D. Pavanesh Vs. the State of Karnataka Represented by Its Chief Secretary and ors.

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Court : Karnataka

Decided On : Jan-03-2006

Reported in : AIR2006Kant97; ILR2006KAR861; 2006(2)KarLJ396

Judge : B. Padmaraj, Ag. C.J. and ;V. Jagannathan, J.

Acts : Constitution of India - Articles 14, 19, 226, 227, 246 and 300A; Registration Act, 1908 - Sections 17, 17(1), 18, 22, 22A, 22A(1), 22A(2), 31, 32, 33, 49, 70C, 72(2), 77, 88 and 89; Registration Rules; Karnataka Registration (Amendment) Act, 1976; Karnataka Land Revenue Act, 1964 - Sections 95, 148(3), 202 and 202(4); Karnataka Municipalities Act, 1964; Karnataka Land Reforms Act - Sections 79A, 79B and 109; Karnataka Municipal Corporations Act; Karnataka Town and Country Planning Act, 1961 - Sections 14; Karnataka Town and Country Planning (Amendment) Act, 1991; Bangalore Development Act; Karnataka Government (Transaction of Business) Rules, 1977 - Rule 19(1); Constitution of India (44" Amendment) Act, 1978; Indian Contract Act - Sections 23; Code of Civil Procedure (CPC) - Ord

Appeal No. : Writ Petition No. 24309/2005

Appellant : D. Pavanesh

Respondent : The State of Karnataka Represented by Its Chief Secretary and ors.

Advocate for Def. : M.N. Sheshadri, Government Adv.

Advocate for Pet/Ap. : M.S. Bhagwat, Adv.

Disposition : Petition allowed

Judgement :
ORDER

B. Padmaraj, Ag. C.J.

1. The petitioner is a practicing advocate in Bangalore. He also claims to be a public spirited person having faith in the rule of law and rendering great social and legal service by espousing causes of public nature. He has filed this writ petition under Articles 226 and 227 of the Constitution by way of public interest litigation with the prayer for issue of a writ of certiorari quashing the impugned Notification dated 23-4-2005 bearing No. RD 174 MUNOMU 2005 issued by the 4th Respondent vide Annexure-A and the consequent Circular dated 23-8-2005 bearing No. RD 174 MUNOMU 2005 issued by the 5th respondent as per Annexure-B. The Government of Karnataka has issued a Notification classifying the registration of certain documents as opposed to public policy dated 23-4-2005 which is as per Annexure-A. The Government of Karnataka has also issued a Circular dated 23-8-2005 in pursuance of the earlier notification dated 23-4-2005 which is at Annexure-B. The petitioner has presented this writ petition challenging the said notification and circular issued by the Government of Karnataka in banning registration of certain documents. It is stated that the registration of various deeds of conveyance were being carried out in the various parts of the State of Karnataka as per the provisions of the Registration Act and the Rules made thereunder. The Government of Karnataka has issued a notification dated 23.4.2005 classifying registration of certain documents as opposed to public policy and it has also issued another circular dated 23.8.2005 in pursuance of the earlier notification dated 23.4.2005, issuing certain clarifications. It is the case of the petitioner that such action on the part of the State Government is opposed to public policy and the interest of the public. The Government of Karnataka has issued a notification dated 23-4-2005 in exercise of its powers under Section 22-A

of the Registration Act, 1908, as amended by the Karnataka Act 55 of 1976 which is at Annexure-A to the writ petition. As per the said notification, the registration of the following documents is prohibited as being opposed to 'public policy':

Those properties which are to be used for agricultural purpose and those not converted for non-agricultural purpose under Section 95 of the Karnataka land Revenue Act, 1964.

Those properties which are declared under Form No. 19 under the rules framed under the Karnataka Municipalities Act, 1964 but not actually converted as such Site.

Those properties/sites formed on revenue land cannot be registered without obtaining approved layout plan and a release certificate from the competent local planning authority.

Those properties/sites formed on revenue land without requisite permission under Section 79/A and B read with Section 109 of Karnataka Land Reforms Act.

The proviso to the said Notification exempts the application of this Notification to properties under Ashraya Scheme, Peoples Housing Scheme, HUDCO, those transferred by Zilla Panchayath, Taluk Panchayath, City Municipal Council, Urban Development Authority, KIADB, KHB, etc.

It is stated that the 4'' respondent has absolutely no authority to pass such an Executive Order in the name of the Governor of Karnataka. The said Notification is based on the sole assumption that all the properties which are not converted for non-agricultural purpose as required under the Karnataka Land Revenue Act and Karnataka Land Grant Rules, cannot be registered as non-agricultural land, which is totally contrary to the rule of law prevailing in our country, opposed to various statutory enactments, the constitutional rights guaranteed to the citizens of our country and the various precedents. It is further stated that pursuant to issue of such notification, another Circular dated 23-8-2005 came to be issued by the 5th respondent which is at Annexure-B, which Circular is intended to be passed in pursuance of the earlier Notification dated 23-4-2005 in the guise of 'some

frequently asked questions'. Even this has been passed by the 5th respondent without any authority of law. According to the petitioner, the impugned Notification and Circular are baseless, illegal and are issued under arbitrary State action. It is also the case of the petitioner that they have been issued for certain extraneous considerations. The effect of the said Notification and Circular is that the registration of all the properties coming under the jurisdiction of the City Corporation established under the Karnataka Municipal Corporations Act, those falling under jurisdiction of the Municipalities under the Karnataka Municipalities Act and those situated within the jurisdiction of Gram Panchayath and Taluk Panchayath areas, are prohibited from being registered as opposed to 'public policy', in all the districts of the State of Karnataka, which has an effect of classifying the statutory powers under those statutes as 'opposed to public policy' is highly impermissible and can be declared only by a Court of law. The impugned notification also refers to the judgment rendered by the Apex Court in the case of State of Karnataka v. Shankara Textiles Limited : AIR 1995 SC234 , wherein the Apex Court has held that in absence of permission for conversion of agricultural land for non-agricultural use, the mere non-user of the land for agricultural purpose or purposes subservient thereto or use for non-agricultural purpose would not have the effect of converting the land into non-agricultural land. This proposition of law laid down by the Apex Court is well-founded on legal principles and is indisputable. But unfortunately, the Government misinterpreted the ratio laid down by the Apex Court and has not examined the applicability of the decision to the conclusion sought to be achieved by the impugned notifications. The said decision of the Apex Court is totally inapplicable to the impugned action taken by the respondents. It is stated that the law in relation to conversion of the properties for non-agricultural purposes is well settled since two decades in so far as the State of Karnataka is concerned. The Division Bench of this Court in the case of Special Deputy Commissioner v. Narayanappa : ILR 1988 KAR1398 has declared that the jurisdiction of the Deputy Commissioner to convert lands for non-agricultural purposes under Section 95 of the Karnataka Land Revenue Act will get ousted in respect of lands falling within the area of the Outline Development Plan or the Comprehensive Development Plan i.e., lands which fall under the planning authority. It is further stated that the planning authority in the various districts of the

State of Karnataka has been formed since 1965 and the table showing the formation of various planning authorities in the various parts of the State of Karnataka is at Annexure-E, which authority has been functioning in most of the districts in the State of Karnataka, as can be ascertained from the table at Annexure-E. Therefore, the Government cannot insist upon the re-conversion of such lands which are situated within the jurisdiction of the local planning authority. It is also stated that the Division Bench of this Court in the case of Bangalore Development Authority v. Vishwa Bharathi House Building Co-operative Society Limited ILR 1991 KAR 4401, has held that the lands which are situated within the jurisdiction of the Corporation are deemed to be converted for that particular use. Therefore the question of classifying these lands as non-agricultural lands in the impugned notification is totally arbitrary and illegal and moreover as these notifications have retrospective effect, the public interest and the property rights guaranteed to citizens have been given a go-bye. Further in the case of J.M. Narayana and Ors. v. Corporation of The City of Bangalore ILR 2005 Karnataka 60 a Division Bench of this Court has clearly declared that the Land Revenue Act would cease to be applicable to such of those lands no sooner the land is brought within the Corporation limits. Hence the impugned Notification and Circular are totally contrary to the consistent law in the State of Karnataka since over two decades. Various layouts in the State of Karnataka such as Cantonment area, Basavangudi, Malleshwaram, Cottonpet, Gandhinagar, Old Mysore etc., are formed over hundred years ago and some layouts are formed during the reign of Diwan of Mysore and since their formation, these areas are being used for non-agricultural/residential purposes. Therefore, the question of converting these lands for non-agricultural purposes under Section 95 of the Karnataka Land Revenue Act does not arise at all. The impugned Notification and Circular are totally one without application of mind and is passed only for extraneous considerations well known to the respondents. The impugned Notification and Circular are contrary to the Division Bench decision of this Court in the case of Special Deputy Commissioner v. Narayanappa (Supra) wherein it is declared that the jurisdiction of the Deputy Commissioner to convert lands for non-agricultural purposes under Section 95 of the Karnataka Land Revenue Act, will get ousted in respect of lands falling within the area of Outline Development Plan or the Comprehensive

Development Plan i.e., lands which fall under the planning authority. It is stated that the right to hold and possess a property is a constitutional right guaranteed under Article 300-A of the Constitution. The settled and vested rights of citizens are sought to be taken away by the impugned State action. Moreover, the action of applying the principle of conversion under the Karnataka Land Revenue Act retrospectively is contrary to law and is liable to be set aside. Section 202 of the Karnataka Land Revenue Act clearly saves any right privilege, obligation or liability acquired, accrued or incurred earlier to the coming into force of the said Act and Sub-section (4) of Section 202 is also very clear that any custom, usage or order prevailing in any area of the State, at the time of commencement of the Act, is saved and only those custom, usage or order which are repugnant or inconsistent with the provisions of the Act would cease to be in operation. Further Section 148(3) of the Karnataka Land Revenue Act is also very clear to the effect that those lands already set apart for building sites within the limits of any village, town or city in accordance with any law for the time being in force prior to the commencement of this Act, shall be deemed to have been so set apart. Therefore the Government cannot now insist for conversion of lands in terms of Section 95 of the Karnataka Land Revenue Act though such lands were already being used for non-agricultural/residential purposes since decades before the Act came into force. Broadly on these and other averments made in the writ petition, the petitioner has sought for quashing of the impugned notification at Annexure-A and the consequent Circular at Annexure-B issued by the State Government.

2. The respondents have filed their statement of objections wherein they have contended inter alia that the impugned notification dated 23-4-2005 as per Annexure-A has been passed in exercise of the powers conferred under Section 22-A of the Registration Act. The State Government is empowered under the Karnataka Act No. 55/1976 called the Registration (Karnataka Amendment) Act, 1976, inserting Section 22-A to the principal Act empowering under Clause (1) thereunder to declare the registration of any document or class of documents as opposed to public policy by notification in the official gazette. This is precisely what has been done under the impugned notification at Annexure-A. The petitioner is not entitled to question the public policy of the State which is founded on data, statistics, factual position and furtherance of public interest as inputs. The judicial

intervention sought for by way of a declaration is hopelessly misconceived and is opposed to facts, statutory law and the judicial precedents. Registration of the first item of the documents under Annexure-A declared as opposed to public policy relates to site with or without building in an agricultural land, which is not converted for non-agricultural purposes under Section 95 of the Karnataka Land Revenue Act. Likewise second item declares the registration of site described as a gramathana site or other site declared under Form-19 under the Rules framed under the Karnataka Municipalities Act, but not actually converted as such site as opposed to public policy. Item No. 3 of the notification relates to registration of site on revenue land described as gramathana site or other site or site with a structure, without the approval of the lay-out plan and a release certificate issued by the competent local planning authority, as opposed to public policy. Under item No. 4, the registration of site on revenue land described as a gramathana site or other site/flats/industrial site/commercial site, without requisite permission under Section 79-A and B read with Section 109 of the Karnataka Land Reforms Act as opposed to public policy. The registration of all these sites of the nature described are opposed to the provisions of the special statutes as clearly spelled out thereunder under the respective items. Sellers and purchasers are required to follow the various special statutes while conveying title even without the impugned annexures. This is the stated position in law and clearly governed by the respective statutes. Despite the said mandatory provisions, the land grabbers, middle men, land sharks, money spinners and touts have been unjustly enriching themselves by alienating the lands in contravention of the aforesaid statutes, victimizing the economically poor and illiterate members of the public aspiring to own sites, to have shelter over their head. This has resulted in large scale violation of the special statutes resulting in a chaotic situation and disorderly growth of cities and towns, thereby defeating the intent and will of the Legislature. The Karnataka Town and Country Planning Act, the Bangalore Development Act, the Karnataka Municipalities Act and the Karnataka Land Reforms Act, though on the statute book, the provisions are being flouted by the aforesaid persons making the special piece of legislation a mockery. This has resulted in over burdening the law Courts, quasi judicial authorities, flooding with unabated flow of litigation, on action being taken by the statutory authorities. These violations are affecting the public interest

inasmuch as the poor and hapless aspirants of sites becoming gullible, falling easy prey to the aforesaid ingenious network of the vested interests, whose sole aim is to make money, with no concern for the rule of law or due process of law. The special enactments/statutes which have been passed in the wisdom of the Legislature in the larger public interest, with laudable intent, object and purpose are being defeated unabatedly by circumventing them and victimizing the poor and innocent buyers. Viewed in the above context, the petition is hopelessly misconceived. It is further stated that on a mere perusal of the impugned annexures, it emerges that the respondent/State has grappled the factual situation in the matter of violation of law under various special statutes, arising out of indiscriminate registration of documents flouting law and burdening the innocent, poor, uneducated and hapless aspirants of sites. In order to protect their interests, among others, the respondent/ State has thought fit in its wisdom to exercise its powers under Section 22-A of the Registration Act to declare the registration of such documents as opposed to public policy. To effectuate the declaration, guidelines are issued in the nature of a circular for a better understanding and implementation of the avowed public policy. The public policy which has been evolved culminating in the impugned annexures cannot be dubbed, termed or styled as illegal. On the contrary, the impugned annexures are well thought of, well intended and well conceived by the respondent/State to thwart the attempts of vested interests to unjustly enrich themselves at the cost of gullible public. Having regard to the certain bonafide doubts and confusion which have arisen in the minds of the concerned, the State of Karnataka has issued notification dated 29-10-2005 at per Annexure-R1 clarifying the position. The said clarification puts as rest the needless apprehensions raised by the petitioner in this regard. By no stretch of imagination the action of the State can be said to be against public interest and public good. It is stated that the various decisions which have been referred to in the pleadings have no relevance or nexus to the impugned Annexure or action of the State Government. The declaration of law relied upon is in a lis between the State and private litigant. But in the instant case, the action of the State is with regard to the prevention of abuse of law in public interest and public good and to safeguard the interests of people, aspiring for a site and preventing unjust enrichment of the few against the law at the cost of community at large. The

petitioner is oblivious to the changes in law, particularly proviso to Clause (2) of Section 14 of the Karnataka Town and Country Planning Act of 1961 (amended w.e.f. 20-3-1991) which mandates that notwithstanding the change in land use under the Act, the conversion of agricultural land to non-agricultural purposes under the relevant provisions of the Karnataka Land Revenue Act are to be mandatorily followed. It is stated that the legal pleas that the officer who has issued the gazette notification is not competent, is hopelessly untenable particularly in the light of Rule 19(1) of the Karnataka Government (Transaction of Business) Rules, 1977 as per Annexure-R2 and also the law laid down by the Division Bench of this Court in W. A. No. 2624 of 2005 and connected matters known as 'Arkavathy case' disposed of on 25-11 -2005. The impugned annexures are in the nature of preventive action by the State as public policy to debar the registration of documents which are violative of law on the statute book and they are solely intended to prevent public mischief and promote the interest of the community at large and rule of law. The impugned action of the State in issuing the assailed annexures would bring down the needless litigations with regard to the documents which are per se against law which would unburden the dockets of law Courts and quasi judicial authorities. Article 19(f) which confers right on a citizen to acquire, hold and dispose of the property as a fundamental right is no more in the Constitution and the said right has been committed by the Constitution (44'' Amendment Act, 1978 which came into being from 20-6-1979). The impugned action protects the rights of the citizens in the property possessed by them for better enjoyment, in accordance with law. Regulatory measurers of the State in the matter of enjoyment of properties by individuals as against the interest of the community is too well settled in law and has been constitutionally recognized in the light of the aforesaid amendment. The authorities of the State have taken cognizance of this unrully growth of cities and Townships within the State on account of illegal conduct of vested rights flouting the law to make commercial gains at the cost of innocent and gullible public and after serious application of judicious mind and objectively assessing the germane materials like data, statistics, field experience, opinion of the experts. The State has thought fit in its wisdom to evolve public policy solely in the interest of the community at large which cannot be faulted. On these and other averments made in the statement of

objections filed by the respondents, they have prayed for dismissing the writ petition with exemplary costs.

3. We have heard the arguments of the learned Counsel for the parties at a considerable length and carefully perused the relevant case papers including the impugned notification at Annexure-A and the consequent Circular at Annexure-B.

4. Learned Counsel for the petitioner while placing reliance upon a decision of the Hon'ble Supreme Court in the case of State of Rajasthan v. Basant Nahata : AIR 2005 SC3401 has contended that Section 22-A of the Registration Act, 1908 as amended by the Karnataka Act 55 of 1976 through a subordinate legislation cannot control the transactions which fall out of the scope thereof. While elaborating this submission, he contended that a legislative policy must conform to the provisions of the constitutional mandates and even otherwise a policy decision can be subjected to judicial review. According to the learned Counsel for the petitioner, the question involved in the writ petition is no longer res integra and it is squarely covered by the above decision of the Apex Court. He therefore contended that the impugned notification at Annexure-A and the consequent Circular at Annexure-B are to be quashed in the light of the decision rendered by the Apex Court.

5. As against this, the learned State Counsel for the respondents has contended that the decision of the Apex Court relied upon by the learned Counsel for the petitioner has no application to the facts and circumstances of the case. The impugned notification having been issued by the State Government in the larger interest of the public, cannot be quashed at the instance of some persons having vested interest. He contended that the members of the public at large are not affected by the impugned notification and it is only certain persons with vested right who are affected or opposing the impugned notification. He therefore contended that the writ petition filed by the petitioner is liable to be dismissed as it is not in the interest of the larger public interest and it is meant only to serve the personal interest of some individuals.

6. Having heard the submissions on both sides and having carefully perused the impugned notifications in the light of the submissions advanced on both sides and

also in the light of the decisions relied upon by them, the question for consideration is whether the impugned notification at Annexure-A and the consequent Circular at Annexure-B are liable to be quashed in exercise of the jurisdiction of this Court under Articles 226 and 227 of the Constitution?

7. In the case of State of Rajasthan v. Basant Nahata (Supra) relied upon by the learned Counsel for the petitioner, the Hon'ble Supreme Court has held as under:

(A) Public policy is not capable of being given a precise definition. What is opposed to 'public policy' would be a matter depending upon the nature of the transaction. The pleadings of the parties and the materials brought on record would be relevant so as to enable the Court to judge the concept as to what is for public good or in the public interest or what would be injurious or harmful to the public good or the public interest at the relevant point of time as contradistinguished from the policy of a particular Government. A law dealing with the rights of a citizen is required to be clear and unambiguous. Doctrine of public policy is contained in a branch of common law, it is governed by precedents. The principles have been crystallized under different heads and though it may be possible for the Courts to expound and apply them to different situations but it is trite that the said doctrine should not be taken recourse to in 'clear and incontestable cases of harm to the public though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world'.

A contract being 'opposed to public policy' is a defence under Section 23 of the Indian Contract Act and the Courts while deciding the validity of a contract has to consider: (a) Pleadings in terms of Order 6 Rule 1 of the Code of Civil Procedure, (b) Statute governing the case, (c) Provisions of Parts III and IV of the Constitution of India, (d) Expert evidence, if any. (e) The materials brought on record of the case, (f) Other relevant factors, if any. It becomes amply clear that it is not possible to define public policy with precision at any point of time. It is not for the executive to fill these grey areas as the said power rests with judiciary. Whenever interpretation of the concept 'public policy' is required to be considered it is for the judiciary to do so and in doing so even the power of the judiciary is very limited.

Even for the said purpose, the part dealing with public policy in Section 23 of the Contract Act is required to be construed in conjunction with other parts thereof.

(B) The respondent-Khatedar tenant of agricultural lands, appointed attorney authorizing him to look after his lands, cultivate the same and to do all other acts, deeds and things including mortgage or sell the same, get the requisite deeds and documents registered, by a deed of Power of Attorney dated 16-7-1999. The said deed was presented before the Sub-Registrar, for the purpose of registration which was refused by making an endorsement on the document that the same could not be registered in terms of the Government Notification dated 26-3-1999 published in the Rajasthan Gazette dated 1-4-1999 as amended on 22-4-1999 whereby and whereunder registration of such documents have been prohibited as being 'opposed to public policy'. The said notifications were said to have been issued by the State of Rajasthan in exercise of its power conferred upon it under Section 22-A of the Act. The respondent questioned the Constitutionality of Section 22-A of the Act as inserted by the Legislature of Rajasthan as also the aforementioned notifications.

HELD, execution of a power of attorney in terms of the provisions of the Contract Act as also the Power of Attorney Act is valid. A power of attorney is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee. The State of Rajasthan inserted Section 17(1)(f) and (g) in the Act making the registration of agreement to sale and irrevocable power of attorney relating to transfer of immovable property in any way a compulsorily registrable document. The State went further to amend Article 23 of the Second Schedule of the Stamp Act, 1899 making an agreement to sale of immovable property and irrevocable power of attorney or any other instrument executed in the course of conveyance etc. with possession to be deemed to be a conveyance and stamp duty is chargeable thereon accordingly. According to the State, despite such enactments sales were

being made by seller on the basis of a power of attorney with a right to sell the property and such powers of attorney were being executed for an unspecified period. A transaction between two persons capable of entering into a contract which does not contravene any statute would be valid in law. The State of Rajasthan does not make such transactions illegal. The Contract Act or the Power of Attorney Act have not been amended. Execution of a power of attorney per se, therefore, is not illegal. Registration of power of attorney except in cases falling under Section 17(1)(g) or 17(1)(h) is not compulsorily registrable. Sections 32 and 33 of the Registration Act also do not bar any such registration. The Act only strikes at the documents and not at the transactions. The whole aim of the Act is to govern documents and not the transactions embodied therein. Thereby only the notice of the public is drawn. Hence, Section 22-A of the Act through a subordinate legislation cannot control the transactions which fall out of the scope thereof. The subordinate legislation which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, thus would not be valid. In absence of any substantive provisions contained in a parliamentary or legislative Act a person cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Section 300-A of the Constitution of India.

A thing which itself is so uncertain cannot be a guideline for anything or cannot be said to be providing sufficient framework for the executive to work under it. Essential functions of the Legislature cannot be delegated and it must be judged with touchstone of Article 14 and Article 246 of the Constitution of India. It is, thus, only the ancillary and procedural powers which can be delegated and not the essential legislative point. A legislative policy must conform to the provisions of the Constitutional mandates. Even otherwise a policy-decision can be subjected to judicial review.

8. In the light of the above ruling of the Hon'ble Supreme Court, we shall now proceed to examine the question raised by us for consideration.

9. The prayer made in the writ petition is to quash the notification dated 23-4-2005 bearing No. RD 174 MUNOMU 2005 issued by the respondent No. 4 at Annexure-

A and the consequent Circular dated 23-8-2005 bearing No. RD 174 MUNOMU issued by the 5th respondent at Annexure-B. The fate of the Circular at Annexure-B depends upon the impugned notification issued by the Respondent No. 4 at Annexure-A. Therefore the attack or challenge of the petitioner herein is mainly to the impugned notification at Annexure-A.

10. The relevant portion of the impugned notification at Annexure-A of the writ petition reads as under:

Wherefore, in exercise of the powers conferred by Section 22-A of the registration Act, 1908 (Central Act 16 of 1908) as amended by the Karnataka Act 55 of 1976, the Government of Karnataka, in addition to the Notification No. RD 80 ESM 93 (p), dated 14th February 1994, hereby declares the registration of the following documents as opposed to 'public policy':-

1. Sale, gift, exchange, mortgage, agreement to sell, lease or assignment or otherwise of a site with or without building in an agricultural land which is not converted for non-agricultural purpose under Section 95 of the Karnataka Land Revenue Act, 1964.

2. Sale, gift, exchange, mortgage, agreement to sell or assignment or otherwise of a site described as a gramathana site or other site declared under Form 19 under the rules framed under the Karnataka Municipalities Act, 1964 but not actually converted as such site.

3. Sale, gift, exchange, mortgage, agreement to sell, or assignment of a site on revenue land described as a gramathana site or other site or a site with a structure for which no layout plan is approved and a release certificate is obtained from the competent local planning authority.

4. Sale, gift, exchange, mortgage, agreement to sell, or assignment of a site on revenue land described as a gramathana site or other site/flats/industrial site/ commercial site without requisite permission under Section 79/A and B, read with Section 109 of Karnataka Land Reforms Act.

Provided, this Notification will not apply to documents relating to sale, gift, exchange, mortgage, agreement to sell or assignment of a site on revenue land to registration of sites under Ashraya Scheme; Peoples Housing Scheme; Hudco; Bhagyamandira; Dr. Ambedkar Housing Scheme; Indira Awas Yojana and similar schemes of Government through which sites, buildings etc. transferred by Zilla Panchayat, Taluk Panchayat, City Municipal Council, Town Municipal Committee, Urban Development Authority, Rajiv Gandhi Housing Corporation and also transfer or re-transfer of properties through KIADB, KSSIDC, and KHB.

The Registering authorities shall for the purposes of ascertaining whether the document presented falls under any of the above categories, call for relevant information from the concerned including the party presenting the document.

By Order and in the name of

the Governor of Karnataka

M.P. MANJUNATH

Desk Officer

Revenue Department

(Stamps and Registration)

11. The above notification at Annexure-A is purported to have been issued in exercise of the powers conferred under Section 22-A of the Registration Act, 1908 (Central Act 16 of 1908) as amended by the Karnataka Act 55 of 1976, besides the Notification No. RD 80 ESM 93(P) dated 14-2-1994.

12. Section 22 of the Registration Act provides for description of houses and land by reference to Government maps or surveys. The State of Karnataka has inserted Section 22-A. In terms of Sub-section (1) of Section 22-A, the State of Karnataka has been authorized to issue a notification declaring that the registration of any documents or class of documents would be opposed to public policy. Sub-section (2) of Section 22-A starts with a non-obstante clause stating that notwithstanding anything contained in the Act, the Registering Officer shall

refuse to register any document for which a notification issued under Sub-section (1) of Section 22-A is applicable. Section 32 occurring in Part VI of the Registration Act provides for presentation of documents for registration. It envisages or prescribes that except in the cases mentioned in Sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office by some person executing or claiming under the same, or in the case of copy of a decree or order, claiming under the decree or order, or by the representative or assign of such person, or by the agent of such person, representative or assign, duly authorized by power of attorney executed and authenticated in manner as specified in Section 33. Part XI of the Act deals with duties and powers of the Registering Officers. Part XI-A of the Act deals with photocopying of documents and it shall apply only to the areas in respect of which a notification is issued by the State Government under Section 70-C. Part XII deals with documents which a Sub-Registrar may refuse to register which, inter alia, refers to a document relating to property, which was not situated within the district of the Registrar or which ought to be registered in the office of the Sub-Registrar or on the ground of denial of execution. An appeal from such orders of the Sub-Registrar is provided for under Sub-section (2) of Section 72. Even as against the order of the Registrar, a suit is maintainable vide Section 77 of the Registration Act. However, If and when a document is refused to be registered by the Sub-Registrar in terms of Sub-section (2) of Section 22-A of the Act, evidently no appeal would lie. Section 17 of the Act enumerates the instruments registration of which is compulsory under the Act, whereas Section 49 of the Act encompasses the effect of a failure to register. Registration of documents, however, is not confined only to documents relating to immovable property but also for the documents dealing with other matters. Section 18 provides for optional registration of documents specified therein. Execution of sale, gift, exchange, mortgage, lease etc. are liable to be registered under the provisions of the Registration Act. According to the statement of objections filed on behalf of the respondents, it would indicate that the registration of the documents such as sale, gift, exchange, mortgage, agreement to sell, lease or assignment or otherwise of a site with or without building in an agricultural land which is not converted for non-agricultural purpose under Section 95 of the Karnataka Land

Revenue Act as opposed to public policy. Likewise as per item No. 2 the sale, gift, exchange, mortgage, agreement to sell or assignment or otherwise of site described as a gramathana site or other site declared under Form No. 19 under the Rules framed under the Karnataka Municipalities Act, 1964, but not actually converted as such site is declared as illegal. Similarly as per item No. 3 of the notification, registration of sale, gift, exchange, mortgage, agreement to sell, or assignment of a site on revenue land described as a gramathana site or other site or a site with a structure for which no lay-out plan is approved and a release certificate is obtained from the competent local planning authority is declared as void. Under item No. 4 of the impugned notification at Annexure-A, the registration of sale, gift, exchange, mortgage, agreement to sell, or assignment of a site on revenue land described as a gramathana site or other site/flats/industrial site/commercial site without requisite permission under Section 79-A and B, read with Section 109 of Karnataka Land Reforms Act is declared as opposed to public policy. A transaction between two persons capable of entering into a contract which does not contravene any statute would be valid in law. The State of Karnataka does not make such transactions illegal. Execution of documents such as sale, gift etc. per se is not illegal. The necessity for registration under the Registration Act would depend upon what a document is or what it purports to be. The question whether there should be a writing or registration would depend on each of the transactions and not on their cumulative result. An identical question came up before the Hon'ble Supreme Court in the case of State of Rajasthan v. Basant Nahata (Supra)) wherein the Hon'ble Supreme Court has held as under:

54. We have noticed hereinbefore that the State of Rajasthan inserted Section 17(1)(f) and (g) in the Act making the registration of agreement to sale and irrevocable power of attorney relating to transfer of immovable property in any way of compulsorily registrable document. The State went further to amend Article 23 of the Second Schedule of the Stamp Act, 1899 making an agreement to sale of immovable property and irrevocable power of attorney or any other instrument executed in the course of conveyance etc. with possession to be deemed to be a conveyance and stamp duty is chargeable thereon accordingly. According to the State, despite such enactments, sales were being made by seller on the basis of a power of attorney with a right to sell the property and such powers of attorney

were being executed for an unspecified period. A transaction between two persons capable of entering in to a contract which does not contravene any statute would be valid in law. The State of Rajasthan does not make such transactions illegal. The Indian Contract Act or the Power of Attorney Act have not been amended. Execution of a power of attorney per se, therefore, is not illegal. Registration of power of attorney except in cases falling under Section 17(1)(g) or 17(1)(h) is not compulsorily registrable. Sections 32 and 33 of the Indian Registration Act also do not bar any such registration.

55. The Act only strikes at the documents and not at the transactions. The whole aim of the Act is to govern documents and not the transactions embodied therein. Thereby only the notice of the public is drawn.

59. Hence, Section 22-A of the Act through a subordinate legislation cannot control the transactions, which fall out of the scope thereof.

60. We have noticed hereinbefore the effect of a power of attorney under the Indian Contract Act or the Power of Attorney Act. A subordinate legislation which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, in our opinion, thus, would not be valid.

61. The question can be considered from another angle. A person may not have any near relative or is otherwise unable to attend the office of the Sub-Registrar or Registrar within whose jurisdictions the property is situated. He may even be out of the country. In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Section 300-A of the Constitution of India.

63. Hence, it becomes amply clear that it is not possible to define Public policy with precision at any point of time. It is not for the executive to fill these gray areas as the said power rests with judiciary. Whenever interpretation of the concept 'public policy' is required to be considered it is for the judiciary to do so and in doing so even the power of the judiciary is very limited.

64. Even for the said purpose, the part dealing with public policy in Section 23 of the Indian Contract Act is required to be construed in conjunction with other parts thereof.

65. A further question which arises is whether having regard to the doctrine of separation of powers what is essentially within the exclusive domain of the judiciary can be delegated to the executive unless policy behind the same is finally laid down.

66. A thing which itself is so uncertain cannot be a guideline for any thing or cannot be said to be providing sufficient frame work for the executive to work under it. Essential functions of the legislature cannot be delegated and it must be judged with touchstone of Article 14 and Article 246 of the Constitution of India. It is, thus, only the ancillary and procedural powers which can be delegated and not the essential legislative point.

67. The contention raised on behalf of the Appellants herein that the State, being higher authority, having been delegated with the power of making declaration in terms of Section 22-A of the Act, would not be abused is stated to be rejected. Such a question does not arise herein as the provision has been held to be ultra vires Articles 14 and 246 of the Constitution of India.

68. The contention raised to the effect that this Court would not interfere with the policy decision is again devoid of any merit. A legislative policy must conform to the provisions of the constitutional mandates. Even otherwise a policy decision can be subjected to judicial review. (See Cellular Operators Association of India and Ors. v. Union of India and Ors. : [2002]SUPP5SCR222 and Clariant International Limited and Anr. v. Securities and Exchange Board of India : AIR 2004 SC4236).

13. Having given our anxious consideration to the entire matter in issue, we find that the question involved in the instant writ petition is no longer res integra and on the other hand it is squarely covered by the aforesaid decision of the Apex Court. Having regard to the law laid down by the Hon'ble Supreme Court in the above cited decision, the impugned notification at Annexure-A and the consequent

Circular at Annexure-B cannot be sustained in law and they are liable to be quashed.

14. In the result, the instant writ petition filed by the petitioner by way of public interest litigation is allowed. The impugned notification at Annexure-A dated 23-4-2005 and the consequent Circular at Annexure-B dated 23-8-2005 are hereby quashed. But in the circumstances of the case, there is no order as to costs.