

M. Ramesh Vs. the Bangalore Development Authority and anr.

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SooperKanoon Citation : sooperkanoon.com/384325

Court : Karnataka

Decided On : Nov-30-2004

Reported in : ILR2005KAR18; 2005(1)KarLJ211

Judge : S.R. Nayak and ;H.N. Nagamohan Das, JJ.

Acts : Bangalore Development Authority Act, 1976 - Sections 69(2); Bangalore Development Authority (Disposal of Corner Sites and Commercial Sites) Rules, 1984 - Rule 6(3); [Constitution of India](#) - Article 226

Appeal No. : Writ Appeal No. 4041 of 2004

Appellant : M. Ramesh

Respondent : The Bangalore Development Authority and anr.

Advocate for Pet/Ap. : S.S. Guttal, Adv.

Disposition : Appeal dismissed

Judgement :

S.R. Nayak, J.

1. There is a delay of 217 days in preferring the appeal. Hence the appellant has filed I.A. I of 2004 under Section 5 of the Limitation Act, 1963 seeking condonation of delay. We have perused the affidavit filed in support of the LA. The explanation

offered in para 4 of the affidavit is self-serving and could hardly constitute a sufficient cause for condoning enormous delay. Be that as it may, we do not find any merit in the writ appeal also.

2. In the writ petition, the action of the Bangalore Development Authority in forfeiting the amount in terms of Rule 6(3) of the Bangalore Development Authority (Disposal of Corner Sites and Commercial Sites) Rules, 1984 (for short, the 'Rules') was questioned. The appellant-petitioner while seeking quashing of the order of the Bangalore Development Authority marked as Annexure-J under which the amount was forfeited, also prayed for a declaration that Rule 6(3) of the Rules is procedural and not mandatory.

3. The argument with regard to the above relief of declaration, if we go by the order of the learned Single Judge, does not seem to have been advanced before the learned Single Judge for consideration. Be that as it may, we are of the considered opinion that, that part of Sub-rule (3) of Rule 6 of the Rules is mandatory in nature and no discretion is vested in the Bangalore Development Authority either to forfeit or to grant exemption from forfeiture. The words 'the deposit of 25% made by the auction purchaser shall be liable to be forfeited to the authority', does not leave any doubt in our mind that in the contingency envisaged in the first part of Sub-rule (3), the Bangalore Development Authority is legally bound to forfeit the deposit of 25% made by the auction purchaser and it has no discretion not to forfeit the said deposit.

4. Since the action of the Bangalore Development Authority impugned in the writ petition is in conformity with the mandatory provisions of Sub-rule (3) of Rule 6 of the Rules, the order of the learned Single Judge is justified. There is no warrant for our interference.

In conclusion, we dismiss the writ appeal, both on merit as well as on the ground of limitation.