

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 31ST DAY OF JULY, 2013

BEFORE

THE HON'BLE MR.JUSTICE MOHAN .M. SHANTANAGOUDAR

WRIT PETITION No.88040/2012(LB-RES)

BETWEEN:

SHIVRAJ S/O TIPPANNA
AGE: 48 YEARS
OCC: WORKING AS
EMPLOYEE IN BSNL
R/O GULBARGA

... PETITIONER

(BY SRI VEERESH B. PATIL, ADVOCATE)

AND:

THE URBAN DEVELOPMENT AUTHORITY
NEAR TIMMAPURI CHOWK
GULBARGA-585103
BY ITS COMMISSIONER

... RESPONDENT

**(BY SRI A.M.NAGRAL, ADVOCATE FOR
SRI R.A.PATIL, ADVOCATE)**

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI THEREBY QUASHING THE IMPUGNED ENDORSEMENT DATED 12.10.2011 ISSUED BY THE RESPONDENT IN No.ನಪ್ರಾಗು/ಹಂಚಿಕೆ/ರಾ-ಬ/464/98-99/2011-12/5170 ORDER AS AT ANNEXURE-F TO THE WRIT PETITION AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING
IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner was allotted plot bearing No.464 measuring 40' x 70' in Rajapur-Badepur Layout in the year 1997. The allotment letter dated 22/26.03.1997 was issued in favour of the petitioner as per Annexure-A calling upon the petitioner to pay the balance of the sital value of Rs.81,000/- within the prescribed period. Petitioner did not pay the sital value after receipt of the allotment letter till the year 2008. During interregnum number of notices were issued to the petitioner requesting him to pay the sital value. However, petitioner did not take benefit of such leniency. Ultimately, the final notice came to be issued to the petitioner as per Annexure-B on 08.02.2008 instructing the petitioner to pay balance of sital value of Rs.78,570/- and interest of Rs.12,670/- totaling Rs.91,240/- within 15 days. After receipt of the said notice, petitioner paid the sital value of Rs.78,570/- on

13.03.2008 and interest of Rs.12,670/- on 28.03.2008. Thus, it is clear that as on 28.03.2008 petitioner has completed the payment of the outstanding dues, thereafter, he had made representations for registering the property in his name. Till today, no action is taken by the respondent, hence, this writ petition is filed.

2. It is no doubt true that the petitioner was at fault in not paying the sital value within the prescribed period. Ultimately, he choose to pay the entire sital value pursuant to the final notice issued by the respondent dated 08.02.2008 as per Annexure-B. In the very notice, interest was also quantified by the respondent-authority. The said notice must have been issued by taking lenient view in the matter, even in the absence any provision to extend the time for more than 90 + 60 days.

3. Be that as it may, the fact remains that the petitioner has paid the entire sital value after receipt of

final notice. In this view of the matter, this Court proposes to take lenient view in this matter by not interfering with the discretion exercised by the authority.

Petitioner is stated to be Second Division Assistant working in Central Government Undertaking. However, petitioner has to be saddled with heavy costs, inasmuch as, he cannot take disadvantage of his fault. Petitioner cannot be allowed to misuse the leniency shown by the authorities. To my mind, respondent-authority should have issued the order of cancellation in the year 1998 itself since the petitioner had not paid the sital value. As aforementioned, the respondent-authority has taken lenient view, therefore, this Court does not wish to interfere with the discretion exercised by the authority. But the fact remains that the petitioner is at fault and therefore, he should be directed to pay the costs.

4. Accordingly, the following order is made:

ORDER

The writ petition is ***allowed***. The impugned order at Annexure-F dated 12.10.2011 issued by the respondent cancelling the allotment of site stands quashed. This order would be subject to petitioner depositing cost of Rs.1,00,000/- with the respondent – authority within eight weeks from today.

It is made clear that if the cost is not deposited as mentioned supra, the respondent shall proceed to allot the site in favour of the 3rd party/on auction as per law. Incase, if the cost is deposited, the lease-cum-sale agreement can be executed in favour of the petitioner, if he fulfills all other conditions.

**Sd/-
JUDGE**

NB*