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IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 29TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 102318 OF 2016 (LB-RES)

BETWEEN:

MOHAN VASUDEV CHAVAN,
AGE: 66 YEARS, OCC: BUSINESS,
R/O: GOKAK, TQ: GOKAK,
DIST: BELAGAVI.

...PETITIONER

(BY SRI LAXMAN T. MANTAGANI, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
BY ITS SECRETARY,
URBAN DEVELOPMENT DEPARTMENT,
VIDHAN SOUDHA, BENGALURU.
2. DEPUTY COMMISSIONER,
BELAGAVI, DIST: BELAGAVI.
3. MUNICIPAL COMMISSIONER,
CITY MUNICIPAL COUNCIL,
GOKAK, DIST: BELAGAVI.
4. PROJECT DIRECTOR,
DISTRICT URBAN DEVELOPMENT WING,
OFFICE OF THE DEPUTY COMMISSIONER,
BELAGAVI.

...RESPONDENTS

(BY SRI P.N. HATTI, HCGP FOR R1, R2 AND R4, SRI SRINAND A.
PACHCHAPURE AND SRI RAJENDRA PATIL, ADVOCATES FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF
CERTIORARI QUASHING THE IMPUGNED LETTER DATED:06.10.2015,
IN NO. BGM:DUDC:2CR-77-B/2014-15/687 ISSUED BY THE 2ND
RESPONDENT VIDE ANNEXURE-D.





THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Captioned petition is filed assailing the order passed by respondent No.2 vide Annexure-D wherein respondent No.2-Deputy Commissioner has resolved to sell a plot reserved for civic amenities by invoking Section 72(2) of the Karnataka Municipalities Act. The said order is under challenge.

2. Heard the counsel for petitioner, learned counsel appearing for respondent No.3 and learned HCGP.

3. Facts leading to the case are as under:

The land bearing Survey No.134/1 which was originally owned by the petitioner was converted to be used for non-agricultural purposes at the instance of petitioner herein. Pursuant to conversion order, a layout was formed comprising of 26 plots. Plot No.1 which is the subject matter of the writ petition measuring 3 guntas 13 annas is reserved for civic amenity with an object to provide civic facilities.



4. This being factual matrix, respondent No.2- Deputy Commissioner by invoking Section 72 of the Act, has resolved to auction the civic amenity plot. The impugned order passed by respondent No.2 vide Annexure-D is liable to be quashed on two counts. Firstly, respondent No.2- Deputy Commissioner has no authority to auction civic amenity site by invoking section 72 of the Act. Section 72 enables every municipal council to lease or sale or otherwise transfer any movable or immovable property, which is owned by the local authority. Plot No.1 being reserved for civic amenity cannot be meddled with by invoking section 72 of the Act.

5. Civic amenity sites play a crucial role in shaping the quality of life within urban areas. These sites are designated for the establishment of essential public amenities such as parks, community centers, schools, healthcare facilities, and other services that contribute to the overall well-being of residents. In the context of the Karnataka Urban Development Act, the prohibition of selling civic amenity sites is a fundamental principle that recognizes



their significance and aims to ensure the sustained availability of these amenities for the public. The Karnataka Urban Development Act, guided by the principles of sustainable urban planning, recognizes that civic amenity sites are not mere parcels of land, but integral components of the urban landscape that directly impact the quality of life of residents. By designating specific areas for civic amenities, the Act aims to create vibrant and livable urban environments that cater to the diverse needs of the population.

6. One of the key reasons behind the prohibition on the sale of civic amenity sites is to prevent the potential misuse or commercialization of these spaces. Allowing the sale of such sites could lead to their transformation into private properties, undermining their original purpose. This would deprive the community of access to vital services and amenities, thereby diminishing the overall livability of the urban area. Moreover, the Act recognizes that local authorities play a pivotal role in preserving and safeguarding civic amenity sites. By designating local authorities as



custodians of these sites, the Act entrusts them with the responsibility to ensure that these spaces continue to serve their intended purpose. This custodianship emphasizes the long-term commitment of local authorities to maintain and develop these sites in a manner that benefits the community.

7. The preservation of civic amenity sites aligns with broader urban development goals. Access to green spaces, educational institutions, healthcare facilities, and recreational areas enhances the quality of life, promotes community interaction, and contributes to the physical and mental well-being of residents. Prohibiting the sale of these sites reflects a forward-thinking approach that values the holistic development of urban areas over short-term economic gains.

8. Be that as it may, section 72 of the Act is an enabling provision which authorizes respondent No.3-State Municipal Council to seek sanction from the government either to lease or to sell the property owned by it. A civic amenity site does not absolutely vest with local authorities. The local authority is only a custodian of civic amenity site.



Therefore, respondent No.2 could not have invoked section 72 of the Act and thereafter proceed to auction a civic amenity site to a particular community.

9. Secondly, there cannot be outright sale of civic amenity site. Section 3 of Karnataka Urban Development (Allotment of Civic Amenity Sites) Rules 1991 (for short "1991 Rules") empowers the authority only to lease a civic amenity site provided in any locality on lease basis to any institution, provided the authority while offering civic amenity site takes cognizance of reservations while allotting civic amenity site on lease basis. Therefore, even under Karnataka Urban Development Act, a civic amenity site at the most can be leased and there cannot be outright sale. If the local bodies and the revenue authorities are given a free hand to meddle with civic amenity sites, that would defeat the very purpose of notifying or reserving some place in developed layout for specific purpose. Therefore, the impugned order passed by respondent No.2 vide Annexure-D is not sustainable. For the foregoing reasons, I pass the following:



ORDER

- i) The writ petition stands allowed.*
- ii) The impugned order passed by respondent No.2 vide Annexure D is hereby quashed.*
- iii) In view of disposal of the petition, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.*

**Sd/-
JUDGE**