



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO. 1668 OF 2018 (GM-KIADB)

BETWEEN:

SRI. H.N.KHALEEL AHAMED
S/O LATE SRI.K.N.NAZEER AHAMED,
AGED ABOUT 48 YEARS,
PROP: R.K. INDUSTRIES NO.338,
7TH CROSS, WEST CHORD ROAD,
RAJAJINAGAR, INDUSTRIAL TOWN,
BENGALURU - 560 010.

...PETITIONER

(BY SRI.K.S.GANESHA., ADVOCATE)

AND:

KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD
(A GOVERNMENT OF KARNATAKA UNDERTAKING)
HAVING ITS REGISTERED OFFICE AT NO.49,
4TH & 5TH FLOOR "EAST WING", KHANIJA BHAVANA,
RACE COURSE ROAD, BENGALURU-560 001
BY ITS CHIEF EXECUTIVE OFFICER.

...RESPONDENT

(BY SRI. P.V. CHANDRASHEKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA SEEKING CERTAIN
RELIEFS.

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Location: HIGH
COURT OF
KARNATAKA



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

ORDER

Sri.K.S.Ganesha., learned counsel for the petitioner and Sri.P.V.Chandrashekar., learned counsel for the respondent have appeared in person.

2. The facts are quite simple and are stated as under:

The petitioner with an intention to set up an industry approached the Board seeking allotment of land. The Board after considering the proposal/ application of the petitioner on 01.06.2012 allotted 1 Acre of land bearing Plot No.IP-47 of Gowribidanur Industrial Area, 1st Stage, Chikkaballapur District, Bengaluru and the Board also issued the Possession Certificate to the petitioner on 16.07.2017 in respect of the allotted land.

In terms and conditions of the allotment, the petitioner paid and the Board received a tentative premium of Rs.24,50,684/- (Rupees Twenty Four Lakh Fifty Thousand Six Hundred and Eighty-Four only) towards consideration. After receipt of the aforesaid consideration, on 09.10.2013, the



Board executed a registered Lease-cum-Sale Agreement in favor of the petitioner.

As things stood thus, citing the delay in implementing the project, the Board issued two notices under Section 34-b(i) and b(ii) of the KIADB Act to the petitioner on 23.08.2017 and 23.09.2017 and informed him to attend the hearing personally. In response to the notices, the petitioner attended the hearing and brought to the notice of the Board that because of the continuous deaths of his family members and owing to the custom prevailing in their community, he could not start the project despite the completion of the building and sanction of the power from the concerned Authorities. He also informed the Board that he would implement the project within four months.

After hearing the matter, Board concluded that the petitioner has made his sincere efforts to implement the project and passed an order on 06.10.2017 and extended the period to implement the project by one year by imposing a fine of Rs.10,50,456/- (Rupees Ten Lakh Fifty Thousand Four Hundred and Fifty Six only) and further directed the petitioner to pay the fine amount within thirty days failing which the allotment would



be canceled automatically and the Board would resume the allotted land to its possession.

Under these circumstances, the petitioner having left with no other efficacious and alternative remedy has filed this Writ Petition under Articles 226 and 227 of the Constitution of India.

3. Learned counsel for the petitioner and respondent have urged several contentions.

4. Heard, the contentions urged on behalf of the respective parties and perused the Writ papers and also the Annexures with utmost care.

5. The short point which arises for consideration is:

Is the Board justified in imposing a
penalty?

Sri.K.S.Ganesha., learned counsel for the petitioner in presenting his arguments vehemently contended that the imposition of penalty by the Board is unjust. Learned counsel drew the attention of the Court to the Lease-cum-Sale Agreement.



He argued by saying that before imposing a fine/penalty as provided under Clause 10(1)(b) of the Lease cum sale agreement, the Board has to take steps as provided under Clause 10(1) and (1)(a) of the lease cum sale agreement. Learned counsel strenuously urged that the Board issued a notice under Section 34-b(i) on 23.08.2017 and before the expiry of 90 days period, the Board issued another notice under Section 34-b(ii) on 23.09.2017. The Board without waiting for the expiry of a total of 120 days, proceeded to pass the order and imposed a penalty.

In reply, Sri.P.V.Chandrashekar., learned counsel for respondent raised several pleas.

A bare perusal of the Lease-cum-Sale Agreement depicts that after issuance of the first notice, 90 days have to be given, and thereafter notice under Section 34-b(ii) has to be issued. But in the instant case, the Board has gone ahead to issue a second notice before the completion of 90 days. Furthermore, under Clause 10(1)(a), if the lessee takes steps to the satisfaction of the lessor for implementation of the project and has started civil construction work, and has spent at least 25%



of the cost towards civil construction, then the Board cannot revise the tentative price of the land.

It is the specific contention of the petitioner that he had already spent 25% of the cost towards civil construction. Hence, the Board ought to have extended the time without imposing a penalty. Hence, I have no hesitation in saying that the action on the part of the Board in imposing a penalty is unjust and the same is contrary to the terms and conditions. In the circumstances, the imposition of a penalty cannot be sustained.

The result is that the Writ Petition will be allowed. This Court orders a writ of certiorari. The order dated 06.10.2017 passed by the respondent in No.ಕ.ಕೈಪ್ರ.ಮಂ/ಕೇಂ.ಕ/ಹಂಚಿಕೆ/130/10581/2017-18 vide Annexure-H is quashed.

Resultantly, the Writ Petition is **allowed**.

**Sd/-
JUDGE**

TKN
List No.: 1 Sl No.: 13