



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF OCTOBER, 2023



PRESENT

THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT APPEAL NO. 873 OF 2023 (GM-RES)

BETWEEN:

M/S DIVYAJYOTHI VIDYA KENDRA
A SOCIETY REGISTERED UNDER
THE PROVISIONS OF THE KARNATAKA SOCIETY
REGISTRATION, 1960,
HAVING ITS REGISTERED OFFICE
AT No.22A, SECTOR-B,
YELAHANKA UPANAGARA,
BENGALURU - 560 064.
REPRESENTED BY ITS PRESIDENT
SRI.M MUNINARSIMHA,
AGED ABOUT 59 YEARS,

...APPELLANT

(BY SRI. K DIWAKAR., SENIOR COUNSEL FOR
SRI. NEERAJ RAJIV SHIVAM.,ADVOCATE)

AND:

1. KARNATAKA HOUSING BOARD
CAUVERY BHAVAN, KG ROAD,
BENGALURU-560 009.
REP HEREIN BY ITS COMMISSIONER.
2. THE ASSISTANT EXECUTIVE ENGINEER
KARNATAKA HOUSING BOARD,
YELAHANKA PLANNING OFFICE,
BENGALURU-560 024.





3. THE SYSTEM ANALYST,
KARNATAKA HOUSING BOARD,
3RD FLOOR, CAUVERY BHAVAN,
KG ROAD, BENGALURU-560 009.

...RESPONDENTS

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE FINAL ORDER DATED 04/07/2023 PASSED BY THE LEARNED SINGLE JUDGE IN WP NO.50859/2018 AND ALLOW THE WRIT PETITION.

THIS APPEAL COMING ON FOR ORDERS THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGMENT

This intra-Court appeal seeks to call in question a learned Single Judge's order dated 04.07.2023 whereby appellant's W.P.No.50859/2018 (GM-RES) challenging the cancellation of allotment of the subject land has been dismissed, with a direction to the respondent Karnataka Housing Board to pass orders determining the quantum of forfeiture and refund of remaining amount to the appellant within a period of four weeks.

2. Learned Senior Advocate argues that the allotment of subject civic amenity site was made vide letter dated 16.12.2003 and that the appellant has paid the allotment price of Rs.53,10,293/- along with interest of



Rs.7,11,157/-; a conditional sale deed dated 20.10.2005 has been executed and registered by the Housing Board on 20.10.2005, subject to the condition that the allottee should construct the school building within a period of 5 years and that should he fail to do it, the allotment would stand rescinded. The counsel submits that because of "shortage of funds and unavailability of loans or credit", the structure could not be constructed though BBMP had issued the khata. He also highlights his client's application dated 09.01.2014 for the grant of BBMP Approval and Sanction of Building Plan. Lastly, he argued that the impugned order which ignores several relevant factors that resulted into the building having not been put up within the stipulated period, have remained unconsidered and therefore the impugned order is liable to be voided.

3. Having heard learned counsel for the appellant and having perused the appeal papers, we decline indulgence in the matter being broadly in agreement with the reasoning of the learned Single Judge. Admittedly, the subject property is a huge civic amenity site formed in the



layout concerned. The allotment of the same was made to the appellant vide allotment letter dated 16.12.2003 followed by the sale deed dated 20.10.2005. The allotment was for the specified purpose of establishing an educational institution by constructing a building therein within a period of five years. That has not happened, admittedly.

4. There is no dispute that the subject property is a public property that was earmarked as a civic amenity which obviously includes establishment of school. Catering education to the masses is a constitutional imperative in terms of Article 21 and 21A as expansively interpreted by the Apex Court in a catena of decisions, beginning with **UNNI KRISHNAN J.P. vs STATE OF A.P.**, (1993) 1 SCC 645 and reiterated as recently in **JANHIT ABHIYAN vs UNION OF INDIA (EWS RESERVATION)**, (2023) 5 SCC 1. When the State is not in a position to cater to the educational needs on its own, it does it with the mediation of private agencies and that is how the civic amenity sites are earmarked for allotment to the intending



caterers. This site has remained unutilized for a period of more than two decades that is, till date after it was allotted to the appellant. As a consequence, the right to education of those who would have studied, should the school or educational institution was established in this site in terms of stipulation of allotment, has been brutalized, to say the least. All such persons are the inarticulate stakeholders in the allotment and the execution of the purpose for which such allotment was made. Had the site in question been allotted to some worthy person, that would have served the public purpose for which it was earmarked.

5. It is pertinent to reproduce what **Mahatma Jyotiba Phule**, a great Social Reformer of yester century in his "Shetkaryaca Asud" (1881 publication) had profoundly said in Marathi:

विद्येविना मती गेली।
मतिविना नीती गेली।
नीतिविना गती गेली।
गतिविना वित्त गेले।
वित्ताविना शूद्र खचले।
इतके अनर्थ एका अविद्येने केले



Its near English translation is *"Without education, wisdom was lost; without wisdom, morals were lost; without morals, development was lost; without development, wealth was lost; without wealth, misfortune was brought upon the mistreated and the downtrodden; so much has happened through lack of education."*

Jean Dreze and Amartya Sen in their "An Uncertain Glory: India and Its Contradictions" (Princeton & Oxford) at page 107 have reproduced what Rabindranath Tagore had said:

"In a powerful diagnosis, Rabindranath Tagore said: 'in my view the imposing tower of misery which today rests on the heart of India has its sole foundation in the absence of education....'"

Along these lines, what the US Supreme Court had observed in **BROWN vs. BOARD OF EDUCATION OF TOPEKA**, 1954 SCC OnLine US SC 44 regarding the importance of education also finds relevance; it reads as thus:

"Today, education is perhaps the most important function of State and local governments It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these



days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”

This decision has also got the imprimatur of the Apex Court in **MAJOR SAURABH CHARAN vs. NCT OF DELHI**, (2014) 6 SCC 798.

6. The vehement submission of learned counsel for the appellant that the impugned order could not have directed cancellation of sale deed and such a course is not available to Writ Court, is bit difficult to countenance and reasons for this are not far to seek:

(i) firstly, it is a public property and the allotment was subject to the condition that a building should come up within five years; admittedly that has not happened; the sale deed dated 20.10.2005 is admittedly a conditional Sale Deed; its very title reads “CONDITIONAL SALE DEED”. Condition No.1 at page No.3 stipulates construction of the building within a period of two years for the purpose for which it is allotted. If this condition is breached with no plausible explanation whatsoever



therefore, the allotment is liable to be voided and as a consequence, the conditional sale deed becomes liable to be set at naught.

(ii) The so-called Sale Deed is liable to be voided because it is only an off-shoot of the allotment letter which stipulated the condition of allotment. It is more so because the Karnataka Housing Board is a creature of law namely, the Karnataka Housing Board Act, 1962; the allotment of sites and execution of sale deeds are done in terms of statutory policy and not as a private arrangement. In other words, they have abundant public law elements and therefore, they are liable to suffer judicial scrutiny of the Writ Court under Articles 226 and 227 of the Constitution of India. Added, the regular and absolute Sale Deed is not the case of appellant. By taking recourse to the decision of the Apex Court in **KORUKONDA CHALAPATHI RAO vs. KORUKONDA ANNAPURNA SAMPATH KUMAR, 2021 SCC OnLine SC 847**, a reading of the Sale Deed gives an impression that it is only a lease-cum-sale, its



nomenclature notwithstanding. Condition 8 of the Sale Deed which reads as under lends support to this view:

"8. The allotment of C.A. Site is on Lease Cum Sale basis for a period of five years from this day. The allottee shall pay the entire cost of the C.A. Site on or before in one lump. During this period the allottee shall put the land in use for the purpose for which it is allotted. After completion of period of 5 years, the allottee shall apply for issue of Absolute Sale Deed. Failure to comply with any one of the conditions of this deed the allotment will be cancelled without any notice and the board has right to resume back the said site in its possession."

7. The submission of learned Senior Advocate that the appellant had the financial difficulty and therefore he could not undertake construction, is not legally tenable as a justification for not complying with the stipulation of allotment. Condition No.2 in the Sale Deed specifically enabled the appellant to raise loan by mortgaging the site in question, for constructing the school building. It reads:

"2. The second party shall not alienate the schedule property except for mortgaging or creation of charge or lien in favour of schedule bank or any statutory lending agencies for raising loan to for the construction of buildings in the schedule property."



Why that was not done remains a mystery wrapped in enigma. Therefore, the contention that the funds were not available for taking up construction of the building falls to the ground.

8. The submission of learned Senior Advocate for Appellant-Society that construction of the structure has begun and that the same would be completed within a month or two, is nothing but an *unconstitutional afterthought*. What is found to be a non-compliance of a conditional allotment of site, does not wither away by highly belated efforts of compliance. What the court has to see is whether the structure is built within two years as stipulated in the so-called conditional sale deed and nothing beyond that. No rule of binding conduct or ruling is brought to our notice which authorizes the extension of stipulated period or for the condonation of enormous delay in endeavouring the compliance of condition. One has to keep in mind that the allotment of the civic amenity sites, although creates interest to an extent, is onerous and the



allottee holds the property in a kind of public trust so that the property is put to specified use.

9. Learned Single Judge has also made certain observations at para 20 of the order as to why no relief could be granted to the appellant. The same reads as under:

"20. Apart from above, petitioner had occupied Krishnarajendra Kushala Karmi Tarabethi Kendra established by Government in Nelamangala and failed to pay rent. Eviction notices issued by department were questioned and pending in W.P.no.39278/2018. It was submitted that petitioner was involved in several other irregularities. Such being case, when several governmental agencies which required land for location of their offices were forced to operate from distant/rented premises, permitting non-compliant allottees to continue to occupy valuable civic amenity sites would be contrary to objective of forming C.A. sites."

No explanation is offered by the appellant as to why the above observations are unsustainable

10. There is one other important factor which we cannot leave unsaid: where the public property is allotted for a specified purpose and that purpose remains unaccomplished, the retention of such allotment militates



against the public interest. Where such a purpose has constitutional flavour like the one catering to the educational needs of the society, this proposition assumes imperative character. If leniency is shown in matters of breach, that would be tantamount to placing premium on illegality. It would be a case of misplaced sympathy too. What we cannot lose sight of is that the petitioner is not a poor person or a mendicant; nor he is a farmer hailing from rural background. It is a society registered under the provisions of the Karnataka Registration of Societies Act, 1960 vide Certificate of Registration dated 28.09.1991 and it claims to run educational institutions. Permitting such entities to retain allotment of the site despite breach of the statutory conditions, would lay a bad precedent which has abundant abuse potential.

In the above circumstances, this appeal being devoid of merits, is liable to be and accordingly rejected in *limine*. Respondent-Board is to comply with the order concerning determination of quantum of forfeiture and refund of amount, as directed by the learned Single Judge in the



impugned order in a time-bound manner. Appellant-Society is also directed to deliver the possession of the property in an 'as is where is' position to the Respondent-Board which should take back the possession within four weeks.

Compliance of the order should be reported to the Registrar-General of this Court within six weeks.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

SNB/BVK
List No.: 1 Sl No.: 29