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**Court :** Karnataka

**Decided On :** Jun-09-2005

**Reported in :** 2005(5)KarLJ295

**Judge :** R. Gururajan, J.

**Acts :** Karnataka State Financial Corporations Act, 1951 - Sections 29; ;[General Clauses Act, 1897](#) - Sections 21; ;[Constitution of India](#) - Articles 226 and 227

**Appeal No. :** Writ Petition No. 25781 of 2000

**Appellant :** Srinivas Jagirdar

**Respondent :** The Commissioner, Bangalore Development Authority and anr.

**Advocate for Def. :** U. Ahdul Khader, Adv. for Respondent-1, ;V.C. Jagannath, Adv. for Respondent-2, ;Ashok B. Patil, ;Jeevan J. Neeralgi and ;K.P. Ramesh, Advs. for Respondent No. 2

**Advocate for Pet/Ap. :** Sriyuths D.L.N. Rao, Sr. Counsel, ;R. Nagendranaidu, ;M.N. Raj Urs, ;N.P. Basavaraj, ;K.S. Nagaraj Rao, ;Prabhakar, ;Ashok B. Patil, ;Jeevan J. Neeralgi and ;K.P. Ramesh, Advs.

**Disposition :** Petition dismissed

## **Judgement :**

ORDER

### **R. Gururajan, J.**

1. Petitioner Sri Srinivas Jagirdar is before me challenging the proceedings of the Commissioner, Bangalore Development Authority, vide No. Bangalore Development Authority/COMMR./DS:II/3601/2000-01, dated 11-7-2000 and order bearing No. Bangalore Development Authority/COMMR./DS:II/INDL.SITE/60/2000-01, dated nil (Composite Order) (Annexure-A) issued by the respondent-Commissioner, Bangalore Development Authority, in the case on hand.

2. Facts in brief are as under:

Petitioner was allotted an industrial site bearing No. 60, Industrial Suburb, II Stage, Rajajinagar, Bangalore, measuring 132' x 330' by the then City Improvement Trust Board ('CITB' for short). The lease-cum-sale agreement dated 20-10-1975 was registered in the office of the jurisdictional Sub-Registrar. Petitioner was put in possession and possession certificate was issued to the petitioner. Thereafter, CITB issued a licence dated 7-9-1976 for construction of industrial sheds. Licence was granted to the petitioner to put up construction. Petitioner is paying taxes in respect of the property. Khata extract stands in the name of the petitioner. Petitioner obtained loan from Karnataka State Financial Corporation (for short, 'KSFC') and to secure the repayment of the said loan amount, petitioner executed a mortgage deed in favour of the KSFC. In the year 1984, petitioner inducted M/s. Balaji Finishing, a sister concern of M/s. Gokuldas Exports as a tenant in respect of a portion of the subject property. Under the agreement M/s. Balaji Finishing was entitled to pay monthly rentals payable in respect of the lease property to the KSFC directly to discharge the loan obtained by the petitioner. Along with the said M/s. Balaji Finishing, two other tenants were also inducted in respect of the other portions of the property. They were authorised to pay the rentals to the KSFC directly towards discharge of the petitioner's loan liability to the KSFC. No dues certificate was issued by the KSFC in terms of Annexure-H. Petitioner thereafter

applied for execution and registration of the absolute sale deed in respect of the subject property enclosing the documents referred to above and the sale deed was executed in respect of the property measuring 132' x 330' in favour of the petitioner under the sale deed dated 31-8-1998. Thus the petitioner became the absolute owner of the subject property measuring 132' x 350' which is equal to 4,840 sq. yards. BDA issued a show-cause notice dated 7-1-2000 calling upon the petitioner to show cause as to why the said property should not be bifurcated on the ground that the KSFC had sold 132' x 250' of the property of favour of M/s. Gokuldas Exports. A reply was sent by the petitioner. Thereafter, the present order was passed by the respondent in the matter.

3. Petitioner states that the KSFC initiated proceedings under Section 29 of the State Financial Corporations Act, 1951. That was questioned by the petitioner in W.P. No. 10352 of 1986. It was dismissed and dismissal was confirmed by Apex Court in S.L.P. No. 17041 of 1994. Petitioner has raised several grounds in respect of the dispute. Respondents entered appearance.

4. 2nd respondent-Gokuldas Exports would say that the petitioner has nothing to do with M/s. Shyam Industrial Complex which is a registered partnership concern with Smt. Shamala Jagirdar and Kishan Jagirdar as partners. It is this partnership concern which was allotted the land in No. 60, Industrial Suburb II Stage, Yeshwanthpur, Bangalore, by the CITB. In the previous proceedings petitioner claimed to be a partner of the complex. Petitioner is estopped from challenging the validity of the sale deed executed in favour of this respondent. It is further submitted that the petitioner or his proprietors concern has nothing to do with property No. 60, Industrial Suburb II Stage, Yeshwanthpur, Bangalore. Initially the said industrial site No. 60 was allotted pursuant to a lease-cum-sale deed dated 22-10-1975 to M/s. Sham Industrial Complex, a registered partnership firm consisting of Sri Kishan Jagirdar and Smt. Shamala Jagirdar as partners. This firm was permitted by the 1st respondent by letter No. A-3, 6095, II 75-76 to create an equitable mortgage of the property and raise loan from the KSFC. There was heavy default in repayment of loan to KSFC and so the entire property No. 60, Industrial Suburb, Yeshwanthpur was taken over under Section 29 of the State Financial Corporations Act and put on public auction for sale, under the auction a

portion measuring 132' East to West and 250 North to South was sold by KSFC to this respondent. All the authorities have accepted the sale deed. The sale was challenged by partners of M/s. Sham Industrial Complex and also the petitioner in this petition. He claims to be a partner of the firm. The writ petition was dismissed and it was confirmed by the Supreme Court. 2nd respondent submits that the petitioner by giving false representation moved the respondent 1 for execution of sale deed in his own name. The officials of the 1st respondent by collusion or otherwise and without notice to the respondent executed a sale deed, even though the 1st respondent was fully aware of the auction and sale of the property by KSFC in favour of the respondent. A legal notice came to be issued. Ultimately, in order to set right the mistake in execution of the sale deed in favour of the petitioner show-cause notice was issued and the rectification deed was executed excluding the sale deed to the extent sold in favour of the respondent 2. 2nd respondent wants the petition to be dismissed.

5. An impleading application was filed by Sham Industrial Complex represented by Sri Kishan Jagirdar. In the application it is stated that the entire transaction leading to the passing of the impugned order is the outcome of fraud in collusion with the petitioner and the officials of the BDA. The applicant has given several details with regard to Sham Industrial Complex. It was a partnership firm. Loan was obtained from KSFC. The partners were Kishan Jagirdar and Smt. Shamala Jagirdar. They created a mortgage by deposit of title deeds for the purpose of loan transaction. It is further stated that the present petitioner in this petition is none other than the brother of Kishan Jagirdar and Smt. Shamala Jagirdar. Power of attorney was executed in his favour. According to them, the same was misused by the petitioner. They have also given other details with regard to the petition. They further say that a separate writ petition is filed by them and the same is pending. With these allegations, according to them, they should be heard and the petitioner should not be granted any relief. Objections are filed to the application and the petitioner denies the allegations and the petitioner says that the grievance of the impleading applicant cannot be decided in a writ Court and it has to be decided by a Civil Court.

6. Heard the Counsels appearing for the respective parties for final disposal.

7. Sri D.L.N. Rao, learned Counsel took me through the proceedings to say that the present set of facts require an interference by this Court. He says that BDA after executing a sale deed has no power to rectify as has been done in the case on hand. Counsel says Section 21 of the [General Clauses Act, 1897](#) is not available to the respondent in the matter. Counsel says that BDA has no power to decide inter se dispute in the matter. He relies on various judgments.

8. Per contra, learned Counsel for the respondent would say that a fraudulent action has been done in the matter and in the light of this, the respondent has rightly taken action in terms of the law governing rectification. Petitioner being not an owner cannot have a decision in his favour. Any decision in his favour would affect the transaction in the case on hand. They want the petition to be dismissed.

9. After hearing, I have carefully perused the material on record.

10. The only question that requires to be answered by this Court is as to whether the impugned order at Annexure-A requires to be set aside or not.

11. Prior to Annexure-A show-cause notice was issued in the matter of possession certificate to the petitioner. A reply was obtained and thereafter Annexure-A has been issued. In Annexure-A it is stated that site No. 60 was allotted in favour of Sham Industrial Complex and loan was obtained and on failure to repay the loan, KSFC initiated proceedings. KSFC auctioned a portion measuring 132' x 250' in all measuring 19,140 sq. ft. and sold the same in favour of M/s. Gokuldas Exports. Sham Industrial Complex applied for absolute sale deed for the entire extent allotted including the area sold by the KSFC by suppression of material facts and by producing got up documents such as the encumbrance certificate. Sale deed was executed without obstruction on account of misrepresentation. It was under those circumstances notice was issued and say of the person was obtained. After reply, in the light of the sale in favour of 2nd respondent, they have issued the impugned order in terms of Section 21 of the General Clauses Act. The argument is that Section 21 is not available to the respondent. At this stage, it is relevant to notice and conduct of the petitioner also. Auction took place in the year 1986 in respect of schedule properties in the light of failure to repay to the KSFC. Petitioner challenged Section 29 of the Karnataka State Financial Corporations Act

and also the proceedings/order dated 27-3-1986 in the matter. Matter was heard by a Division Bench and the Division Bench noticed various aspects of the matter and thereafter by a detailed order, petitions were dismissed. This very petitioner approached the Supreme Court in S.L.P. No. 17041 of 1994 challenging the order of the Division Bench. Supreme Court dismissed the petition on 3-11-1995. Thereafter, the 2nd respondent approached the BDA in terms of Annexure-R12. Thereafter, he approached the BDA once again in terms of Annexure-R3. In Annexures-R3 and R12, the 2nd respondent has categorically stated that the sale in respect of the schedule property cannot be granted to anybody in the light of an auction sale confirmed by the Supreme Court. In the light of this complaint of the 2nd respondent, BDA issued a show-cause notice, obtained a reply and passed an order ordering restricting sale excluding the area of 1773.33 sq. yds. sold in public auction.

12. This order according to the petitioner is illegal since according to the petitioner Section 21 of the General Clauses Act is not available. Section 21 reads as under:

'21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.--Where by any Central Act or regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, order, rules or bye-laws so issued'.

A reading of the said section would show that it provides for modification or cancellation in terms of the section. In fact this very section has come under judicial scrutiny in a number of matters. It is unnecessary to refer to all the judgments except to notice the famous judgment in Chief Inspector of Mines and Anr. v. Karam Chand Thapar, : (1961)11LLJ146SC . In the said judgment, the Court has ruled as under:

'The purpose of the General Clauses Act is to place in one single statute different provisions as regards interpretations of words and legal principles which would otherwise have to be specified separately in many different acts and regulations. Whatever the General Clauses Act says whether as regards the meaning of words

or as regards legal principles, has to be read into every statute to which it applies'.

13. Admittedly, in the case on hand, petitioner cannot claim an area of 1773.33 sq. yds. which in terms of the earlier proceedings has been made over to the 2nd respondent in terms of various legal proceedings as I see from the material placed on record. Writ petition filed by the petitioner stood dismissed and the same is confirmed by the Supreme Court. Therefore, legally speaking the petitioner cannot have the benefit of the auction land so approved by this Court and also the Supreme Court by way of a sale deed. However, petitioner has chosen to make an application to the BDA in the year 1998 and from the file it is seen that the petitioner has not chosen to refer to the earlier proceedings in the letter dated 17-8-1998. He has chosen to enclose a no due certificate of 1987. He has not chosen to refer to the proceedings of the Supreme Court. He has also enclosed a letter written by Kishan Jagirdar and Smt. Shamala Jagirdar with regard to no claim over the properties. He has also executed an indemnity bond and in the indemnity bond it is stated that Sham Industrial Complex a partnership firm was dissolved on 31-3-1998. From the letter dated 12-8-1998 it is also seen with regard to the auction sale in favour of Gokuldas Exports. The same is addressed to the Assistant Sub-Registrar, Bangalore. In the circumstances, what is clear to this Court is that the petitioner suppressing the earlier auction proceedings and the earlier findings of the Apex Court, has chosen to make a very bald application and the same has been accepted by BDA despite BDA knowing that the property has been made over in terms of the auction proceedings to Gokuldas Exports in terms of the Apex Court confirmation. Notwithstanding the auction sale in terms of the confirmation by the Supreme Court and notwithstanding the other material available on record, the BDA has chosen to provide a sale deed in favour of the petitioner. In the circumstances, the BDA in my view cannot be said to be wrong in any way in exercising its power in correcting the document in compliance with Supreme Court order in auction proceedings as otherwise the BDA would have given a now existing title to the petitioner which he is not entitled in terms of the auction proceedings. A combined reading of all the material facts and material documents available on record would clearly point out that the petitioner seems to be in a hurry to grab and properties not belonging to him by way of an absolute sale deed. On noticing the same, as I mentioned earlier, BDA has chosen to issue a notice

and thereafter, they have chosen to remove the fraud by way of the impugned order. There is also an inter se dispute between the parties with regard to the status of the firm being a partnership or proprietary ship firm in terms of the proceedings in the connected writ petition. In the given circumstances, I am unable to accept the argument of Sri Rao that Section 21 is not available to the petitioner. It is always open to an authority in the light of its power to enter into an agreement to maintain purity of its action under Section 21 of the Act. That is exactly what has been done by the BDA. I am unable to accept the argument that Section 21 is not applicable to the facts of this case. In the case on hand what has to be done by the BDA is to remove the pollution of fraud by way of a deed and nothing else.

14. Petitioner pressed into service two judgments. Petitioner relies on Kiran Singh and Ors. v. Chaman Pas wan and Ors., : [1955]1SCR117 and Dhananjaya Reddy v. State of Karnataka, 2001(5) Kar. L.J. 356: AIR 2001 SC 1512 : (2001)4 SCC 9 : 2001 Cri L.J. 1712 and the judgment in Chandra Kishore Jha v. Mahavir Prasad and Ors., (1999)8 SCC 206 : 1999(8) Supreme 389. There cannot be any quarrel in the proposition laid down in those decisions. If a statute requires anything to be done in a particular manner, that has to be done in that manner only but what cannot be forgotten is that is a fraud has been played and that fraud can be rectified by way of proceedings and that cannot be termed as illegal in terms of the above judgments. These judgments are available to a fair transaction and not to a fraudulent transaction. Therefore, I do not accept that any legal error as such has been committed by the BDA.

15. In fact, Courts have considered the powers of the Courts in the matter of fraudulent proceedings. Supreme Court had occasion to consider in United India Insurance Company Limited v Rajendra Singh and Ors., : [2000]2SCR264 with regard to fraudulent action as the power of the Court. Supreme Court has ruled as under:

'The High Court in its writ jurisdiction under Articles 226 and 227 can recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim'.

Noticing the same, I have in my judgment in the case in Commissioner of Income-tax, Central Circle, Bangalore v. Electronic Research Limited, Bangalore and Anr., : [2003]262ITR361(KAR) ruled as under:

'I must also point out at this stage that the wheels of justice can move only on true facts. Any mischief including a fraud on the Tribunal would result in derailing the wheels of justice. Justice is based on truth and truth cannot be trampled by an act of fraud. A litigant has to come to the Court with clean hands and an unclean hand has to be shown the door by a Court and not an entry to the Court. Such entries to such persons would pollute the true atmosphere of a temple of justice'.

16. I must also observe that writ jurisdiction is not a matter of right and it is purely discretionary in nature. Discretion of Courts would be judicial discretion. It is not an arbitrary exercise of power, but however, if the Court is satisfied that justice has been done by removing the fraud or misrepresentation, Court need not encourage such litigations by way of its discretion. Any discretion in such circumstances in favour of such litigants would be an act encouraging and polluting the discretionary powers of the Courts under Article 226 of the [Constitution of India](#). Article 226 is available to bona fide litigants and not for those who derive benefit out of misrepresentation or fraud. In the circumstances, I am not inclined to exercise my discretion even otherwise in terms of my discretionary power under Article 226 in a matter like this.

17. Before concluding, I must say that my conscience was very much disturbed in seeing an absolute sale deed in favour of the petitioner despite earlier proceedings in the case on hand. There are several loopholes in the case on hand. There is some unseen hand working with the petitioner. Otherwise, it would not have been possible for the petitioner to obtain an absolute sale deed despite the material on record and also the Apex Court's order. In the given circumstances and to maintain purity in public transaction, I deem it proper to direct the Commissioner to get the entire file and hand it over to the COD for proper investigation for the purpose of punishing those who are guilty in the case on hand. The concerned authorities are at liberty not only to proceed against officials departmentally but also by way of criminal proceedings after proper investigation in the matter.

18. In the normal circumstances, I would not have imposed costs but the present set of circumstances compel me to impose costs of Rs. 10,000/- to discourage such litigations. Costs of Rs. 10,000/- shall be made over to the Karnataka State Legal Services Authority within four weeks from today.

19. Insofar as impleading application is concerned, it is seen that the impleading applicant has made certain allegations against the present petitioner and the same is disputed by the petitioner. In these proceedings, I am of the view that it is not necessary to consider this application since even otherwise, I am satisfied that the BDA has the power to correct a fraudulent error on the facts and circumstances of the case. The impleading application is not considered in the light of my findings on merits.

In the result petition stands dismissed with exemplary costs of Rs. 10,000/-.

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