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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF MARCH 1998

Before

THE HON'BLE MR.JUSTICE HARI NATH TILHARI

WRIT PETITION No.8057/1998

Between:

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K.Kemparamaiah, 54 years,
s/o.late Krishnappa,
r/a.Saneguruvanahalli Village,
Yeshwanthapura Hobli,
Bangalore North Taluk. .. PETITIONER

(By Sri.S.Channaraya Reddy, Adv.)

And:

1. The State of Karnataka
rep. by its Secretary
Revenue Department,
M.S.Building,
Bangalore-560001.
2. The Bangalore Development
Authority, rep. by its
Commissioner, Kumara Park
West, Bangalore-560020.
3. The Asst.Commissioner,
Re-grant Section, BDA.,
Kumara Park West,
Bangalore-560020. .. RESPONDENTS

(By Sri.M.H.Ibrahim, G.P.)
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This Writ Petition is filed under Article 226 & 227 of the Constitution praying to quash vide Ann.K dt.21-2-98 and set aside the same & direct the respondents to consider the request of the petitioner to regularise the construction in accordance with law.

This Writ Petition coming on for preliminary hearing this day, the Court made the following:-

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O R D E R

Heard the learned counsel for the petitioner.

2. The petitioner has sought quashing of order dated 21-2-1998 whereby the competent authority/Assistant Commissioner (Land Acquisition), after considering the matter on merits, rejected petitioner's application ^{for regularisation of} for unauthorised construction on the land in question. The competent authority has mentioned that as per the report of the Land Acquisition Officer of the Bangalore Development Authority that the land bearing No.3/1 of Saneguruvanahally had been acquired for extension of West of Chord Road III Stage as per award dated 3-2-1978. The authority has taken the view that notice had been issued to the petitioner to attend the enquiry on 29-1-1998 and the same was served on him. He attended the enquiry. Documents have been examined and in view of Section 4(viii) of the Regularisation of Unauthorised Constructions Act, 1991, there is no ^{power and provision of} ~~provision~~ for regularisation of unauthorised construction on the land acquired by any authority or local authority. With these observations, the authority had

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rejected the application. Petitioner contended that the order dated 21-2-1998 is illegal as the unauthorised constructions were covered by Section 3, ~~but~~^{and} his case was not covered by Section 4(viii) of the Act No.29 of 1991. Section 3 of the Act No.29 of 1991 reads as under:-

"Section 3: REGULARISATION:-

Notwithstanding anything contained in any law, but subject to such rules as may be prescribed, any unauthorised construction made in any urban area, except those specified in Section 4, made prior to the 31st day of March, 1990, by any person, on land, -

- (i) belonging to the State Government; or
- (ii) which is a revenue site owned by him; or
- (iii) belonging to him which is proposed to be acquired in connection with any development scheme of an Authority, in relation to which a notification under the Bangalore Development Authority Act, 1976, or under Section 17 of the Karnataka Urban Development Authorities Act, 1987,

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or under Section 15 of the
Karnataka Improvement Boards
Act, 1976, is published and
which has not yet vested in
favour of any Authority for
which the acquisition is
proposed,

May, on the application of such person
made within sixty days of the commen-
cement of this Act, be regularised in
accordance with the provisions of this
Act."

A reading of this Section perse reveals that
it provides for regularisation of constructions
made in urban areas, except those specified in
Section 4, provided the unauthorised construction
in question had been made prior to 31st March,
1990 on the land belonging to the State Government
or which is a revenue site owned by the person
concerned or in cases where the land though
belonged to the owner of the building, but
it is proposed to be acquired under any scheme
or Act referred to in section and under notifi-
cation published and which has not yet vested
in favour of the authority for which acquisition
is proposed. In the present case, for applica-
tion of this Section, the person claiming the
benefit should have asserted very clearly that

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the constructions were made on or before 31st March 1990 and not later. In the present case, petitioner has not stated any date. It is not his case that it was a construction made prior to 31st March 1990. There is only a vague allegation that he had made the construction long back. This petition has been filed in 1998. It could be ~~stated~~ ^{stated} that they might have been raised during 1992 or 1994 after coming into force of the Act. Petitioner has not taken any specific case. So petitioner has failed to make out the ^{necessary} first/ingredient of provision of Section 3. The second necessary ingredient is either the land should be belonging to the Government or to the owner or belonging to the owner but that has been proposed to be acquired. In this present case, as per the report of the Land Acquisition Officer of the Bangalore Development Authority, it had been acquired some time in February 1978. and vested in local authority. It means it is not a case of site being owned by the applicant or petitioner. It is not also said to be a case that the land was proposed to be acquired. Really it had already been acquired in 1978.

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So it continued to remain vested in the local authority ie, the Bangalore Development Authority.

3. Thus, considered in my opinion, the petitioner's contention placing reliance on Section 3 is without merits. As ~~far as~~ Section 4(viii) is concerned, Section 3 has excluded the unauthorised constructions which are covered by Section 4(viii) or those covered by Section 4 shall not be regularised. Section 3 will not apply to those which may be said to be covered by Section 4 of the Act. Section 4 says ^{mandates that} "following unauthorised constructions shall not be regularised" namely unauthorised constructions made on the land belonging to or vested in any local authority. In the present case, the land is one vested in the local authority. Therefore, the unauthorised construction that has been made cannot be regularised in view of provisions of Section 4(viii). The order has been passed on 21-2-1998 and that had become final. Learned counsel for the petitioner contended that this order impugned dated 21-2-1998 passed in case No.BDA(LA) 721/1997-98 (Annexure-K) may be quashed in view of the notice Annexure 'L' dated 23.2.1998 to which my attention has been invited by the learned counsel on the basis of which the learned counsel contended that the authority issued a notice to the petitioner to prove his

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right on Sy.No. 3/1, to which petitioner filed his reply. Once the authority had considered and passed the order rejecting the application holding that regularisation cannot be done in view of Section 4(viii) of the Act, authority ceased to have jurisdiction to entertain any fresh application and to pass any order issuing notice unless it could be shown that there is any specific provision authorising review. No such provision has been shown by the learned counsel for the petitioner. No benefit can be acquired by the petitioner on the basis of this notice dated 23-2-1998.

The writ petition, as such being without merits, is hereby dismissed.

Sd/-
JUDGE

bss/-
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