



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2021

PRESENT

THE HON'BLE MR.SATISH CHANDRA SHARMA,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.9616/2020 (GM-RES-PIL)

C/W

REVIEW PETITION NO.294/2021

IN WRIT PETITION 9616/2020

BETWEEN:

MR ADINARAYANASHETTY
S/O VENKATANARASAI AH SHETTY
AGED ABOUT 72 YEARS,
RESIDING AT 5TH BLOCK
KORAMANGALA
BANGALORE- 560 095

... PETITIONER

(BY SRI SUNIL KUMAR H., ADV)

AND:

- 1 . THE PRINCIPAL SECRETARY
URBAN DEVELOPMENT DEPARTMENT
VIKASA SOUDHA
BANGALORE- 560 001
- 2 . THE MANAGING DIRECTOR
KARNATAKA HOUSING BOARD
3RD FLOOR, CAUVERY BHAVAN
K.G. ROAD,
BANGALORE- 560 009
- 3 . MURTHY CHARITABLE TRUST
REPRESENTED BY ITS PRESIDENT
SMT. GAYATHRI

C.A. NO 35, KHB, V PHASE
YELAHANKA NEW TOWN,
BANGALORE- 560 064

... RESPONDENTS

(BY SRI VIJAYKUMAR A PATIL, AGA FOR R1
SRI B.J.MAHESH, ADV. FOR R2
SRI CHANDRASHEKAR S.M., SENIOR ADV. ALONG WITH
SRI H.S.PRASHANTH, ADV. FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE SALE DEED DATED 28.07.2020 EXECUTED IN FAVOR OF R-3 AT BOOK NO.1 NO.YAN-1-01707-2020-21, C.D.NO.YAND1062 REGISTERED DATED 28.07.2020 IN THE OFFICE OF THE SUB-REGISTRAR YELAHANKA BANGALORE WITH REGARD TO C.A.SITE NO.35, 5TH PHASE, YELAHANKA NEW TOWN, BANGALORE VIDE ANNEXURE-D AND ETC.

IN REVIEW PETITION NO.294/2021

BETWEEN:

MURTHY CHARITABLE TRUST
REPRESENTED BY ITS SECRETARY
SRI R.K.MADAN
C.A.NO. 35, KHB, V PHASE
YELAHANKA NEW TOWN
BENGALURU 560 064

... PETITIONER

(BY SRI CHANDRASHEKAR S.M., SENIOR ADV. ALONG WITH
SRI. H.S.PRASHANTH, ADV.)

AND:

- 1 . MR ADINARAYANASHETTY
S/O VENKATANARASIAH SHETTY
AGED ABOUT 72 YEARS
RESIDING AT 5TH BLOCK
KORAMANGALA
BENGALURU 560 095
- 2 . THE PRINCIPAL SECRETARY
URBAN DEVELOPMENT DEPARTMENT

VIKASA SOUDHA
BENGALURU 560 001

3 . THE MANAGING DIRECTOR
KARNATAKA HOUSING BOARD
5TH FLOOR, CAUVERY BHAVAN
K.G. ROAD,
BENGALURU 560 009

... RESPONDENTS

(BY SRI VIJAYKUMAR A PATIL, AGA FOR R2)

THIS REVIEW PETITION IS FILED UNDER ORDER 47 RULE 1 R/W SECTION 114 OF CPC PRAYING TO REVIEW THE ORDER DATED 31/03/2021 PASSED IN W.P.NO.9616/2020 (GM-RES), PASSED BY THIS HONBLE COURT AND PERMIT THE PETITIONER TO CONTEST THE SAID WRIT PETITION ON THE MERITS BY ALLOWING THIS REVIEW PETITION AND ETC.

WRIT PETITION AND REVIEW PETITION COMING ON FOR FINAL DISPOSAL THIS DAY, **ACTING CHIEF JUSTICE**, MADE THE FOLLOWING:

ORDER

The petitioner has filed the present petition as a PIL and his contention is that a civic amenity site No.35, situated at 5th phase, Yelahanka New Town, Bengaluru, was allotted by the Karnataka Housing Board (KHB) to respondent No.3- Murthy Charitable Trust, represented by its President Smt. Gayathri on 23.08.2004 and there were specific conditions mentioned in the allotment order. The allotment order is on record and the conditions of the allotment order are reproduced as under:

1. The second party shall construct building suitable for Education and public service as the case may be, duly providing for all infrastructures as are relevant to provide facilities to accomplish the said objective, within a period of two years or within such period of further time allowed by the second party, in conformity with the provisions of law in force from time to time.
2. The second party shall not alienate (alienate) the schedule property except by mortgage or creation of charge or lien in favour of schedule bank or any statutory lending agencies for the construction of buildings in the schedule property.
3. The second party is bound by the provisions of Karnataka Housing Board Act and Rules framed there under.
4. The site which been designed as one unit shall not be split into two or more sites on any condition."

The other condition i.e., Condition No.8 which relates to Lease-cum-sale is also reproduced as under:

"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."

2. The four conditions in the allotment order makes it very clear that the allottee was required to construct a building suitable for Education and public service within a period of two years and condition No.8 provides that the Housing Board shall be entitled to cancel the allotment without issuing any notice after expiry of five years.

3. Undisputedly, no construction has been carried out and the KHB has now executed an absolute sale deed in favour of respondent No.3 on 23.07.2020 for a sum of Rs.3,87,000/-. The value of the land is more than 10 Crores and an additional amount was received by KHB i.e., Rs.18,00,000/- for additional area allotted to respondent No.3. Undisputedly, at no point of time, the procedure provided under the Karnataka Housing Board (allotment) Regulations, 1983 was followed.

4. It is argued before this Court that respondent No.3 has been favoured by KHB only because the President of respondent No.3 Smt.Gayathri, is the wife of member of Parliament.

5. In the present case, the basic issue involved is whether the Rules were followed in the matter of allotment or not.

6. Reply has been filed by the KHB and the KHB has made a submission that the PIL is not maintainable in the facts and circumstances of the case and the petitioner cannot seek cancellation of a registered document in exercise of writ jurisdiction under Article 226 of the Constitution of India and the petitioner has to take shelter of the provisions of the Specific Relief Act. The reply of the KHB is silent in respect of the procedural rules relating to allotment i.e., KHB (allotment) Rules, 1983 and it has been stated that respondent No.3 has approached KHB for allotment of Civic Amenity site with a noble cause. Therefore, the site was allotted. It has also been stated that there was some litigation in respect of some other sites and therefore the matter was delayed and they have executed a fresh sale deed in favour of respondent No.3 subsequently in the year 2020, meaning thereby all attempts have been made by the KHB to justify their illegal allotment. Respondent No.3, in the present case has also not brought on record the procedure adopted by the KHB.

7. It is true that some reference has been made to writ petition i.e.,38128/2009 (Sadashivnagar Youth Association v. The State of Karnataka and Others) decided on 31.07.2013, however it does not relate to the present land.

8. The most shocking aspect of the case is that an instrumentality of the State i.e., KHB has allotted the site in question without following the allotment regulations. There is a detailed procedure provided under the KHB Regulations for allotment of sites and the procedure has not been followed at all especially when the site was reserved as a Civic Amenity Site.

9. The other important aspect of the case is that earlier also, this matter has been argued at length and learned counsel for the respondent No.3, on instructions has stated in the open Court that respondent No.3 – Trust i.e., allottee is willing to execute a deed of cancellation of the sale deed made in its favour and he is ready to surrender the land to the KHB.

10. Today, a new Senior counsel has been engaged in the matter and a review petition has been filed against the

order dated 31.03.2021. The order dated 31.03.2021 reads as under:

"After the matter was fully argued, the learned counsel appearing for the third respondent, on instructions, states that the third respondent is willing to execute a deed of cancellation of the sale deed subject matter of challenge (Annexure-B). It is obvious that even after the sale deed is cancelled and possession is surrendered to the Karnataka Housing Board, the third respondent will be entitled to apply for allotment of the same site in accordance with law.

For reporting the steps taken for cancellation, list the petition on 22nd April 2021."

11. It is unfortunate that such a review petition has been filed after giving an undertaking in the open Court. However, this Court is deciding the matter on merits after hearing the learned Senior Counsel at length.

12. The statutory provisions governing the field as contained under the KHB, Act of 1962 providing power to dispose of the land are reproduced as under:

"38. Power to dispose of land – Subject to any rules made by the State Government under this Act, the Board may retain, lease, sell, exchange or otherwise dispose of, any land, building or other property vesting in it and situate in the area comprised in any housing scheme sanctioned under this Act."

The State Government in exercise of the powers conferred under Section 76 of the KHB Act of 1962 has framed regulations for allotment-disposal of sites/houses and they are known as KHB (Allotment) Regulations, 1983. Regulation 3 provides for a mechanism for allotment of sites/houses and the same is reproduced as under:

"3. Offer of Sites/Houses for allotment.- (1)

Whenever the Board has formed sites and constructed houses in pursuance of any scheme, the Board may offer all or any of sites/houses for allotment to person eligible for allotment under these regulations.

(2) Due publicity shall be given in respect of sites/houses for allotment specifying their location, number of sites/houses, the amount payable as Earnest Money Deposit/Registration Fee and such other particulars as the Board may consider necessary, by:

(a) Affixing Notices:

- i. On the notice Board of the Office of the Karnataka Housing Board;
- ii. On the Notice Board of the Divisional, Sub-Divisional Office(s) of the Karnataka Housing Board in whose area the sites / houses are to be allotted;
- iii. On the Notice Board of the Taluk office/Taluk Development Board office in whose area the sites/houses are to

be allotted.

(b) Publication in the Karnataka Gazette, and not less than three daily news papers of which one should be a Kannada Daily having wide circulation in the area in which the sites are formed or houses are constructed, as may from time to time be decided by the Board. Provided that if in response to any earlier notification for allotment of houses/sites in the same area or demand survey notification, adequate applications are available for allotment, it shall not be necessary for the Board to give publicity again for such sites/houses.

Regulation 13 provides for Outright sale of houses/sites and the same is reproduced as under:

"13. Allotment of Houses on Outright sale basis.-Wherever, the Board has notified houses/sites for allotment on outright sale basis, the allottee shall pay the entire cost of the house as determined by the Board before executing the lease-cum-sale agreement. The conditions in Rule 13(I) to (v) will apply mutatis mutandis to these allottee also."

13. The aforesaid statutory provisions of law makes it very clear that a site can be allotted / can be sold only through a transparent process that too after wide publicity through tender notice / auction notice.

14. In the present case, the conditions of the sale deed dated 23.08.2004 were not complied with. The KHB took no steps in the matter for cancellation of the sale deed. On the contrary, the KHB has issued another sale deed dated 28.07.2020 without adhering to the statutory provisions as contained Karnataka Housing Board Act, 1962 and the Regulations framed thereunder i.e., Karnataka Housing Board (allotment) Regulations, 1983. In case, execution of such sale deeds are permitted, there shall be total anarchy in the system which will lead to illegal allotment and sale of land to blue eyed persons without following the procedure prescribed under the rules relating to allotment and this case is one such example of favoritism by KHB. The prescribed procedure has been given go-bye for obvious reasons by the KHB while allotting the civic amenity site to respondent No.3-Trust. Therefore, the initial allotment as well as the sale deed dated 28.07.2020 deserves to be set aside.

15. The Hon'ble Supreme Court in the case of **Centre for Public Interest Litigation v. Union of India** reported in (2012) 3 SCC 1 has dealt with the Public trust doctrine in paragraphs-94, 95 and 96, which reads as under:

"94. There is a fundamental flaw in the first-come-first-served policy inasmuch as it involves an element of pure chance or accident. In matters involving award of contracts or grant of licence or permission to use public property, the invocation of first-come-first-served policy has inherently dangerous implications. Any person who has access to the power corridor at the highest or the lowest level may be able to obtain information from the government files or the files of the agency/instrumentality of the State that a particular public property or asset is likely to be disposed of or a contract is likely to be awarded or a licence or permission is likely to be given, he would immediately make an application and would become entitled to stand first in the queue at the cost of all others who may have a better claim.

95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc. it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

96. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process."

In the aforesaid case, it has been held by the Hon'ble Supreme Court that in the matter of dispensation / allocation of natural resources by the State, distribution process must be fair and transparent affording equal opportunity to all interested parties.

In the present case, the land has been allotted by the KHB without following a transparent procedure. Therefore, the allotment order as well as the subsequent sale deed in favour of respondent No.3 deserves to be quashed.

16. The Hon'ble Supreme Court in the case of **Natural Resources Allocation, In re, Special Reference No.1 of 2012** in paragraph-149 reads as under:

149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution.

In the light of the aforesaid judgment, again respondent No.2-KHB should have followed a fair and transparent

procedure in case the KHB wanted to dispose of the land, which is the subject matter of the present writ petition. However, without following the transparent procedure and the KHB (allotment) Regulations, 1983, the KHB has made initial allotment of the site in question and has also executed the sale deed dated 28.07.2020, which deserves to be set aside.

17. The Hon'ble Supreme Court, in the case of **Ajar Enterprises Private Limited v. Satyanarayan Somani and others** reported in **(2018) 12 SCC 756** in paragraphs-48 and 49 has held as under:

"48. A Constitution Bench of this Court has held in its decision in *Natural Resources, In re* [Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1] that auction is not the only permissible means for the disposal of natural resources. The Court noticed that legislation does permit or prescribe methods other than auction. D.K. Jain, J. delivering the judgment of four Judges held that: (SCC pp. 98-99, para 149)

"149. ... auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."

Jagdish Singh Khehar, J. (as the learned Chief Justice then was) in his concurring judgment held that: (SCC p. 144, para 200)

"200. I would, therefore, conclude by stating that no part of the natural resource can be dissipated as a matter of largesse, charity, donation or endowment, for private exploitation. Each bit of natural resource expended must bring back a reciprocal consideration. The consideration may be in the nature of earning revenue or may be to "best subserve the common good". It may well be the amalgam of the two. There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth. One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable."

49. Undoubtedly, disposal of natural resources by auction is not a mandatory principle for, as the Constitution Bench held, individual statutes may provide for modalities of transfer by alternate modes which subserve public interest. In the present case, as we have noted, Rule 5 of the 1975 Rules provides four modalities: (i) direct negotiations; (ii) auction; (iii) inviting tenders; and (iv) concessional terms. Where the statute has provided for several modes of disposal, the choice among one of the available methods must facilitate the fulfilment of public interest. That inter alia requires consideration being given to all aspects of the matter including the nature and value of the land, the purpose of the allotment and the need for the authority to generate funds to facilitate the objects for which it was constituted, such as planned development. The choice of one of a range of permissible choices can never be based on the anvil of conferring an undeserved benefit on a commercial developer. The choice of methods is not left to the unbridled discretion of a public authority. Where a public authority exercises an executive prerogative, it must nonetheless act in a manner which would subserve public interest and facilitate the distribution of scarce natural resources in a manner that would achieve public good. Where a public authority implements a policy, which is backed by a constitutionally recognised social purpose intended to achieve the welfare of the community, the considerations which would govern would be different from those when it alienates natural resources for commercial exploitation. When a public body is actuated by a constitutional purpose embodied in the Directive Principles, the considerations which weigh with it in determining the mode of alienation should be such as would achieve the underlying object. In certain cases, the dominant consideration is not to maximise revenues but to achieve social good such as when the alienation is to provide affordable housing to members of the Scheduled Castes or Tribes or to implement housing schemes for below the poverty line (BPL) families. In other cases where natural

resources are alienated for commercial exploitation, a public authority cannot allow them to be dissipated at its unbridled discretion at the cost of public interest."

In the aforesaid case, the Hon'ble Supreme Court has again dealt with alienation of natural resources and it is well settled proposition of law that State largesse should not be marred by any arbitrariness. Fairness, in the action of the State or local bodies or instrumentalities of the State while leasing out / disposing any public property is a *sine qua non*. The State and the instrumentality of the State are required to follow a transparent procedure. The statutory provisions as contained under the Act and the Regulations are required to be followed.

However, in the present case favoritism has been done by respondent No.2 to respondent No.3 without following the prescribed procedure. Therefore, the initial allotment as well as the sale deed dated 28.07.2020 deserves to be set aside.

18. The Hon'ble Supreme Court in the case of **Saroj Screens Private Limited v. Ghanshyam and others** reported in (2012) 11 SCC 434 in paragraphs-38 and 39 is held as under:

"**38.** The question whether the State and/or its agency/instrumentality can transfer the public property or interest in public property in favour of a private person by negotiations or in a like manner has been considered and

answered in negative in several cases. In *Akhil Bhartiya Upbhokta Congress v. State of M.P.* [(2011) 5 SCC 29 : (2011) 2 SCC (Civ) 531] this Court was called upon to examine whether the Government of Madhya Pradesh could have allotted 20 acres land to Shri Kushabhau Thakre Memorial Trust under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 read with the M.P. Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975. After noticing the provision of the Act and the Rules, as also those contained in the M.P. Revenue Book Circular and the judgments of this Court in *S.G. Jaisinghani v. Union of India* [AIR 1967 SC 1427] , *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489] , *Erusian Equipment and Chemicals Ltd. v. State of W.B.* [(1975) 1 SCC 70] , *Kasturi Lal Lakshmi Reddy v. State of J&K* [(1980) 4 SCC 1] , *Common Cause v. Union of India* [(1996) 6 SCC 530] , *Shrilekha Vidyarthi v. State of U.P.* [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] , *LIC v. Consumer Education & Research Centre* [(1995) 5 SCC 482] and *New India Public School v. HUDA* [(1996) 5 SCC 510] , the Court culled out the following propositions: (*Akhil Bhartiya Upbhokta case* [(2011) 5 SCC 29 : (2011) 2 SCC (Civ) 531] , SCC p. 60, paras 65-66)

"65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form

of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution."

39. The factual matrix of the instant case shows that before granting 30 years' lease of the plot in favour of the appellant, the Corporation neither issued any advertisement nor followed any procedure consistent with the doctrine of equality so as to enable the members of the public to participate in the process of alienation of public property. Therefore, the conclusion reached by the High Court, though for different reasons, that the resolution dated 28-8-1991 and the sanction accorded by the State Government vide Letter dated 12-6-2000 are legally unsustainable does not call for interference by this Court."

19. The aforesaid case also relates to the transfer of public property and in the light of the aforesaid judgment, the transfer in the present case is contrary to the statutory provisions and therefore, the same deserves to be set aside.

20. In the light of the above, the initial allotment of site to respondent No.3 is **quashed** and the allotment order made in favour of respondent No.3 is **set aside** and the subsequent sale deed dated **28.07.2020** is also **set aside**. The KHB shall take possession of the site in question within 30 days from today.

21. The second sale deed has been executed after a lapse of 16 years only to over come condition No.7 in the earlier lease-cum-sale deed. There appears to be collusion

between respondent No.3 and the officer of the KHB, which requires to be probed.

22. With the aforesaid, the petition is **allowed** with a **costs** of **Rs.1,00,000/-** to be paid to the Karnataka Advocate Clerks Association by the KHB within a period of **thirty days** and the Principal Secretary, Urban Development Department, shall conduct a fact finding enquiry in the matter, for fixing responsibility of such illegal allotment, upon the officers who have allotted the site in question without following the prescribed procedure and in case, the officers are found to be guilty, the State shall take appropriate action after holding departmental enquiry against such officers and shall also recover the cost imposed on the KHB from them. The enquiry be concluded within a period of six months from today.

23. As the present writ petition has been decided on merits, the review petition has become infructuous and the same is accordingly **disposed of**.

SD/-
ACTING CHIEF JUSTICE

SD/-
JUDGE

TL