

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 12<sup>TH</sup> DAY OF DECEMBER, 2022**

**BEFORE**

**THE HON'BLE MR JUSTICE M.G.S. KAMAL**

**WRIT PETITION NO. 14656 OF 2022 (LB-RES)**

**BETWEEN:**

1. SRI N. VIJAYAKUMAR  
S/O LATE NARASIMHAIAH  
AGED ABOUT 65 YEARS  
R/AT NO.565, HOLENKERE STREET  
KENGARI  
BANGALORE-560060  
KARNATAKA.
2. SRI. K.R. ANJAN KUMAR  
S/O LATE RAMAKRISHNAPPA  
AGED ABOUT 49 YEARS  
R/AT NO.565  
HOLENKERE STREET  
KENGARI  
BANGALORE-560 060  
KARNATAKA.
3. SRI. K.A. RAVINDRAKUMAR  
S/O LATE BHADRAMMA AND ANJANAPPA  
AGED ABOUT 60 YEARS  
R/AT NO.565  
HOLENKERE STREET  
KENGARI  
BANGALORE-560060  
KARNATAKA

...PETITIONERS

(BY SRI. M SHIVAPRAKASH.,ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
BY ITS CHIEF SECRETARY  
VIDHANA SOUDHA  
BANGALORE-560 001.
2. THE PRINCIPAL SECRETARY  
HOUSING AND URBAN  
DEVELOPMENT AUTHORITY  
313, III FLOOR  
VIKASA SOUDHA  
BENGALURU-560 001.
3. THE KARNATAKA HOUSING BOARD  
REP BY ITS COMMISSIONER  
CAUVERY BHAVAN  
K G ROAD  
BANGALORE-560 009.
4. THE SPECIAL LAND  
ACQUISITION OFFICER  
KARNATAKA HOUSING BOARD  
CAUVERY BHAVANA  
BANGALORE - 560 009.
5. SRI. SUVALAL JAIN  
S/O LATE NTHUHAL JAIN  
AGED ABOUT 71 YEARS  
RAJARAJESHWARI JEWELLERS  
PAWN BROKERS  
NO.349, KUVEMPU ROAD  
Kengeri  
BANGALORE - 560 060.
6. SRI. SURESHCHAND JAIN  
S/O ROSHANLAL JAIN

AGED ABOUT 59 YEARS  
SREE RAJALAKSHMI BANKERS  
NO.167, KUVEMPU ROAD  
KENGARI  
BANGALORE -560 060.

AMENDED CAUSE TITLE V/O DATED:14.10.2022

...RESPONDENTS

(BY SMT. K. SHOBHA, HCGP FOR R1 & R2;  
SMT. MYTHILI EIRISLY FOR  
SRI. MANU K., ADVOCATE FOR R3;  
SRI. RAJESWARA P.N., ADVOCATE FOR R4 & R5)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE ENTIRE RECORDS FROM THE RESPONDENT KARNATAKA HOUSING BOARD IN RESPECT OF SY.NO.206 OF KENGARI ISSUE WRIT AGAINST THE RESPONDENT KARNATAKA HOUSING BOARD AND TO GIVE EFFECT TO THE RESOLUTION PASSED BY HOUSING BOARD ON 31.12.2021 AT ANNEXURE-G AND TO GIVE EFFECT TO THE SCHEME PROPOSED ON 50.50 RATION I RESPECT OF LAND BEARING SY.NO.206 MEASURING AN EXTENT OF 6 ACRES 26 GUNTAS BY DAMAGING THE DEVELOPED SITES IN THE LAYOUT PLAN IN SY.NO.206 OF KENGARI.

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

## **ORDER**

Present petition is filed by the petitioners seeking following reliefs;

*"a) To call for the entire records from the Respondent Karnataka Housing Board in respect of Sy.No.206 of Kengeri.*

*b) Issue Writ of Mandamus against the Respondent Karnataka Housing Board and to give effect to the Resolution passed by Housing Board on 31.12.2021 at Annexure -G and to give effect to the scheme proposed on 50:50 Ratio I respect of land bearing Sy.No.206 measuring an extent of 6 Acres 26 Guntas by damaging the developed sites in the layout plan in Sy.No.206 of Kengeri.*

*c) Issue Writ of Mandamus against Respondent KHB to consider the detailed representation made dated:08.06.2022 at Annexure -J and to give effect to the Board Resolution dated:31.12.2021 and allot the developed area/sites/plots in favour of the petitioners-legal heirs of the Narasimhaiah and Anjanappa".*

2. It is the case of the petitioners that one Narasimaiah and Anjanappa being father and uncle respectively of the petitioners were the absolute owners of the land bearing Sy.No.206 situated at Kengeri. That an extent of 6 acres 26 guntas was notified in the year 1990 by the Karnataka Housing Board as per Annexure-B for the purpose of formation of a residential layout, which was

subject matter of challenge in WP No.14063/1993 and W.A.No.5533/1988, later SLP No. 425-426/2011. That the legal heirs of said Narasimahaiah had executed a power of attorney in favour of private respondent Nos. 4 and 5 on 04.03.2005 to take care of the litigation pending before the supreme Court. That the Karnataka Housing Board had come with a proposal of sharing of developed area in the ratio of 50:50 which was accepted by the petitioners and accordingly, the Special Leave Petition was withdrawn on 03.01.2022. That the Karnataka Housing Board failed to comply and give effect to the said proposal /resolution which was placed before the Apex Court on the pretext of the claim being made by respondent Nos. 4 and 5. That the representations made by the petitioners were not considered constraining the petitioners to approach this Court.

3. Respondent No.3 has filed statement of objections along with various documents denying the case of the petitioners. It is contended that the KHB acquired 5-06 acres and 4 acres of Kharab land in respect of

Sy.No.206 of Kengeri village for the purpose of housing scheme. A compensation was paid to an extent of land measuring 2 acres 15 guntas and 17 guntas of kharab land directly to some of the land owners in terms of the award dated 30.06.1992. The respondent No.3-KHB took possession of only 2 acres 15 guntas and 17 guntas of kharab land. The aforesaid acquisition is subject matter of writ petition, writ appeal and special leave petition before the Apex Court. Though, the petitioners have disputed the sale of 3 acres of land in favour of respondent Nos. 4 and 5 the same is admitted by the petitioner No.1 in his representation dated 07.06.2022 produced at Annexure-R24 to the statement of objection. In view of the admissions made therein, the petitioners are not entitled for the relief sought for in the present petition as they do not have right over the land.

4. The above petition is resisted by the respondent Nos. 4 and 5 alleging suppression of material facts by the petitioners. It is contended that the petitioners had

executed a deed of sale dated 02.03.2005 by which they had sold an extent of 3 acres of land in Sy.No.206 of Kengeri village in favour of respondent Nos. 4 and 5. The names of the respondent No.4 and 5 have been mutated in the revenue records and have been reflected. That a suit in O.S.No.4731/2022 is filed by one K.N.Puneeth and five others against the petitioners and the respondents for relief of partition and separate possession of the property and also for declaration regarding the deed of sale dated 02.03.2005 alleged to have been obtained by the respondent Nos. 4 and 5 by fraud. That in the said suit though the interim order was sought the trial court had merely issued notice. That the respondent No.3-KHB has already made allotment of sites in favour of respondent Nos. 4 and 5 and has also executed deeds of sale in favour of the respondent Nos. 4 and 5 in respect of 16 sites and only 7 sites are remained to be allotted to the respondent Nos. 4 and 5. That since the petitioners have admittedly executed deeds of sale they cannot deny the rights of the respondent Nos. 4 and 5.

5. Sri.M.Shivaprakash, learned counsel for the petitioners and Smt.K.Shobha, learned HCGP for the respondent Nos. 1 and 2, Smt. Mythili Girish, learned counsel for Sri.Manu K, learned counsel for the respondent No.3, Sri. Rajeswara P.N, learned counsel for the respondent No.4 and 5 and perused the records.

6. From the submissions of the learned counsel for the parties, it appears that originally an extent of 9 acres 6 guntas was notified. Out of which admittedly 4 acres of land was Kharab land. Out of remaining 5 acres 6 guntas of land, it is stated that some of the family members of the petitioners have received compensation to the extent of 2 acres 32 guntas. Leaving the balance land to be considered for the purposes of granting compensation or other benefits under the scheme, it appears there was a purported sale transactions took place between the petitioners and the respondent nos. 4 and 5 in terms of which the petitioners have executed deed of sale on



02.03.2005 conveying an extent of 3 acres of land in favour of respondent Nos. 4 and 5. That the matter was carried up to the Apex Court wherein it appears the respondent No.3-KHB had made representation that 50% of developed land would be given to the land owners in lieu of the acquisition of their lands under the land sharing scheme. The dispute arose when the respondent No.3-KHB was considering allotment of the developed area as per scheme at which time, respondent Nos. 4 and 5 claiming to have purchased 3 acres of land staked their claim. The petitioner No.1 herein had made a representation before the respondent No.3-KHB on 07.06.2022 which is produced at Annexure-R24 along with the statement of objections filed by the respondent No.3-KHB. Paragraphs 7B and C of the said representation is relevant, which reads as under;

*"B. Whereas, in the year as per the Decree and Judgment in original suit No.349/1993, in execution No.1371/1998, the Hon'ble Court issued sale certificate in the name of Sri. V.R. Ramegowda and the same was registered as document No.34519/2003-04 dated: 06.09.2003. Conveyed two*

*items in the northern undivided share of Narasimhaiah and Smt. Badramma wife of Aninappa i.e.:*

**Schedule "A"**

*All that piece and parcel of land bearing survey No.206, measuring 12 guntas situated at Kengeri Village, Kengeri Hobli, Bangalore South Taluk, Bangalore and bounded on:*

*East by : Private property of Dasappa  
son of Dasanna*

*West by : Road*

*North by : Private property of late  
puttaswamappa*

*South by : Road going to  
Kommanagatta,*

**Schedule "B"**

*All that piece and parcel of land bearing survey No.206, measuring 21 guntas situated at Kengeri Village, Kengeri Hobli, Bangalore South Taluk, Bangalore and bounded on :*

*East by : Road and Bande Mutta Land*

*West by : Canal*

*North by : Road going to Kommanagatta*

*South by : Private Property and  
Bandematt*

*Hence, out of remaining 6 acres 27 guntas of land, an extent of 0-33 guntas land went to Sri. Ramegowda as per the court order as stated above and extent of 5 acres -34 guntas remained in our*

*possession. (In this transaction also as per the schedule in the Document, the land sold was including Kharab).*

*C. Whereas again during the year on 02.03.2005, due to financial constraints the Petitioners and others have sold property in favor of Sri. Suvilal Jain and Sri. Suresh Chand Jain, Jointly of an extent of 3 acres out of 5 acres 34 guntas land bounded on :*

*East by : Road and Bande Matt Property,*

*West by : Remaining portion of the same survey No.206, retained by the petitioner,*

*North by : Remaining portion of the same survey No.206 and Road.*

*South by : Bande Matt Property, by way of registered sale deed registered as document No.45676/2004-05m of book I, stored in CD:KEND 191, in the office of the sub-registrar, Kengeri, Bangalore since then the said Sri. Suvilal jain and other in possession and enjoyment and the khatha of the same was mutated in their names vide MR No.174/2004-05, by the Tahasildar, Bangalore South Taluk, Bangalore. (In this transaction also as per the sale deed schedule, the land sold w as including Kharab)".*

7. The said representation admittedly given by the petitioner No.1-Vijakumar is also annexed to the writ petition at Annexure-J. However, in the said Annexure-J the aforesaid paragraphs as found in Annexure-R24 are not forthcoming. It is necessary to note that the petitioners, more particularly, the petitioner No.1 who in the aforesaid representation has categorically stated about the alienation of the property in favour of respondent Nos.4 and 5 at paragraphs 'B' and 'C' extracted hereinabove ought to have disclosed same in the writ petition. Since the petitioners sought to invoke the extraordinary jurisdiction of this Court it was expected of them to have come with clean hands. Even at paragraph 7 of the petition though the petitioner has made a mention about the misuse of the power of attorney and the mischief being played by the respondent No. 4 and 5, has however not mentioned about the representation made to the respondent No.3- KHB of they having alienated the property.

8. Learned counsel for the respondent Nos.4 and 5 in this regard relies upon the judgment of the Apex Court in the case of **Ramrameshwari Devi and others vs. Nirmala Devi and others** reported in **(2011) 8 SCC 249** wherein Apex Court dealing with issue of abuse of process of court had taken an exception with regard to the parties not disclosing the material facts before the Court.

9. The fact remains that there is alienation of portion of the land in favour of respondent Nos. 4 and 5 in terms of deed of sale dated 02.03.2005. It is brought to the notice of this court that a suit in O.S.No.4731/2022 has been filed by the legal representatives of Narasimaiah and Anjinappa the original owners seeking relief including the relief disputing the execution of deed of sale by the petitioners in favour of the respondent Nos. 4 and 5. In the said suit petitioners and the respondent Nos. 4 and 5 have been arrayed as parties.

10. It is also submitted by the learned counsel for the parties that applications filed under Order 39 rules 1 and 2 of CPC by the plaintiffs in the said suit seeking interim order restraining the respondent No.3-KHB from allotting sites in favour of respondent Nos.4 and 5 and seeking interim order against the respondent Nos. 4 and 5 from alienating the property are pending consideration.

11. Be that as it may. In view of the representation which was given on 07.06.2022 by the petitioner No.1 categorically admitting execution of deeds of sale dated 04.03.2005 and deed of sale dated 02.03.2005, and in view of the plaintiffs in the said suit disputing the said deeds of sale, this Court is of the considered view that the parties be relegated to the trial Court which is seized of the matter.

12. The present petition as noted above is filed by the petitioners being aggrieved by inaction on the part of the respondent No.3. -KHB in responding to or

communicating its decision on the representation given by the petitioners. However, in view of the development as noted above, the further proceedings in the petition at present would be frivolous and an exercise in futility. Since the parties are agitating before the civil court seeking substantial reliefs, even if respondent No.3-KHB issuing any endorsement against the representation of the petitioners, the same would still be subject matter of the adjudication of the issues before the civil Court in the aforesaid suit.

13. Keeping in view of the aforesaid aspect of the matter, the parties are relegated to the civil Court for adjudication of their rights with a direction that they shall maintain *status quo* with regard to allotment of sites till disposal of the interim applications that are pending consideration before the civil Court. All contentions of the parties are left open to be urged before the civil Court. The civil Court shall pass orders in accordance with law without being influenced in any manner whatsoever either by the

earlier interim orders of this Court or its observation in this order, within an outer limit of two (2) months from the date of receipt of the certified copy of this order.

The parties shall extend cooperation in expeditious disposal of the said interim applications. The petition is disposed of accordingly.

**Sd/-  
JUDGE**

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