

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2021

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO.26131 OF 2015 (LB-RES)

BETWEEN:

SRI D.DIVAKAR,
AGED ABOUT 52 YEARS,
S/O LATE SRI DONDIBA RAO,
NO.980, E & F BLOCK,
KUVEMPUNAGAR,
PANCHAMANTRA ROAD,
MYSORE - 570 001.

... PETITIONER

(BY SRI.V.B.SHIVAKUMAR, ADVOCATE)

AND:

1. THE COMMISSIONER,
MYSORE CITY CORPORATION,
MYSORE - 570 001.

2. THE COMMISSIONER,
MYSORE URBAN DEVELOPMENT AUTHORITY,
J.L.B.ROAD, MYSORE - 570 001.

... RESPONDENTS

(BY SRI.MOHAN BHAT, ADVOCATE FOR R1;
SRI.SIDDHARTH H.M., ADVOCATE FOR R2)

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

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

ORDER

Sri.V.B.Shivakumar, learned counsel for petitioner Sri.Mohan Bhat, learned counsel for respondent-1 and Sri.Siddharth H.M., learned counsel for respondent-2, have appeared through video conferencing.

2. It is stated that the property bearing No. 5491 situated at 2nd stage, Vijayanagar layout, Devraj Mohalla, Mysore City was allotted to one Thimmappa under a letter for allotment dated 07.04.1988 by the Mysore Urban Development Board (C.I.T.B.), Mysore, Nagarabhivrudhi Vishwastha Mandali Mysore under "Asha Mandira Group Housing Scheme". Thereafter khata was transferred in respect of the property in the records of Mysore Mahanagar Palike on 17.07.2003 and paid the requisite taxes. Thereafter, the khata was made in the name of Thimmappa B., son of Basavarajappa. The Temporary Possession Certificate was issued on 07.04.1988. It is said

that permission was given to put up construction on the site allotted under the scheme. The condition imposed was that the construction work to be carried out without causing any damage to the neighbouring properties and 12 months' time was granted for the completion of the work. The conditions imposed has been undertaken and construction of residential premises was completed by B.Thimmappa and he was given Hakku Patra on 21.07.2003. The sale deed is registered on 02.08.2003 and since then, he was in peaceful possession and enjoyment of the property.

It is said that B.Thimmappa executed a registered sale deed on 18.05.2009 in favor of K.Kantharaj and Smt.Vinutha K.Kantharaj and they in turn have executed a registered sale deed on 10.10.2012 in favour of one Gopal Rao, M.Ravi Shankar and S.Prabhu. They in turn, sold the property in favor of the petitioner under a registered sale dated 28.03.2013 and in that regard, the

petitioner was even given Uttarapatra on 10.07.2013. The petitioner is the owner in possession of the property.

As things stood thus, the Zonal Commissioner issued an intimation letter on 02.05.2015 and one more communication on 06.05.2015. The Commissioner issued an Official Memorandum on 04.06.2015 and thereby, cancelled the khata pertaining to the property of the petitioner.

Under these circumstances, left with no other alternative or efficacious remedy, petitioner has invoked the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

3. Learned Counsel for petitioner has urged several grounds. Heard the contentions urged on behalf of petitioner and respondents. Perused the Annexures with care.

The principal ground on which the Court is asked to quash the Official Communication is that there had been a breach of rules of natural justice, in particular, it is said that the petitioner had been denied a fair hearing by reason of the fact that the petitioner had not been served with notice as required under Section 114-A of the Municipal Corporation Act, 1976 (for short the 'Act').

While arguing the matter, learned counsel for petitioner Sri. V.B. Shivakumar strenuously urged that the first respondent has not exercised the power as per Section 114-A of the Act in true spirit.

It would be relevant to refer to Section 114-A of the Act, which reads as under:-

"Section 114A. Review by the Commissioner.- Where the Commissioner, either suo motu or otherwise, after such enquiry as he considers necessary is satisfied that any transfer of title under section 114 was got recorded in the Corporation register by fraud, misrepresentation, or suppression of facts or by furnishing false,

incorrect or incomplete material, he may within a period of three years from the date of such recording of transfer of title reopen the case and pass such order with respect thereto as he thinks fit:

Provided that no such order shall be made except after giving the person likely to be affected thereby a reasonable opportunity of being heard".

A bare perusal of the proviso makes it very clear that no order shall be made without giving an opportunity to person who may adversely be affected. But in the instant case, no opportunity was given to the petitioner to have his say in the matter. The Official memorandum is issued in violation of the Section 114-A of the Act.

Further, it is pivotal to note that as and when the power under Section 114-A is exercised, the Commissioner is required to pass a speaking order. But in the present case, an Official Memorandum is issued which is totally opposed to the provisions of the statute. That apart, the petitioner was not at all heard.

It is pivotal to note that, the principle of *Audi alteram partem* is the basic concept of the principle of natural justice. The omnipotence inherent in the doctrine is that no one should be condemned unheard.

It is needless to say that whenever a public function is being performed there is an inference, in the absence of an express requirement to the contrary, that the function is required to be performed fairly. The inference will be more compelling in the case of any decision which may adversely affect a person's rights or interests or when a person has a legitimate expectation of being fairly treated. The significance of this approach is that it *prima facie* imposes on all administrators an obligation to act fairly. Without acknowledging this expressly, the majority of the decisions/orders of the public authorities are in practice no more than conscious or unconscious illustrations of the approach.

4. In the result, the writ petition deserves to be allowed. Order of certiorari to quash the intimation letter, the Communication and the Official Memorandum is granted.

In the result, the writ petition is **allowed**. The intimation letter dated 02.05.2015 ಸಂಖ್ಯೆ:ವ.ಆ.ಕ(5):ಕಂ(1): ಪಿ.ಆರ್(ಖಾ):208/2014-15 at Annexure-'B', the Communication dated 06.05.2015 ಸಂಖ್ಯೆ:ಮೈನಪ್ರಾ/ವ.ಕ-4/ದೂರು.1/2014-15 at Annexure-'C' and the Official Memorandum in ಸಂಖ್ಯೆ: ಮೈ. ನ. ಪಾ:ವ.ಆ.ಕ(5):ಕಂ(1):ಪಿ.ಆರ್(ಖಾ):208/2015-16 dated 04.06.2015 at Annexure-'A' are quashed.

**Sd/-
JUDGE**

VMB