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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 24726 OF 2022 (LB-RES)

BETWEEN:

1. SRI M. GOVINDAPPA
S/O LATE MOTAPPA
AGED ABOUT 85 YEARS
OCC AGRICULTURE
REPRESENTED BY HIS G P A HOLDER
SHRI T G CHANDRU
RESIDING AT NO.239 THINDLU VILLAGE
VIDYARANYAPURA POST
BENGALURU-560097.

2. T G CHANDRU
S/O GOVINDAPPA
AGED ABOUT 54 YEARS
OCC:AGRICULTURE
RESIDING AT NO.239 THINDLU VILLAGE
VIDYARANYAPURA POST
BENGALURU-560097.

...PETITIONERS

(BY SRI. G. A. SRIKANTE GOWDA., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ITS SECRETARY
URBAN DEVELOPMENT DEPARTMENT
VIKASA SOUDHA
BENGALURU-560001.





2. THE NELAMANGALA PLANNING AUTHORITY
REPRESENTED BY ITS MEMBER SECRETARY
2ND MAIN ROAD
SADASHIVANAGARA
NELAMANGALA TALUK
BANGALORE RURAL DISTRICT-562123.

...RESPONDENTS

(BY SRI NAVEEN CHANDRASHEKHAR, AGA FOR R1;
SRI YOGESH D. NAIK, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENDORSEMENT DATED 16.09.2021 BEARING NUMBER LAO 58 2005-06 ANNEXURE - K AND LETTER DATED 27.07.2021 BEARING NUMBER LAO 58 2006-06 AT ANNEXURE K1 ISSUED BY R-2 DIRECT THE R2 TO RELEASE THE REMAINING SITES,1,2,3,22,38,73 AND 74 AS PER THE ORDERS OF R1 DATED 06.07.2013 APPEAL NO. 198 BMR / 2012 ANNEXURE - G.

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

ORDER

1. The petitioners are before this Court seeking for the following reliefs:

- a) *Writ in the nature of Certiorari, or any other appropriate writ or order or direction, to quash the endorsement dated 16.09.2021 bearing number NAYOPRA LAO 58 2005-06 Annexure - K and letter dated 27.07.2021 bearing number NAYOPRA LAO 58 2006-06 at Annexure K1 issued by R-2*
- b) *To issue Writ in the nature of Mandamus directing the R2 to release the remaining sites,1,2,3,22,38,73 and 74 as per the*



orders of R1 dated 06.07.2013 Appeal No. AE 198 BMR/2012 Annexure - G.

- c) Issue Writ in the nature of mandamus directing the R1 to initiate appropriate legal proceedings against the learned officials of R2 who are responsible for not releasing the sites even after directions issued by R1 as per Annexure - E and G through competent officer.*
- d) Any other appropriate writ or order or direction, that be deemed fit under the facts and circumstances of the case including an order for costs be passed, in the interest of justice and equity.*

2. Petitioners are owners of land carved out of Sy.No.184/1 measuring 5 acres 15 guntas at Nelamangala taluk, Bangalore Rural District. The petitioner obtained conversion of the land from agricultural to non-agricultural purposes and applied to respondent No.2 for sanction of layout plan in terms of the provisions of the Karnataka Town and Country Planning Act, 1961 ['KTCP Act' for short].
3. The respondent sanctioned the said plan on 26.05.2006, in pursuance thereof the petitioners



formed 90 sites of different dimensions, the highest being 30 x 50 ft. and other sites being lesser than that. 60% of the sites were released numbering nearly 54 sites and the balance 40% were remaining to be released. Subsequently, when an application was filed by the petitioner for release of balance 40%, respondent No.2 vide letter dated 6.03.2009 informed the petitioners that the said release cannot be made on account of the Master Plan proposing 45 mtr road in the layout which would cover many of the sites which were not released.

4. Aggrieved by the same, the petitioner had filed an appeal under Section 10(5) of the Bangalore Metropolitan Region Development Act ['BMRD Act' for short] which came to be allowed vide order dated 10.01.2011 directing the respondents to release balance 40% sites with liberty to acquire any land required for road widening.



5. In pursuance thereof the petitioners made a representation on 22.02.2011 for release 40% balance sites, when a few of the sites were released except 7 sites. Though the said sites were not released and the petitioner took up the same, respondent No.2 called upon the petitioner to allot alternate sites to the purchaser of seven sites and make available the said sites for widening of the road.
6. Once again petitioner filed an appeal under Section 10(5) of BMRD Act challenging this order. The Prl. Secretary, Urban Development Department set-aside the endorsement dated 9.07.2012 vide his order dated 6.07.2021 and directed respondents to comply with the order dated 10.01.2011 passed in earlier appeal passed under Section BMRD Act.
7. The petitioner once again made a request for release of the sites on 6.08.2021 when once again an endorsement is claimed to be issued on 16.09.2021



directing the petitioners to relinquish 45 mtrs of land required for formation of road. Much belatedly even the conversion of the land in Sy.No.184/1 was questioned by calling upon the petitioner to produce the sketch of the said land and if there conversion order relating thereto. It is aggrieved by the same, the petitioners are before this Court.

8. Sri.G.Srikante Gowda, learned counsel for the petitioners would submit that,
 - 8.1. The entire action on part of the respondents is completely malafide inasmuch as the respondents have not followed the directions issued in two of the appeals filed under Section 10(5) and the respondents have been acting on their own accord dehors the applicable law, as also in violation of applicable law inasmuch as once formation of layout has been completed, it was but required that these sites be released in



favour of the petitioners which has not been so done.

8.2. The respondents have from time to time taken up some stand or the other to deprive the petitioners of the sites formed by them which have already been sold to third parties on the basis of the plan sanction granted and it is the bounden duty on part of the respondents to execute the registered sale deeds in favour of such purchasers which has not been done by respondent No.2.

8.3. On these grounds learned counsel submits that the petition is required to be allowed and the submission made by respondent No.2 for relinquishment of land of the petitioners for formation of 45 mtrs road, as also calling upon the petitioners to produce the conversion order is required to be quashed.



9. Sri.Yogesh D.Naik, learned counsel for respondent No.2-Planning Authority would submit that in the Master Plan which has been approved by the State Government, there is a road which has been shown and in order to implement the said road, it is required that the petitioners relinquish the area coming within the land demarcated for the road. Instead of relinquishing the same, the petitioners have filed the present writ petition.
10. He further submits that some of the sites which have been sought for release or area demarcated for formation of 45 mtr road in the Master Plan, as such, respondent No.2 is unable to release the same since the property is sold to third parties and their interest may be adversely affected.
11. Learned AGA submits that it is for respondent No.2 to implement the order dated 10.01.2011 in Appeal No.1/2009 passed by the Addl. Chief Secretary to Government, Urban Development Department in



Appeal filed under Section 10(5) of BMRD Act wherein liberty has been reserved to the respondent to acquire the land, if required. On this ground, he submits that issue is required to be addressed by respondent No.2.

12. Heard Sri.G.A.Srikante Gowda, learned counsel for the petitioners, Sri.Naveen Chandrashekhar, learned AGA for respondent No.1 and Sri.Yogesh D.Naik, learned counsel for respondent No.2. Perused papers.
13. The present case is one more in a long list of matters where the Planning Authorities are impinging upon the property rights of the citizens of the country inasmuch as the Planning Authority having sanctioned a layout plan on 26.05.2006, on which basis the petitioners have acted, formed the layout, sold the sites to third parties, some of those sites not being released by the Planning Authority on the ground that there is proposed road located in the



same area where the sites sought for release are located.

14. It is rather strange that once the Planning Authority who is supposed to consider all planning requirements and act under the KTCP Act, 1961 for orderly development of the State and urban areas, has after sanctioning a layout wants to now form a road in the said land.
15. Any action and permission taken by the Planning Authority would be acted upon by third parties believing the said action and permission to be valid and correct, more so in respect of layouts where ordinary citizens of the country would purchase the plots with their hard earned money, savings and or by obtaining loans to establish a roof over their heads.
16. A layout having been formed by the petitioners and petitioners having sold all the sites to third parties



and it is only awaiting release of the sites so that sale deeds could be executed and registered. After having sanctioned the plan and after having released 83 sites out of 90 sites, respondent No.2 has now called upon the petitioner to furnish the sketch of the land situated in Sy.No.184/1 and the conversion orders in order to verify if the conversion orders are proper or not. The conversion orders having been passed way back on 4.02.2006, the plan sanction having been granted on 26.05.2006, release of various sites having been made from time to time, the fact that respondent No.2 has called upon the petitioners to furnish copy of the conversion order with survey sketch on 16.09.2021 only indicates that respondent No.2 is clutching at straws to usurp the property of the petitioners and or deprive the petitioners of their right to use of the properties in terms of the plan sanction granted by respondent No.2 itself.



17. A perusal of Annexure-B being the layout plan sanction dated 26.05.2006 indicates that sites which have not been released viz., sites No. 1, 2, 3, 73 and 74 are spread out in the layout inasmuch as site No.73 and 74 are separated from site No.1 to 3 by five internal roads and site Nos. 1, 2, 3 being in sequence, there are three rows of sites, on that site till the last where site Nos. 73, 74 to 75 are located. Needless to say that other sites in site Nos.9, 10, 11, 23, 24, 25, 26, 27, 39, 40, 41, 42, 43, 54, 55, 56, 57, 58, 59, 70, 71, 72, 75 and 75 have already been sold and registered sale deeds have been executed in favour of the purchasers.

18. The manner in which the demands have been made by respondent No.2-Authorities and respondent No.2 has not complied with the orders earlier passed on 10.01.2011 in Appeal No.1/2009 by the Addl. Chief Secretary to Government, Urban Development Authority and the order dated 6.07.2013 passed by



the Appellate Authority and the Prl. Secretary, Urban Development Department in Appeal No.198/BMR/2012 at Annexure-G would only indicate the scant disregard that respondent No.2 has to such orders when both the Appellate Authorities had directed respondent No.2 to release the remaining sites.

19. The only inference that this Court can draw when respondent No.2 is not complying with the orders passed by the Appellate Authorities under Section 10(5) is that respondent No.2 has no regard for such orders and has continued in its persistent demands for lack of better work, dishonest demand.
20. The Planning Authority being a public body is required to act for the public and in the interest of the public and not in the manner so as to deprive the rights of the public by resorting to non-release of sites and trying to coerce the citizen of the country forcing for relinquishing or releasing its property for



formation of road since the property has not been released by respondent No.2.

21. It is in these circumstances that the petitioners being citizens of the country have been driven to this Court after having approached and succeeded twice earlier and the two appeals filed under Section 10(5) of the BMRD Act. It is, therefore, required that respondent No.1 to look into this matter and take appropriate action such that Authorities like the Planning Authority will not impinge upon the property rights of citizens of the country in a manner unknown to law or contrary to law.
22. In view of the above observation having come to a conclusion that Annexure-K and K1 have been issued without any authority and only to harass the petitioners without respondent No.2 having any authority, I pass the following:



ORDER

- i. The writ petition is allowed, a certiorari is issued. The endorsement dated 16.01.2021 at Annexure-K and letter dated 16.09.2021 at Annexure-K1 are hereby quashed.
- ii. Respondent No.2 is directed to forthwith comply with the order dated 10.01.2011 at Annexure-E, dated 6.07.2013, Annexure-G and release the balance sites of the petitioners within 15 days from the date of receipt of copy of this order.
- iii. The petitioners are permitted to serve copy of this order on respondent No.2. Respondent No.2 shall act on a printout of the uploaded copy of this order without insisting on a certified copy. In the event of respondent No.2 having any doubt about the veracity of the order, respondent No.2 could scan the QR code available on the copy of



this order or to visit the website of this Court to verify the authenticity thereof.

iv. Though this court could have imposed cost on respondent No.2, due to fervent pleading of Sri.Yogesh D.Naik, learned counsel for respondent No.1, this Court refrains from doing so.

**Sd/-
JUDGE**

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List No.: 1 Sl No.: 67