



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT PETITION NO. 21551 OF 2022 (BDA)

BETWEEN:

SRI.K.N.PRAKASH
S/O.K.N.NARAYAN,
AGED ABOUT 53 YEARS,
RESIDING AT NO.76/2,
4TH MAIN, 15TH CROSS,
MALLESWARAM,
BANGALORE - 560 055.

...PETITIONER

(BY SRI.M.S.BHAGWAT., SENIOR ADVOCATE FOR
SRI.SATISH.K., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
DEPARTMENT OF URBAN DEVELOPMENT,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
VIKASA SOUDHA,
BANGALORE - 560 001.
2. BANGALORE DEVELOPMENT AUTHORITY,
REPRESENTED BY ITS COMMISSIONER,
KUMARA PARK WEST,
T. CHOWDAIAH ROAD,
BANGALORE - 560 020.
3. SMT.PALLAVI RAM,
W/O.B.A.RAM,





AGED ABOUT 53 YEARS,
RESIDING AT NO.T1/194,
PEBBLE BAY APARTMENTS,
1ST MAIN ROAD, BEHIND R.M.V. CLUB,
BANGALORE NORTH,
R.M.V. II STAGE,
BANGALORE - 560 094.

4. THE INQUIRY COMMITTEE FOR
'G' CATEGORY SITES,
REPRESENTED BY ITS SECRETARY,
5TH FLOOR, CAUVERY BHAVAN,
K.H.B. COMPLEX,
BANGALORE - 560 009.

...RESPONDENTS

(BY SRI.G.S.ARUNA., AGA FOR R1;
SRI.K.KRISHNA., ADVOCATE FOR R2 AND 4;
SRI.SANDEEP PATIL., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO a) CALL FOR RECORDS FROM THE RESPONDENT NOS.1 AND 2, PERTAINING TO THE IMPUGNED ALLOTMENT LETTER DATED 07/06/2010 (ANNEXURE-H), IMPUGNED ORDER DATED 06/04/2021 (ANNEXURE-L) AND THE IMPUGNED SALE DEED DATED 23/02/2022 (ANNEXURE-M) b) ISSUE WRIT OR ORDER QUASHING THE IMPUGNED ALLOTMENT LETTER DATED 07/06/2010 BEARING NO.BEMAPRAA UKAA-4:RMV-2:253:A:2010-11 ISSUED BY THE 2ND RESPONDENT (ANNEXURE-H), IMPUGNED ORDER DATED 06/04/2021 PASSED BY THE 4TH RESPONDENT IN INQUIRY NO.1/584/2021 (ANNEXURE-L) AND THE IMPUGNED SALE DEED DATED 23/02/2022 EXECUTED BY THE 2ND RESPONDENT IN FAVOUR



OF THE 3RD RESPONDENT (ANNEXURE-M) c) PASS ANY OTHER ORDER, INCLUDING COST OF THE WRIT PETITION.

THIS WRIT PETITION, COMING ON FOR HEARING INTERLOCUTORY APPLICATION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL ORDER

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

The petitioner is before us invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, calling in question the order of allotment of site bearing No.253A in favor of the third respondent vide Annexure-H, the impugned order dated 06.04.2021 passed by the fourth respondent vide Annexure-L and the impugned Sale Deed dated 23.02.2022 executed by the second respondent in favor of the third respondent vide Annexure-M.



2. The petitioner filed the present Writ Petition seeking following:

"PRAYER

- a) *CALL FOR RECORDS from the Respondents No.1 and 2, pertaining to the impugned Allotment Letter dated 07/06/2010 (ANNEXURE-H), impugned Order dated 06/04/2021 (ANNEXURE-J) and the impugned Sale Deed dated 23/02/2022 (ANNEXURE-M);*
- b) *ISSUE WRIT OR ORDER quashing the impugned Allotment Letter dated 07/06/2010 bearing No.BemAPraa: UKaa-4:RMV-2:253:A:2010-11 issued by the 2nd Respondent (ANNEXURE-H), impugned Order dated 06/04/2021 passed by the 4th Respondent in Inquiry No.1/584/2021 (ANNEXURE-L) and the impugned Sale Deed dated 23/02/2022 executed by the 2nd Respondent in favour of the 3rd Respondent (Annexure-M), in the interest of justice and equity.*
- c) *PASS any other Order which this Hon'ble Court deems fit, including cost of the Writ Petition, in the interest of justice and equity."*

3. The brief facts leading to file the present Writ Petition are as under:



3.1) It is the case of the petitioner that the land in Sy.No.1/1 of Geddalahalli Village was allotted to the share of one Smt.Muninanjamma under the Partition Deed dated 29.07.1957 in her family. The said Muninanjamma and others thereafter sold the land in Sy.No.1/1 of Geddalahalli Village to one Sri.O.Sudarsan (vendor of the petitioner herein). The said O.Sudarsan thereafter, formed sites in the said survey number.

3.2) On 03.01.1977, the second respondent - Bengaluru Development Authority¹ issued a Preliminary Notification proposing to acquire land to an extent of 1,334 Acres 12 Guntas situated in 08 Villages including the land in Sy.No.1/1 of Geddalahalli Village measuring 28 Guntas under Section 17 of Bangalore Development Authority Act, 1976². Thereafter, the second respondent prepared a

¹ 'the BDA', for short

² the BDA Act, 1976



Scheme under Section 18 of the BDA Act, 1976 and sent the same to the first respondent - Government for its approval for formation of R.M.V 2nd Stage Layout, which the first respondent - Government approved under Section 18 of the BDA Act, 1976. Thereafter, a Final Notification came to be issued on 02.08.1978 by the first respondent - Government for acquiring the aforesaid lands for formation of the said layout.

3.3) It is contended that, one Sri.Shivanna and others filed a Writ Petition No.29726/1981 calling in question the Preliminary Notification dated 03.01.1977 and the Final Notification dated 02.08.1978. The said W.P.No.29726/1981 connected with other matters came to be allowed on 27.07.1984, quashing both the Preliminary Notification dated 03.01.1977 as well as the Final Notification dated 02.08.1978. The Writ Court passed



the order with the following observations, which reads as under:

"ORDER

The preliminary notification issued by the B.D.A. which is produced as Annexure-H in W.P.29335 of 1981 only says that all persons interested in the said lands are hereby warned not to obstruct or interfere are hereby warned not to obstruct or interfere with any Surveyors or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said lands by sale, lease, mortgage, assignment, exchange or otherwise or any outlay or improvements made therein without the sanction of the Deputy Commissioner, Bangalore District, Bangalore after the date of publication of the notification shall be disregarded by the Officer assessing compensation for such parts of the said lands as may be finally acquired. The said notification does not provide for filling the objections by the petitioners against the proposed acquisition. Therefore, the said notification, on the fact of it, is bad in law. Though these writ petitions were filed in the year 1981, the B.D.A. has not chosen to file any return controverting the averments made by the petitioners in these writ petitions. In the circumstances, I will have to proceed on the basis of the averments made by the petitioners that they were not served with the



notice as required under Section 17(5) of the B.D.A. Act. Further, their assertion that the lands had been excluded from the scheme of the RAJAMAHAL VILAS SECOND STAGE LAYOUT', Bangalore is also well founded in the absence of any return by the B.D.A. However, the High Court Government Pleader for the State Government submitted that the petitioners have not satisfactorily explained the delay in filing these writ petitions. The Petitioner in paragraph - 11 of the Writ Petition No.29335 has explained the delay in approaching this Court and that apart in view of the fact that the entire acquisition / proceedings were wholly without jurisdiction since the B.D.A. had not complied with the mandatory requirements of Section 17(5) of the B.D.A. Act read with Sections 5 and 6 of the Land Acquisition Act, the impugned proceedings are liable to be quashed.

5. Accordingly, these writ petitions are allowed, the impugned notifications are quashed reserving liberty for the authorities to initiate fresh proceedings, if so advised, in accordance with law.

6. Parties to bear their own costs.

7. The Government Pleader to file memo of appearance within four weeks from this date."

3.4) It is the further case of the petitioner that he recently came to know regarding the fact that his vendor O.Sudarshan had also approached



unsuccessful by this Court in W.P.No.1538/1983 calling in question the Final Notification dated 02.08.1978, and also laid a challenge to the rejection, in Writ Appeal which subsequently came to be withdrawn. However, the fact remains that the entire notifications Preliminary as well as Final were quashed in W.P.No.29726/1981 was operating.

3.5) It is his further case that the second respondent - BDA filed a Review Petition in W.P.No.29726/1981 and other connected matters in Civil Petition No.144 and 144A of 1989, which came to be disposed of on 03.03.1992, modifying the order passed by the Writ Court in W.P.29726/1981 restricting it only to the extent of the lands claimed by the petitioners therein. The operating portion of the order in Civil Petition Supra dated 03.03.1992 reads as under:

"19. In the result, I make the following order:

(i) Office is directed to incorporate one more number as C.P.No.144-A of 1989 in the relevant register



and the petitioners shall furnish the deficit court fee within two weeks:

(ii) The Review Petitions C.P.Nos.144 of 1989 and 144-A of 1989 are allowed:

(iii) The order made in the Writ Petitions is modified as follows:-

A) W.P.No.29726/1981

(i) The Writ Petition is allowed;

(ii) The impugned final notification (Annexure-A) is quashed, only in so far it relates to the following extent of lands:

<u>Village</u>	<u>Sy. No</u>	<u>Extent</u>
		A-G
Mathikere	48/1	1-8
	48/8	0-1
	48/9	0-2
	120/1	0-14
Chikkamaranahalli	1/144	7-32
	Total	18-31

(iii) The B.D.A is at liberty to proceed from the stage at which the illegality was committed;

(iv) The writ petitioner and all the persons who are applicants in the interlocutory applications shall file their objections to the preliminary notification on or before 30th April 1992 before the Land Acquisition Officer;

(v) Respondent No.4 or any other person similarly situated shall also be at liberty to



- present their case in writing before the Land Acquisition Officer and/or the B.D.A. in support of the acquisition of the lands in question on or before 30-4-1992;*
- (vi) *The competent authority shall proceed to consider and hear objections, in accordance with law after 30th April 1992 and a final decision in the matter shall be taken in accordance with law;*
- (vii) *The B.D.A. shall not demolish any structure put up on the land in question till the acquisition is completed and thereafter shall be at liberty to take appropriate steps in accordance with law;*
- (viii) *The writ petitioner or the applicants for impleading, by themselves or through any other person on their behalf, shall not put up any construction or continue any construction activity on the land concerned;*

B) W.P.No.29355/1981:

- (i) *The Writ Petition is allowed;*
- (ii) *The impugned final notification (Annexure-A) is quashed, only in so far it relates to the following extent of lands:*

<u>Village</u>	<u>Sy. No</u>	<u>Extent</u>
		A-G
Dyavasandra	28	4-0
	34/1	0-35
	Total	4-35



- (iii) The B.D.A is at liberty to proceed from the stage at which the illegality was committed;*
- (iv) The writ petitioner and all the persons who are applicants in the interlocutory applications shall file their objections to the preliminary notification on or before 30th April 1992 before the Land Acquisition Officer;*
- (v) Respondent No.4 or any other person similarly situated shall also be at liberty to present their case in writing before the Land Acquisition Officer and/or the B.D.A. in support of the acquisition of the lands in question on or before 30-4-1992;*
- (vi) The competent authority shall proceed to consider and hear objections, in accordance with law after 30th April 1992 and a final decision in the matter shall be taken in accordance with law;*
- (vii) The B.D.A. shall not demolish any structure put up on the land in question till the acquisition is completed and thereafter shall be at liberty to take appropriate steps in accordance with law;*
- (viii) The writ petitioner or the applicants for impleading, by themselves or through any other person on their behalf, shall not put up any construction or continue any construction activity on the land concerned;"*



3.6) It is further case of the petitioner that the Final Notification acquiring the land to form R.M.V. 2nd Stage Layout was also questioned by one Dr.H.S.Hanumantha before this Court in Writ Petition, which was allowed quashing the Final Notification and reversed in Writ Appeal.

3.7) One 'Gokula Education Foundation' also questioned the very same Notifications acquiring the land, which came to be allowed by the Writ Court and confirmed by the Division Bench in the case of **STATE OF KARNATAKA Vs. GOPAL EDUCATION FOUNDATION**³. An unsuccessful petition was filed before the Supreme Court calling in question the order in favour of Gokula Education Foundation in Civil Appeal No.1394-1411/2009 which was rested on 21.01.2015.

³ (2005) 6 KLJ 429



3.8) It is the case of the petitioner that he has purchased a Site bearing No.14, old Site No.9 in Sy.No.1/1 of Geddalahalli Village from Sri.O.Sudarsan on 24.08.1989 (i.e., during the intervening period from the date of order passed at Annexure-A and the order passed at Annexure-B). Now the property has come under the jurisdiction of Bruhat Bengaluru Mahanagara Palike⁴. The BBMP has also transferred Katha and issued Katha Certificate in favour of the petitioner and he has been paying tax in respect of the property to the BBMP. It is his case that notwithstanding the dismissal of petition filed by his vendor in W.P.No.1583/1983, the purchase made by the petitioner is saved in view of quashing of the Preliminary and Final Notifications in **SHIVANNA's** case in WP No.29726/1981 and connected matters, wherein the entire Preliminary as well as Final Notifications to the entire extent supra was quashed

⁴ the BBMP, for short



and restricted subsequently on 30.03.1992 to the lands claimed by the petitioner in the aforesaid petition and connected matters since the petitioner has purchased the said property in the interregnum.

3.9) It is his further case that the second respondent has issued No Objection Certificate dated 24.08.1992 in favour of the petitioner for construction of a residential building in the aforesaid property (Annexure-D).

3.10) It is his further case that the father of third respondent by name Sri.D.B.Chandregowda was a former Member of Parliament, was allowed a site at Matadahally under 'G' Category vide Lease cum Sale Agreement dated 10.02.1982, followed by Possession Certificate dated 12.02.1982 and thereafter, Absolute Sale Deed executed in his favour on 16.10.1995 (Annexure-E, E1 & E2).



3.11) It is contended that the mother of the third respondent by name Smt.B.S.Purna purchased a Flat at Greenfield in the year 2003 (02.01.2003) and she gifted the same in favour of the son of the third respondent Sri.Dhanush Ram on 02.08.2010.

3.12) It is the further case of the petitioner that on 18.08.2009, the father of the third respondent addressed a letter (Annexure-F) to the then Chief Minister requesting him to allow a BDA stray site under 'G' category in favour of his daughter in view of her contribution to the Society, which reads as under:

Ref: DBC:RO:245:2009-10

18th Aug 09'

To,
Hon'ble Chief Minister
Government of Karnataka
Vidhana Soudha
Bangalore.

Sir,

This is in reference to the request by my daughter Mrs.Pallavi Ram, for the allotment of a BDA stray site in Bangalore under 'G' category.

Please find enclosed the details of her contribution to the society and in view of the same I strongly



recommend that her request for an allotment of a suitable BDA stray site under 'G' category in one of the developed layout in Bangalore be considered.

With warm regards.

Yours Sincerely

*Sd/-
(D.B.Chandre Gowda)*

3.13) It is the further case of the petitioner that although the third respondent was not entitled to be allotted with any site under 'G' Category, the then Chief Minister directed the concerned to allot 'G' Category site measuring 50 X 80 in favour of the third respondent forthwith. In pursuant to such direction, the first respondent directed the second respondent vide Letter dated 09.12.2009 to allow a site under Rule 5 of Bangalore Development Authority (Allotment of Sites) Rules, 1984⁵ under 'G' Category in favour of the third respondent considering the same as a special case. The letter dated 09.12.2009 reads as under:

⁵ 'Allotment of Sites Rules, 1984', for short



"ಸಂಖ್ಯೆ:ನಅಇ/396/ಬೆಂಭೂಸ್ವಾ/2009.

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,
ವಿಕಾಸ ಸೌಧ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ:09/12/2009

ಇವರಿಂದ:

ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ,
ನಗರಾಭಿವೃದ್ಧಿ ಇಲಾಖೆ,
ವಿಕಾಸ ಸೌಧ,
ಬೆಂಗಳೂರು.

ಇವರಿಗೆ:

ಆಯುಕ್ತರು,
ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ,
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೆ,

ವಿಷಯ: ಶ್ರೀಮತಿ ಪಲ್ಲವಿ ರಾಮ್, ಇವರಿಗೆ "ಜಿ" ಪ್ರವರ್ಗದಲ್ಲಿ ಬಿಡಿ
ನಿವೇಶನ ಹಂಚಿಕೆ ಮಾಡುವ ಬಗ್ಗೆ.
ಉಲ್ಲೇಖ: ಪತ್ರ ಸಂಖ್ಯೆ: ಬೆಂಅಪಾ:ಕಾವಿ:ಬಿನಿ:307/09-10 ದಿನಾಂಕ:
15/09/2009.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಪ್ರಾಧಿಕಾರದ ಉಲ್ಲೇಖಿತ ಪತ್ರದ
ಕಡೆಗೆ ಗಮನ ಸೆಳೆಯಲಾಗಿದೆ. ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ (ನಿವೇಶನ ಹಂಚಿಕೆ)
ನಿಯಮಗಳು 1984ರ ನಿಯಮ 5 ಹಾಗೂ ಸರ್ಕಾರದ ದಿನಾಂಕ:06-08-1997ರ
ಪರಿಷ್ಕೃತ ಮಾರ್ಗಸೂಚಿಯಡಿ, ಶ್ರೀ.ಡಿ.ಬಿ.ಚಂದ್ರೇಗೌಡ, ಮಾನ್ಯ ಲೋಕಸಭಾ ಸದಸ್ಯರು,
ಇವರು ನಿವೇಶನ ಪಡೆಯದೇ ಇರುವುದರಿಂದ ಅವರ ಮಗಳಾದ ಶ್ರೀಮತಿ ಪಲ್ಲವಿ
ರಾಮ್, ಇವರಿಗೆ ವಿಶೇಷ ಪ್ರಕರಣವೆಂದು ಪರಿಗಣಿಸಿ, ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ
ಪ್ರಾಧಿಕಾರದ ವತಿಯಿಂದ "ಜಿ" ಪ್ರವರ್ಗದಲ್ಲಿ 50X80 ಅಡಿ ಅಳತೆಯ ಬಿಡಿ
ನಿವೇಶನವನ್ನು ಹಂಚಿಕೆ ಮಾಡಲು ಸರ್ಕಾರದ ಅನುಮೋದನೆ ನೀಡಲಾಗಿದೆ ಎಂದು
ತಿಳಿಸಲು ನಾನು ನಿರ್ದೇಶಿತನಾಗಿದ್ದೇನೆ.

ನಿಮ್ಮ ನಂಬುಗೆಯ

Sd/-

(ಎಸ್.ಚಂದ್ರಪ್ಪ)

ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ, (ಪ್ರಭಾರ)
ನಗರಾಭಿವೃದ್ಧಿ ಇಲಾಖೆ."

(as provided at Annexure-G)



No.: NAI/396/BemBhuSwa/2009. Govt. of Karnataka,
Vikas Soudha, B'lore,
dated 09/12/2009

FROM:
Principal Secretary to Govt.
Urban Development Department,
Bangalore.

TO:
Commissioner,
Bangalore Development Authority,
Bangalore.

Sir,
Subject: Regarding allotment of stray site in
'G' category to Mrs. Pallavi Ram.
Ref: Letter No.BemAaPa:KaVi:BiNi:307/09-10
dated 15/09/2009.

In connection with the above matter, drawing attention to the reference letter of the Authority, I am directed to inform you that under Rule 5 of the Bangalore Development Authority (Allotment of Site) Rules, 1984 and the revised guidelines of the Government dated 06-08-1997, since Sri.D.B.Chandregowda, Hon'ble Member of Lok-Sabha, has not been allotted a site, I am hereby directed to inform you that the Government has approved the allotment of a stray site measuring 50X80 feet under "G" Category to his daughter, Smt..Pallavi Ram, considering it as a special case.

Yours Faithfully,

Sd/-

(S. Chandrappa)
Under Secretary to Government, (In-charge)
Urban Development Department.

(English Translation)



3.14) It is his further case that the second respondent in pursuance of the letter dated 09.12.2009 allotted an illusory site bearing No.253A in favour of the third respondent, which is portrayed as being part of Site No.14, old Site No.9 in Sy.No.1/1 of Geddalahalli Village i.e., property belonged to the petitioner, under allotment letter dated 07.06.2010 at Annexure-H.

3.15) It is further case of the petitioner that as on the date of impugned allotment letter, there was no such Site bearing No.253A in the original layout plan of the property belonging to the petitioner as approved by the first respondent - Government. The said site was created by an order of the Commissioner of the second respondent in Site No.14, old Site No.9 in Sy.No.1/1 of Geddalahalli Village on 12.10.2010 as the same is reflected in Layout Plan dated 29.12.2012 to the petition (Annexure-J). This according to the petitioner clearly shows that the site



No.253A was an illusory site which was allotted much earlier to creation of the same itself in the layout on 12.10.2010, whereas the allotment letter is dated 07.06.2010. This clearly indicates the collusion of the respondents.

3.16) A Writ Petition came to be filed by one Sri.Srinath Hegde and others in W.P.No.16074-100/2010 seeking for a declaration that the acquisition proceedings pursuant to the Preliminary and Final Notifications dated 03.01.1977 and 02.08.1978 has lapsed, in the wake of demolition proceedings initiated by the second respondent. The Writ Court after examining the issue and also examining the implementation of the Scheme, while deliberating on allotment of site to the third respondent under the impugned Allotment Letter dated 07.06.2010, specifically observed that the second respondent in the guise of implementation of Scheme could not have demolished the structures, threw the occupants



from the lands and allot Site No.253A in favour of the third respondent under 'G' Category and also issued various directions vide order dated 02.09.2011, declaring that the entire Scheme has lapsed and the second respondent was restrained from taking further coercive action in the name of implementation of the Scheme. A Writ Appeal was filed by the second respondent calling in question the order dated 02.09.2011 which is pending consideration before the Co-ordinate Bench of this Court, wherein an order of *status quo* came to be passed in respect of the lands in dispute therein.

3.17) It is pertinent to note that the petitioner also filed a Writ Petition in No.16738/2010 against the second respondent seeking following reliefs:

"i) *Issue a Writ of certiorari, such other order or direction as this Court deems fit quashing the preliminary notification dated 3.1.1977 No.A3.PR511/SLAO/76-77 at Annexure-K passed by the Special Land Acquisition Officer, Bangalore Development Authority, and final notification*



No.HUD 39 MNJ 78 dated 2.8.1978 passed by Commissioner and Secretary to Government, Housing and Urban Development, at Annexure-D and the award dated 4.10.1988 passed by Additional Land Acquisition Officer, Bangalore Development Authority, at Annexure-M and declare that the development scheme of Gokul II Stage Rajamahal Vilas II Stage Layout in Survey No.1/1 Geddalahalli, under the notifications at Annexure-K & L has lapsed and has become void in terms of Section 27 of the Bangalore Development act, 1976;

- (ii) issue a writ of mandamus or direction or an order directing the respondent to act in accordance with law and not to take law into its own hands and not to dispossess the petitioner from the Schedule property without due process of law; and*
- (iii) to grant such other relief/s as this Hon'ble Court deems fit to grant in the circumstances of the case including allowing this Writ with exemplary costs in the interests of justice."*

The Writ Court vide order dated 01.06.2010 issued notice to the respondent and directed both the parties to maintain *status quo* in respect of the property in question, which was shown as schedule property in the interim prayer of the Writ Petition.



3.18) The petitioner further contended that he had issued legal notice through his advocate to the second respondent on 21.03.2020 (Annexure-K) calling upon them to cancel the impugned Allotment Letter dated 07.06.2010, registered Lease-cum-Sale agreement dated 15.10.2010 and Possession Letter dated 18.10.2010.

3.19) A Public Interest Litigation⁶ came to be filed in W.P.No.23475/2010 and connected matters, wherein this Court passed the following order, with several directions:

- i) *"It is declared that the sites allotted to the respondents/allottees pursuant to the directions issued by the State Government under G-Category is held to be illegal, arbitrary and violative of Art.14 of the Constitution holding that issuing direction by the Government exercising powers under Sec.65 of BDA Act and to allot G-category sites*
- ii) *A direction is issued to the Government to constitute a committee of three members out of*

⁶ PIL, for short



two shall be retired Hon'ble Judges of this court and one shall be from the cadre of retired Chief Secretary of the State of Karnataka.

- iii) Government and BDA shall provide all infrastructure to the committee;*
- iv) Government and BDA are directed to place all the applications submitted by each of the respondents/allottees;*
- v) Committee shall scrutinize each and every application filed by the respective allottees in order to find out whether such allottees were eligible for allotment of sites under BDA Act and Rules considering them as general merit applicants;*
- vi) If the committee is of the opinion that allottees who satisfy the eligibility criteria of the sites to be allotted by the BDA under general allotment rules, such allotments are saved;*
- vii) If the committee is of the opinion that any allottee was ineligible for allotment and if such allottee has constructed the building or sold the property to a third party under registered document, in such circumstances the committee shall recommend to the BDA and to the Government to recover double the value of the amount fixed as per the guide-line value for the purpose of registration of such site in that particular layout as on the date of allotment excluding the sital value deposited by the allottees. If the allottees were not eligible and if no construction is made by such allottees, Committee shall recommend for resuming the sites. Based on*



the recommendation of the Committee BDA shall pass appropriate order in each and every case and if the allotment made to the allottees are saved subject to the fulfilment of the aforesaid condition, BDA shall impose the condition on the allottees or subsequent purchasers not to alienate the property/sites for a period of 10 years from the date of respective allotment.

- viii) Committee is requested to examine all the applications and to make its recommendation within a period of three months from the date of providing all the infrastructure and documents by the BDA and the Government;*
- ix) Till committee submits its report and cases are considered by the BDA thereafter no further construction shall be undertaken either by the allottees or by the purchasers;*
- x) Government shall not allot any sites under G-category and liberty is reserved to the Government to frame appropriate Rules in accordance with law.*
- xi) Two weeks time is granted to the Government to constitute a committee from the date of receipt of this order."*

3.20) In pursuance to the directions issued by this Court in the above PIL, a Three Member Committee came to be constituted, among which two were retired



Hon'ble Judges of this Court and one from the cadre of retired Chief Secretary of the State of Karnataka.

3.21) It is the further case of the petitioner that the third respondent appeared before the Committee and filed a false affidavit stating that she was not allotted any site by any of the authority in Bengaluru or anywhere in the State and she was not possessing any property, accordingly sought to recommend the BDA to confirm the allotment of site allotted to her and fulfil all other formalities pending, if any since she comes within the eligibility criteria in terms of the directions issued by this Court in W.P.No.23475/2010.

3.22) The committee after considering the affidavit, though records that the allottee is daughter of politician and politician's kith and kin have sufficient influence with regard to allotment of site under "G" Category and present allottee has got one and the



same is primarily because of the relationship stated supra and she was allotted a site under "G" Category by the BDA. However, considering the affidavit which was not opposed by the BDA, recommended the BDA to confirm the allotment of site allotted to the third respondent as she has fulfilled the eligibility criteria for allotment of site under the general category as per Allotment of Site Rules, 1984 and fulfil other formalities pending if any and effectuate the allotment.

3.23) In pursuance of the impugned order by the Committee, the second respondent executed absolute Sale Deed in favour of the third respondent on 23.02.2022 (Annexure-M).

3.24) It is further case of the petitioner that the third respondent who appeared before the Committee suppressed material facts before the Committee and by filing a false affidavit before the Committee



playing fraud and misleading the Committee, got the order.

3.25) The petitioner also filed a suit in O.S.No.3813/2022 seeking for declaration and injunction against the second and third respondent, with following prayer:

- "a) *DECLARE that the Plaintiff herein is the absolute owner of Suit Schedule Property and*
- b) *PASS A JUDGMENT AND DECREE DECLARING that the Lease-cum-Sale Agreement/Sale Deed dated 15/10/2010 executed by the 1st Defendant in favour of the 2nd Defendant, bearing registered document No.BDA-1-01647-2010-11, stored in C.D.No. BDAD159 registered in the office of Sub-Registrar, BDA, Bangalore is not binding on this Plaintiff; CONSEQUENTLY CANCEL the Lease-cum-Sale Deed dated 15/10/2010 executed by the 1st Defendant in favour of the 2nd Defendant bearing registered document No.BDA-1-01647-2010-11, stored in C.D.No. BDAD159 registered in the office of Sub-Registrar, BDA, Bangalore AND DIRECT the concerned registering authority to note the factum of cancellation of Lease-cum-Sale Agreement dated 15/10/2010;*
- c) *DIRECT the 2nd Defendant to produce the original Lease-cum-Sale Agreement dated 15/10/2010 executed by the 1st Defendant in favour of the 2nd Defendant, bearing registered document No.BDA-*



1-01647-2010-11, stored in C.D.No. BDAD159 registered in the office of Sub-Registrar, BDA, Bangalore for the purpose of cancellation of aforesaid instrument;

- d) *GRANT PERMANENT INJUNCTION restraining the Defendants herein, their servants, agents, henchmen, administrators, legal representatives, assignees or anybody claiming under them from interfering with the peaceful possession and enjoyment of Suit Schedule Property by Plaintiff; AND*
- e) *PASS any other order as this Hon'ble Court deems fit in the facts and circumstances of the above case including the cost of this suit, in the interest of justice and equity.*

SUIT SCHEDULE PROPERTY

All that piece and parcel of property bearing Site No. 14 (Old No.9), carved out of Sy. No. 1/2, Old Village Panchayat Khatha No. 465, present 7, measuring East to West 80 feet and North to South 50 feet admeasuring 4000 sq.ft., formed in Sy.No.1/1 of Geddalahalli Village, Bangalore North Taluk, Bangalore, presently situated at 6th Cross, Bande Layout, Geddalahalli Village, Bangalore along with a 1 square house constructed thereon and bounded on:

East by : Property Nos. 7 and 8

West by : 40ft. B.D.A Road

North by : Property No.13

South by : Property No.15"



3.26) An application was filed seeking a temporary injunction in I.A.No.1. The third respondent appeared and filed her objections to the said application. The Trial Court after considering the application and the objections, disposed of the I.A on 21.07.2022 with the following order:

"ORDER

I.A No.1 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendant No.2 and any other persons are restraining from interfering and dispossessing the plaintiff from the suit schedule property.

Further, both plaintiff and defendant No.2 are directed to maintain status quo in the suit property till disposal of the Writ Appeal pending before Hon'ble High Court of Karnataka."

3.27) The order passed on I.A.No.1 was the subject matter before this Court in MFA No.5803/2022. This court at the time of issuance of notice, after considering the case advanced by both the parties, directed both the parties i.e., the petitioner and respondent No.2 herein who are the plaintiff and



defendant No.2 before the Trial Court to maintain *status quo* in respect of the property and also directed both the parties not to proceed with any further construction in the scheduled property till the next date of hearing on 21.09.2022. Subsequently, after hearing the rival contentions, this Court decided and disposed of the appeal on 27.10.2022 directing the parties to maintain *status quo* till disposal of the suit and directed them to co-operate with the Trial Court for speed disposal of the suit in O.S.No.3813/2022 pending before the Civil Court.

3.28) The petitioner further contends that he has made an application before the concerned authority under the Right to Information Act, 2005⁷ seeking records with respect to formation/ creation of Site No.253 and also issuance of modified plan. The concerned two Sections of the BDA, which were concerned with maintaining records pertaining to creation of the site,

⁷ 'the RTI Act', for short



issued two Endorsements respectively dated 29.09.2022 and 14.10.2022. As per the endorsement dated 29.09.2022, the Urban Project Division informed that, the records with reference to formation of Site No.253A, 253B and 253C were not found in their division and the same may be sought at Engineering Section of the Authority. However, in the endorsement issued by the Engineering Section dated 14.10.2022, it is clearly stated that no records pertaining to creation of Sites No.253A, 253B and 253C were available in the office (Annexure-T & T1).

3.29) It is the further case of the petitioner that the BDA has allotted a 'G' Category site in favour of the third respondent exceeding its jurisdiction and power under Rule 5 of Allotment of Site Rules, 1984 and the same is opposed to Rule 5 and Rule 10(3) of Allotment of Site Rules, 1984, as Rule 5 provides that stray sites can be allotted in favour of a person if he or any member of his family does not own a site



or a house in Bengaluru Metropolitan Area. Further, the documents produced along with the Writ Petition clearly indicates that father of the third respondent who was Ex-MP was allotted a 'G' Category site by the very same BDA itself in the year 1982 by way of Lease-cum-Sale agreement and subsequently, an Absolute Sale Deed came to be executed in the year 1995. The mother of the third respondent purchased a Flat within the Bengaluru Metropolitan Area in the year 2003 and gifted the same in favour of son of the third respondent. The third respondent suppressing all these material facts, filed false affidavit before the Committee and made the Committee to pass an order in her favour by playing fraud and misleading the Committee.

3.30) The petitioner further contended that even a perusal of Allotment Order and creation of site makes it clear that there is collusion between the respondents. The allotment order was passed on 07.06.2010, whereas



the Site No.253A was created and incorporated in the plan by the order of the Commissioner on 12.10.2010. This conspicuously postulates that Site No.253A was an illusory site which was allotted on 07.06.2010, notwithstanding the order of *status quo* passed in the Writ Petition filed by the petitioner calling in question the Notifications in respect of his property as per the schedule in the petition stated supra and the interim order passed thereon on 01.06.2010 to maintain *status quo*. Accordingly, the petitioner is before this Court calling in question the order of Allotment, issuance of Possession Certificate, Lease-Cum-Sale Agreement, the order of recommendation and execution of Sale Deed.

4. In response to the notice, both respondent No.2 - BDA and contesting respondent No.3 - Allottee appeared before the Court and filed their separate statement of objections.



5. Respondent No.2 - BDA has filed statement of objection contending that the Writ Petition filed calling in question the impugned Allotment Letter and Sale Deed is not maintainable as the same is hit by delay and laches, the reason being the allotment letter was issued on 07.06.2010 and the petition is filed on 29.10.2022 i.e., after a lapse of 12½ years and the order impugned passed by the fourth respondent was dated 06.04.2021 and the Writ Petition is filed after lapse of more than 1½ year, as such the Writ Petition is liable to be dismissed on the aforesaid ground of delay and laches.

5.1 Further, it was contented by the BDA that Site No.253A was carved out in the Sy.No.1/2 of Geddalahalli Village measuring 18 Guntas including 1 Gunta of Kharab land acquired along with certain other lands for the public purpose for formation of residential area called Rajmahal Vilas II Stage Layout under Preliminary Notification and Final Notification dated 23.01.1977 as well as 02.08.1978 both



gazetted on 24.02.1977 and 31.08.1978. It is contended that one Annayyappa was the notified Khathedar of the said land and award was passed on 10.06.1981 and the same was approved on 10.02.1982 and the same was deposited in the Civil Court on 15.09.1983, possession of the above land was taken on 04.03.1982 and handed over to the Engineering Section on 15.04.1982.

5.2 It was contended by the BDA that Site No.253A measuring 50X80 is one of the sites formed in the above acquired land in Sy.No.1/2 of Geddalahalli Village. The State Government vide order dated 09.02.2009, directed the BDA to allot a site measuring 50X80 to the third respondent under 'G' Category according approval to the same, considering the same as a special case. Accordingly, on 07.06.2010 Allotment letter was issued in favour of the third respondent and thereafter she has deposited the site value on 09.06.2010. A lease cum



sale agreement was executed in her favour in respect of Site No.253A on 15.10.2010 and the same was issued on 15.10.2010 and the Possession Certificate in respect of the above site was issued on 18.10.2010.

5.3 The BDA further submitted that in view of the order passed by this Court in PIL, in W.P.No.23475/2010, a three member Committee was constituted, the Committee upon deliberation and enquiry on the document produced by the third respondent, recommended the BDA to confirm the allotment of the above site to the third respondent and fulfil other formalities. Accordingly, an absolute Sale Deed came to be executed in favour of the third respondent on 23.02.2022 which was registered on 24.02.2022.

5.4 The BDA further submits that the petitioner claims to have purchased Revenue Site No.14 with its old No.9 from one Sri.O.Sudarsan on 20.04.1989 which was



carved out of the land in Sy.No.1/1 of Geddalahalli Village. The land in Sy.No.1/1 of Geddalahalli Village was also acquired by the BDA under the aforesaid Notifications and after issuance of Final Notification, award was passed, the amount was deposited before the Civil Court, the possession was taken and handed over to the Engineering Section, as such the property vested with the Government, way back in the year 1982 itself. The Sale Deed dated 20.04.1989 in favour of the petitioner was after vesting of the land with the BDA, as such the Sale Deed will not confirm any right, title to the petitioner as the Sale Deed itself is void and *non-est*.

5.5 Further it is submitted by the second respondent - BDA that the site claimed by the petitioner was formed/carved out of Sy.No.1/1 of Geddalahalli Village and the site allotted in favour of the third respondent i.e., Site.No.253A was carved out in Sy.No.1/2 of Geddalahalli Village. Therefore, the



petitioner has no *locus-standi* to seek a challenge to the allotment made in favour of the third respondent.

5.6 Further, the BDA submitted that the order passed in W.P.No.29726/1981 was restricted only in respect of lands of the petitioners therein who filed the petition i.e., in respect of Sy.No.1/1 of Chikkamarenahalli Village and not either in Sy.No.1/1 or Sy.No.1/2 of Geddalahalli Village, out of which the above site No.253/A was carved out.

5.7 Further it was submitted that the vendor of the petitioner earlier filed a Writ Petition in W.P.No.1538/1983 challenging the acquisition of the land in Sy.No.1/1 of Geddalahalli Village which has resulted in a failure and the appeal filed later on was also came to be withdrawn by the said vendor. As such, the acquisition proceedings in respect of Sy.No.1/1 of Geddalahalli Village have attained finality. In that view of the matter, the petitioner



being the subsequent purchaser cannot maintain the Writ Petition as the claim of title itself is null and void and do not confer any right, title and interest on the petitioner.

5.8 Further it was contented by the BDA that the documents obtained in furtherance of the Sale Deed of the year 1989 will not confer any right to the petitioner over the acquired land. As such, the contention that the sale deed is saved by the judgment of this Court in **SHIVANNA's** case supra has nothing to do with allotment of Site No.253A in favour of the third respondent as the petitioner has no right over the above site.

5.9 It is further contented by the second respondent - BDA that the NOC dated 24.08.1992 issued in favour of the petitioner for construction of residential building in Site No.14 of Geddalahalli Village is denied as the Joint Director of Town Planning who



has issued the same is not the acquiring Authority and the competent authority over the acquired land of the BDA.

5.10 Further, it was again contended that, the land Site No.253A was part of Sy.No.1/2 of Geddalhalli Village and not part of Sy.No.1/1 of Geddalhalli Village. It was further contended that even otherwise also the petitioner has no right over the land in Sy.No.1/1 or 1/2 of Geddalhalli Village. Therefore he has no *locus-standi* to seek a challenge to the allotment of Site No.253A in favour of the third respondent. With this, the BDA sought to dismiss the Writ Petition.

6. Contesting respondent/ respondent No.3, has contended more or less as contended by the BDA.

6.1 The third respondent contended that she comes within the eligibility criteria as she has rendered service to the public/ community in the field of



mathematics by establishing the Abacus learning of higher arithmetic School of Karnataka, which is popularly known as 'Aloha School of Karnataka'. The students of Aloha School of Karnataka have set National record in the 'Limca book of Records' for demonstrating the fastest multiplication and division. Based upon the service rendered by the third respondent in the field of mathematics, the 'G' Category site was allotted to her and the same is confirmed by the fourth respondent by the impugned order in furtherance of direction issued by this Court in Public Interest Litigation directing the second respondent - BDA to execute the Sale Deed and complete all formalities.

6.2 It was further contented by contestant respondent No.3 that the petitioner has no *locus standi* to challenge the allotment of Site No.253A which was carved out in Sy.No.1/2 as his claim was in respect of Site No.14, old Site No.9 carved out of Sy.No.1/1.



Even otherwise, his vendor who earlier filed Writ Petition in the year 1983 calling in question the acquisition proceedings tasted failure and withdrawn the Writ Appeal. As such, the acquisition proceedings in respect of Sy.No.1/1 has attained finality. In these circumstances, the petitioner cannot maintain the Writ Petition.

6.3 The third respondent further contended that she has fulfilled all the eligibility criteria as mentioned in Rule 5(6)(iii) of Allotment of Site Rules 1984. The said Rule prescribes that 'G' Category sites shall be allotted only if he or any member of his family does not own a site or a house in the Bangalore Metropolitan Area and has not been allotted a site by the BDA or any other authority within the Bangalore Metropolitan Area. In other words, the said Rule prescribes that any dependent of the family should not own a site or a house in Bangalore Metropolitan area and has not been allotted a site or a house by



the BDA. In the present case, the family members of the third respondent i.e., the husband or dependent children of the third respondent do not own a site or house in Bangalore Metropolitan Area and has not been allotted a site or a house by the BDA or any other authority. As such the contention of the petitioner that the site was allotted in favour of the third respondent is in violation of Rule 5(6)(iii) is untenable and has no legs to stand, as such the petition required to be dismissed.

6.4 The third respondent further contented that a Criminal case was filed by her with the Sanjaynagar Police Station, wherein notice was issued calling the BDA to submit the records under Section 91 of Cr.P.C, with reference to the property of the third respondent bearing Site No.253A. Pursuant thereto, the BDA conducted a Survey and submitted the Survey Report to the Police stating that Site No.253A is found in Sy.No.1/2, as such the contention of the



petitioner that the site is formed in Sy.No.1/1 is unsustainable in the eyes of law, as such the Writ Petition is liable to be dismissed.

6.5 The third respondent specifically urges on the *locus standi* of the petitioner to seek a challenge to the allotment of site No.253A in Sy.No.1/2. Accordingly, sought to dismiss the Writ Petition.

7. All the concerned learned counsel appearing for the respective parties are heard and perused the entire materials placed before us i.e., the Writ Petition papers as well as the statement of objections filed by the second respondent - BDA and contesting respondent No.3.

8. Sri.M.S.Bhagwat, learned Senior counsel assisted by Sri.Satish.K, learned counsel for the petitioner with all vehemence submits that the site bearing No.253A was formed and created as an illusory site, now overlapping on the part of the site purchased by the petitioner in the year 1989.



9. He further asserts that the BDA has not adhered to Rule 5 and 10 of Allotment of Site Rules, 1984 while allotting Site No.253A in favour of the third respondent. Even otherwise the third respondent does not fulfil the eligibility criteria as carved out for allotment of 'G' Category site in favour of a person. The Rule prescribes that for allotment of G-category sites, a person must be in public life. That means, "the persons who are serving the public or available to the public for service as a whole or involved in the affair of the community in different capacity". The third respondent does not fit in any of the ingredients stated in the said Rule stated above. The only reason for allotment of Site No.253A in favour of the third respondent is she being the daughter of an Ex-MP. The letter requesting allotment of site in favour of the third respondent by her father at Annexure-F indicates the same, stating that she has contributed to the Society and in view of the same, he strongly recommends that her request for an allotment of suitable BDA site under 'G'



Category in one of the developed areas be considered. The same was countersigned and endorsed by the then Chief Minister to consider the request forthwith for allotment of the site measuring 50 X 80. In pursuance of the same, Annexure-G came to be passed on 09.12.2009 by the Principal Secretary, Urban Development Department stating that in terms of the revised guidelines dated 06.08.1997, since the father of the third respondent, the then Lok-Sabha member has not been allotted a site, his daughter - the third respondent be considered for allotment of a site in 'G' Category measuring 50 X 80, considering the case as a special case and the same is approved by the Government. This clearly shows that the State has given largesse as per the sweet will and whims of the political entities and succumbed to the political pressure, though the person who claimed the site is not eligible within the parameters set out in the particular Rule i.e., Rule 5.



10. He further submits that the third respondent appeared before the Committee and filed false affidavit stating that none of her family members have been allotted any site which is false *per se*, the reason being her father was allotted a site way back in the year 1982 by the BDA itself by means of Lease-cum-Sale agreement and executed an absolute sale deed in the year 1995, bearing site No.3 in extension of Matadahalli. Further, the mother of the third respondent purchased the house/apartment in Greenfield way back in the year 2003 and gifted the same in the year 2010 in favour of son of the third respondent. This fact has been suppressed by the third respondent in her affidavit before the Committee. In these circumstances, she has obtained the order by suppressing material facts, playing fraud & misleading the Committee. This amounts to fraud and in view of settled position of law, fraud and justice does not dwell together. As such the third respondent is not entitled for any site and the



allotment order as well as the order passed confirming the same to execute the Sale Deed requires to be quashed.

11. He further submits taking us through the petition papers that the allotment letter was issued on 07.06.2010. He emphasizes upon the interim order passed by this court on 01.06.2010 in the Writ Petition filed by the petitioner, calling the acquisition proceedings in respect of the site number stated in the schedule to the Writ Petition bearing No.16738/2020. The Writ Court upon considering the materials placed before it, passed an order directing both the parties i.e., the petitioner and the second respondent - 2 BDA to maintain *status quo* in respect of the property in question. The allotment order passed is directly in contravention of the order passed by the Writ Court since the site allotted is overlapping on the site which was purchased by the petitioner way back in the year 1989.



12. So far as contention of the second and third respondents regarding *locus standi* and Sale Deed of the petitioner as null and void, learned Senior counsel taking us through the Judgment of the Writ Court in W.P.No.2976/1981 connected with W.P.No.29355/1981 dated 27.07.1984 as well as the Civil Petition i.e., Review Petition order in Civil Petition No.144 & 144A/1989 dated 27.07.1984, submits that the entire notification in respect of an area of 1,334 Acres 12 Guntas of land situated in 8 villages had been quashed, which was subsequently got corrected and restricted only with respect of the lands claimed by the petitioners therein in the year 1992. The sale deed of the petitioner was in the interregnum, therefore saved.

13. He further submits that a perusal of Allotment Letter clearly shows that it was issued on 07.06.2010 allotting illusory Site No.253A in favour of the third respondent. Learned Senior counsel emphasis on the word 'Illusory Site' to contend that there was no such site



formed or shown or indicated in the original plan. The said site was created or formed on the layout by the order of Commissioner of BDA on 12.10.2010, which is clearly reflected in the Layout Plan produced at Annexure-J. A note was found place in the said Layout Plan creating Site No.253/A, 253/B and 253/C stating that "these sites are incorporated as per order of the Commissioner dated 12.10.2010 in the File No.810/2010-11". This clearly shows there was no such site available on the land. An illusory site was created and was allotted by means of the Allotment Letter. This clearly shows that the respondents are in collusion in creating the illusory site and now coming on the site purchased by the petitioner.

(emphasis by us)

14. Learned Senior counsel further contended that the Committee constituted in furtherance of the order passed by this Court in the PIL, has though observed in Paragraph No.6 as under:



"6. Allottee is a House Wife. She is a Social Worker by profession. Allottee is the daughter of a Politician. Politicians kith and kin have sufficient influence with regard allotment of site under "G" category and the present allottee got one. It is primarily because of this relationship that she was allotted a site under "G" category by the Bangalore Development Authority"

However without deliberating anything on that, only on the basis of the affidavit filed by the third respondent, which was not opposed by the BDA (though very well aware of the fact that her father has already been allotted a site by the BDA itself), the Committee passed the order recommending the BDA to confirm the allotment of site. This is nothing but a fraud on the Court as well as the Committee by means of misrepresentation and suppression of material facts, as such, the allotment of site which is the creature of fraud requires to be quashed.

15. Learned Senior counsel further submits that the State and its instrumentalities are very keen in showing unnecessary favouritism and nepotism in favour of the



third respondent for the only reason that she is the daughter of the then sitting MP.

16. So far as contention of respondents 2 and 3 regarding locus standi, learned Senior counsel submits that the petitioner has filed a suit seeking a declaration that he be declared as owner of the property in O.S.No.3813/2022 and also a declaration against the Lease-cum-Sale Agreement, Sale Deed dated 15.10.2010 and sought cancellation of the same stating that the same is now shown to be on the land i.e., site purchased by the petitioner which is clearly stated in the schedule to the aforesaid suit.

17. He further submits that though the third respondent filed objections to the I.A seeking temporary injunction against the interference in the enjoyment of the site by the petitioner, the Civil Court upon consideration of the entire material placed before it, allowed I.A.No.1 filed seeking temporary injunction which we have already



extracted herein above, directing the parties to maintain *status quo* and restraining defendant No.2 and any other persons from interfering and dispossessing the petitioner/plaintiff from the schedule property. The said order was the subject matter before this Court in MFA No.5803/2022, wherein, at the first hearing, *status quo* order come to be issued. Subsequently, the appeal was disposed of continuing the interim order till the disposal of the suit and directed both the parties to co-operate for the speedy disposal of the suit stated supra. In these circumstances, the petitioner is having all rights and *locus* to maintain the petition since illusory site bearing No.253A which is shown in the modified Layout plan is coming/ overlapping on the site purchased by the petitioner in the year 1989.

18. He further submits taking us through the endorsement issued by the two sections of the BDA with whom the petitioner had sought certain records by means of an application filed under the Right to Information Act,



wherein both the Sections of the BDA have stated that such records were not available in their office. This shows that except the endorsement in the modified plan and creation of the site, no proceedings were held, the basis on which the said sites were created. This clearly shows that the sites created are illusory sites and now upon such allotment the third respondent and the BDA are coming over the site of the petitioner.

19. Learned Senior counsel further submits that the unnecessary largesse favoured by the State in favour of the third respondent is uncalled for and unsustainable in law. He submits that any such largesse to be confirmed by the State on any person must be founded on sound, transparent, discriminable and well-defined policy, which shall be made known to the public. However in the case on hand, there is nothing such kind of record forthcoming in the office of the BDA. This clearly shows that the BDA has succumbed to the political pressure as well as the pressure of the State instrumentalities and acted according to the



sweet will and whims of the political entities by means of allotting the site under 'G' Category in favour of the third respondent though she is not entitled and eligible within the meaning of Rule 5 and 10 of Allotment of Site Rules, 1984. To support his arguments, learned Senior Counsel relied on the judgment of Co-ordinate Bench of this Court in W.P.No.9616/2020 and stresses more on Paragraph No.25 & 26 which reads as under:

"25. However, in the present case favoritism has been done by respondent No.2 to respondent No.3 without following the prescribed procedure. Therefore, the initial allotment as well as the sale deed dated 28.07.2020 deserves to be set aside.

26. The Hon'ble Supreme Court in the case of Saroj Screens Private Limited v. Ghanshyam and others reported in (2012) 11 SCC 434 in paragraphs-38 and 39 is held as under:

"38. The question whether the State and/or its agency/instrumentality can transfer the public property or interest in public property in favour of a private person by negotiations or in a like manner has been considered and answered in negative in several cases. In Akhil Bhartiya Upbhokta Congress v. State of M.P. [(2011) 5 SCC 29 : (2011) 2 SCC (Civ) 531] this Court was called upon to examine whether the Government of



Madhya Pradesh could have allotted 20 acres land to Shri Kushabhau Thakre Memorial Trust under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 read with the M.P. Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975. After noticing the provision of the Act and the Rules, as also those contained in the M.P. Revenue Book Circular and the judgments of this Court in S.G. Jaisinghani v. Union of India [AIR 1967 SC 1427], Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489], Erusian Equipment and Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70], Kasturi Lal Lakshmi Reddy v. State of J&K [(1980) 4 SCC 1], Common Cause v. Union of India [(1996) 6 SCC 530], Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] , LIC v. Consumer Education & Research Centre [(1995) 5 SCC 482] and New India Public School v. HUDA [(1996) 5 SCC 510] , the Court culled out the following propositions: (Akhil Bhartiya Upbhokta case [(2011) 5 SCC 29 : (2011) 2 SCC (Civ) 531] , SCC p. 60, paras 65-66)

"65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such



policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution."

39. The factual matrix of the instant case shows that before granting 30 years' lease of the plot in favour of the appellant, the Corporation neither issued any advertisement nor followed any procedure consistent with the doctrine of equality so as to enable the members of the public to participate in the process of alienation of public property. Therefore, the conclusion reached by the High Court, though for different reasons, that the resolution dated 28-8-1991 and the sanction accorded by the State Government vide Letter dated 12-



6-2000 are legally unsustainable does not call for interference by this Court."

With this, learned Senior counsel sought to allow the Writ Petition and quash the impugned allotment letter, order for confirmation and the absolute sale deed executed in furtherance thereof.

20. In contrast, Sri.K.Krishna, learned counsel appearing for the second respondent - BDA with all vehemence submits that the BDA has allotted the site as per the direction of the State Government vide Annexure-G. The BDA being the organ of the State required to comply with the directions of the State Government, in terms of an intimation from the Office of Principal Secretary, Urban Development Department on 09.12.2009 according approval for allotment of 'G' Category site measuring 50X80 in favour of the third respondent, and in compliance with the order of the State Instrumentality, allotted the site. As such there is no



illegality in allotment of site in favour of the third respondent.

21. He has further submitted that the petitioner has no *locus standi* to challenge the order of allotment, as his vendor lost his case in the year 1987 in Writ Petition filed in the year 1983 seeking quashing of the acquisition proceedings in respect of Sy.No.1/1 of Geddalahalli Village and the appeal filed by him comes to be withdrawn subsequently and the acquisition proceedings had attained finality and in view of passing of the award, depositing the award amount and taking possession and handing over it to the Engineering Section, the land stood vested with the BDA and the vendor has no *locus* and right to convey the said land in favour of the petitioner in 1989 since the entire proceedings were completed in the year 1982 itself, as there is no right conferred on the petitioner. Even otherwise the land wherein Site No.253A was created was carved out in Sy.No.1/2 and the site claimed by the petitioner under the Sale Deed of 1989 i.e., Site No.14,



old Site No.9 was carved out in Sy.No.1/1. In view of completion of acquisition proceedings way back in the year 1982 and the unsuccessful attempt of petitioner's vendor in the year 1987 itself in seeking quashing of the acquisition proceedings in respect of Sy.No.1/1, the petitioner cannot maintain the present Writ Petition. Further it was contented that the petitioner has filed a suit seeking for declaration which is pending for consideration before the Civil Court challenging the very same allotment and other orders questioned in the Writ Petition, as such the Writ Petition itself is not maintainable and sought to dismiss the Writ Petition.

22. Sri.Sandeep Patil, learned counsel appearing for constesting respondent No.3 argued in toe with Sri.K.Krishna, and submitted that the case of the third respondent was considered as she comes within the four of law as envisaged in Rule 5 for the purpose of allotment of 'G' Category site. The third respondent was very much known in the education field for her contribution as she



has rendered her service to the Public/ Community in the field of Mathematics by establishing Abacus learning of higher arithmetic school of Karnataka, which is known as 'Aloha School of Karnataka'. The students of the Aloha School of Karnataka have set record in 'Limca book of Records' for demonstrating the fastest multiplication and division. It is for this service which comes within the purview of the eligibility criteria under Rule 5, the third respondent case was considered for allotment of 'G' category site.

23. He further submits that the restriction provided for allotment of Site in Rule 5 is that none of the family members, own a site or house in the Bangalore Metropolitan Area and has been allotted a site by the BDA or any other authority within the Bangalore Metropolitan Area, which should be considered with respect to the family of the third respondent i.e., her husband and dependent children. In the present case, neither the husband nor the dependent children of the third



respondent have any house or site or have any house owned in the Bangalore Metropolitan Area by them or they have been allotted any site by the BDA or other authorities, as such the Committee constituted in furtherance of order passed by this Court in the PIL after verifying all the records and deliberating on the same, recommended for confirmation of allotment of the site in favour of the third respondent and for doing all necessary further formalities. The BDA in furtherance of said order, has executed Sale Deed in favour of the third respondent. The petitioner has filed the Writ Petition belatedly that is 12½ years after the issuance of allotment letter and 1½ year after the order confirming the allotment of said property, cannot maintain the Writ Petition as the same is also hit by delay and laches. Besides, he has no *locus standi* to lay a challenge to a site bearing No.253A in Sy.No.1/2. As such the contention of the petitioner that the site is formed in Sy.No.1/1 is untenable in the eyes of law and sought to dismiss the Writ Petition.



24. In this writ petition, we are concerned only with the legality of the allotment of the site and not with the question of ownership/title of the petitioner. The title dispute is already pending before the Civil Court and involves disputed facts requiring trial. Therefore, the present case is confined to examining whether the allotment of the 'G' Category site in favour of the third respondent is sustainable under Rules 5 and 10 of the Allotment of Site Rules, 1984.

25. Before entering upon the facts of the case, it is apt to extract certain provisions of the BDA Act, 1976 as well as Allotment of Site Rules, 1984.

26. Section 12 of the BDA Act, 1976 prescribes for appointment of Commissioner and Section 13 of BDA Act, 1976 states regarding powers and duties of the Commissioner. For easy reference, we extract both Sections 12 and 13, which reads as under:

"12. Appointment of Commissioner.- (1) *The State Government shall appoint an officer, not below the*



rank of Divisional Commissioner, to be the Commissioner for the Authority.

(2) The Commissioner shall receive such monthly salary and other allowances as the State Government may, from time to time determine.

(3) The State Government may, from time to time, grant leave of absence for such period 2[as it thinks fit]2 to the Commissioner. A copy of every order granting such leave shall be communicated to the Chairman.

12A. Appointment of Secretary.- (1) The State Government shall appoint an officer not below the rank of a senior scale officer of the Karnataka Administrative Service, to be the Secretary of the Authority.

(2) The Secretary shall receive such monthly salary and other allowances as the State Government may from time to time determine.

13. Powers and duties of the Commissioner.-

(1) The Commissioner shall be the Chief Executive and Administrative Officer of the Authority.

(2) The Commissioner shall in addition to performing such functions as are conferred on him by or under this Act or under any law for the time being in force,-

(a) carry into effect the resolutions of the Authority ;

Provided that, if in the opinion of the Commissioner any resolution of the Authority contravenes any provision of this Act or any other law or of any rule, notification, regulation or bye-law made or issued under this Act or any other law, or of any order passed by the Government or is prejudicial or detrimental to the interest of the Authority, he shall, within fifteen days of the passing of the resolution refer the matter to the Government for orders and inform the Authority at its next meeting, of the action taken by him and until the orders of the Government on such reference are received, the Commissioner shall not be bound to give effect to the resolution;

(b) keep and conduct the Authority's correspondence;

(c) carry out and execute such schemes and works as the State Government may direct and incur necessary expenditure therefore;



(d) be responsible for implementing the schemes of the Authority;

(e) operate the accounts of the Authority and be responsible for the maintenance of the accounts of the authority;

(f) exercise supervision and control over the accounts and proceedings of all officers and servants of the Authority in matters of executive administration and in the matters concerning the accounts and records of the Authority and to the extent specified in sub-section (1) of section 50 dispose of all questions relating to the service of such officers and servants and their pay, privileges and allowances; and

(g) furnish to the Government a copy of the minutes of the Authority's proceedings and any return or other information which the Government may, from time to time, call for;

(h) authenticate by his signature all permissions, orders, decisions, notices and other documents of the Authority and the orders of the Chairman.

(3) The Commissioner shall have all the powers of a major Head of the Department of the State Government under the Karnataka State Civil Services Rules for the time being in force as respects the officers and servants of the Authority."

(emphasis supplied)

27. Rule 5 of Bangalore Development Authority (Allotment of Sites) Rules, 1984 prescribes for allotment of stray sites including allotment of 'G' category site in respect of persons in public life, which reads as under:

"Rule - 5. Allotment of stray sites - (1)
Notwithstanding anything contained in these rules, allotment of stray sites shall be in accordance with the provisions hereinafter provided.



(2) *The authority shall at least once in a year cause to be prepared a list of stray sites, giving details of layouts and dimension of sites and offer any or all the sites for allotment under this rule to persons eligible for allotment.*

(3) *Due publicity shall be given in respect of sites offered for allotment specifying their location, number, last date for submission of application and such other particulars as the Commissioner may consider necessary, by affixing a notice on the notice board of the office and website of the authority and any other office as the Commissioner may decide and by publication in not less than two daily newspapers published in City of Bangalore in English and Kannada, having wide circulation in the city.*

(4) *Sites shall be allotted among different categories as follows:*

Category	Description	Percentage
A	<i>Disposal by auction</i>	30
B	<i>Persons who have recognition in the field of sports at International/ National level</i>	10
C	<i>Persons who have won special recognition in the field of Art, Painting, Sculpture, Music, Dance, Drama, Films, Science, Literature, Education, Medicine, Press and Electronic media and Public Administration at the National/ International level and sitting or former members of Higher Judiciary.</i>	15
D	<i>Ex-Military personnel or military personnel</i>	05



<i>E</i>	<i>Freedom fighters who are residents of Bangalore Metropolitan Area for a period of not less than ten years</i>	<i>05</i>
<i>F</i>	<i>Dependents of Karnataka Government Servants who died while on duty</i>	<i>05</i>
<i>G</i>	<i>Persons in public life</i>	<i>30</i>

Explanation.- For the purpose of Category "G", "Persons in public life" means persons who are serving the public or available to the people for service as a whole and involved in the affairs of the Community in different capacities and includes persons who are or were elected or nominated to the Parliament or the State Legislature.

(5) Allotment through auction under Category 'A' shall be made only to a person if:-

- (i) he is not a minor, and*
- (ii) he is a citizen of India.*

(6) Allotment to any person falling under Categories 'B' to 'G' shall be made only if.-

- (i) he is not a minor,*
- (ii) he is a domicile of Karnataka for not less than fifteen years,*
- (iii) he or any member of his family does not own a site or a house in the Bangalore Metropolitan Area and has not been allotted a site or house by the Bangalore Development Authority or any other Authority within the Bangalore Development Authority or any other Authority within the Bangalore Metropolitan Area, and*



(iv) he satisfies the Authority that he is in a reasonable position to put up a building on the site allotted, within a period of three years from the date of handing over possession of the site:

Provided that requirement of fifteen years domicile may be relaxed by the Authority.-

(i) in case of persons who are domiciled in the State of Karnataka but are in the Armed Forces of the Union and serving outside the State of Karnataka;

(ii) in the case of persons who are domiciled in the State of Karnataka but have gone outside the State for employment, business, studies or training and who bona fide intend to reside in the Bangalore Metropolitan Area; and

(iii) in the case of persons belonging to Categories 'B' and 'C' with the prior permission of the Government.

(7) Sites earmarked for disposal under Category 'A' shall be allotted by the Authority based on the result of auction.

(8) Sites to persons falling under Categories 'B' to 'F' (both inclusive) shall be allotted by the Authority on the recommendation of a committee constituted by it.

(9) In the case of persons falling under Category 'G', the Authority shall scrutinise all applications received and submit them to the Government for approval and after getting the approval allot the sites to such persons.

(10) Value of sites to be allotted to persons falling under Categories 'B' to 'G' shall be fixed at ten per cent above the current value of sites which are allotted under Rule 11.



(11) The provisions of Rules 7, 8, 9, 13, 14 and 15 shall apply for allotment made under this rule in respect of Categories 'B' to 'G'.

28. Whereas, Rule 10 prescribes the eligibility criteria of the persons who are entitled for allotment of sites, which reads as under:

"Rule - 10. Eligibility.- No person--

(1) *who is a minor.*

(2) *who is not a domicile of Karnataka for not less than fifteen years immediately prior to the date of registration; and*

(3) *who or any member of whose family owns a site or a house or has been allotted a site or a house by the Bangalore Development Authority or any other Authority within the Bangalore Metropolitan Area shall be eligible to apply for allotment of a site;*

Provided that the requirement of fifteen years domicile may be relaxed;

(i) *in the case of persons who are domiciled in the State of Karnataka but being in the armed forces of the Union and servicing outside the State of Karnataka;*

(ii) *in the case of persons who are domiciled in the State of Karnataka but have gone outside the State for employment or higher studies and who bona-fide intend to reside in the Bangalore Metropolitan Area.*

(iii) *xxxx.*

(iv) *in the case of officers belonging to All India Service, whose services are allotted to the Karnataka State Cadre and domiciled in the State*



of Karnataka for not less than two years immediately prior to the date of registration;

(v) in the case of serving soldiers who are either serving in the State or outside the State of Karnataka."

29. What is forthcoming from the provisions extracted above is that, the Rule provides for allotment of 'G' Category sites in the ratio of 30% in favour of persons in public life. The explanation is most important. It says that for the purpose of category 'G' persons in public life means persons who are serving the public or available to the people for service as a whole are involved in the affairs of the Community in different capacities and includes persons who are or were elected or nominated to the Parliament or the State Legislature. As per the explanation, the person in public life means who are serving the public or available to the people for service as a whole or involved in the affairs of the community in different capacities, which entails them to seek for allotment of site.



30. Now coming to the facts of the case, a perusal of Letter by the father of the third respondent at Annexure-F and in view of the counter signature and endorsement by the then Chief Minister on the same and in furtherance of which the order of approval came to be passed on 09.12.2009, resulting in allotment of site bearing No.253A on 07.06.2010. The State Government while recommending for allotment intimated BDA, that the approval has already been accorded for such allotment and stated that the case of the third respondent be considered as a special case, which is just opposite to the Rules prescribing the eligibility criteria. Though an attempt is made by learned counsel for the third respondent that she is in educational field and has contributed to the public or community, but none of the records of such sort were placed on record to fit the third respondent within the four of the provision stated above, which is much elaborately stated in the explanation. The only criteria which made the BDA to allot site to third respondent, is she is the daughter



of the then sitting MP and he has recommended for allotment of site for the alleged contribution to the Society. This Court as well as Supreme Court in catena of cases have held that the fairness in the action of the State or local bodies or instrumentalities of the State while easing out or disposing of any public property is a *sine qua non*. The State and the instrumentalities of the State are required to follow a transparent procedure and statutory provisions as contained under the Act and the Regulations are required to be followed. An unnecessary favouritism or nepotism cannot be extended only because the person has applied for allotment belongs to a political family or to a family of the officials placed in highest pedestal. The criteria should be in accordance with the provisions contained in the Act and Rules there under and not on the authority which their family members held in the public life.

31. With pain this Court has to observe that the persons who have been elected by the people as their



representatives to be their voice in the Assembly as well as in the Parliament, with all hope and confidence that they would protect the rights of the citizens and will render justice to them in all situations, but the facts of the case goes against such hope. The persons who are placed in high pedestal in public office are required to work for the good of the people and not for their personal interest. A time has come for the people who are placed in highest position in public life to introspect whether they are rendering the service in true senses, in serving the citizen for protecting their rights and rendering them justice rather indulge in supporting and feeding their personal interest.

32. The letter by the father of the third respondent is an example of feeding the personal interest which is against the oath taken by the said person. The persons in highest pedestal placed in highest public office as elected representatives or in highest public offices by means of their Government service are expected to work according



to their oath and should stand high against the private interest.

33. A perusal of allotment order as well as the order incorporating the creation of the site clearly shows that the site when it was allotted by means of allotment order dated 07.06.2010 was not at all incorporated or created on the layout plan and the same was incorporated even according to the note at Annexure-J dated 12.10.2010, but the allotment letter was issued on 07.06.2010, which clearly shows that the letter of allotment was issued in favour of the third respondent is an illusory site, as rightly contended by learned Senior counsel.

34. Further, the endorsements issued by two sections of the BDA manifestly and pellucidly indicate that no records were forthcoming in the section regarding the procedure for creation of Sites which were stated in the modified plan in terms of the note stated there under. This clearly creates a suspicion regarding creation of illusory



site only on the paper as contended by learned Senior counsel to place benefit in favour of the third respondent.

35. So far as *locus standi* of the petitioner is concerned, it is his firm case that the site which was allotted and created was an illusory site and now taking advantage of allotment of such site, the third respondent and BDA are coming on the site of the petitioner and trying to illegally disturb and dispossess him in respect of which, a suit is pending before the competent Civil Court. Even otherwise, in terms of the law laid down by the Supreme Court in **AYAAUBKHAN NOORKHAN PATHAN VS. STATE OF MAHARASHTRA AND OTHERS**⁸, at paragraph No.23 has held as under:

"22. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus-standi to raise any grievance whatsoever. However, in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can

⁸ (2013) 4 SCC 465



grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bonafides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo-motu, in such respect."

36. This clearly states that whenever any illegality is brought before the Court, the Court exercising its Constitutional power under Article 226 of the Constitution of India can go to the roots of illegality. Even if the bonafides of the person who has approached the Court are doubted, but the issue raised in the opinion of the Court requires consideration. The Court can proceed *suo motu* in such respect.

37. A perusal of order passed by the three member Committee clearly shows that the Committee at first instance at Paragraph No.6 which we have already extracted herein above has clearly opined that the 'G' Category site was allotted to the petitioner primarily because of her relationship stated in the said paragraph. However the Committee subsequently in the following paragraphs, in terms of directions issued by this Court in



the PIL regarding consideration of allotment, recommended for confirmation of the allotment to the BDA. What weighed much in the mind of the Committee was the affidavit submitted by the third respondent seeking confirmation of the allotment. As per the Allotment of Site Rules, 1984, the eligibility criteria as contained under Rules 5 & 10 is, no person or any member of whose family owns a site or a house or has been allotted a site or a house by the BDA or any other authority within the Bangalore Metropolitan area shall be eligible to apply for allotment of site. The family as defined in Clause (e) to Rule 2 states that "Family" in relation to a person means such person, the wife or husband, as the case may be of such person, and the children, parents, sisters and brothers of such person, and wholly dependent on him.

38. It is a fact that the father of the third respondent was allotted a site way back in the year 1982 and confirmed the same by executing absolute sale deed



in the year 1995 by the BDA itself. Further, the mother of the third respondent purchased a property i.e., an apartment in the year 2003 and gifted the same in favour of son of the third respondent, immediately after two months from the date of issuance of the Allotment Letter in respect of Site No.253A in favour of the third respondent i.e., on 02.08.2010, but prior to creation of the Site No.253A on the layout plan and on the place which was done by means of order passed by the Commissioner on 12.10.2010. As per sub-Rule 9 of Rule 5, in case of persons falling under Category 'G', the authorities shall scrutinize all applications received and submit them to the Government for approval and after getting the approval, allot sites to such persons. In the case on hand, the same is in reverse. The Government first issued approval and directed to consider the case of the third respondent as a special case under Rule 5 and directed to allot a site under 'G' Category measuring 50X80. The very words used in the said letter dated 09.12.2009 for considering the case of



the third respondent as a special case does not find place in the Allotment of Site Rules, 1984. There is no diversion for considering a special case as enjoined in Rule 5. For allotment of a site in 'G' Category, the person must be in public life and the person in public life as has been explained in the explanation are serving the public or available to the people for service as a whole or involved in the affairs of the Community in different capacities. There is nothing placed on record to fit the third respondent within the explanation provided to Category 'G', allotment of site in Category G in terms of Rule 5.

39. The indication in the letter of approval directing to consider the case of the third respondent as a special case clearly shows that it is outside the purview of the explanation provided to 'G' category in Rule 5 and just opposite to sub-Rule 9 of Rule 5.

40. A bird view of entire exercise taken by the State Government and implementation of the same in a



seamless but shameless way clearly postulates that the same is extended to the benefit of the third respondent showing favouritism only for the reason that she being the daughter of a highly placed politician which is not the criteria to be considered within Rule 5 and 10 of Allotment of Sites Rules, 1984.

41. Even as per the third respondent, she is running a School and earning her livelihood. This will never come within the explanation of a person in public life under Rule 5. The explanation is very specific regarding a person in public life, which we have already extracted. As such, the third respondent is not eligible to claim the said site as per Rules 5 and 10.

42. As per Section 13 of the BDA Act, 1976, the Commissioner of BDA has been enjoined with the power to carry into effect the resolutions of the authority. The proviso which is most important which we have already extracted above, clearly says that if the Commissioner is



of the opinion that any resolution of the authority contravenes any provisions of this Act or any other law or of any Rule, Notification, Regulation or Bye-law made or issued under this Act or any other law or any order passed by the Government or is prejudicial or detrimental to the interest of the authority, he shall within 15 days to the passing of the Resolution refer the matter to the Government for orders and inform the Authority at its next meeting, of the action taken by him and until the orders of the Government on such reference are received the Commissioner shall not be bound to give effect to the resolution. There is no such exercise of duty by the Commissioner forthcoming, perhaps for the reason that he has been instructed by the highest authority indicating the approval to allot a site against Sub-rule (9) of Rule 5 is, the order has been given effect by allotting the site that amounts to colourable exercise of power only to show favouritism and nepotism as per the whims and fancies of political entities.



43. It is trite that any order obtained by means of fraud or misrepresentation is *void ab initio* and null and void. The recommendation order got by the third respondent by means of filing a false affidavit, suppressing the material facts regarding allotment of sites in favour of her father and acquisition of a flat by her mother within the vicinity of Bangalore metropolitan Area. It is on record that the father of the third respondent has already been allotted a site by the BDA itself. Even the BDA has kept itself as a silent spectator to the affidavit filed by the third respondent before the Committee. The BDA ought to have brought to the notice of the Committee regarding the site allotted in favour of the father of the third respondent, which was apparently not done in the case on hand.

44. Our view gain strength with the Judgment of the Supreme Court in **MEGHMALA VS. G.NARASIMHA REDDY**, wherein the Supreme Court at Paragraph No.28 and 29 has held as under:



"28. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law.

"Fraud avoids all judicial acts ecclesiastical or temporal." (vide S.P.Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath. In Lazarus Estate Ltd. Vs. Besalay, the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

29. In Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and State of Maharashtra & Ors. Vs. Prabhu this Court observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law."

45. In the above stated PIL i.e., W.P.No.23475/2010 and connected matters, filed challenging the allotment of stray site under G-category by the BDA pursuant to Government directions, wherein under the guise of stray site allotment, the BDA allotted several sites without following prescribed Rules and Guidelines, thereby allotting sites to ineligible persons.



This Court upon finding that the Government issued direction to the BDA to allot sites under G-category based on application or recommendations made by the Ministers and MLAs has held that the Government had no authority under Section 65 of the BDA Act, 1976 to issue direction for allotment under G-category as held in the Judgment in ***K.RAJU's*** case. In the PIL, it was also declared that the sites allotted pursuant to the directions issued by the Government under G-Category is held to be illegal, arbitrary and violative of Article 14 of the Constitution of India holding that the Government exercising powers under Section 65 of the BDA Act, 1976 to direct such allotment is invalid and without authority.

46. The coordinate Bench of this Court in the case of ***SRI.K.RAJU VS. BANGALORE DEVELOPMENT AUTHORITY***⁹, has clearly laid down that the Act does not authorize the State Government to issue directions to allow the sites to the persons of its choice. The

⁹ ILR 2011 KAR 120



observations find place at Paragraph No.32 of the Judgment which reads as under:

"32. As per the circular, the government can allot the sites to the persons in public life under 'G' category. 'Persons in public life' in the context are those having to do with the public or available to the people as a whole and are those involved in the affairs of the community. Learned AGA has produced one of the files bearing No. ನಲಇ 49 ಬೆಂಚೂಸಾ 07 relating to the allotments made by the State Government under 'G' category. A perusal of the file shows that the State Government has made allotment of sites mostly on the recommendation of the Ministers. The sites have been allotted in an arbitrary manner without considering as to whether the applicants are persona in public life. BDA forms sites of different dimensions. No reasons have been assigned as to why some of the applicants were allotted sites measuring 50 ft. x 80 ft. and some others were allotted sites measuring 40 ft. x 60 ft. or 30 ft. x 40 ft. It is also evident from the file that one T.N.Narayana Gowda, under Secretary to Chief Minister was allotted a site under 'G' category on 3.10.2007. When a democratic Government in exercise of its discretion selects the recipients for its largess, the discretion should be exercised objectively, rationally, intelligibly, fairly and non-arbitrarily. It is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice and not according to private opinion."

47. A perusal of the paragraph 32 clearly shows that when a democratic Government in exercise of its discretion selects the recipients of its choice, the discretion should be exercised objectively, rationally, intelligibly, fairly and non-arbitrarily. If something is to be said to be



done within the discretion of the authorities that something is to be done according to the rules of reason and justice and not according to private opinion and choice. The Letter issued by father of the third respondent to then Chief Minister vide Annexure-F and the endorsement of the then Chief Minister for consideration of the same for allotment of a site measuring 50 x 80 forthwith and a letter according approval issued by the Principal Secretary dated 09.12.2009 directing the Commissioner to consider the case of the third respondent as a special case within Rule 5 to allot a 'G' Category Site measuring 50 x 80 and the execution of the same in a seamless way, clearly shows that the entire exercise is done against the provisions and without any rationale, but only for a private gain and interest.

48. With the cost of repetition, we reiterate that, the persons placed in highest public office in the public life must do justice to the office, by shirking themselves to succumb to any private interest and commit themselves to



the oath which they have taken to the office for the public good, protecting rights of their citizens and the justice.

49. The entire scenario placed before us by means of documents clearly shows that there is total absence in protecting the public right rather abrasive act of giving effect to private interest of political entities seeking to allot site in favour of their kith and kin by misusing the office, which is highly unsustainable, arbitrary and illegal within the four of law.

50. The entire fact before us reminds us to tone this judgment by adverting to the words of Saint Augustine (354-430 A.D.) in his book, *The City of God*, Volume 1 (426 A.D):

"Without justice, what else is the State but a great band of robbers...?"

51. The State and its instrumentalities have failed to protect the rights of the citizens by means of exercising their power enjoined with their highest public office, but



succumbing to the personal interests required to be dealt with by iron hands. At this juncture, reminding again that we are without expressing anything on the merits regarding the title of the petitioner since the matter is seized before the Civil Court in the suit filed by him, but are of the considered opinion that the entire act of allotment of site is illusory and there is no site No.253A in the place, as there are no records for creation of the same available and the allotment process and the recommendation of the same are unsustainable in law. In that view of the matter, the prayers sought in the Writ Petition required to be favoured. Accordingly, we proceed to pass the following:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned orders sought in the prayer are quashed.
- (iii) Any observation made in this Writ Petition are restricted only with respect to allotment of site in favour of the third



respondent in terms of Rule 5 and Rule 10 of Bangalore Development Authority (Allotment of Sites) Rules, 1984 and will not come in the way of the Civil Court in considering the right of the parties in accordance with the law in the suit O.S.No.3813/2022, pending before it.

52. In view of disposal of the Writ Petition, pending interlocutory applications if any are disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

TKN
List No.: 2 Sl No.: 4