no much dispute that any question of law debated before us was raised in the said case and decided. We are afraid that this decision does not have any precedential value and therefore it cannot be cited as a binding rule of authority in support of the case of respondent. We are not inclined to grant rescue to the respondent only because in more or less a similar fact matrix, some alternate land was granted to some others. In a case like this, parity in treatment cannot be sought for as a matter of right. A host of factors enter the fray whilst granting land as an alternative to the one sought to be auctioned. Therefore, a Writ Court cannot readily grant relief of the kind.

(c) The above being said, we cannot ignore that the appellants happen to be State entities under Article 12 of the Constitution of India and therefore they have to conduct tall & scrupulous whilst dealing with the citizens like the respondent. They could not have hastily notified



the land for public auction when challenge to forfeiture was undertaken by the land owner in the appeals mentioned above, which later eventually came to be allowed by the Tribunal. At least, the factum of challenge ought to have been mentioned in the Auction Notification itself so that the intending participants therein would have made a rational decision to bid or not. The respondent was made to participate in the auction, being kept in darkness. His highest bid of Rs.3,05,00,000/- was accepted and in furtherance he deposited 25% of the same i.e., Rs.76,25,000/- way back on 28.05.2005 ie., exactly 19 years ago. Added, why despite endorsement dated 01.01.2016 this amount was not refunded to him, remains as a mystery wrapped in enigma. This culpable act of the appellants, whether one calls it a 'tort' or any other 'actionable wrong', cannot go with impunity.

(d) Respondent had filed W.P.No.2061/2016 *inter alia* challenging the subject endorsement issued by the 2nd appellant. The learned Single Judge vide ad interim order



dated 22.01.2016 directed him to deposit in the Registry the remainder of the bid amount i.e., 75%. Accordingly, he deposited a sum of Rs.2,78,75,000/-. This money was lying in the Registry without accrual of interest till 24.11.2019. However, the Registry in terms of Registrar (Judicial) Circular No.43/2019 dated 07.11.2019 parked this amount in a Fixed Deposit on 25.11.2019 in a Nationalized Bank. Thus undeniably, the said amount was not earning any interest till such investment was made. For this blame cannot be laid at the threshold of the respondent.

(e) Money belonging to a citizen is his property. If that is retained by the State entities falling under Article 12, that amounts to temporary acquisition of property for which as a matter of rule compensation has to be paid going by Article 300A jurisprudence as developed by the Apex Court, precedent by precedent. Such a view gains broad support from the Constitution Bench decision in **MAFATLAL INDUSTRIES LTD., AHMEDABAD VS.**



UNION OF INDIA, AIR ONLINE 1996 SC 1268. It needs no research to know that the property prices have been sky-rocketing and at the same time the value of money is depleting. What the amount in deposit made way back in 2006 or later in 2019 could have bought, cannot buy it now, hardly needs to be stated. Further, retention of respondent's amount even otherwise is unjustifiable. Accepting a contra argument virtually amounts to placing premium on unconscionability. We make it clear that all this discussion is relevant to decide the claim for payment of interest and the rate at which it should be remitted. We hasten to add that we are not awarding any damages for the tort of the appellants. However, we have kept in view the provisions of the Interest Act, 1978, as interpreted by the Apex Court in **STATE OF RAJASTHAN v. FERO CONCRETE CONSTRUCTION (P) LTD., (2009) 12 SCC 1.**

(f) The last submission of learned HCGP that the respondent's writ petition be dismissed and he be



relegated to civil court for working out his remedies in the realm of contract law, does not much impress us: firstly, we are not adjudging the tortuous liability of the State; what we are inclined to do is to award interest on the amount to be refunded. Secondly, the auction was held way back in the year 2005 and since then years have rolled. The limited liability on account of demonstrable culpability of the appellants, entitles the respondent – writ petitioner to an equitable relief. Denying the same would shake the conscience of the Court. It was **Justice Oliver Wendell Holmes** who said “*Constitutions are intended to preserve practical and substantial rights, not to maintain theories...*” **DAVIS v. MILLS, 194 U.S.451.**

In the above circumstances, this appeal succeeds in part and the impugned order of the learned Single Judge is set aside with the following directions:

(i) The appellants are directed to refund to the respondent 25% of the bid amount i.e., Rs. 76,25,000/- (Rupees Seventy Six Lakh & Twenty Five Thousand) only



with interest at the rate of 10% per annum reckoned from 28.05.2005.

(ii) The appellants are further directed to pay to the respondent interest at rate of 10% per annum on the amount of Rs.2,28,75,000/- (Rupees Two Crore Twenty Eight Lakh & Seventy Five Thousand) only for the period between 25.11.2019 and till 10.06.2024.

(iii) The directions at (i) & (ii) above shall be complied with within a period of six weeks from this day, failing which, additional interest at the rate of 4% on what is prescribed above, shall be payable and that amount after payment to the respondent be recovered from the erring officials of the Department.

(iv) The Registry is directed to liquidate the Fixed Deposit dated 25.11.2019, made in a sum of Rs.2,28,75,000/- vide Circular 43/2019 dated 07.11.2019 and hand the same to the respondent herein forthwith. However, it is open to the respondent to continue the said



Fixed Deposit in his name on the basis of this judgement, till the expiry of the maturity period or to continue the same by way of refixing or the like.

(v) The appellants are liable to pay jointly a cost of Rs.1,00,000/- (Rupees One Lakh) only to the respondent within six weeks, failing which, an additional sum of Rs.500/- becomes payable per day.

**Sd/-
JUDGE**

**Sd/-
JUDGE**