



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 5TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE M.I.ARUN

WRIT PETITION NO.25040 OF 2023 (KLR-RES)

BETWEEN:

1. SOUTH CANARA DISTRICT CENTRAL
CO-OPERATIVE BANK LTD.
HAVING REGISTERED OFFICE AT:
UTHKRUSHTA SAHAKARI SOUDHA
KODIALBAIL, MANGALURU-575 003
REPRESENTED BY ITS MANAGER.

...PETITIONER

(BY SRI RAKSHITH KUMAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REVENUE DEPARTMENT
M.S. BUILDING
VIDHANA SOUDHA
BENGALURU-560 001
REPRESENTED BY ITS SECRETARY.
2. THE DEPUTY COMMISSIONER
RAJATHADRI, MANIPAL
UDUPI DISTRICT-576 101.
3. THE ASSISTANT COMMISSIONER
KUNDAPURA SUB-DIVISION, KUNDAPURA
UDUPI DISTRICT-576 201.





4. THE TAHASILDAR
OFFICE OF THE TAHASILDAR
BRAHMAWARA
UDUPI DISTRICT-576 213.
5. SMT. POORNIMA
W/O. RAMESH ACHARYA
AGED ABOUT 36 YEARS
R/AT MUDOOR,
HALAVALLU VILLAGE
UDUPI-576 215.

...RESPONDENTS

(BY SRI HARISH A.S., AGA FOR R.1 TO R.4;
R.5: NOTICE DISPENSED WITH VIDE
COURT ORDER DATED 29.05.2024.)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ENDORSEMENT NO.HSDR/CR/04/23-24 DATED 18.07.2023 PASSED BY THE RESPONDENT NO.4 TAHSILDAR, AS PER ANNEXURE-A, ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THROUGH PHYSICAL HEARING/VIDEO CONFERENCING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE M.I.ARUN

**ORAL ORDER**

1. Respondent No.5 has been granted a free site by the State under the Ashraya scheme under the provisions of the Karnataka Land Grant Rules, 1969 (for short 'the Rules'). The said grant is subject to certain conditions as mentioned in the grant order which reads as under:

"ಷರತ್ತುಗಳು

1. ನಿವೇಶನ ಪಡೆದವರು ಮಂಜೂರಾದ ದಿನದಿಂದ 25 ವರ್ಷಗಳ ಅವಧಿಯವರೆಗೆ ನಿವೇಶನವನ್ನು ಬೇರೆ ಯಾರಿಗೂ ಪರಭಾರೆ ಮಾಡಬಾರದು. ಹಾಗೂ ಅದರಲ್ಲಿಯ ತಮ್ಮ ಹಕ್ಕುಗಳನ್ನು ಬೇರೆಯವರಿಗೆ ವರ್ಗಾಯಿಸಕೂಡದು.
2. ಸದರಿ ನಿವೇಶನದಲ್ಲಿ ವಾಸದ ಮನೆ ನಿರ್ಮಿಸಲು ಕರ್ನಾಟಕ ಗೃಹ ಮಂಡಳಿ ವತಿಯಿಂದ ಅಥವಾ ಇನ್ನಿತರ ರಾಷ್ಟ್ರೀಕೃತ ಬ್ಯಾಂಕ್ ಅಥವಾ ಗೃಹ ನಿರ್ಮಾಣ ಸಂಸ್ಥೆಗಳಿಂದ ಸಾಲ ಪಡೆಯಲು ಸದರಿ ನಿವೇಶನವನ್ನು ಅಡವು ಮಾಡಲು ಅವಕಾಶವಿದೆ.
3. ಸದರಿ ಫಲಾನುಭವಿಗಳು ನಿವೇಶನವನ್ನು ಬೇರೆಯವರಿಗೆ ಬಾಡಿಗೆಗೆ ನೀಡದೆ ಸ್ವಯಂ ಉಪಯೋಗಿಸುವುದು ಹಾಗೂ ಸದರಿ ನಿವೇಶನವನ್ನು ಎಲ್ಲಾ ಕಾಲಕ್ಕೂ ಇಟ್ಟುಕೊಳ್ಳುವುದು. 2 ವರ್ಷದೊಳಗೆ ಮನೆ ನಿರ್ಮಿಸತಕ್ಕದ್ದು.
4. ಸರ್ಕಾರ ಅಥವಾ ಸಂಬಂಧಪಟ್ಟ ಸ್ಥಳೀಯ ಸಂಸ್ಥೆಗಳು ವಿಧಿಸುವ ತೆರಿಗೆಗಳನ್ನು ನಿಯಮಾನುಸಾರ ಪಾವತಿ ಮಾಡುವುದು ಹಾಗೂ ಜಾರಿಯಲ್ಲಿರುವ ನಿಯಮಗಳನ್ನು ಪಾಲಿಸುವುದು.



5. ನಿವೇಶನ ಪಡೆಯುವಾಗ ಸರ್ಕಾರಿ ಅದೇಶದಲ್ಲಿ ನಮೂದಿಸಿರುವ ಅಂಶಗಳಿಗೆ ವಿರುದ್ಧವಾಗಿ ತಪ್ಪು ಮಾಹಿತಿ ನೀಡಿದಲ್ಲಿ, ಅಂತಹ ಮಂಜೂರಾತಿಯನ್ನು ರದ್ದುಪಡಿಸಿ, ನಿವೇಶನವನ್ನು ವಾಪಸ್ಸು ಪಡೆಯಲಾಗುವುದು.

ಮೇಲ್ಕಂಡ ಯಾವುದೇ ಷರತ್ತುಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿದಲ್ಲಿ ನಿವೇಶನದ ಹಂಚಿಕೆಯನ್ನು ರದ್ದು ಮಾಡಲಾಗುವುದು ಹಾಗೂ ನಿರ್ಮಾಣವಾದಂತಹ ಮನೆಯನ್ನು ನಿವೇಶನದ ಸಹಿತ ಸರ್ಕಾರ ಮುಟ್ಟುಗೋಲು ಹಾಕಿಕೊಳ್ಳಲಾಗುವುದು."

Further, Rule 9 of the Rules, reads as under:-

"9. Conditions of grant.-(1) The grant of lands under these rules for agricultural purposes shall be jointly in the name of husband and wife and shall be subject to the following conditions namely. -

- (i) the grantee shall not alienate the land for a period of twenty-five years from the date of taking possession:

Provided that he may, after a period of five years, with the previous permission of, and subject to the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act 1978 (Karnataka Act 2 of 1979), and such conditions as may be specified by the Deputy Commissioner, alienate the whole or any portion of such land. But however, the Deputy Commissioner shall not



grant such permission unless he is satisfied that the alienation is for the purpose of acquiring other land or for improving the remaining land and the grantee credits to Government an amount equal to fifty per cent of the market value of such land as on the date of sanction of such alienation as determined by the Deputy Commissioner:

Provided that no person who has obtained permission to alienate land under the rule shall, notwithstanding the provisions of Rule 4 be eligible for grant of any Government Land.

- (ii) the land granted shall be brought under cultivation within three years from the date of taking possession:

Provided that the Deputy Commissioner, may, if he is satisfied that the grantee could not do so for *bona fide* reasons extend the aforesaid period upto 5 years;

- (iii) the grantee shall cultivate the land personally;
- (iii-a) where the land is granted for coffee cultivation the grantee shall apply within the period specified in Section 14 of the Coffee Act, 1942 (Central Act 7 of 1945) to the Registering Officer appointed under the said section to be registered as an owner of such land;



(iv) the land shall not be appropriated for any purpose other than that for which it was granted, except with the prior approval of the Granting Authority who may grant such permission subject to such conditions as he may consider proper and subject to payment of additional upset price as he may consider fit provided the conversion is for a non-agricultural purpose and the price is within the maximum specified in Rule 12;

(iv-a) the grantee shall within a period of one year from the date of his taking possession of the granted land plant and maintain not less than one tree per every 10 (ten) acres of land or ten trees per hectare of land, at his cost.

In case the tree/trees planted were to die or get damaged due to causes beyond his control, he shall replant in its place another tree/trees and rear them;

(v) for contravention of any of the above conditions the grant shall be liable to be cancelled and resumed to Government free from all encumbrances by the authority granting the land:

Provided that before cancelling the grant, the grantee is afforded with an opportunity of being heard. Provided further that where the grant has been cancelled for non-payment of upset price, the Deputy Commissioner may restore the grant on payment of upset price with a penalty of 10 per cent of the upset price, within a period



of 2 years after the grant if the land in question has not been disposed of otherwise.

(2) The following shall not be regarded as alienation for purposes of sub-rule (1).-

- (a) mortgage of the land in favour of State Government or a Co-operative Society or the Indian Coffee Board or a Scheduled Bank or the Agricultural Refinancing Corporation or the Karnataka State Agro Industries Corporation for loans obtained for improvement of such land or for buying cattle or agricultural implements for the cultivation of such land or for raising educational loan to prosecute further studies of the children of the grantee after Pre-University Examination or twelfth Standard examination conducted by CBSC or ICSE or any Diploma Courses; and
- (b) leasing of the land in accordance with the provisions of the Karnataka Land Reforms Act, 1961.

(3) The grant of lands other than building sites under these rules, for non-agricultural purposes shall be subject to the following conditions, namely.-

- (i) the land shall be utilised for the purpose for which it was granted within two years from the date of taking possession:



Provided that the authority granting the land may, if satisfied, that the grantee could not for *bona fide* reasons utilise the land within the said period by order, in writing, extend the time for a further period not exceeding two years;

- (ii) the land shall not be appropriated for any purpose other than that for which it was granted except with the prior approval of the Granting Authority who may grant such permission subject to such conditions as he may consider proper and fit;
- (iii) for contravention of any of the above conditions, the grant shall be liable to be cancelled and resumed by the Granting Authority, free from all encumbrances and without payment of any compensation."

2. Respondent No.5 raised a loan from the petitioner which is a Co-operative Bank and as a security for the loan, apart from other things, mortgaged the property which was granted in her favour. The conditions of the grant as well as Rule 9 of the Rules permitted the mortgage. Thereafter, respondent No.5 committed default in repayment of the loan. Petitioner - Bank, to recover the



loan, sought to enforce the mortgage by bringing the property mortgaged for sale. In this regard, the petitioner gave a representation to respondent No.4, seeking permission to sell the land. The same has been refused by an endorsement dated 18.07.2023 (vide Annexure-'A' to the writ petition) on the ground that the same is impermissible in the light of the restriction stating that the lands should not be alienated for a period of 25 years. Aggrieved by the same, the present writ petition is filed.

3. The case of the petitioner - Bank is that though there is a restriction not to alienate the property for a period of 25 years, a mortgage to a Co-operative Bank is not considered as an alienation and consequently, when there is a default in repayment of the loan, the Bank is entitled to enforce the mortgage and it is contended that the impugned endorsement issued by respondent No.4 is liable to be set aside.



4. Per contra, learned Additional Government Advocate appearing for respondent Nos.1 to 4 justifies the impugned endorsement and prays for dismissal of the writ petition.

5. It is contended by the State that the grant is subject to a restriction which prohibits alienation of the property granted for a period of 25 years. An exception is created wherein permission is granted to an allottee to raise a loan by mortgaging the property so as to facilitate the allottee to develop the land or construct a building thereon, but the land is allotted for the purposes of the allottee and it cannot be sold in favour of the third person by the mortgagee till the expiry of the said 25 years and in the instant case, the allotment was done on 30.01.2010 and 25 years has not lapsed.

6. The allotment under ashraja scheme which is a free allotment is made in favour of poor persons so that they are given a place to construct a house and live. A



restriction is imposed to the effect that they cannot alienate the property for a period of 25 years, otherwise, the allottee may indulge in speculative activities and the very purpose of allotment stands defeated.

7. However, an exception is created to the condition of non-alienation of the property for a period of 25 years wherein the allottee is permitted to raise a loan from a Co-operative Bank by mortgaging the site which is allotted to her, so that she can get the necessary money to construct a house. The law does not expressly prohibit the mortgagee from enforcing the mortgage, selling the mortgaged property and recover its loan within the said stipulated period. Once, law permits mortgage of the property for the loan borrowed, the mortgagee cannot be left without any remedy. As the law expressly permit mortgage of the property, it has to be held that irrespective of the prohibition being there for non-alienation of the land allotted, the mortgagee is entitled to sell the property while enforcing the mortgage.



8. If the State is of the opinion that the allottee has misused the allotment, it is at liberty to legislate the required laws to take action against the allottee or black list the allottee or his family and deny them future benefits, but they cannot deny permission to the Bank from enforcing the mortgage. Hence, the following:

ORDER

- i. The impugned endorsement dated 18.7.2023 bearing no.ಎಚ್‌ಎಸ್‌ಡಿಆರ್/ಸಿಆರ್/04/23-24 passed by respondent No.4 (vide Annexure-'A' to the writ petition) is hereby set aside;
- ii. Respondent Nos.2 to 4 are directed to give necessary permission to the petitioner to sell the property concerned to enforce the mortgage;
- iii. The writ petition is accordingly ***disposed of.***



iv. Pending interlocutory applications, if any,
stand disposed of.

**SD/-
(M.I.ARUN)
JUDGE**

VMB
List No.: 1 SI No.: 50