



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2025

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PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT PETITION NO. 14296 OF 2024 (GM-CON)

BETWEEN:

SRI .LT.GEN (RETD) BNBM PRASAD,
S/O BILIGERI NARAYAN BHAT,
AGED ABOUT 70 YEARS,
OCC: MEDICAL SPECIALIST
R/O NO.1301, G 25, SANDEEP VIHAR,
KANNAMANGALA, BENGALURU,
KARNATAKA-560 067.

...PETITIONER

(BY SMT.ARUNA BHAT., ADVOCATE FOR
SRI.AJAY T.,ADVOCATE)

AND:

1. THE COMMISSIONER,
MYSORE URBAN DEVELOPMENT AUTHORITY,
J L B ROAD, MYSORE-570 005.
2. THE REGISTRAR,
THE KARNATAKA STATE CONSUMER
DISPUTES REDRESSAL COMMISSION,
BANGALORE BASAVA BHAVAN,
SRI BASAVESWARA CIRCLE, HIGH GROUNDS,
BANGALORE-560 001.

...RESPONDENTS

(BY SRI.G M ANANDA.,ADVOCATE FOR R1;
SMT.CHANDINI S., HCGP FOR R2)

Digitally signed
by SHARADA
VANI
Location: HIGH
COURT OF
KARNATAKA



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 11.01.2024 PASSED BY THE RESPONDENT No-2 HON'BLE KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION BANGALORE IN APPEAL No-713/2017 AS PER ANNEXURE-A TO THIS WP AND THEREBY CONFIRMING THE ORDER DATED 22.07.2016 PASSED BY THE HONBLE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, MYSORE IN COMPLAINT No-513/2015 AND THEREBY ALLOW THE COMPLAINT FILED BY THE PETITIONER OR IN THE ALTERNATIVE AND B) ISSUE WRIT OF MANDAMUS DIRECTING THE RESPONDENT No-1 TO ALLOT THE SITE BEARING No-566 MEASURING 40 60 FEET SITUATED IN HANCHYA SATHAGALLY, B-ZONE MYSORE BY HANDING OVER THE POSSESSION OF SAME TO THE PETITIONER AND ETC.,

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE G BASAVARAJA

ORAL ORDER

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

Petitioner, an Ex-Defense Personnel is knocking at the doors of writ court with the following principal prayers:

"(a) Writ in the nature of Certiorari to quash the Impugned Order dated 11.01.2024 passed by the Respondent No.2 - Hon'ble Karnataka State Consumer Disputes Redressal Commission, Bangalore in Appeal No.713/2017 as per Annexure-A to this writ petition and thereby confirming the order dated 22.07.2016 passed by the Hon'ble District Consumer Disputes Redressal Forum, Mysore in Complaint



No.513/2015 and thereby allow the Complaint filed by the petitioner or in the alternative.

(b) Issue Writ of Mandamus directing the Respondent No.1 to allot the site bearing No.566, measuring 40X60 feet situated in Hanchya-Sathagally, B-Zone Mysore by handing over the possession of same to the petitioner.

(c) Allot a site of similar dimension in the same location or any nearest location around city limits of Mysore by handing over the possession of the same to the petitioner”.

2. Brief facts of the case:

2.1 Petitioner was in the active service of Indian Armed Forces during the period between 1977 and 2016 i.e., about 30 years without any spot. He has been conferred with President’s Award, Sena Medal for Gallantry for serving in Kargil, Vishishta Seva Medal, Karnataka Rajyothsava Award, etc., Having earned several promotions, he retired from service on 17.11.2016. This is a long and last battle he has been raising to secure a house site so that he can spend evening of life in a house of his own.

2.2 The Respondent – MUDA vide Allotment Letter dated 25.02.2001 allotted a 60x40 house site for a concessional sale consideration of Rs.1,60,000/- under Ex-Servicemen Category. Petitioner has paid the entire sale



consideration as follows: Rs.5,500/- vide Receipt No.179358 & 159116 dated 29.03.1994 (along with the application); Rs.24,000/- vide Challan No.03703 dated 02.06.2001 & Rs.1,31,000/- vide Challan No.04453 dated 29.11.2001. Despite all this, the MUDA did not come forward to execute and register a sale deed.

2.3 Strangely it issued an Endorsement dated 05.07.2014 served on the petitioner only on 14.08.2014 to the effect that petitioner was due in a sum of Rs.21,930/- and that there is no provision for accepting the belated payment in the Extant Rules and therefore his prayer for execution of sale deed was negated. Petitioner's legal notice dated 16.03.2015 yielded no result.

2.4 Because of denial of sale deed, petitioner filed Complaint No.513 of 2015 which came to be allowed by District Consumer Disputes Redressal Forum, Mysore directing MUDA to allot the site by executing necessary conveyance and deliver possession within 60 days. In default, MUDA is directed to pay Rs.500/- for the delay of each day. Further a compensation of Rs.10,000/- plus a cost of Rs.2,000/- with a default clause of 10% interest has been awarded. This order having been set aside in the appeal of MUDA, petitioner is grieving before this Court.



3. After service of notice respondent MUDA has entered appearance through its Sr.Panel Counsel and the respondent-Registrar of the State Consumer Forum is represented by the learned HCGP. Both they oppose the petition making submission in justification of the impugned order and the reasons on which it has been constructed. Learned HCGP vehemently contends that petitioner should be relegated to alternate remedy of review and that even otherwise this court should not interfere. In support of this, she presses into service a decision of Apex Court in *CICILY KALLARACKAL vs. VEHICLE FACTORY*¹.

4. We have heard the learned counsel for the petitioner and the petitioner in person. We have also heard learned Sr. Panel Counsel appearing for the MUDA and learned HCGP representing the State Forum. Having perused the petition papers and adverted to the ruling cited at the Bar, we are inclined to grant indulgence in the matter as under and for the following reasons:

¹ AIR OnLine 2012 SC 321



4.1 The first contention as to maintainability of the writ petition is liable to be answered in favour of the petitioner inasmuch as review u/s.51 of the Consumer Protection Act, 2019 is not efficacious nor can be treated as an alternate remedy. The very terminology of the section shows its limited scope for interference at the hands of the Forum whose order is put in challenge here. The related contention of learned HCGP that the petitioner should invoke the jurisdiction of National Commission is also not tenable inasmuch as the Act provides for only one single appeal from the orders of District Consumer Forum and thus second appeal does not lie. The decision in *CICILY supra* has a different fact matrix wherein appeal was admissible to the Apex Court. It hardly needs to be stated that a case is an authority for the proposition that it lays down in a given fact matrix and not for all that which logically follows from what has been so laid down vide *QUINN vs. LEATHAM*².

4.2 There is force in the submission of learned counsel for the petitioner that petitioner having paid the entire money as stipulated in the Allotment Letter, the MUDA ought to have executed the sale deed. Admittedly, the allotment price was Rs.1,60,000/- only. Petitioner made the entire payment and the same is vouched by the

² (1901) AC 495



receipts. Obviously, this amount is remitted by bank cheques. Once the amount is accepted albeit with delay in making payment, the said delay is deemed to have been waived, as rightly contended by learned counsel for the petitioner. Even otherwise, for the delayed period interest/penalty admissible in law could have been levied, at the most.

4.3 The vehement contention of learned counsel for the MUDA that petitioner had tendered a sum of Rs.21,930/- which the MUDA did not accept because of delay and therefore the allotment stands automatically cancelled is very difficult to countenance. As already mentioned above entire money is paid, albeit a part of that was delayed. It was open to the MUDA to return the money saying that delayed payment is inadmissible. That course it did not undertake. Secondly, the notice sent by MUDA asking the petitioner to make the payment of the alleged deficit never reached the petitioner who was since transferred to other border of the country. No efforts were made to serve the notice by substituted mode. It is a matter of common knowledge that the Defense Personnel have to go wherever they are deployed, regard being had to their nature of duty. This had happened in the case of petitioner too and therefore non-service of notice cannot be counted against him.



4.4 There is force in the submission of learned counsel for the petitioner as to how the additional amount of Rs.21,930/- becomes payable merely because audit branch of MUDA has indicated it. The full payment of sale price is vouched by the documents. It is not that if there was delay, interest cannot be levied or delay cannot be condoned when no lapse is attributable to the allottee. The MUDA has treated with scant respect & regard a Defense Personnel of the kind who has put a long & spotless service of three decades in guarding the frontiers of the nation. The encomia earned by him at the hands of Central Government & the State Government failed to impress the MUDA officials. The State and its instrumentalities should learned to show deference to the Defense Personnel who guard our country unfazed by enormous difficulties. The State Forum has not kept all these things in view while making the impugned order. Simply, it has quoted one single rule as if it is a draconian legislation, when it has several elbow joints and the relief granted by the District Forum could not have been snatched from the hands of the petitioner.

4.5 The vehement contention of learned Panel Counsel appearing for the MUDA that the order of the District Forum in directing payment of Rs.500/- for delay of each day in executing the sale deed is too harsh, does



not merit acceptance. Here is a Defense Personnel who has served the country for about three decades; now he is in the evening of life and he wants to reside in his own home. The allotment was made way back in February 2001; entire allotment price is paid; no justification is shown for raising another demand for Rs.21,930/-; added, the notice of demand was not served on the petitioner by ascertaining his whereabouts; it is not that petitioner is a vagabond, but a high ranking Army official. He could not have been compelled to wage this long legal battle to get a house site of the kind. Keeping all this in mind, we are of the considered opinion that the District Forum was justified in making order of the kind.

4.6 In its 'not much reasoned' order, the State Forum appears to have been swayed away by the provision of an extant Rule which has the following colloquial text:

“ಕರ್ನಾಟಕ ನಗರಾಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ (ನಿವೇಶನಗಳ ಹಂಚಿಕೆ) ನಿಯಮಗಳು
1991ರ ಉಪನಿಯಮ 19(1)ರಲ್ಲಿ

“ಹಂಚಿಕೆ ಪಡೆದವರು ಹಂಚಿಕೆ ನೋಟೀಸನ್ನು ಸ್ವೀಕರಿಸಿದ ದಿನಾಂಕದಿಂದ ಅರವತ್ತು ದಿನಗಳ ಅವಧಿಯ ಒಳಗೆ ನಿವೇಶನದ ಬೆಲೆಯ ಶೇಕಡಾ 15ರದಷ್ಟನ್ನು ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಸಂದಾಯ ಮಾಡತಕ್ಕದ್ದು ಮತ್ತು ಅಂಥ ಸಂದಾಯವನ್ನು ಅರವತ್ತು ದಿನಗಳೊಳಗೆ ಮಾಡದೇ ಇದ್ದರೆ, ಹಂಚಿಕೆ ಪಡೆದವನು ಹಂಚಿಕೆಯನ್ನು ನಿರಾಕರಿಸಿದ್ದಾರೆಂದು ಭಾವಿಸತಕ್ಕದ್ದು. ನಿವೇಶನದ ಮೌಲ್ಯದ ಬಾಕಿಯನ್ನು ನೋಟೀಸನ್ನು ಸ್ವೀಕರಿಸಿದ ದಿನಾಂಕದಿಂದ ತೊಂಬತ್ತು ದಿನಗಳ ಒಳಗೆ ಅಥವಾ ತೊಂಬತ್ತು ದಿವಸಗಳನ್ನು ಮೀರದ ಅಂಥ ವಿಸ್ತೃತ ಅವಧಿಯೊಳಗೆ ವರ್ಷವೊಂದಕ್ಕೆ ಶೇ.12ರ ಬಡ್ಡಿಯೊಂದಿಗೆ ಆರು ತಿಂಗಳವರೆಗೆ ಅವಧಿಯನ್ನು ವಿಸ್ತರಿಸಬಹುದು. ತೊಂಬತ್ತು ದಿನಗಳ ಅವಧಿಯೊಳಗೆ ಅಥವಾ ವಿಸ್ತೃತ ಅವಧಿಯೊಳಗೆ ಸದರಿ ಮೊಬಲಗನ್ನು ಸಂದಾಯ ಮಾಡದಿದ್ದರೆ ಹಂಚಿಕೆ ಪಡೆದವನಿಂದ ಸಂದಾಯ ಮಾಡಲಾದ ಖಾತರಿ ಠೇವಣಿಯು ಮುಟ್ಟುಗೋಲಿಗೆ ಬದ್ಧವಾಗಿರತಕ್ಕದ್ದು ಮತ್ತು ಹಂಚಿಕೆಯನನು ರದ್ದುಮಾಡಬಹುದು.”



The Rule itself employs the word '*vistrutha awadhiyolage*' which in Kannada means 'extended period'. Why no such extension was granted in the befitting circumstances, remains a riddle wrapped in enigma.

4.7 The State Forum failed to see a separate provision namely Sec.56 of the Karnataka Urban Development Authorities Act, 1987 which provides for the receipt of fine amounts that go to funds of the Authority. Of course, it is in connection with the fines realized from prosecution. But that provision coupled with the conspicuous absence of any other provision prohibiting receipt of the delayed payment, grants credence to the contention of the petitioner that if there was delayed payment, interest could have been levied. It is more so when amount is accepted with no demur. Strangely the order of the MUDA that forfeits the entire hard earned money of a soldier who has guarded the country for thirty years is bereft of reason & justice. Sages of law have always said that legal action should be pregnant with human values such as mercy & compassion at least *qua* those whose acts do not have any elements of *mala fide*. After all, **John Rawls** rightly titled his book as '**Justice as Fairness**'.

4.8 Lastly one more thing is to be mentioned. Aggrieved persons knock at the doors of Courts & Tribunals. Their genuine grievances have to be addressed,



of course, within the frame work of law. Law here means not only the legislative instruments but the principles of equity & justice. Otherwise law loses connect with the subjects and ceases to be living law of the people. Courts cannot deny justice to the deserving litigant by quoting some jurisprudential theories & doctrines. Amartya Sen's great work "Idea of Justice" is not just meant for adorning the book shelves in the library. It was **Justice Oliver Wendell Holmes**, who a century ago has said in **DAVIS vs. MILLS, 194 U.S. 451 (1904)**:

"Constitutions are intended to preserve practical and substantial rights, not to maintain theories..."

In the above circumstances, this petition is allowed. A Writ of Certiorari issues quashing the impugned order of the State Forum and as a consequence the order of the District Forum is restored. A Writ of Mandamus issues to the respondent-MUDA to execute & register a sale deed in favour of petitioner and put him in peaceable possession of the site in question or an alternative site of equal dimension & value, within eight weeks.

The respondent-MUDA is further directed to pay to the petitioner all that amount that has accrued due in terms of order of the District Forum within four weeks, failing which the same would carry interest at the rate of 10% p.a. apart from attracting contempt action in



accordance with law. The said amount may be recovered personally from the erring officials of MUDA. It hardly needs that the amount of Rs.21,930/- may be deducted from the amount payable to the petitioner so that in that guise the mandated exercise is not delayed.

Costs reluctantly made easy.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE

Snb/
List No.: 1 Sl No.: 40