

**Radhika Bhat Vs. Mysore Urban Development Authority**

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**Court :** Karnataka

**Decided On :** Dec-20-2021

**Judge :** M.Nagaprasanna

**Appeal No. :** WP 22550/2019

**Appellant :** Radhika Bhat

**Respondent :** Mysore Urban Development Authority

**Advocate for Def. :** Sri. T.P.Vivekananda

**Advocate for Pet/Ap. :** Sri. M.V.Sundararaman

**Judgement :**

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE20H DAY OF DECEMBER, 2021 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA WRIT PETITION No.22550 OF2019(LB- RES) BETWEEN: RADHIKA BHAT W/O LATE VENKATESH VISHWANATH BHAT AGED ABOUT50YEARS R/AT NO.907, 10TH CROSS, 24TH MAIN ROAD, J.P. NAGAR2D PHASE, BENGALURU - 560 078. ... PETITIONER (BY SRI K.ARUN KUMAR, SR.ADVOCATE A/W SRI M.V.SUNDARA RAMAN (PHYSICAL HEARING)) AND: MYSORE URBAN DEVELOPMENT AUTHORITY JHANSI RANI LAKSHMI BAI ROAD, K.G. KOPPAL CHAMARAJAPURAM MOHALLA, CHAMARAJAPURA MYSURU, KARNATAKA570005 (REPRESENTED BY COMMISSIONER) ... RESPONDENT (BY SRI T.P.VIVEKANANDA, ADVOCATE

(PHYSICAL HEARING)) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ACKNOWLEDGMENT DATED 23.11.2016 (ANNEXURE-A) TO THE EXTENT THAT IT IMPOSED A PENALTY OF RS.6,60,000/- ON THE PETITIONER; AND ETC., 2 THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

ON 10.12.2017, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner in this writ petition calls in question endorsement dated 23-11-2016 insofar as it imposes penalty of Rs.6,60,000/- against the petitioner towards allotment of site in her favour by the respondent/Mysore Urban Development Authority (MUDA for short).

2. Heard Sri K.Arun Kumar, learned Senior Counsel for Sri M.V.Sundararaman, learned counsel for the petitioner and Sri T.P.Vivekananda, learned counsel for the respondent.

3. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows: Karnataka State Group-D Employees House Building Co-operative Society allotted Site No.7 on 23-12-1988 in favour of late Vishwanath Bhat, father-in-law of the petitioner. Thereafter, the respondent-MUDA executed a lease-cum-sale agreement on 15-11-1991 in favour of the father-in-law of the petitioner. Thereafter, possession of site No.7 was handed over to the father-in-law of the petitioner on 21-08-1992 by handing over possession certificate of the said date.

4. On 8-11-1998 the father-in-law of the petitioner died and the mother-in-law of the petitioner who succeeded to the property, also died intestate on 21-04-2007 leaving behind her son, the only legal heir, even to site No.7 that was allotted. Thereafter, the son/husband of the petitioner also died on 19-09-2012 leaving behind him the petitioner and her two children. In respect of properties that stood

in the name of the father-in-law and mother-in-law were granted in favour of the petitioner by this Court in Probate Civil Petition No.12 of 2013. After the petitioner coming to know of the properties applied before the respondent for transfer of khata and execution of registered sale deed of site No.7 which had come to her name in terms of aforesaid proceedings. In this regard an application was sent on 19-06-2015 to MUDA. 4

5. In reply, MUDA called upon the petitioner to pay an outstanding amount of Rs.9370/- as arrears of property tax, interest thereon and transfer fee for allotment of site in favour of the petitioner, which the petitioner complied with and khata of the property stood transferred in favour of the petitioner by an order of the respondent on 03-05-2016. Thereafter i.e., after transfer of khata, the respondent called upon the petitioner to deposit a sum of Rs.6,60,000/- for execution of sale deed in her favour since the petitioner had succeeded to the property. It was the claim of MUDA that petitioners predecessor in interest i.e., her father-in-law had failed to construct a house on site No.7 and therefore, the said amount is towards penalty in terms of the Rules. The petitioner left with no option claims to have paid the said amount of Rs.6,60,000/- under protest and submitted a representation contending that MUDA has no power to impose any penalty on her under any provision of law, as the petitioner has not sold the property, but has retained it. 5

6. Since the amount was paid under protest, MUDA executed a sale deed on 14-03-2018 conveying title of site No.7 in favour of the petitioner. The petitioner after becoming the beneficiary of such execution of sale deed has preferred the subject writ petition calling in question the endorsement of demand of Rs.6,60,000/- on the score that MUDA is not entitled to impose such penalty and that she has paid the said amount under protest.

7. The learned Senior Counsel appearing for the petitioner would contend that by erroneous interpretation of the Rules, MUDA has charged penalty of 25% of the site value and such penalty is leviable only if the allottee would sell the site and not retain the site. Insofar as the objection of MUDA, the learned Senior Counsel would point out that after 10 years MUDA has to come forward or execute the sale deed or order cancellation of the allotment. But, no such action is done by MUDA

and therefore, it cannot demand penalty from the hands of the petitioner. 6

8. On the other hand, the learned counsel Sri T.P.Vivekananda representing MUDA would refute such contention and submit that it is not for MUDA to come forward for execution of the sale deed but the allottee should come forward and get the sale deed executed within the stipulated time. MUDA could have even cancelled the allotment itself and the petitioner cannot contend that she is not liable to pay penalty of 25%, as till date allottee has not constructed the house on the site and has kept as a land bank. He would submit that the writ petition be dismissed.

9. I have given my anxious consideration to the submissions made by the respective learned counsel on both sides and have perused the material on record.

10. The afore-narrated factual sequence of events need not be reiterated, as they are not in dispute. The allotment of site was made on 23-12-1988 and lease-cum-sale agreement was executed in favour of father-in-law of the petitioner on 15-11-1991. The father-in-law and mother-in-law of the 7 petitioner did not in their life time construct the house as was required in law. The husband of the petitioner also did not perform that part of the contract which ought to have been done. It is for the first time, the petitioner in 2016, knocked the doors of MUDA for change of khata but not for construction of the house. Therefore, the case at hand will have to be considered in terms of contractual obligation of the lease-cum-sale agreement executed qua rules of allotment.

11. The site is allotted in terms of allotment rules of the Karnataka Urban Development Authorities (Distribution of Sites) Rules, 1991 made under the Karnataka Urban Development Authorities Act, 1987. The relevant Rules that fall for consideration in the case at hand are Rules 19 and 20 and they read as follows:

"19. z AaPAi v iglz gvU - F AiU gU z AZPAi F A gvUqvPz JAzg.-

(1) After the receipt of the allotment letter the allottee shall pay to Authority sital after deducting the 8 initial deposit made by him within 90 days. Thereafter, the authority shall call upon the allottee to execute a lease-cum-sale agreement in Form III. If the allottee fails to execute the lease-cum-sale the agreement within 60 days after the authority has called upon him to execute such agreement, the registration fee paid by the allottee may be forfeited, and the allotment of the site cancelled, and the amount paid by the allottee, may be refunded by the Authority after deducting such expenditure as might have been incurred by the Authority: Provided that the authority may extend the time- limit specified in sub-rule (1), by 30 days and levy an interest at 18% for the extended period: Provided that the authority may on application of the allottee permit him/her to execute a lease-cum-sale agreement in Form III in the joint name of the allottee and him/her spouse. v gAv AaP qzg F PV UP jz.- (C) j ew/j U Cx gPu ESAi zs Azg / CAUPgzg PIAzgVz, 6\*9 . Cx 9\*12 . Cx 12\*18 . AaP qz; Cx (D) DyPV Azz UP jz, PgAz PPP Canz, 6\*9 .CvAi AaPAiiVz; 9 wPz Q z v F G- Aiz AaPzgg rgvV n ejAiiz APAz g zUV vg i PAVUU gzAv wvPz.

(2) Every allottee shall construct a building on the site so allotted in accordance with the plans and designs approved by the authority.

(3) The authority may impose additional conditions in the lease- cum- sale deed as may be considered necessary.

(4) Until the site is conveyed to the allottee, the amount paid by the allottee for the purchase of the site shall be held by the authority as security deposit for the due performance of the terms and conditions of the allotment and the lease-cum-sale agreement entered into between the authority and the allottee.

(5) The allottee shall comply with the conditions of the agreement executed by him and the buildings and other bye-laws of the authority or the Corporation, or the municipality as the case may be for the time being in force.

(6) The allottee shall construct a building within a period of five years from the date of execution of the agreement or such extended 10 period as the authority may in any specified case by written order permit. If the building is not constructed within

the said period the allotment may after reasonable notice to the allottee be cancelled, the agreement revoked, the lease determined and the allottee evicted from the site by the authority and after forfeiting twelve and half per cent of the value of the site paid by the allottee the authority shall refund the balance to the allottee.

(7) i) On the expiry of a period of ten years from the date of the lease-cum-sale agreement and if the allotment has not been cancelled or the lease has not been determined in accordance with these rules or the terms of the agreement the authority shall by notice call upon the allottee to get the sale deed of the site executed at his own cost within the time specified in the said notice. ii) If the allottee fails to get the sale deed executed within the time specified the authority shall itself execute the same and recover the cost and other charges if any incidental thereto from the allottee. 11

(8) With effect from the date of taking possession of the site, the allottee or his legal heirs and successors shall be liable to pay the taxes, fees and cesses payable in respect of the site and any building erected thereon.

(9) If the particulars furnished by the applicant in the prescribed application form for allotment of site are found to be incorrect or false, the sital value deposited shall be forfeited and the site shall be resumed by the authority.

20. Restrictions, conditions on sale of sites.-(1) The allottee shall not alienate the site within the lease period of ten years except mortgaging the site in favour of Government of India or the State Government or any financial institutions for the purpose securing loan for the construction of building. (2) If the site is alienated within the lease period except specified in sub-rule (1), the Authority after a due notice to the lessee, shall Cancel the allotment, resume the site and forfeit the amount paid by the lessee. (3) Notwithstanding anything contained in these rules if the lessee applies for reasons beyond his control or by reasons of his insolvency or impecuniosities to sell the site or the site with the building constructed 12 thereupon, the authority may, with the previous approval of the Government, either.-. (a) require him to surrender the site, whereupon no building is constructed. The Authority after such surrender shall pay to the lessee the sital

value with the interest at the rate of 12% per annum; (b) where the building is constructed on the site so allotted the authority shall permit him to sell the building provided the lessee pays to the authority an amount calculated at 12% of the sital value per annum. gAv: (a) PIP Ug PgU AaP AiU, 1991g jv AaPAiiz U Adgwzgg (Adgw gw CAi) Adgw gv GAX 10 z UwU CzsAiU /z g gl irg, PgtU Pg PPP Ur Azt Ai .50%g zAq RjzgjAz wPAq PAiv qz. (b) PIP Ug PgU AaP AiU, 1991g jv AaPAiiz U Adgwzgg 10 z UwU C tUAq Avg Ai /z PAi v qAiz g igl irg, PgtU Pg PPP Ur Azt Ai .25g zAq RjzgjAz wPAq PAiv qz. 13 (c) 2001 jAz 2005g gV CAi (CAzg Pgz CZ AS CE257JAL 98, AP 15- 11- 2001g jv PIP Ug PgU ( AaP) AiU 1991P grVz wzrAiAi, Pg CZ AS Airr 123 Ag 2005, AP 23- 5- 2005g PIP Ug PgU ( AaP) AiU, 1991P vAg wzr AiU, 2005g gV CAi) AaP iqz U Adgwzgg EzgU PAi v qAig PgtU Pg PPP Ur Azt Ai .25g zAq RjzgjAz wPAq PAiv qz. (d) PIP Ug PgU AaP AiU, 1991g jv AaPAiiz U Adgwzgg UwU CAiU Cx UwU C tUAq Avg Ai / z PAiv rAi f..J.

irPnz, f..J.

P CAv / Ai Rjg PgtU iv G AzuPjU Ur igPm Ai .50g zAq RjzgjAz wP Aq PAiv qz."

(Emphasis supplied) Rule 19 imposes certain conditions on the allottee. Sub-rule (6) of Rule 19 mandates that an allottee shall construct a building within a period of 5 years of the agreement or such extended period and if the building is not constructed within the 14 said period, the allotment made, after reasonable notice to the allottee, be cancelled, agreement revoked and eviction of the allottee from the possession of the site is one of the mandate of the Rule. Sub-rule (7)(i) mandates that on expiry of the period of 10 years from the date of lease-cum-sale agreement if the allotment is not cancelled or lease has not been determined in accordance with the Rules, the authority shall by notice call upon the allottee to get the sale deed of the site executed at his own cost and sub-rule (ii) of Rule 7 directs that, if the allottee fails to get the sale deed executed within the time specified, the authority itself would execute the same and recover the cost from the allottee. Rule 20 deals with restrictions, conditions on sale of sites. Sub-rule (1) of Rule 20 directs that the allottee shall not alienate the site within the lease period of 10 years except mortgaging as is found in the sub-rule. If the site is alienated the site would entail cancellation. Notwithstanding what is contained in sub- rules

(1) and (2) the allottee can for reasons beyond his control 15 or for insolvency or impecuniosities, sell the site with the previous approval of the Government. Proviso (c) of sub-clause (3) of Rule 20 directs that allotments made to the allottees between 2001 and 2005, subject to amendments made to the allotment rules, if they have not got the sale deed so far, the sale deeds may be executed in their names after collecting 25% of penalty of the guidance value fixed from time to time. The penalty clause in terms of proviso (c) of sub-rule (3) of Rule 20 is brought into force with effect from 02-05-2013.

12. Therefore, the said clause was not in existence when the allotment was made in favour of the father-in-law of the petitioner. The proviso itself restricts imposition of 25% upon an allottee of such allotment that has been made between 2001-2005. It is not in dispute that the subject site was allotted in favour of father-in-law of the petitioner on 15-11-1991 at which point in time, admittedly the penalty clause aforementioned was not in existence. The Rule also does not direct imposition of penalty upon allottees of sites before 2001 as the amendment for 16 the first time was brought into effect from 23-06-2005 and the next amendment was on 02.05.2013 wherein the penalty of 25% was introduced.

13. On a coalesce of facts aforesaid, the provisions of the Rules would mandate that an allottee has to construct a building within 5 years from the date of execution of lease-cum- sale agreement; on expiry of 10 years from the date of lease- cum-sale agreement if the allotment has not been cancelled, MUDA shall execute the sale deed on its own cost after notice to the allottee or if the allottee fails to get the sale deed executed within the time frame stipulated by authority, the authority shall execute the sale deed and recover the cost from the allottee. All these circumstances have never happened in the case at hand. Original allottee never constructed the house, MUDA never issued any notice directing execution of sale deed after 10 years or cancelled the allotment invoking the afore-quoted clauses in the Rules and the penalty clause coming into effect long after the allotment would not empower the respondent/MUDA to impose 17 the penalty in terms of the impugned endorsement as the Rule itself restricts imposition of penalty only to allotments made beyond 2001 and not prior to it.

14. It is trite law that, even a single rupee of penalty cannot be imposed against a citizen, except in accordance with law. The law in the case at hand i.e., the Rules does not permit imposition of such penalty on the allottee.

15. The submission of the learned counsel appearing for MUDA that Government has clarified by way of a communication to MUDA that all the allotments made beyond 1991 would attract penalty for such violation is unacceptable, as any clarification contrary to the Rules by way of an ordinary communication can hardly be pressed into service as a justification for imposition of penalty.

16. When the Rule prohibits it, the communication cannot permit it, as it is well-worn law that a Circular or a Government order by itself cannot be contrary to law, much less, an ordinary communication of the Government from the Urban Development Department to MUDA. Such a communication cannot be elevated to the status of Circular or order by Government having the effect of amending the Rule. Even circulars or Government orders cannot be contrary to the Act or the Rules.

17. Therefore, imposition of impugned penalty is contrary to law, apart from the fact that the charging section under the Karnataka Urban Development Authorities Act, 1987 itself does not empower framing of such a Rule that imposes penalty, as penal clauses must have a statutory sanction from the charging section. The petitioner has contended and appended documents that she has paid the amount so demanded by MUDA, under protest. Therefore, since the demand itself is contrary to law and the amount is paid under protest, MUDA will have to now refund the amount of Rs.6,60,000/- demanded as penalty for execution of the sale deed in favour of the petitioner along with interest that has accrued on the deposit made by the petitioner, as obtaining in the Banks from time to time. 19

18. For the aforesaid reasons, I pass the following:

## ORDER

(i) Writ Petition is allowed and the impugned endorsement dated 23-11-2016 stands quashed. (ii) The respondent is directed to refund the entire sum of

Rs.6,60,000/- to the petitioner with applicable rate of interest that the said amount has earned with its deposit in the Bank as obtaining from time to time. (iii) The aforesaid amount of Rs.6,60,000/- with determined interest shall be refunded to the petitioner within eight weeks from the date of receipt of a copy of this order, failing which, the petitioner shall become entitled to interest at 12% per annum from the date of this order, till payment. Sd/- JUDGE bkp CT:MJ

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