

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER 2021

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION NO.57689/2018 (BDA)

BETWEEN:

DR. R GANESH
AGED ABOUT 56 YEARS
S/O LATE R SHANKARANARAYANA IYER
NO.1250 (30)
4TH MAIN, 'E' BLOCK
2ND STAGE RAJAJINAGAR
BENGALURU-560 010.

...PETITIONER

(BY SRI VIKRAM PHADKE, ADV.)

AND:

1. THE BANGALORE DEVELOPMENT AUTHORITY
KUMARA PARK WEST
BENGALURU – 560 020
REP. BY ITS COMMISSIONER.
2. THE BRUHAT BENGALURU
MAHANAGARA PALIKE
J.C.ROAD, N.R.SQUARE
BENGALURU – 560 002
REP. BY ITS COMMISSIONER.
3. THE REVENUE OFFICER
BRUHAT BENGALURU MAHANAGARA PALIKE

CHANDRA LAYOUT, WEST ZONE/REGION
BENGALURU – 560 040.

...RESPONDENTS

(BY SRI GOUTHAMDEV C ULLAL, ADV. FOR R1)
SRI PAVAN KUMAR, ADV. ON BEHALF OF
SRI H DEVENDRAPPA, ADV. FOR R2 & R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R1 TO RELEASE THE SAID SITE I.E., SITE NO.47, FORMED IN VYALIKAVAL HOUSE BUILDING CO-OPERATIVE SOCIETY LAYOUT, MARENAHALLI, KEMPAPURA AGRAHARA, BANGALORE NORTH TALUK, CHANDRA LAYOUT, BANGALORE-560040, AND ISSUE 'NO-DUE CERTIFICATE' IN THIS REGARD AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP **THROUGH VIDEO CONFERENCE** THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner, purchaser of a site from a layout approved by the first respondent-Bangalore Development Authority (for short "BDA") in the year 2001 is before this Court under Article 226 of the Constitution of India, praying for a writ of mandamus to direct the first respondent to release site No.47, formed in Vyalikaval House Building Co-operative Society Layout, Marenahalli, Kempapura Agrahara, Kasaba Hobli, Bangalore North Taluk (for short " Vyalikaval

Society”) and to issue No Due Certificate in this regard and for a writ of mandamus directing the second and third respondents to issue katha in the name of the petitioner in respect of site No.47.

2. Heard the learned counsel Sri.Vikram Phadke for Sri.N.G.Phadke, learned counsel for the petitioner, Sri.Gouthamdev C Ullal, learned counsel for respondent No.1 and learned counsel Sri.Pavan Kumar for Sri.H.Devendrappa, learned counsel for respondents No.2 and 3. Perused the writ petition papers.

3. Learned counsel for the petitioner would submit that the petitioner purchased site bearing No.47 in the layout formed by Vyalikaval Society under sale deed dated 12.04.2001. The petitioner applied for katha in respect of site bearing No.47 to the second respondent-BBMP along with necessary documents. The second respondent-BBMP by its endorsement dated 04.09.2014 communicated the petitioner stating that on furnishing “No Due Certificate” further action

would be taken on the application of the petitioner. Aggrieved by the said endorsement, the petitioner is before this Court.

4. Learned counsel for the petitioner would contend that the respondent-BBMP was obliged to consider the application of the petitioner for issuance of katha under Section 114 of Municipal Corporation Act, 1976, and at present under Section 149 of the Bruhat Bengaluru Mahanagara Palike Act, 2020 (for short “BBMP Act”). It is his submission that the said provision would not require furnishing of “No Due Certificate” from the respondent-BDA where the layout is formed by private House Building Co-operative Society and approved by the BDA. Referring to sub-Section 6 of Section 149 of the BBMP Act, learned counsel for the petitioner would submit that consultation of BDA would be necessary where the building or land belonging to the BDA or Karnataka Housing Board or any local authority is conveyed in favour of any person. Further, learned counsel would submit that the BDA refused to issue No Objection Certificate only on the

ground that the Vyalikaval Society which had formed the layout has not executed relinquishment deed in pursuance of the approval of layout i.e., in the year 1997. Learned counsel referring to Section 32(9) of the BDA Act, 1976 submits that any person who forms or attempts to form any extension or layout in contravention of the provisions of sub-Section (1) of Section 32 or makes any street without or otherwise than in conformity with the orders of the authority shall be liable, on conviction, to a fine which may extend to ten thousand rupees and nothing else. The consequences against the Society would be under Section 32(9). On the ground that the Society has not executed relinquishment deed, the petitioner who is a bonafide purchaser of site cannot be penalized or made to run from pillar to post for obtaining katha. Thus, he prays for allowing the writ petition.

5. Learned counsel Sri.Gouthamdev C.Ullal appearing for respondent No.1/BDA submits that the layout plan in respect of the layout formed by the Vyalikaval Society at Marenahalli

was approved on 19.05.1997. In terms of the order of approval of the layout, Society was required to execute relinquishment deed in respect of roads, streets and civic amenity sites. But the Society failed to execute such relinquishment deed in respect of the approved layout. Further, learned counsel would submit that the site bearing No.47 purchased by the petitioner is not released for executing the sale deed and for registration. Moreover, it is submitted that those sites are not handed over to the Society for allotment as could be evidenced from Annexure-R10. He submits that Annexure-R10 is the list of sites which was released in favour of the Society in which, site of the petitioner i.e., site No.47 is not released. As such, the petitioner would not be entitled for No Objection Certificate for issuance of katha. Learned counsel would also refer to Section 17 of the Town and Country Planning Act and the Circulars issued under the provisions of the Town and Country Planning Act to contend that unless sites are released, the Society could not have executed the registered

sale deed in favour of the petitioner. Learned counsel would also refer to Circular dated 03.12.2012 as well as Circular dated 24.05.2014, Annexures-R8 and R9, respectively in respect of the procedure and guidelines, laid down by the Government for approval and release of sites.

6. On hearing the learned counsel for the parties and on perusal of the writ petition papers, the only point which falls for consideration is as to whether the respondent-BBMP could deny the katha to the petitioner in respect of site No.47 purchased under sale deed dated 12.04.2001 (Annexure-A).

7. Answer to the above point would be in the negative for the following reasons:

It is an admitted fact that the petitioner purchased site bearing No.47, formed by Vyalikaval House Building Co-Operative Society Limited in various survey numbers of Marenahalli village, Kempapura, Kasaba Hobli, Bangalore North Taluk under registered sale deed dated 12.04.2001 and the layout plan of which was approved by the first

respondent-BDA under order dated 19.05.1997. Document No.R-11 dated 22.12.2018 placed on record by the learned counsel for respondent-BDA along with additional statement of objections dated 30.11.2021 of respondent No.1, indicates that No Objection Certificate for issuance of katha to the petitioner is refused only on the ground that the Society which had formed the layout had not executed relinquishment deed in respect of the roads, civic amenity sites and parks to the first respondent-BDA. If the Society fails to execute the relinquishment deed relinquishing the rights over the road, civic amenity sites and parks, the petitioner cannot be held responsible for the same. Section 32 of the BDA Act provides for approval of new extension or layouts or making new private streets. Once permission is granted to form layout and if the formation of layout is in contravention of the orders of the authority, under Section 32(9) of the BDA Act, the person who contravenes the orders shall be liable for conviction or fine which may extend to Rs.10,000/-. Further Section 33 of the BDA Act in addition

to criminal prosecution provides for alteration or demolition of extension, layout or street, if it is otherwise than in conformity with the orders of the authority under Section 32, after issuing show cause notice. Section 32 would not authorize or permit action against the purchaser of sites from a person who forms the layout or new extension. In the absence of any specific provision to take action against the purchaser of a site from the layout formed by Society, which is approved by the BDA, the petitioner, a bonafide purchaser cannot be penalized. Admittedly layout was approved in the year 1997. No action is taken by the respondent/BDA against the Society which had formed the layout more than last 20 years, either under Section 32 or 33 of the BDA Act. Hence, the action of the BDA is wholly unfair and unreasonable besides arbitrary.

8. The learned counsel for respondent-BDA relies upon Section 17 of the Karnataka Town and Country Planning Act, 1961 (for short 1961 Act) and Annexures R-1 to R-5 to justify

the action of respondent-BDA. On reading of Section 17 it is seen that, it provides for sanction of sub-division of plots or layout of Private Street. Sub-Sections (2A) and (2B) to Section 17 are substituted with effect from 10-09-2015, which requires when a layout is approved by the planning authority to relinquish the roads, parks to the local authority and civic amenity site to planning authority. Sub-Section (2B) requires planning authority to affix its seal on the final layout plan only on completion of development work and on relinquishing the roads, parks and civic amenity sites to the authorities respectively. Earlier to substitution of sub-Sections (2A) and (2B) the requirement of relinquishing road, parks and civic amenity site was regulated under circulars. The above provision or circulars would have no application to the petitioner's case. It is not the case of the respondent-BDA that the site No.47, purchased by the petitioner is either identified as road, park or civic amenity site. When the site of the petitioner is purely a residential site, the respondent-BDA could not object for issuance of khata by respondent-BBMP.

Moreover it is not the case of the respondent-BDA that the site No.47 purchased by the petitioner is in unauthorized layout nor the layout is not approved. On the other hand it is the specific case the respondent-BDA that layout was approved on 19.05.1997.

9. Insofar as BBMP is concerned, respondent -BBMP could not have directed the petitioner to obtain No Objection Certificate for issuance of katha under the impugned endorsement dated 04.09.2014. Section 149 of the BBMP Act and Section 114 of the Municipal Corporation Act, provides for issuance of katha wherever the title of the property is transferred and notice of transferred is received. Sub-Section 6 of Section 149 reads as follows:

“149(6):- Notwithstanding anything contained in this Act, in respect of any building or land belonging to the Bangalore Development Authority or the Karnataka Housing Board or any local authority the possession of which has been delivered to any person in pursuance of any grant,

allotment or lease by the Board of local authority concerned, the transfer of title of any person primarily liable to the payment of property tax shall not be recorded in the corporation registers without consulting the Board or local authority concerned.”

A reading of the above provision would make it clear that while considering the application under Section 149 for transfer of katha, if the building or land belonging to the BDA or Karnataka Housing Board or any local authority has been delivered to any person in pursuance of any grant, allotment or lease, consultation of the Board or local authority would be necessary. In the instant case, transfer of building or land in question is not by the BDA or by the Karnataka Housing Board or by any other local authority. The petitioner purchased the site from the Vyalikaval House Building Co-operative Society layout, approved by the BDA. Therefore, requirement of consultation under sub-Section 6 of Section 149 of BBMP Act, would not arise.

10. Moreover, during the course of argument, learned counsel for the petitioner submitted that adjacent site owners i.e., site bearing No.46 as well as site No.48 have been issued with katha by the second respondent-BBMP and buildings have come up on the said sites. Therefore, in the peculiar facts of the present case, the following direction is issued:

The second respondent-BBMP is directed to consider the application of the petitioner for issuance of katha in the name of the petitioner in respect of site No.47, Vyalikaval House Building Co-operative Society layout, Marenhalli, Kempapura Agarahara, Banglaore North Taluk, without insisting 'No Objection Certificate' from BDA, in accordance with law.

With the above directions, the writ petition is disposed of.

Time for compliance: three months from the date of receipt of a copy of this order.

Sd/-
JUDGE

mpk/-*
CT:bms