BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTH ZONE, AT CHENNAI

O.A. No. 165 of 2024

BETWEEN

A. Shivakumar ...**APPLICANT**

AND

Vijayashekar Thangiah and others ...**RESPONDENTS**

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Place: Bengaluru

Date: 13.09.2024

Advocate for the Respondent No.1 to 5

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTH ZONE, AT CHENNAI

O.A. No. 165 of 2024

BETWEEN

A. Shivakumar ...APPLICANT

AND

Vijayashekar Thangiah and others ...RESPONDENTS

STATEMENT OF OBJECTIONS ON BEHALF OF THE RESPONDENT NO.1 TO 5 TO THE INSTANT APPLICATION

The Respondent No.1 to 5 most respectfully states as follows:

1. It is submitted that the instant statement of objections are being filed to the Application dated 02.04.2024 ("***Application***") filed by the Applicant under Section 18(1) read with Section 14 and 15 of the National Green Tribunal Act, 2010 ("***NGT Act***").

2. It is submitted that the Application is not maintainable either in law or on facts and is liable to be dismissed at the outset. The Application lacks *bona fides*, is an utter abuse of process of law and filed with an ulterior motive to harass the Respondent Nos. 1 to 5. The Application is nothing but a forum shopping tactic adopted by the *public spirited*-Applicant who is a busybody engaged in filing multiple complaints against the Respondent Nos. 1 to 5 at the behest of invested third parties to arm twist the Respondent Nos. 1 to 5 to terms. The Application deserves to be dismissed in limine with exemplary costs

3. All the statements/ averments/ allegations made in the Application are denied in *toto*. Nothing stated in the Application is deemed to be admitted for want of any traversal unless specifically admitted to herein. The Applicant has not approached this Hon'ble Tribunal with clean hands.

4. At the outset, it is submitted that the allegation of the Applicant that the Respondent No.1 to 5 have encroached and obstructed a storm water drain, referred to as 'rajakaluve', located at Sy.no.2/2, 7/1A1a1a3, 7/1A3 and 7/1B, all situated at Binnamangala Manavarthe Kaval, K.R. Puram, Bengaluru East, Bengaluru (**Schedule Properties**) is absolutely false,

meritless, baseless and frivolous made with the sole intention of harassing these Respondents.

PRELIMINARY OBJECTIONS:

5. It is submitted that as per Section 14(3) of the NGT Act, no application for adjudication of disputes can be entertained by this Hon'ble Tribunal unless it is made within a period of six months from the date on which the cause of action for dispute first arose.

6. It is submitted that the attempt made by the Applicant to initiate a false complaint before this Hon'ble Tribunal, on the basis of a concocted story is that in and around September/October 2023, during the monsoon season, the owners of the neighbouring properties noticed that there was extreme stagnation on the Schedule Properties and the surrounding areas, including the abutting public roads. Therefore, as per the Applicant's own concocted case, the alleged cause of action first arose on 01.09.2023. In which case, the Application ought to have been filed on or before 01.03.2024. However, the instant Application being filed on 02.04.2024 is clearly barred as under Section 14 of the NGT Act. Further, it is also pertinent to note that the Applicant has not laid out any grounds showing sufficient cause from being prevented from filing the instant Application within 01.03.2024. Therefore, the instant Application ought to be dismissed in *limine*.

7. Also, the Application is making an attempt by way of clever drafting to create a concocted story of water stagnation in the Schedule Properties, complaints by neighbours etc, without even an iota of evidence. The Applicant has intentionally not mentioned that the buildings at the Schedule Properties was constructed way back in the year 1977. The Applicant is trying to pull wool over the eyes of this Hon'ble Tribunal in an attempt to make out an illusory cause of action and creating false timelines to be able to fall within the limitations as prescribed under the NGT Act. In fact, the Application is hopelessly barred by limitation.

8. It is submitted that the there exists no rajakaluve or storm water drain on the Schedule Properties which are owned by the Respondent No.1 to 5. Therefore, the question of encroachment of any rajakaluve or storm water drain by the Respondent Nos. 1 to 5 does not even arise.

9. The Applicant seeks to place reliance on the village map, sketch prepared by the ADTP and endorsement received by the ADTP to an RTI Application by the Applicant dated 07.03.2024 to allege that storm water drain/rajakaluve flows through the Schedule Properties. The said allegation is absolutely false and self-serving. In any case, the said documents do not indicate any encroachment of rajakaluve by the Respondent No. 1 to 5.

10. It is settled position of law that the Revised Master Plan (RMP) would prevail over the village map or any other revenue record and unless the RMP discloses any existence of rajakaluve or storm water drain, the state authorities cannot take any action. It is submitted that as per the RMP 2015 which came into force on 25.06.2007, there is absolutely no rajakaluve or storm water drain on the Schedule Properties. The Relevant extract of the RMP 2015 is produced herewith as ***Annexure-1***. As such, the instant Application is nothing but an abuse of process of law and ought to be dismissed with exemplary costs.

11. Further, it is also pertinent to note that the allegations in the Application pertaining to alleged encroachment of government land of 16 Guntas by the Respondent Nos. 1 to 5 are matters which are covered by various orders of the Hon'ble High Court of Karnataka and therefore not amenable to be reagitated by the Applicant before this Hon'ble Tribunal.

12. The Applicant has deliberately not even whispered, leave alone produced the Orders of the Hon'ble High Court of Karnataka which are very much within the knowledge of the Applicant. In fact, the said Orders have been produced by the Applicant in his own complaint on the same subject matter (encroachment of 16 Guntas B-Kharab Land) before the Karnataka Land Grabbing Court in proceedings bearing LGC (P) No. 275/2023. For this reason alone, the application deserves to be dismissed.

13. It is submitted that the Application filed by the Applicant is absolutely false, frivolous and filed with *malafides*. The Applicant has also filed several other complaint before various authorities, as mentioned in the Application, and the instant case is another attempt by the Applicant to harass the Respondent No.1 to 5.

14. The Applicant has suppressed several material facts. The Respondent Nos. 1 to 5 seeks to place on record the brief facts.

BRIEF FACTS

15. Late Mr. George Thangiah was the father of the Respondent Nos.1 and 2, grandfather of Respondent No.3 and 4 and the husband of the Respondent No.5. He was the absolute owner in peaceful possession of the Schedule Properties till the time of his demise on 24.12.2019.

16. It is submitted that the property bearing Survey No.2 and Survey No. 7/1, measuring 4 Acres and 07 Guntas, 30 square yards and 2.25 square feet was purchased by Late Mr. George Thangiah son of Late Mr. Mark Thangiah under Sale Deed dated 02.08.1969, registered as Document No. 2178/1969-70 in Book-I, at the office of Sub-Registrar, Bangalore South Taluk.

17. Another Property bearing Survey No. 2/1 and Survey No. 7/1-A, admeasuring 1 Acre 04 Guntas situated at Binnamangala, Manavartha Kaval, Bangalore East Taluk, Bangalore was purchased by Late Mr. George Thangiah son of Late Mr. Mark Thangiah under Sale Deed dated 27.06.1970, registered as Document No. 1660/1970-71, in Book – I, Volume-23 at Pages 166, at the Office of Sub Registrar, Bangalore.

18. Further, Four Plots totally measuring 3.35 Guntas in Survey No. 7/1 situated at Binnamangala, Manavartha Kaval, Bangalore East Taluk, Bangalore was purchased by Late Mr. George Thangiah son of Late Mr. Mark Thangiah under Sale Deed dated 05.07.1972 registered as Document No. 2394/1972-73, in Book-I, Volume 951, at Pages 65 to 68, at the Office of Sub Registrar, Bangalore along with sketch.

19. Furthermore, *vide* Sale Deed dated 23.02.1972 registered as Document No. 6594/1971-72, in Book – 1, Volume-926 at Pages 123 to 127, at the Office of Sub Registrar, Bangalore, Late Mr. George Thangiah purchased land to

an extent of 10 Guntas in Survey No.7/1A in at Binnamangala, Manavartha Kaval, Bangalore East Taluk, Bangalore.

20. The above properties purchased under the said Sale Deeds dated 02.08.1969, 27.06.1970, 23.02.1972 and 05.07.1972 are hereinafter collectively referred to as the '**Property**'. Copies of the Sale Deeds dated 02.08.1969, 27.06.1970, 23.02.1972 and 05.07.1972 are produced herewith as ***Annexure 2, 3, 4 and 5 respectively***.

21. In furtherance to the application made by Late Mr. George Thangiah seeking conversion of an extent of 3 Acres 33 Guntas in Survey No. 2/2 & Survey No.7/1B, Survey. No. 7/1A measuring 32 ½ Guntas and Survey. No. 2/1 measuring 11 ½ Guntas, Sy No. 7/1A measuring 14½ Guntas of Binnamangala Manavartha Kaval, Bangalore comprised in the Property, the Deputy Commissioner converted the same from agricultural use to non-agricultural purpose under Section 95(2) of the Mysore Land Revenue Act, 1954, *vide* Official Memorandum dated 03.04.1970, Conversion Sanction Certificate dated 05.09.1970, Official Memorandum dated 08.07.1971, Conversion Sanction Certificate dated 22.09.1971 and Conversion Sanction Certificate 31.12.1979.

22. In the survey numbers mentioned above, which were purchased by Late Mr. George Thangiah under various sale deeds, an extent of 13 Guntas comprised in Survey No. 2/2, and 01 Gunta in Survey No. 7/1A and 02 Guntas in Survey No. 7/1B totalling to 16 guntas was phut kharab land which was in possession of Late Mr. George Thangiah as a part of the total extent of the survey numbers purchased by him. Late Mr. George Thangiah requested the Deputy Commissioner to grant him the said Phut Kharab lands measuring 13 Guntas comprised in Survey No. 2/2, and 01 Gunta in Survey No. 7/1A and 02 Guntas in Survey No. 7/1B totalling to 16 Guntas ("**Grant Lands**") for non-agricultural use.

23. In this regard, the Tahsildar, Bangalore South Taluk, vide his Letter dated 30.04.1975 bearing reference No. ALN.CR.22/1974-75, recommended the disposal of the Grant Lands, since the same was no longer required for general public use. The Tahsildar further confirmed that the Grant Lands is surrounded by N.A.L. road and H.A.L. double roads on both sides and is

surrounded on all sides by residential localities and that the said road has been formed by the CITB, Bangalore.

24. In view of the aforesaid recommendation of the Tahsildar, the Deputy Commissioner vide Official Memorandum dated 26.12.1975 bearing reference No.B-Dis.LND (3)62/1975-76, appropriated the 16 Guntas of Kharab Land in Survey No. 2/2, 7/1A and 7/1B of Binnamangala Manavartha Kaval, Bangalore, under Section 71 of the Karnataka Land Revenue Act, 1964 and granted the said 16 Guntas Kharab Land to Late Mr. George Thangiah for non-agricultural purpose. The Deputy Commissioner has in the said order confirmed that the said 13 Guntas Kharab Land in Sy. No. 2/2, 01 Gunta in Survey No.7/1A and 02 Guntas in Survey No. 7/1B totally measuring 16 Guntas was no longer of any use to the public.

25. Pursuant to the issuance of the aforesaid Official Memorandum dated 26.12.1975, Late Mr. George Thangiah has paid the upset price of Rs. 4,000/- (Rupees Four Thousand only) for the Grant Lands and also paid the conversion fine of Rs.1,600 (Rupees One Thousand Six Hundred only) to the Bangalore North Taluk Treasury, State Government, vide Challan No. SLR 20, dated 16.01.1976. Upon receipt of the applicable upset price and conversion fine, the Tahsildar vide Conversion Certificate dated 20.01.1976 bearing reference No.ALN.CR.22/11975-76, confirmed the receipt of the aforesaid payment and confirmed Late Mr. George Thangiah's entitlement to use the Grant Lands for non-agricultural purpose.

26. In view of the aforesaid grant of the Grant Lands to Late Mr. George Thangiah under Official Memorandum dated 26.12.1975, with the permission to use the same for non-agricultural purpose under Conversion Certificate 20.01.1976, there does not exist any 'Kharab' land in the Property. The 13 Guntas Kharab land in Sy. No. 2/2, 01 Gunta in Survey No.7/1A and 02 Guntas in Survey No. 7/1B, situated at Binnamangala Manavartha Kaval, Bangalore East Taluk, ceased to be Kharab land upon its grant to Late Mr. George Thangiah, for non-agricultural use. Pursuant to all of the above, Late Mr. George Thangiah obtained conversion of a total extent of 5 Acres 27.5 Guntas in Binnamangala Manavartha Kaval,

Bangalore, and was in possession of the same. This entire extent of land is hereinafter referred to as '***Entire Property***'.

Copies of Conversion Certificate dated 05.09.1970, 22.09.1971, 31.12.1979 and 20.01.1976 are produced herewith as ***Annexure 6, 7, 8 and 9 respectively***.

27. In addition to the above, the Bangalore Development Authority (BDA) has sanctioned the Modified Development Plan with respect to the existing building *vide* plan sanction dated 16.11.1977. Late Mr. George Thangiah has also paid the applicable development charges of Rs. 40,856/- (Rupees Forty Thousand Eight Hundred and Fifty-Six Only) for sanction of the said development plan. The proof of payment of development charges are produced herewith as ***Annexure-10***.

28. Therefore, as early as the year 1977, the Property together with adjacent properties (owned by Late Mr. George Thangiah) was developed into a commercial complex comprising of multiple buildings and the entire Property was being used for non-agricultural purpose. Around the same time when the commercial complex comprising of multiple buildings was put up, a compound wall was also put up around the entire Property.

29. The Applicant deliberately and with *mala fide* intentions appears to refer to the constructions at the Schedule Properties as though the said building had been put up recently, when in fact, the processor in title of the Property had put up the construction on the property way back around the year 1977. It is pertinent to note that the construction has been put up and is standing for around four decades and subsequent to that, no new construction has been put up in the recent past as alleged by the Applicant.

30. It is submitted that the allegation of encroachment of rajakaluve or storm water drain is absolutely false, in as much as the Respondent No.1 to 5 have not encroached any such rajakaluve or storm water drain.

31. Without prejudice to the above and notwithstanding the aforesaid facts which clearly demonstrate that there is no kharab land at the Property, the Tahsildar, Bengaluru East Taluk had issued a Show Cause Notice dated 20.01.2016 bearing Reference No. N.C.R/CR:51/2015-16, under Sections

94 and 104 of the KLR Act alleging that the Subject Lands are government lands and sought for clarification on the same. Under Reply Letter dated 28.01.2016, all the relevant details were provided by Late Mr. George Thangiah to the Tahsildar. Thereafter, the Tahsildar has vide an Order dated 10.06.2016, withdrawn the Show Cause Notice dated 20.01.2016, after being satisfied with the clarifications provided.

32. Copies of the Show Cause Notice dated 20.01.2016, Reply Letter dated 28.01.2016 and Tahsildar's Order dated 10.06.2016 are produced herewith as ***Annexures-11, 12 and 13 respectively***.

33. The contents of the aforesaid Reply Letter dated 28.01.2016 and the Order dated 10.06.2016 passed by the office of the Tahsildar Bengaluru East Taluk will also apply to the lands bearing Sy. No. 7/1A (01 gunta) and 7/1B (02 Guntas), since the Official Memorandum and Conversion Certificate referred above, relates to the said lands as well.

34. Ignoring the above aspects and after a lapse of more than 45 years from the date of which the Grant Lands were granted to Late Mr. George Thangiah, the Deputy Commissioner, Bengaluru purporting to act on the recommendation issued by the Tahsildar, Bengaluru East and the direction from the Under Secretary, Department of Revenue had initiated proceedings against the Respondent No.1, 2, 5 herein for cancellation of the Grant Order dated 26.12.1975 and the Conversion Certificate dated 20.01.1976 by issuing a Show Cause Notice dated 06.06.2020 and consequently, initiated suo motu proceedings bearing No. L.N.D. (E) CR/ 104/2019-20. A copy of the show cause Notice dated 06.06.2020 is produced herewith as ***Annexure-14***.

35. From a perusal of the Show Cause Notice dated 06.06.2020, it appears that the proceedings bearing No. L.N.D. (E) CR/ 104/2019-20 therein came to be initiated pursuant to the recommendation dated 13.11.2019 sent by the Tahsildar Bengaluru East, letter dated 21.11.2019 of the Deputy Commissioner, Bengaluru addressed to the Principal Secretary, Department of Revenue expressing his view that the Grant in favour of Late Mr. George Thangiah is contrary to law and the direction issued by the Under Secretary, Department of Revenue under a Letter dated 17.12.2019 for initiating

proceedings under Rule 28(1) of the Karnataka Land Grant Rules, 1969 ("*Land Grant Rules*").

Copies of the recommendation letter dated 13.11.2019, letter dated 21.11.2019 and letter dated 17.12.2019 letters dated 06.11.2019 & 5/6/20 are produced herewith as *Annexure-15, 16 and 17 respectively,* 17A.

36. In response to the said notice, the Respondent No.1, 2, 5 appeared before the Deputy Commissioner and filed their response and written arguments. The Counsel for the Respondent No.1, 2 and 5 also addressed oral arguments. The matter was thereafter posted for passing for orders without fixing a date. A copy of the response is produced herewith as ***Annexure-18***.

37. Being aggrieved by the Notice dated 06.06.2020, the Respondent No.1,2, 5 challenged the said show-cause notice dated 06.06.2020 before the Hon'ble High Court of Karnataka in W.P. No.8972/2020.

38. During the pendency of W.P No. 8972/2020, the Deputy Commissioner, Bengaluru had illegally and in unusual haste passed the Order dated 19.08.2020 in the said proceedings, cancelling the Official Memorandum dated 26.12.1975 and declaring that the Conversion Order dated 20.01.1976 in No. ALN CR/ 22/ 75-76 as null and void without any intimation to the Respondent No.1, 2 and 5. A copy of the Order dated 19.08.2020 passed by the Deputy Commissioner is produced herewith as ***Annexure-19.***

39. The Respondent No.1, 2 and 5 filed an application for amendment of the writ petition to challenge the Order dated 19.08.2020. The Learned Single Judge of the Hon'ble High Court of Karnataka *vide* its Order dated 10.09.2020 in W.P. No.8972/2020 was pleased to set-aside the show-cause Notice dated 06.06.2020 and declared all proceedings and the subsequent Order dated 19.08.2020 to be null and void. A copy of the Order dated 10.09.2020 passed by the Hon'ble High Court of Karnataka in W.P. No.8972/2020 is produced herewith as ***Annexure-20.***

40. The said Order dated 10.09.2020 of the Hon'ble High Court of Karnataka upholds the validity of the Official Memorandum dated 26.12.1975 and holds that the grant of the Subject Lands in favour of Late Mr. George

Thangiah cannot in any manner be interfered with after a lapse of more than 45 years.

41. Thereafter, the State of Karnataka challenged the Order dated 10.09.2020 passed by the Learned Single Judge of the Hon'ble High Court of Karnataka in W.P. No.8972/2020 before the Division Bench of the Hon'ble High Court of Karnataka in W.A. No.552/2020. The Division Bench of the Hon'ble High Court of Karnataka in W.A. No.552/2020 dismissed the appeal *vide* its Order dated 19.04.2021 and confirmed the Order dated 10.09.2020 of the Learned Single Judge of the Hon'ble High Court of Karnataka. As such, the grant made with respect to the Subject Lands i.e., 16 Guntas of Kharab Land in Survey No. 2/2, 7/1A and 7/1B of Binnamangala Manavartha Kaval, Bangalore in favour of Late Mr. George Thangiah was upheld. A copy of the Order dated 19.04.2021 passed by the Division Bench of the Hon'ble High Court of Karnataka in W.A. No.552/2020 is produced herewith as ***Annexure-21***.

42. The relevant portions of the order passed in the W.A No. 552/2020 are as follows:

> *"Para 2(b)- After obtaining the said conversion orders, George Thangiah had requested the Deputy Commissioner to grant the adjacent kharab lands measuring 13 guntas comprised in Sy.No. 2/2, 01 gunta in Sy.No. 7/1A and 02 guntas in Sy.No. 7/1B of Binnamangala Manavartha Kaval, K.R. Puram Hobli, Bengalore East Taluk, Bangalore (hereinafter referred to as "the lands in question") for non-agricultural use. Considering the said request, the Deputy Commissioner after receiving recommendation from the Tahsildar vide Official Memorandum dated 26.12.1975 grated the lands in question to said George Thangiah subject to payment of offset price of Rs. 4000/- which was duly paid..."*
>
> *"Para 5- It is not in dispute that the grant of the land in question was made in favour of late George Thangiah in the year 1975 and subsequently he got the said land for non-agricultural purpose in the year 1976..."*

"Para 14- Taking into consideration the inordinate delay of 45 years in initiating the proceedings and also considering the fact that the impugned show cause notice and order passed pursuant to the said notices does not speak of the alleged fraud, we are of the considered opinion that the learned Single Judge was fully justified in allowing the writ petition...."

"Since we have already held that the action of the appellants in initiating proceedings for cancellation of the grant is beyond reasonable time, the prayer made by the learned Advocate General for reserving liberty to initiate fresh action for cancellation of the grant of the lands in question cannot be granted."

43. It is emphasized that the Division Bench of the Hon'ble High Court of Karnataka rejected the specific request of the Learned Advocate General appearing for the State of Karnataka in W.A No. 552/2020 to initiate any fresh proceedings in this regard. A perusal of the Order dated 19.04.2021 makes it abundantly clear that the Division Bench of the Hon'ble High Court of Karnataka specifically precluded the State from initiating any action in respect of the grant of Subject Lands in question in the appeal.

44. The State of Karnataka has thereafter preferred a review petition bearing R.P No. 478/2022 against the Order dated 19.04.2021 passed in W.A No. 552/2020. No order of stay has been passed in the said review petition till date.

45. From the above, it clear that the grant of 16 Guntas of Kharab Land in Survey No. 2/2, 7/1A and 7/1B of Binnamangala Manavartha Kaval, Bangalore in favour of Late Mr. George Thangiah was upheld and all allegations of the Applicant that the grant certificate is concocted and fraudulent are all false. It is pertinent to state here that the Official Memorandum dated 26.12.1975 and the Conversion Order dated 20.01.1976 find reference in several revenue records, governmental correspondences, etc.

46. It is also pertinent to note that the Tahsildar, Bengaluru had instituted a Complaint dated 24.03.2020 before the Bengaluru Metropolitan Task Force

Police Station ("***BMTF***"), basis which an FIR was registered by the BMTF in Crime No.02/2020 for alleged offences punishable under Section 192-A of the KLR Act against the Respondent No.1, 2 and 5, *inter alia* alleging encroachment of 17 Guntas of B-Kharab Land in Sy No 2/2 and 7/1. A copy of the Complaint dated 19.03.2020 and FIR dated 24.03.2020 are produced herewith as ***Annexure-22 and 23*** respectively.

47. The Respondent No.1, 2 and 5, being aggrieved by the same approached the Hon'ble High Court of Karnataka challenging the Complaint dated 24.03.2020 and FIR dated 24.03.2020 in W.P. No.8073/2020. The Hon'ble High Court of Karnataka was pleased to allow the petition and quash the Complaint dated 24.03.2020 and FIR dated 24.03.2020 *vide* Order dated 22.03.2024. A copy of the Order dated 22.03.2024 is produced herewith as ***Annexure-24***.

48. It is also pertinent to note that the Tahsildar, Benglauru East issued another undated Notice to the Respondent No.1, 2 and 5, which was received by the Respondent No.1, 2 and 5 on 05.06.2020 alleging encroachment of 02 Guntas of B Kharab Land in Sy. No. 7/1A, 2 and 2/1 measuring 24 Guntas. Thereafter, the Tahsildar, Benglauru East passed an Order dated 03.07.2020 in NCR / CR / 01 / 2020-21 holding that the Tahsildar, Benglauru East herein have allegedly encroached 02 Guntas of Kharab land in Sy. No. 7/1a, 2 and 2/1 in Binnamangala, Manavarthe Kaval, Bengaluru East Taluk, Bengaluru and that the matter has been referred to BMTF for further actions. A copy of the undated Notice received on 05.06.2020 and the Order dated 03.07.2020 is produced herewith as ***Annexure-25 and 26 respectively***.

49. Pursuant to which, the Tahsildar, Benglauru East filed a Complaint dated 09.07.2020 before the BMTF, which was registered as an FIR dated 24.07.2020 in Crime No.05/2020. A copy of the Complaint dated 09.07.2020 and the FIR dated 24.07.2020 is produced herewith as ***Annexure-27 and 28*** respectively. Aggrieved by the above, the Respondent No.1, 2 and 5 challenged the same before the Hon'ble High Court of Karnataka in W.P. No.9625/2020. The Hon'ble High Court of Karnataka was pleased to vide its Order dated 07.09.2020, stay further proceedings in Crime No.5/2020, which is in force even as on date. A copy of the Order

dated 07.09.2020 passed by the Hon'ble High Court of Karnataka in W.P. No.9625/2020 is produced herewith as ***Annexure-29***.

50. It is pertinent to note that the Tahsildar, Benglauru East had previously also filed an Application dated 03.06.2020 in L.G.C. (G) No.342/2020 before the Special Court against the Respondent No.1, 2 and 5 for alleged grabbing of government land measuring 13 Guntas in Sy.No.2/2, 2 Guntas in Sy.No.7/1A, and 1 Gunta in Sy.No.7/1B. The Respondent No.1, 2 and 5 have filed an Application under Section 9(5) of the KLGP Act seeking for dropping of the proceedings. The counsels for the Respondent No.1, 2 and 5 have already addressed arguments in the said matter, and the same is now posted for the government advocate to reply.

51. It is also pertinent to note that Tahsildar, Bengaluru East Taluk issued a Notice dated 27.02.2023 to show cause as to why action must not be taken against the Respondent No.1 and 2 under Section 192-A of the KLR Act in relation to the alleged encroachment of 13 guntas in Sy.No.2/2, 1 gunta in Sy.No.7/1A and 2 gunta in Sy.No.7/1B of 'B' Kharab land in Binnamangala Manavarthe Kaval, K.R. Puram, Bengaluru East, Bengaluru. The said notice was issued pursuant to the Complaint filed by the Applicant herein.

    The Respondent No.1 and 2 were surprised to receive the said notice despite the orders passed by the Hon'ble High Court of Karnataka. The Counsel for the Respondent No.1 and 2 appeared before the Tahsildar, Bengaluru East Taluk, produced the Orders passed by the Hon'ble High Court in W.P No. 8972/2020 and W.A No. 552/2020 and made submissions. Tahsildar, Bengaluru East Taluk *vide* Order dated 12.06.2023 in N.C.C.R/01/2020-21 dropped the proceedings against the Respondent No.1 and 2 on the basis of the Orders of the Hon'ble High Court of Karnataka, records available with the Tahsildar, Bengaluru East Taluk and revenue records. A copy of the Order dated 12.06.2023 passed by the Tahsildar, Bengaluru East Taluk is produced herewith as ***Annexure-30***. Accordingly, even as per the Tahsildar, Bengaluru East Taluk, the Respondent No.1 to 5 have not encroached upon any kharab land in the Property.

52. It is submitted that on the basis of the Complaint by the Applicant dated 24.04.2023, a Show-Cause Notice dated 06.06.2023 was issued by the

Special Deputy Commissioner-03, Bengaluru North Division, Bengaluru in R.R.T(2)/(E)/CR-04/2023-24 calling upon the Respondent No.1 and 2 to produce certain original/certified copies of documents pertaining to the Subject Land, and appear on 20.06.2023. A copy of the Show-cause Notice 06.06.2023 is produced herewith as ***Annexure-31***.

53. The Respondent No.1 and 2 approached the Hon'ble High Court of Karnataka challenging the show-cause Notice dated 06.06.2023 in proceedings bearing No. R.R.T(2)/(E)/CR-04/2023-24, in W.P. No.12451/2023. The Hon'ble High Court of Karnataka was pleased to *vide* Order dated 19.06.2023 stay the Notice dated 06.06.2023 and all further proceedings in R.R.T(2)/(E)/CR-04/2023-24. A copy of the Order dated 19.06.2023 is produced herewith as ***Annexure-32***.

54. It is submitted that Applicant and few other miscreants have been filing multifarious and multiple complaints against the Respondent No.1 to 5 as regards the very same subject matter before several authorities, with a ulterior motive to arm twist the Respondent Nos. 1 to 5.

55. One Shreenath Shamanna had filed a Complaint bearing P.C.R. (F.R.) No. 5284/2023 before the VIII Addl. Chief Metropolitan Magistrate at Bengaluru. The Magistrate Court vide its Order dated 02.06.2023 referred the Complaint under Section 156(3) of the Code of Criminal Procedure, 1973 ("***CrPC***") to the Cubbon Park Police Station for investigation. Accordingly, the Cubbon Park Police Station had registered a First Information Report against the Respondent No.1 and 2 herein in Crime No.99/2023 for alleged offences punishable under Sections 465, 466, 468, 471, 477 of the Indian Penal Code ("***IPC***"), Section 192-A of the Karnataka Land Revenue Act, 1964 ("***KLR Act***") and Sections 4 and 5 of the Karnataka Land Grabbing Prohibition Act, 2011. Copies of the Order dated 02.06.2023, FIR dated 14.06.2023 and Complaint dated 30.03.2023 are produced herewith as ***Annexure-33, Annexure-34 and Annexure-35*** respectively. The allegations in the Complaint were that RTI Applications were filed and it had come to light that the Official Memorandum dated 26.12.1975 and the Conversion Order dated 31.12.1979 do not exist in the records of the concerned public authorities. Accordingly, that the documents basis which the Respondent No.1 and 2 knowing or having

reason to believe the documents on which they have placed reliance in support are forged, fabricated and concocted ones, are proclaiming the same to be genuine to establish their ownership and possession over the alleged 16 guntas of kharab land.

56. The Respondent No.1 and 2, being aggrieved by the above had preferred a Criminal Petition bearing No. Crl P. No.5606/2023 challenging the Complaint, FIR and Order dated 02.06.2023. The Hon'ble High Court of Karnataka was pleased to stay further proceedings in Crime No.99/2023 vide its Order dated 06.07.2023. A copy of the Order dated 06.07.2023 passed in Crl P No.5606/2023 is produced herewith as ***Annexure-36***.

57. It is pertinent to note that the allegations in the Complaint bearing P.C.R. (F.R.) No. 5284/2023 filed by Shreenath Shamma are similar, if not the same, to that of the instant Application.

58. It must be noted that the Applicant has also filed proceedings before the Land Grabbing Court in L.G.C (P) No.275/2023 alleging encroachment of the16 guntas of kharab land by the Respondent No.1 and 2. The Respondents have challenged *interalia* the Complaint before the Hon'ble High Court of Karnataka in W.P. No.18582/2023. The Hon'ble High Court of Karnataka was pleased to admit the writ and stay all further proceedings in L.G.C (P) No.275/2023 *vide* its Order dated 05.04.2024. A copy of the Order dated 05.04.2024 is produced herewith as ***Annexure-37***.

59. From all of the above, it is forthcoming that the said persons namely Mr. Shiva Kumar (Applicant), Mr. Shreenath Shamanna and Mr. Manjunath are invested third parties who are filing multiple false and *mala fide* complaints against the Respondents with ulterior motives. Further, the Applicant and the said persons seem to be acting in consortium with one another in as much as it can be seen from various complaints filed by these miscreants that the said person use/rely upon RTI Applications and responses filed by each other interchangeably. Another interesting aspect is that the addresses of all these three miscreants appear to be similar, if not the same, clearly indicating the *mala fides*.It is submitted that there is more than what meets the eye in these complains.

60. The sequence of events leaves no room for doubt that the filing of the Application in the present matter has been engineered by some third party with the intention of forcing the Respondent No.1 to 5 to terms.

61. It is pertinent to mention here that Nitesh Indiranagar Retail Private Limited ("***NIRPL***") and Nitesh Estates Limited ('***NEL***') (the holding Company of the NIRPL) had entered into a Joint Development Agreement dated 11.02.2011 ('***JDA***') with Late Mr. George Thangiah with the intention of putting up a Mall on the Property. In terms of the JDA, NIRPL had confirmed that it has inspected all relevant documents and is fully satisfied regarding the title of Late Mr. George Thangiah to the Said Property.

62. It is submitted that after the RMP 2015 had come into force on 25.06.2007, Bangalore Development Authority and Bruhat Bengaluru Mahanagara Palike had accorded plan sanction to the entire Schedule Properties in the year 2011 and 2013 respectively for development of a mall. A copy of the letter dated 02.08.2011 issued by the Bangalore Development Auhority and Letter dated 14.04.2013 issued by the Bruhat Bengaluru Mahanagara Palike in this regard is produced here with as ***Annexure-38 and 39***.

63. However, pursuant to the execution of the JDA and despite granting of several opportunities by Late Mr. George Thangiah, NIRPL and NEL failed to fulfill their obligations under the JDA within the time stipulated in the JDA. Owing to the failures and breaches on part of NIRPL in fulfilling its obligations, the parties were constrained to enter into a Supplementary Agreement dated 11.02.2014 ('Supplementary JDA').

64. Despite granting sufficient opportunities to NIRPL and NEL and entering into the Supplementary JDA they miserably failed to fulfil their obligations under the JDA and the Supplementary JDA. NIRPL and NEL had in fact refused to perform their obligations and also disabled themselves from performing their obligations under the JDA and the Supplementary JDA and had repudiated the same. Late Mr. George Thangiah wrote a letter dated 19.01.2015 and accepted the repudiation of the JDA and the Supplementary JDA by the NIRPL and NEL as a result of which the JDA and the Supplementary JDA stood terminated. Pursuant to such termination, the contractual relationship between the parties came to an end.

65. Thereafter, a letter dated 08.05.2015 came to be issued by Late Mr. George Thangiah in which all the defaults and breaches committed by NIRPL and NEL in fulfilling their obligations was highlighted. Under the said letter, Late Mr. George Thangiah also informed NIRPL and NEL that the JDA and the Supplementary JDA have been terminated and are no longer subsisting. There was no response from NIRPL and NEL to this letter.

66. Thereafter, certain disputes arose between Late Mr. George Thangiah on the one hand and NIRPL and NEL on the other regarding the JDA and the Supplementary JDA. The parties went to arbitration for resolution of the disputes. After recording of evidence and hearing both the parties, the Arbitral Tribunal comprising of three retired High Court Judges passed an Award dated 25.04.2018. A Copy of the Award dated 25.04.2018 is produced herewith as ***Annexure-40***.

67. A perusal of this Award shows that the Arbitral Tribunal has held that NIRPL and NEL were not ready and willing to perform their obligations under the JDA and Supplementary JDA and that they had committed several breaches. It was held that NIRPL and NEL are not entitled to claim specific performance in respect of the Said Property. All monetary claims of NIRPL and NEL were also rejected by the Arbitral tribunal.

68. Subsequently, NIRPL and NEL filed an Application under Section 34 of the Arbitration and Conciliation Act, 1996 bearing Com A.S No. 134/2018 seeking to set aside the Award dated 25.04.2018. Late Mr. George Thangiah also preferred an Application under Section 34 of the Act bearing Com A.S No. 153/2018 seeking to set aside the Award dated 25.04.2018 to the extent as challenged thereunder. During the pendency of the proceedings in Com A.S. No.134/2018, Mr. George Thangiah passed away and his Legal Representatives were brought on record.

69. The LXXXVII Addl. City Civil & Sessions Judge (Commercial Court), at Bengaluru vide separate Orders dated 23.02.2022 dismissed both the abovementioned Applications under Section 34 of the Arbitration and Conciliation Act, 1996. A copy of the Order dated 23.02.2022 passed in Com AS No.134/2018 is produced herewith as ***Annexure-41***.

70. It is submitted that NIRPL and NEL have on 24.03.2022 filed a commercial appeal bearing Com A.P No. 156/2022 under section 37 of the Act challenging the judgment dated 23.02.2022 in Com A.S No. 134/2018. It is submitted that the Respondent No.1 to 5 have also preferred a commercial appeal under section 37 of the Act bearing Com A.P No. 231 /2022 *inter alia* challenging that portion of the Award dated 25.04.2018 directing the refund of Rs. 42.45 crores with interest. However, no order of stay has been granted in the said matters.

71. NIRPL and NEL had on 11.04.2022 filed for execution of the Award dated 25.04.2018 before the LXXXVIII Addl. City Civil and Sessions Judge (Commercial) at Bengaluru in Com Ex No.178/2022. It submitted that the Judgment Debtors therein, which includes Respondent No.1 and 2 have paid the amount of Rs.42,45,00,000 with interest. The Hon'ble Addl. City Civil and Sessions Judge (Commercial) at Bengaluru has vide order dated 05.07.2023 closed the execution proceedings as satisfied. A copy of the Order dated 05.07.2023 in Com Ex No. 178/2022 is produced herewith as ***Annexure-42***.

72. It is pertinent to mention at this juncture that the several FIRs/Complaints have come to be registered against the Respondent No.1 to 5 concerning the Property and certain adjoining lands in a span of 5 years. All the FIRs/Complaints that have been registered against the Respondent No.1 to 5 relate to the issues that were adjudicated in arbitration proceedings between Late Mr. George Thangiah on the on hand and NIRPL and NEL on the other.

73. NIRPL and NEL had filed a false criminal complaint dated 16.03.2020 before the Ashok Nagar Police station alleging offences under Section 406 and 420 of the Indian Penal Code against the Respondent No.1, 2 and 5. A perusal of the Complaint shows that the NIRPL has alleged cheating by the Respondent No.1, 2 and 5 on the false ground that the Respondent No.1, 2 and 5 herein had withheld information regarding the Property and other adjacent lands falling within the red zone and thereby induced NIRPL into paying huge sums of money to the Respondent No.1, 2 and 5 and that some portions of the Said Land are Kharab Land and that it also falls in the Red Zone. The said false Complaint resulted in the registration of another FIR

against the Respondent No.1, 2 and 5 in Crime No. 97/2020. The Respondent No.1, 2 and 5 challenged the aforementioned FIR and Complaint in Crl. P. No. 2720 / 2020. The Hon'ble High Court of Karnataka has passed an Order dated 22.02.2024 quashing the proceedings in favour of the Respondent No.1, 2 and 5 and further warned NIRPL and NEL from initiating any complaint with respect to the JDA.

74. It is extremely pertinent to note that Shreenath Shammana who is working in consortium with the Applicant is a witness claiming to be a employee of the NIRPL and NEL. A copy of the relevant portion of the charge-sheet and the final Order passed by the Hon'ble High Court in Crl.P. No.2720/2020 is produced herewith as ***Annexure-43 and 44 respectively***.

75. Pertinently, all actions by various authorities narrated above alleging that the Respondent No.1, 2 and 5 have encroached upon government land came to be initiated after NIRPL had lodged a complaint making allegations that are subject matter of the Complaint and FIR in Crime No. 97/2020.

76. It is evident from the above series of events and a comparison of the contents of the Complaints and the FIRs on the one hand with the contentions of NIRPL and NEL before the Arbitral Tribunal on the other; shows that the FIRs/Complaints registered relate specifically to those matters that were alleged by NIRPL and NEL in its claim statement filed before the Arbitral Tribunal. The sequence of events leaves no room for doubt that the instant Application have been engineered and manipulated by certain third parties including NIRPL and NEL with the intention of forcing the Respondent No.1 to 5 to terms.

77. The Respondent No.1 to 5 have learnt that the Applicant is an employee of NIRPL and NEL and is acting on the instructions of them. The said aspect makes it clear that the actions reek of mala fides and are an abuse of the process of law. As such, the Application is illegal, malicious, mala fide and an abuse of process of law. In fact, the *malafide* acts of the Applicant are further substantiated by the false translation of the Annexure-A12 produced with the Application, wherein the ADTP only mentions that the building plan sought for is not available in the said office, which translation has been made to read as "no such building plan for the said number has been

issued". The fact that the RTI response was only in relation to the said office has been suppressed. The same goes to show that the Applicant and other busybodies intend to harass the Respondent No.1 to 5 to bring them to terms.

78. Without prejudice to the above, the Respondent Nos. 1 to 5 seek to traverse the averments made in the Application.

79. ***Re: Para 1 and 2***: The averments in the paragraph under reply are formal in nature and do not warrant any specific traversal.

80. ***Re: Para 3***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. As already stated above, the Respondent No.1 to 5 have not encroached or obstructed any storm water drain or rajakaluve as alleged by putting up constructions on the schedule properties. In fact, the construction on the schedule properties was put up way back in the year 1977, which fact has been suppressed by the Applicant.

81. ***Re: Para 4***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. It is vehemently denied that the Applicant is a lawyer and a public activist or that he was approached by group on individuals who are residents and landowners in Binnamangala Manavartha Kaval, K.R. Puram Hobli, Bangalore East Taluk being aggrieved by the alleged acts of the Respondents encroaching and land grabbing public/government properties and assets. As stated above, the Applicant is a miscreant and a busy body who has approached this Hon'ble Tribunal with unclean hands to harass the Respondent No.1 to 5. Further, the Applicant has also not produced an iota of evidence apart from making bald statements regarding the paragraph under reply.

82. ***Re: Para 5***: The averments in the paragraph under reply are true however, the Applicant has suppressed several other facts regarding the title of Late Mr. George Thangiah to the Property. The Respondent No.1 to 5 rely upon Paragraph No. 16 to 27 of the instant statement of objections in response to the same.

83. ***Re: Para 6***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. While it is admitted that a complex under the name and style of 'George Thangiah Complex' stands on the Property, the same was constructed in the year 1977 in accordance with law and not in September/October 2023 as averred to indicate by the Applicant. Further, it is also denied that there was any extreme water stagnation in the Schedule Properties in and around September/October 2023, and that the residents had bought the same to the notice of the Respondent No.1 to 5, as stated by the Applicant. As stated above, the same is a concocted story by the Applicant to maintain the instant Application and harass the Respondent No.1 to 5 to being them to terms.

84. ***Re: Para 7 and 8***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. It is denied that the local revenue authorities refused to intervene in the matter, the local residents approached the Applicant, in and around the December 2023, and the Applicant is put to strict proof of the same. It is also denied that the Applicant had received similar complaints that the Respondent No.1 to 5 had encroached upon and illegally taken possession of the approximately 16 guntas of government land, abutting the schedule properties with an intention to illegally cause construction on the same. It is further denied that the Respondent No.1 to 5 claim title to the land on the basis of a concocted and fraudulent grant certificate or that based on alleged RTI endorsements, the grant certificate dated 26.12.1975 does not exist. As stated above in length, the allegation of the encroachment of 16 guntas of land, has been settled by the Hon'ble High Court of Karnataka, which while being in the knowledge of the Applicant, has purposefully suppressed before this Hon'ble Tribunal. It is submitted that as the same has been settled by the Hon'ble High Court, the same cannot be re-agitated before this Hon'ble Tribunal. Further, it must be noted that the Applicant had similarly filed a false complaint before the Land Grabbing Court in L.G.C No.275/2023. The Respondent No.1 and 2 filed a writ Petition challenging the same, and the Hon'ble High Court of Karnataka in W.P. No.18582/2023 was pleased to stay further proceedings in L.G.C No.275/2023.

85. ***Re: Para 9***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. The Village map and sketch do not disclose any rajakaluve on the Schdedule Properties. In any case, it is settled position of law that the Revised Master Plan (RMP) would prevail over the village map or any other revenue record and unless the RMP discloses any existence of rajakaluve or storm water drain, the state authorities cannot take any action. It is submitted that as per the RMP 2015 which came into force on 25.06.2007, there is absolutely no rajakaluve or storm water drain on the Schedule Properties. As such, the allegation that 'Geroge Thangiah Complex' having been constructed over a rajakaluve is absolutely denied as false.

86. ***Re: Para 10***: The averments in the paragraph under reply appear to be extract of the law, which is a matter of record. Anything stated or extracted which is not a matter of record or the relevant law, is hereby denied. The Respondent No.1 to 5 also rely upon the applicable legislations for their true purport in indicating that the Respondent No.1 to 5 have not encroached upon any rajakaluve or storm water drain.

87. ***Re: Para 11-12***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. The averments in the paragraph under reply appear to be the Applicant's interpretation of the law and the same is denied as false.

88. ***Re: Para 13-14***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. It is submitted that the response issued by the authority is denied. In any case, the same only states that the records were not available with the authority in their office, however, the Applicant has produced a wrong translation of the same and has misrepresented before this Hon'ble Court. Further, as already stated the construction was put up way back in the year 1977 in accordance with law and the Applicant has merely concocted a story to mislead and maintain the instant Application before this Hon'ble Court.

89. ***Re: Para 15-17***: The averments in the paragraphs under reply appear to be extracts of the law, which is a matter of record. Anything stated or extracted which is not a matter of record or not as per the relevant law, is hereby

denied. The Respondent No.1 to 5 also rely upon the applicable legislations for their true purport in indicating that the Respondent No.1 to 5 have not encroached upon any rajakaluve or storm water drain.

90. ***Re: Para 18-19***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. It is also denied that obstruction and encroachment of a rajakaluve would amount amount to violation of the Environment Proection Act and the Wetland Rules, 2017, which confers jurisdiction on this Hon'ble Tribunal and the Applicant is put to strict proof of the same.

91. ***Re: Para 20-27***: The averments in the paragraphs under reply appear to be extracts of the law, which is a matter of record. Anything stated or extracted which is not a matter of record or not as per the relevant law, is hereby denied. The Respondent No.1 to 5 also rely upon the applicable legislations for their true purport in indicating that the Respondent No.1 to 5 have not encroached upon any rajakaluve or storm water drain.

92. ***Re: Para 28-33***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. As already stated above in length, there exists no rajakaluve or storm water drain on the Schedule Properties which are owned by the Respondent No.1 to 5. Therefore, the question of encroachment of any rajakaluve or storm water drain by the Respondent Nos. 1 to 5 does not even arise. Further, in any case, The Application filed by the Applicant does not relate to any issues falling within the jurisdiction of this Hon'ble Tribunal under the NGT Act, as such the instant Application is maintainable in law and on facts.

93. ***Re: Para 34-38***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. The averments in the paragraph under reply are irrelevant and do not concern the instant Application. In any event, the same are denied. As already stated above, it is it is settled position of law that the Revised Master Plan (RMP) would prevail over the village map or any other revenue record and unless the RMP discloses any existence of rajakaluve or storm water drain, the state authorities cannot take any action. It is submitted that as per the RMP 2015 which came into force on 25.06.2007, there is absolutely no rajakaluve or

storm water drain on the Schedule Properties. Therefore, it is only the RMP that needs to be relied upon and the RMP does not disclose any rajakaluve or storm water drain. As such, the Application is false, frivolous and filed with absolute *malafides*.

94. ***Re: Para 39***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. While it is true that the Applicant has filed the case bearing L.G.C No.264/2024, which is also one of the many *malafide* complaints filed to harass the Respondent No.1 to 5, it is denied that the Applicant has filed any case against the Respondent No.1 to 5 for encroachment of government land in Sy.No.8 of Binnamangala Manavartha Kaval, K.R. Puram Hobli, Bengaluru East Taluk. It is submitted that the Applicant has filed Applications for vacating the Interim Order dated 05.04.2024 and dropping of proceedings. The counsel for the Respondent No.1 to 5 have also addressed arguments on the said IAs, and the matter is now posted for reply arguments by the counsel for the Applicant.

95. ***Re: Para 40-41***: The averments in the paragraph under reply are denied as false and the Applicant is put to strict proof of the same. It is denied that the cause of action arose on 14.03.2024 as stated in the averments in the paragraph under reply. It is submitted that the there is no cause of action in the instant case and the one stated is a concocted and imaginary one, which is absolutely false and even the concocted cause of action is barred by law of limitation. Further, the grounds for interim prayer are frivolous in nature and without any iota of evidence.

96. For all the reasons stated above, it is submitted that the instant Application is not maintainable in law or facts, this Hon'ble Tribunal has ought to be dismissed. The Application filed by the Applicant does not relate to any issues falling within the jurisdiction of this Hon'ble Tribunal under the NGT Act.

97. The Respondent No.1 to 5 reserve liberty to raise additional grounds of objections and produce necessary documents, if any, at a later stage.

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal maybe pleased to *dismiss* the instant Application with exemplary costs, in the interests of justice and equity.

Place:

Date:

Respondent No.1 **Respondent No.2**

Respondent No.3 **Respondent No.4**

Respondent No.5

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTH ZONE, AT CHENNAI

O.A. No. 165 of 2024

BETWEEN

A. Shivakumar ...**APPLICANT**

AND

Vijayashekar Thangiah and others ...**RESPONDENTS**

VERIFYING AFFIDAVIT

I, Vijaya Shekar Thangiah son of Late Mr. George Thangiah, aged about 64 years, residing at No.6, Commissariat Road, Bengaluru - 560025 do hereby solemnly affirm and state on oath as under:

1. I am the Respondent No.1 in the instant matter. I am acquainted with the facts and circumstances of the matter. I swear to this affidavit on behalf of Respondent No.2-5 as well. I state I am authorised to execute the accompanying statement of objections on behalf of Respondent No.2-5, who are my family members. I am competent to swear to this instant affidavit.
2. I state that the averments made in Paragraph No. 1 to 97 in accompanying statement of objections are true and correct to the best of my knowledge and information.
3. I state that Annexure 1 - 44 are true copies of originals.

Identified by me,

Advocate **DEPONENT**

VERIFICATION

I, Vijaya Shekar Thangiah, the Deponent above-named, state that the averments herein above are true and correct to the best of my knowledge and information and I believe the same to be true.

Place:

Date: **DEPONENT**

ANNEXURE - 1

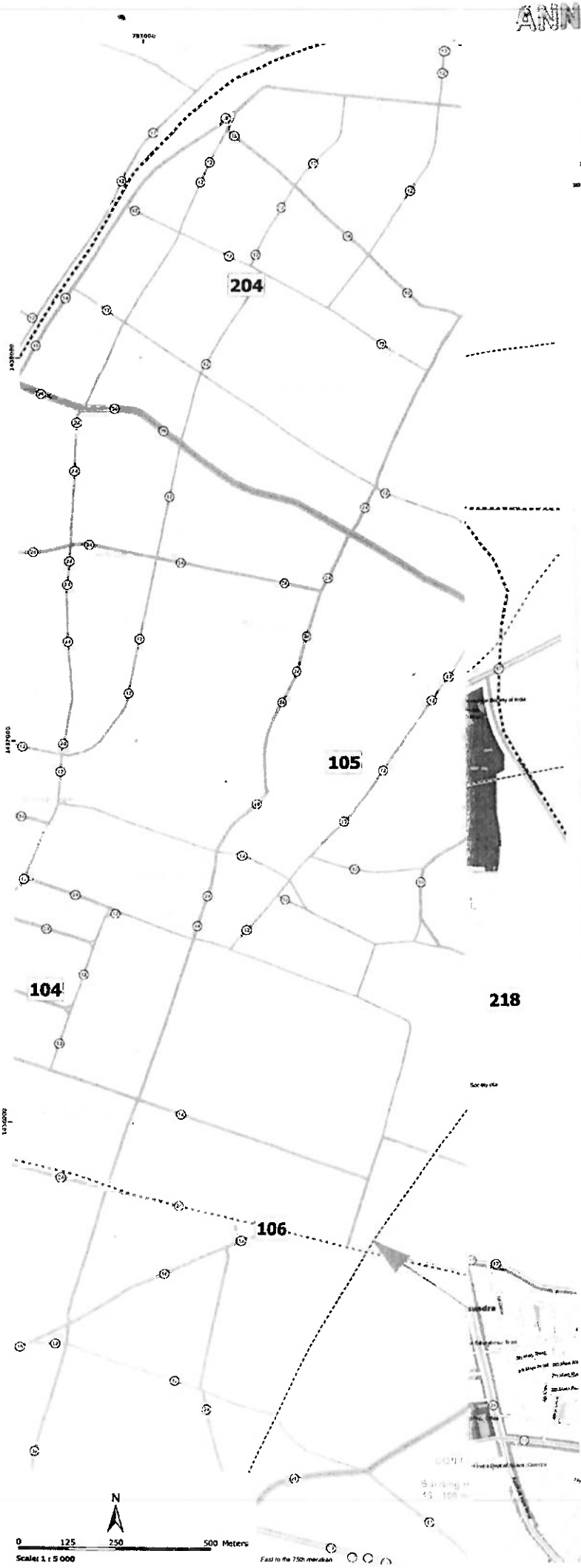
BANGALORE

Revised Master Plan 2015

Proposed Land Use Map

2.06 Indira Nagar

map (a)



ZONING CLASSIFICATION

MAIN ZONES

Residential
- Residential (Mixed)
- Residential (Main)

Commercial
- Commercial (Central)
- Commercial (Business)
- Mutation Corridor
- Commercial Axes

Industrial
- Industrial
- High Tech

Public and Semi-public
- Public / Semi-public

Green (Parks and Open spaces)
- State forest
- Valley (Protected land)
- Lake / tank
- Parks and Green Spaces, Sport / Playgrounds, Cemeteries / Burial grounds

Traffic and Transportation
- Road / Rail / Airport Transport

Public Utilities
- Power / Water / Garbage Facility / Treatment Plant

Agricultural land

Unclassified use

Planning Perimeters
- Town Planning Scheme (TPS)
- Coordinated Planning Scheme (CPS)
- Area Improvement Perimeter
- Transport and Utilities Perimeter
- Heritage Conservation zone

CONSTRAINT AREA
- Non buildable: High Tension Line (HTL) Pipeline: Oil / Water
- Airport/Heights restrictions

OTHER INFORMATIONS

Proposed roads hierarchy
- Ring road
- Primary Urban road
- Major Urban road
- Minor Urban road
- Proposed width of roads (in meters)
- Railway line
- Metro Alignment

Boundaries
- BDA LPA
- BMP Bangalore Mahanagara Palike
- LPA of BMICAPA
- Village
- Survey number

Hydrography
- Drain

Proposed Land Use Analysis

Description	Area in Ha.	%
Residential (Main)	460.12	44.21
Residential (Mixed)	73.99	7.11
Commercial (Central)	-	-
Commercial (Business)	8.04	0.77
Mutation Corridor	36.93	3.55
Commercial Axes	29.39	2.82
Industrial	0.30	0.03
High Tech	17.68	1.70
Public and Semi-public	64.14	6.16
Green (Parks & Open Spaces)	80.51	7.74
Traffic and Transportation	171.02	16.43
Public Utilities	5.25	0.50
Unclassified	93.42	8.98
Total	1040.80	100.00

BANGALORE DEVELOPMENT AUTHORITY

Town Planner Member BDA | Commissioner BDA | Chairman BDA

Coordinate system: UTM zone 43N
Reference ellipsoid: WGS 1984
Unit: meters

North to Equator

East to the 75th meridian

ANNEXURE-2

28

This Document consists of [illegible] sheets
first sheet of duct. No [illegible]

1000 Rs.

INDIA NON JUDICIAL

१००० रु.

Rs 1000

भारत

एक हजार रुपये ONE THOUSAND RUPEES

(2)

THIS DEED OF SALE is made on the 2nd day of August, One thousand Nine hundred and Sixty Nine by The St. - Michael's Convent Home represented by (1) Rev. Mother Superior, presently Rev. Mother Euphrasia, residing at Michael's Convent, Old Madras Road, Bangalore, and (2) Rev. Mother Provincial of the Good Shepherd Convent, Bangalore (hereinafter called the "VENDORS", which term shall mean and include their successors in office and assigns) of the One Part in favour of Sri George Thangiah, son of Mark Thangiah, No. 6, Commissreat Road, Bangalore-25 (hereinafter called the "PURCHASER", which term shall mean and include his heirs, executors, administrators, legal representatives and assigns) of the Other Part:

S.H.S. Rev. Mott. M Francis

C.K.

NOTARY
C.V. EARAPPA,
B.Com., LL.B.,
Bangalore City
Regn. No. 7881
GOVT. OF INDIA

WHEREAS the vendors St. Michael's Convent Home and Good Shepard Convent are the absolute owners of the land comprised in survey Nos. 2 and 3 and part of Survey - No. 7 and 7/1 situated in Binnamangala village, Kanvarthe Kavalu, Krishnarajapuram Hobli, Bangalore South Taluk having purchased

Sister M. Euphrasia
Mother Superior
St. Michael's Convent Home
Bangalore.

ASST. DIRECTOR OF INSPECTION

31-7-69.

No. 664-669

Sri. George Thangiah.

Value Rupees 1000/-, only

Bangalore (S)

Sgd 4.8.69

Presented in the Office of the Sub-Registrar of Bangalore South Taluk
Between the Hours of 11 and 1
On 4.8.69. By George Thangiah

Thangiah.

RECEIVED FEE FOR:—	Rs.	NP
Registration	275	00
Copying (Folios)	7	50
Copying Endorsements	0	50
Misc. Fee Under Sec.	0	60
Postage	9	00
R. M.		
Total	Rs. 292	60

Rev. Mother Euphrasia, Mother Superior, Convent of Good Shepherd, Bangalore.
Rev. mother E. Francis

Admits Execution and Makes Thumb Impression

Mother Superior
St. Michael's Convent Home,
Bangalore-8.

For Provincial Convent of Good Shepherd
Mother Provincial.

Regd as No. 2178 of 69-70
Page 70 Volume 762 of Book 1
Date: 4.8.69 Sub-Registrar

State that I personally know the above executants and identify him.

Bangalore South Taluka

Share Bonds of Nepean Sea Weed Drop no 61/233639 dated 1.8.69 for Rs Seventy five thousand and another Drop no 233656 dated 4.8.69 for Rs Ten thousand only from Thangiah.

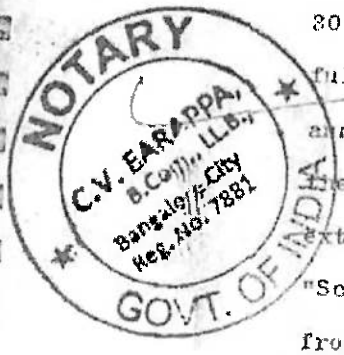
Rs 45000/-

Mother Superior
St. Michael's Convent Home
Bangalore-8.

having purchased the same in the year 1920 onwards from several ryots who had permanent occupancy rights, and subsequent to absolition of Inams they have become - absolute owners;

WHEREAS the vendors have been in possession and enjoyment of the said lands as such absolute owners;

WHEREAS the vendors have offered to sell a part of the land comprised in survey Nos. 2 and 7/1, Binnamangala Hanvarthe Kavalu Krishnarajapuram Hobli, - Bangalore South Taluk to the extent of 4 acres 7 guntas 30 Square yards and 2.25 square feet as described in full in the schedule hereto and delienated in the plan annexed to this deed together with the super structures thereon and the purchaser has agreed to buy the said extent of land which shall hereinafter called the - "Schedule Property" for the price of Rs. 5,000/- free from all encumbrances:



Sister M. Euphrasia
Mother Superior
St. Michael's Convent Home
Bangalore-8.

Contd....

For Rupees 3375/- One of Rs 75/- two of Rs 150/- and three of Rs 1000/-. Total six papers are attached.

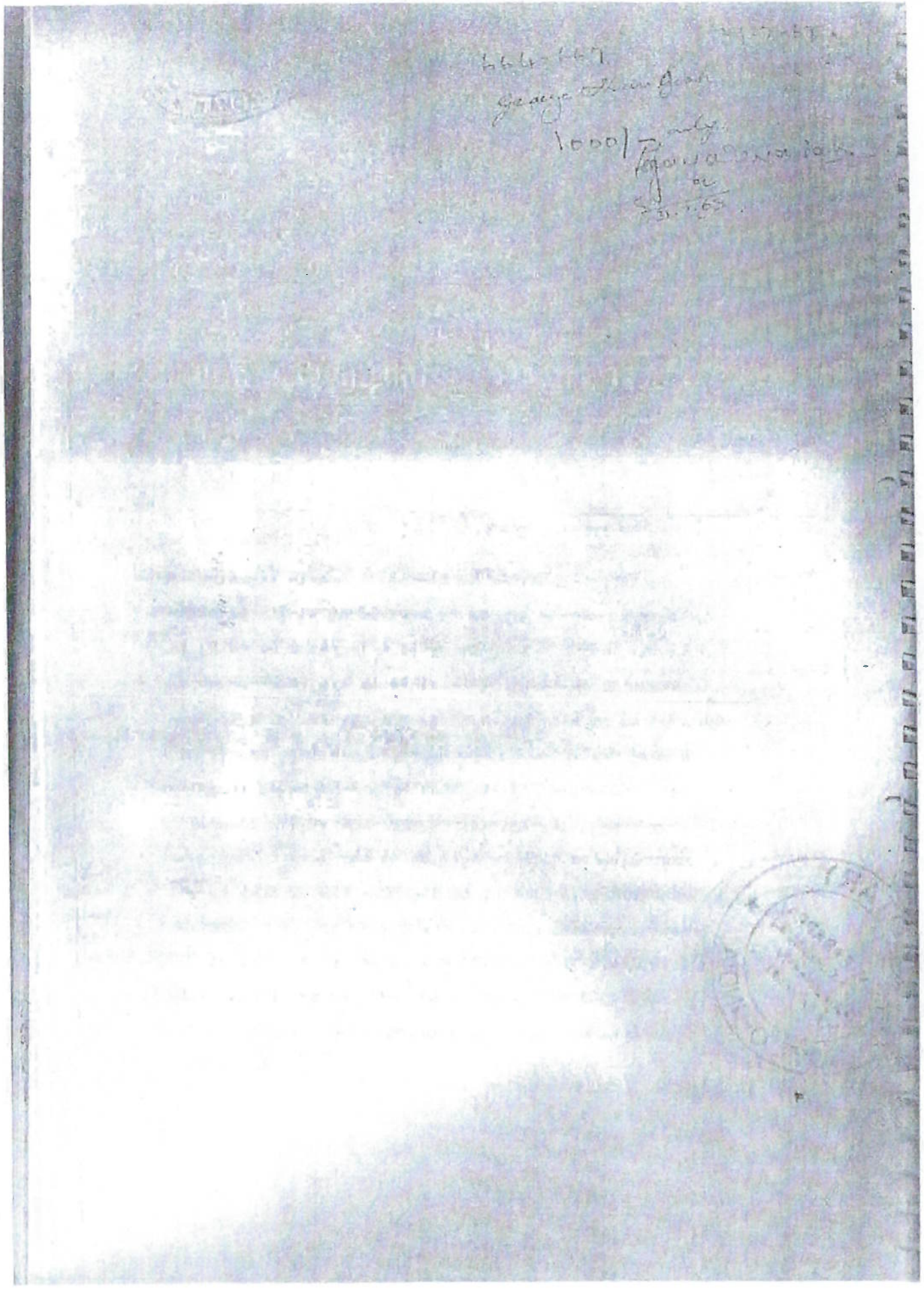
For Accountant General
Madras & Andhra,
State Finance Treasury,
Bangalore.
31.7.67.

NOTARY GOVT. OF INDIA
C.V. EARAPPAI
Bangalore City
Regn. No. 1221

NOW THIS INDENTURE WITNESSES: that in pursuance of the said agreement and in consideration of the payment of Rs. 25,000/- (Rupees ~~Forty~~ Five thousand only) by the purchaser to the vendors, that is Rs. 10,000/- as advance on 21st April, 1969 and Rs. 45,000/- by bank demand draft No. 66/233639 dated 1.8.1969 in favour of Mother Superior of St. Michael's Convent Home, Bangalore in presence of the registering officer at the time of registration of this sale deed, the vendors named above acknowledging receipt of the said sum in full do hereby convey, transfer, grant and assign by way of absolute sale all that land measuring 4 acres and 7 gunts (30 Sq. yards and 2.25 Sq. feet) in the village of Nimmamangala Manvartha Kavalu, Krishnarajapuram Hobli, Bangalore South Taluk,

NOTARY C.V. EARAPPA, B.Com., LL.B., Bangalore City Regn. No. 7582 GOVT. OF INDIA

Mother Superior
St. Michael's Convent Home
Bangalore-8.



South aluk, more fully described in the schedule hereto together with super structures and all rights of way, water courses, trees, plants and hedges, liberties, privileges and easements that are attached to and belonging to or reputed to belong to the schedule property unto the purchaser to have, to hold and to enjoy the same for ever free of all encumbrances.

The vendors covenant with the purchaser that they are the absolute and full owner of the schedule property and that they have not done or been a party to any act or deed whereby they are prevented from conveying the property or any portion thereof in the manner herein appearing.

The vendors covenant with the purchaser that the property hereby sold is free from any claim, charge or demand of

NOTARY
C.V. EARAPPA, B.Com., LL.B.
Bangalore City
Reg. No. 7681
GOVT. OF INDIA

Mother Superior
St. Michael's Convent Home
Bangalore-8.

deamand of any person and the same is not subject to any attachment under any legal proceedings. The vendors - covenant to save the purchaser harmless and to indemnify him against any loss or damage that he may sustain on account of such claim, charge, demand or court attachment.

The vendors covenant with the purchaser that they shall from time to time and at the request of the purchaser execute or do or cause to be done or executed all such acts, deeds and things as may be legally - necessary for more effectively assuring the title of the purchaser to the property hereby sold.

The Rev. Mother Provincial of the Good Shepherd Convent joins in this deed of sale as consenting party in token of her consent and for better assuring the title in favour of the purchaser.

The vendors have delivered to the purchaser possession of the property described in the schedule hereto.

Mother Superior
St. Michael's Convent Home

Contd.....

NOTARY
C.V. EARAPPA, B.Com., LL.B.
Bangalore City
Reg. No. 7881
GOVT. OF INDIA

INDIA
SEVENTY FIVE RUPEES
75Rs

Schedule

All that piece and parcel of land being parts of survey numbers 2 and 7/1 together with the superstructures thereon situate in Binnamangala Manavartha Kavalu, - Krishnarajapuram Hobli, Bangalore South Taluk, measuring in extent 3 acres, 19 guntas 94 square yards and 7.75 square feet in survey No. 2 and 29 guntas - 56 square yards 3.50 square feet in survey No. 7/1 totalling - 4 acres 7 guntas - 30 square yards and 2.25 square feet bounded on the North by: land retained by the vendors: East by: land bearing survey No. 6; South by: Sofia Ratnamma's land; West by: properties belonging to - T.P. Natarajan, N.C. Mathew, C.P. Thomas and public - road as denoted by the letters A B C D E F G H I J K L M N O P and by the line shown in red colour.

IN WITNESS WHEREOF the vendors have signed this deed on the 2nd day of August, 1969.

WITNESSES:

1.

2.

Sister M. Euphrasia
Mother Superior
St. Michael's Convent Home
Bangalore-8.

For Provincial Council

VENDORS

NOTARY
C.V. EAPPA, B.Com., LL.B.,
BANGALORE CITY
GOVT OF INDIA

Certified that a stamp of Rs. 75.0/- Paise ... was affixed on this document

[in words] Rupees Seventy five and fifty paise only

being the duty chargeable on the same. Stamp Duty has been remitted to Government under challan No 6.8.69 14:9 dated 2.8.69 by Sri. G. Govinda Shetty residing at Commissariat Road, Bangalore

Bangalore
Dated 4.8.69

Sub-Registrar
Bangalore South Taluk.

NOTARY
C.V. GARAPPA
B.Com., LL.B.,
Bankalore City
Regd. No. 7851
GOVT. OF INDIA

ANNEXURE 03

40

1660
30-7-71

THIS DEED OF SALE made this Twenty-Seventh day of June One Thousand Nine hundred and Seventy (27-6-1970) by Sri P.V. Devassey, aged 60 years, son of Varkey, residing at " May Ville.", Yercaud, Salem District, Tamil Nadu, represented by Sri Kora Chandy, aged 62 years, son of Varghess, Advocate and holder of General Power of Attorney for the said P.V.Devassey, dated 30th January 1970, registered as No.15 of 1970 in Book 4, Volume 83 at pages 25 to 28 in the office of the Joint Sub-Registrar IV, Salem, Tamil Nadu, residing at No.12, Kumaraswami Naidu Road, Fraser Town, Bangalore-5, hereinafter called " the Vendor ", which expression where the context admits, shall be deemed to mean and to include his heirs, executors, administrators, assigns and legal representatives of the ONE PART, in favour of George Thangiah, aged 40 years, son of Sri Mark Thangiah, residing at No.6, Commissariat Road, Civil Station, Bangalore-25, hereinafter called " the Purchaser ", which expression also where the context admits shall be deemed to mean and to include his heirs, executors, administrators, assigns and legal representatives, of the Other Part: K. Chandy, power of attorney holder of Vendor

....2/-

6.591

for want of Rs. ... Non Judi
of Rs. 3.00 of Rs. 3.00
Rs. 1587 of Rs. ...
... Rs. ...
No. 312-314 Rs. 3/-
Name. George Thangaiah

Stamp Vendor N. B. Purohit & Co
Manufacturer's Date 23.4.79

-: 2 :-

WHEREAS the Vendor purchased from the Mother Superior, St. Michael's Convent, Bangalore, by virtue of and under a Deed of Sale dated 14th May 1952 registered as No.1041/52-53 in Book I Volume 1265 at pages 110 to 113 in the office of the Sub-Registrar, Bangalore Taluk, Bangalore, the piece and parcel of land, in extent two acres and sixteen guntas, then known as site No.15 and forming part of the then Survey No.2, situate in Ainnamangala Hanavarthekaval, Krishnarajapura Hobli, Bangalore South Taluk, Bangalore District;

AND WHEREAS the Government of Mysore by its Notification No. RD.6 ITB dated 19-8-1964, published in the Mysore Gazette dated 27-8-1964 at page 1550 in Part III section 1, proposed to acquire the said land along with other lands in the locality for the formation of a layout " between Old Madras Road and H.A.L. Road, II Stage".

AND WHEREAS by a subsequent Notification No.RD 317 ACB (4) 67, dated 16-12-1967 published in the Mysore Gazette dated 11-1-1968 at Page 128 in part III Section 1, the Government withdrew from the said proposed acquisition by denotifying inter alia

...3/-

Bangalore South Taluk

42

-: 3 :-

certain areas out of the land proposed to be acquired under the aforesaid Notification dated 19-8-1964, as they were no longer required for the original purpose of the said layout and retained only the land required for the 80 ft C.I.T.B. road; And Whereas in pursuance of the said decision a portion of the Vendor's land extending to (a) 20 guntas and 21 Sq.yds out of the land purchased by him under the said sale deed dated 14-5-1962 was acquired by the Government, and the City Improvement Trust Board by its award in acquisition case No.393/64-65 awarded compensation to the Vendor for the said portion (c) acquired from the Vendor; and the remaining portion of the Vendor's land was withdrawn from acquisition;

AND WHEREAS the Vendor is thus in absolute possession and enjoyment and well-seized of the remaining land out of the land purchased by him under the Sale Deed dated 14-5-1962;

CANARA BANK

AND WHEREAS the Vendor being desirous of selling certain portions out of the said remaining

K Chandy & M Shankar Advocates

...2/-

Sl.No. ..... Dt. .....

Name: Sri K.C. Thimayya

Signed Vendors: N. B. Poonacha & Co.

Bangalore-1. Date: 23-4-1979

land comprising one acre and four guntas in extent and set out and described in the Schedule hereunder written and marked and delineated as blocks A, B, C, D, and E and by the line shown in red colour in the plan hereto annexed and referred to hereinafter as the Schedule property, negotiated with the Purchaser for the sale to him of the same for the sum of Rs.20,900/- (Rs. twenty thousand and nine hundred only); and the Purchaser being interested in the same as he owns the adjoining land and having agreed to purchase the same at that price;

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the said sum of Rs.20,900/- (Rs. twenty thousand and nine hundred only) paid by the Purchaser to the Vendor as follows: Rs.5,000/- (Rs. five thousand only) paid as advance on 3-1-1970 to secure the sale and the balance of Rs.15,900/- (Rs. Fifteen thousand nine hundred only) paid this day before the Sub-Registrar at the time of the registration of this deed, by bank draft No.035444, dated 27-8-1970, issued by the State Bank of Mysore, Vidhana Veedhi Branch, and drawn on the Bangalore Branch of the same Bank, in favour of the said Sri Kora Chandy, Power of Attorney Holder of the Vendor the receipt of which full sum of Rs.20,900/- [illegible]

In the District Court of the Sessions

501 46

doth hereby acknowledge, acquit and release the purchaser from the same the Vendor doth hereby sell, transfer, convey, assign and make over unto and to the use of the Purchaser all that schedul e property together with all the right, title, interest, claims, demand, liberties, easements, right of way, water courses, two wells, trees, hedges, bushes, stones and stone pillars, whatso-ever appurtenant thereto or reputed to belong thereto, TO HAVE and TO HOLD the same absolutely now and for ever free of all interruptions by the Vendor or any person or persons claiming either acquitably or legally (s) through, by or in trust for him or any of his predecessors in title;

AND THE VENDOR doth hereby undertake that in order that the purchaser may enjoy the schedule property more effectively and utilise it to the maximum extent possible, he the Vendor hereby reserves the bits of his retained land marked blocks I.J, and K in the Plan annexed hereto, for acquisition on behalf of the Bangalore City Improvement Trust Board, Village Panchayat or the Corporation of the City of Bangalore or any other competent K-Charady-6-II Court of Jurisdiction NO (6604-70-71 N.K.S. Court)

B/-

CANARA BANK

No. 1 Re.
Name George Thangaiah
Stamp Vendor N. B. Purshotham & Co.
Bangalore-1. Date 23-4-79

local authority, as the case may be, exclusively for the formation of 30 ft. roads;

And the Vendor doth hereby covenant and agree with the Purchaser that he has not done or been party to any act or deed whereby the schedule property hereby conveyed is or may be subject to any claim, charge, lis pendens or court attachments or whereby the Vendor is prevented from conveying the same as done under these presents;

AND WHEREAS THE VENDOR doth hereby covenantand agree with the Purchaser that he shall keep the Purchaser indemnified and save harmless against all losses or damages he m ay sustain as a result of any defect in title or on account of any claim being put forward to the schedule property by whomsoever, or on account of any arrears of rates, khandayam or taxes;

AND THE VENDOR doth hereby further covenants and agree with the Purchaser that he shall from hence forth and from time to time at his cost and upon the request of the purchaser do or cause to be done all such acts, deeds, things and assurances as may be legally and reasonably required by the Purchaser for the further and

K. Chandy,

....7/-

In Sch to C.A.No 56/78 A1 (26) N

and more effectively assuring the title of the purchaser to the schedule property hereby conveyed.

THE VENDOR has delivered to the Purchaser a certified copy of the previous document of title relating to the schedule property dated 14-5-1952 as well as a copy of the said Power of Attorney dated 30-1-1970 in favour of the said Sri Kora Chandy and has this day put the Purchaser in actual vacant possession of the schedule property.

SCHEDULE

All those pieces and parcels of land forming parts of Survey No.2/1 and 7/1-A, formarly known as site No.15 and forming part of old survey No.2, situated in Binnamangala, Manavarthekaval, Krishnarajapuram Hobli, Bangalore South Taluk, Bangalore District, comprising blocks marked as A, B, C, D and K and by the line shown in red colour in the Plan hereto annexed, together with two wells, and described as follows; K Chandy

I Sheet or document no. 1660 08-10-71 N.K.S

...8/-

CANARA BANK
23 JUL 1974

Block	Survey	Boundaries	Extent A. G.	A.C.
A	2/1	N: Purchasers 1 and E: -do- S: Block C (S.No.7/1-A) W: 80 ft. Road.	0-105	(0-10½
B	2/1	N: Triangular bit forming part of 80 ft. Road E: 80 ft. Road. S: Block D forming part of S.No.7/1-A W: S.No.2/1	0-01	(0-01)
C.	7/1-A	N: Block A. E: Purchaser's land and part of S.No.7/1-A. S: Block J - Vendor's land reserved for 30 ft. Road. W: 80 ft. Road.	0-175	(0-17½
D.	7/1-A	N: S.No.2/1(6) E: 80 ft. Road, S: Block I - Vendor's land reserved for 30 ft. Road. W: S.No.2/1	0-05	(0-05)
E.	7/1-A	N: Block I. E: 80 ft Road S: Block K-Old road and Vendor's land reserved for 30 ft. Road. W: Block F (S.No.7/1-A	0-10	(0-10)
		Total	1-04	(1 - 04)

(N:B: Block C contains phut karab 0-01 gunta. The extent of 17½ gunta shown against Block C is exclusive of this 0-01 gunta).

IN WITNESS WHEREOF the Vendor has here-unto K. Chavan

...9/-

set his hand the day, month and year first above written. Signed & delivered by the above named Vendor

WITNESSES:

1. T. Francis (T. Francis) Vendor

2. K.V. Sarathchandran
K.V. Sarathchandran

For want of Rs 1575.00 2 papers of Rs 750-00 1 g Rs 60-00 1 g Rs 15-00 g Rs - g Rs - g Rs are issued Date 24.6.70 Acharya Stamp Vendor Sri Bangalore Legal Practitioners Co-operative Society Ltd No. 1588-91 Rs 750/- Name Sri George Thangaiah Date 24.6.70. K.S.B. Acharya Stamp Vendor Sri Bangalore Legal Practitioners Co-operative Society Ltd Forward of Rs 1575-00 2 papers of Rs 750-00 1 g Rs 60-00 1 g Rs 15-00 g Rs - g Rs - g Rs are issued Date 24.6.70 K.S.B. Acharya Stamp Vendor Sri Bangalore Legal Practitioners Co-operative Society Ltd. No. 1588-91 Rs 750 Name Sri George Thangaiah Date 24.6.70 K.S.B. Acharya Stamp Vendor Sri Bangalore Legal Practitioners Co-operative Society Ltd. 1 g Rs 1575. 2 - papers g Rs 750/- 1 g Rs 60/- g Rs - g Rs - g Rs - Issued Date 24.6.70 K.S.B. Acharya Stamp Vendor Sri Bangalore Legal Practitioners Co-operative Society Ltd No. 1588-91 Rs 60/- Name Sri George Thangaiah Date 24.6.70 K.S.B. Acharya Stamp Vendor Sri Bangalore Legal Practitioners Co-operative Society Ltd For want of Rs 1575-00 2 papers of Rs 750-00 1 g Rs 60/- 1 g Rs 15/- g Rs - g Rs - g Rs are issued Date 24.6.70. K.S.B. Acharya Stamp Vendor Sri Bangalore Legal Practitioners

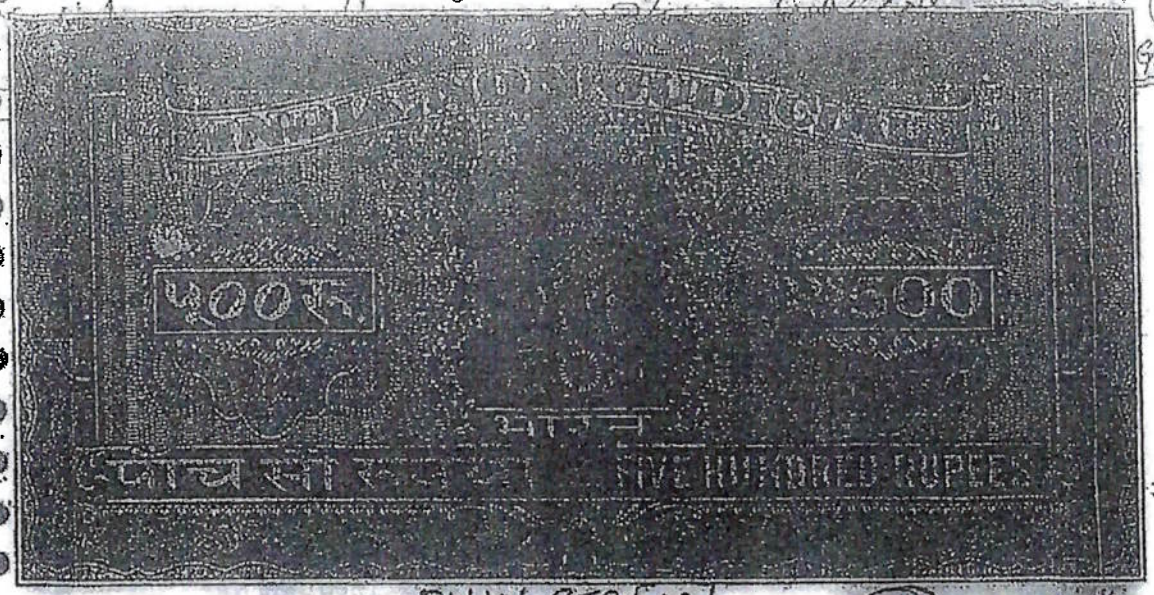
Indexed Compared Scanned
No. 2 Sri George Mangalore Date 24.6.70 I.S.R.
Malleswaram Bangalore Development Co-operative Housing Society Ltd. Limited
Deed of Conveyance of Site bearing Site No. 27/6 (Seal)
Doc. No. 1668 of 70-71 Nic's
S. No. 3123 pertaining to the Office of the Sub-Registrar Bangalore South Taluk between the hours of 4 and 5 PM on 27.6.70 by George Mangalore (PW) George Mangalore delivered for registration Rs. 705-00 Copy of Index 6-00 Copy of Endorsement 2-00 More fee Rs. 1-00 R.R. 45-00 Total Rs 159-00
I K Chandy Advocate Bangalore Admitted Execution and Marcus Thumbs impression by K. Chandy S/o Rema Swamy Advocate Bangalore State Karnataka personally known to the above Executant and identified him. Sri Ramaswamy Advocate Bangalore paid in my office Service State Bank of Mysore Draft No. 63/635464 dated 27th June 1970 for Rs. Fifteen Thousand nine Hundred only (Rs 15,900/-) by George Mangalore to K Chandy N.K. Srinivasan Sub-Registrar 27.6.70 Copied as No. 1660 of 70-71. page 186-192 Volume 1220-4 Book I
N.K Srinivasan Sub-Registrar Date 27.6.70 (Seal)
In the original as (C)(S) altered (B) admitted
original (B) erased (D) (I) Inserted (H) (F) Initialled
Entered copy (V)(Q)(B)(G)(D)(R) Scrolled (A) Examined
(S) Re-altered Thumb. N.K. Srinivasan 27/6/70.
Sub-Registrar in-charge Copy N.K.

Copy applied on 24-6-70
" Received " 27-6-70
" Delivered " 27-6-70
" Paid " 27-6-70

Sub-Registrar
Bangalore South Taluk

ANNEXURE -04

50



ONLY GTC [W]

THIS DEED OF SALE made this Twenty Third day of February, One Thousand Nine Hundred and Seventy Two (23-2-1972) by P.V.Devassey, aged 61 years, son of Varkey, residing at 'May Ville', Yercaud, Salem District, Tamil Nadu, represented by Kora Chandy, aged 63 years, son of Varghese, Advocate and Holder of General Power of Attorney for the said P.V.Devassey, dated 30th January 1970, Registered as No.15 of 1970 in Book 4 Volume 83 at pages 25 to 28 in the Office of the Joint Sub-Registrar, Salem, residing formerly at No.12, Kumaraswami Naidu Road, Fraser Town, Bangalore-5 and now at No.1 V Cross 'B' Hutchins Road, Bangalore-5, hereinafter called 'THE VENDOR' which expression where the context so admits shall mean and include his heirs, executors, administrators, assigns and legal representatives of the ONE PART, in favour of George Thangiah, aged 41 years, son of Mark Thangiah, residing at No.6 Commissariat Road, Bangalore-25, hereinafter called 'THE PURCHASER' which expression also where the context so admits, shall mean and include his heirs, executors, administrators, assigns and legal representatives of the OTHER PART: WHEREAS the Vendor purchased

S. BALU, B.Com., LL.B., M.L., Regn. No. 4342 NOTARY GOVT. OF INDIA

ATTESTED TRUE COPY
S. BALU, B Com, LL.B, M.L.
NOTARY
GOVT. OF INDIA
Regn. No. 4342
#406, 1st Cross, Vijayanagar
HAL 3rd Stage, BANGALORE - 560 075

(continued)

51

10 DEC

No. 3428 of

Date 22.12.

RECEIVED FEE FOR :-

	Rs	Ps
Registration	35	00
	4	00
	0	50

South Taluk

Dt. 23-2-07

3 and 4/Per Receipt

P. 40 00

Executed and signed by : K. Rachandy

Power holder of P.V. Devasi

S. BALU, B.Com., LL.B., M.L.
Regn. No. 4342
NOTARY
GOVT. OF INDIA
BANGALORE METROPOLITAN AREA

Identified by : S. K. Ramaswamy
A/Manager
Bowringpet city

ATTESTED TRUE COPY
S. BALU, B Com., LL.B., M.L.,
NOTARY
GOVT. OF INDIA
Regn. No. 4342
100, First Cross, 2nd Main Road,
HAL 3rd Stage, BANGALORE - 560 075

PAID IN MY PRESENCE RUPEES Seven Thousand Five Hundred and Forty (7540) only through Bank draft - 38 E Bank of Mysore Vidhana Soudhi Branch Dt. No. 07/270409 dt. 23-2-07 on State Bank of India Salem.

By Power holder.

52

St.Micheal's Convent, Old Madras Road, Bangalore, under a Sale Deed dated 14th May 1963 and Registered as No.1041/52-53, in Book I Volume 1265, pages 110 to 113 in the Office of the Sub-Registrar, Bangalore Taluk, the piece and parcel of land, in extent two acres and sixteen guntas, then known as site No.15 and forming part of Survey No.2 situate in Binnamangala Manavarthekaval, Krishnarajapuram Hobli, Bangalore South Taluk, Bangalore District;

AND WHEREAS the Government of Mysore by Notification No.RD 6 ITB dated 19-8-1964, Published in the Mysore Gazette dated 27-8-1964 at page 1539, Part III, Section I, proposed to acquire the said land along with other lands in the locality for the formation of a layout "between Old Madras Road and H.A.L. II Stage";

S. BALU, B.Com., LL.B., M.L. Regn. No. 4342 NOTARY GOVT. OF INDIA BANGALORE METROPOLITAN

AND WHEREAS by a subsequent Notification No.RD 317 AQB 67, dated 18-12-1967, published in the Mysore Gazette dated 11-1-1968 at page 128, Part III Section 1, the Government withdrew from the said acquisition by denotifying certain areas out of the land proposed to be acquired under the said Notification dated 19-8-1964,

ATTESTED TRUE COPY
S. BALU, B.Com., LL.B., M.L.
NOTARY
GOVT. OF INDIA (continued)
Regn. No. 4342
106, First Cross, 2nd Main Road,
HAL 2nd Stage, BANGALORE - 560 075

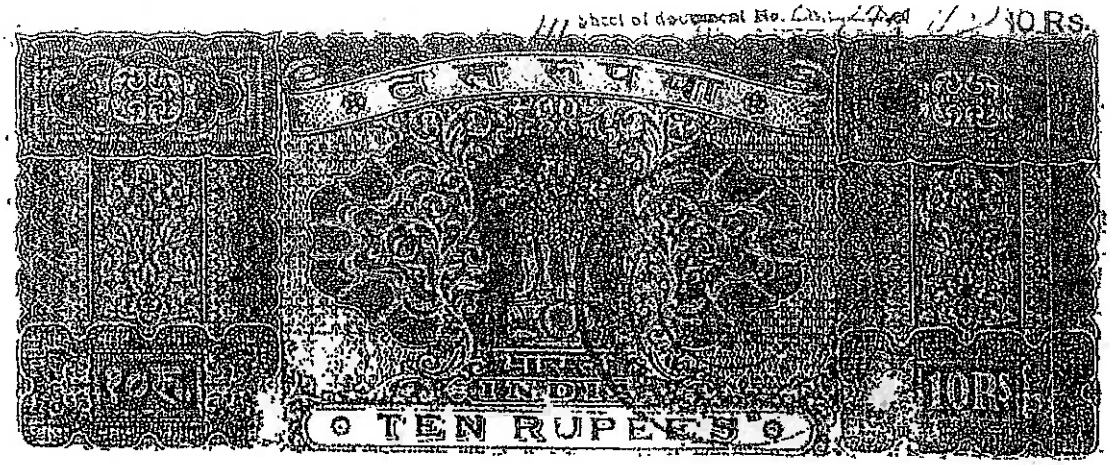
as they were no longer required for the original purpose of the proposed layout and retained only the land required for the 80 feet C.I.T.B. Road; AND WHEREAS in pursuance of the said decision a portion of the Vendor's land extending to 20 guntas and 21 sq.yds out of the said land purchased by him under the said Sale Deed dated 14-5-1954, was acquired by the Government and the City Improvement Trust Board in acquisition case No.383/64-65 awarded compensation to the Vendor for the portion acquired from the Vendor, and the remaining portions of the Vendor's land were withdrawn from acquisition;

AND WHEREAS out of the said remaining portions of his land the Vendor sold to the Purchaser under a Deed of Sale dated 27-6-1970 Registered as No.1660/70-71 in Book I Vol.820 pages 186/192 in the Office of the Sub-Registrar, Bangalore South Taluk, five blocks marked A,B,C,D and E, in the annexed thereto and retained blocks marked F,G,H,J and K in the said plan, Blocks I,J and K being reserved for 30 feet road;

AND WHEREAS the Vendor is thus the sole and

ATTESTED TRUE COPY

54



-: 4 :-

absolute owner of the said five blocks of land marked F, G, I, J and K in the plan annexed to the said sale deed dated 27-6-1970, well seized and possessed of the same;

AND WHEREAS the Vendor has since decided not to reserve Block I for a thirty feet road, as there is no necessity for the same and as the Purchaser who owns the adjoining blocks H and E wishes to purchase the same in order to have one compact area for himself;

AND WHEREAS the Vendor is now desirous of selling a further portion of his land comprising the two Blocks F & I out of the said five blocks F, G, I, J and K measuring [illegible] cuntas and four guntas respectively, totalling ten [illegible] in extent and set out and more fully described in the Schedule hereunder and marked and delineated as F and I by the line shown in red colour in the plan annexed and hereinafter referred to as the Schedule property, negotiated with the Purchaser for the sale to him of the same for a sale price of Rs.6,240/- (Rupees six thousand six hundred and forty only); and the Purchaser having agreed to purchase the same at that price, free of encumbrances.

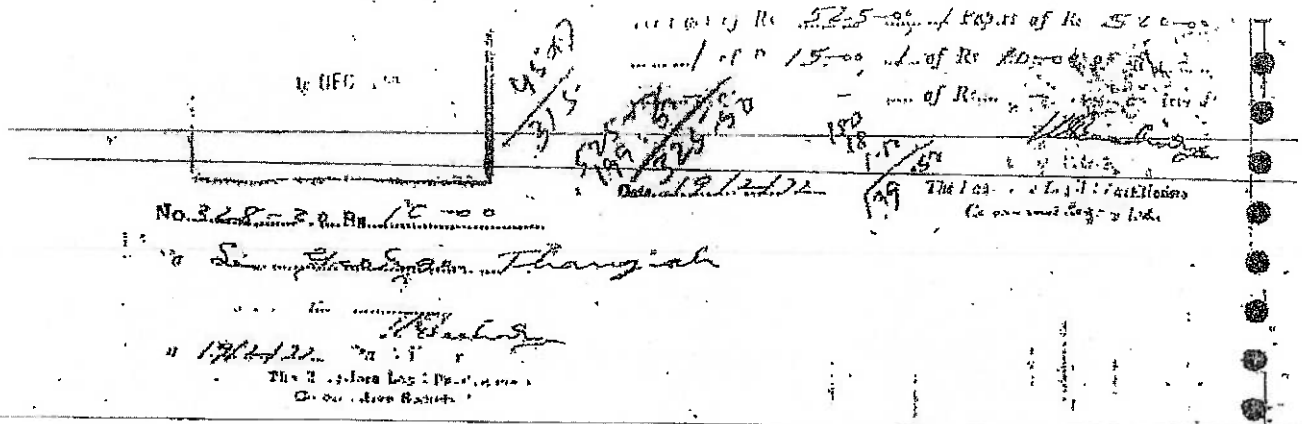
NOW THIS DEED OF SALE witnesseth that in pursuance of the said agreement and in consideration of the said

(Continued)

S. BALU, B.Com., LL.B., M.A.
NOTARY
GOVT. OF INDIA
Regn. No. 4342
100, First Cross, 2nd Main Road,
Hanumanthnagar, BANGALORE - 560 019

ATTESTED TRUE COPY
S. BALU, B.Com., LL.B., M.A.
NOTARY
GOVT. OF INDIA
Regn. No. 4342
100, First Cross, 2nd Main Road,
Hanumanthnagar, BANGALORE - 560 019

55



sum of Rs.6,640/- (Rupees six thousand six hundred and forty) only paid by the Purchaser to the Vendor in the following manner viz. Rs.1000/- (Rupees one thousand) only paid as advance on 19-5-1971, by cheque in favour of the Vendor drawn on the State Bank of Mysore, Vidhana Veedhi Branch, Bangalore, and the balance of Rs.5,640/- (Rupees five thousand six hundred and forty) only paid before the Sub-Registrar at the time of the registration of this Deed by Draft No. 67/27044 dated 23rd February 1972 in favour of the Vendor issued by the State Bank of Mysore, Vidhana Veedhi Branch on the State Bank of India, Salem, the receipt of which full sum of Rs.6,640/- (Rupees six thousand six hundred and forty) the Vendor doth hereby acknowledge, acquit and release the Purchaser from the same, the Vendor doth hereby sell, transfer, convey, assign and make over unto and to the use of the Purchaser all that schedule property together with all the right, title, interest, claim, demands, liberties, easements, &

(continued)

ATTESTED TRUE COPY
S. BALU, B.Com., L.L.B., M.L.,
NOTARY
GOVT. OF INDIA
Regn. No. 4342
100, First Cross, 2nd Main Road,
HAL 3rd Stage, BANGALORE - 560 075

Sheet of document No. 6598 of 91-92

trees, and appurtenances belonging thereto or reputed to belong thereto TO HAVE AND TO HOLD the same absolutely now and for ever, free of interruption by the Vendor or any person or persons claiming through, by or in trust for him or any of his predecessor in title.

THE VENDOR doth hereby assure the Purchaser that he has not done or been party to any act or deed whereby the schedule property hereby conveyed or any part thereof is or may be subject to any claim, charge or any other encumbrance whereby the Vendor is prevented from conveying the same as done under these presents.

AND THE VENDOR doth hereby covenant and agree with the Purchaser that he shall keep the Purchaser indemnified and save harmless against all losses or damages he may sustain on account of any defect in title of the Vendor to the Schedule property or on account of any claim by way of arrears of rates, Kandayam or taxes.

AND THE VENDOR doth hereby further covenant with the Purchaser that he shall from henceforth and from time to time at his cost and upon the request of the Purchaser do or cause to be done all such acts as may legally and reasonably be required by the Purchaser for the further and more effectively assuring the title of the Purchaser to the Schedule property.

THE VENDOR has this day put the Purchaser in

S. BALU, B.Com., LL.B., M.L. Regn. No. 4342 NOTARY GOVT. OF INDIA BANGALORE METROPOLITAN AREA

ATTESTED TRUE COPY

S. BALU, B.Com LL.B M.L.
NOTARY
GOVT. OF INDIA
Regn. No. 4342
100, First Cross, 2nd Main Road,
HAL 3rd Stage, BANGALORE - 560 075

Continued

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vacant possession of the Schedule property.

S C H E D U L E.

All those pieces andparcels of land in two blocks, marked F and I by the line shown in red colour in the plan hereto annexed, measuring six guntas and four guntas respectively, in all ten guntas, being vacant land, situated in Binnamangala Manavartha Kaval, Krishnarajepuram Hobli, Bangalore South Taluk, and forming ppat of Survey No.7/1-A formerly known as site No.16 and forming part of Old Survey No.2, and more fully described below:

	Area: A. G.	Boundaries.
BLOCK F.	0-06	West: S.No.2 (Now 2/1) (Old sites Nos.16 and 17)
		East: Block E belonging to Purchaser
		South: Block K belonging to Vendor;
		North: Block I now sold to Purchaser
BLOCK I	0-04	West: S.No.2 (Now 2/1)- (Old sites Nos.16 and 17)
		East: 80 feet Road;
		South: Block F now sold to Purchaser and Block belonging to Purchaser
		North: Block D belonging to Purchaser;
	0-10	

IN WITNESS WHEREOF the Vendor has hereto set his hand the day, month and year first above written.

WITNESSES:

1. [signature]

2. [signature]

[signature]
By General Power of Attorney Holder
Kora Ch. BALU

6, Commercial Road, Richmond Town, Bangalore-25

B.Com., LL.B., M.L. Regn. No. 4342 NOTARY GOVT. OF INDIA BANGALORE METROPOLITAN AREA

S. BALU B.Com. LL.B. NOTARY GOVT. OF INDIA BANGALORE

ATTESTED TRUE COPY

[signature]
Murali Palaiyam
Bangalore

ANNEXURE 05

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(15)

4 plots

THIS DEED OF SALE is made and executed on the (5TH JULY 1972) Fifth day of July One Thousand Nine Hundred and Seventy Two by J.Samuel Jaya Kymar, son of the late S.Joseph, aged about 24 years, residing at No.1226, Rakshanapuram, Hassan, (hereinafter called the 'VENDOR', which term shall mean and include his heirs, executors, administrators, legal representatives and assigns) of the One Part in favour of Shri George Thangiah S/o Mark-Thangiah, aged 38 years, residing at No.6, Commissariat Road Bangalore-25, (hereinafter called the 'PURCHASER', which term shall mean and include his heirs, executors, administrators, legal representatives and assigns) of the Other Part;

WHEREAS the VENDOR is the owner in possession of the four plots of land numbered as Plots D, B, 6 and 5 situated in Survey No.7/1 of Binnamangala Manvartha Kaval Krishnarajapuram Hobli, Bangalore South Taluk, more fully described in the Schedule hereto and herinafter called the schedule property, he having inherited the same as the only child and heir from his late mother who had purchased the land bearing Survey No.7/1 for consideration under a Salee Deed dated 10th September 1952, registered as No.3645 of 52-53 in Book I, Volume 1096, pages 183-91 Office of the Sub-Registrar of South Taluk, Bangalore;

for Wakf / Rs. [illegible] ..... Papers of Rs. [illegible]
..... of Rs. [illegible] ..... of Rs. [illegible] ..... of Rs. [illegible]
..... of Rs. [illegible] ..... of Rs. [illegible] are issued

NO. [illegible] Rs. 15

Sold to Sri/Smt. [illegible]

Date 1-7-72

Jinde Muniyappa

Jinde Muniyappa
Stamp Vendor,
Mayo Hall, Bangalore.
Resi:- No. 11, Dhanagarkashappa Lane,
Balepet, Bangalore-53.

Regd. as No 2394 of 72-73
Page 65 Volume 951 of Book I

68

Date : 14.9.72

Sub-Registrar.

SEAL OF THE SUB-REGISTRAR BANGALORE TALUK (RURAL)

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WHEREAS the VENDOR has settled down in Hassan City, and is employed there itself, he has decided to sell awayithe schedule property and as such he has offered to sell and the Purchaser has agreed to buy the said property for the price of Rs.3,500/-(Rupees Three thousand Five-Hundred only) free of all encumbrances.

NOW THIS INDENTURE OF ABSOLUTE SALE WITNESSETH:

That in consideration of the payment of Rs.3,500/- (Rupees Three thousand five hundred only) made by the Purchaser to the Vendor that is Rs.1,000/- (Rupees One thousand only) as advance on 4-5-1972 and Rs.2,500/- (Rupees Two thousand five hundred only) by Bank Draft No. [illegible] on Canara Bank Bangalore, in the presence of the Registering Officer at the time of registration of this deed, the Vendor acknowledging receipt of the full consideration does hereby convey, transfer, grant and assign by way of absolute sale all that property fully described in the schedule hereto together with all rights of way, trees, plants, water courses, liberties, privileges and easements that are attached to or belonging to or reputed to belong to the said property Unto the Purchaser TO HOLD, TO HAVE and TO ENJOY the same for ever free from all encumbrances.

contd...3

Sold to Sri/Smt.

Date 16.12.72

Jinde Muniyappa
Stamp Vendor,
Mayo Hall, Bangalore.
Resi:- No. 11, Dhanagarkashappa Lane,
Balepet, Bangalore-2A.

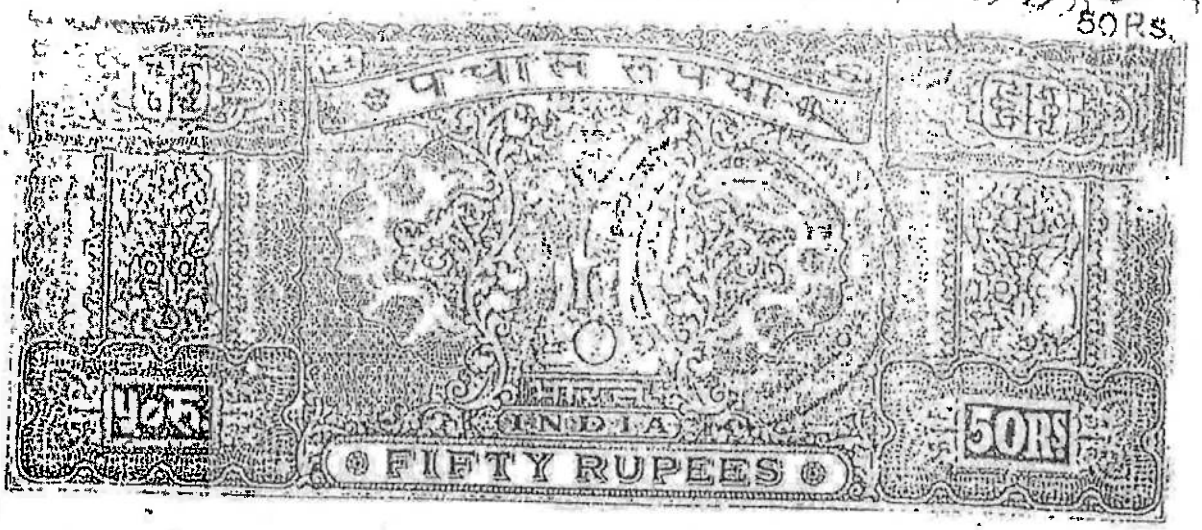
- 3 -

The Vendor assures the Purchaser that the property sold to him is free from any claim, charge, demand or court attachment under any legal proceedings, and he will save the Purchaser harmless and indemnify her against all loss or damage that he may sustain on account of such claim, charges, demand or court attachment or defect in title.

cont...4

III Sheet of document No [illegible] 55

50 RS.



The Vendor covenants with the Purchaser that he shall do or execute or cause to be done or executed from time to time and at the request of the Purchaser all such acts, deeds and things as may be legally necessary for more effectively assuring the title of the Purchaser to the property hereby sold to her.

contd....6

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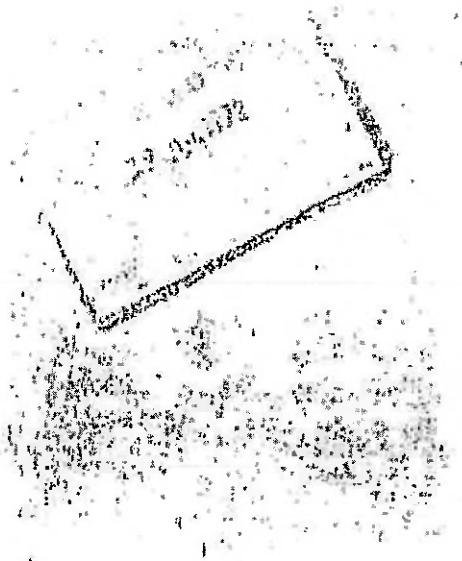


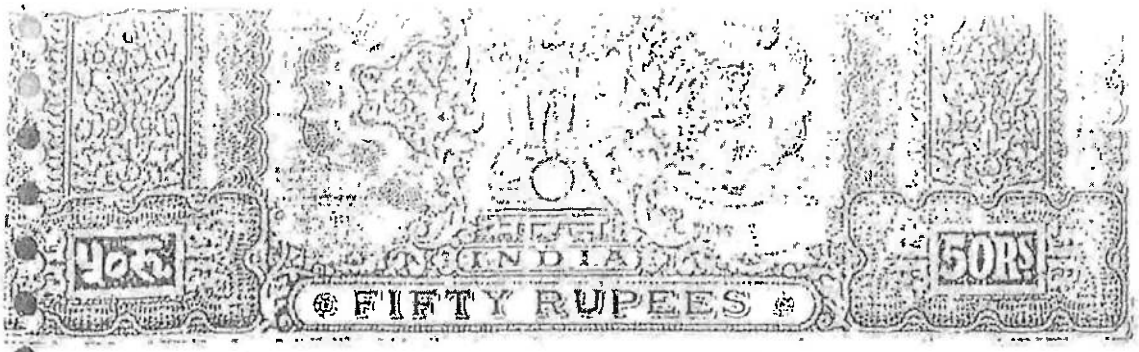
NO 1548 RS Sv

Sold to Sri/Smt.

Date 6-2-21

Jinde Muniyappa

Jinde Muniyappa
Stamp Vendor,
Mayo Hall, Bangalore.
Resi:- No. 11, Dhanagalkashappa Lane,
Balepet, Bangalore-2A.



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The Vendor has delivered possession of the Schedule property to the Purchaser and has also handed over the documents of title.

SCHEDULE

All those pieces and parcels of land being vacant plots in Survey No.7/1 situated in Binnamangala Manavarthe Kaval, Krishnarajpuram Hobli, Bangalore South Taluk, comprising four Blocks as follows:-

PLOT "D"

Bounded on the North by: No.B; South by: Road; East by: Plot No.12; West by : Plot No.C, sold to Thomas; and measuring on the North 30 feet; South 30 feet, East 48 feet; West 48 feet.

PLOT NO."B"

Bounded on the North by: George Thangiah's land; South by: Plot No.3, East by: Plot No.6; West by : plot No.A. and measuring North 30 feet; South 30 feet; East 22½ feet, West 19 feet.

PLOT NO.6

Bounded on the North by: George Thangiah's

65

NO ..... 25 .....

Sold to Sri/Smt ..... D .....

.....

Date.....

.....

Jinde Munivenna
Stamp Vend
Mayo Hall, Bang
Resi.- No. 11, Dhanagarkas... Lane,
Balepet, Bangalore-53.

land; South by : Plot No.12; East by: Plot No.5; West by: Plot No.B: and measuring on the North by:30 feet, South by 30 feet East 25 feet 9 inches; West 22½ feet.

PLOT NO.5:

Bounded on the Borth by:George Thangaiah's land; South by: Plot No.11; East by : Plot No.-; West by ; Plot No.6 and measuring on the North 30feet; South 30 feet, East 31½ West 25¾ feet (more fully delineated in the plan attached hereto) and marked Red [illegible]

contd...7

66

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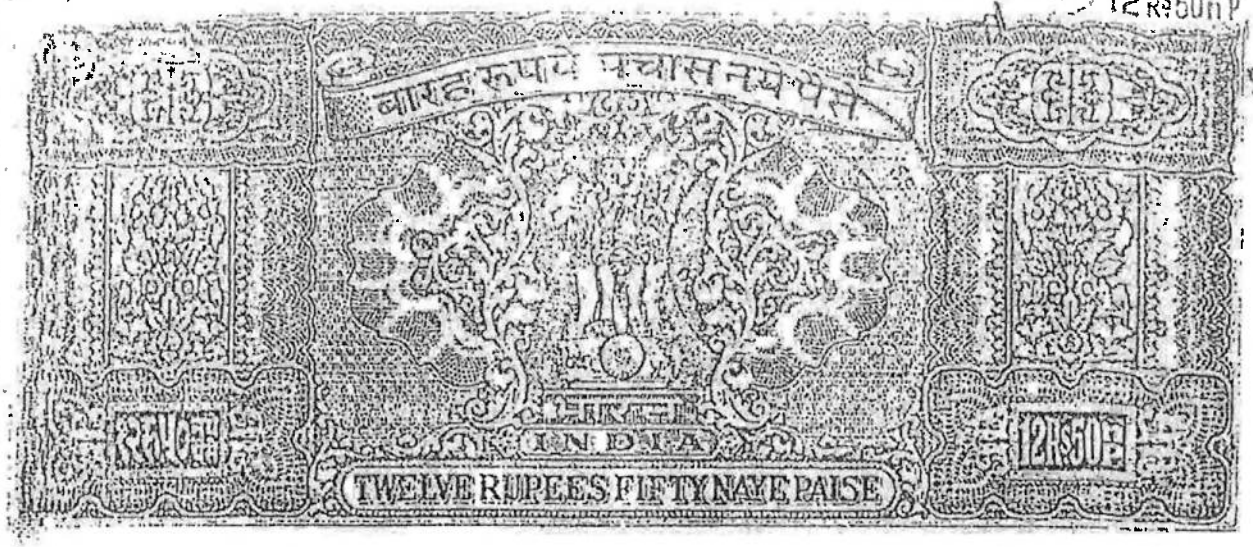

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- 8 -7 -

IN WITNESS WHEREOF the VENDOR named above has signed this deed on the 5TH DAY OF JULY 1972.

V E N D O R

WITNESSES:

1. M. MARIGNATHEN

2.

67

No. [illegible] Rs. 12-50

Sold to Sri/Smt. [illegible]

Date. [illegible]

Jinde Munireppa
Stamp Vendor,
Mayo Hall, Bangalore.
Resi:- No. 11, Dhanakankasheppa Lane,
Balepet, Bangalore-2.

Presented in the Office of the
Sub-Registrar of Bangalore South Taluk
Between the Hours of 12 and 1 PM
On 5-7-72 By Sri George Thangiah

Magial

RECEIVED FEE FOR :-	Rs.	Ps.
Registration	35	00
Copying (Folios)	4	50
Copying Endorsements	0	50
Misc. Fee Under Sec.		
Postage		
R P.	35	
Total Rs.	75	

Execution admitted by : J. Samuel Jaya Kumar

J. Samuel Jaya Kumar

Identified by : M. M. RAMAIAH,
Laundry villa, Mechanic Patayana
Bangalore 38

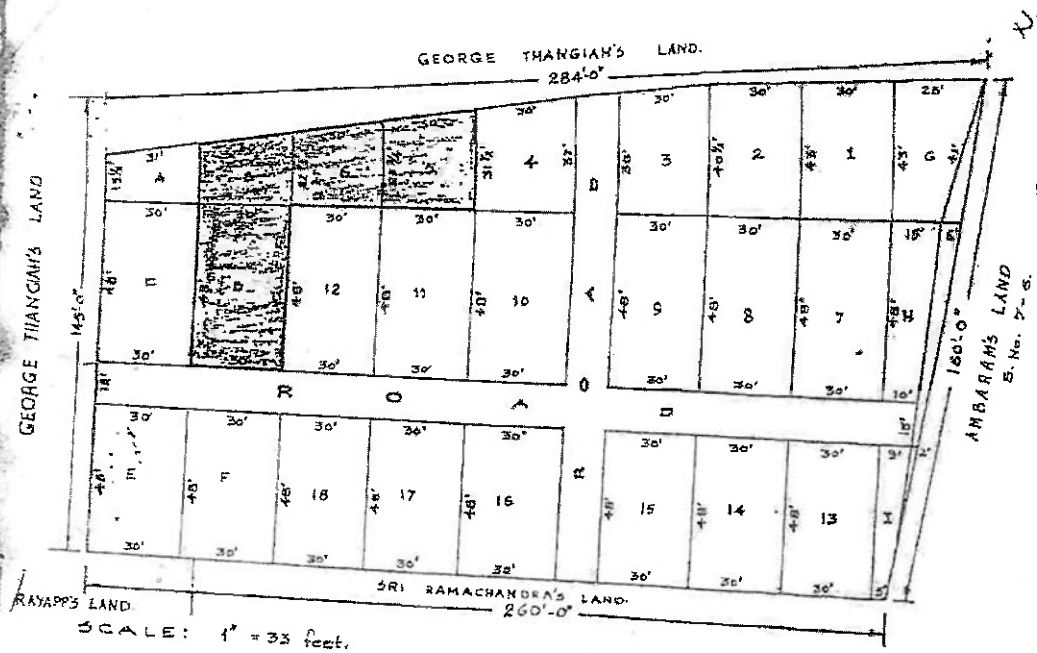
D. Kallaraj
S/o. Subba
Block No. 89/K
Ply Fire Men Qrt Bangalore-23

PAID IN MY PRESENCE RUPEES Twenty thousand five Hundred (Rs 25004) only Through Bank Draft No 721396 dt 5-7-72 on Canara Bank Sampangi Ramaiah Bangalore

By Magial To J. Samuel Jaya Kumar

5/7/72

Sub-Registrar
Bangalore South Taluk, Bangalore



PLAN SHOWING THE SURVEY No. 7/4 { PART OF -
- VILLAGE BINNAMANGALA, MANAVARTHE KAVAL }
KRISHNARAJ PURA, HOBLI - BANGALORE SOUTH TALUK
BANGALORE DIST, BANGALORE-38.

PLOTS PURCHASED BY GEORGE THANGIAH UNDER THIS TITLE DEED.

TRACED BY: G.T. GAJJAR/SD. 4-7-72.

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ANNEXURE 06

69

Office of the Tahsildar
Bangalore South Taluk,
Bangalore Dated: 5-9-1970

CONVERSION SANCTION ORDER

The extent of Agricultural land described in the margin situate in Binnamangala Honavarthe Kaval Village Kaikhondrajapura Hobli, Bangalore South Taluk having been converted into non-agricultural Industrial Purposes of locating a record Studio purpose in favour of Sri. George Thangaiah, H.P.V.House No. 33, Infantry Road, Bangalore-1, by the Deputy Commissioner, Bangalore District, Bangalore vide his O.M.No. M.Dis.ALN.SR. 4049 dated 3-4-1970 and the said land is exempted from the conversion fine and status as per Deputy Commissioner's O.M.No. M/Dis ALN.SR. 4049 dated 27-7-1970 under the provisions of Rule 108(2) (ii) of the Mysore Land Revenue Rules 1966 read with G.O.No. RI 172 FMH 69 dated 25th November 1969.

S.No.	Extent.
2/2	3-11
and 7/1B	0-22
Total	3-33

The said Sri. George Thangaiah, is hereby permitted to utilise the said extent of land for the purpose for which it is converted subject to the following conditions in addition to usual conditions under section 95(2) 95(4) and 96(7) of the Mysore Land Revenue Act, 1964.

1. That in case Messrs. Deccan Records Industries fail to establish the proposed Industries unit (Manufacture of Gramaphone Records) within a period of five years from 3-4-70, the applicant or khatedar shall be liable to pay the conversion fine at Rs. 3000/- per acre in addition to any other penalties.

3. The land in question should not be transfered to some one else other than Messrs. Deccan Records Company, within a period of five years without establishing the above mentioned industry should either the applicant or Messrs. Deccan Records Company, do so, the applicant or the khatedar shall be liable for payment of conversion fine at Rs. 2000/- per acre in addition to any other penalties.

3. The land should be used for the specific non-agricultural industrial use for locating a recording studio.

4. The phut kharab of O-13 gts in S.No. 2/2 (O-13 gts) and 7/1B (O-02G gts) should be reserved under section 67 of the Mysore Land Revenue Act, 1964 for 'Sarabu', Cart.track, Well and Katte' for public use.

5. A road margin of 220 feet from the centre of the National High Way and 80 from the centre of approach road to the nearest point of construction should be reserved vacant and no constructions should be put up within this road margin as per G.O.No. PWD.7556-565 R and B-8-54-S dated 12-2-1955.

6. Other required road margin and open spaces etc., should also be reserved in the area as per rules and the specifications of the CITB Bangalore and layout and charges shouldbe paid in full to CITB Bangalore as fixed by them.

7. The layout and building plans etc, should be duly got approved by the C.I.T.B., Bangalore within one year and the constructions etc., should be put up in strict confirmity with the plans approved by the Trust Board.

8. Smoke or any other effluent that may emanate out of the industry should be effectively treated within the premises of the industry rendering it harmless to the health of general public.

9. All road portions approaches civic amenity areas should be handed over to the C.I.T.B., Bangalore free of cost.

10. The [illegible] should be duly modified suitably to adjust with the layout scheme that may be prepared in the near future.

11. The applicant should [illegible] agreement with the C.I.T.B., Bangalore agreeing to abide by their conditions.

12. The formalities of the CITB also completed before appropriating the land in to non-agricultural purposes.

13. Necessary licence etc., should be obtained from the competent authority before the commencement of the work of construction on the land. The purpose of sanction should be effectuated within two years from 3-4-1970.

14. The applicant has executed an agreement before the Tahsildar, Bangalore South Taluk in the prescribed form agreeing to abide by the conditions of conversion on 7 /9/1970.

15. Non compliance with any of the conditions specified above will result in cancellation of these orders of sanction as well as proceedings &xxxx and penalties provided under section 96 of the Mysore Land Revenue Act, 1964. Constructions if any put up in such a case are also liable to be demolished without compensation and the cost incurred to Government thereof will be recovered from khatedar as arrears of Land Revenue. The paxx proportionate assessment on the land is written off the accounts.

Tahsildar
Bangalore South Taluk.

To

Sri, George Thangaiah,
H.M.V.House, No. 33,
Infantry Road,
Bangalore-1.

7/9/70

ANNEXURE 07

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(6)

61

(9)

Office of the Tahsildar,
Bangalore South.
Dated 22.9.71.

Annex 18

Aln.SR.1929/70-71

CONVERSION SANCTION CERTIFICATE

S.No.	Extent A	G
7/1	0	32½
2/1	0	11½
Total	1	04

The extent of agricultural land described in the margin situated at Binnamangala Manavarthakaval, Krishnarajapura Hobli, Bangalore South Taluk, having been converted for non-agricultural purposes in favour of Sri George Thangaiah residing at No. 6, Commissariat Road, Bangalore-25, by the Deputy Commissioner, Bangalore District Bangalore in O.M.No. BDis.Aln-SR 5079 dated 8th July 1971, and the said George Thangaiah having remitted a sum of Rs.5544/- (Rupees five thousand five hundred and forty four only) as conversion fine and cesses vide challan No. SLR.199 dated 21.9.1971, at the Bangalore North Taluk Treasury the said George Thangaiah is hereby permitted to utilise the above extent for the purpose for which it is converted subject to the following conditions in addition to usual conditions of conversion under section 95(2), 95(4), 95(7) of the Mysore Land Revenue Act 1964:-

1. Conversion fine is levied at Rs.4000/- per acre (four thousand) under rule 107(1) of the Mysore Land Revenue Rules 1966.

2. The land should be used for the specific non-agricultural purpose only.

3. The reserved phut kharab if any, should be reserved to Government.

4. A road margin of 30 feet or as required by the City Improvement Trust Board, Bangalore from the centre of the Domlur-HAL Road to the extreme edge of the construction should be reserved vacant and no constructions should be put up within this road margin as per G.O No. PWD.7556-665 R and B.3-54-5 dated 12.2.55.

5. Other required road margins and open spaces etc., should also be reserved in the area as per rules and the specifications of the City Improvement Trust Board as fixed by them

6. The layout and building plans etc., should be duly got approved by the City Improvement Trust Board, Bangalore and the constructions etc., should be put up in strict conformity with the plans approved by the City Improvement Trust Board.

7. All road portions, [illegible] should be handed over to the City Improvement Trust Board,

72

8. The layout, buildings andplans should be duly modified suitably to adjust with the layout schemes that may be taken up in the area in future.

9. The Applicent should enter into an agreement with the City Improvement Trust Board, Bangalore, agreeing to abide by their conditions.

10. The formalities of the City Improvement Trust Board also completed before appropriating the land into non-agricultural purposes.

11. Necessary licences etc., should be obtained from the competent authority before the commencement of the work of construction on the land. The purpose of sanction should be effectuated within two years from the date of this order.

12. Non-compliance with any of the conditions specified above will result in cancellation of these ordersof sanction as well as proceedings and penalties provided under section 96 of the Mysore Land Revenue Act 1964. Construction if any, put up in such a case are also liable to be demolished without compensation and the cost incurred to Government thereof will be recovered from the khetedar as arrears of land revenue. The proportionate assessment on the land is written off the accounts.

13. That the plans should be got approved by the Board within one year from the date of sanction of conversion.

14. Smoke or anyother effluent that may emenage out of the industry should be effectively treated within the premises of the industry rendering it harmless to the health of the general public.

Tahsildar,
Bangalore South Taluk.
22/9

ANNEXURE 08

73

(16)

(7)

104

No. ALN.SR.46/79.80.

Office of the Tahsildar,
Bangalore South Taluk,
Bangalore, dt. 31.12.79.

MODIFIED CONVERSION CERTIFICATE

S.No.	Extent.
7/1A 1a	A-G.
	0-10
	0-4½
	0-14½

The extent of agricultural land described in the margin situated in Binnamangala, Manavarthekaval, Krishnarajapuram hobli, Bangalore South Taluk, having been converted into non-agricultural industrial purpose in favour of Sri.George Thangaian, No.6, Commissariat Road, Bangalore-560025 by the Special Deputy Commissioner, Bangalore District, Bangalore vide O.M.No.B.D 1s.ALN.SR.126/79.80 dt. 31 December, 1979 and the said Sri. George Thangaiah, having remitted the amount of Rs.1484-80 vide challan No.SLR. 292/327 dt.30.4.79 at the rate of Rs.4,000/- per acre at Bangalore North Taluk Treasury, Bangalore. The said Sri. George Thangaiah is hereby permitted to utilise the above land for the purpose for which it is converted subject to following conditions in addition to usual conditions under section 95(2) 95(4) and 95(7) of K.L.R.Act,1964. This conversion certificate issued in modification of the Certificate already issued in this office even No.dt.6.12.79.

1. The land should be used for the specific non-agricultural purpose only for manufacturing/setting up of industry only within a period of two years.

2. The phut kharab if any as per rules should be reserved to Government under section 67 of the Karnataka Land Revenue Act,1964.

3. A road margin as per rules from the centre of the extreme edge of the construction should be maintained and no construction should be put within this road margin as per G.O.No.PWD-7556-665 R and B-8-54-5 dated 12.2.1955 and letter No.PL-7(11)/57 dated 1.1.1966 of the Ministry of Transport, Government of India.

4. Other required road margins and open spaces etc should also be reserved in the areas as per rules and the specifications of the Bangalore Development Authority concerned as fixed by them.

5. Smoke or any other effluent that may emanate out of the industry should be effectively treated within the premises of the industry rendering it harmless to the health of the General Public.

6. The layout and building plans etc should be duly got approved by the Bangalore Development Authority concerned of the and the constructions etc should be put up in strict conformity with the plans approved by the Bangalore Development Authority concerned.

All road portions, approaches, civic amenity areas should be handed over to the Bangalore Development Authority concerned free of Cost

8. The layout buildings and plans should be duly modified suitably to adjust with the layout schemes that may be taken up in the area in future.

9. The applicant should enter into an agreement with the Bangalore Development Authority concerned agreeing to abide by their conditions.

10. Necessary conversion certificates etc should be obtained from the Tahsildar, Bangalore South Taluk on payment of the required conversion fine etc within one month from the date of this order and the formalities of the Bangalore Development Authority concerned also completed before appropriating the land into non-agricultural purposes.

11. Necessary licence etc should be obtained from the competent authority before commencement of the work of construction on the land. The purpose of sanction should be effectuated within two years from the

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from the date of this order.

12. Non-compliance with any of the conditions specified above will result in cancellation of these orders of sanction as well as initiation of proceedings and penalties provided under section 96 of the Karntataka Land Revenue Act,1964. Construction if any put up in such a case area also laible to be domolished without compensation and the cost incurred to Government thereof will be recovered from the khatedar as arrears of Land Revenue. The proportionate deneas ment on the lands is written off the accounts.

Bangalore,
dated: 31-12-79.

31.12.79.

Assistant Commissioner,
Bangalore South,
Bangalore.

S. BALU, B.Com., LL.B., M.I. NOTARY Regn. No. 4342 GOVT. OF INDIA BANGALORE METROPOLITAN

ATTESTED TRUE COPY

S. BALU, B Com., LL B M.I
NOTARY
GOVT. OF INDIA
Regn. No. 4342
100, First Cross, 2nd Main Road,
HAL 3rd Stage, BANGALORE - 560 075

75 ANNEXURE 09

ALR No. 62/75-76.

Office of the Tahsildar,
Bangalore South Taluk,
Bangalore, dated 20-1-76.

CONVERSION CERTIFICATE

WHEREAS sanction has been accorded under section 71 of the Karnataka Land Revenue Act 1964, by the Deputy Commissioner, Bangalore District, Bangalore, for the appropriation of 0-16 Guntas of phut kharab land in Survey No. 2/2 (0-15) guntas, 7/1A (1a) (0-01) guntas, and 7/1B (0-02) guntas only of Binnamangala Nanavarthekavale Village, K.R. PuramHobli, Bangalore South Taluk, for non-agricultural purpose vide his O.M. No. RDIS IND (3) 62/75-76, dated 26-12-75, in favour of Sri. George Thangaiah, No.6, Commissariat Road, Bangalore,-560025, at an upset price of Rs.10,000/- (Rupees ten thousand only) per acre along with conversion fine of Rs. 4,000/- (Rupees four thousand only) per acre and WHEREAS the said Sri. George Thangaiah, has credited Rs. 4,000/- (Rupees four thousand only) for an upset price and Rs.1,600-00 (Rupees One thousand six hundred only) for conversion fine to the Bangalore North Taluk Treasury vide Challan No. SLR 20, dated 16th January 1976,

Now therefore, the said Sri. George Thangaiah, is hereby permitted to utilise thesaid extent of landfornon-agricultural purpose subject to the following conditions in addition to usual conditions under section 95 (2), (4), (7) of the Karnataka Land Revenue Act 1964.

(a) The land shouldbe usedfor specific non-agricultural industrial use for locating recording studio.

(b) All other conditions which are specified in the original conversion certificate dated 5-9-1970 and 22-9-1971.

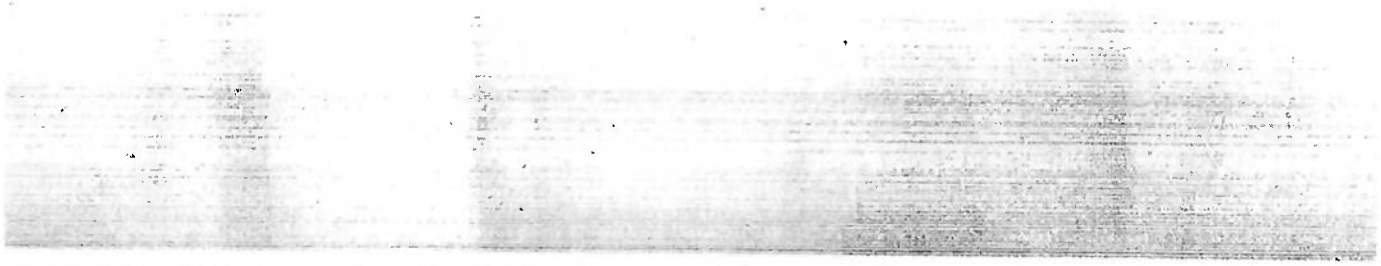
Tahsildar
Bangalore South Taluk
20/1/76

This
Ann
Affi

Oath Commissioner

TRUE COPY

Scanned with CamScanner



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095 *Typed Copy of Annexure-* ಇ 09

ALN CR 22 / 75-76

Office of the Tahsildar,

Bangalore South Taluk,

Bangalore, dated 20-1-76

CONVERSION CERTIFICATE

WHEREAS sanction has been accorded under section 71 of the Karnataka Land Revenue Act, 1964, by the Deputy Commissioner, Bangalore District, Bangalore for the appropriation of 0-16 Guntas of phut kharab land in Survey No.2/2 (0-13) guntas, 7/1A (1a) (0-01) guntas, and 7/1B (0-02) guntas only of Binnamangala Manavarthekavale Village, K.R. Puram Hobli, Bangalore South Taluk, for non-agricultural purpose in his O.M. No. BDIS IND (3) 62/75-76, dated 26-12-75, in favour of Sri. George Thangiah, No.6, Commissariat Road, Bangalore – 560 025, at an upset price of Rs.10,000/- (Rupees ten thousand only) per acre along with conversion fine of Rs.4,000/- (Rupees four thousand only) per acre and WHEREAS the said Sri. George Thangiah, has credited Rs.4,000/- (Rupees four thousand only) per acre and WHEREAS the said Sri. George Thangiah, has credited Rs.4,000/- (Rupees four thousand only) for an upset price and Rs.1,600/- (Rupees one thousand six hundred only) for conversion fine to the Bangalore North Taluk Treasury vide Challan No.SLR 20, dated 16th January 1976.

Now therefore, the said Sri. George Thangiah is hereby permitted to utilise the said extent of land for non-agricultural purpose subject to the following conditions in addition to usual conditions under section 95(2), (4), (7) of the Karnataka Land Revenue Act 1964.

(a) The land should be used for specific non-agricultural industrial use for locating recording studio.

(b) All other conditions which are specified in the original conversion certificate dated 5-9-1970 and 22-9-1971.

-Signature-

Tahsildar,

Bangalore (South Taluk),

Bangalore.

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ANNEXURE 10

(16)

No. BDA/T. 77 /TP/8

Office of the Chairman,
Bangalore Development Authority,
Bangalore, Dated: 17th November 1977.

Sri. George Thangaiah,
Managing Director,
Deccan Records Private Ltd.,
No. 16, 81 Marks Road,
Bangalore-560001.

Sir,

Sub: Modified Development plan in Sy. No. 2*/1, 2/2, 7/1, 7/1A and 7/1B of Byrasandra in favour of Sri. George Thangiah.

***

The modified development plan in Sy. No. 2*/1, 2/2, 7/1, 7/1A and 7/1B of Byrasandra is approved, vide Authority Resolution No. 368 dated 11.8.1977, subject to the same conditions under which the original plan was approved.

It is approved by the Chairman.

Yours faithfully,

for Chairman,
B.D.A., Bangalore.

Encl: Modified Development plan.

TRUE COPY

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Typed copy of ANNEXURE 10

No. BDA / 714 / 17-18

Office of the Chairman
Bangalore Development Authority
Bangalore, Dated. 17th November 1977

Sri. George Thangiah,
Managing Director,
Deccan Records Private Limited,
No.16, 81 Marks Road,
Bangalore – 560 001.

Sir,

Sub: Modified Development plan in Sy. No. 2/1, 2/2, 7/1, 7/1A and 7/1B of Binnamangala in favour of Sri. George Thangiah.

The modified development plan in Sy. No. 2/1. 2/2, 7/1, 7/1A and 7/1B of Binnamangala is approved, vide Authority Resolution No.368 dated 31.8.1977, subject to the same conditions under which the original plan was approved.

Yours faithfully,
-Signature-
For Chairman,
B.D.A., Bangalore

Encl: Modified Development Plan.

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ANNEXURE 11

ಸಂಖ್ಯೆ: ಬಿಎಸ್.ಬಿ/ಕಂಅ:51/10-16

ತಹಸೀಲ್ದಾರರವರ ಆಡಳಿತ ಕಚೇರಿ
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು
ಕೆ.ಆರ್.ಪುರ ದಿ: 01
2016.

ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಅಧಿನಿಯಮ 1964 ರ ಪ್ರಕರಣ 94 ಮತ್ತು 104 ರಡಿ ಕೊಡಲಾದ ನೋಟೀಸ್.

ಶ್ರೀ ಜಾರ್ಜ್ ತೆಂಗಯ್ಯ ಆದ ನಿಮಗೆ ಈ ಮೂಲಕ ತಿಳಿಯಪಡಿಸುವುದೇನೆಂದರೆ, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಗ್ರಾಮದ ಸ.ನ.2/2 ರಲ್ಲಿ ಸುಮಾರು ಜಮೀನಿನಲ್ಲಿ ಬೃಹತ್ ಕಟ್ಟಡಗಳನ್ನು ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದಾಗಿ, ನೀವು ಒತ್ತುವರಿ ಮಾಡಿರುವುದು ಕಂದಾಯಾಧಿಕಾರಿಗಳು/ಮೇಜರೆಡ್ಡಾರರ ಗಮನಕ್ಕೆ ಬಂದಿರುವುದರಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತದೆ.

ಮಾನ್ಯ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ, ರಿಟ್ ಅರ್ಜಿ ಸಂಖ್ಯೆ:3969/2001 ಮತ್ತು ಇತರ ರಿಟ್ ಅರ್ಜಿಗಳನ್ನು ಒಟ್ಟಿಗೆ ಸೇರಿಸಿ ಮಾಡಿದ ಆದೇಶದಲ್ಲಿ ಸರ್ಕಾರಿ ಜಮೀನು ಒತ್ತುವರಿದಾರರ ವಿರುದ್ಧ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ ಕಲಂ 192(ಎ) ರಂತೆ ಕ್ರಮ ಜರುಗಿಸುವ ಮುನ್ನ ಸಂಬಂಧಿಸಿದವರಿಗೆ ಒಂದು ಅವಕಾಶ ನೀಡಲು, ನಿರ್ದೇಶಿಸಿರುತ್ತದೆ.

ಆದುದರಿಂದ, ಮೇಲೆ ನಮೂದಿಸಿದ ನಿರ್ದೇಶನದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಮತ್ತು ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಅಧಿನಿಯಮ 1964 ರ ಕಲಂ 94 ಮತ್ತು 104 ರಡಿ ನಿರ್ದಿಷ್ಟಪಡಿಸಿರುವಂತೆ, ಈ ನೋಟೀಸನ್ನು ನಿಮಗೆ ನೀಡಲಾಗಿದೆ

1) ಈ ನೋಟೀಸ್ ತಲುಪಿದ ಕೂಡಲೇ ನೀವು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ 2/2 ಸರ್ಕಾರಿ ಖರಾಬು ಜಮೀನು ಅನಧಿಕೃತವಾಗಿ ಒತ್ತುವರಿಯನ್ನು ಖುಲ್ಲಾಪಡಿಸಿ, ಜಮೀನನ್ನು ಸರ್ಕಾರದ ವಶಕ್ಕೆ ನೀಡುವುದು ತಪ್ಪಿದಲ್ಲಿ ಈ ಕಾರ್ಯಾಲಯದ ವತಿಯಿಂದ ಒತ್ತುವರಿಯನ್ನು ತೆರವುಗೊಳಿಸಲು ಕ್ರಮ ಜರುಗಿಸಿ ತೆರವುಗೊಳಿಸಲು ಆಗಲುಆ ವೆಚ್ಚದನ್ನು ನಿಮ್ಮಿಂದ ಭೂ ಕಂದಾಯ ಬಾಕಿಯಂತೆ ವಸೂಲು ಮಾಡಲಾಗುವುದು.

2) ಮೇಲ್ಕಂಡ ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 2/2 ರಲ್ಲಿ ಎ.ಗುಂ. ವಿಸ್ತೀರ್ಣದ ಸರ್ಕಾರಿ ಜಮೀನನ್ನು ಅನಧಿಕೃತವಾಗಿ ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವ ನಿಮ್ಮ ವಿರುದ್ಧ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964 ರ ಕಲಂ 192(ಎ) ರಂತೆ ಕ್ರಿಮಿನಲ್ ಮೊಕದ್ದಮೆಯನ್ನು ಏಕೆ ದಾಖಲಿಸಬಾರದೆಂಬುದಕ್ಕೆ ನಿಮ್ಮ ಸಮಜಾಯಿಷಿ ನೀಡುವುದು.

ಈ ಬಗ್ಗೆ ನೀವು ಯಾವುದೇ ದಾಖಲೆಯನ್ನು ನೀಡಬಯಸಿದಲ್ಲಿ ಅಥವಾ ತಮ್ಮ ಅಹವಾಲನ್ನು ಹುದ್ದಾಗಿ ಅರಿಕೆ ಮಾಡಬಯಸಿದಲ್ಲಿ ದಿನಾಂಕ: 21-1-2016 ರಂದು 3-00 ಗಂಟೆಗೆ ಈ ವ್ಯಾಪ್ತಿಕ್ಕಾಗಿ ಸಮಕ್ಷಮ ಮಾಹಿತಿಗಾಗಿ ಸಲ್ಲಿಸಬಹುದು.

ತಹಸೀಲ್ದಾರ್,
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು.
[illegible]

ಗೆ,
ಜಾರ್ಜ್ ತೆಂಗಯ್ಯ,
ಬಿನ್ನಮಂಗಲ ಗ್ರಾಮ,
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಬೆಂಗಳೂರು

80 TRANSLATED Copy of Annexure-11

Number NCR/CR: 51/15-16

Tahsildar's Office
Bangalore East Taluk
K.R. Puram, Date:

Under Sections 94 and 104 of the Karnataka Land Revenue Act, 1964, notice is hereby given to you, George Tangayya, that it has been confirmed from the report of the Revenue Officers/Surveyors that you have encroached and constructed large buildings on government kharab land in Survey No. 2/2 of Binnamangala Village, K.R. Puram Hobli, Bangalore East Taluk.

The Honorable Karnataka High Court, in its order in Writ Petition No. 3969/2007 and other writ petitions combined, has directed to give an opportunity to the concerned before taking action under Section 92(a) of the Karnataka Land Revenue Act against the encroachers of government land.

Therefore, in view of the above-mentioned directions and under Sections 94 and 104 of the Karnataka Land Revenue Act, 1964, this notice is issued to you:

1) Immediately upon receipt of this notice, you are required to vacate the unauthorized encroachment on government kharab land in Survey No. 2/2 of Binnamangala Village, K.R. Puram Hobli, Bangalore East Taluk, and hand over the land to the government. If you fail to do so, this office will take steps to remove the

encroachment and the cost of removal will be recovered from you as land revenue arrears.

2) Explain why a criminal case should not be filed against you under Section 192(a) of the Karnataka Land Revenue Act, 1964, for unauthorized encroachment on government land in Survey No. 2/2 of Binnamangala Village, K.R. Puram Hobli, Bangalore East Taluk.

If you wish to submit any documents or make a personal representation, you may appear before this authority on the date: __ at __ hours.

Tahsildar,
Bangalore East Taluk,
K.R. Puram.

To,

George Tangayya,
Binnamangala Village
Bengaluru East Taluk, Bengaluru

ANNEXURE -12

82

GEORGE THANGIAH

George Thangiah Complex (East)
80 Feet Road, Jeevan Bhimanagar,
BANGALORE – 560 075 (INDIA)
Ph : 25283283, 25283284, 25283585
Fax : 080 – 25283378

By Hand & R.P.A.D

January 28, 2016

To,

The Tahsildar,
Bengaluru East Taluk,
K. R. Puram.
Bangalore.

Reference : Notice dated 20.01.2016 bearing Reference No. N.C.R/CR:51/2015-16 issued by the Tahsildar under Sections 94 and 104 of the Karnataka Land Revenue Act, 1964.

Subject : Reply to the above referred Notice dated 20.01.2016

Sir,

1. I am in receipt of the above referred Notice dated 20.01.2016 issued by you under Sections 94 and 104 of the Karnataka Land Revenue Act, 1964 with respect to the property bearing Survey No. 2/2 of Bimmanagala, Mahavarthe Kaval, Bangalore East Taluk, Bangalore ('Notice'). I received the said Notice on 27.01.2016.

2. I am shocked to note the allegation against me in your Notice that I have encroached upon certain government kharab land in my land bearing Survey No. 2/2, measuring 3 Acres 34 Guntas, situated at Bimmanagala Mahavarthe Kaval, Bangalore East Taluk, Bangalore ('Property').

3. At the outset I deny the aforesaid allegation as it is made without any basis. The Notice is unsustainable and devoid of any merits.

4. The entire extent of land comprised in the Property (*i.e.*, Survey No. 2/2) is 3 Acres 34 Guntas ("Total Extent"). Initially, out of the Total Extent, an extent of 3 Acres 19 Guntas 94 Square Yards & 7.75 Square Feet was purchased by me from St.Michael's Convent Home and Good Shepherd Convent under Sale Deed dated 02.08.1969, registered as Document No. 2178/1969-70 in Book-I, at the office of Sub-Registrar, Bangalore South Taluk. A copy of the said Sale Deed dated 02.08.1969 has been annexed to this letter as 'Annexure-A'.

GEORGE THANGIAH

George Thangiah Complex (East)
80 Feet Road, Jeevan Bhimanagar,
BANGALORE – 560 075 (INDIA)
Ph : 25283283, 25283284, 25283585
Fax : 080 – 25282374

5. In furtherance to my application seeking conversion of the aforesaid land in Survey No. 2/2, Bijnamangala Manavarthe Kaval, Bangalore, the Deputy Commissioner converted the aforesaid land in Survey No. 2/2 measuring 3 Acres 11 Guntas from agricultural use to non-agricultural purpose under Section 95(2) of the Mysore Land Revenue Act, 1954, vide Conversion Sanctioned Certificate dated 05.09.1970. A copy of the said Conversion Sanctioned Certificate dated 05.09.1970 has been annexed to this letter as 'Annexure-B'.

6. Pursuant to obtaining conversion of the said 3 Acres 11 Guntas, I requested the Deputy Commissioner to grant to me the adjacent Kharab Land (measuring 13 Guntas) comprised in Survey No. 2/2, Bijnamangala Manavarthe Kaval, Bangalore, for non-agricultural use. In this regard, the Tahsildar, Bangalore South Taluk, vide his Letter dated 30.04.1975 bearing reference No.ALN.CR.22/1974-75, recommended the disposal of the said phut Kharab Land, since the same was no longer required for general public use. The Tahsildar further confirmed that the said Kharab Land is surrounded by N.A.L road and R.A.L double roads on both sides and is surrounded on all sides by residential localities and that the said road has been formed by the CITB, Bangalore. In view of the aforesaid recommendation of the Tahsildar, the Deputy Commissioner vide Official Memorandum dated 26.12.1975 bearing reference No.B-Dis.LND(3)62/1975-76, appropriated the 13 Guntas phut Kharab Land in Survey No. 2/2, Bijnamangala Manavarthe Kaval, Bangalore, under Section 71 of the Karnataka Land Revenue Act, 1964 and granted the said 13 Guntas phut Kharab Land to me for non-agricultural purpose. The Deputy Commissioner has in the said order confirmed that the said 13 Guntas phut Kharab Land in Sy. No. 2/2 was no longer of any use to the public.

7. Pursuant to the issue of the aforesaid Official Memorandum dated 26.12.1975, I have paid the upset price of Rs. 4,000/- (Rupees Four Thousand only) for such grant and also paid the conversion fine of Rs.1,600 (Rupees One Thousand Six Hundred only) to the Bangalore North Taluk Treasury, State Government, vide Challan No. SLR 30, dated January 16, 1976. Upon receipt of the applicable upset price and conversion fine, the Tahsildar vide Conversion Certificate dated 20.01.1976 bearing reference No.ALN.CR.22/1975-76, confirmed the receipt of the aforesaid payment and confirmed my entitlement to use the said 13(thirteen) Guntas phut Kharab land in Survey No. 2/2, Bijnamangala Manavarthe Kaval, Bangalore, granted to me, for non-agricultural purpose. Copies of the aforesaid Official Memorandum dated 26.12.1975 and the Conversion Certificate dated 20.01.1976 have been annexed to this letter as 'Annexure-C' and 'Annexure-D', respectively.

GEORGE THANGIAH

George Thangiah Complex (East)
80 Feet Road, Jeevan Bhimanagar,
BANGALORE – 560 075 (INDIA)
Ph : 25283283, 25283284, 25283585
Fax : 080 – 25282374

8. In view of the aforesaid grant to me of the 13 Guntas phut kharab land in Survey No. 2/2, Binnamangala, Mahavirthe Kaval, Bangalore, under Official Memorandum dated 26.12.1975 with the permission to use the same for non-agricultural purpose under Conversion Certificate 20.01.1976, there does not exist any 'Phut Kharab' land in my Property (measuring 3 Acres 24 Guntas in Sy. No. 2/2). The said 13 Guntas phut Kharab land in Sy. No. 2/2, ceased to be Kharab land upon its grant to me, for non-agricultural use. Therefore, the question of encroachment of Government kharab land or existence of 'Pot Kharab' land within my Property does not arise.

9. In addition to the above submissions, it is pertinent to *inter-alia*, note the following significant events that transpired post the grant to me of the said 13 Guntas phut Kharab land in Sy. No. 2/2, for non-agricultural purpose:

(i) The Bangalore Development Authority has sanctioned the Modified Development Plan with respect to the existing building vide its Letter dated 17.11.1977. The said sanction has been issued with respect to the entire extent of 3 Acres 24 Guntas in Survey No. 2/2. A copy of the said Letter dated 17.11.1977 issued by Bangaloge Development Authority has been annexed to this letter as 'Annexure-E'. I have also paid the applicable development charges of Rs.40,856/- (Rupees Forty Thousand Eight Hundred and Fifty Six Only), for sanction of the said development plan. A copy of the acknowledgement dated 22.03.1980 for receipt of the said charges is annexed herein as 'Annexure- F';

(ii) Bangalore Development Authority and Bruhat Bengaluru Mahanagara Palike have sanctioned the Development Plan and Building Plan with respect to the proposed construction of commercial building for Shopping Mall at the Property (measuring 3 Acres 24 Guntas) and the adjacent properties owned by me. Copy of the Letter dated 02.08.2011 issued by Bangalore Development Authority with respect to sanction of aforesaid Development Plan and copy of the Letter dated 17.04.2013 issued by Bruhat Bengalum Mahanagara Palike with respect to sanction of aforesaid Building Plan have been annexed to this letter as 'Annexure-G' and 'Annexure-H', respectively.

The aforesaid development plan sanctions do not recognize any Kharab lands in my Property (measuring 3 Acres 24 Guntas) and permit construction on the entire extent. The

GEORGE THANGIAH

George Thangiah Complex (East)
80 Feet Road, Jeevan Bhimanagar,
BANGALORE – 560 075 (INDIA)
Ph : 25283283, 25283284, 25283585
Fax : 080 – 25282374

concerned authorities would not have sanctioned the said plans, unless they were fully satisfied that there does not exist any Kharab land in my Property.

10. The Property together with adjacent properties (owned by me) is already developed into a commercial complex comprising of multiple buildings and the entire Property is being used for the non-agricultural purpose. Further, in terms of the Revised Master Plan, 2015, issued by Bangalore Development Authority under the provisions of Karnataka Town and Country Planning Act, 1961, the entire Property is earmarked as 'Commercial Axes'.

11. In view of the grant to me of the 13 Guntas phut Kharab land in Sy. No. 2/2 for non-agricultural purposes under the aforesaid Official Memorandum dated 26.12.1975 and considering the above events, it is totally unjust and unfair on the part of the Tahsildar to issue the Notice alleging encroachment of the Government kharab land by me, when no such kharab land exists at the Property. It is evident that the Tahsildar has failed to verify its own records prior to issue of the Notice.

12. It is pertinent to note that the very same authority, the Tahsildar, has recommended for disposal of the 13 Guntas phut Kharab land in Sy. No. 2/2 vide its Letter dated 30.04.1975 and the same was considered favorably by the Deputy Commissioner. The Notice is contrary to the order for grant of 13 Guntas phut Kharab land in Sy. No. 2/2 passed by the Deputy Commissioner under the aforesaid Official Memorandum dated 26.12.1975. The order of the Deputy Commissioner under the said Official Memorandum dated 26.12.1975 is binding upon the Tahsildar and therefore, the Notice, which claims the contrary, is bad in law.

In view of the above, I request the Tahsildar to consider the above submissions and forthwith withdraw the Notice. In the event the Tahsildar, for any reason, considers it necessary to further enquire into this matter, I reserve my right to provide additional information and documents, as may be required from time to time, in support of my above submissions.

Please note that the submissions made in this letter are without prejudice to the rights and remedies available to me under applicable law.

Yours sincerely,

(George Thangiah)

GEORGE THANGIAH

George Thangiah Complex (East)
80 Feet Road, Jeevan Bhimanagar,
BANGALORE – 560 075 (INDIA)
Ph : 25283283, 25283284, 25283585
Fax : 080 – 25282374

Encl:

Annexures

Annexure-A – Sale Deed dated 02.08.1969, registered as Document No. 2178/1969-70 in Book-I, at the office of Sub-Registrar, Bangalore South Taluk, for sale of 3 Acres 19 Guntas 94 Square Yards & 7.75 Square Feet in Sy. No. 2/2, Binnamangala Manavarthe Kaval, Bangalore, to George Thangiah;

Annexure-B- Conversion Sanctioned Certificate dated 05.09.1970, issued by the Deputy Commissioner, for conversion of 3 Acres 11 Guntas in Sy. No. 2/2, Binnamangala Manavarthe Kaval, Bangalore, for non-agricultural purposes;

Annexure-C- Official Memorandum dated 26.12.1975 bearing reference No.B-Dis.LND(3)62/1975-76, issued by the Deputy Commissioner, for grant of 13 Guntas of kharab land in Sy. No. 2/2, Binnamangala Manavarthe Kaval, Bangalore;

Annexure-D- Conversion Certificate dated 20.01.1976 bearing reference No.A.L.N.CR.22/1975-76, issued by the Tahsildar, for non-agricultural use of the 13 Guntas of kharab land in Sy. No. 2/2, Binnamangala Manavarthe Kaval, Bangalore;

Annexure-E- Letter dated 17.11.1977 issued by Bangalore Development Authority, for sanction of Modified Development Plan with respect to the existing building at the Property;

Annexure-F- Acknowledgement dated 22.03.1980 issued by Bangalore Development Authority, for receipt of the development charges;

Annexure-G- Letter dated 02.08.2011 issued by Bangalore Development Authority with respect to sanction of Development Plan for construction of Shopping Mall at the Property;

Annexure-H- Letter dated 17.04.2013 issued by Bruhat Bengaluru Mahanagara Palike with respect to sanction of aforesaid Building Plan for construction of Shopping Mall at the Property.

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ತಹಶೀಲ್ದಾರ್ ರವರ ನ್ಯಾಯಾಲಯ, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು,
ಕೆ.ಆರ್.ಪುರ, ಬೆಂಗಳೂರು

ಪ್ರಕರಣದ ಸಂಖ್ಯೆ:ಎಸ್.ಸಿ.ಆರ್.ಸಿ.ಆರ್:51/15-16 ದಿ:- 10.6.16

ಉಪಸ್ಥಿತರು: ಶ್ರೀ ಬಿ.ಆರ್.ಹರೀಶ್ ನ್ಯಾಯಾಂಗೇತರ ಕ.ಎ.ಎಸ್
ತಹಶೀಲ್ದಾರ್ ಹಾಗೂ ಪೀಠಾಧಿಕಾರಿಗಳು
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು

ವಾದಿಗಳು :-
ಸರ್ಕಾರ

ವಿರುದ್ಧ

ಪ್ರತಿವಾದಿಗಳು:-
1. ಜಾಕೋಬ್ ಜಂಗಯ್ಯ

ವಿಷಯ: ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಬಿ.ವೈ.ಪುರ ಮಹದೇವಪುರ ಕಾವಲು ಗ್ರಾಮದ ಸ.ನಂ.2/2 ರ ಜಮೀನನ್ನು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವ ಬಗ್ಗೆ.

ಪ್ರಸ್ತಾವನೆ:-

ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ ಬಿ.ವೈ.ಪುರ ಮಹದೇವಪುರ ಕಾವಲು ಗ್ರಾಮದ ಸ.ನಂ.2/2 ರ ಜಮೀನನ್ನು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವ ಬಗ್ಗೆ ಜಾಕೋಬ್ ಜಂಗಯ್ಯರವರು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವುದಾಗಿ ಈ ಕಛೇರಿ ಕ್ರಮ ಸಂಖ್ಯೆ:ಎಸ್.ಸಿ.ಆರ್.ಸಿ.ಆರ್:51/15-16, ದಿನಾಂಕ:20/01/16 ರಂದು ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಅಧಿನಿಯಮ 1964 ರ ಕಲಂ 94 ಮತ್ತು 104 ರಡಿ ವಿಚಾರಣೆಗೆ ಹಾಜರಾಗಲು ನೋಟೀಸನ್ನು ನೀಡಲಾಗಿದ್ದು, ನೀವು ಒತ್ತುವರಿಯಾಗಿರುವ ಅಂಶದ ಮೂಲಕ ಮೋಟೀಸ್‌ಗೆ ಉತ್ತರವನ್ನು ನೀಡಿದ್ದು ಸದರಿ ಜಮೀನಿನ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 3-19 ಎ/ಗುಂಟೆ ಇದ್ದು ಸೆಂಟ್ ಮೈಕಲ್ಸ್ ಕಾನ್ವೆಂಟ್ ಜೋಮ್ ಮತ್ತು ಗುಡ್ ಶೆಫರ್ಡ್ ಕಾನ್ವೆಂಟ್ ರವರು ಕ್ರಯಧ ಮುಖಾಂತರ ಸೋಂದಪಡಿ ಕ್ರಯ ಪತ್ರ ನಂ:ಕೆ.ಆರ್.ಪಿ.2178/1969-70, ದಿನಾಂಕ:02.08.1969 ರಂತೆ ಕ್ರಯಕ್ಕೆ ಪಡೆದಿದ್ದು ಸದರಿ ಜಮೀನನ್ನು ವಾಸದ ಉದ್ದೇಶಕ್ಕೆ ಭೂ-ಪರಿವರ್ತನೆ ಮಾಡಿಕೊಂಡಿರುವ ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳವರ ಅಧಿಕೃತ ಜ್ಞಾಪನ ಪತ್ರ ದಿನಾಂಕ:05.09.1970 ರ ಪ್ರತಿಯನ್ನು ಹಾಜರು ಪಡಿಸಿರುತ್ತಾರೆ.

ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳವರ ಅಧಿಕೃತ ಜ್ಞಾಪನ ಪತ್ರ ಸಂಖ್ಯೆ:ಡಿಸ್ಟ್.ಎಲ್.ಎನ್.ಡಿ(3)62/75-76, ದಿನಾಂಕ:26.12.1975 ರಂತೆ ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳವರು 0-13 ಗುಂಟೆ ಭೂಮಿ ಬಿಟ್ಟು ಬೇರೆ ಜಮೀನನ್ನು ಮಂಜೂರು ಮಾಡಿ ಆಜ್ಞೆಪಿಸಿರುತ್ತಾರೆ ಆದ್ದರಿಂದ ಸದರಿ ಜಮೀನನ್ನು ಸಂಖ್ಯೆ:ಎ.ಎಲ್.ಎನ್.ಸಿ.ಆರ್:22/75-76, ದಿನಾಂಕ:20/01/1976 ರಂತೆ ಭೂಪರಿವರ್ತನೆ ಮಾಡಿ ಆದೇಶಿಸಿರುತ್ತಾರೆ.

ಸದರಿ ಜಮೀನಿನ ಆಸ್ತಿಯ ಬಗೆಗಿನ ನಡೆಯನ್ನು ಕ್ರಯಾರಿಸಿ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದವರಿಂದ ವಸ್ತೆಯನ್ನು ದಿನಾಂಕ:17.11.1977 ರಂದು ಮಂಜೂರು ಮಾಡಿರುತ್ತಾರೆ ಸದರಿ ಜಮೀನಿನ ಬಗ್ಗೆ ಅಭಿವೃದ್ಧಿ ಶುಲ್ಕಗಳನ್ನು

ಪ್ರಾಪತಿಸಿರುವ ಬಗ್ಗೆ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದವರು ನೀಡಿರುವ ರಿಟೀದಿ ದಿನಾಂಕ:22.03.1980 ರ ಪ್ರತಿಯನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ.

ಮೇಲ್ಕಂಡ ಜಮೀನಿನ ಅಭಿವೃದ್ಧಿ ನಕ್ಷೆಯನ್ನು ಪುರಸ್ಕಾರ ಮಾಡಿರುವ ಬಗ್ಗೆ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದವರು ಸದರಿ ಜಮೀನಿನಲ್ಲಿ ಅಂಗಡಿ ಮುಂಗಿಗಳು ಮತ್ತು ಮೂಲಭೂತ ಸೌಲಭ್ಯಗಳನ್ನು ನಿರ್ಮಿಸಲು ನೀಡಿರುವ ಅಮಾನ್ಯತಿ ಪತ್ರ ದಿನಾಂಕ:02.08.2011 ರ ಪತ್ರಗಳನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ. ಬೆಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆ ರವರು ಸದರಿ ಜಮೀನಿಗೆ ಸ್ವಾಧೀನಪಡಿಸಿರುವ ಪಟ್ಟಿಯಲ್ಲಿ ಬರುವ ಸರ್ವೆಯನ್ನು ಬಿಟ್ಟಿರುವ ಬಗ್ಗೆ ನೀಡಿರುವ ಪತ್ರ ದಿನಾಂಕ:17.04.2013 ರ ಪ್ರತಿಯನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ.

ವ್ಯತ್ಯಾಸದ ವಿಚಾರಣೆಯನ್ನು ಅಂತಿಮವಾಗಿ ಇತ್ಯರ್ಥಕ್ಕಾಗಿ ಕಾಯ್ದಿರಿಸಲಾಯಿತು.

ಪೊಷ್ಟೆ : ಎಸ್.ಸಿ.ಆರ್.ಸಿ.ಆರ್.51/15-16

ದಿನಾಂಕ: 10.6.16

ಬೆಂಗಳೂರು ಪೂರ್ವ - ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಮಹಸರ್ ಗ್ರಾಮದ ಸ.ನಂ.2/1 ರ ಜಮೀನನ್ನು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವ ಬಗ್ಗೆ ಜಾರ್ಜ್ ತಂಗಯ್ಯರವರು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವುದಾಗಿ ವೀಕ್ಷಣಾಗಿದ್ದ ಮೋಟಿಗಾಗೆ ಉತ್ತರಿಸಿರುವ ಜಾರ್ಜ್ ತಂಗಯ್ಯರವರು ಸದರಿ ಜಮೀನಿನಲ್ಲಿ ಯಾವುದೇ ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವುದಿಲ್ಲವೆಂಬ ಬಗ್ಗೆ ಪಾಲಿಗಳನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಸದರಿಯವರಿಗೆ ವೀಕ್ಷಣಾಗಿದ್ದ ನೋಟೀಸ್ಸನ್ನು ಹಿಂಪಡೆದು ಪ್ರಕರಣವನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸಲಾಗಿದೆ.

ಈ ಆದೇಶವನ್ನು ದಿನಾಂಕ: 10.6.16 ರಂದು ಮುಕ್ತ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹೊರಡಿಸಿದೆ.

ತಹಶೀಲ್ದಾರ್ 10.6.16

ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು

ಕೆ.ಆರ್.ಪುರ

TRUE COPY

89 Translated copy of Annexure -13

Tahsildar's Office, Bangalore East Taluk,

K.R. Puram, Bangalore

Case No : NCRCR 51/15-16 Date:- 10.6.16

Present: Shri A. Harish Nayak K.A.S
Tahsildar and Presiding Officers
Bangalore East Taluk

Plaintiffs

Government

VERSUS

Defendants:-

1. George Tangayya

Subject: Regarding the encroachment of government land in Survey No. 2/2 of Binnamangala Village, K.R. Puram Hobli, Bangalore East Taluk.

Proposal-

Bangalore East Taluk, Hobli: Binnamangala Manavarthe Kaval Village, Survey No. 2/2, regarding the encroachment of government land, George Tangayya has encroached upon the land as per this office case number: NCR/15-16, dated: 20/01/16, under Sections 94 and 104 of the Karnataka Land Revenue Act, 1964, and has been notified to appear for inquiry. The encroacher has responded

to the notice by post, stating that the total area of the land is 319 guntas and that St. Michael's Convent Home and Good Shepherd Convent have purchased the land through registered sale deed number 278/1969-70, dated: 02.08.1969, and have converted the land for residential purposes with the authorized memorandum of the Honorable District Commissioner dated: 05.09.1970.

The Honorable District Commissioner, through official memorandum number V-Dis.LND(62/75-76, dated 26.12.1975, has sanctioned and ordered the conversion of 0-3 guntas of kharab land, and the land has been converted as per order number: ALN.CR:22/75-76, dated: 20/01/1976.

A map of the said property was prepared and approved by the Bangalore Development Authority on 17.11.1977. Receipts for the development charges paid for the said property have been submitted, with the receipt dated 22.03.1980 issued by the Bangalore Development Authority.

The Bangalore Development Authority has also submitted documents dated 02.08.2011, granting permission to construct shops and malls on the said property. Additionally, a copy of the letter dated 17.04.2013 from the Bangalore Municipal Corporation, approving the building plan related to the said property, has been submitted.

The case hearing has been reserved for final orders.

Number: NCR/CR:51/15-16 Date: 10.6.16

Bangalore East Taluk, K.R. Puram, Hobli, Binnamangala Manavarthe Kaval, George Tangayya, who had been issued a notice regarding the encroachment on the land in Survey No. 2/2 of Binnamangala Village, K.R. Puram Hobli, Bangalore East Taluk, has responded to the notice, submitting documents proving that he has not encroached on the said land. Therefore, the notice issued to him has been withdrawn, and the case has been closed.

This order was pronounced in open court on the date: .....

Tahsildar
Bangalore East Taluk
K.R. Puram

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ANNEXURE 14

ಹೆಚ್ಚುವರಿ ನ್ಯಾಯಾಲಯ, ಬೆಂಗಳೂರು ಜಿಲ್ಲೆ, ಕೆ.ಆರ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು

ಪ್ರಕರಣ ಕ್ರಮಾಂಕ: ಎಲ್.ಎನ್.ಡಿ (ಹೂ) ಸಿಆರ್/104/2019–20

ವಾದಿಗಳು	ವಿರುದ್ಧ	ಪ್ರತಿವಾದಿಗಳು
ಸರ್ಕಾರ		1. ಶ್ರೀ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ಬಿನ್ ಮಾರ್ಕ್ ತಂಗಯ್ಯ ಇವರ ಪರವಕಿಲರು ಪ್ರತಿವಾದಿಗಳು 1ಎ) ಶ್ರೀಮತಿ. ಚಿತ್ರಮೂರ್ತಿಮ್ಮ ಕೋಂ ಜಾರ್ಜ್ ತಂಗಯ್ಯ, ನಂ–339, ಗೋವಿಂದ ರೈನ್‌ಬೋ ಡ್ರೈವ್ ಲೇಔಟ್, ಸಜ್ಜನ್‌ಮಲ ರಸ್ತೆ, ಬೆಂಗಳೂರು 1ಬಿ) ಶ್ರೀ ವಿಜಯ್ ಜೇಮ್ಸ್ ಬಿನ್ ಜಾರ್ಜ್ ತಂಗಯ್ಯ, 1ಸಿ) ಚೈತ್ರ ಪ್ರಭಾಕರ್ ಬಿನ್ ಜಾರ್ಜ್ ತಂಗಯ್ಯ, ಕ್ರ.ಸಂ 1ಬಿ ಮತ್ತು 1ಸಿ ರ ಪಾಸ: ನಂ–6, ಕಮಿಷನರೇಟ್ ರಸ್ತೆ, ರಿಚ್‌ಮಂಡ್ ಟೌನ್, ಬೆಂಗಳೂರು–25

ವಿಷಯ:– ಕರ್ನಾಟಕ ಭೂ ಮಂಜೂರಾತಿ ಕಾಯ್ದೆ 1969 ರ ನಿಯಮ 25(1) ರಡಿ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್ ಪುರಂ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಮನವರ್ತೆಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ 2/2 ರಲ್ಲಿ 0–13 ಗುಂಟೆ, ಸ.ನಂ 7/ಎ1ಎ ರಲ್ಲಿ 0–01 ಗುಂಟೆ ಮತ್ತು ಸ.ನಂ 7/ಬಿ ರಲ್ಲಿ 0–02 ಗುಂಟೆ "ಬಿ" ಖರಾಬ್ ಜಮೀನುಗಳ ಮಂಜೂರಾತಿ ಮತ್ತು ಭೂ ಪರಿವರ್ತನೆ ರದ್ದುಗೊಳಿಸುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ:– 1. ಮಾನ್ಯ ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿಗಳು, ಕಂದಾಯ ಇಲಾಖೆ, ಭೂ ಮಂಜೂರಾತಿ–I ರವರ ಪತ್ರದ ಸಂಖ್ಯೆ ಆರ್‌ಡಿ 93 ಎಲ್‌ಜಿಬಿ 2019 (ಇ) ದಿನಾಂಕ: 17–12–2019

2. ತಹಶೀಲ್ದಾರ್, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು ರವರ ಪ್ರಸ್ತಾವನೆಯ ಕ್ರಮಾಂಕ: ಇಫ್.ಸಿ.ಆರ್(ಕೆಆರ್‌ಪು)ಸಿಆರ್/14/2019–20 ದಿನಾಂಕ: 13–11–2019

ನೋಟೀಸ್

ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್ ಪುರಂ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಮನವರ್ತೆಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ 2/2 ರಲ್ಲಿ 0–13 ಗುಂಟೆ, ಸ.ನಂ 7/ಎ1ಎ ರಲ್ಲಿ 0–01 ಗುಂಟೆ ಮತ್ತು ಸ.ನಂ 7/ಬಿ ರಲ್ಲಿ 0–02 ಗುಂಟೆ "ಬಿ" ಖರಾಬ್ ಜಮೀನು ಭೂ ಮಂಜೂರಾತಿಯು ಶ್ರಮಬದ್ಧವಲ್ಲವೆಂದು ಸರ್ಕಾರಕ್ಕೆ ಪ್ರಸ್ತಾವನೆ ಸಲ್ಲಿಸಲಾಗಿದ್ದು, ಸರ್ಕಾರವು ಉಲ್ಲೇಖ 1 ರ ಪತ್ರದಲ್ಲಿ ಕರ್ನಾಟಕ ಭೂ ಮಂಜೂರಾತಿ ಕಾಯ್ದೆ 1969 ರ ಕಲಂ 25(1) ರಡಿ ಸೂಕ್ತ ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ನಿರ್ದೇಶಿಸಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಸದರಿ ಬ ಖರಾಬು ಜಮೀನಿನ ಮಂಜೂರಾತಿಯನ್ನು ರದ್ದುಗೊಳಿಸಿ, ಈ ಜಮೀನುಗಳನ್ನು ಸರ್ಕಾರಕ್ಕೆ ಪಾವತ್ತುಗೊಳಲು ಕಾಕೆಕೊಳ್ಳುವ ಬಗ್ಗೆ ವಿಚಾರಣೆಯನ್ನು ದಿನಾಂಕ: 16/06/2020 ರಂದು ಮಧ್ಯಾಹ್ನ 3-30 ಗಂಟೆಗೆ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಕಛೇರಿ, ಬೆಂಗಳೂರು ಜಿಲ್ಲೆ ಕಛೇರಿಯ ಕೋರ್ಟ್ ಹಾಲಿನಲ್ಲಿ ನಿಗದಿಪಡಿಸಿದ್ದು, ಸದರಿ ದಿನಾಂಕದಂದು ಸ್ವಯಂ ನೀವು ಅಥವಾ ನಿಮ್ಮ ನ್ಯಾಯವಾದಿಗಳ ಮುಖಾಂತರ ಹಾಜರಿದ್ದಲು ತಿಳಿಸಲಾಗಿದೆ. ಒಂದು ವೇಳೆ ಸದರಿ ದಿನಾಂಕದಂದು ಈ ಕಾರ್ಯಾಲಯದ ಕೋರ್ಟ್ ಹಾಲಿನಲ್ಲಿ ಹಾಜರಾಗದೆ ಇದ್ದಲ್ಲಿ ನೀವು ಏನೂ ಹೇಳುವುದಿಲ್ಲವೆಂದೂ ಭಾವಿಸಿ ಪ್ರಕರಣದ ಗುಣಾವಗುಣದ ಮೇಲೆ ಆದೇಶವನ್ನು ಹೊರಡಿಸಲಾಗುವುದು.

ಉಪವಿಭಾಗಾಧಿಕಾರಿಗಳು ಪೂರ್ವ,
ಬೆಂಗಳೂರು ಜಿಲ್ಲೆ, ಬೆಂಗಳೂರು.

94 TRANSLATED Copy of Annexure-14

Court of the District Magistrate, Bangalore District, K.G. Road, Bangalore

Case Number: LND (P) CR/104/2019-20

Plaintiffs:

Government

Defendants:

1. Mr. George Tangayya
Mark Tangayya
His legal heirs
a) Mrs. Chitranim Kom
George Tangayya,
No-339, Govika Rain Drive Layout,
Sarjapur Road, Bangalore
b) Mr. Vijay Shekhar Bis
George Tangayya,
c) Chaitra Prabhakar Bin
George Tangayya,
Residing at No-6,
Commissionerate Road, Richmond Town,
Bangalore-25

Subject: Regarding the cancellation of land approval and conversion of 6-3 guntas in Survey No. 2/2, 0-01 gunta in Survey No. 71A, and 0-02 guntas in Survey No. 71B of Binnamangala

Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk under Rule 25(1) of the Karnataka Land Grant Act, 1969.

Reference:

1. Letter No. RD 93 dated 17-12-2019 from the Under Secretary, Revenue Department, Government of Karnataka.

2. Proposal number. NCR (KAPI) CR/14/2019-20 dated 13-11-2019 from the Tahsildar, Bangalore East Taluk.

Notice

A proposal has been submitted to the government stating that the land approval for 113 guntas in Survey No. 2/2, 0-01 gunta in Survey No. 71A, and 0-02 guntas in Survey No. 71B of Binnamangala Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk is irregular. The government, in its letter referenced above, has directed to take appropriate action under Section 25(1) of the Karnataka Land Grant Act, 1969. Therefore, the approval of the said 'B' kharab lands is canceled, and the hearing for the confiscation of these lands by the government is scheduled for 16/06/2020 at 3:30 PM in the court hall of the District Magistrate's office, Bangalore District. You are hereby informed to appear in person or through your advocate on the said date. If you fail to appear, an order will be passed based on the merits of the case, assuming that you have nothing to say.

On behalf of the District Magistrate,
Bangalore District, Bangalore

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ANNEXURE - 15

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ತಹಶೀಲ್ದಾರ್‌ರವರ ಕಾರ್ಯಾಲಯ, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್. ಪುರಂ. ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ

ನಂ: ಬಿಎಸ್.ಆರ್.(ಕೆ.ಆರ್.ಪಿ)ಸಿಆರ್/ 14 /2019-20 ದಿನಾಂಕ: 13-11-2019.

ರವರಿಗೆ,
ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು,
ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ,
ಬೆಂಗಳೂರು

ಮಾನ್ಯರೇ

ವಿಷಯ:- ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ ಬಿನ್ನಮಂಗಳ ಪುನರ್ವಸತಿ ಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ 2/2ರಲ್ಲಿ 0-13 ಗುಂಟೆ, 7/1ಎಎ ರಲ್ಲಿ 0-01 ಗುಂಟೆ ಮತ್ತು 7/1ಬಿರಲ್ಲಿ 0-02 ಗುಂಟೆ ಬಿ ಖರಾಬು ಜಮೀನುಗಳ ಮಂಜೂರಾತಿ ಮತ್ತು ಭೂ ಪರಿವರ್ತನೆ ರದ್ದುಗೊಳಿಸುವ ಬಗ್ಗೆ

ಉಲ್ಲೇಖ:- ರಾಜಸ್ವ ನಿರೀಕ್ಷಕರು, ಮಹದೇವಪುರ ವೃತ್ತರವರ ವರದಿ ಸಂಖ್ಯೆ: ರಾ.ನಿ(ಪ)ಪಿ.ಆರ್. 01 /19-20.

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ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ ಬಿನ್ನಮಂಗಳ ಪುನರ್ವಸತಿ ಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ 2/2ರಲ್ಲಿ ಒಟ್ಟು 3-24 ಎ/ಗುಂ ವಿಸ್ತೀರ್ಣವಿದ್ದು, ಈ ಪೈಕಿ ಬಿ ಖರಾಬು 0-13 ಗುಂಟೆ, ಜಾತಿ ಉಳಿಕೆ 3-11 ಗುಂಟೆ ಜಮೀನು ಜಾರ್ಜ್ ತಂಗಯ್ಯರವರಹಿಸರನಲ್ಲಿ ಖಾತೆ ಇರುತ್ತದೆ ಮೂಲ ಸರ್ವೆ ದಾಖಲೆಗಳಂತೆ ಹಾಗೂ ತಾಲ್ಲೂಕು ಮೋಜಿಣೆದಾರರು ನೀಡಿರುವ ವರದಿ ಹಾಗೂ ನಕ್ಷೆಯಂತೆ, 2/2ರಲ್ಲಿ 0-10 ಗುಂಟೆ ಕಟ್ಟೆ ಬಗ್ಗೆ, 0-02 ಗುಂಟೆ ಬಂಡಿದಾರಿ ಬಗ್ಗೆ, 0-01 ಗುಂಟೆ ಸರಹದ್ದಿನ ಬಗ್ಗೆ, ಒಟ್ಟು 0-13 ಗುಂಟೆ ಖರಾಬು ಇರುತ್ತದೆ. ಸ.ನಂ 7/1ಬಿ ರಲ್ಲಿ ಸರಹದ್ದಿನ ಬಗ್ಗೆ 0-02 ಗುಂಟೆ ಮತ್ತು 7/1ಎ1ಎ3 ರಲ್ಲಿ 0-01 ಗುಂಟೆ ಬಿ ಖರಾಬು ಇದ್ದು, ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳವರ ಅಧಿಕೃತ ಜ್ಞಾಪನ ಸಂಖ್ಯೆ: ಬಿ.ಡಿಸ್/ಎಲ್.ಎನ್.ಡಿ(3)62/75-76, ದಿನಾಂಕ: 26/12/1975 ರಂತೆ ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಸದರಿ ಆದೇಶದಲ್ಲಿ 0-13 ಗುಂಟೆ ಷೂಟ್ ಖರಾಬು ಜಮೀನನ್ನು ಮಂಜೂರಿ ಮಾಡಿರುತ್ತಾರೆ. ಹಾಗೂ ಸದರಿ ಜಮೀನನ್ನು ಸಂಖ್ಯೆ: ಎಎಲ್ಎನ್.ಸಿಆರ್ 22/75-76, ದಿನಾಂಕ: 20/01/1976 ರಂತೆ 0-16 ಗುಂಟೆ ಷೂಟ್ ಖರಾಬನ್ನು ಭೂ ಪರಿವರ್ತನೆ ಮಾಡಿ ಆದೇಶಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಭೂ ಪರಿವರ್ತನೆ ಆದೇಶ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964 ಕಲಂ 95(2) (4) (7)ರ ನಿಯಮವನ್ನು ಉಲ್ಲಂಘನೆ ಮಾಡಿರುವುದಾಗಿ ಕಂಡುಬಂದಿರುತ್ತದೆ.

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ಪ್ರಸ್ತಾಪಿತ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ ಬಿನ್ನಮಂಗಲ ಮಹಪರ್ತಿಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ 2/2 ರಲ್ಲಿ 0-13 ಗುಂಟೆ, 7/ಎ ರಲ್ಲಿ 0-01 ಗುಂಟೆ 7/ಬಿ ರಲ್ಲಿ 0-02 ಗುಂಟೆ ಜಮೀನುಗಳು ಖರಾಬು ಜಮೀನುಗಳಾಗಿರುತ್ತವೆ. ಸದರಿ ಜಮೀನನ್ನು ಸರ್ಕಾರದ ಸುತ್ತೋಲೆ ಸಂಖ್ಯೆ: ಆರ್.ಡಿ/46/ಎಲ್.ಜಿ.ಪಿ.2017/ದಿನಾಂಕ: 14/06/2018ರಂತೆ ಜಲಮೂಲ ಪ್ರದೇಶಗಳನ್ನು ಸಂರಕ್ಷಿಸಬೇಕಾಗಿದ್ದು, ಸದರಿ ಪ್ರಸ್ತಾಪಿತ ಜಮೀನನ್ನು ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964 ಕಲಂ 68(5)ರಡಿ ವಿಹಿತಗೊಳಿಸಲು ರಹವಿಲ್ಲವಾದ್ದರಿಂದ ಭೂ ಮಂಜೂರಾತಿಯನ್ನು ರದ್ದುಪಡಿಸಿ ಸದರಿ ಖರಾಬು ಜಮೀನಿನ ಭೂ ಪರಿವರ್ತನೆ ಆದೇಶವನ್ನು ರದ್ದುಗೊಳಿಸಿ ಖರಾಬು ಜಮೀನನ್ನು ಯಥಾಸ್ಥಿತಿ ಇರುವ ಬಗ್ಗೆ ಸೂಕ್ತ ಆದೇಶ ಹೊರಡಿಸಲು ಪೂರಾ ಈಡಪಡಿಸಿ ತಮ್ಮ ಅವಗಾಹನೆಗಾಗಿ ಸಲ್ಲಿಸಿದೆ.

ತಹಶೀಲ್ದಾರ್
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು
ಕೆ.ಆರ್.ಪುರ

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TRANSLATED COPY of Annexure-15

11

KARNATAKA GOVERNMENT

Tahsildar's Office, Bangalore East Taluk, K.R. Puram, Horamavu City

NO: NCR(RP)CR/14/2019-20 Date: 13-11-2019.

To,

Honorable District Magistrate,
Bangalore Urban District,
Bangalore

Honorable Sir,

Subject: Regarding the cancellation of land approval and conversion of 0-13 guntas in Survey No. 2/2, 0-01 gunta in Survey No. 71A, and 0-02 guntas in Survey No. 71B of Binnamangala Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk.

Reference: Report number ma(3) 01/19-20 from the Revenue Inspector, Mahadevapura Circle.

With reference to the above subject, the total area of 324 guntas in Survey No. 2/2 of Binnamangala Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk, includes 0-13 guntas of 'B' kharab land, 3-11 guntas of retained land in the name of George Tangayya. According to the original survey records and the report and map provided by the taluk surveyors, 0-10 guntas of the land in Survey No. 2/2 is for a platform, 0-02 guntas for a boundary,

and 0-01 gunta for a drain, totaling 0-13 guntas of kharab land. In Survey No. 71, 0-02 guntas is for a drain, and in Survey No. 71B, 0-01 gunta is 'B' kharab. The Honorable District Magistrate, in official memorandum number B.Dis/LND(3)62/75-76 dated 26/12/1975, has approved 0-3 guntas of 'B' kharab land and ordered the conversion of 0-16 guntas of 'B' kharab land as per order number ALN.CR:22/75-76 dated 20/01/1976. This conversion order appears to violate the provisions of Section 95(2)(4)(7) of the Karnataka Land Revenue Act, 1964.

In view of the above, the approval of 0-13 guntas in Survey No. 2/2, 0-01 gunta in Survey No. 71A, and 0-02 guntas in Survey No. 71B of Binnamangala Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk, is canceled. The government, in its circular number RD/46/LGP/2017 dated 14/06/2018, has directed to protect the water source areas. Therefore, the land approval is canceled, and the order for the conversion of 'B' kharab lands is revoked, and the 'B' kharab lands are restored to their original status. The complete file is submitted for your perusal and to issue appropriate orders.

Yours faithfully,

Tahsildar, Bangalore East Taluk

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ANNEXURE -16

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಕಾರ್ಯಾಲಯ, ಬೆಂಗಳೂರು ಜಿಲ್ಲೆ, ಕೆ.ಜಿ.ರಸ್ತೆ, ಬೆಂಗಳೂರು

ನಂಇಎಲ್‌ಕಾವಾಡಿ (ಸಂಖ್ಯೆ) ಸಿಆರ್:104/2019-20

ದಿನಾಂಕ: 21.1.2019.

ರವರಿಗೆ:

ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿಗಳು,

ಕಂದಾಯ ಇಲಾಖೆ,

ಬಹುಮಂಜಿಡಿಗಳ ಕಟ್ಟಡ, ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ:- ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಳ ಮನವರ್ತೆ ಗಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ.2/2 ರಲ್ಲಿ 0-13 ಗುಂಟೆ, ಸ.ನಂ.7/1ಎ1ಎ ರಲ್ಲಿ 0-01 ಗುಂಟೆ ಮತ್ತು ಸ.ನಂ.7/1ಬಿ ರಲ್ಲಿ 0-02 ಗುಂಟೆ 'ಬಿ' ಖರಾಬು ಜಮೀನುಗಳ ಮಂಜೂರಾತಿ ಮತ್ತು ಭೂ ಪರಿವರ್ತನೆ ರದ್ದುಗೊಳಿಸುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ:- ತಹಸೀಲ್ದಾರ್, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು ರವರ ಪತ್ರ ಸಂಖ್ಯೆ: ಎಸ್.ಸೀ.ಆರ್(ಕೆ.ಆರ್.ಪುರ)ಸಿಆರ್: 14/19-20, ದಿನಾಂಕ: 13.11.2019

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ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಳ ಮನವರ್ತೆ ಗಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ.2/2 ರಲ್ಲಿ 3-24 ಎ.ಗುಂ. ವಿಸ್ತೀರ್ಣವಿದ್ದು, ಈ ಪೈಕಿ 'ಬಿ' ಖರಾಬು 0-13 ಗುಂಟೆ, ಹಾಗೆ ಉಳಿಕೆ 3-11 ಎ.ಗುಂ. ಜಮೀನು ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಹೆಸರಿನಲ್ಲಿ ಖಾತೆ ಇರುತ್ತದೆ. ಮೂಲ ಸರ್ವೆ ದಾಖಲೆಗಳಂತೆ ಹಾಗೂ ತಾಲ್ಲೂಕು ಪೋಡಿನಿರ್ದೇಶಕರವರು ಪರಿಶೀಲಿಸಿರುವ ವರದಿ ಹಾಗೂ ಪಟ್ಟಿಯಂತೆ, ಸ.ನಂ.2/2 ರಲ್ಲಿ 0-10 ಗುಂಟೆ ಕಟ್ಟೆ ಬಗ್ಗೆ 0-02 ಗುಂಟೆ ಬಂಡಿದಾರಿ ಬಗ್ಗೆ 0-01 ಗುಂಟೆ ಸರಹದ್ದಿನ ಬಗ್ಗೆ, ಒಟ್ಟು 0-13 ಗುಂಟೆ ಖರಾಬು ಇರುತ್ತದೆ. ಸ.ನಂ.7/1ಬಿ ರಲ್ಲಿ ಸರಹದ್ದಿನ ಬಗ್ಗೆ 0-02 ಗುಂಟೆ ಮತ್ತು ಸ.ನಂ.7/1ಎ1ಎ3 ರಲ್ಲಿ 0-01 ಗುಂಟೆ 'ಬಿ' ಖರಾಬು ಆಥವ್ಯ ತಾಲ್ಲೂಕು ಪೂರ್ವ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳವರ ಆದೇಶದ ಜ್ಞಾಪನ ಸಂಖ್ಯೆ: ಪಿಡಿಜಿ/ಎಲ್‌ಪಿಸಿ.ಡಿ(3)62/75-76 ದಿನಾಂಕ: 26.12.1975 ರಂತೆ ಮೂಲ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಪದವಿ ಆದೇಶದಲ್ಲಿ 0-13 ಗುಂಟೆ ಪೂರ್ ಖರಾಬು ಜಮೀನನ್ನು ಮಂಜೂರು ಮಾಡಿರುವುದಾಗಿ ಹಾಗೂ ಸದರಿ ಜಮೀನನ್ನು ಸರ್ ಎಲ್‌ಎನ್/ಸಿಆರ್:22/75-76, ದಿನಾಂಕ:20.01.1976 ರಂತೆ 0-16 ಗುಂಟೆ ಕೊಪ್ಪೆ ಖರಾಬನ್ನು ಭೂ ಪರಿವರ್ತನೆ ಮಾಡಿ ಆಧೀಕೃತಗೊಳಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಭೂ ಪರಿವರ್ತನೆ ಆದೇಶ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964 ಕಲಂ 95(2)(4)(7) ರ ವಿಧಿಯಮಾನ್ಯ ಉಲ್ಲಂಘನೆ ಮಾಡಿರುವುದಾಗಿ ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಪ್ರಸ್ತಾಪಿತ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಳ ಮನವರ್ತೆಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ.2/2 ರಲ್ಲಿ 0-13 ಗುಂಟೆ, ಸ.ನಂ.7/1ಎ ರಲ್ಲಿ 0-01 ಗುಂಟೆ, ಸ.ನಂ.7/1ಬಿ ರಲ್ಲಿ 0-02 ಗುಂಟೆ ಜಮೀನುಗಳ ಖರಾಬು ಜಮೀನುಗಳಾಗಿರುವುದಿಲ್ಲ. ಸದರಿ ಜಮೀನನ್ನು ಸರ್ಕಾರದ ಸುತ್ತೋಲೆ ಸಂಖ್ಯೆ: ಆಂಕಿಡಿ 46 ಎಲ್‌ಜಿಪಿ 2017, ದಿನಾಂಕ: 14.06.2018 ರಂತೆ ಜಾರಿಮೂಲ ಪ್ರದೇಶಗಳನ್ನು ಪುನರ್ವಿನಿಯೋಗಿಸಲ್ಪಟ್ಟಿದ್ದು, ಸದರಿ ಪ್ರಸ್ತಾಪಿತ ಜಮೀನನ್ನು ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964 ಕಲಂ 63(5) ರಡಿ ವಿಕ್ರಿಂತಗೊಳಿಸಲು ದೃಢಪಿಟ್ಟಿಸಾದ್ದರಿಂದ ಭೂ ಮಂಜೂರಾತಿಯನ್ನು ರದ್ದುಪಡಿಸಿ ಸದರಿ ಖರಾಬು ಜಮೀನಿನ ಭೂ ಪರಿವರ್ತನೆಗೆ ಆದೇಶವನ್ನು ರದ್ದುಗೊಳಿಸಿ, ಖರಾಬು ಜಮೀನನ್ನು ಯಥಾಸ್ಥಿತಿ ತರುವ ಬಗ್ಗೆ ಸೂಕ್ತ ಆದೇಶ ಹೊರಡಿಸಲು ಕೋರಿ ತಹಸೀಲ್ದಾರ್, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು ರವರು ವರದಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಪರಿಶೀಲನೆಯಲ್ಲಾಗಿ, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಳ ಮನವರ್ತೆ ಗಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ.2/2 ರಲ್ಲಿ 3-24 ಎ.ಗುಂ. ಪೈಕಿ 0-10 ಗುಂಟೆ ಕಟ್ಟೆ ಬಗ್ಗೆ 0-02 ಗುಂಟೆ ಬಂಡಿದಾರಿ ಕುಗ್ಗೆ, 0-01 ಗುಂಟೆ ಸರಹದ್ದಿನ ಬಗ್ಗೆ, ಒಟ್ಟು 0-13 ಗುಂಟೆ ಖರಾಬು ಹೊರತುಪಡಿಸಿ, 3-11 ಎ.ಗುಂ. ಜಮೀನು ಮತ್ತು ಸ.ನಂ.7/1ಬಿ ರ 0-24 ಗುಂಟೆ ಜಮೀನಿನ ಪೈಕಿ 0-02 ಗುಂಟೆ ಸರಹದ್ದಿನ ಬಗ್ಗೆ ಖರಾಬು ಹೊರತುಪಡಿಸಿ 0-22 ಗುಂಟೆ ಜಮೀನನ್ನು ಒಟ್ಟಿನ ಖಾತಾ 3-33 ಎ.ಗುಂ. ಜಮೀನು ಎ.ಎಲ್.ಎನ್/ಎಸ್.ಆರ್: 4448/72-73 ರಂತೆ ವೈಯಕ್ತಿಕ ಕೈಗಾರಿಕಾ ಉದ್ದೇಶಕ್ಕಾಗಿ ಭೂ ಪರಿವರ್ತನೆಯಾಗಿರುತ್ತದೆ. ಸದರಿ ಭೂ ಪರಿವರ್ತನಾ ಆದೇಶದಲ್ಲಿ 'ಬಿ' ಖರಾಬು ಜಮೀನನ್ನು ಸಾರ್ವಜನಿಕ ಉದ್ದೇಶಕ್ಕಾಗಿ ಮೀಸಲಿರಿಸಲಾಗಿರುತ್ತದೆ. (ಕೆಡತ ಲಭ್ಯವಿರುತ್ತದೆ).

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ಅಡಕೇಲ್ಲೂರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬರಿನ ಲಗತ್ತು ದಾಖಲೆಗಳನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಮಾಗಣಿಯ ಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ.2/2 ರಲ್ಲಿನ 0-13 ಗುಂಟೆ, ಸ.ನಂ.7/1ಎ ರಲ್ಲಿ 0-01 ಗುಂಟೆ ಮತ್ತು ಸ.ನಂ.7/1ಬಿ ರಲ್ಲಿನ 0-02 ಗುಂಟೆ ಒಟ್ಟು 0-16 ಗುಂಟೆ 'ಬಿ' ಖರಾಬು ಜಮೀನುಗಳು ಸಾರ್ವಜನಿಕ ಉದ್ದೇಶದಲ್ಲಿ ಬಳಕೆ ಇರುವುದಿಲ್ಲವೆಂದು ಪರಿಗಣಿಸಿ, ಸದರಿ ಜಮೀನನ್ನು ಪ್ರತಿ ಎಕರೆಗೆ 10,000/-(ಹತ್ತು ಸಾವಿರ) ರೂಪಾಯಿಗಳಂತೆ ಸದರಿ ಜಮೀನುಗಳ ಅಪ್ರೈಸಲ್ ಪ್ರಕಾರ ವಿಶೇಷ ತಿಲ್ಲೇದಾರರಿಗಳು ಬಿ.ಡಿಸ್.ಎಲ್.ಎನ್.ಡಿ(3)62/75-76, ದಿನಾಂಕ: 26.12.1975 ರಂತೆ ಕೆ.ಎಲ್.ಆರ್. ಆಕ್ಟ್ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964 ಕಲಂ 71 ರಂತೆ ಜಾರ್ಜ್ ಅಥಂಗಯ್ಯ ರವರಿಗೆ ಮಂಜೂರು ಮಾಡಿರುತ್ತಾರೆ. (ಮೂಲ ಪತಿಗಳು ಈ ಕಛೇರಿಯಲ್ಲಿ ಲಭ್ಯವಿರುವುದಿಲ್ಲ) ಈ ಆದೇಶದಂತೆ ತಹಸೀಲ್ದಾರ್ ಪಾವಲ್ಎನ್/ಸಿಆರ್: 73/75-76 ದಿನಾಂಕ: 20.01.1976 ರಂತೆ ಭೂ ಪರಿವರ್ತನಾ ಆದೇಶವನ್ನು ಹೊರಡಿಸಿರುತ್ತಾರೆ. ಈನರಿ ಭೂ ಪರಿವರ್ತನಾ ಆದೇಶದಂತೆ ಪ್ರಸ್ತುತ ಖರಾಬು ಜಮೀನುಗಳು ವ್ಯವಸಾಯಕ್ಕೆ ಯೋಗ್ಯವಲ್ಲದ ಜಮೀನುಗಳಿರುವುದೆ (ಪನ್ಎಪಕೆ) ಎಂದು ದಿನಾಂಕ: 2.11.1979 ರಲ್ಲಿ ದಾಖಲಿಸಿರುವುದು ಸರ್ವ ದಾಖಲೆಯಂತೆ ಕಂಡು ಬರುತ್ತದೆ.

ಕರ್ನಾಟಕ ಲ್ಯಾಂಡ್ ರೆವಿನ್ಯೂ ಆಕ್ಟ್ 1964 ರ ಕಲಂ 71 ರಂತೆ ಭೂಮಿಗಳನ್ನು ವಿಶೇಷ ಉದ್ದೇಶಗಳಿಗಾಗಿ ಸಿಸಿಮೊಗಳಿಸಬಹುದು. ಆದರೆ, ಈ ವಿಧಿಯಡಿಯ ಯಾವುದೇ ಉದ್ದೇಶಕ್ಕಾಗಿ ಜಮೀನು ಮಂಜೂರು ಮಾಡಲು ಅವಕಾಶವಿರುವುದಿಲ್ಲ.

ಸಾರ್ವಜನಿಕ ಪ್ರಯೋಜನ ಯಾವುದೇ "ಬಿ" ವರಾಬು ಜಮೀನುಗಳು, ಸಾರ್ವಜನಿಕ ಬಳಕೆಗೆ ಉಳಿಸಿಲ್ಲದ ಯಾವುದೇ ರಸ್ತೆ ಬಿಟ್ಟು, ಓಣಿ ಅಥವಾ ಹಾಡಿಯ ಜಮೀನುಗಳನ್ನು ಭೂಮಾಪನಿಕರಿಂದ ಅಥವಾ ಪ್ರೈಯಕ್ಷಕ ಅಧಿಕಾರಿಗಳಿಗೆ ಇರುವ ಅಧಿಕಾರಗಳನ್ನು ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ ಕಲಂ 68 ರಡಿ ಸಾರ್ವಜನಿಕ ಹಿತಕ್ಕಿಂದ ನಿಯಮಾನುಸಾರ ವಿಶೇಷತೆಗೊಳಿಸಿದ ನಂತರವೇ ಬೇರೆ ಉದ್ದೇಶಗಳಿಗೆ ಬಳಸಬಹುದಾಗಿರುತ್ತದೆ. ಆದರೆ, ಸದರಿ ಖರಾಬು ಜಮೀನನ್ನು ಈ ರೀತಿ ನಿಯಮಾನುಸಾರ ಸಾರ್ವಜನಿಕ ಹಿತಕ್ಕಿಂದ ವಿಶೇಷಗೊಳಿಸುವ ಕ್ರಮ ಆಗಿರುವುದು ಕಂಡು ಬಂದಿರುವುದಿಲ್ಲ. ಆದುದರಿಂದ ಸದರಿ ಮಂಜೂರಿ ನಿಯಮಾನುಸಾರ ಕ್ರಮಬಾಗಿರುವುದಿಲ್ಲ. ಈ ಹಂತದಲ್ಲಿ, ಈ ಪ್ರಾಥಮಿಕ ವರದಿಯಲ್ಲಿ ತಹಶೀಲ್ದಾರರವರ ಶೋರಿಕೆಯಂತೆ ಕ್ರಮ ವಹಿಸಲು ಯಾವ ಇರುವುದಿಲ್ಲ ಎಂಬ ಅಭಿಪ್ರಾಯವೊಂದಿಗೆ, ನಿಯಮಾನುಸಾರ ಮುಂದಿನ ಕ್ರಮಕ್ಕಾಗಿ ತಮ್ಮ ಅವಗಾಹನೆಗೆ ಸಲ್ಲಿಸಿದೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ,

ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು

ಬೆಂಗಳೂರು ಜಿಲ್ಲೆ, ಬೆಂಗಳೂರು.

ಪ್ರತಿಯನ್ನು: ತಹಶೀಲ್ದಾರ್, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಬೆಂಗಳೂರು ರವರಿಗೆ ಮುಂದಿನ ಅಗತ್ಯ ಕ್ರಮಕ್ಕಾಗಿ.

NC
ಸಲ್ಲಿಸಲಾಗಿದೆ
27-11-19

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TRANSLATED COPY OF
Annexure-16

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Government of Karnataka

Office of the Commissioner, Bangalore, Chitte K.G. Road, Bangalore

No. LND(M) CR:104/2019-20 Date: 21.11.2019

To,

Principal Secretary to the Government,

Revenue Department,

Vikasa Soudha, Bangalore

Respected Sir/Madam,

Subject: Regarding the approval and cancellation of land conversion for 'B' Kharaab lands in Survey No. 2/2 (0-13 guntas), Survey No. 7/1A (0-01 guntas), and Survey No. 7/1B (0-02 guntas) in Binnamangala Manavarthe Kaval village, K.R. Puram Hobli, Bangalore East Taluk.

Reference: Letter from the Tahsildar, Bangalore East Taluk, No: NCR(KRP)CR: 14/19-20, Date: 13.11.2019

Upon examination, in Survey No. 2/2 of Binnamangala Manavarthe Kaval Village, K.R. Puram Hobli, out of 3-24 guntas, excluding 10 guntas for the platform, 0-2 guntas for the boundary, and 0-01 gunta for the drain, totaling 0-13 guntas of kharab land, and excluding 1-02 guntas for the drain in Survey No. 7/1B, out of 0-24 guntas of land, a total of 333 guntas of land has been converted for

agricultural and industrial purposes as per ALN.CR: 4448/72-73. In the said land conversion order, 'B' kharab land has been reserved for public purposes (file available). Upon examining the attached records of the Tahsildar's report, it is considered that the 0-13 guntas in Survey No. 2/2, 0-01 gunta in Survey No. 7/1, and 0-02 guntas in Survey No. 7/1B, totaling 16 guntas of 'B' kharab land, are not being used for public purposes. Therefore, the said land is valued at Rs. 10,000/- (ten thousand) per acre as per the Asset Press. The Special District Magistrate, B.Dis.LND(3)62/75-76, dated 26.12.1975, has sanctioned the land to Mr. George Thangayya under Section 71 of the Karnataka Land Revenue Act, 1964 (original file not available in this office). Based on this order, the Tahsildar issued the land conversion order as per ALN/CR: 12/75-76 dated 20.01.1976. According to the said land conversion order, the current kharab lands are unsuitable for agriculture (NK) as recorded on 2.11.1979 by the survey records.

Under Section 71 of the Karnataka Land Revenue Act, 1964, lands can be reserved for special purposes. However, under this rule, land cannot be sanctioned for any purpose.

Any 'B' kharab lands reserved for public use, any roads, streets, lanes, or pathways that are not required for public use, can only be used for other purposes after being de-reserved from public use as per Section 68 of the Karnataka Land Revenue Act. However, it is found that the said kharab lands have not been de-reserved from public use as per the rules. Therefore, the said sanction is not in

accordance with the rules. In this context, it is not possible to take action as per the Tahsildar's request within the jurisdiction of this authority. The matter is submitted for your perusal for further action as per the rules.

Yours faithfully,
District Magistrate,
Bangalore District, Bangalore.

Copy to:

Tahsildar, Bangalore East Taluk, Bangalore for necessary further action.

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ANNEXURE -17

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ: ಆರ್‌ಡಿ 93 ಎಲ್‌ಜಿಪಿ 2019(ಇ)

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,
ಬಹುಮಹಡಿಗಳ ಕಟ್ಟಡ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ:17.12.2019

ಇವರಿಂದ:

ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿಗಳು,
ಕಂದಾಯ ಇಲಾಖೆ,
ಬೆಂಗಳೂರು.

ಇವರಿಗೆ:

ಜಿಲ್ಲಾಧಿಕಾರಿ,
ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ,
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ:-ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್ ಪುರ ಹೋಬಳಿ, ಭಿನ್ನಮಂಗಲ, ಮಾವಳ್ಳಿಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ.2/2 ರಲ್ಲಿ 0-13 ಗುಂಟೆ ಸ.ನಂ 7/ಎ1ಎ3 ರಲ್ಲಿ 0-01 ಗುಂಟೆ ಸ.ನಂ 7/ಬಿ ರಲ್ಲಿ 0-02 ಗುಂಟೆ "ಬಿ" ಖರಾಬು ಜಮೀನುಗಳ ಮಂಜೂರಾತಿ ಮತ್ತು ಭೂ-ಪರಿವರ್ತನೆ ರದ್ದುಗೊಳಿಸುವ ಬಗ್ಗೆ.

ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯಲ್ಲಿ ಸ್ವೀಕರಿಸಿದೆ
30 DEC 2019
DEPUTY COMMISSIONER OFFICE BANGALORE

ಉಲ್ಲೇಖ:ಜಮ್ಮ ಪತ್ರ ಸಂಖ್ಯೆ: ಎಲ್.ಎವ್.ಡಿ(ಪೊ)ಸಿಆರ್/404/2019-20,ದಿನಾಂಕ:21.11.2019

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಉಲ್ಲೇಖಿತ ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್ ಪುರ ಹೋಬಳಿ, ಭಿನ್ನಮಂಗಲ, ಮಾವಳ್ಳಿಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ.2/2 ರಲ್ಲಿ 0-13 ಗುಂಟೆ ಸ.ನಂ 7/ಎ1ಎ3 ರಲ್ಲಿ 0-01 ಗುಂಟೆ ಸ.ನಂ 7/ಬಿರಲ್ಲಿ 0-02 ಗುಂಟೆ "ಬಿ" ಖರಾಬು ಜಮೀನುಗಳ ಮಂಜೂರಾತಿ ಮತ್ತು ಭೂ ಪರಿವರ್ತನೆ ರದ್ದುಗೊಳಿಸುವ ಕ್ರಮವಹಿಸಲು ಪ್ರಸ್ತಾವನೆ ಸಲ್ಲಿಸಲಾಗಿದೆ.

ಸದರಿ ಪ್ರಸ್ತಾವನೆಯನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ,ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್ ಪುರ ಹೋಬಳಿ, ಭಿನ್ನಮಂಗಲ, ಮಾವಳ್ಳಿಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ.2/2 ರಲ್ಲಿ 0-13 ಗುಂಟೆ ಸ.ನರಿ 7/ಎ1ಎ3 ರಲ್ಲಿ 0-01 ಗುಂಟೆ ಸ.ನಂ 7/ಬಿರಲ್ಲಿ 0-02 ಗುಂಟೆ "ಬಿ" ಖರಾಬು ಜಮೀನುಗಳನ್ನು ಕರ್ನಾಟಕ ಭೂ ಮಂಜೂರಾತಿ ನಿಯಮಗಳು 1969 ನಿಯಮ 25(1), ರಲ್ಲಿನ ಅವಕಾಶದಂತೆ ಮಂಜೂರಾತಿಯನ್ನು ರದ್ದುಪಡಿಸಲು ಕ್ರಮವಹಿಸುವಂತೆ ತಮಗೆ ತಿಳಿಸಲು ನಿರ್ದೇಶಿಸಲ್ಪಟ್ಟಿದ್ದೇನೆ.

ವಿಶ್ವಾಸ ಕೃತಜ್ಞತೆಯನ್ನು ಇದರೊಂದಿಗೆ ಲಗತ್ತಿಸಿ ಹೇಂದುರಿಗಿಸಿದೆ.

ತಮ್ಮ ನಂಬುಗೆಯ,

(ಸಿ.ಬಲರಾಮು)
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ
ಕಂದಾಯ ಇಲಾಖೆ ಭೂಮಂಜೂರಾತಿ.(

TRANSLATED Copy of Annexure-17

Government of Karnataka 16

No. RD 93 LGB 2019 (E)

Government of Karnataka Secretariat, Multi-storied Building, Bangalore, Dated 17.17.2019

From: Principal Secretary to Government, Revenue Department, Bangalore.

To,

District Collector, Bangalore Urban District, Bangalore.

Respected Sir/Madam,

Subject: Cancellation of approval and land conversion of "B" Kharaabu lands in Survey No. 2/2 (0-13 Guntas), Survey No. 7/1A (0-01 Gunta), and Survey No. 7/1B (0-02 Guntas) in Bhinnamangala, Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk.

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With reference to the subject mentioned above, a proposal has been submitted to take action to cancel the approval and land conversion of "B" Kharaabu lands in Survey No. 2/2 (0-13 Guntas), Survey No. 7/1A (0-01 Gunta), and Survey No. 7/1B (0-02 Guntas) in Bhinnamangala, Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk.

Upon examining the said proposal, I am directed to inform you to take action to cancel the approval of "B" Kharaabu lands in Survey No. 2/2 (0-13 Guntas), Survey No. 7/1A (0-01 Gunta), and Survey No. 7/1B (0-02 Guntas) in Bhinnamangala, Manavarthe Kaval Village, as per the provisions of Rule 25(1) of the Karnataka Land Revenue Rules, 1969.

The specific file is attached herewith for your reference.

Sincerely,

(C. Balarama)

Under Secretary to Government,

Revenue Department, Land Approval.

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ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಭೂದಾಖಲೆಗಳ ಸಹಾಯಕ ನಿರ್ದೇಶಕರವರ ಕಛೇರಿ
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು. ಕೆ.ಆರ್.ಪುರ.

ಸ. ಭೂ.ಸ.ನಿ/ಮೋಡಿ/ಜ್ಞಾಪನ/ 11/2019-20.

ಬೆಂಗಳೂರು. ದಿನಾಂಕ: 04-11-2019.

ತಹಶೀಲ್ದಾರ್,
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು,
ಕೆ.ಆರ್.ಪುರ,

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಭಿನ್ನಮಂಗಲ ಮನವರ್ತೆ ಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ. 2/1ಎ, 2/2, 7/1ಬಿ, 7/1ಎ3, 7/1ಎ2, 7/1ಎ1ಎ1ಎ ರ ಜಮೀನುಗಳಲ್ಲಿನ ಸರ್ಕಾರಿ ಖರಾಬ್ ಒತ್ತುವರಿಯನ್ನು ಗುರುತಿಸಿ ಕೊಡುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: ತಹಶೀಲ್ದಾರ್, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರಂ ರವರ ಪತ್ರದ ಸಂಖ್ಯೆ: ಎನ್.ಸಿ.ಆರ್(ಕೆ.ಆರ್.ಪಿ)ಸಿ.ಆರ್: 14/2019–20, ದಿನಾಂಕ: 23–10–2019.

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ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ, ಭಿನ್ನಮಂಗಲ ಮನವರ್ತೆ ಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ. 2/1ಎ, 2/2, 7/1ಬಿ, 7/1ಎ3, 7/1ಎ2, 7/1ಎ1ಎ1ಎ ರ ಜಮೀನುಗಳಲ್ಲಿನ ಸರ್ಕಾರಿ ಖರಾಬ್ ಒತ್ತುವರಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಅಳತೆ ಮಾಡಿ ನಕ್ಷೆಯೊಂದಿಗೆ ವರದಿ ಸಲ್ಲಿಸಲು ಕೋರಿ ಬಂದ ಉಲ್ಲೇಖಿತ ಪತ್ರ ಪರಿಶೀಲಿಸಲಾಗಿರುತ್ತದೆ.

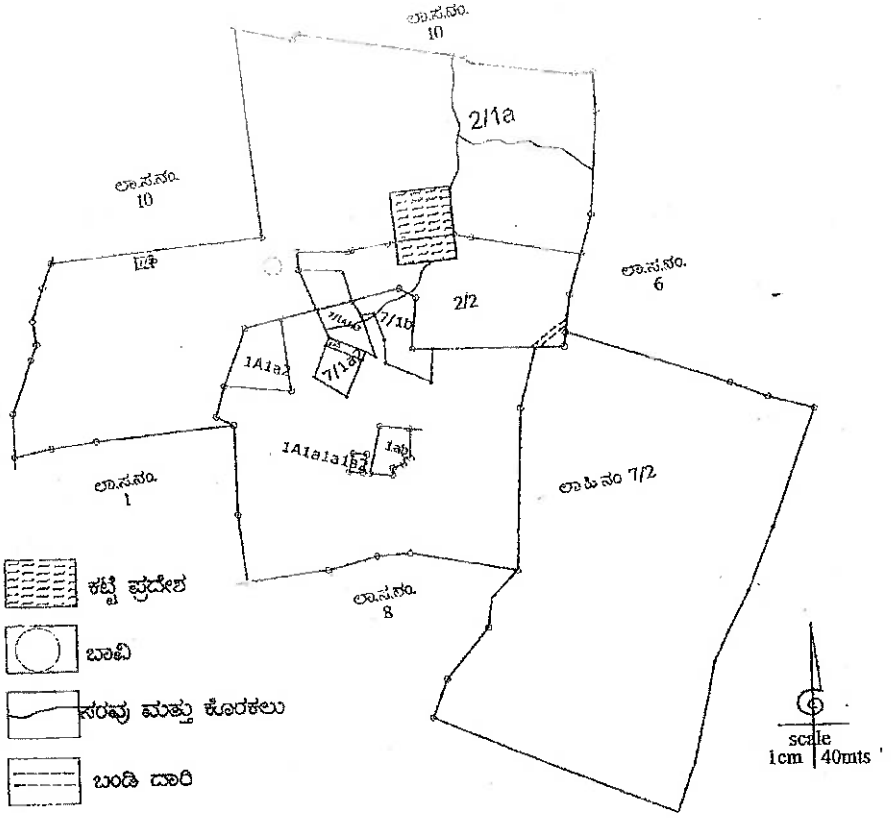
ಮೇಲ್ಕಂಡ ಗ್ರಾಮದ ಸ.ನಂ. 2/1ಎ, 2/2, 7/1ಬಿ, 7/1ಎ3, 7/1ಎ2, 7/1ಎ1ಎ1ಎ ಗಳಲ್ಲಿ ಅಳತೆ ಮಾಡಿ ನಕ್ಷೆಯೊಂದಿಗೆ ವರದಿ ಸಲ್ಲಿಸಲು ಭೂಮಾಪಕರಿಗೆ ಪ್ರಕರಣ ಹಂಚಿಕೆ ಮಾಡಲಾಗಿ, ಭೂಮಾಪಕರು ಅಳತೆ ಕೆಲಸ ಪೂರೈಸಿ ನಕ್ಷೆಯೊಂದಿಗೆ ವರದಿಯನ್ನು ಈ ಕಛೇರಿಗೆ ಸಲ್ಲಿಸಿದ್ದು, ಭೂಮಾಪಕರು ಸಲ್ಲಿಸಿರುವ ಸದರಿ ನಕ್ಷೆಯೊಂದಿಗೆ ವರದಿಯನ್ನು ಈ ಕೂಡ ಲಗತ್ತಿಟ್ಟು ತಮ್ಮ ಮುಂದಿನ ಕ್ರಮಕ್ಕಾಗಿ ಸಲ್ಲಿಸಿದೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ

4/11/19.

ಭೂದಾಖಲೆಗಳ ಸಹಾಯಕ ನಿರ್ದೇಶಕರು
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು
ಬೆಂಗಳೂರು

ಗ್ರಾಮ-ಬಿನ್ನಮಂಗಲ ಮನವರ್ತೆಕಾವಲ್ ಹೋಬಳಿ- ಕೃಷ್ಣರಾಜಪುರ ತಾಲ್ಲೂಕು-ಬೆಂಗಳೂರು ಪೂರ್ವ
ರೀ.ಸ.ನಂ. 2/1ಎ,2/2, 7/1ಬಿ,1ಎ3, 1ಎ1ಎ3 ರಲ್ಲಿ ತಯಾರಿಸಿದ ನಕ್ಷೆ.



1.ಮಾನ್ಯ ತಾಲ್ಲೂಕು ತಹಶೀಲ್ದಾರ್ ರವರ ಆದೇಶ ಸಂಖ್ಯೆ ಓಅಖ/(ಏಖಕ)ಅಖ/14/2019-20 ದಿನಾಂಕ 23/10/2019 ರ ಮೇರೆ ಹಾಗೂ ಮಾನ್ಯ ಭೂ ದಾಖಲೆಗಳ ಸಹಾಯಕ ನಿರ್ದೇಶಕರವರವ ಜ್ಞಾಪನ ಸಂಖ್ಯೆ/ಭೂಸನಿ/ (ಮೋ)ಜ್ಞಾಪನ:11-2019/20ದಿನಾಂಕ 24-10-2019 ರ ಮೇರಗೆ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು ಕೆ.ಆರ್. ಪುರ ಹೋಬಳಿ ಬಿನ್ನಮಂಗಲ ಮನವರ್ತೆಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ.2/1ಎ,2/2, 7/1ಬಿ, 1ಎ3, 1ಎ2, 1ಎ1ಎ1ಎ3 ರ ಜಮೀನುಗಳಲ್ಲಿ ಸರ್ಕಾರಿ ಖರಾಬು ಒತ್ತುವರಿಯನ್ನು ಗುರುತಿಸಿ ಕೊಡಲು ಆದೇಶಿಸಿದಂತೆ ಸದರಿ ಸ.ನಂ.ಗಳನ್ನುಮಾನ್ಯ ರಾಜಸ್ವನಿರಿಕ್ಷಕರು, ಗ್ರಾಮಲೆಕ್ಕಾದಿಕಾರಿಗಳು,ನಗರಮಾಪನ ತಂಡದ ಭೂಮಾಪಕರು,ಹಕ್ಕುದಾರರ ಸಮಕ್ಷಮ ಅಳತೆ ಕಾರ್ಯ ನಿರ್ವಹಿಸಿ ನಕ್ಷೆ ಹಾಗೂ ವರದಿಯನ್ನು ತಯಾರಿಸಿದೆ.

2.ರೀ.ಸ.ನಂ 2/1ಎ ರಲ್ಲಿ ಮೂಲ ಸರ್ವೇದಾಖಲೆಗಳಂತೆ ಕಟ್ಟಿ ಬಗ್ಗೆ 00-20 ಗುಂಟೆ ಬಾವಿ ಬಗ್ಗೆ 0-01 ಗುಂಟೆ, ಕೊರಕಲು ಬಗ್ಗೆ 0-05 ಗುಂಟೆ ಸರವುವಿನ ಬಗ್ಗೆ 0-09 ಗುಂಟೆ ಪ್ರದೇಶವಿದ್ದು 2/1ಎ ಹಿಡುವಳಿದಾರರು ಹಾಲಿ ಜಮೀನು ಸ್ಥಿತಿಯಂತೆ ಈಜು ಕೊಳ,ಕಟ್ಟಡಗಳನ್ನು ನಿರ್ಮಿಸಿರುತ್ತಾರೆ.

3.ರೀ.ಸ.ನಂ 2/2,ರಲ್ಲಿ ಮೂಲ ಸರ್ವೆ ದಾಖಲೆಗಳಂತೆ ಕಟ್ಟಿ ಬಗ್ಗೆ 0-10ಗುಂಟೆ ಬಂಡಿದಾರಿ ಬಗ್ಗೆ 0-02 ಗುಂಟೆ ಸರವುವಿನ ಬಗ್ಗೆ 0-01 ಗುಂಟೆ ಒಟ್ಟು 0-13 ಗುಂಟೆ ಖರಾಬಿದ್ದು ಮತ್ತು ರೀ.ಸ.ನಂ 7/1ಬಿ ರಲ್ಲಿ ಸರವುವಿನ ಬಗ್ಗೆ 0-02 ಗುಂಟೆ, 7/1ಎ1ಎ3 ರಲ್ಲಿ 0-01 ಗುಂಟೆ ಖರಾಬಿದ್ದು ಅಳತೆ ಸಮಯದಲ್ಲಿ ಹಾಜರಿದ್ದ ಹಿಡುವಳಿದಾರರು ದಾಖಲಾತಿಗಳನ್ನು ಕೊಟ್ಟಿರುವಂತೆ ಮಾನ್ಯ ಡೆಪ್ಯೂಟಿಕಮಿಷನರ್ ಸಾಹೇಬರ್‌ರವರ ಹುಕ್ಕುಂ ನಂ. ಬಿಡಿಎಸ್,ಎಎಲ್‌ಎಸ್/ಎಸ್‌ಆರ್/4448 ತಾರೀಖು 3-04-1970 ರ ಮೇರಗೆ ಮತ್ತು ಹುಕ್ಕುಂ ನಂ. ಬಿಡಿಎಸ್,ಎಎಲ್‌ಎಸ್/ಎಸ್‌ಆರ್(3)62/75-76 ದಿನಾಂಕ 26-12-75 ರ ಮೇರಗೆ ಹಾಗೂ ತಾಲ್ಲೂಕು ಎಎಲ್‌ಎಸ್/25/78-79 ರ ಮೇರಗೆ ಪೂರ ಖರಾಬನ್ನು ಮಂಜೂರಾತಿ ಮಾಡಿ ಪೂರಾ ವಿಸ್ತೀರ್ಣವನ್ನು ಭೂಪರಿವರ್ತಿಸಿ ಪೂರಾ ವಿಸ್ತೀರ್ಣವನ್ನು ಎಸ್ ಎ ಖರಾಬಿನಲ್ಲಿ (ಆಕಾರಬಂದಿನಂತೆಎಸ್‌ಎಕೆ)ದಾಖಲು ಮಾಡಿರುತ್ತದೆ.

ತಯಾರಿಸಿದವರು
ತಾಲ್ಲೂಕು ಭೂಮಾಪಕರು
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು
ಕೆ ಆರ್ ಪುರ

ಜಿಲ್ಲಾಧ್ಯಕ್ಷ, ಜಿ..
ನಗರ ಭೂಮಾಪಕರ
ಭೂ.ಸ.ನಿ.ನ ಮಾ-

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Government of Karnataka TYPED COPY

No.: Bhoo.Sa.Podi/Memo/11/2019-20

Office of the Assistant Director of Land Records,
Bengaluru East Taluk, K.R. Pura,
Bengaluru, Dated 04-11-2019.

To:

Tahsildar,
Bengaluru East Taluk,
K.R. Pura.

Dear Sir,

Sub: Recognition of encroached government kharab lands in Sy. Nos. 2/1a, 2/2, 7/1b, 7/1a3, 7/1a2, 7/1a1a1a situated at Bhinnamangala Manevarte Kaval Village, K.R. Pura Hobli, Bengaluru East Taluk – reg.

Ref: Letter bearing No. N.C.R(K.R.P) C.R.:14/2019-20, Dated 23-10-2019.

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With reference to the above matter, the letter, as referred above, submitted requesting to submit a report along with measurement and map related to encroached government kharab lands in Sy. Nos. 2/1a, 2/2, 7/1b, 7/1a3, 7/1a2, 7/1a1a1a situated at Bhinnamangala Manevarte Kaval Village, K.R. Pura Hobli, Bengaluru East Taluk has been scrutinised.

The work was allotted to land surveyor to submit a report along with a map and the surveyor completed measurement and submitted a report with map in respect of the lands in Survey Nos. 2/1a, 2/2, 7/1b, 7/1a3, 7/1a2, 7/1a1a1a of the above-mentioned village. The report along with map has been submitted by the land surveyor to this office and the said report along with map has also been attached for your further action.

Sd/- 4/11/19.
Assistant Director of Land Records,
Bengaluru East Taluk,
Bengaluru.

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Prepared sketch of re-survey Nos. 2/1a, 2/2, 7/1b, 1a2, 1a1a3 situated at Bhinnamangala Manavarte Kavel, Krishnarajapura Hobli, Bengaluru East Taluk.

S K E T C H

1. Pursuant to the Orders of Hon'ble Taluk Tahsildar bearing No. O.A.Kha/ (A.Kha)A.Kha/14/2019-20 dated 23/10/2019 and the Memo of Hon'ble Assistant Director of Land Records bearing No. Bhoo.Sa.Ni./(Po)/Memo: 11/2019-20 dated 24.10.2019, Land Surveyors of City Survey Team carried out competent surveying of lands in Survey Nos. 2/1a, 2/2, 7/1b, 7/1a3, 7/1a2, 7/1a1a1a in the presence of Revenue Inspector, Village Accountant, rights holders and prepared a map and a report.

2. In Re-Survey No. 2/1a, as per the original survey documents, there is an area of 00-20 guntas barren land; well 0-01 guntas; 0-05 guntas graze land; 0-09 guntas plain land; the tenants of Sy. No. 2/1 have constructed swimming pool, buildings as per the existing land condition.

3. In Re-Survey No. 2/2, as per the original survey documents, there is an area of 00-10 guntas barren land; cart way 0-02 guntas; 0-01 guntas plain land totalling to 0-13 guntas of kharab land; and in Sy. No. 7/1b, 0-02 guntas plain; in Sy. No. 7/1a1a3, 0-01 guntas kharab, 0-09 guntas plain land; the tenants of Sy. No. 2/1 have constructed swimming pool, buildings as per the existing land condition

4. In Survey No. 7/1a3, there was 0-01 guntas kharab, as per the documents given by the tenants who were present at the time of measurement, as the Order of Deputy Commissioner, vide No. BDS.ALN/SR/4468 dated 03-04-1970 and vide Order No. BDS.ALNSR(3)62/75-76 dated 26.12.1975 and based on Taluk ALN/25/78, sanctioned the entire kharab area and converted the entire area to land use and documented the entire area in the NA Kharab (as per Akarband).

Sd/-
Taluk Surveyor
Bengaluru East Taluk,
K.R. Puram

Sd/-
(Janardhana. T.K.)
City Surveyor
A.D.L.R. -2

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ANNEXURE -18

IN THE COURT OF THE DEPUTY COMMISSIONER, BENGALURU

DISTRICT, BENGALURU

L.N.D. (E) CR /104 /2019-20

BETWEEN:

The Government ... **Applicant**

AND

Mr. George Thangiah (Through his LRs) ... **Respondent**

STATEMENT OF OBJECTIONS OF THE RESPONDENTS 1(a) TO 1(c)

The Respondents above named most respectfully submit as under:

1. This Hon'ble Court has suo-motu initiated the present proceedings against the Respondents herein as regards the grant in favour of Late Mr. George Thangiah of 13 Guntas of land in Sy. No. 2/2, 1 Gunta of Land in Sy. No. 7/1A, and 2 Guntas in Sy. No. 7/1B of Binnamangala Manavarthe Kaval Village, K. R. Puram Hobli, Bengaluru East Taluk *vide* an Order dated 26.12.1975. Late Mr. George Thangiah is the husband of the Respondent No. 1(a) and the father of the Respondents 1(b) and 1(c).

2. A perusal of the notice issued by this Hon'ble Court reveals that the present proceedings came to be initiated pursuant to the recommendation dated 13.11.2019 sent by the Tahsildar, Bengaluru East Taluk (**'Recommendation'**) and the direction issued by the Under Secretary, Department of Revenue under a letter dated 17.12.2019 (**'Direction'**) for initiating proceedings under Rule 25(1) of the Karnataka Land Grant Rules, 1969 (**'Land Grant Rules'**).

3. Nothing stated in the notice issued by this Hon'ble Court to the Respondents, the Recommendation and the Direction is to be deemed to be admitted by the Respondents unless specifically admitted herein.

4. Before entering into the merits of the present matter, it is relevant to state that neither in the notice issued by this Hon'ble Court nor in the Recommendation or the Direction the precise details of the allegations / matter which requires to be defended by these Respondents is forthcoming. The notice issued by this Hon'ble Court merely refers to the Direction issued in terms of which proceedings under Rule 25(1) of the Land Grant Rules are sought to be initiated. However, it is nowhere stated whether the proceedings relate to any alleged violation of the terms of the grant in favour of Late Mr. George Thangiah or any violation of the Land Grant Rules themselves. In the absence of necessary particulars regarding the exact nature of the allegations sought to be levelled against the Respondents, they will not be in a position to effectively defend their interests in the matter. As such, there is a gross violation of the principles of natural justice and these proceedings stand vitiated owing to such defect. Without prejudice to the other contentions of the Respondents, it is most respectfully submitted that the present matter ought not to proceed any further until the exact nature of the allegations that the Respondents are called upon to defend are made known to the Respondents.

5. Without prejudice to the above, the Respondents seek leave of this Hon'ble Court to place on record the following preliminary objections to the maintainability of the present proceedings.

Preliminary objections:

Re: Jurisdiction.

6. From the contents of the notice issued by this Hon'ble Court, it is evident that suo motu proceedings are sought to be initiated against the Respondents herein under Rule 25(1) of the Land Grant Rules. For the sake of convenience, Rule 25(1) of the Land Grant Rules is reproduced hereunder:

> *25. Cancellation of grant: Any grant of land made under these rules shall be liable to be cancelled and the land resumed by the authority*

which granted it, where the grant has been obtained by making false and fraudulent representations or is contrary to these rules.

7. A perusal of the above Rule shows that (i) The rule applies only in case of a grant made under the Land Grant Rules (ii) That the grant can be cancelled if the grant was obtained by making false and fraudulent representations and (iii) That the grant can be cancelled if the grant is contrary to the rules.

8. Firstly, on a perusal of the Order dated 26.12.1975 in terms of which the concerned land was granted in favour of Late Mr. George Thangiah shows that it was not a grant under the Land Grant Rules. It was a grant under the provisions of the Karnataka Land Revenue Act, 1964 which does not contain any provision for cancellation of grant. Therefore, at the outset, Rule 25(1) is not available to be pressed into service and the present proceedings are without jurisdiction.

9. Secondly, a perusal of the record available in the file of this Hon'ble Court shows that it is not the stand of the Tahsildar who has issued the Recommendation, or the Under Secretary, Department of Revenue who issued the Direction or this Hon'ble Court in the notice that Late Mr. George Thangiah obtained the grant by making any false / fraudulent representations or that any of the Rules under the Land Grant Rules have been violated. A positive allegation in this regard which is a sine qua non for initiation of proceedings under Rule 25(1) of the Land Grant Rules is entirely absent. As such, the present proceedings are misconceived and are wholly without jurisdiction. Consequently, these proceedings are liable to be closed as being without jurisdiction.

Re: Violation of principles of natural justice.

10. A perusal of the record of the present proceedings reveals that the Tahsildar, Bengaluru East Taluk under a letter dated 23.10.2019 had called for a report from the Assistant Director of Land Records regarding the alleged encroachment of kharab land. Pursuant thereto, the Assistant Director of Land Records had furnished a sketch and a report to the Tahsildar Bengaluru East Taluk under the cover of a letter dated 04.11.2019. The Tahsildar,

Bengaluru East Taluk has purported to act on the said report and addressed the Recommendation to this Hon'ble Court. However, no notice was issued to the Respondents herein either by the Tahsildar or the Assistant Director of Land Records before the said survey was allegedly conducted. The survey on the basis of which the present proceedings are sought to be conducted against the Respondents was prepared by keeping the Petitioners in the dark and without issuing any notice to them. Consequently, this proceeding which is based on the alleged survey conducted by the Assistant Director of Land Records stands vitiated due to gross violation of principles of natural justice and the present proceedings are liable to be dismissed.

11. Without prejudice to the above, it is submitted that the report / sketch submitted by the Assistant Director of Land Records to the Tahsildar on the basis of which the present proceedings have come to be initiated is incorrect, illegal and contrary to records. These Respondents reserve liberty to submit detailed arguments in this regard at the appropriate stage.

12. Further, a perusal of the record available in the file relating to the present matter also reveals that this Hon'ble Court has addressed a letter dated 21.11.2019 to the Principal Secretary, Department of Revenue in which a view has already been taken by this Hon'ble Court that the grant in favour of Late Mr. George Thangiah is contrary to law. As has been held by the Hon'ble Supreme Court of India in *State of W.B. vs Shivananda Pathak* reported in (1998) 5 SCC 513, *"an essential requirement of judicial adjudication is that the judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case put up before him. If he is predisposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting as a judge"*. A perusal of the contents of the letter dated 21.11.2019 sent by this Hon'ble Court reveals that this Hon'ble Court is predisposed on the facts of the matter, in as much as, a view has already been taken by this Hon'ble Court that the grant in favour of Late Mr. George Thangiah is not in accordance with law. Borrowing from the language of the judgment of the Hon'ble Supreme Court of India that is quoted above, it is most respectfully submitted that this Hon'ble Court is disqualified in the matter of adjudication of the present matter and the present proceedings ought not to continue before this Hon'ble Court. The right to be heard by an

unbiased tribunal is a fundamental facet of the principles of natural justice and the said right of the Respondents ought to be secured.

13. Lastly, as already stated above, the necessary particulars regarding the exact nature of the allegations which are made against the Respondents have not been furnished. The record of the present matter does not reveal exact particulars of the relevant material / allegations that are sought to be made against the Respondents. The Respondents are therefore not in a position to effectively defend their interests in the matter. The right to be informed of the case one is to meet at the hearing is also another important facet of the principles of natural justice. The present proceedings are sought to be conducted in complete disregard of the said right / principle.

Re: Laches.

14. A perusal of the facts pleaded below would demonstrate that the grant order dated 26.12.1975 that is sought to be questioned in the present proceedings is more than 45 years old. For more than 45 years Late Mr. George Thangiah has been in peaceful possession and enjoyment of the land that is subject matter of the grant order dated 26.12.1975 and after his demise on 24.12.2019, his legal heirs are in peaceful possession and enjoyment of the same. Further, as early as the year 1975 itself the then Deputy Commissioner and Tahsildar had held that the lands which are subject matter of the grant order were of no use to the public and the said finding has attained finality. The Hon'ble Supreme Court of India in *Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim* reported in (1997) 6 SCC 71 has held that "... where no time-limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time." Relying on the aforesaid decision, the Hon'ble High Court of Karnataka has held in a number of judgments that any proceeding for cancellation of the grant which is not initiated within a reasonable time would be invalid. The attempt at this juncture to interfere with the grant order dated 26.12.1975 after a lapse of more than 45 years cannot be said to be an action initiated within a reasonable time by stretch of imagination. The proceedings initiated by this Hon'ble Court would run contrary to the decisions of the Hon'ble Supreme Court of India and the

Hon'ble High Court of Karnataka and these proceedings are therefore liable to be dismissed in favour of the Respondents.

Re: Estoppel

15. From a perusal of the record, it can be seen that it is this Hon'ble Court that passed the grant order dated 26.12.1975 pursuant to which the Tahsildar issued a Conversion Certificate dated 26.01.1976. Acting on the said grant / conversion certificate, Late Mr. George Thangiah paid the applicable upset price and acquired possession of the lands that are subject matter of the said order. Further, Late Mr. George Thangiah acting on the grant order passed this Hon'ble Court, made applications for plan sanction to the BDA and put up buildings and a compound wall over his property by spending lakhs of rupees as early as the year 1975. Late Mr. George Thangiah has also been paying taxes in respect of his entire property since the year 1975 and was in peaceful of the same till the time of his demise on 24.12.2019. Thereafter, his legal heirs stepped into his shoes and have continued in possession. Relying on the Orders passed by this Hon'ble Court, Late Mr. George Thangiah altered his position and incurred substantial expenditure for putting up buildings and a compound wall around his property. Several government authorities such as the BDA, BBMP, Department of Revenue etc. have acted on the grant order dated 26.12.1975 and issued sanctions, licences etc. in favour of Late Mr. George Thangiah. Having passed the grant order dated 26.12.1975 and treated the said order to be valid for more than 45 years, it is now not available to this Hon'ble Court to question the validity of the said Order in any manner as Late Mr. George Thangiah and several other authorities have altered their position on the strength of the said order. Any action in this regard by this Hon'ble Court would be barred by the principles of estoppel and these proceedings are liable to be dismissed. The grant order dated 26.12.1975, its contents and its legality has stood the test of time and cannot now be questioned in any manner.

Re: Circular has no force of law.

16. A perusal of the Recommendation dated 13.11.2019 sent by the Tahsildar, Bengaluru East Taluk reveals that in issuing the Recommendation, the said

Authority has relied primarily upon a Government Circular bearing No. RD/ 46/ L.J.P. 2017 dated 14.06.2018 regarding preservation of water bodies. These Respondents have not been furnished with a copy of the said Circular and are therefore not in a position to respond to the same. Without prejudice to the same, it is relevant to note that a Circular has no force of law and cannot be pressed into service to take away substantial rights. These proceedings having been initiated on the Recommendation of the Tahsildar which in turn relies on the aforesaid Circular would mean that the basis of these proceedings is a Government Circular which does not have the force of law. Thus, these proceedings are liable to be dismissed at the outset without any further consideration.

17. In any event, in the face of the grant order dated 26.12.1975 and the Conversion Certificate dated 20.01.1976 issued by the Tahsildar, the circular is not even available to be applied / relied upon in the case of these Respondents. Valid and legal orders of grant / conversion cannot be overcome by relying upon a circular which does not have the force of law.

Re: Non-joinder of proper and necessary parties.

18. The contention in this portion regarding non-joinder of proper and necessary parties is pleaded without prejudice to the contention of these Respondents that absolutely no proceeding for cancellation of the grant order dated 26.12.1975 are maintainable or are capable of being initiated against the Respondents.

19. The present proceedings are sought to be initiated as regards certain kharab lands that were granted in favour of Late Mr. George Thangiah on 26.12.1975. Even as per the sketch / report furnished by the Assistant Director of Land Records, these proceedings relate only to a small portion of the alleged kharab lands comprised in Sy. Nos. 2/1A, 2/2, 7/1B, 1A3, 1A2, 1A1A1A3 of Binnamangala Manavarthe Kaval Village, K. R. Puram Hobli, Bengaluru East Taluk. Without prejudice to the contentions of these Respondents, it is pertinent to note that the report / sketch furnished by the Assistant Director of Land Records itself reveals that as regards the kharab land in Sy. No. 2/1A, the occupier of the said land (which is not any of the

Respondents herein) has constructed a swimming pool and buildings over kharab land.

20. Further, a comparison of the applicable village map and the present developments that have come up on the ground reveals that the kharab land granted in favour of Late Mr. George Thangiah is only a small portion and the major portion of the kharab land is occupied by other property owners in Old Sy. Nos. 2, 3, 5, 6, 7 and 8 of Binnamangala Manavarthe Kaval Village, K. R. Puram Hobli, Bengaluru East Taluk.

21. From the contents of the notice issued by this Hon'ble Court to these Respondents, it is clear that the object which these proceedings seek to achieve is the repossession of kharab lands. The Tahsildar in his Recommendation has referred to the Government Circular dated 14.06.2018 in terms of which water bodies require to be conserved. Without prejudice to the contentions of these Respondents it is submitted that if the real object behind these proceedings is conservation of water bodies and recovery of kharab lands, it is submitted that no effective order can be passed in these proceedings without impleading all the property owners who are in possession of the kharab lands in all the survey numbers mentioned above. Apart from selectively targeting these Respondents, no useful object would be served in recovering a very small portion of kharab land and leaving a very large extent free to be occupied by other property owners. It is submitted that proper and necessary parties without whose presence no effective order can be passed in these proceedings have not been impleaded as parties to these proceedings. The presence of all the property owners who have occupied kharab lands in the above mentioned survey numbers is necessary in these proceedings for determination of the real questions that arise for consideration i.e. whether any portion of the kharab lands are at all liable to be repossessed. As such, these proceedings are bad for non-joinder of proper and necessary parties and are liable to be dismissed.

22. Without prejudice to the above, the Respondents crave leave of this Hon'ble Court to state certain relevant facts regarding the matter at hand. It appears that the real facts and documents relating to the matter in question have not

been brought to the notice of this Hon'ble Court which has led to issuance of the notice to the Respondents.

Facts:

23. Property bearing Survey No. 2 and Survey No. 7/1, measuring 4 Acres and 07 Guntas, 30 square yards and 2.25 square feet was purchased by Late Mr. George Thangiah son of Late Mr. Mark Thangiah under Sale Deed dated 02.08.1969, registered as Document No. 2178/1969-70 in Book-I, at the office of Sub-Registrar, Bangalore South Taluk. Another Property bearing Survey No. 2/1 and Survey No. 7/1-A, admeasuring 1 Acre 04 Guntas situated at Binnamangala, Manavartha Kaval, Bangalore East Taluk, Bangalore was purchased by Late Mr. George Thangiah son of Late Mr. Mark Thangiah under Sale Deed dated 27.06.1970, registered as Document No. 1660/1970-71, in Book – I, Volume-23 at Pages 166, at the Office of Sub Registrar, Bangalore. Both the properties purchased under the said Sale Deeds dated 02.08.1969 and 27.06.1970 are hereinafter collectively referred to as the **'Property'** and copies of both the Sale Deeds are produced herewith as ***Document No. 1*** and ***Document No. 2*** respectively.

24. As mentioned above, Late Mr. George Thangiah is the husband of the Respondent No. 1 (a) and the father of the Respondents 1(b) and 1(c). He was the absolute owner in peaceful possession of the Property and certain adjoining lands till the time of his demise on 24.12.2019. All the transactions detailed in these objections were handled by Late Mr. George Thangiah during his lifetime and he was looking after all the affairs relating to the Property. All statements made by the Respondents these objections are based on the documents that Late Mr. George Thangiah had dealt with during his lifetime.

25. In furtherance to the application made by Late Mr. George Thangiah seeking conversion of an extent of 3 Acres 33 Guntas in Survey No. 2/2 & Survey No.7/1B, Survey. No. 7/1A measuring 32 ½ Guntas and Survey. No. 2/1 measuring 11 ½ Guntas, Binnamangala Manavartha Kaval, Bangalore comprised in the Property, the Deputy Commissioner converted the same from agricultural use to non-agricultural purpose under Section 95(2) of the

Mysore Land Revenue Act, 1954, *vide* Official Memorandum dated 03.04.1970, Conversion Sanction Certificate dated 05.09.1970, Official Memorandum dated 03.07.1971 and Conversion Sanction Certificate dated 22.09.1971. The said Official Memorandum dated 03.04.1970, Conversion Sanction Certificates dated 05.09.1970 and 22.09.1971 and the official memorandum dated 03.07.1971 are produced herewith as ***Document Nos. 3, 4, 5*** and ***6*** respectively.

26. Upon obtaining the conversion of the said 4 Acres 37 Guntas, Late Mr. George Thangiah thereafter requested the Deputy Commissioner to grant to him the adjacent Kharab Lands, measuring 13 Guntas comprised in Survey No. 2/2, 01 Gunta in Survey No.7/1A and 02 Guntas in Survey No. 7/1B, Binnamangala Manavartha Kaval, Bangalore (collectively referred to as '**Subject Lands**'), for non-agricultural use. In this regard, the Tahsildar, Bangalore South Taluk, vide his Letter dated 30.04.1975 bearing reference No. ALN.CR.22/1974-75, recommended the disposal of the Subject Lands, since the same was no longer required for general public use. The Tahsildar further confirmed that the Subject Lands (being Kharab Land) is surrounded by N.A.L road and H.A.L double roads on both sides and is surrounded on all sides by residential localities and that the said road has been formed by the CITB, Bangalore.

27. In view of the aforesaid recommendation of the Tahsildar, the Deputy Commissioner *vide* Official Memorandum dated 26.12.1975 bearing reference No.B-Dis.LND (3)62/1975-76, appropriated the 16 Guntas Kharab Land in Survey No. 2/2, 7/1A and 7/1B of Binnamangala Manavartha Kaval, Bangalore, under Section 71 of the Karnataka Land Revenue Act, 1964 and granted the said 16 Guntas Kharab Land to Mr. George Thangiah for non-agricultural purpose. The Deputy Commissioner has in the said order confirmed that the said 13 Guntas Kharab Land in Sy. No. 2/2, 01 Gunta in Survey No.7/1A and 02 Guntas in Survey No. 7/1B totally measuring 16 Guntas was no longer of any use to the public.

28. Pursuant to the issue of the aforesaid Official Memorandum dated 26.12.1975, Late Mr. George Thangiah has paid the upset price of Rs. 4,000/- (Rupees Four Thousand only) for the Subject Lands and also paid the

conversion fine of Rs.1,600 (Rupees One Thousand Six Hundred only) to the Bangalore North Taluk Treasury, State Government, *vide* Challan No. SLR 20, dated 16.01.1976. Upon receipt of the applicable upset price and conversion fine, the Tahsildar *vide* Conversion Certificate dated 20.01.1976 bearing reference No.ALN.CR.22/11975-76, confirmed the receipt of the aforesaid payment and confirmed Late Mr. George Thangiah's entitlement to use the Subject Lands for non-agricultural purpose. The aforesaid Official Memorandum dated 26.12.1975 and the Conversion Certificate dated 20.01.1976 are produced herewith as ***Document Nos. 7*** and ***8*** respectively.

29. In view of the aforesaid grant of the Subject Lands to Late Mr. George Thangiah under Official Memorandum dated 26.12.1975, with the permission to use the same for non-agricultural purpose under Conversion Certificate 20.01.1976, there does not exist any 'Kharab' land in the Property. The 13 Guntas Kharab land in Sy. No. 2/2, 01 Gunta in Survey No.7/1A and 02 Guntas in Survey No. 7/1B, situated at Binnamangala Manavartha Kaval, Bangalore East Taluk, ceased to be Kharab land upon its grant to Late Mr. George Thangiah, for non-agricultural use. Therefore, the question of encroachment of Government kharab land within the Property does not arise. Further, the orders by which the Subject Land was granted in favour of Late Mr. George Thangiah still stand and have not been varied or cancelled. After a lapse of more than 45 years from the date on which the Grant Lands were granted in favour of Late Mr. George Thangiah, the said orders cannot be interfered with in any manner by this authority.

30. In addition to the above; The Bangalore Development Authority has sanctioned the Modified Development Plan with respect to the existing building *vide* plan sanction dated 16.11.1977. The said Plan Sanction dated 16.11.1977 issued by Bangalore Development Authority is produced herewith as ***Document No. 9.*** A copy of the intimation dated 17/11/1977 issued by the Bangalore Development Authority regarding sanction of modified development plan in favour of Late Mr. George Thangiah in respect of Survey No. 2/1, 2/2, 7/1, 7/1-A and 7/1-B of Binnamangala, Manavartha Kaval, Bangalore East Taluk, Bangalore is produced herewith as ***Document No. 10.*** Late Mr. George Thangiah has also paid the applicable development charges of Rs. 40,856/- (Rupees Forty Thousand Eight Hundred and Fifty-

Six Only) for sanction of the said development plan. The Acknowledgement Receipt dated 15.07.1980 is produced herewith as ***Document No. 11.***

31. Since the year 1975 the Property together with adjacent properties (owned by Late Mr. George Thangiah) was developed into a commercial complex comprising of multiple buildings and the entire Property was being used for the non-agricultural purpose. Around the same time when the commercial complex comprising of multiple buildings was put up, a compound wall was also put up around the entire Property.

32. Bangalore Development Authority and Bruhat Bengaluru Mahanagara Palike have sanctioned the Development Plan and Building Plan with respect to the proposed construction of a commercial building for Shopping Mall at the Property (measuring 3 Acres 24 Guntas) and the adjacent properties owned by Late Mr. George Thangiah. The Letter dated 02.08.2011 issued by Bangalore Development Authority with respect to sanction of aforesaid Development Plan and the Letter dated 14.04.2013 issued by Bruhat Bengaluru Mahanagara Palike with respect to sanction of aforesaid Building Plan are produced herewith as ***Document Nos. 12*** and ***13*** respectively.

33. The aforesaid development plan sanction does not recognize any Kharab lands in the Property (measuring 3 Acres 24 Guntas along with the adjacent lands totally measuring 5 Acres 1 ½ Guntas) and permits construction on the entire extent. The concerned authorities would not have sanctioned the said plans, unless they were fully satisfied that there does not exist any Kharab land in the Property.

34. Notwithstanding the aforesaid facts which clearly demonstrate that there is no kharab land at the Property, the Tahsildar, Bengaluru East Taluk had issued a Show Cause Notice dated 20.01.2016 bearing Reference No. N.C.R/CR:51/2015-16, under Sections 94 and 104 of the KLR Act alleging that the Subject Lands are government lands and sought for clarification on the same. Under Reply Letter dated 28.01.2016, all the relevant details were provided by Late Mr. George Thangiah to the Tahsildar. Thereafter, the Tahsildar has *vide* an Order dated 10.06.2016, withdrawn the Show Cause Notice, after being satisfied with the clarifications provided. A copy of the

Show Cause Notice dated 20.01.2016 along with the reply letter dated 28.01.2016 and the said Order dated 10.06.2016 is collectively produced herewith as ***Document No. 14 Series.***

35. The contents of the aforesaid Reply Letter dated 28.01.2016 and the Order dated 10.06.2016 passed by the office of the Tahsildar Bengaluru East Taluk will also apply to the lands bearing Sy. No. 7/1A (01 gunta) and 7/1B (02 Gunta), since the Official Memorandum and Conversion Certificate referred above, relates to the said lands as well. Having already held that there is no encroachment of Kharab lands, it was not available to the Tahsildar to have submitted that the Recommendation to this Hon'ble Court. It is submitted that by taking note of the Order dated 10.06.2016 the present proceedings which have been initiated on the Recommendation of the very same Tahsildar are liable to be dropped by application of the principles of estoppel and constructive res judicata.

36. In view of the above it is clear that there is absolutely no kharab land in the Property as on date. Further, the actions by this very office and the sanctions granted by the Bangalore Development Authority and the Bruhat Bengaluru Mahanagar Palike show that even according to them there never existed any kharab land in the Property.

37. From a perusal of the above it is clear that the Subject Lands were granted to Late Mr. George Thangiah under the provisions of the Karnataka Land Revenue Act, 1964 without any reference to the Land Grant Rules. The grant in favour of Late Mr. George Thangiah is in conformity with the law and no case for revocation of the grant in any manner has been made out. The grant order dated 20.12.1975 and the conversion certificate dated 20.01.1976 show that all prescribed procedures for grant of the Subject Lands in favour of Late Mr. George Thangiah have been followed.

38. Each of the above facts / objections have been pleaded without prejudice to one another. The Respondents reserve liberty to amend alter and urge additional objections at the time of hearing. The facts and objections stated on these Statement of Objections are without prejudice to all our rights,

remedies and contentions that are available to the Respondents in facts and in law.

Respondent No. 1 (a)	Respondent No. 1 (b)	Respondent No. 1 (c)	Advocate for the Respondents 1(a) to 1(c)

VERIFICATION

We, (1) G. Chitra Poornima, (2) Vijaya Shekar Thangiah (3) Rachel Chitra Prabhakar, the Respondents 1(a) to the 1(c) in the present matter do hereby state and affirm that the statements made in Para No. 1 to 37 of these Statement of Objections are true to the best of our knowledge, information and belief.

Place: Bengaluru

Date: 22.06.2020

Respondent No. 1 (a)	Respondent No. 1 (b)	Respondent No. 1 (c)

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ANNEXURE -19

IN THE COURT OF THE DEPUTY COMMISSIONER,
BENGALURU URBAN DISTRICT, BENGALURU

Dated this 19 th day of 8 2020

Present: **G.N.Shivamurthy, I.A.S.**
Deputy Commissioner,
Bengaluru Urban District,
Bengaluru.

LND(E) CR 104/2019-20

Petitioner : The State of Karnataka.

Respondents :

1) Sri. George Thangaiah
S/o Mark Thangaiah,
Since deceased by his LRs

1.a) G.Chitra Poornima
W/o George Thangaiah,
R/at No.339,
Govik Rainbow Drive Layout,
Sarjapura Road,
Bengaluru.

1 b) Vijayashekar Thangaiah
S/o George Thangaiah,

1 c)- Rachal Chitra Prabhakar
D/o George Thangaiah,
1 b and 1c are R/a No.6,
Commissariat road,
Bengaluru 560 025.

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The above proceedings has been initiated against the respondents herein by invoking provision of section 25 (1) of Karnataka Land Grant Rules 1969 (Hereinafter called as 'Act') towards cancellation of Grant in respect of Sy. No.2/2, measuring to an extent of 0.13 Guntas, Sy. No.7/1A-1A measuring to an extent of 0.01 Guntas, Sy. NO.7/1B measuring to an extent of 0.02 Guntas of 'B' Kharab land, all situated at Binnamangala Manavarthe Kaval, Bengaluru East Taluk. Hereinafter called as subject property.

The Tahsildar, Bengaluru East Taluk by referring the report submitted by the Revenue Inspector, Mahadevapura Circle, in No.RI/(V)/PR/1/19-20 reported that, the land bearing Sy. No.2/2 of Binnamangala Manavarthe Kaval, Bengaluru East Taluk having total extent of 03 Acres 0.24 Guntas out of that, 0.13 Guntas 'B' Kharab land, Khatha of the remaining extent in the name of George Thangaiah. Further in Sy. No.2/2 0.10 Guntas for Khatte, 0.02 Guntas Cart Road, 0.01 Guntas Saravu land, in total 0.13 Guntas Kharab land. Further, in Sy. No.7/1B having 0.02 Guntas Saravu and in Sy. No.7/1A-1A3 0.01 Gunta 'B' Kharab land are situated. As per the O.M. No.BDS/LND(3)/62/75-76 dated 26.12.1975 issued by the Deputy Commissioner, 0.13 Gunta Foot Kharab has been granted. Further, as per order in ALN/CR/22/1975-76 dated 20.01.1976, 0.16 Guntas Foot Kharab land has been ordered to convert. The said order is contrary to Section 95(2) (4) (7) of Karnataka Land Revenue Act, 1964.

Further reported that, as per the Government Circular No. RD/46/L JP/ 2017 dated 14.06.2018, the land bearing Sy. No.2/2, Sy. No.7/1A, 7/1B of Binnamangala Manavarthe Kaval, Bengaluru East Taluk, are comes under sensitive zone. Therefore, by invoking section 68(5) of the Act cannot be

grant. Accordingly, the grant has to be cancelled in respect of the above said extent of land.

Same was forwarded to the Government as per the letter dated 21.11.2019 in No. LND (E) CR/104/2019-20. In response to the same as per the letter dated 17.12.2019 in No. RD/33/LGB/2019 (E), by the Under Secretary, Department of Revenue, directed to take necessary steps to cancel the grant of 'B' Kharab land in the above said survey numbers. Accordingly, the above proceedings has been initiated and notice issued to the respondents herein.

In response to the notice the respondents herein by filing the statement of objection contended that, in the notice or in the recommendation or the direction the precise details of the allegations / matter which requires to be defended by these respondents is not forthcoming. Further, it is no way stated whether the proceedings related to any alleged violation of the terms of the grant in favour of late Mr. George Thangaiah or any violation of the land grant rules. In the absence of necessary particulars regarding the exact nature of the allegations sought to the leveled against the respondents is not sustainable, and they will not be in a position to effectively defend their interest in the matter.

Further contended that, on perusal of the order dated 26.12.1975 it clearly shows that, it was not a grant under the Land Grant Rules, it was grant under the provisions of the Karnataka Land Revenue Act, 1964 which does not contain any provision for cancellation for grant.

The grant order was issued in favour of late Mr. George Thangaiah on 26.12.1975 and the impugned show cause notice is dated 06.06.2020. The proceedings has been initiated after lapse of 45 years, which is barred by limitation and in contrivance of Section 27 of the Limitation Act, read with Article 112 of Schedule to the Limitation Act. Therefore, the proceedings initiated against the respondents are without jurisdiction. The proceedings is barred by the Principles of estoppels and laches. Further, the circular bearing No.RD/46/L JP/2017 dated 14.06.2018 regarding prevention of water bodies as no force of law and cannot be pressed into service to take away substantial rights. Further contended that, the proceedings is suffered from non-joinder of proper and necessary parties.

On these background the respondents contended that, the grant in favour of late Mr. George Thangaiah is in conformity with the law and no case of revocation of the grant in any manner has been made out. The grant order dated 20.12.1975 and the conversion certificate dated 20.01.1976 show that, all prescribed procedures for grant of the subject lands in favour of late Mr. George Thangaiah have been followed.

In response to the notice the respondents herein by filing the statement of objection contended that, property bearing Sy. No.2, Sy. No.7/1 measuring to an extent of 04 Acres 0.07 Guntas of Binnamangala Manavarthe Kaval was purchased by late M.George Thangaiah S/o Mark Thangaiah who is husband of the 1st respondent and father of the respondents No. 2 and 3 herein and he was in possession and enjoyment of the same alongwith certain adjoining lands till the time of his demise on 24.12.2019. In furtherance to application made by late M.George

Thangaiah seeking conversion of an extent of 03 Acres 0.33 Guntas in Sy. No.2/2 and Sy. No.7/1b and Sy. No.7/1a measuring 0.32 ½ Guntas and Sy. No.2/1 measuring 0.11 ½ Guntas, before the Deputy Commissioner from Agriculture to Non-Agriculture purpose and as per Official Memorandum dated 03.04.1970, Official Memorandum dated 03.07.1971 and dated 03.04.1970, Conversion Sanction Certificates dated 05.09.1970 and 22.09.1971 and the Official Memorandum dated 03.07.1971. Thereafter he made an application to the Deputy Commissioner to grant him the adjacent Kharab land measuring 0.13 Guntas comprised in Sy. No.2/2. measuring 0.01 Gunta, in Sy. No.7/1a and measuring 0.02 Guntas in Sy. No.7/1b for non-agricultural use. In this regard the Tahasildar, Bengaluru South Taluk vide his letter dated 30.04.1975 bearing reference No.ALN/CR/22/1974-75 recommended for disposal of the said grant lands, since the same was no longer required for general public. In view of the aforesaid recommendation the Deputy Commissioner, vide O.M. dated 26.12.1975 in No.B-Dis/LND(3)62/1975-76 appropriate the 0.16 Guntas of land in above said survey numbers and granted the same in favour of Mr. Jeorge Thangaiah. To that effect he has paid the upset price of Rs.4000/-. Thereafter the Tahasildar issued a conversation certificate for the same on 21.09.1974 in No.ALN/CR/22/ 119/75-76.

In view of the aforesaid grant of the lands to late Mr. George Thangaiah and conversion certificate dated 20.01.1976 there doesn't exist any Kharab land in the property. The 0.13 Guntas Kharab land in Sy. No.2/2 0-1 Gunta in Sy. No.7/1a and 0-02 Guntas in Sy. No.7/1b situated at Binnamangala Manavarthe Kaval seized to be Kharab land, therefore

question of encroachment of Government Kharab land within the property doesn't arised. Further after lapse of more than 45 years from the date of which grant of lands the said orders cannot be interfere within any manner by this Authority. In addition the B.D.A. has sanction the modified development plan with respect to the existing building vide plan sanction dated 16.11.1977.

Further contended that, the property together with adjacent property is already developed in to a commercial complex and that B.D.A. and B.B.M.P. have sanctioned the development plan and building plan in respect to the proposed construction of a commercial building for shopping mall at the property and the adjacent property owned by M.George Thangaiah the development plan sanction do not recognize any Kharab land in the property. Notwithstanding aforesaid facts which clearly demonstrate that there is no Kharab land at the property. Further contended that, this Authority as per order dated 10.06.2016 withdraw the similar type of show cause notice after being satisfied with the clarification provided, it is not no available to very same authority so seek to issue one more show cause notice alleging that there is encroachment of kharab land. Therefore all further proceedings in this regard would be barred by the principles of rest judicator and estoppels and the show cause notice is liable to be dropped without any further consideration. In support of their contention have produced Xerox copy of the sale deed dated 02-08-1969, 27-06-1970, O.M dated 03-04-1970 conversion sanctioned certificate dated 05-09-1970, 22-09-1971, O.M dated 03-07-1971, 26-12-1975, conversion certificate dated

20-01-1976, sanctioned plan dated 16-11-1977, Copy of the letter dated 17-11-1977, Acknowledgement receipt dated 15-07-1980, and etc.

Heard the arguments and perused the records.

By going through the material documents available on record, it is an undisputed fact that, to an extent of 0.13 Guntas in Sy. No.2/2, to an extent of 0.01 Guntas in Sy. No.7/1A-1A and to an extent of 0.02 Guntas in Sy. No.7/1B of Binnamangala Manavarthe Kaval, are 'B' Kharab land.

It is not in dispute that, the respondents claiming that, as per the order dated 26.12.1975 issued by the Special Deputy Commissioner Sri. Jeorge Thangaiah, has been granted with the above said 'B' Kharab lands. Further, as per conversion certificate dated 20.01.1976 in ALN No.22/75-76, the Tahsildar, Bengaluru South Taluk issued a conversion certificate.

It is relevant mentioned here that, under the provision of Section 68 of the Karnataka Land Revenue Act, 1964 for Extinction of Rights of Public and Individuals in or over any public roads, streets, lane or park. The procedures has to be followed and final decision has to be taken by the Government only. It clearly shows that, said exercise has not been done, while issuing the alleged grant certificate in favour of the Jeorge Thangaiah in respect of the lands in question. Therefore, the said order is without jurisdiction, nullity in the eye of law.

Further contention is that, the Tahsildar has issued a conversion order dated 20.01.1976 in No. ALN/CR/22/75-76. However the endorsement issued by the Tahsildar Bangalore South Taluk, in No.809/2020-21 dated 18.08.2020 and endorsement in No. 64/20-21 dated

18.08.2020 clearly shows that the above conversion orders is not available. Upon verifications in the record room also confirm that the alleged conversion order is not available in this authority. Further this authority secured the other conversion orders pertaining to the year 1976 issued by the Tahsildar Bengaluru South Taluk. By going through the same it clearly confirms that the signature of the Tahsildar found in the conversion certificate dated 20-01-1976 is not genuine one. Further the Nos referred in the conversion order also confirms that the conversion order No in the alleged conversion certificate is created one. It shows that, based on the bogus documents, the respondents fraudulently obtained conversion order and all subsequent permissions under the relevant provisions of law.

It is relevant to mention here that the Hon'ble Apex Court in the case of **Ram Chandra Singh vs Savitri Devi And Ors** 2003 (8) SCC 319 categorically held that:

> *Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.*
>
> *Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.*
>
> *It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentations may also give reason to claim relief against fraud.*
>
> *A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.*

Once it is held that a judgment and decree has been obtained by practicing fraud on the court it is trite that the principles of res-judicata shall not apply. The High Court, therefore, in our opinion committed a serious error in referring to the earlier orders passed by it so as to shut the doors of justice on the face of appellant for all time to come. We, therefore, are of the opinion that the impugned judgment dated 10.12.1998 cannot be sustained.

"It is now well-settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are liable to be set aside. All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such."

It will bear repetition to state that any order obtained by practicing fraud on court is also non-est in the eyes of law.

In view of the law laid down by the apex court it clearly substantiate that even fraud can be looked into in the collateral proceedings.

The respondents have also raised the objection that, there is no opportunity has provided while initiating the proceedings. But question of giving an opportunity at the stage of initiating the proceedings does not arise. However, after initiating the proceedings the notices have been issues to respondents and they have filed the objections and they have also not disputed the nature of the land before alleged grant and conversion. However, one or the other reasons, with an intention to drag on the proceedings made all exercises by making allegation. filing the memo. As

the factual aspect is not disputed by the respondents, the allegations made by them that, opportunity has not provided to them is not sustainable.

The contention of the respondents is that, the proceedings under Section 25(1) is not sustainable, as it is not specify the reasons to initiate the enquiry. However, that objection is not sustainable, because Section 25(1) itself speaks about the grounds for cancellation of the grant. Further, Section 2(1) of the Karnataka Land Grant Rules clearly speaks that, 'Act' means the Karnataka Land Revenue Act, 1964. Such being the case the contentions urged by the respondents that, as the land granted under the provisions of the Karnataka Land Revenue Act, the proceedings initiated under the land grant rules is not sustainable.

Further, as the order of the grant is nullity in the eye of law and same was obtained by playing a fraud. Question of limitation doesn't arise. Therefore, the contentions of the respondent that, the proceedings is barred by law of limitation cannot accepted.

The respondents raised another point that, there is a laches and estoppels. However, it is settled position of law that, as the grant order and conversion order are, nullity in the eye of law and obtained by playing fraud. The above contentions of the respondents are baseless.

Further the grant order speaks that, by invoking provision of Section 71 of the Karnataka Land Revenue Act, that grant has been issued. However, under the said provision, the land which had been assigned for special purpose would not be diverted. It also shows that, the alleged grant order is nullity in the eye of law.

For the above said reasons, I am of the opinion that, the above grant order and conversion order are liable to be cancelled.

Hence, I proceed to pass the following;

ORDER

I hereby cancelled the Official Memorandum dated 26.12.1975, No. B-Dis. LND/ (3) 62/75-76 issued by the Special Deputy Commissioner, Bengaluru District in respect of 0.16 Guntas of phut kharab land in Sy.No.2/2, 7/1A and 7/1B of Binnamagala Manavarthekaval Village, K.R.Puram Hobli, Bengaluru East Taluk. Consequently conversion order dated 20.01.1976 in No. ALN CR/22/75-76 alleged to have been issued by the Tahsildar Bengaluru South Taluk, Bengaluru is declared as Null and Void.

(Order pronounced in the open court on this 19 day of 8 2020).

G.N.Shivamurthy, I.A.S.
Deputy Commissioner,
Bengaluru Urban District,
Bengaluru.

Copy Applied by.....
Copy Applied on.....20/8/20.....
Copy Prepared by.....
Copy Compared by.....
Copy Ready on.....20/8/20.....
Copy Delivered on.....20/8/20.....
C.A.R. No.....181/20-21.....

ಜೆರಾಕ್ಸ್ ನಕಲು
ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಕಚೇರಿ
ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ
20/8/20

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ANNEXURE -20

RMFS53/2021
DUA ASSTS.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF SEPTEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

W.P. NO.8972 OF 2020 (KLR-LG)

BETWEEN:

1. MRS. G. CHITRA POORNIMA
W/O LATE MR. GEORGE THANGIAH
AGED ABOUT 52 YEARS
R/AT NO.6, COMMISSARIAT ROAD
BENGALURU - 560 025

2. MR. VIJAYA SHEKAR THANGIAH
S/O LATE MR. GEORGE THANGIAH
AGED 62 YEARS
R/AT NO.6, COMMISSARIAT ROAD
BENGALURU - 560 025

3. MRS. RACHEL CHITRA PRABHAKAR
W/O MR. SATHI PRABHAKAR
AGED 59 YEARS
R/AT NO.6, COMMISSARIAT ROAD
BENGALURU - 560 025

... PETITIONERS

(BY SRI. K.G.RAGHAVAN, SENIOR ADVOCATE FOR
SRI. HEGDE GANAPATI NARAYAN, ADVOCATE FOR
M/S. DUA ASSOCIATES)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF REVENUE
VIDHANA SOUDHA
DR. AMBEDKAR VEEDHI

HIGH COURT OF KARNATAKA

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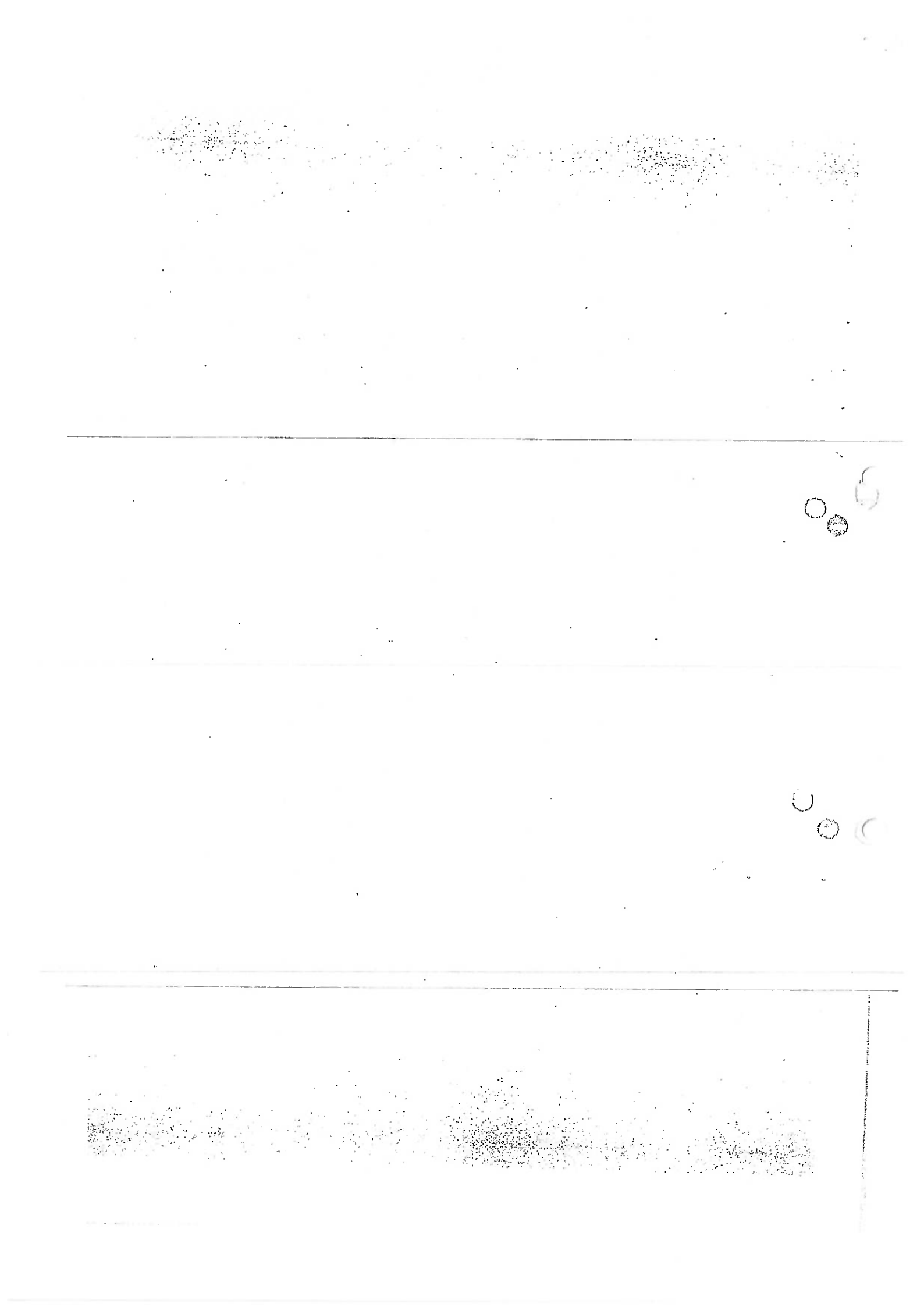

BENGALURU – 560 001
REP. BY UNDER SECRETARY
REVENUE DEPARTMENT

2. DEPUTY COMMISSIONER
BENGALURU DISTRICT
K.G.ROAD
BENGALURU – 560 009

3. THE TAHSILDAR
BANGALORE EAST TALUK
K.R.PURAM
BENGALURU – 560 010

... RESPONDENTS

(BY SRI. R. SUBRAMANYA, AAG A/W
SMT. NAMITHA MAHESH B.G., HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION QUASHING THE IMPUGNED SHOW CAUSE NOTICES DATED 06.06.2020 RELATING TO PROCEEDINGS BEARING NO.L.N.D. (E) CR/104/2019-20 ISSUED BY THE RESPONDENT NO.2 (VIDE ANNEXURE-A) AND CONSEQUENTLY QUASH THE PROCEEDINGS BEARING NO.L.N.D. (E) CR/104/2019-20 BEFORE RESPONDENT NO.2 AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 02.09.2020 FOR ORDER AND COMING ON FOR PRONOUNCEMENT OF ORDER THROUGH VIDEO CONFERENCE, THIS DAY, THE COURT MADE THE FOLLOWING:

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ORDER

Heard.

2. Aggrieved by the show cause notice dated 06.06.2020 bearing No.L.N.D (POO) CR/104/2019-20 issued by respondent no.2 and the consequent *suo motu* proceedings initiated by respondent no.2 against the petitioners, the instant writ petition is filed.

3. One late George Thangaiah, who was the husband of petitioner no.1 and father of petitioner nos.2 and 3, was granted a total of 16 guntas of lands in Survey Nos.2/2, 7/1A and 7/1B of Binnamangala Manavarthe Kaval Village, K.R.Puram Hobli, Bengaluru East Taluk vide order dated 26.12.1975 for non-agricultural purpose. It was granted at an upset price of Rs.12,000/- per acre. After the death of George Thangaiah, the petitioners have inherited the same and are in peaceful possession of the same. The said George Thangaiah was also the owner of certain adjoining lands to the property granted to him. The Bangalore Development Authority (hereinafter referred to as 'the BDA') thereafter has sanctioned development plan in

respect of the property in question way back in the year 1977 and the said property has been developed. The fact that the property was allotted for non-agricultural purpose and the BDA sanctioning a development plan indicates that the property in question is no longer a kharab land.

4. Late George Thangaiah and the petitioners have been in enjoyment of the property since the date of its allotment in the year 1975. However, the respondents with an ulterior motive have been issuing certain show cause notices and initiating certain proceedings since 2016. The petitioners have duly replied to those notices and are defending themselves in the proceedings initiated against them. The present impugned notice has been issued as late as 06.06.2020 under Rule 25(1) of the Karnataka Land Grant Rules, 1969 (hereinafter referred to as 'the Rules'). The said notice is issued on the ground that the lands in question are "B" kharab lands and the same were not allotted to the petitioners in accordance with law. On the said ground, the petitioners have been asked to show cause

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as to why the allotment should not be cancelled and the lands be appropriated by the Government.

5. The petitioners have participated in the proceedings pursuant to the said notice. When the proceedings were going on, the petitioners have preferred the instant writ petition. During the pendency of the writ petition, respondent no.2 has passed an order cancelling the allotment of 16 guntas of phut kharab lands in Survey Nos.2/2, 7/1A and 7/1B of Binnamangala Manavarthe Kaval village. The petitioners in the instant writ petition, as mentioned above, have sought for quashing of the show cause notice and the consequential proceedings.

6. The petitioners have sought for quashing the show cause notice on the ground that the proceedings for cancellation are being issued under the provisions of the Karnataka Land Grant Rules, 1969 while the allotment was made under the provisions of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as 'the Act'); the issuance of notice is in violation of the principles of natural justice and is barred by time; the act of the BDA and other

authorities sanctioning development plan amounts to an estoppel on respondents from issuing such notice; and the notice issued is not in accordance with law.

7. The respondents have filed their objections statement and have raised a preliminary objection that the writ petition is premature and what has been issued is only a show cause notice. The petitioners have participated in the same and they cannot prefer a writ petition. Section 49 of the Act provides for an appeal from the original orders and it is an alternative and efficacious remedy. In the light of the same, the petitioners cannot maintain the writ petition. All the grounds raised by the petitioners in the writ petition have been considered by respondent no.2 in his order dated 19.08.2020. The finding is that the predecessor in title of the petitioners has obtained the grant by playing fraud and on the said ground, the grant has been cancelled and if the petitioners are aggrieved by the same, they have to prefer an appeal.

8. It is true that Section 49 of the Act provides for an appeal from original orders such as the order passed by

HIGH COURT OF KARNATAKA

respondent no.2 in respect of the property in question pursuant to the show cause notice dated 06.06.2020 issued by him. However, apart from other grounds, the petitioners have raised the ground of limitation i.e., whether respondent no.2 could have issued the impugned show cause notice dated 06.06.2020 to cancel the grant made way back in the year 1975. Limitation is a question of jurisdiction.

9. It is true that any grant made as in the instant case can be *suo motu* enquired into by respondent no.2 and the said grant can be cancelled, if it is found that the same is obtained by making false or fraudulent representation or if it is contrary to the Rules. There is no period of limitation prescribed under any statute as to the time within which respondent no.2 has to exercise his powers under Rule 25 of the Rules and cancel the grant. It is a well settled proposition of law that when such limitation is not prescribed the same has to be exercised within a reasonable period. In this context, it is relevant to refer to the judgment of the Hon'ble Supreme Court in ***JOINT***

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COLLECTOR RANGA REDDY DISTRICT AND ANOTHER V. D. NARSING RAO AND OTHERS **[(2015) 3 SUPREME COURT CASES 695]**. Paragraphs 25 and 31 of the said judgment read as under:

> *"25. The legal position is fairly well settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power, revisional or otherwise, such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference insofar as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period.*
>
> *31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third-party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority."*

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10. A Coordinate Bench of this Court in ***N. RAGHAVENDRA MURTHY V. STATE OF KARNATAKA*** **[2020 SCC ONLINE KAR 860]** has held as under:

> *"(vi) It is settled position in law that power conferred on an Authority or by a statute must be exercised within a reasonable period of time. The Apex Court in Santoshkumar Shivgonda Patil v. Balasaheb Tukaram Shevale[33] was considering the case of exercise of revisional power under Section 257 of the Maharashtra Land Revenue Code, 1966. Admittedly, there was no time limit prescribed for exercise of such power under the law and when such power was sought to be exercised after 17 years, it was held as follows:-*
>
> > *"11. It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the Legislature does not provide for any length of time within which the power of revision is to be exercised by the authority suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein."*
>
> *In the present case, the exercise of power asserting the State's claim in the year 2011-2012 having the consequence of canceling mutations effected several decades ago as reflected in Column No.3 of the Table extracted hereinabove is clearly an effort to exercise power conferred beyond a reasonable period of time and hence impermissible. Accordingly, in such of the cases where mutation has been effected pursuant to the transfer by the Maharaja of Mysore at the first instance as indicated in Column No.3, exercise of power in the year 2010, 2011-2012 many decades subsequent to the effecting of such mutations is bad in law, as power is not only sought to be exercised after a reasonable*

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period of time, but beyond the period of limitation prescribed in Section 27 of the Limitation Act, 1963.

(e) Alternative remedy:

(i) It is the contention of the State that as against the impugned order passed by the Deputy commissioner under Section 67(2) of the K.L.R. Act, there are alternative remedies available as provided under Section 67(3) of the K.L.R. Act which includes filing of a civil suit against the order passed under Section 67(2) of the K.L.R. Act or as against an order passed in revision or appeal.

(ii) On the other hand, learned counsel for the petitioners have contended that the impugned order is passed without jurisdiction and if that were to be so, the writ petitions challenging the validity of such orders would be maintainable.

(iii) It is settled legal position that relegating the petitioners to avail the alternative remedy to challenge the impugned orders as provided for under the statute instead of entertaining the writ petitions directly is a matter left to the discretion of the Court to be exercised keeping in mind the settled principle that a writ petition can be entertained directly against an order passed without jurisdiction. In fact, in the case of M. Sankaranarayanan[34] in the context of a broadly similar factual matrix and legal controversy where the jurisdiction of the revenue authority under Section 67 of the K.L.R. Act to initiate proceedings in respect of time barred claims was being considered, the Apex Court has held that the challenge to a notice without jurisdiction could be directly entertained under Article 227 of the Constitution of India."

11. Further, when a notice is issued, the notice should be clear and precise as to on what grounds action is proposed to be taken. It cannot be vague and ambigious.

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12. A Coordinate Bench of this Court in W.P.No.46547/2011 (DD 14.12.2011) at paragraph 4 has held as under:

> *"4. The question that requires to be determined in this writ petition is whether the impugned notice is valid in law?*
>
> *When a notice can be said to be valid in law? The term 'Notice' originated from the Latin word 'Notitia' which means 'being known'. It is equivalent to information, intelligence or knowledge. Notice is the starting point of any hearing. The right to fair hearing covers every stage through which an administrative adjudication passes, starting from notice to final determination. Notice embodies rule of fairness and must precede an adverse order. It should clearly state the reason as to why a party is required to appear and/or his reply is required. The party concerned should be apprised of the evidence on which the case against him is based and be given an opportunity to rebut the said evidence. A notice, to be valid in law, should be clear and precise so as to give the party concerned adequate information of the case he has to meet. The adequacy of notice is a relative term and must be decided with reference to each case. The test of adequacy of notice will be whether it gives sufficient information so as to enable the person concerned to put up an effective defence. If a notice is vague or it contains unspecified or unintelligible allegations, it would imply a denial of proper opportunity of being heard. Natural justice is not only a requirement of proper legal procedure but also a vital element of good administration."*

13. The Hon'ble Supreme Court in ***BIECCO LAWRIE LIMITED AND ANOTHER V. STATE OF WEST BENGAL***

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AND ANOTHER **[(2009) 10 SUPREME COURT CASES**

32] at paragraphs 24 and 25 has held as under:

> *"24. It is fundamental to fair procedure that both sides should be heard-audi alteram partem i.e. hear the other side and it is often considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. One of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e. a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of notice and opportunity to respond result in making the administrative decision as vitiated.*
>
> *25. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice to be adequate must contain the following:*
>
> *(a) time, place and nature of hearing;*
> *(b) legal authority under which the hearing is to be held;*
> *(c) statement of specific charges which a person has to meet."*

14. In the instant case, the lands were granted to the predecessor in title of the petitioners way back in the year 1975. The said grant is sought to be cancelled in the year 2020, after a lapse of nearly 45 years. The delay in issuance of show cause notice cannot be considered reasonable. As per Article 112 of the Limitation Act, even for a suit by or on behalf of Central Government or State Government, the limitation prescribed is 30 years. Though

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fraud vitiates everything, the impugned show cause notice does not indicate as to what action of the grantee amounted to fraud nor does it indicate as to the facts based on which the respondents have concluded that the grant was not in accordance with law. The show cause notice is bad for being issued after a lapse of nearly 45 years which is beyond reasonable time and also for not specifying the reasons on which it is sought to be cancelled. The order which is passed subsequent to the impugned notice during the pendency of the writ petition though states that the allotment is vitiated by fraud, it does not specify the facts which constitute the fraud.

15. For the aforementioned reasons, the impugned notice dated 06.06.2020 issued by respondent no.2 and subsequent proceedings pursuant to the notice are liable to be set aside. Hence, the following:

ORDER

(i) The writ petition is allowed.

(ii) The show cause notice dated 06.06.2020 bearing No.L.N.D (POO) CR/104/2019-20 issued by respondent no.2 in respect of 13

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guntas of land in Survey No.2/2, 1 gunta of land in Survey No.7/1A and 2 guntas of land in Survey No.7/1B of Binnamangala Manavarthe Kaval Village, K.R.Puram Hobli, Bengaluru East Taluk under Rule 25(1) of the Karnataka Land Grant Rules, 1969 is hereby set aside.

(iii) All proceedings and the subsequent order dated 19.08.2020 passed in No.LND(E) CR 104/2019-20 pursuant to the aforementioned notice dated 06.06.2020 are held to be null and void.

In view of disposal of the writ petition, pending interlocutory applications do not survive for consideration and are accordingly disposed of.

No order as to costs.

HIGH COURT OF KARNATAKA BENGALURU

hkh

Sd/-
JUDGE

a) The date on which the application was made 07/7/21
b) The date on which charges and additional Charges if any are called for —
c) The dated on which charges and additional Charges if any are deposited/Paid —
d) The date on which the copy is ready 08/7/21
e) The date of notifying that the copy is ready for delivery 08/7/21
f) The date on which the applicant is required to appear on or before 13/7/21
g) The date on which the copy is delivered to the Applicant
h) Examined by 20/7/2021

TRUE COPY
Section Officer 8.7.21
High Court of Karnataka
Bangalore-560 001

ANNEXURE -21

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18083/2021

DOA DSSO

W.A.552/2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF APRIL 2021

PRESENT

THE HON'BLE MR.JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

WRIT APPEAL No. 552/2020 (KLR-LG)

BETWEEN:

1. THE STATE OF KARNATAKA
DEPARTMENT OF REVENUE
VIDHANA SOUDHA
DR.AMBEDKAR VEEDHI
BENGALURU-560 001
REP. BY UNDER SECRETARY
REVENUE DEPARTMENT.

2. DEPUTY COMMISSIONER
BENGALURU DISTRICT, K.G.ROAD
BENGALURU-560 009.

3. THE TAHASILDAR
BENGALURU EAST TALUK
K.R.PURAM
BENGALURU-560 010. ... APPELLANTS

(BY SRI PRABHULING K.NAVADGI, ADVOCATE GENERAL
A/W SMT.NAMITHA MAHESH, AGA AND
SRI S.S.MAHENDRA, AGA)

AND:

1. MRS. G.CHITRA POORNIMA
W/O LATE MR.GEORGE THANGIAH
AGED ABOUT 52 YEARS
R/AT NO.6, COMMISSARIAT ROAD
BENGALURU-560 025.

HIGH COURT OF KARNATAKA BENGALURU

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And Copying charges of ₹.....57.....
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2. MR.VIJAYA SHEKAR
THANGAIAH
S/O LATE GEORGE THANGAIAH
AGED 62 YEARS
R/AT NO.6, COMMISSARIAT ROAD
BENGALURU-560 025.

3. MRS.RACHEL CHITRA PRABHAKAR
W/O MR.SATHI PRABHAKAR
AGED 59 YEARS
R/AT NO.6, COMMISSARIAT ROAD
BENGALURU-560 025. ... RESPONDENTS

(BY SRI K.G.RAGHAVAN, SR.COUNSEL FOR
SRI GEORGE JOSEPH & MS.LAVANYA BHASKAR
ADVS. FOR C/R1, R2 & R3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, PRAYING TO ALLOW THIS WRIT APPEAL AND SET ASIDE THE IMPUGNED ORDER DATED 10.09.2020 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN W.P. NO.8972/2020 (KLR-LG).

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.04.2021 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, ***VISHWAJITH SHETTY J.***, DELIVERED THE FOLLOWING:

JUDGMENT

The present writ appeal is filed by the State assailing the orders passed by the learned Single Judge of this court dated 10th September 2020 in Writ Petition No.8972/2020 (KLR-LG) (*Mrs.G.Chitra Poornima and others -vs- State of Karnataka and others).*

2. Brief facts of the case as reflected are:

HIGH COURT OF KARNATAKA
BENGALURU

(a) One Sri.George Thangaiah, who is the husband of the first respondent and father of respondent Nos.2 and 3, was the absolute owner of the land bearing Sy.No.2 and Sy.No.7/1 measuring 4 acres 7 guntas and the land bearing Sy.No.2/1 and Sy.No.7/1A measuring 1 acre 4 guntas situated at Binnamangala Manavartha Kaval, K.R.Puram Hobli, Bangalore East Taluk, Bangalore, having purchased the same under two separate sale deeds dated 02.08.1969 and 27.06.1970 respectively. In furtherance of an application made by said George Thangaiah, an extent of land measuring 3 acres 33 guntas in Sy.No.2/2 and Sy.No.7/1B, 32½ guntas in Sy.No.7/1A and 11½ guntas in Sy.No.2/1 was converted from agricultural to non-agricultural purpose in the year 1970.

(b) After obtaining the said conversion orders, George Thangaiah had requested the Deputy Commissioner to grant the adjacent kharab lands measuring 13 guntas comprised in Sy.No.2/2, 01 gunta in Sy.No.7/1A and 2 guntas in Sy.No.7/1B of Binnamangala Manavartha Kaval, K.R.Puram Hobli,

HIGH COURT OF KARNATAKA

Bangalore East Taluk, Bangalore (hereinafter referred to as "the lands in question") for non-agricultural use. Considering the said request, the Deputy Commissioner after receiving recommendation from the Tahsildar vide Official Memorandum dated 26.12.1975 granted the land in question to said George Thangaiah subject to payment of offset price of Rs.4,000/- which was duly paid. Subsequently after paying conversion fine of Rs.1,500/-, George Thangaiah got the lands in question converted for non-agricultural purpose. Accordingly, conversion certificate was also issued on 20th January 1976. In the year 1977, the BDA had issued Development Plan and modified development plan in favour of George Thangaiah in respect of the land belonging to him which included the lands in question. Subsequently in the year 2011, the Bangalore Development Authority (B.D.A.) has sanctioned the plan for proposed construction of commercial building in the land owned by George Thangaiah.

(c) When the matter stood thus, the third respondent/Tahsildar had issued a show cause notice

HIGH COURT OF KARNATAKA BENGALURU

dated 20.01.2016 under Sections 94 and 104 of the Karnataka Land Revenue Act, 1964, alleging that the lands in question are Government lands and sought for clarification on the same. A detailed reply was given to the said notice by George Thangaiah and on receipt of such reply, the Tahsildar thereafterwards vide his order dated 10.06.2016 had withdrawn the show cause notice dated 20.01.2016 and closed the proceedings. Subsequently, yet another show cause notice was issued on 06.06.2020 by the second respondent/Deputy Commissioner and challenging the said show cause notice and the consequential proceedings, the wife and children of late George Thangaiah had filed Writ Petition no.8972/2020, which was allowed by this court vide order impugned, quashing the show cause notice dated 06.06.2020 as well as the entire proceedings initiated pursuant to the said show cause notice. Being aggrieved by the same, the respondents in the writ petition are before this court in this appeal.

3. The learned Advocate General appearing on behalf of the appellants has submitted that the grant was

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a result of fraud, the original grantee late George Thangaiah had suppressed material facts and had managed to obtain the grant order in his favour. Therefore the authorities concerned having realised the same have taken action in accordance with law. He submits that the proceedings pursuant to the show cause notice impugned in the writ petition had concluded in an order of cancellation of grant vide Annexure-AF dated 19th August 2020 and therefore he submits that the learned Single Judge was not justified in passing the impugned order. However since the impugned show cause notice and the order dated 19.08.2020 passed pursuant to the said notice do not reflect the particulars of the alleged fraud said to have been committed by late George Thangaiah, alternatively he has submitted that liberty is required to be granted to the State for initiating fresh action for cancellation of the grant.

4. Per contra, learned Senior Counsel Sri.K.G.Raghavan appearing for the respondents would submit that the proceedings initiated for cancellation is hopelessly barred by time. The proceedings has been

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initiated after 45 years, which definitely is beyond a reasonable time. He submits that the earlier proceedings initiated in the year 2006 by the Tahsildar was closed and subsequently in the year 2020, a fresh proceedings has been initiated by the Deputy Commissioner for extraneous reasons. He has relied upon the judgment of the Hon'ble Apex Court in the case of ***Foreshore Cooperative Housing Society Limited and Others -vs- Praveen D.Desai (dead) through LRs and Others***[1] and in the case of ***Chhedi Lal and Others -vs- Hari Kishore Yadav (dead) through LRs and Others***[2] in support of his contentions and prays to dismiss the appeal.

5. It is not in dispute that the grant of the land in question was made in favour of late George Thangaiah in the year 1975 and subsequently he got the said land converted for non-agricultural purpose in the year 1976. Thereafterwards the B.D.A. and the B.B.M.P. have sanctioned development plans in favour of late George Thangaiah for putting up commercial building for

[1] (2015) 6 SCC 412
[2] (2018) 12 SCC 527

developing the lands owned by George Thangaiah which included the lands in question. The Tahsildar had initiated similar proceedings in the year 2016 which was closed by him after receipt of suitable reply from late George Thangaiah. Subsequently, after the death of George Thangaiah, the Deputy Commissioner has initiated a fresh proceedings in the year 2020 for cancellation of the grant of lands in question to George Thangaiah on the ground of alleged fraud. However, in the show cause notice, there is no mention about the particulars of the alleged fraud and even in the subsequent order dated 19.08.2020 passed by the Deputy Commissioner cancelling the grant, there is no discussion with regard to the particulars of the alleged fraud said to have been committed by late George Thangaiah. There is no dispute that the impugned proceedings has been initiated after a lapse of 45 years. The appellants have failed to give any satisfactory explanation for the inordinate delay in initiating the action for cancellation of the grant on the ground of alleged fraud. Even before this court, the appellants

have failed to provide necessary particulars with regard to the alleged fraud said to have been committed by George Thangaiah, which resulted in grant of lands in question in his favour.

6. The Hon'ble Supreme Court in the case of ***Foreshore Cooperative House Society Ltd.*** (supra) at paragraphs-49 and 53 has held as under:

> *"49. A Constitution Bench of five Judges of this Court in the case of Pandurang Dhondi Chougule vs. Maruti Hari Jadhav, AIR 1966 SC 153, while dealing with the question of jurisdiction, observed that a plea of limitation or plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceeding. The Bench held:-*
>
> > *"10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (a), (b) and (e) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to*

questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115."

. . . . . .

. . . . . .

53. In ITW Signode India Ltd. vs. CCE, (2004) 3 SCC 48, a similar question came before a three Judges Bench of this Court under the Central Excise Act, 1944, when this Court opined as under:-

"69. The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact. Such a jurisdictional question is to be determined having regard to both fact and law involved therein. The Tribunal, in our opinion, committed a manifest error in not determining the said question, particularly, when in the absence of any finding of fact that such short-levy of excise duty related to any positive act on the part of the appellant by way of fraud, collusion, wilful misstatement or suppression of facts, the extended period of limitation could not have been invoked and in that view of the matter

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no show-cause notice in terms of Rule 10 could have been issued."

7. In the case of ***Chhedi Lal Yadav*** (supra), the Hon'ble Supreme Court at paragraphs-13 and 14 has observed as follows:

"13. In our view, where no period of limitation is prescribed, the action must be taken, whether suo motu or on the application of the parties, within a reasonable time. Undoubtedly, what is reasonable time would depend on the circumstances of each case and the purpose of the Statute. In the case before us, we are clear that the action is grossly delayed and taken beyond reasonable time, particularly, in view of the fact that the land was transferred several times during this period, obviously, in the faith that it is not encumbered by any rights.

14. We are of the view that merely because the legislation is beneficial and no limitation is prescribed, the rights acquired by persons cannot be ignored lightly and proceedings cannot be initiated after unreasonable delay as observed by this Court in the case of Situ Sahu and Ors. v. State of Jharkhand reported in (2004) 8 SCC 340."

8. Even in the present case, the material on record would go to show that substantial developments have been made in the lands in question by the parties and therefore, the rights and liabilities of the parties cannot be ignored. The crystallised rights of the parties cannot be disturbed at the whims and fancies of the State, that too, without showing sufficient cause. The Hon'ble Supreme Court in the case of ***Chhedi Lal Yadav*** (supra) has held that the delay of 24 years is beyond reasonable time. In the present case, the delay in initiating action for cancellation of the grant is about 45 years. In addition to the same, though the cancellation is sought to be made on the ground of alleged fraud, neither in the show cause notice nor in the order passed pursuant to the said notice, particulars of the fraud alleged are not forthcoming. The learned Single Judge while allowing the writ petition in paragraph-14 has observed as follows:

> *"14. In the instant case, the lands were granted to the predecessor in title of the petitioners way back in the year 1975. The said grant is sought to be cancelled in the year 2020, after a lapse of nearly 45 years. The delay in issuance of show cause notice cannot be considered reasonable. As per Article 112 of the Limitation Act, even for a suit by or on behalf of*

HIGH COURT OF KARNATAKA
BENGALURU

Central Government or State Government, the limitation prescribed is 30 years. Though fraud vitiates everything, the impugned show cause notice does not indicate as to what action of the grantee amounted to fraud nor does it indicate as to the facts based on which the respondents have concluded that the grant was not in accordance with law. The show cause notice is bad for being issued after a lapse of nearly 45 years which is beyond reasonable time and also for not specifying the reasons on which it is sought to be cancelled. The order which is passed subsequent to the impugned notice during the pendency of the writ petition though states that the allotment is vitiated by fraud, it does not specify the facts which constitute the fraud."

9. It is a well-settled proposition of law that when a period of limitation is not prescribed under the statute, the same has to be exercised within a reasonable period. This is so even in cases where allegations of fraud are alleged. In this context, the learned Single Judge has relied upon the following judgments:

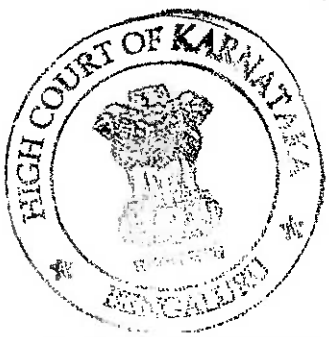
1) ***Joint Collector Ranga Reddy and Another -vs- D.Narsing Rao and Others***[3] and

2) ***N.Raghavendra Murthy -vs- State of Karnataka***[4]**.**

[3] (2015) 3 SCC 695
[4] 2020 SCC Online Kar 860

10. The Hon'ble Supreme Court in the case of ***Joint Collector Ranga Reddy*** (supra) at Paragraphs 25 and 31 has observed as under:

> *"25. The legal position is fairly well settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power, revisional or otherwise, such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference insofar as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period.*
>
> *31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third-party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority."*



11. This Court in the case of **N. Raghavendra Murthy** *(supra)* has held as under:

> *"(vi) It is settled position in law that power conferred on an Authority or by a statute must be exercised within a reasonable period of time. The Apex Court in Santoshkumar Shivgonda Patil v. Balasaheb Tukaram Shevale[33] was considering the case of exercise of revisional power under Section 257 of the Maharashtra Land Revenue Code, 1966. Admittedly, there was no time limit prescribed for exercise of such power under the law and when such power was sought to be exercised after 17 years, it was held as follows:-*
>
> > *"11. It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the Legislature does not provide for any length of time within which the power of revision is to be exercised by the authority suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein."*
>
> *In the present case, the exercise of power asserting the State's claim in the year 2011-2012 having the consequence of canceling mutations effected several decades ago as reflected in Column No.3 of the Table extracted hereinabove is clearly an effort to exercise power conferred beyond a reasonable period of time and hence impermissible. Accordingly, in such of the cases where mutation has been effected pursuant to the transfer by the Maharaja of Mysore at the first instance as indicated in Column No.3, exercise of power in the year 2010, 2011-2012 many decades subsequent to the effecting of such mutations is bad in law, as power is not only sought to be exercised after a reasonable period of time, but beyond the*

period of limitation prescribed in Section 27 of the Limitation Act, 1963.

(e) Alternative remedy:

(i) It is the contention of the State that as against the impugned order passed by the Deputy commissioner under Section 67(2) of the K.L.R. Act, there are alternative remedies available as provided under Section 67(3) of the K.L.R. Act which includes filing of a civil suit against the order passed under Section 67(2) of the K.L.R. Act or as against an order passed in revision or appeal.

(ii) On the other hand, learned counsel for the petitioners have contended that the impugned order is passed without jurisdiction and if that were to be so, the writ petitions challenging the validity of such orders would be maintainable.

(iii) It is settled legal position that relegating the petitioners to avail the alternative remedy to challenge the impugned orders as provided for under the statute instead of entertaining the writ petitions directly is a matter left to the discretion of the Court to be exercised keeping in mind the settled principle that a writ petition can be entertained directly against an order passed without jurisdiction. In fact, in the case of M. Sankaranarayanan in the context of a broadly similar factual matrix and legal controversy where the jurisdiction of the revenue authority under Section 67 of the K.L.R. Act to initiate proceedings in respect of time barred claims was being considered, the Apex Court has held that the challenge to a notice without jurisdiction could be directly entertained under Article 227 of the Constitution of India."

12. With regard to the principle that whenever a show cause notice is issued proposing certain action, the said notice should be clear, precise, should reveal the allegations and the proposed action and if the said notice

HIGH COURT OF KARNATAKA BANGALURU

is vague and ambiguous, such notice cannot stand the test of law, the learned Single Judge has relied upon the judgment of this Court in W.P.No.46547/2011 (DD 14.12.2011) wherein at paragraph-4, it has been held as under:

> *"4. The question that requires to be determined in this writ petition is whether the impugned notice is valid in law?*
>
> *When a notice can be said to be valid in law? The term 'Notice' originated from the Latin word 'Notitia' which means 'being known'. It is equivalent to information, intelligence or knowledge. Notice is the starting point of any hearing. The right to fair hearing covers every stage through which an administrative adjudication passes, starting from notice to final determination. Notice embodies rule of fairness and must precede an adverse order. It should clearly state the reason as to why a party is required to appear and/or his reply is required. The party concerned should be apprised of the evidence on which the case against him is based and be given an opportunity to rebut the said evidence. A notice, to be valid in law, should be clear and precise so as to give the party concerned adequate information of the case he has to meet. The adequacy of notice is a relative term and must be decided with reference to each case. The test of adequacy of notice will be whether it gives sufficient information so as to enable the person concerned to put up an effective defence. If a notice is vague or it contains unspecified or unintelligible allegations, it would imply a denial of proper opportunity of being heard. Natural justice is not only a requirement of proper legal procedure but also a vital element of good administration."*

13. The Hon'ble Supreme Court in ***BIECCO LAWRIE LIMITED AND ANOTHER V. STATE OF WEST BENGAL AND ANOTHER***[5] at paragraphs 24 and 25 has held as under:

> *"24. It is fundamental to fair procedure that both sides should be heard-audi alteram partem i.e. hear the other side and it is often considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. One of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e. a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of notice and opportunity to respond result in making the administrative decision as vitiated.*
>
> *25. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice to be adequate must contain the following:*
>
> *(a) time, place and nature of hearing;*
> *(b) legal authority under which the hearing is to be held;*
> *(c) statement of specific charges which a person has to meet."*

14. Taking into consideration the inordinate delay of 45 years in initiating the proceedings and also considering the fact that the impugned show cause notice and the order passed pursuant to the said notice does

[5] (2009) 10 SCC 32

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not speak about the alleged fraud, we are of the considered opinion that the learned Single Judge was fully justified in allowing the writ petition, more so, on the background of the judicial pronouncements made by the Hon'ble Apex Court as well as by this Court referred to above. Since we have already held that the action of the appellants in initiating proceedings for cancellation of the grant is beyond reasonable time, the prayer made by the learned Advocate General for reserving liberty to initiate fresh action for cancellation of the grant of the lands in question cannot be granted.

15. Accordingly, we proceed to pass the following;

ORDER

The Writ Appeal is dismissed.

HIGH COURT OF KARNATAKA BENGALURU

Sd/-
JUDGE

Sd/-
JUDGE

KNM

a) The date on which the application was made 19/4/21
b) The date on which charges and additional Charges if any are called for —
c) The date on which charges and additional Charges if any are deposited/Paid —
d) The date on which the copy is ready 12/5/21
e) The date of certifying that the copy is ready For delivery 12/5/21
f) The date on which the applicant is required to appear on delivery 18/5/21
g) The date on which the copy is delivered to the Applicant 26/5/2021
h) Examined by

'TRUE COPY'
K. Mahadevaiah
I/c Section Officer, 12/5/21
High Court of Karnataka
Bangalore-560 001

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ANNEXURE -22

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

(ಕಂದಾಯ ಇಲಾಖೆ)

ತಹಶೀಲ್ದಾರ್ ರವರ ಕಾರ್ಯಾಲಯ, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೃಷ್ಣರಾಜಪುರ.

ನಂ:ಎನ್.ಸಿ.ಆರ್/ಸಿ ಆರ್. 70/2018-2020 ದಿನಾಂಕ:07/03/2020

ರವಲಗೆ,

ಹಿಷ್ಟುವಲಿ ಅರಕ್ಷಕ ಮಹಾ ನಿರ್ದೇಶಕರು,(ಎ.ಡಿ.ಜಿ.ಪಿ)

06, ಜಿ.ಎಂ.ಐ.ಎಫ್,

ಕಮೀಷನರೇಟ್ ರಸ್ತೆ,

ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ:- ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ ಜನ್ನಮಂಗಲ ಮವವರ್ತೆ ಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ 2/2ರಲ್ಲಿ 3.24 ಎ/ಗು, ವಿಸ್ತೀರ್ಣವಿದ್ದು ಅದರಲ್ಲಿ 0-13 ಗುಂಟೆ "ಜ" ಖರಾಬು ಜಮೀನಿರುತ್ತದೆ. ಸ.ನಂ 7/ಜ, 7/ಎ3, 7/ಎ2, 7/ಎ,ಎ, ರಲ್ಲಿ 1 ಎಕರೆ 6 1/4 ಗುಂಟೆ ಜಮೀನಿದ್ದು ಅದರಲ್ಲಿ 4 ಗುಂಟೆ ಖರಾಬು ಇರುತ್ತದೆ ಒಟ್ಟು 5 ಎಕರೆ 1 8 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣದ ಜಮೀನಿನಲ್ಲಿ 17 ಗುಂಟೆ 'ಜ' ಖರಾಬು ಜಮೀನಿರುತ್ತದೆ. ಇದನ್ನು ಅಕ್ರಮವಾಗಿ ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿದ್ದು ತೆರವುಗೊಳಿಸುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ:- ರಾಜಸ್ವ ನಿರೀಕ್ಷಕರ ವರದಿ ರಾ.ನಿ(ಮ)ಪಿ.ಆರ್.01/19-20

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ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ ಜನ್ನಮಂಗಲ ಮವವರ್ತೆ ಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ 2/2ರಲ್ಲಿ 3.24 ಎ/ಗು ವಿಸ್ತೀರ್ಣವಿದ್ದು, ಅದರಲ್ಲಿ 0-13 ಗುಂಟೆ 'ಜ' ಖರಾಜಿರುತ್ತದೆ, ಸ.ನಂ 7/ಜ, 7/ಎ3, 7/ಎ2, 7/ಎ,ಎ, ರಲ್ಲಿ 1 ಎಕರೆ 6 1/4 ಗುಂಟೆ ಜಮೀನಿದ್ದು ಅದರಲ್ಲಿ 4 ಗುಂಟೆ 'ಜ' ಖರಾಬು ಇರುತ್ತದೆ ಒಟ್ಟು 5 ಎಕರೆ 1 1/4 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣದ ಜಮೀನಿನಲ್ಲಿ 17 ಗುಂಟೆ 'ಜ' ಖರಾಬು ಜಮೀನಿರುತ್ತದೆ. ಸದರಿ ಜಮೀನನ್ನು ಸರ್ಕಾರದ ಸುತ್ತೋಲೆ ಸಂಖ್ಯೆ ಆರ್.ಡಿ/48/ಎಲ್.ಜಿ.ಪಿ.2017/ ದಿನಾಂಕ 14/08/2018 ರಂತೆ ಜಲಮೂಲ ಪ್ರದೇಶಗಳನ್ನು ಸಂರಕ್ಷಿಸಬೇಕಾಗಿದ್ದು, ಸದರಿ ಪ್ರಸ್ತಾಪಿತ ಜಮೀನನ್ನು ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964 ಕಾಲಂ 88(ಸಿ)ರಡಿ ವಿಹಿತಗೊಳಿಸಲು ರಹಿತರುವುದಿಲ್ಲ, ಪ್ರಯುಕ್ತ ಭೂ ಮಂಜೂರಾತಿಯನ್ನು ರದ್ದುಪಡಿಸಿ ಸದರಿ ಖರಾಬು ಜಮೀನಿನ ಭೂ ಪರಿವರ್ತನೆ ಆದೇಶವನ್ನು ರದ್ದುಗೊಳಿಸಿ ಖರಾಬು ಜಮೀನನ್ನು ಯಥಾಸ್ಥಿತಿ ತರುವ ಬಗ್ಗೆ ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳವರಿಗೆ ದಿನಾಂಕ 13/11/2018ರಂದು ಸೂಕ್ತ ನಿರ್ದೇಶನ ಕೋರಲಾಗಿದೆ

ಈ ಮೇಲೆ ಹೇಳಲಾಗಿರುವ ಸರ್ವೆ ನಂಬರ್‌ನ ಮಾಲೀಕರಾದ 1. ಚಿತ್ರ ಪೂರ್ಣಿಮಾ ಕೋಂ ಜಾರ್ಜ ತಂಗಯ್ಯ 2. ವಿಜಯ್ ಲೆಬರ್ ಜಸ್ ಜಾರ್ಜ ತಂಗಯ್ಯ 3. ಚೈತ್ರ ಪ್ರಭಾಕರ್ ಜಸ್ ಜಾರ್ಜ ತಂಗಯ್ಯ ಎಂಬುವವರು ಸದರಿ ಖರಾಬು ಜಮೀನಿನಲ್ಲಿ ಅಕ್ರಮವಾಗಿ ಕಾಂಪೌಂಡ್ ಮತ್ತು ವಾಣಿಜ್ಯ ಕಟ್ಟಡವನ್ನು ಅನಧಿಕೃತವಾಗಿ ನಿರ್ಮಿಸಿದ್ದು ಅಲ್ಲದೆ ಜಿ.ಜಿ.ಎಂ.ಪಿ ಸಾರ್ವಜನಿಕ ರಸ್ತೆಯನ್ನು ಹಾಗೂ ಕಾಲುವಾಲಿ ಸಹ ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವುದು ಕಂಡುಬಂದಿದ್ದು ಅಲ್ಲದೇ ಸದರಿ ಸರ್ವೆ ನಂಬರ್‌ನ ಜಮೀನಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಜಿ.ಡಿ.ಎ ಮತ್ತು ಜಿ.ಬಿ.ಎಂಪಿ ರವರಿಂದ ಪಡೆದಿರುವ ಎಲ್ಲಾ ನಕ್ಷೆ ಮಂಜೂರಾತಿ ಮತ್ತು ಅನುಮೋದನೆಗಳನ್ನು ಈ ಕೂಡಲೆ ರದ್ದು ಪಡಿಸುವ ಬಗ್ಗೆ ಸದರಿಯವರ ವಿರುದ್ಧ ಕಾನೂನು ರೀತಿಯ ಕ್ರಮ ಕೈಗೊಳ್ಳುವ ಸಂಬಂಧ ಉಲ್ಲೇಖ ರೀತ್ಯ ಕಂದಾಯ ಅಧಿಕಾರಿಗಳವರು ವರದಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಮೇಲ್ಕಂಡಂತೆ ಎಲ್ಲಾ ಅಂಶಗಳನ್ನು ತಮ್ಮ ಅವಗಾಹನೆಗೆ ಮತ್ತು ಸರ್ಕಾರಿ ಖರಾಬು ಜಮೀನಿನಲ್ಲಿ ಅಕ್ರಮವಾಗಿ ಕಟ್ಟಡ ಮತ್ತು ರಸ್ತೆಯನ್ನು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವುದನ್ನು ತೆರವುಗೊಳಿಸಲು ಹಾಗೂ ಅನಧಿಕೃತ ಕಟ್ಟಡಗಳನ್ನು ನಿರ್ಮಿಸಿರುವವರ ವಿರುದ್ಧ ಕೂಡಲೇ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964 ರ ಕಲಂ 192(ಎ)ರಡಿ ಒತ್ತುವರಿದಾರರ ವಿರುದ್ಧ ಕ್ರಿಮಿನಲ್ಲ್ ಮೊಕದ್ದಮೆ ದಾಖಲಿಸಿಕೊಳ್ಳುವಂತೆ ಕೋರಲಾಗಿದೆ.

ದಿನಾಂಕ: 24-03-2020 ರಂದು
ಸಂಜೆ ಸ.ನಂ 2 ಗಂಟೆಗೆ ಮಾನ್ಯ A.D.C ರವರ
ತಹಶೀಲ್ದಾರ್ ಯಿಂದ ಸೂಚನೆಯ ಮೇರೆಗೆ ಸಂಜೆ
ಸ್ಥಳಕ್ಕೆ ಭೇಟಿ ನೀಡಿ ಅಕ್ರಮ ಕಟ್ಟಡವನ್ನು
02/2020 U/S 192(A) KLR Act 1964
ರೀತ್ಯ ತೆರವುಗೊಳಿಸಲಾಗಿರುತ್ತದೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ,

ತಹಶೀಲ್ದಾರ್

ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು,

ಕೃಷ್ಣರಾಜಪುರ

TRANSLATED COPY of Annexure -22

Government of Karnataka

(Revenue Department)

Office of the Tahsildar, Bangalore East Taluk,

Krishnarajapuram

No. NCR/CR 70/2019-2020

To,

Additional Director General of Police, (AC.08.P)
#06, BMTF, Commissionerate Road,
Bangalore.

Honorable Sir,

Subject: Regarding the encroachment and removal of unauthorized constructions on 3.24 acres of land in Survey No. 2/2, 0-13 guntas in Survey No. 7/1, and 0-02 guntas in Survey No. 7/1B of Binnamangala Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk.

Reference: Rajanna's complaint No. R.N(M)P.R.01/19-20

In Survey No. 2/2 of Binnamangala Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk, there is 3.24 acres of land, out of which 0-15 guntas is 'B' kharab land. In Survey Nos. 7/1A, 7/1B, 7/1C, 7/1D, there is 1 acre 6 1/4 guntas of land, out of which 4 guntas is 'B' kharab land, totaling 5 acres 1 1/4 guntas of land with 17 guntas of 'B' kharab land. The said land has been

encroached upon and unauthorized constructions have been made. As per the government's circular number RD/48/LTP/2017 dated 14/08/2018, water source areas must be protected, and the proposed land must be de-reserved under Section 3(5) of the Karnataka Land Revenue Act, 1984. Therefore, the land sanction is canceled, and the land conversion order is revoked, restoring the kharab lands to their original status. The matter is submitted to the Honorable District Magistrate for further action on 3/11/2019.

The above-mentioned property owners, 1. Chitra Poornima Kom George Thangayya, 2. Vijay Shekar s/o George Thangayya, 3. Chaitra Prabhakar d/o George Thangayya, have unauthorizedly constructed buildings on the said kharab lands and have also encroached upon the public road and footpath of BBMP. Therefore, all maps and approvals obtained from BDA and BBMP related to the said survey numbers must be revoked immediately. Legal action must be taken against the encroachers as per the Revenue Department's reference, and the unauthorized constructions on the government land must be removed. Criminal cases should be filed against the encroachers under Section 192(a) of the Karnataka Land Revenue Act, 1964.

Yours faithfully,
District Magistrate,
Bangalore District, Bangalore.

169 ANNEXURE -23

FIRST INFORMATION REPORT

(Under Section 154 Crpc)

[Before the Honorable C M M Court, Bengaluru City]

1. Crime No: **02/2020** Police Station: Bengaluru Metropolitan Task Force

FIR Date: 24-03-2020 District : Bengaluru City

Type : Typed State : Karnataka

2. Act and Section: **192(A) KLR Act 1964**

3. (a) Occurrence of offence: From: Prior to 13-11-2019

Time from: 00:00:00 Hrs. Day:

(b) Information received at P.S: Date: 24-03-2020, 17:15 Hrs

(c) Type of Information: Typed

(d) Reasons for Delay in reporting by the Complainant/Informant:

4. Place of occurrence: **Manvarthe kaval villege, Binnamangala, K.R puram Hobli, Bengaluru East Talluk**

(a) Direction and Distance from Police Station: approximate 18 km

(b) In Case outside limits of this police Station then Name of P.S: Dist.

5. Complainant/Informant.

(a) Name: **Sri. Tejash kumar** (b) Father Name:

(c) Age : (d) Nationality: **Indian**

(e) Passport No: (f) Occupation: **Tahsildar**

(g) Mobile No: 7899899444

(h) Address: : **Bangaluru East taluk , K.R puram, Bengaluru**

6. Details of Known/ Suspected/Unknown Accused with Full Particulars:

1) Chitra poornima w/o George Thangaiah,
2) Vijay Shekar s/o George Thangaiah
3) Chaithra Prabhakar D/O George Thangaiah
Resident : Manvarthe Kaval Villege, Binnamangala, K.R puram Hobli, Bengaluru East talluk, Bengaluru

7. Particulars of Properties stolen/ involved:

8. Total Value of Properties Stolen/involved:

9. Inquest reports/U.D Case no if any:

10. Brief facts: **Complaint attached**

ಈ ಪ್ರಕರಣದ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶವೇನೆಂದರೆ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರಂ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಪೋಸ್ಟ್, ಮನವರ್ತೆಕಾವಲ್ ಸರ್ವೆ ನಂ.2/2 ರಲ್ಲಿ ಒಟ್ಟು 3.24 ಎ/ಗು ಜಮೀನು ಇದ್ದು ಇದರಲ್ಲಿ 0-13 ಗುಂಟೆ ಬಿ. ಖರಾಬು ಜಮೀನು ಇರುತ್ತದೆ. ಸರ್ವೆ ನಂ.7/1ಬಿ, 7/1ಎ3, 7/1ಎ2, 7/1ಎ,1ಎ ರಲ್ಲಿ 1 ಎಕರೆ 6 1/4 ಗುಂಟೆ ಜಮೀನು ಇದ್ದು ಇದರಲ್ಲಿ 4 ಗುಂಟೆ ಬಿ.ಖರಾಬು ಜಮೀನು ಇರುತ್ತದೆ. ಒಟ್ಟು 5 ಎಕರೆ 1 1/4 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣದ ಜಮೀನಿನಲ್ಲಿ 17 ಗುಂಟೆ ಬಿ.ಖರಾಬು ಜಮೀನು ಇರುತ್ತದೆ. ಸದರಿ ಜಮೀನನ್ನು ಸರ್ಕಾರದ ಸುತ್ತೋಲೆ ಸಂಖ್ಯೆ:ಆರ್.ಡಿ/46/ಎಲ್.ಜಿ.ಪಿ.2017 ದಿನಾಂಕ:14-06-2018 ರಂತೆ ಜಲಮೂಲ ಪ್ರದೇಶಗಳನ್ನು ಸಂರಕ್ಷಿಸಬೇಕಾಗಿದ್ದು, ಸದರಿ ಪ್ರಸ್ತಾಪಿತ ಜಮೀನನ್ನು ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964 ಕಲಂ 68(5) ಅಡಿ ವಿಹಿತಗೊಳಿಸಲು ರಹವಿರುವುದಿಲ್ಲ. ಪ್ರಯುಕ್ತ ಭೂ ಮಂಜೂರಾತಿಯನ್ನು ರದ್ದುಪಡಿಸಿ ಸದರಿ ಖರಾಬು ಜಮೀನಿನ ಭೂ ಪರಿವರ್ತನೆ ಆದೇಶವನ್ನು ರದ್ದುಗೊಳಿಸಿ ಖರಾಬು ಜಮೀನನ್ನು ಯಥಾಸ್ಥಿತಿ ತರುವ ಬಗ್ಗೆ ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳವರಿಗೆ ದಿನಾಂಕ:13-11-2019 ರಂದು ಸೂಕ್ತ ನಿರ್ದೇಶನಕ್ಕೆ ಕೋರಲಾಗಿದೆ. ಮೇಲ್ಕಂಡ ಸರ್ವೇ ನಂಬರ್‌ನ ಮಾಲೀಕರಾದ 1. ಚಿತ್ರಾ ಪೂರ್ಣಿಮಾ ಕೋಂ ಜಾರ್ಜ್ ತಂಗಯ್ಯ, 2.ವಿಜಯ್ ಶೇಖರ್ ಬಿನ್ ಜಾರ್ಜ್ ತಂಗಯ್ಯ, 3.ಚೈತ್ರಾ ಪ್ರಭಾಕರ್ ಬಿನ್ ಜಾರ್ಜ್ ತಂಗಯ್ಯ, ಎಂಬುವರು ಸದರಿ ಬಿ.ಖರಾಬು ಜಮೀನಿನಲ್ಲಿ ಅಕ್ರಮವಾಗಿ ಕಾಂಪೌಂಡ್ ಮತ್ತು ವಾಣಿಜ್ಯ ಕಟ್ಟಡವನ್ನು ಅನಧಿಕೃತವಾಗಿ ನಿರ್ಮಿಸಿದ್ದು, ಅಲ್ಲದೇ ಬಿ.ಬಿ.ಎಂ.ಪಿ ಸಾರ್ವಜನಿಕ ರಸ್ತೆಯನ್ನು ಹಾಗೂ ಕಾಲುದಾರಿ ಸಹ ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಅಲ್ಲದೇ ಸದರಿ ಸರ್ವೇ ನಂಬರ್‌ನ ಜಮೀನಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಬಿ.ಡಿ.ಎ ಮತ್ತು ಬಿ.ಬಿ.ಎಂ.ಪಿ ಯಿಂದ ಪಡೆದಿರುವ ಎಲ್ಲಾ ನಕ್ಷೆ ಮಂಜೂರಾತಿ ಮತ್ತು ಅನುಮೋದನೆಗಳನ್ನು ಈ ಕೂಡಲೇ ರದ್ದುಗೊಳಿಸುವ ಬಗ್ಗೆ ಸದರಿಯವರ ವಿರುದ್ಧ ಕಾನೂನು ರೀತಿಯ ಕ್ರಮ ಕೈಗೊಳ್ಳುವ ಸಂಬಂಧ ಕಂದಾಯ ಅಧಿಕಾರಿಗಳು ವರದಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಸರ್ಕಾರಿ ಖರಾಬು ಜಮೀನನ್ನು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡು ಅಕ್ರಮವಾಗಿ ಕಟ್ಟಡ ಮತ್ತು ರಸ್ತೆಯನ್ನು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವುದನ್ನು ತೆರವುಗೊಳಿಸಲು ಹಾಗೂ ಅನಧಿಕೃತ ಕಟ್ಟಡಗಳನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿರುವವರ ವಿರುದ್ಧ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ-1964 ಕಲಂ 192(ಎ)

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ಅಡಿಯಲ್ಲಿ ಕ್ರ ಕೈಗೊಳ್ಳುವಂತೆ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕಿನ ತಹಸೀಲ್ದಾರರು ನೀಡಿದ ದೂರು ಇತ್ಯಾದಿ.

(1) Name of I.O: Srinivasa .P Rank: Police Sub-Inspector

(2) Refused Investigation due to: No

(3) On Point of jurisdiction transferred to PS District: No

(a) Read over to the complainant informant, admitted to be correctly recorded, and a copy given to the complainant/Informant free of Cost: Yes

(b) If the Police Officer does not proceed to the spot for investigation of if he declines to investigate/S 157 Cr.P.C provision (a) or (b) the reason there of should be mentioned.

11. Action Taken: **Investigation.**

12. Signature/Thumb impression of complainant.

13. Date and time of dispatch to the court: 24-03-2020 at 17-45 hrs.

14. Name of the PC/HC who carried the FIR to the Court:- Chandrashekar HC

Signature of the I.O

(Srinivasa.P)
Police Sub-Inspector
BMTF Police Station,
Bengaluru.

Copy To

1. Additional Director General Of Police,BMTF.
2. Superintendent of Police BMTF.
3. DySP, BMTF.
4. Complainant Copy/Office Copy.

Relevant portion of translated copy of Annexure – 23

6.Details of known/suspected/unknown accused with full particulars:

1) Chiyra poornima w/o George Thangaiah
2) Vijay Shekar s/o George Thangaiah
3) Chaithra Prabhakar d/o George Thangaiah

Resident: Manvarthe Kuval Village, Binnamangala, KR puram Hobli, Bengaluru East Taluk, bengaluru

7. Particulars of the properties stolen/involved

8. Total value of properties stolen/involved

9. Inquest reports/U.D Case no if any:

10. Brief facts: Complaint attached:

The brief summary of this case is that in Bangalore East Taluk, K.R. Puram Hobli, Ninna Mangala Post, Manavernakaval Survey No. 2/2, there is a total of 3.24 acres of land, out of which 9-13 guntas is 'B' kharab land. In Survey No. 71B, 1, 7, 7/s1, there is 1 acre 6 1/4 guntas of land, out of which 4 guntas is 'B' kharab land, totaling 5 acres 1 1/4 guntas of land with 17 guntas of 'B' kharab land. The said land must be protected as per the government circular number: RD.DL.JC.2017 dated 14-06-2018, and the said land cannot be included under Section 68(5) of the Karnataka Land Revenue Act, 1964. Therefore, the land approval is canceled, and the land conversion order of the said kharab land is revoked, restoring the kharab land to its original status. The matter was

submitted to the Honorable District Magistrate on 13-11-2019 for appropriate directions. The owners of the above-mentioned survey numbers, V. Chitra Poornima Kom George Tangayya, Vijay Shekhar Bin George Tangayya, and Chaitwa Prabhakar Bin George Tangayya, have illegally constructed a compound and commercial building on the said 'B' kharab land, and have also encroached upon the BBMP public road and footpath. Therefore, all maps and approvals obtained from BDA and BBMP related to the said survey numbers must be revoked immediately. The Revenue Department has reported that legal action must be taken against the encroachers and the unauthorized constructions on the government land must be removed. Criminal cases should be filed against the encroachers under Section 192(a) of the Karnataka Land Revenue Act, 1964.

ANNEXURE 24

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN

WRIT PETITION NO. 8073 OF 2020 (GM-RES)

BETWEEN:

1. MRS. G. CHITRA POORNIMA
W/O LATE MR. GEORGE THANGIAH,
AGED ABOUT 50 YEARS,
HAVING OFFICE AT GEORGE THANGIAH
COMPLEX (EAST),
80 FEET ROAD, INDIRANAGAR,
BENGALURU - 560 075.

2. MR. VIJAYA SHEKAR THANGIAH
S/O LATE MR. GEORGE THANGIAH,
AGED ABOUT 62 YEARS,
HAVING OFFICE AT GEORGE THANGIAH
COMPLEX (EAST),
80 FEET ROAD, INDIRANAGAR,
BENGALURU - 560 075.

3. MRS. RACHEL CHITRA PRABHAKAR
W/O MR. SATHI PRABHAKAR,
AGED ABOUT 59 YEARS,
HAVING OFFICE AT GORGE THANGIAH
COMPLEX (EAST),
80 FEET ROAD, INDIRANAGAR,
BENGALURU - 560 075.

...PETITIONERS

(BY SMT. PRIYA KALE, ADVOCATE FOR M/S DUA ASSOCIATES)

Digitally signed by
VEDAVATHI A K
Location: High
Court of Karnataka

AND:

1. STATE BY
BANGALORE METROPOLITAN TASK,
FORCE POLICE STATION,
BBMP MAIN BUILDING,
1ST FLOOR, N. R. ROAD,
BENGALURU - 560 002.

2. STATE OF KARNATAKA
DEPARTMENT OF REVENUE,
VIDHANA SOUDHA,
DR. AMBEDKAR VEEDHI,
BENGALURU - 560 001.

REPRESENTED BY PRINCIPAL SECRETARY,
REVENUE DEPARTMENT.

3. THE TAHSILDAR
BANGALORE EAST TALUK,
BENGALURU - 560 010.

...RESPONDENTS

(BY SMT. RASHMI PATEL, HCGP FOR R1 TO R3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO i. QUASH THE COMPLAINT DATED 24.03.2020 (VIDE ANNEXURE-B) AND CONSEQUENTLY THE FIR DATED 24.03.2020 (VIDE ANNEXURE A) REGISTERED BY THE BANGALORE METROPOLITAN TASK FORCE POLICE STATION (i.e. THE 1ST RESPONDENT POLICE STATION) IN CR.NO.02/2020 PENDING BEFORE THE C.M.M., BENGALURU FOR THE OFFENCE P/U/S 192-A OF KARNATAKA LAND REVENUE ACT, 1964 AND SECTION 436A OF KARNATAKA MUNICIPAL CORPORATIONS ACT, 1976.

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This writ petition is filed by the petitioner-accused Nos.1 to 3 under Articles 226 and 227 of the Constitution of India read with Section 482 of Cr.P.C. for quashing FIR in Crime No.2/2020 registered by the Bangalore Metropolitan Task Force Police Station, now pending on the file of the Chief Metropolitan Magistrate, Bengaluru, for the offence punishable under Section 192-A of Karnataka Land Revenue Act, 1964 (hereinafter referred to as 'KLR Act'), and Section 436A of the Karnataka Municipal Corporation Act, 1976.

2. Heard the learned counsel appearing for the petitioners, learned High Court Government Pleader for respondents.

3. The case of prosecution is that on the complaint filed by the Tahsildar of K.R. Puram, Bangalore East Taluk, the Bangalore Metropolitan Task Force Police Station registered the case against the petitioners. It is alleged that the property bearing Sy. No.2/2 is situated at Manavarthekaval, Binnamangala Post, K.R. puram Hobli, Bangalore East, and out of 3 acres 24 guntas in the said survey number, 0.13 guntas is

B-Kharab land. Out of 1 acres $6^{1}/_{4}$ guntas in Sy. No.7/1B, 7/1A3, 7/1A2, 7/1A1, there are 4 guntas of B-Kharab land, and out of 5 acres $1^{1}/_{4}$ guntas, there are 17 guntas of B-Kharab land. It is further alleged that, in order to preserve the said land, the proposed land should be cancelled and the order of conversion of revenue land should be abandoned. After the order of conversion obtained, the petitioners said to be constructed a compound and commercial building illegally and also said to be encroached the BBMP public road as well as by the land. Therefore, he has requested the Deputy Commissioner to cancel the conversion order and also the land grant order. The complainant also obtained report from the authorities where the petitioners said to be obtained conversion order. Therefore, filed a complaint for taking action against the petitioners. The police filed FIR on the complaint, which is under challenge in this writ petition.

4. Learned counsel for the petitioners has contended that before registering FIR under Section 192-A of the KLR Act and before taking any action against the petitioners, no notice has been issued by the Tahsildar. It is further contended that a request was made by the complainant to the Deputy

Commissioner to cancel the land, grant order and also the conversion order, which was challenged in Writ Petition No.8972/2020. The Co-ordinate Bench of this Court allowed said writ petition on 10.09.2020 by setting aside the order of Deputy Commissioner. The said order of the Co-ordinate Bench was challenged by the State in W.A. No.552/2020, wherein the Division Bench of this Court has dismissed the appeal 19.04.2021 and the order of the Division Bench has attained finality. The Division Bench has not given the liberty to the State for taking further fresh action for cancellation of the grant of the land. Therefore, continuation of proceedings is abuse of process of law, and therefore, prayed to allow the petition.

5. Per contra, learned High Court Government Pleader has objected the petition and prayed to dismiss the petition. It is contended that though the writ appeal was dismissed, the State has filed an SLP before the Hon'ble Supreme Court and therefore, if the State succeeds in the said case, permission may be granted to revive the case. The submission of the learned High Court Government Pleader is placed on record.

6. Having heard the learned counsel appearing for the parties, perused the records.

7. It is the case of the prosecution that the land in question was said to be granted in the year 1970 and the conversion order was also obtained by the petitioners. Subsequently, the respondent declared that the said land was the B-Kharab land and the government was required to take back the land. Therefore, the Tahsildar requested the Deputy Commissioner to cancel the conversion orders and also the grant order. Simultaneously, before cancelling the conversion order, the Tahsildar sent a complaint to BMTF. Prior to registering the FIR, there was no notice issued by the Tahsildar under Section 192-A of the KLR Act. In this regard, learned counsel for the petitioners has relied upon the judgment of the this Court in the case of ***SRI PARAMESHWARAPPA Vs. THE STATE OF KARNATAKA AND OTHERS*** in Writ Petition No.18483/2022 decided on 08.12.2022, wherein this Court has taken the contention by relying upon the earlier judgment of the Co-ordinate Bench of this Court passed in the case of ***Shiva Kumar Vs. State of Karnataka and another*** in W.P. No.49183/2012 decided on 24.02.2015 wherein the Co-

ordinate Bench has held that before initiating any proceedings or registering the FIR, notice has to be issued calling for explanation of the petitioners. The Co-ordinate Bench has quashed the proceedings in the said case. In view of the aforesaid order of the Co-ordinate Bench of this Court, initiating the proceedings without issuing notice to the petitioners, is abuse of process of law.

8. Apart from that, as per the contention of learned counsel for the petitioners, the Tahsildar requested the Deputy Commissioner for initiating the proceedings and cancelling the grant order and also the conversion order. The same was challenged by the petitioner in the writ petition before the Co-ordinate Bench in Writ Petition No.8972/2020 which came to be allowed on 10.09.2020 by setting aside the order of the Deputy Commissioner. The said order was challenged by the State in Writ Appeal No.552/2020 before the Division Bench. The Division Bench of this Court has upheld the order of the Co-ordinate Bench on 19.04.2021 and dismissed the said appeal. Though the learned High Court Government Pleader submits that, if the State succeeds in SLP, they may be permitted to revive the order as no liberty was granted by the Division

Bench for taking a fresh course of action, but, it has been clearly held by the Division Bench that after 45 years of the grant order, initiating the proceedings is not correct and hence, dismissed the appeal and also, no liberty was granted to the State for initiating the action. Further, the learned High Court Government Pleader has also not produced any record to show that the State has preferred the SLP before the Hon'ble Supreme Court. Such being the case, if the State has preferred an SLP and if the Hon'ble Supreme Court set asides the order of the Division Bench, the order will be revived after issuing the notice and the State can take action against the petitioners. Therefore, taking action against the petitioners is nothing but the abuse of process of law.

9. Therefore, the petition is allowed. The FIR in Crime No.2/2020 registered by the Bangalore Metropolitan Task Force Police Station, now pending on the file of the Chief Metropolitan Magistrate, Bengaluru, is hereby quashed.

Sd/-
JUDGE

CS
List No.: 1 Sl No.: 25
CT:SK

ANNEXURE -25

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ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಉಪವಿಭಾಗಾಧಿಕಾರಿಯವರ ಕಾರ್ಯಾಲಯ, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್. ಪುರಂ, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ

ಸಂ: ವಿಸಾ.ಸ.ಆಯೋ/ಸ.ಆಯೋ/7/2/ 7/2020-21 ದಿನಾಂಕ :

ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಅಧಿನಿಯಮದ 1964ರ ಪ್ರಕರಣ 94 ಮತ್ತು 104ರಡಿ ನೋಟೀಸ್

ಶ್ರೀ/ಶ್ರೀಮತಿ ವಿಜಯ್ ಕೇಖಿರ್ ಬಿನ್ ಬಾಚ್ಚ್ ತಂಗಯ್ಯ ಮತ್ತು ಚೈತ್ರ ಪ್ರಭಾಕರ್ ಬಿನ್ ಬಾರ್ಜ್ ತಂಗಯ್ಯ ಆದ ನಮಗೆ ಈ ಕೆಳಕಂಡ ತೀರ್ಮಾನವನ್ನು ತಿಳಿಯಪಡಿಸುವುದೇನೆಂದರೆ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿಯ, ಬಿನ್ನಮಂಗಲ ಮು.ಕಾ ಸ.ನಂ 7/1ಎ ಮತ್ತು 2, 2/1, ರಲ್ಲಿ 0-24 ಇದ್ದು, 0-2 ಗುಂಟೆ ಬಿ ಖರಾಬು ಸರ್ಕಾರಿ ಜಮೀನನ್ನು ನೀವು ಒತ್ತುವರಿ ಮಾಡಿಕೊಳ್ಳಲು ಕಂದಾಯಾಧಿಕಾರಿಗಳಿಗೆ/ಮೇಜರಿಟಿದಾರರ ಪರವಾಗಿ ದೃಢಪಟ್ಟಿರುತ್ತದೆ.

ಮಾನ್ಯ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ, ರಿಟ್ ಅರ್ಜಿ ನಂ: 3969/2017 ಮತ್ತು ಇತರೆ ರಿಟ್ ಅರ್ಜಿಗಳನ್ನು ಒಟ್ಟಿಗೆ ತೀರ್ಪು ಮಾಡಿದ ಆದೇಶದಲ್ಲಿ ಸರ್ಕಾರಿ ಜಮೀನು ಒತ್ತುವರಿದಾರರ ವಿರುದ್ಧ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ ಕಲಂ 192(ಎ)ರಂತೆ ಕ್ರಮ ಜರುಗಿಸುವ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದ ಆದೇಶವನ್ನು ಪರಿಪಾಲಿಸಿದವರಿಗೆ ಒಂದು ಅವಕಾಶ ನೀಡಲು ನಿರ್ದೇಶಿಸಿರುತ್ತದೆ.

ಆದುದರಿಂದ, ಮೇಲೆ ಪ್ರಸ್ತಾಪಿಸಿದ ಅಧೀನದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಮತ್ತು ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಅಧಿನಿಯಮದ 1964ರ ಕಲಂ 94 ಮತ್ತು 104ರಡಿ ನಿರ್ದೇಶಿಸಿದಂತೆ, ಈ ನೋಟೀಸನ್ನು ನಿಮಗೆ ನೀಡಲಾಗಿದೆ.

1. ಈ ನೋಟೀಸ್ ಕಲುಪಿದ 07 ದಿವಸಗಳೊಳಗೆ ನೀವು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಬಿನ್ನಮಂಗಲ ಮು.ಕಾ ಸ.ನಂ 7/1ಎ ಮತ್ತು 2, 2/1, ರಲ್ಲಿ 0-24 ಇದ್ದು, 0-2 ಗುಂಟೆ ಬಿ ಖರಾಬು ಸರ್ಕಾರಿ ಜಮೀನನ್ನು ಅನಧಿಕೃತವಾಗಿ ಮಾಡಿಕೊಂಡಿರುವ ಒತ್ತುವರಿಯನ್ನು ತೆರವುಗೊಳಿಸಿ, ಜಮೀನನ್ನು ಸರ್ಕಾರದ ವಶಕ್ಕೆ ನೀಡುವುದು ಇಲ್ಲವಾದಲ್ಲಿ ಈ ಕಾರ್ಯಾಲಯದ ವತಿಯಿಂದ ಒತ್ತುವರಿಯನ್ನು ತೆರವುಗೊಳಿಸಲು ಕ್ರಮ ಜರುಗಿಸಿ ತೆರವುಗೊಳಿಸಲು ತಗಲುವ ವೆಚ್ಚವನ್ನು ನಿಮ್ಮಿಂದ ಭೂ ಕಂದಾಯ ಬಾಕಿಯಂತೆ ವಸೂಲು ಮಾಡಲಾಗುವುದು.

2. ಮೇಲ್ಕಂಡ ಬಿನ್ನಮಂಗಲ ಮು.ಕಾ ಸ.ನಂ 7/1ಎ ಮತ್ತು 2, 2/1, ರಲ್ಲಿ 0-24 ಇದ್ದು, 0-2 ಗುಂಟೆ ಬಿ ಖರಾಬು ಸರ್ಕಾರಿ ಜಮೀನನ್ನು ಅನಧಿಕೃತವಾಗಿ ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವ ನಿಮ್ಮ ವಿರುದ್ಧ ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964ರ ಕಲಂ 192(ಎ)ರಂತೆ ಕ್ರಿಮಿನಲ್ ಮೊಕದ್ದಮೆಯನ್ನು ಏಕೆ ದಾಖಲಿಸಬಾರದೆಂಬುದಕ್ಕೆ ನಿಮ್ಮ ಸಮಜಾಯಿಷಿ ನೀಡುವುದು.

ಈ ಬಗ್ಗೆ ನೀವು ಯಾವುದೇ ದಾಖಲೆಯನ್ನು ನಿಡಬಯಸಿದ್ದಲ್ಲಿ ಅಥವಾ ತಮ್ಮ ಅಹವಾಲನ್ನು ಮಂಡ್ಯಾಗಿ ಅರಿಕೆ ಮಾಡಬಯಸಿದ್ದಲ್ಲಿ ದಿನಾಂಕ: 12/12/20 ರಂದು ಅಪರಾಹ್ನ 3-00 ಗಂಟೆಗೆ ಈ ಖಚೇರಿಗೆ ತಮ್ಮೆಲ್ಲ ಹಾಜರಾಗಿ ಸಲ್ಲಿಸಬಹುದಾಗಿರುತ್ತದೆ.

ಉಪವಿಭಾಗಾಧಿಕಾರಿ
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು
ಕೆ.ಆರ್.ಪುರ

ರವರಿಗೆ,
1 ವಿಜಯ್ ಕೇಖಿರ್ ಬಿನ್ ಬಾಚ್ಚ್ ತಂಗಯ್ಯ
2 ಚೈತ್ರ ಪ್ರಭಾಕರ್ ಬಿನ್ ಬಾರ್ಜ್ ತಂಗಯ್ಯ
ನಂ. 6 ಕಮಿಷನರೇಟ್ ರಸ್ತೆ ಬಾಣಸವಾಡಿ ಪೋಸ್ಟ್,
ಬೆಂಗಳೂರು - 560025.

183 TRANSLATED COPY OF
Annexure-25

Government of Karnataka

Office of the Tahsildar, Bangalore East Taluk, K.R. Puram, Bangalore Urban District

No: NCR/CR/2020-21 Date:

Notice issued under Sections 94 and 104 of the Karnataka Land Revenue Act, 1964

To, Sri/Smt. Vijay Shekhar Bin George Tangayya and Chaitra Prabhakar Bin George Tangayya, this is to inform you that in Bangalore East Taluk, K.R. Puram Hobli, Binnamangala M.K. Survey Nos. 7/1A and 2, 2/1, there is 0-24 guntas of land, out of which 02 guntas is 'B' kharab land. The Revenue Officers/Surveyors' report confirms that you have encroached upon the government land.

The Honorable Karnataka High Court, in its order in Writ Petition No. 3969/2007 and other combined writ petitions, has directed to give an opportunity to the concerned before taking action under Section 192(a) of the Karnataka Land Revenue Act against the encroachers of government land. Therefore, in view of the above-mentioned order and as per Sections 94 and 104 of the Karnataka Land Revenue Act, 1964, this notice is issued to you:

1. Within 07 days of receiving this notice, you are required to vacate the unauthorized encroachment on government land in Bangalore East Taluk, Binnamangala M.K. Survey Nos. 7/1A and 2, 2/1, with 0-24 guntas of land, out of which 02 guntas is 'B' kharab land. If

you fail to do so, this office will take steps to remove the encroachment, and the cost of removal will be recovered from you as land revenue arrears.

2. Explain why a criminal case should not be filed against you under Section 192(a) of the Karnataka Land Revenue Act, 1964, for unauthorized encroachment on government land in Binnamangala M.K. Survey Nos. 7/1A and 2, 2/1, with 0-24 guntas of land, out of which 02 guntas is 'B' kharab land.

If you wish to submit any documents or make a personal representation, you may appear before this authority on the date: 24-2 at 3:00 PM.

Tahsildar

Bangalore East Taluk

K.R. Puram

To

1. Vijay Shekhar Bin George Tangayya
2. Chaitra Prabhakar Bin George Tangayya

No. 6, Commissionerate Road, Richmond Town,
Bangalore - 560025.

185 ANNEXURE -26

IN THE COURT OF THE TAHSILDAR
BENGALURU EAST TALUK AT K.R.PURAM, BENGALURU.

Before this the 13 th day of July 2020.

Present: Thejas Kumar. K.A.S
Tahsildar
Bengaluru East Taluk.

NCR/CR/01/2020-21

Petitioner : The State of Karnataka.

Respondents :
1) G.Chitra Poornima
W/o George Thangaiah,

2) Vijayashekar Thangaiah
S/o George Thangaiah,

3) Chaitra Prabhakar
D/o George Thangaiah,
All are r/at No.6,
Commissariat road,
Bengaluru 560 025.

The above proceedings has been initiated against the respondents herein by invoking provision of section 94 and 104 of Karnataka Land Revenue Act (herein after called as Act) regarding initiation of necessary action under section 192(A) of the Act, for encroachment of Kharab land in Sy. No.7/1a, Sy. No.2 and Sy. No. 2/1 ofBinnamangala Manavarthe Kaval, Bengaluru East Taluk.

Accordingly notice was issued calling upon the respondents to show cause.

In response to the notice the respondents herein by filing the statement of objection contended that, property bearing Sy. No.2, Sy. No.7/1 measuring to an extent of 04 Acres 0.07 Guntas of Binnamangala Manavarthe Kaval was purchased by late M.George Thangaiah S/o Mark Thangaiah, who is husband of the 1st respondent and father of the respondents No. 2 and 3 herein and he was in possession and enjoyment of the same alongwith certain adjoining lands till the time of his demise on 24.12.2019. In furtherance to application made by late M.George Thangaiah seeking conversion of an extent of 03 Acres 0.33 Guntas in Sy. No.2/2 and Sy. No.7/1b and Sy. No.7/1a measuring 0.32 ½ Guntas and Sy. No.2/1 measuring 0.11 ½ Guntas, before the Deputy Commissioner from Agriculture to Non-Agriculture purpose and as per Official Memorandum dated 03.04.1970, Official Memorandum dated 03.07.1971 and dated 03.04.1970, Conversion Sanction Certificates dated 05.09.1970 and 22.09.1971 and the Official Memorandum dated 03.07.1971. Thereafter he made an application to the Deputy Commissioner to grant him the adjacent Kharab land measuring 0.13 Guntas comprised in Sy. No.2/2. measuring 0.01 Gunta, in Sy. No.7/1a and measuring 0.02 Guntas in Sy. No.7/1b for non-agricultural use. In

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this regard the Tahasildar, Bengaluru South Taluk vide his letter dated 30.04.1975 bearing reference No.ALN/CR/22/1974-75 recommended for disposal of the said grant lands, since the same was no longer required for general public. In view of the aforesaid recommendation the Deputy Commissioner, vide O.M. dated 26.12.1975 in No.B-Dis/LND(3)62/1975-76 appropriate the 0.16 Guntas of land in above said survey numbers and granted the same in favour of Mr. Jeorge Thangaiah. To that effect he has paid the upset price of Rs.4000/-. Thereafter the Tahasildar issued a conversation certificate for the same on 20.01.1976 in No.ALN/CR/22/ 119/75-76.

In view of the aforesaid grant of the lands to late Mr. George Thangaiah and conversion certificate dated 20.01.1976 there doesn't exist any Kharab land in the property. The 0.13 Guntas Kharab land in Sy. No.2/2 0-1 Gunta in Sy. No.7/1a and 0-02 Guntas in Sy. No.7/1b situated at Binnamangala Manavarthe Kaval seized to be Kharab land, therefore question of encroachment of Government Kharab land within the property doesn't arised. Further, after lapse of more than 45 years from the date of which grant of lands the said orders cannot be interfere any manner by this Authority. In addition, the B.D.A. has sanction the modified development plan with respect to the existing building vide plan sanction dated 16.11.1977.

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Further contended that, the property together with adjacent property is already developed in to a commercial complex and that B.D.A. and B.B.M.P. have sanctioned the development plan and building plan in respect to the proposed construction of a commercial building for shopping mall at the property and the adjacent property owned by M.George Thangaiah the development plan sanction do not recognize any Kharab land in the property. Notwithstanding aforesaid facts which clearly demonstrate that there is no Kharab land at the property. Further contended that, this Authority as per order dated 10.06.2016 withdraw the similar type of show cause notice, after being satisfied with the clarification provided, it is not available to very same authority to issue one more show cause notice alleging that there is encroachment of kharab land. Therefore all further proceedings in this regard would be barred by the principles of rest judicator and estoppels and the show cause notice is liable to be dropped without any further consideration.

Regarding the allegation in notice now being respond to this Authority is already registered a complaint against the respondents before the Bengaluru Metropolitan Task Force Police Station (BMTF) in Crime No. 2/2020. Further challenging the FIR they have preferred W.P. No.8073/2020 before the Hon'ble High Court of Karnataka which is pending consideration, wherein this Authority also party for

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said proceeding. Further the said petition the further investigation in relation to Crime No. 2/2020 stand stayed.

Further by relaying upon the judgments reported in 1997(6) SCC 71, 1999-(5) SCC 590, 2003(2) SCC 355 and ILR 1998 KAR 4000 contended that, the proceedings is barred by limitation. Further it is amounts to rest judicator.

Heard the arguments and perused the material documents available on record.

In the notice dated 12.06.2020 this authority calling upon the respondents to submit the reasons why should criminal prosecution should not be initiated by invoking section 192 (A) of Karnataka Land Revenue Act regarding encroachment of Kharab land in Sy. No.7/1a, 2/1 to an extent of 0-02 Guntas 'B' Kharab land.

The respondents replied to said notice and they have filed their detailed reply as well as return arguments contending that, property bearing Sy. No.2, Sy. No.7/1 measuring to an extent of 04 Acres 0.07 Guntas of Binnamangala Manavarthe Kaval was purchased by late M.George Thangaiah S/o Mark Thangaiah who is husband of the 1st respondent and father of the respondents No. 2 and 3 herein and he was in possession and enjoyment of the same alongwith certain adjoining lands till the time of his demise on 24.12.2019. In

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furtherance to application made by late M.George Thangaiah seeking conversion of an extent of 03 Acres 0.33 Guntas in Sy. No.2/2 and Sy. No.7/1b and Sy. No.7/1a measuring 0.32 ½ Guntas and Sy. No.2/1 measuring 0.11 ½ Guntas, before the Deputy Commissioner from Agriculture to Non-Agriculture purpose and as per Official Memorandum dated 03.04.1970, Official Memorandum dated 03.07.1971 and dated 03.04.1970, Conversion Sanction Certificates dated 05.09.1970 and 22.09.1971 and the Official Memorandum dated 03.07.1971. Thereafter he made an application to the Deputy Commissioner to grant him the adjacent Kharab land measuring 0.13 Guntas comprised in Sy. No.2/2, measuring 0.01 Gunta, in Sy. No.7/1a and measuring 0.02 Guntas in Sy. No.7/1b for non-agricultural use. In this regard the Tahasildar, Bengaluru South Taluk vide his letter dated 30.04.1975 bearing reference No.ALN/CR/22/1974-75 recommended for disposal of the said grant lands, since the same was no longer required for general public. In view of the aforesaid recommendation the Deputy Commissioner, vide O.M. dated 26.12.1975 in No.B-Dis/LND(3)62/1975-76 appropriate the 0.16 Guntas of land in above said survey numbers and granted the same in favour of M.George Thangaiah. To that effect he has paid the upset price of Rs.4000/-. Thereafter the

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Tahasildar issued a conversation certificate for the same on 20.01.1976 in No.ALN/CR/22/ 119/75-76 and etc.,

However, in the reply has been filed by the respondents there is no reference made in respect of Sy. No.7/1a and Sy. No.2/1. Further the sketch prepared by the Taluk Survey in respect of Sy. No.2/1a, 2/2, 7/1b, 1/a2, 1/1a1a3 clearly indicates that, as per the original survey records in Sy. No.2/1a there is a katte to an extent of 0.20 Guntas 0-01 Gunta for WELL, 0-05 Gunta for KORAKALU, 0-09 Gunta for SARAVU. And as per the present situation the buildings are construction therein. Which clearly indicates that the respondents have encroached portion of 'B' Kharab land.

In respect of the above said encroachment in Sy. No. 2/1a the respondents have not replied the notice with material documents on the other hand by referring the Sy. No.2/2, 7/1b, 7/1a and 2/1 contended that, they have not encroached any portion of land. But said explanation clearly indicates that, they have shield their encroachment in Sy. No.2/1a.

Another contention of the respondents is that, this authority issued similar type of notice in No. NCR/CR/51/2015-16 and as per the Order dated 10.06.2016 dropped the proceedings. However, by perusing the said order, it shows that, the said proceedings was

initiated only in respect of Sy. No.2/2 of Binnamangala Manavarthe Kaval. Therefore there is no force in the contention of the respondents that, the present proceedings is hit by res-judicata.

The Mahazar conducted by the Revenue Inspector and the Sketch prepared by the Taluk Surveyor clearly indicates that, in Sy. No.7/1a, 2/1 and Sy. No.2 having total extent of 0.24 Guntas including 0.02 Guntas Kharab land and by utilizing the said 0-02 Guntas of Kharab land the respondents have constructed the building which clearly substantiate that, they have encroached the 'B' Kharab land.

This notice has been issued based on the recent information available, after getting the report from the surveyor. Therefore, question of limitation as urged by the respondents doesn't arise.

The respondents have contended that, this authority has no jurisdiction under section 94 and 104 of the Act to issue notice. However, under the said provisions this authority have very much jurisdiction to examine the encroachment of any Government land and entitled for take further proceedings. Further the order of the Deputy Commissioner dated 26.12.1975 and conversation certificate dated 20.01.1976 will not come to the aid to the respondents regarding encroachment of the kharab land. Even they have not

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produced the original documents to substantiate the genuineness of the order / grant.

For the above reasons I am of the opinion that, prima facie proves that the respondents have encroached 0.02 Guntas of Kharab land in subject survey number and it is a fit case to refer the matter to BMTF for necessary and further steps to prosecute the respondents by invoking provision of section 192(A) of Karnataka Land Revenue Act.

Hence I proceed to pass the following

ORDER

As the respondents have encroached 0.02 Guntas of Kharab land in subject survey number the matter has been referred to BMTF (Bengaluru Metropolitan Task Force) for necessary and further actions against the respondents herein.

(Order pronounced in the open court on this 03 day of July 2020).

N.TEJESH KUMAR.KAS
TAHASHILDAR
BENGALURU EAST TALUK,
K.R.PURAM, BENGALURU.

ANNEXURE –27

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ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಪೊಲೀಸ್ ಉಪಾಧೀಕ್ಷಕರ ಕಾರ್ಯಾಲಯ, ಬೆಂಗಳೂರು ಪೂರ್ವ ಉಪವಿಭಾಗ, ಕೆ.ಆರ್. ಪುರಂ, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ

ಸಂಖ್ಯೆ: ಘಟಸಿ/ಪೂರ್ವ/ಬಿ. / 2020-21. ದಿನಾಂಕ : 05-07-2020.

ರವರಿಗೆ,
ಜಂಟಿನಿರ್ದೇಶಕರು ಆರಕ್ಷಕ ಮಹಾ ನಿರ್ದೇಶಕರು, (ಎ.ಡಿ.ಜಿ.ಪಿ)
ಬಿಬಿಎಂಪಿ ಮುಖ್ಯ ಕಛೇರಿ ಕಟ್ಟಡ
ಎನ್.ಆರ್.ಸ್ಕ್ವೇರ್
ಬೆಂಗಳೂರು

ಮಾನ್ಯರೆ,

ವಿಷಯ:– ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ ಬಿಸ್ನಮಂಗಲ ಮುನಿಪರ್ಮೆ ಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ 7/1ಎ, ಮತ್ತು 2, 2/1ಎರಲ್ಲಿ 0-24 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣವಿರುವ, ಅದರಲ್ಲಿ 0-02 ಗುಂಟೆ 'ಬಿ' ಖರಾಬು ಜಮೀನನ್ನು ಅಕ್ರಮ ಒಕ್ಕುಪರಿಯಮ್ಮ ಕರುವುಗೊಳಿಸುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ:– 1. ಈ ಕಛೇರಿಯ ಸ್ಥಳಪಟಗಳ ದಿನಾಂಕ: 05-06-2020
2. ರಾಜಸ್ವ ನಿರೀಕ್ಷಕರುಗಳ ಮಹಜರ್ ವರದಿ ದಿನಾಂಕ: 29-06-2020
3. ಈ ಕಛೇರಿ ಪ್ರಾಥಮಿಕ ವಿಚಾರಣೆಯ ಅಂತಿಮ ಆದೇಶ ದಿನಾಂಕ: 03-07-2020

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ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರ ಹೋಬಳಿ ಬಿಸ್ನಮಂಗಲ ಮುನಿಪರ್ಮೆ ಕಾವಲ್ ಗ್ರಾಮದ ಸ.ನಂ 7/1ಎ, ಮತ್ತು 2, 2/1ಎ ರಲ್ಲಿ 0-24 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣವಿರುವ, ಅದರಲ್ಲಿ 0-02 ಗುಂಟೆ 'ಬಿ' ಖರಾಬಿರುತ್ತದೆ. ಉಲ್ಲೇಖ (1)ರಂತೆ ಈ ಕಛೇರಿಯಿಂದ ಒಕ್ಕುಪರಿವಾರದವರಿಗೆ ನೋಟಿಸ್ ಜಾರಿ ಮಾಡಲಾಗಿದ್ದು, ಅದರಂತೆ 12-06-2020 ರಂದು ಒಕ್ಕುಪರಿವಾರದವರು ಹಾಜರಾಗಿ ಜೆರಾಕ್ಸ್ ಪ್ರತಿಗಳನ್ನು ಸಲ್ಲಿಸಿದ್ದರು. ಅಸಲು ದಾಖಲೆಗಳನ್ನು ಸಲ್ಲಿಸಿರುವುದಿಲ್ಲ ಸದರಿ ದಾಖಲೆಗಳನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ, ದಾಖಲೆಗಳು ಪ್ರಕೃತಿಯಾಗಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ. ನಂತರ ಸ್ಥಳಕ್ಕೆ ಭೇಟಿ ನೀಡಿ ಗ್ರಾಮಸ್ಥರ ಸಮಕ್ಷಮದಲ್ಲಿ ಪಂಚನಾಮೆ (ಪರಿಶೀಲನಾ) ಮಾಡಿರುತ್ತೇವೆ. ಅದರಲ್ಲಿ ಒಕ್ಕುಪರಿ ಮಾಡಿರುವುದು ಕಂಡುಬಂದಿದ್ದು, ಈ ಬಗ್ಗೆ ದಿನಾಂಕ: 03-07-2020 ರಂದು ಅಂತಿಮ ಆದೇಶ ಹೊರಡಿಸಲಾಗಿರುತ್ತದೆ.

ಈ ಮೇಲೆ ಹೇಳಲಾಗಿರುವ ಸರ್ವೆ ನಂಬರ್‌ನ ಮೂಲೇಕಲಾದ 1. ಚಿತ್ರ ಪೂರ್ಣಿಮಾ ಕೋಂ ಜಾರ್ಜ್ ತರಗಯ್ಯ 2. ವಿಜಯ್ ಲೇಔಟ್ ಭೂಮಿ ಮಾಲೀಕರು ಜಾರ್ಜ್ ತರಗಯ್ಯ 3. ಬೈಜು ಪ್ರಭಾಕರ್ ಜಿನ್ ಜಾರ್ಜ್ ತರಗಯ್ಯ ಎಂಬುವವರು ಸದರಿ ಖರಾಬು ಜಮೀನಿನಲ್ಲಿ ಅಕ್ರಮವಾಗಿ ಕಾಂಪೌಂಡ್ ಮತ್ತು ಶಾಶ್ವತ ಕಟ್ಟಡವನ್ನು ಅನಧಿಕೃತವಾಗಿ ಶೆಡ್ ಹಾಕಿದ್ದು ಅಲ್ಲದೆ ಬೆಟ್ಟಳ್ಳಿ ಸಾರ್ವಜನಿಕ ರಸ್ತೆಯನ್ನು ಹಾಗೂ ಕಾಲುದಾರಿ ಸಹ ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.

–2)

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-2-

ನಕಲಿ ದಾಖಲೆಗಳ ಆಧಾರದ ಮೇಲೆ ಪರ್ಯಾರಿ ಪಟ್ಟಾಭಿ ಜಮೀನನ್ನು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡು ಅಕ್ರಮವಾಗಿ ಕಟ್ಟಡವನ್ನು ನಿರ್ಮಿಸಿ ಮತ್ತು ಸಾರ್ವಜನಿಕ ರಸ್ತೆಯನ್ನು ಒತ್ತುವರಿ ಮಾಡಿರುವುದು ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ಕಾಯ್ದೆ 1964 ಮತ್ತು ಇನ್ನಿತರೆ ಕಾಯ್ದೆಗಳಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾಗಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ಮೇಲ್ಕಂಡ ಒತ್ತುವರಿದಾರರ ವಿರುದ್ಧ ಕ್ರಿಮಿನಲ್ ಮೊಕದ್ದಮೆ ಹಾಕಿಸಿಕೊಂಡು ಕಾನೂನು ರೀತ್ಯಾ ಕ್ರಮ ಕೈಗೊಳ್ಳುವಂತೆ ಕೋರಿದೆ.

ತಮ್ಮ ನಂಬುಗೆಯ

ಜಂಟಿ ಆಯುಕ್ತರು ಮತ್ತು ಸಹಾಯಕ ಕಂದಾಯ ಅಧಿಕಾರಿ

ಅನುಪಾಲನೆ ಪತ್ರ/ಪಾ/ಪಿಟಿಸಿಎಲ್/ಕೆಎಲ್ಆರ್/ಬಿಬಿಎಂಪಿ/ಬೆಂ.ಉ.ಜಿ/ಸಂ/2020-21,

ಪೀಠಿಕೆಯಾದುದರಿಂದ ಮೇಲಿನ ಪ್ರಕಾರ ಸಿದ್ಧಪಡಿಸಿ ಕೆಳಕಂಡಂತೆ ಪೂರ್ಣಗೊಳಿಸಿ

ಕಳುಹಿಸಲು, ಪಾಲನೆ ಮಾಡಿದ ದಿನಾಂಕ/ಇಂದಿನ, ಆದೇಶ 192(ಎ) KLR ಕಾಯ್ದೆ, 1964, ಕಲಂ:

436(ಎ) KMC Act, 1976 ಕಲಂ 465, 466, 468, 480 ಮತ್ತು ಇತರೆ ಸಂಬಂಧಪಟ್ಟ ಕಾಯ್ದೆ/ಕಾನೂನುಗಳ

ಅಡಿ ಪ್ರಕರಣವನ್ನು ದಾಖಲಿಸಲಾಗಿದೆ.

ಸಹಾಯಕ ಆಯುಕ್ತರು

COURT OF THE CHIEF METROPOLITAN MAGISTRATE

196 TRANSLATED copy of Annexure - 27

Government of Karnataka

Office of the Tahsildar, Bangalore East Taluk, K.R. Puram, Bangalore Urban District

No: NCR/CR 01/ 2020-21 Date: 09-07-2020

To,

Additional Director General of Police, (ADGP)
BBMP Main Office Building
N.R. Circle
Bangalore

Honorable Sir,

Subject: Regarding the removal of unauthorized encroachments on 0-24 guntas of land in Survey Nos. 7/1A, and 2, 2/5 of Binnamangala Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk.

Reference:

1. This office notice dated: 17-6-202
2. Revenue Inspector's report dated: 29-06-2020
3. This office court's final order dated: 03-07-2020

With reference to the above subject, in Bangalore East Taluk, K.R. Puram Hobli, Binnamangala Manavarthe Kaval Village, Survey Nos. 7/1A, and 2, 2/4A, there is 0-24 guntas of land, out of which 0-02 guntas is 'B' kharab land. As per reference (1), this office had issued

a notice to the encroachers, and accordingly, on 12-06-2020, the encroachers appeared and submitted xerox copies of the documents but did not submit the original documents. Upon examining the records, it was found that the documents were forged. Subsequently, a spot inspection was conducted in the presence of the villagers, and it was found that the land was encroached upon. Therefore, the final order was issued on 03-07-2020.

The owners of the aforementioned survey numbers, 1. Chitra Poornima Kom George Tangayya, 2. Vijay Shekhar Bin George Tangayya, 3. Chaitra Prabhakar Bin George Tangayya, have illegally constructed a compound and commercial building on the said 'B' kharab land, and have also encroached upon the BBMP public road and footpath. It has been found that they have encroached upon the government kharab land and constructed buildings illegally based on fake documents, which is a violation of the Karnataka Land Revenue Act, 1964, and other laws. Therefore, criminal cases should be filed against the above-mentioned encroachers under the relevant laws, and legal action should be taken.

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ANNEXURE 28

FIRST INFORMATION REPORT

(Under Section 154 Cr.pc)

[Before the Honorable C M M Court, Bengaluru City]

1. Crime No: 65/2020 Police Station: Bengaluru Metropolitan Task Force

FIR Date: 24-07-2020 District : Bengaluru City

Type : Typed State : Karnataka

2. Act and Sections: 192 (A) KLR Act,1964, 436(A) KMC Act 1976, 465, 467, 468, 420,471, 120 (B) R/W 34 IPC

3. (a) Occurrence of offence: From: Prior to 09-07-2020

Time from: 00:00:00 Hrs. Day:

(b) Information received at P.S : Date: 24-07-2020 12-30 hrs

(c) Type of Information: Typed

(d) Reasons for Delay in reporting by the Complainant/Informant:

4. Place of occurrence: Survey No. 7/1(A) & 2, 3/1 (A) Manavarathe kaval, village, K.R.puram hobali, Bangalore East Taluk. Bangalore.

(a) Direction and Distance from Police Station: approximate 20 km

(b) In Case outside limits of this police Station then Name of P.S: Dist.

5. Complainant/Informant.

(a) Name: Srt. N. Thejas Kumar (b) Father Name:

(c) Age : (d) Nationality: Indian

(e) Passport No: (f) Occupation: Thashildhar

(g) Mobile No: 7899899414

(h) Address: Thashildhar K.R.puram, Bangalore East Taluk. Bangalore.

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6. Details of Known/ Suspected/Unknown Accused with full Particulars:

1.Chithra purnima w/o George Thangaiah
2.Vijay shekar S/o George Thangaiah
3.chithra prabhakar S/o George Thangaiah

7. Particulars of Properties stolen/ involved : Mariyarathe kaval, Survey No 7/1, (A) & 2,,2/1 (A),

8. Total Value of Properties Stolen/involved:

9. Inquest reports/U.D Case no if any:

10. Brief facts: Complaint attached

ಈ ಪ್ರಕರಣದ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶವೇನೆಂದರೆ ಚಂಗಪ್ಪನು ಪೂರ್ವಜ ಜಾಲಪ್ಪನು, ಕೆಳಗಿನ ಹುದ ಹೋಬಳಿ, ಮನೆವರ್ಗ ಕಾವಲ್ ಸರ್ವೇ ನಂ. 7/1 ಎ, 2, 2/1ಎ ರಲ್ಲಿ 0-24 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣವಿದ್ದು, ಅದರಲ್ಲಿ 0-02 ಗುಂಟೆ ಜಾಗವನ್ನು ನಕಲಿ ದಾಖಲೆಗಳನ್ನು ಸೃಷ್ಟಿಸಿಕೊಂಡು ಅಕ್ರಮವಾಗಿ ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡಿರುವ ಬಗ್ಗೆ ನೀಡಿದ ದೂರು ಇತ್ಯಾದಿ.

(1) Name of I.O: Yogananda Sonar Rank: Police Sub-Inspector
(2) Refused Investigation due to:
(3) On Point of jurisdiction transferred to PS District. -
(a) Read over to the complainant/informant, admitted to be correctly recorded, and a copy given to the complainant/Informant free of Cost: Yes
(b) If the Police Officer does not proceed to the spot for investigation or if he declines to investigate u/S 157 Cr.P.C provision (a) or (b) the reason there of should be mentioned.

11. Action Taken: Investigation
12. Signature/Thumb impression of complainant.
13. Date and time of dispatch to the court: 24-07-2020. at 13-00 hrs.
14. Name of the PC/HC who carried the FIR to the Court:- Chandrashekar HC 535

Signature of the I.O

(Yogananda Sonar)
Police Sub-Inspector
BMTF Police Station.

Copy To
1. Additional Director General Of Police BMTF.
2. Superintendent of Police BMTF.
3.Complainant Copy/Office Copy.

Relevant portion of translated copy of Annexure - 28

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6. Details of Known/ Suspected/Unknown Accused with Full Particulars:

1. Chitra Poornima w/o George Thangayya
2. Vijay Shekhar s/o George Thangayya
3. Chaitra Prabhakar s/o George Thangayya

7. Particulars of Properties stolen/involved: Manavarathe Kaval, Survey No. 7/1, (A) & 2, 2/1 (A)

8. Total Value of Properties Stolen/involved:

9. Inquest reports/U.D Case no if any:

10. Brief facts: Complaint attached

The brief summary of this case is that in Bangalore East Taluk, K.R. Puram Hobli, Manavarthe Kaval Survey No. 2A, 2, 2/15, there is 1.24 acres of land, out of which 0-02 guntas is 'B' kharab land. A complaint has been filed regarding the illegal encroachment of this land using fake documents.

Name of I.O: Yogananda Sonar
Rank: Police Sub-Inspector
Refused Investigation due to:
On Point of jurisdiction transferred to PS District:
(a) Read over to the complainant informant, admitted to be correctly recorded, and a copy given to the complainant/Informant free of Cost: Yes
(b) If the Police Officer does not proceed to the spot for investigation

or if he declines to investigate u/S 157 Cr.P.C provision (a) or (b) the reason thereof should be mentioned.

11. Action Taken: Investigation

12. Signature/Thumb impression of complainant.

13. Date and time of dispatch to the court: 24-07-2020 at 13-00 hrs.

14. Name of the PC/HC who carried the FIR to the Court: Chandrashekar HC 535

Signature of the IO
Police Sub-Inspector
BMTF Police Station

Copy To:

1. Additional Director General Of Police
2. Superintendent of Police
3. Complainant Copy/Office Copy.

ANNEXURE, 29

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9228/2020

Arunya. B

FORM III-A

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

WRIT PETITION NO. 9625 / 2020 [KLR-RES]

[Notice under Rule 13(a) proviso]

PETITIONERS:

1. MRS. G CHITRA POORNIMA
W/O. LATE. MR. GEORGE THANGIAH, AGED ABOUT 52 YEARS,
HAVING OFFICE AT GEORGE THANGIAH COMPLEX (EAST),
80 FEET ROAD, INDIRANAGAR, BENGALURU 560075.

2. MR. VIJAYA SHEKAR THANGIAH,
S/O. LATE. MR. GEORGE THANGIAH, AGED 62 YEARS,
HAVING OFFICE AT GEORGE THANGIAH COMPLEX (EAST),
80 FEET ROAD, INDIRANAGAR, BENGALURU 560075.

3. MRS. RACHEL CHITRA PRABHAKAR
W/O. MR. SATHI PRABHAKAR, AGED 59 YEARS,
HAVING OFFICE AT GEORGE THANGIAH COMPLEX (EAST),
80 FEET ROAD, INDIRANAGAR, BENGALURU 560075.

By Sri. GANAPATI HEGDE &
Smt. LAVANYA B. ANANTH, ADV.,

Vs

RESPONDENTS:

1. STATE OF KARNATAKA
BANGALORE METROPOLITAN TASK FORCE POLICE STATION,
BBMP MAIN BUILDING, 1ST FLOOR,
NR ROAD, BENGALURU 560002.

2. STATE OF KARNATAKA
DEPARTMENT OF REVENUE, VIDHANA SOUDHA,
DR. AMBEDKAR VEEDHI, BENGALURU 560001,
REP BY PRINCIPAL SECRETARY.

3. THE TAHSILDAR
BANGALORE EAST TALUK,
BENGALURU 560010.

4. UNION BANK OF INDIA
(PREVIOUSLY ANDHRA BANK),
UTTARAHALLI BRANCH, BENGALURU 560070,
REP BY SENIOR BRANCH MANAGER.

5. UNION BANK OF INDIA
(PREVIOUSLY ANDHRA BANK,
INDIRANAGAR BRANCH, BENGALURU 560038,
REP BY SENIOR BRANCH MANAGER.

AGA FOR R2 & R3.

This Certified copy contains 4 Pages
And Copying charges of ₹ 40/- is
Received

(P.T.O)

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Whereas, a Writ Petition filed by the above named petitioner under Article 226 & 227 of the constitution of India, as in the copy annexed hereunto, has been registered by this Court.

Notice is hereby given to you to appear in this court in person or through an Advocate duly instructed or through some one authorised by law to act for you in this case, returnable within four weeks to show cause why rule nisi should not be issued.

If you fail so to appear on the said date or any subsequent date to which the matter may be posted as directed by the Court, without any further notice, the petition will be dealt with, heard and decided on merits in your absence.

INTERIM ORDER

(Through Video Conference)

Pending issue of Rule nisi in the aforesaid Writ Petition it is hereby ordered by this Court on

MONDAY, THE 07TH DAY OF SEPTEMBER 2020
By Hon'ble Mr. Justice JOHN MICHAEL CUNHA

as follows:

(COPY OF THE ORDER DATED 07.09.2020 IS ENCLOSED SEPARATELY).

NOTE: Annexure – H & K to the writ petition are the copies of the impugned letters dated 28.07.2020 bearing No. Nil issued by the Police Inspector, B.M.T.F. Police Station, Bengaluru.

D/ASSISTANT REGISTRAR 10/9/2020

Free legal aid will be provided to SC/ST, Women, Child, Convicted/Prisoners, Industrial workmen, Mentally ill, Disabled etc., and also whose annual income is less than Rs.1,00,000/-. The eligible persons may contact the Member Secretary , High Court Legal Services Committee or District Legal Services Authority or Taluka Legal Services Committee.

HSP

HIGH COURT OF KARNATAKA BANGALORE

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JMCJ :
07.09.2020

WP.NO.9625 OF 2020

Through Video Conference

ORDER

Learned AGA takes notice for respondent Nos.2 and 3.

Issue notice to respondent Nos.1, 4 and 5 returnable within four weeks.

Heard learned Senior Counsel appearing for petitioners and learned AAG appearing for respondent Nos.2 and 3 – State.

The dispute pertains to the alleged encroachment of 02 guntas of land. Annexure-A, though styled as notice, is in the nature of a final order which directs the petitioners to vacate and hand over possession of 02 guntas of land comprised in Sy.No.7/1a, 2 and 2/1 out of 24 guntas of Binnamangala Manavarthe Kaval, Bengaluru East Taluk, whereas the finding recorded in Annexure-D namely the order passed by the Tahsildar (respondent No.3) based on the mahazar conducted by the Revenue Inspector goes to show that Sy.No.7/1a, 2/1 and 2 totally measures 24 guntas. In the said order, it is stated that 02 guntas of karab land includes all the aforesaid 24 guntas. As

HIGH COURT OF KARNATAKA BANGALORE

such, there is no clarity with regard to the description and identity of the property which is alleged to be in the encroachment of the petitioners.

In that view of the matter, I find it appropriate to direct the parties to maintain status-quo as on the date of the impugned orders at Annexures-A and D. Since criminal action has been initiated against the petitioners on the basis of impugned Annexures-A and D which require consideration, the criminal action initiated against the petitioners as per Annexure-F and the consequent orders passed by the Police Inspector, BMTF at Annexures-H and K are stayed. None of the parties shall change the nature of the disputed land until further orders.

Liberty is granted to the respondents to move for vacating stay, by making out good and justifiable grounds.

List this matter after six weeks.

Sd/-
JUDGE

HIGH COURT BSS BANGALORE KARNATAKA

TRUE COPY

Section Officer
High Court of Karnataka
Bengaluru - 560 001

1 COPY

The date on which the application was made 21/9/2020

The date on which charges and addl. charges, are called for 10/9/2020

The date on which the charges are ready 10/9/20

The date of notice that the copy is ready for delivery 10/9/2020

The date on which copy is delivered to the applicant 11/9/2020

Assistant Registrar
High Court of Karnataka
Bengaluru - 560 001

1 206 **ANNEXURE -30**

IN THE COURT OF THE TAHSILDAR BENGALURU EAST TALUK
AT K.R. PURAM, BENGALURU

Before this 12th day of June 2023

Present: **S. AJITH KUMAR RAI**
TAHSILDAR,
BENGALURU EAST TALUK

NCR/CR/01/2020-21

PETITIONER : The Government of Karnataka.

RESPONDENTS :
1. Vijaya Shekar,
S/o George Thangaiah,
2. Chaitra Prabhakar
D/o George Thangaiah,
3. Chitra Poornima,
W/o George Thangaiah,
Binnamangala Manavarthe
Kaval Village,
K.R Puram Hobli,
Bengaluru East Taluk.

This is a proceedings initiated for unauthorised encroachment of Government Land i.e., 'B' Karab land by the owner of the property bearing Sy.No.2/2, 7/1A, 7/1B of Binnamangala Manavarthe Kaval, K.R. Puram Hobli, Bangalore East, Taluk.

Reference : Notice dated 02.07.2020 bearing NCR/CR//01/2020-21 and Notice dated 27.02.2023 bearing NCCR/01/2020-21 issued by this authority to 1) Mr. Vijaya Shekar Thangiah, 2) Mrs. G. Chitra Poornima and 3) Mrs. Chitra Prabhakar, No.6, Commissariat Road, Bengaluru - 560 025 seeking response regarding alleged encroachment of land in Sy.No.2/2, 7/1A, 7/1B of Binnamangala Manavarthe Kaval, K.R. Puram Hobli, Bangalore East Taluk.

Rai 12/6/23

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1) This authority having regard to existence of 'B' Karab land, and encroachment of land in Sy.No.2/2, 7/1A, 7/1B of Binnamangala Manavarthe Kaval, K.R. Puram Hobli, Bangalore East Taluk. Thus being custodian of land belonging to the Government, with a view to protect and preserve unlawful encroachment of land had issued Notice dated 02.07.2020 bearing NCR/CR/01/2020-21 and Notice dated 27.02.2023 bearing NCCR/01/2020-21 to the responding party stated herein above.

2) Upon issuance of notice to the Responding party stated herein above, they had responded by filing a detailed reply along with Documents in support their contentions earmarking the sequence of events,

3) It is the case of the Responding party that the Property bearing Survey No. 2 and Survey No. 7/1, measuring 4 Acres and 07 Guntas, 30 square yards and 2.25 square feet was purchased by Late Mr. George Thanglah son of Mr. Mark Thanglah under Sale Deed dated 02.08.1969, registered as Document No. 2178/1969-70 in Book-1, at the office of Sub-Registrar, Bangalore South Taluk. Another property bearing Survey No. 2/1 and Survey No. 7/1-A, admeasuring 1 Acre 04 Guntas situated at Binnamangala Manavartha Kaval, K.R. Puram Hobli, Bangalore East Taluk, Bangalore was purchased by Late Mr. George Thanglah son of Mr. Mark Thanglah under Sale Deed dated 27.06.1970, registered as Document No. 1660/1970-71, in Book - I, Volume-23 at Pages 166, at the Office of Sub Registrar, Bangalore. Both the properties

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purchased under the said Sale Deeds dated 02.08.1969 and 27.06.1970.

4) It is averred that Late Mr. George Thangiah is the father of the responding party No. 1 and 3, and husband of responding party No.2. Late Mr. George Thangiah was the absolute owner in peaceful possession of the Property and certain adjoining lands till the time of his demise on 24.12.2019.

5) It is averred that in consideration of the application made by Late Mr. George Thangiah seeking conversion of an extent of 3 Acres 33 Guntas in Survey No. 2/2 & Survey No.7/1B, Survey. No. 7/1A measuring 32 ½ Guntas and Survey. No. 2/1 measuring 11 ½ Guntas, Binnamangala Manavartha Kaval Village, K.R. Puram Hobli, Bangalore comprised in the Property, the Deputy Commissioner converted the same from agricultural use to non-agricultural purpose under Section 95(2) of the Mysore Land Revenue Act, 1954, vide Official Memorandum dated 03.04.1970, Conversion Sanction Certificate dated 05.09.1970, Official Memorandum dated 08.07.1971 and Conversion Sanction Certificate dated 22.09.1971.

6) It is specific case of the Responding party that pursuant to the conversion of the said 4 Acres 37 Guntas, Late Mr. George Thangiah had requested the Deputy Commissioner for grant of adjacent Kharab Lands, measuring 13 Guntas in Survey No. 2/2, and 01 Gunta in Survey No.7/1A and 02 Guntas in Survey No. 7/1B, Binnamangala Manavartha Kaval Village, K.R.Puram Hobli, Bangalore, for non-agricultural use. In consideration of the request

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of the Tahsildar, Bangalore South Taluk, vide his Letter dated 30.04.1975 bearing reference No.ALN.CR.22/1974-75, recommended the disposal of the karab land, since the same was no longer required for public purpose. That apart the Tahsildar had confirmed that Kharab Landis surrounded by N.A.L road and H.A.L double roads on both sides and is surrounded on all sides by residential localities.

7) Having regard to the recommendation, the Deputy Commissioner vide Official Memorandum dated 26.12.1975 bearing reference No.B-Dis. LND (3)62/1975-76, appropriated the 16 Guntas Kharab Land in Survey No. 2/2, 7/1A and 7/1B of Binnamangala Manavartha Kaval Village, K.R. Puram Hobli, Bangalore, under Section 71 of the Karnataka Land Revenue Act, 1964 and granted the said 16 Guntas Kharab Land to Late Mr. George Thanglah for non-agricultural purpose. The Deputy Commissioner has in the said order confirmed that the said 13 Guntas Kharab Land in Sy. No. 2/2, 01 Gunta in Survey No.7/1A and 02 Guntas in Survey No. 7/1B totally measuring 16 Guntas was no longer of any use for public at large.

8) Thereafter, pursuant to the issue of the aforesaid Official Memorandum dated 26.12.1975, Late Mr. George Thanglah had paid an upset price of Rs. 4,000/- (Rupees Four Thousand only) for such Grant of Land and also paid the conversion fine of Rs.1,600 (Rupees One Thousand Six Hundred only) to the Bangalore North Taluk Treasury, State Government, Vide Challan No.SLR 20, dated 16.01.1976. Upon receipt of upset price and conversion fine, the

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Tahsildar had issued Conversion Certificate dated 20.01.1976 bearing No.ALN.CR.22/1975-76.

9) Thus the land stood vested with said George Thanglah, conferring right title interest and possession over the same. That apart the land is claimed to have been lost its being a Revenue Land not coming within the ambit of Land Revenue Act. Thus in view of the conversion the land having lost its status, and the same having been governed by the Municipal authority for payment of taxes. Therefore, this authority could not adjudicate the above matter as the land is no more governed under the land Revenue Act. Therefore, the question of encroachment of Government kharab land within the Property by Late Mr.George Thanglah and/or by the responding authority does not arise.

10) In furtherance thereof, the Bangalore Development Authority has sanctioned the Modified Development Plan with respect to the existing building vide sanction plan dated 16.11.1977, which is fortified from the Letter dated 17.11.1977 issued by Bangalore Development Authority. Thereafter Late Mr.George Thanglah has also paid the applicable development charges of Rs.40,856/- (Rupees Forty Thousand Eight Hundred and Fifty Six Only) for sanction of the said development plan.

11) Subsequently, pursuant to sanction plan, the Property together with adjacent properties (owned by Late Mr. George Thanglah) has been developed into a commercial complex comprising of multiple buildings and the entire Property was being used for the non-

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agricultural purpose consistently since the year 1977 till date. After completion of the aforesaid construction around the year 1977, a compound wall was put up around the Property and adjacent lands and Late.Mr. George Thanglah has continued to be in peaceful possession of the said property till the time of his demise on 24/12/2019.

12) That apart it is claimed by the responding party that in the year 2011 and 2013 respectively, Bangalore Development Authority and Bruhat Bengaluru Mahanagara Palike have sanctioned the Development Plan and Building Plan with respect to the proposed construction of a commercial building for Shopping Mall at the Property and the adjacent properties owned by Late Mr. George Thanglah which is exemplified from The Letter dated 02.08.2011 issued by Bangalore Development Authority and also the Letter dated 14.04.2013 issued by Bruhat Bengaluru Mahanagara Palike.

13) The aforesaid development plan sanctions do not recognize any Kharab lands in the Property and permit construction on the entire extent. The concerned authorities would not have sanctioned the said plans, unless they were fully satisfied that there does not exist any Kharab land in the Property.

14) Thus this authority without having verified the aforesaid scenario had got issued a Show Cause Notice dated 20.01.2016 bearing Reference No. N.C.R/CR:51/2015-16 with regard to Sy. No. 2/2 in Binnamanagala, Manavarthe Kaval, Bengaluru East

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Taluk, Bengaluru, alleging that the Grant Lands are government lands and sought for clarification on the same.

15) Under reply dated-28.01.2016, all the relevant details and document pertaining to the grant lands in survey No.2/2, 7/1A, and 7/1B were provided by Late. George Thanglah.

16) By considering the relevant details and documents this authority vide its order dated 10.06.2016 withdraw the show cause notice being satisfied with the clarification.

17) Having afforded opportunity, in respect of notices under reference the owner/responding party have got filed their detailed statement of objection, documents and concluded by addressing argument before this Authority.

18) Upon perusal of record filed by the Responding party, it reveals that the aforesaid property was initially vested with the Government as per the documents a s well the admission of the responding party himself.

19) The survey sketch prepared by taluk surveyor in respect of Sy.Nos. 2/1a, 2/2, 7/1b, 7/A3,7/1A2 and 7/1A1AIA of Binnamangala Manavarthe Kaval, Bangalore East Taluk, K.R. Puram Hobli, as per original survey records clearly indicates that in Sy.No.2/2, there exists a KATTE measuring to extent of 10 guntas. Further an extent of 02 guntas as BANDI DAARI, and another portion of 01 gunta as saravu, totally measuring 13 guntas kharab land. The existence of karab in Sy.No. 7/1b measuring 02 guntas

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of saravu and Sy.No.7/1a there exists 01 gunta kharab land. With regard to the above survey sketch in respect of-Survey No.2/1A, is reflecting as measuring 0-20 guntas as katte, 1 gunta as baavi, 0-05 guntas as korakalu and 0-09 guntas as saravu and is reflecting as hiduvalidhar in the said lands has constructed a swimming pool and building in the said property in Survey No.2/1A.

20) On the basis of the documents produced by the Respondents and the revenue records available with this office, it is seen that out of the entire extent of land acquired by Late Mr. George Thanglah, which is now in the occupation of the Respondents, only an extent of 16 guntas is kharab land.

21) The Respondent's explanation in respect of the above mentioned encroachment is that 16 guntas of kharab land in the subject property were granted to Late Mr. George Thanglah vide Official Memorandum No.B-Dis.LND (3)62/1975-76 dated 26.12.1975 and this was followed by Conversion Certificate No. No.ALN.CR.22/1975-76 dated 21.01.1976 issued by the then Tahsildar, in respect of this grant of 16 guntas kharab land.

22) Respondents have further contended that, this Authority vide its Order dated 03.07.2020 in respect of an earlier Notice have passed Orders in respect of alleged kharab land in Sy.No.2/1a, which is neither owned by Respondents nor are Respondents concerned with it. On perusal of the documents produced by the Respondents and the Revenue Records available with this office, I am of the opinion that the kharab land in Sy.No.2/1a does not belong to the Respondents,

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23) The documents relied upon by the respondents it reveals that, the predecessors in title of Responding party having acquired the land adjacent to the karab land, i.e., Late Mr. George Thanglah son of Mr. Mark Thanglah had purchased the property bearing Survey No. 2 and Survey No. 7/1, measuring 4 Acres and 07 Guntas, 30 square yards and 2.25 square feet, under Sale Deed dated 02.08.1969, registered as Document No. 2178/1969-70 in Book-1, at the office of Sub-Registrar, Bangalore South Taluk and another property bearing Survey No. 2/1 and Survey No. 7/1-A, admeasuring 1 Acre 04 Guntas situated at Binnamangala Manavartha Kaval, K.R. Puram Hobli, Bangalore East Taluk, Bangalore, under Sale Deed dated 27.06.1970, registered as Document No. 1660/1970-71, in Book - I, Volume-23 at Pages 166, at the Office of Sub Registrar, Bangalore. It shows that, later on Late George Thanglah to make an application for grant of land reflected as Karab land in Sy. No. 2/1 and Survey No. 2 and Survey No. 7/1 and the property bearing Survey No. 2/1 and Survey No. 7/1-A, admeasuring 1 Acre 04 Guntas situated at Binnamangala Manavartha Kaval, K.R. Puram Hobli, Bangalore East Taluk, Bangalore.

24) The respondents relaying upon the O.M dated 26.12.1975 contending that the above said 0-16 Guntas of Karab land has been regularized by the Deputy Commissioner by invoking the provision of Section 71 of The Karnataka Land Revenue Act. Thereafter, the respondents have obtained the conversion order dated 20.01.1979.

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25) That apart it is pertinent here to mention that, prior to the present notice under enquiry, there was notice and other passed by the Deputy Commissioner earlier which was subject matter in question before the Hon'ble High Court of Karnataka in W.P. No. 8972/2020, wherein the Court was pleased to allow the petition quashing the notice issued by this authority and orders passed by the Deputy Commissioner.

26) Thereafter the said Order passed above quoted WP No. 8972/2020 was challenged by the Government, in W.A. No. 552/2020, wherein upon consideration of relevant aspect and relying upon the Judgment of Apex Court, the Hon'ble High Court was pleased to dismiss the Appeal, on premise that there is inordinate delay of 45 years in initiating the proceedings, thereby upheld the order of Hon'ble Single Judge in WP No. 8972/2020. Hence, in view of the above narrated facts and also having greatest respect to the Judgment of Hon'ble High Court of Karnataka, it deems fit for this Authority to drop the above proceedings,

Hence, I proceed to pass as below-

ORDER

The above proceedings against the respondent herein is hereby dropped.

(Order pronounced in the open court on this 12th day June 2023).

S. AJITH KUMAR RAI,
TAHSILDAR,
BENGALURU EAST TALUK

ANNEXURE -3

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ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ವಿಶೇಷ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು-3 ಬೆಂಗಳೂರು ಉತ್ತರ ಉಪವಿಭಾಗ, ಬೆಂಗಳೂರು ರವರ ಕಾರ್ಯಾಲಯ
ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಕಛೇರಿ, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ, 1ನೇ ಮಹಡಿ, ಕೆ.ಜಿ.ರಸ್ತೆ, ಬೆಂಗಳೂರು.

ಇಮೇಲ್: spdc1bngur@gmail.com ದೂರವಾಣಿ ಸಂಖ್ಯೆ: 080-22214370

ಪ್ರಕರಣ ಸಂಖ್ಯೆ:ಆರ್.ಆರ್.ಟಿ(2)/(ಇ)/ಸಿಆರ್-04/2023-24 ದಿನಾಂಕ:06/06/2023

ಸರ್ಕಾರದ ಪರವಾಗಿ

ತಹಶೀಲ್ದಾರ್,
ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು,
ಕೆ.ಆರ್.ಪುರಂ

ಶ್ರೀ/ಶ್ರೀಮತಿ

1. ವಿಜಯ್ ಶೇಖರ್ ಬಿನ್ ಚಾರ್ಜ್ ತಂಗಯ್ಯ

2. ಚೈತ್ರ ಪ್ರಭಾಕರ್ ಬಿನ್ ಚಾರ್ಜ್ ತಂಗಯ್ಯ
ನಂ.06, ಕಮಿಷರೇಟ್ ರಸ್ತೆ, ರಿಚ್‌ಮಂಡ್ ಟೌನ್, ಬೆಂಗಳೂರು-560025.

ವಿಚಾರಣಾ ನೋಟೀಸ್

ವಿಷಯ: ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ, ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರಂ ಹೋಬಳಿ, ಭಿನ್ನಮಂಗಲ ಮನವರ್ತೆ ಕಾವಲ್ ಗ್ರಾಮದ ಸರ್ವೆ.ನಂ.2/2 ರಲ್ಲಿ 0-13 ಎ/ಗುಂ, 7/1ಎ ರಲ್ಲಿ 0-01 ಗುಂಟೆ ಮತ್ತು 7/1ಬಿ ರಲ್ಲಿ 0-02 ಗುಂಟೆ ಸರ್ಕಾರಿ "ಬಿ" ಖರಾಬು ವಿಸ್ತೀರ್ಣದ ಜಮೀನಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಹಕ್ಕು ದಾಖಲೆ ನೈಜತೆಯನ್ನು ಕ.ಭೂ.ಕಂ.ಕಾಯ್ದೆ 1964 ರ ಕಲಂ 67(2) ಹಾಗೂ 136(3) ರಡಿ ವಿಚಾರಣೆ ಕೈಗೊಳ್ಳುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: ಶ್ರೀ ಶಿವಕುಮಾರ್, ವಕೀಲರು ರವರ ಪತ್ರ ದಿ:25/04/2023.

$$$$$$$$

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ, ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರಂ ಹೋಬಳಿ, ಭಿನ್ನಮಂಗಲ ಮನವರ್ತೆ ಕಾವಲ್ ಗ್ರಾಮದ ಸರ್ವೆ.ನಂ.2/2 ರಲ್ಲಿ 0-13 ಎ/ಗುಂ, 7/1ಎ ರಲ್ಲಿ 0-01 ಗುಂಟೆ ಮತ್ತು 7/1ಬಿ ರಲ್ಲಿ 0-02 ಗುಂಟೆ ಸರ್ಕಾರಿ "ಬಿ" ಖರಾಬು ಜಮೀನಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಮಂಜೂರಾತಿ ನೈಜತೆಯ ಬಗ್ಗೆ ಕ.ಭೂ.ಕಂ.ಕಾಯ್ದೆ 1964 ರ ಕಲಂ 67(2) ಹಾಗೂ 136(3) ರಡಿಯಲ್ಲಿ ಪ್ರಕರಣ ದಾಖಲಿಸಿಕೊಂಡು ಪ್ರಕರಣದ ವಿಚಾರಣೆಯನ್ನು ದಿನಾಂಕ:21/6/23 ರಂದು ಮಧ್ಯಾಹ್ನ:3-00 ಘಂಟೆಗೆ ನಿಗಧಿಪಡಿಸಿದೆ.

ವಿಚಾರಣೆ ನಿಗಧಿಪಡಿಸಿದ ದಿನಾಂಕದಂದು ನಿಮ್ಮಲ್ಲಿರುವ ಮೂಲ ದಾಖಲೆಗಳ ದೃಢೀಕೃತ ನಕಲುಗಳನ್ನು ವಿಶೇಷ ಜಿಲಾಧಿಕಾರಿಗಳು-3, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ ಇವರ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಖುದ್ದು ನೀವಾಗಲೀ ಅಥವಾ ನಿಮ್ಮ ಪರ ವಕೀಲರ ಮುಖಾಂತರವಾಗಲೀ ವಿಚಾರಣೆಗೆ ಈ ಕೆಳಕಂಡ ದಾಖಲೆಗಳೊಂದಿಗೆ ಹಾಜರಾಗಲು ತಿಳಿಯಪಡಿಸಿದೆ.

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1. ಭೂ ಮಂಜೂರಾತಿ ಕೋರಿ ಸರ್ಕಾರಕ್ಕೆ ಸಲ್ಲಿಸಿದ್ದ ಅರ್ಜಿಯ ಸ್ವೀಕೃತಿ.
2. ಪ್ರಶ್ನಿತ ಜಮೀನು ಅಧಿಕೃತವಾಗಿ ಮಂಜೂರದ ಬಗ್ಗೆ ಭೂ ಮಂಜೂರಾತಿ ಆದೇಶ/ಅಧಿಕೃತ ಜ್ಞಾಪನ.
3. ಭೂ ಮಂಜೂರಾತಿ ಸಮಿತಿ/ಅಧಿಕಾರಿಯ ನಡವಳಿಗಳು.
4. ಭೂ ಮಂಜೂರಾತಿ ಬಗ್ಗೆ ಸರ್ಕಾರ ನೀಡಿರುವ ಸಾಗುವಳಿ ಚೀಟಿ/ಹಕ್ಕು ಪತ್ರ.
5. ಮೇಜೂರದ ಜಮೀನಿನ ಕಿಮ್ಮತ್ತನ್ನು ಸರ್ಕಾರಕ್ಕೆ ಜಮಾ ಮಾಡಿರುವ ಬಗ್ಗೆ ಚಲನ್ ಪ್ರತಿ.
6. ಸಾಗುವಳಿ ಚೀಟಿ ವಿತರಣಾ ಪಹಿಯ ಉದ್ಧೃತ ನಕಲು.
7. ಭೂ ಮಂಜೂರಾತಿ ಆದೇಶ ಹಾಗೂ ಸಾಗುವಳಿ ಚೀಟಿ ಆಧಾರದ ಮೇಲೆ ಮಾಡಿರುವ ಹಕ್ಕು ಬದಲಾವಣೆ ಆದೇಶದ ಪ್ರತಿ(ಎಂ.ಆ. ನಕಲು).
8. ಪ್ರಶ್ನಿತ ಜಮೀನು ನಿಮಗೆ ಅಧಿಕೃತವಾಗಿ ಮಂಜೂರಾಗಿದೆ ಎಂದು ತೋರಿಸಲು ನಿಮ್ಮಲ್ಲಿರಬಹುದಾದ ಇನ್ನಾವುದೇ ದಾಖಲೆ/ಪುರಾವೆ.
9. ನೀವು ಮೂಲ ಮಂಜೂರಿದಾರರಲ್ಲದಿದ್ದಲ್ಲಿ, ಮೂಲ ಮಂಜೂರಿಯಿಂದ ಪ್ರಾರಂಭಗೊಂಡು ನಿಮಗೆ ಖಾತೆ ವರ್ಗಾವಣೆ ಬಗ್ಗೆ ಎಲ್ಲಾ ವಹಿವಾಟುಗಳ ಕ್ರಮಬದ್ಧತೆ ಕುರಿತು ದಾಖಲೆಗಳ ದೃಢೀಕೃತ ನಕಲುಗಳು (ಪಹಣಿ, ಎಂ.ಆರ್., ಕ್ರಯ ಪತ್ರ ಇತ್ಯಾದಿ)

ವಿಶೇಷ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು–3
ಬೆಂಗಳೂರು ಉತ್ತರ ಉಪವಿಭಾಗ
ಬೆಂಗಳೂರು

ಪ್ರತಿಯಮ್ಮ : ತಹಶೀಲ್ದಾರ್, ಪೂರ್ವ ತಾಲ್ಲೂಕು ರವರಿಗೆ ರವಾನಿಸುತ್ತಾ, ಪಹಣಿ ಕಾಲಂ (11) ರಲ್ಲಿ ಪ್ರಕರಣಾ ಹಂತದಲ್ಲಿರುವ ಬಗ್ಗೆ ನಮೂದಿಸಲು ಹಾಗೂ ಸದರಿ ನೋಟೀಸನ್ನು ಸಂಬಂಧಪಟ್ಟವರಿಗೆ ಜಾರಿ ಮಾಡಿಸಿ, ಜಾರಿಯಾದ ನೋಟೀಸನ್ನು ಪ್ರಕರಣದ ವಿಚಾರಣೆಯ ಮುಂಚಿತವಾಗಿ ಈ ಕಛೇರಿಗೆ ವರದಿಯೊಂದಿಗೆ ಸಲ್ಲಿಸಲು ಸೂಚಿಸಲಾಗಿದೆ.

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TRANSLATED COPY OF
ANNEXURE - 31

Government of Karnataka

Office of the Special District Magistrate-3, Bangalore North Sub-Division, Bangalore

District Magistrate's Office, Bangalore Urban District, 1st Floor, K.G. Road, Bangalore

Email: spdc1bngur@gmail.com Telephone Number: 080-22214370

Case Number: RRT(2)/(E)/CR-04/2023-24

On behalf of the Government:

Tahsildar,
Bangalore East Taluk,
K.R. Puram

Mr/Mrs.

1. Vijay Shekhar Bin George Tangayya
2. Chaitra Prabhakar Bin George Tangayya

No. 06, Commissionerate Road, Richmond Town, Bangalore-560025.

Inquiry Notice

Subject: Regarding the authenticity of the ownership records of 0-13 guntas in Survey No. 2/2, 0-01 gunta in Survey No. 7/1A, and 0-02 guntas in Survey No. 11B of government 'B' kharab land in Binnamangala Manavarthe Kaval Village, K.R. Puram Hobli,

Bangalore East Taluk, under Sections 67(2) and 136(3) of the Karnataka Land Revenue Act, 1964.

Reference: Letter from Advocate Shivakumar dated 25/04/2023.

In relation to the above subject, an inquiry into the authenticity of the ownership records of 0-13 guntas in Survey No. 2/2, 0-01 gunta in Survey No. 7/1A, and 0-02 guntas in Survey No. 11B of government 'B' kharab land in Binnamangala Manavarthe Kaval Village, K.R. Puram Hobli, Bangalore East Taluk, has been scheduled for 03-06-2023 at 3:00 PM. You are required to appear in person or through your advocate with the following documents:

1. Application submitted to the government seeking land approval.
2. Land approval order/official memorandum regarding the questioned land.
3. Proceedings of the land approval committee/authority.
4. Sale deed/right document issued by the government regarding land approval.
5. Copy of the challan for the amount deposited with the government for the approved land.
6. Extract of the distribution register for the sale deed.
7. Copy of the order of change of ownership based on the land approval order and sale deed (M.A. copy).
8. Any other documents/evidence you may have to show that the questioned land has been officially approved to you.
9. If you are not the original applicant, certified copies of all

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32.

transactions from the original applicant to you (Pahani, M.R., sale deed, etc.).

Special District Magistrate-3
Bangalore North Sub-Division
Bangalore

Copy to: Tahsildar, Bangalore East Taluk, to note the case status in column (11) of the Pahani and to issue the notice to the concerned parties, and to submit the issued notice to this office before the inquiry.

ANNEXURE -32

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11493/20

Dec. Associates
Pooja D. Kale

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JUNE 2023

BEFORE

THE HON'BLE MR. JUSTICE M.I. ARUN

WRIT PETITION NO. 12451 / 2023 [KLR RES]

PETITIONER:

1. MR VIJAYA SHEKAR THANGIAH,
S/O LATE GEORGE THANGIAH,
AGED 64 YEARS,
R/AT. NO.6, COMMISSARIAT ROAD,
BENGALURU - 560 025

2. MRS. RACHEL CHITRA PRABHAKAR
W/O. MR. SATHI PRABHAKAR,
AGED ABOUT 60 YEARS,
R/AT. NO., COMMISSARIAT ROAD,
BENGALURU - 560 025

By Sri: GEROGE JOSEPH, ADV

Vs

RESPONDENTS:

1. THE STATE OF KARNATAKA
DEPARTMENT OF REVENUE,
VIDHANA SOUDHA
DR. AMBEDKAR VEEDHI
BENGALURU – 560 001
REP.BY UNDER SECRETARY
REVENUE DEPARTMENT

2. DEPUTY COMMISSIONER
BENGALURU DISTRICT,
K.G.ROAD,
BENGALURU - 560 009

3. THE TAHSILDAR,
BENGALURU EAST TALUK,
K.R. PURAM,
BENGALURU - 560 010

4. THE SPECIAL DEPUTY
COMMISSIONER - 3
BENGALURU NORTH DIVISION
BENGALURU DISTRICT
K.G ROAD
BENGALURU - 560 009

...AGA FOR RESPONDENTS.

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Whereas, a Writ Petition filed by the above named petitioner under Article 226 & 227 of the constitution of India, has been registered by this Court.

After hearing, the Court made the following:

ORDER
(Video Conferencing/Physical Hearing)

Learned AGA accepts notice for the respondents.

Heard Sri K G Raghavan, learned senior counsel for the peititioners.

There shall be stay of further proceedings pursuant to impugned notice dated 06.06.2020 and the impugned proceedings bearing No. RRT(2)/(E)/CR-04-2023-24 passed by respondent No. 4 vide Annexure-A to the writ peitition, till next date of hearing.

Sd/-
JUDGE

// COPY //

ASSISTANT REGISTRAR

SMD 21.06..2023

HIGH COURT OF KARNATAKA BANGALORE

TRUE COPY
Section Officer
High Court of Karnataka
Bengaluru - 560 001

ANNEXURE -33

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Cr-3982/23
28/6/23 40—

RBL.RP-69
Govt. of Karnataka

Form No. 4
(Criminal)
Order Sheet
Ch. VIII R.1(1).18, 20(2) Ch. VII R. 3

ORDER SHEET

IN THE COURT OF THE VIII Addl, *CHIEF METROPOLITAN MAGISTRATE, BANGALORE CITY.*

PCR NO: /2023 FR-5984/23

COMPLAINANT *V/S* *ACCUSED*

SRI.SREENATH SHAMANNA, S/O.SHAMANNA, AGED ABOUT 35 YEARS,	1.SRI.VIJAY SHEKAR, S/O.GEORGE THANGIAH, AGED ABOUT 63 YEARS, 2.MRS.CHITRA PRABHAKAR, D/O.GEORGE THANGAIAH, AGED ABOUT 54 YEARS, 3.MR.SUDEEP THANGAIAH, S/O.VIJAY SHEKAR THANGIAH, AGED ABOUT 36 YEARS,

Serial No.of. Order	Date of Order or Poceeding	Order or Proceeding Signature of Presiding Oficer	Signature of Parties or pleaders when necessary

DATE:31-03-2023.

SHRI/SMT.SIDDHARTH SUMAN . ,Advocate for Complainant filed the complaint along with vakalath U/s 200 R/W CrPc for order to take the cognizance for the offence punishableU/S.,§ 465, 466, 468, 471, AND 477 ,IPC SECTION 192A of the karnataka land revenue act, 1964 as well as section 4 and 5 of the karnataka land grabbing prohibition act, 2011 against the accused.

Hence for kind order.

SUBMITTED.VERIFIED THE JURISDICTION IN THIS FILE ITS COMES UNDER 8 TH ACMM COURT IN LIMITS OF CUBBON PARK PS. complainant not produce the [illegible]	CHECK &PUTUP FOR HEAR ON 21-04-2023

[illegible]

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O/C DIT
to produce station GD no.
on 13-am 31/5/13

31/5

31/5/13
court

An rept to hear
7/10
31/5

kbz3
~~Advocate for complainant~~
filed Advance application
under Section 204 CPC
humbly prays that this Hon'ble
court may be pleased to
Advance the above case to
Flobaz to tangie for
Filing the police complaint

Cash Advance. Adv fr
Compl filed. Acts Ulw
by Jurisdiction pthe
Hcon. for order 4

FIR-5284/23

The complainant has filed this complaint against accused for the offences punishable U/Sec.465, 466, 468, 471 and 477 of IPC and U/S.192A of Karnataka Land Revenue Act as well as U/S. 4 and 5 of Karnataka Land Grabbing Prohibition Act, 2011.

Heard.

Before approaching this Court the complainant has already approached jurisdictional police by filing complaint. The Jurisdictional police issued endorsement. Hence the complainant has already complied the guidelines issued by **Hon'ble Apex Court in the case Priyanka Srivastava & Anr vs State Of U.P.& Ors.** Hence primafacie appears to refer the complaint to the Jurisdictional police for investigation.

Accordingly, I hereby refer this complaint U/Sec. 156(3) of Cr.PC to the SHO, **Cubbon Park** Police Station, Bengaluru for investigation.

Register FR in PCR.

Office to send the copies of the complaint and connected papers to the said police station.

Await FIR by 25.07.2023.

VIII ACMM, Bengaluru.

opy applied for on the 28/6/23

2) Copying fee required to be produced on the .....

3) Copying fee furnished on the .....

4) Applicantsrequired to be appear on 1.2.24

5) Copy ready on the 28/6/23

6) Copy dalivered on the .....

7) Copied by .....

8) Examined by .....

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RELAVANT PORTION OF TYPED COPY OF ANNEXURE-A1 33

A/C PIT
To produce status of NCR
Call on 31/5/23

Sd/-
21/4

31/5/23
Compt

No representation to hear by 7/10

Sd/-
31/5

1/6/23
Advocate for Complaint filed advance application under section 309 of Cr.P.C humby prays that this Hon'ble Court may be pleased to advance the above case from 7/10/2023 to today i.e for filing the police endorsement

Case Advanced. Advocate for complainant filed acknowledgment by jurisdictional police. Heard. For Orders by 2/6

Sd/-
1/6

TRUE COPY

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ANNEXURE 34

ಪ್ರಥಮ ವರ್ತಮಾನ ವರದಿ

(ದಂಡಪ್ರಕ್ರಿಯಾ ಸಂಹಿತೆ ಕಲಂ 154 ರಡಿಯಲ್ಲಿ)

ANNEXURE-R

ಘನ ನ್ಯಾಯಾಲಯ : 8th Addl.CMM Court,Nrupatunga Road,Bangalore City

1. ಜಿಲ್ಲೆ : Bengaluru City ವೃತ್ತ/ಉಪ ವಿಭಾಗ : Cubbon Park Sub division ಪೊಲೀಸ್ ಠಾಣೆ : Cubbon Park

ಅಪರಾಧ ಸಂಖ್ಯೆ : 0159/2023 ಪ್ರ.ವ.ವ.ದಿನಾಂಕ : 14/06/2023

Received FIR alongwith ... encl... on 15/06/2023 11:00 Hrs by HC/PC 1...1... of Cubbon PS

VIII ACC

2. ಕಾಯ್ದೆ ಮತ್ತು ಕಲಂಗಳು : IPC 1860 (U/s-465,466,468,471,477); KARNATAKA LAND REVENUE ACT 1964 (U/s-192(A)); The Karnataka Land Grabbing Prohibition Act, 2011 (U/s-4,5)

3. (a) ಕೃತ್ಯ ನಡೆದ ದಿನ : Friday ದಿನಾಂಕ ದಿಂದ : 28/01/2022 ದಿನಾಂಕ ವರೆಗೆ : 14/06/2023

ವೇಳೆಯಿಂದ : 00:00:00 ವೇಳೆಯವರೆಗೆ : 00:00:00

(b) ಠಾಣೆಯಲ್ಲಿ ವರ್ತಮಾನ ಸ್ವೀಕರಿಸಿದ ದಿನಾಂಕ : 14/06/2023 18:30:00 ಮನವಿಯಿಂದ / ಹೇಳಿಕೆ : Judicial/Magistrate reference

(c) ಫಿರ್ಯಾದುದಾರ / ಬಾತ್ಮೀದಾರ ತಡವಾಗಿ ವರದಿ ಮಾಡಿದಕ್ಕೆ ಕಾರಣಗಳು :

(d) ಜನರಲ್ ಡೈರಿ ಉಲ್ಲೇಖ ಸಂಖ್ಯೆ ಮತ್ತು ಸಮಯ : 2 , 18:30:00

4. (a) ಕೃತ್ಯ ನಡೆದ ಸ್ಥಳ :

Manvarte villege, Binnamangala, K R Puram, Bengaluru City, Karnataka,

(b) ಪೊಲೀಸ್ ಠಾಣೆ ಯಿಂದ ಇರುವ ದಿಕ್ಕು ಮತ್ತು ದೂರ : 00

(c) ಗ್ರಾಮ : Other PS Limits ಗಸ್ತಿನ ಹೆಸರು : Other PS Limits

(d) ಸ್ಥಳವು ಬೇರೆ ಪೊಲೀಸ್ ಠಾಣೆ ವ್ಯಾಪ್ತಿಗೆ ಬರುವಂತಹದ್ದು ಆದರೆ ಆ ಪೊಲೀಸ್ ಠಾಣೆಯ ಹೆಸರು :

ಜಿಲ್ಲೆ :

5. ಫಿರ್ಯಾದುದಾರ/ಬಾತ್ಮೀದಾರ :

(a) ಹೆಸರು : Shreenath Shamanna ತಂದೆ / ಗಂಡನ ಹೆಸರು : Shamanna

(b) ವಯಸ್ಸು : 35 (c) ವೃತ್ತಿ : Others Pl Specify

(d) ಧರ್ಮ : Hindu (e) ಜಾತಿ :

(f) ಫೋನ್ : (g) ಇ-ಮೇಲ್ :

(h) ದೂರವಾಣಿ : (i) ರಾಷ್ಟ್ರೀಯತೆ : India

(j) ಪಾಸ್ ಪೋರ್ಟ್ ಸಂಖ್ಯೆ : ನೀಡಿದ ದಿನಾಂಕ :

(k) ವಿಳಾಸ : No.23, 3rd Floor, H V R Layout,Banaṭarahaḷ i, K R Puram , Bengaluru City , Karnataka

ಲಿಂಗ : Male

(m) ಪಿರ್ಯಾದುದಾರ ಮಿದ್ದಾಗಿ ನೋಡಿದ್ದರೆ ಅಭಿಪ್ರಾಯವೇಳಿಸಿಕೊಂಡಿದು

ವಿವರ:

6. ಗೊತ್ತಿರುವ / ಅನುಮಾನಿತ/ಅಪರಿಚಿತ ವ್ಯಕ್ತಿಯ ಪೂರ್ಣ ವಿವರಗಳು

Sl.No.	ಹೆಸರು / ತಂದೆಯ ಹೆಸರು / ಜಾತಿ / ವಿಳಾಸ	ವಿಧ	ವ್ಯಕ್ತಿಯ ವಿಧ	ಲಿಂಗ	ವಯಸ್ಸು	ವೃತ್ತಿ
1	Vijay Shekhar(A1), ,No.6, Commissionarate Road,Richmond TownBengaluru City, Karnataka	Accused	Adult	Male	63	
2	Chaitre Prabhakar N(A2) ,No.6, Commissionarate Road,Richmond TownBengaluru City, Karnataka	Accused	Adult	Female	54	
3	Sudeep Thangayya(A3) ,No.6, Commissionarate Road,Richmond TownBengaluru City, Karnataka	Accused	Adult	Male	36	

7. ಸೊಂದವರ ವಿವರಗಳು

Sl. No	ಹೆಸರು	ವಿಳಾಸ	ಗಾಯದ ವಿಧ	ಲಿಂಗ	ವಯಸ್ಸು	ವೃತ್ತಿ
1						

8. ಕಳುವಾಗಿರುವ / ಬಾಗಿಯಾಗಿರುವ ಸ್ವತ್ತುಗಳ ವಿವರಗಳು

Sl.No	Property Type	Item description	Estimated Value (in Rs.)
1			

ಕಳುವಾಗಿರುವ / ಬಾಗಿಯಾಗಿರುವ ಸ್ವತ್ತುಗಳು ಮೌಲ್ಯ :

9. ಪಂಚನಾಮೆ ವರದಿ / ಯು.ಡಿ. ಕೇಸ್, ಸಂಖ್ಯೆ :

10. ಪ್ರಥಮ ವರ್ತಮಾನ ವರದಿಯ ವಿವರಗಳು

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ಅರ್ಜಿದಾರರು ಪಿಟ್ಟಿಂದರ ಹೆಚ್.ಸಿ-6191 ರವರು ಸದರಿ ಸ್ಥಿರಾಸ್ತಿಯನ್ನು ತಗೆದುಕೊಂಡು ಬಂದಿರುವ ಪಿ.ಓ.ಆರ್. ಅನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ ಶ್ರೀಯುತ ಶೇಖರ್, ಶ್ರೀಮತಿ ಜ್ಯೋತ್ಸ್ನಾ ಪ್ರಭಾಕರ್ ಎನ್., ಮತ್ತು ಸುಮೀತ್ ಪಂಗಾಯ್ಕರ್ ರವರುಗಳು ಬೆಂಗಳೂರು ಸ್ಥಾವರ ತಾಲ್ಲೂಕಿನ ಕೆ.ಆರ್. ಪುರಂ ಹೋಬಳಿ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಬರುವ ಕಾವಲ್ ಭೈರಸಂದ್ರ ಗ್ರಾಮದ ಸರ್ವೇ ನಂಬರಿನ ಸರ್ವೇ ನಂ.2, 2/7, 7/1ಎ, 7/1ಬಿ ರಲ್ಲಿ ಸಾಮೂಹಿಕವಾಗಿ 3 ಎಕರೆ 33 ಗುಂಟೆ ಜಮೀನನ್ನು ವಿಷಂಗತ ಶ್ರೀ. ಜಾರ್ಜ್ ತಂಗಡ್ಡಿ ಅವರು ದಿನಾಂಕ:26.12.1975 ರಂದು ಅನುದಾನಕ್ಕಾಗಿ ನೀಡಲಾದ ಅಧಿಕೃತ ಜ್ಞಾಪಕ ಪತ್ರ/ಅನುದಾನ ಪ್ರಮಾಣ ಪತ್ರದ ಸಂಖ್ಯೆ BDIS/LND(3)62/1975-76 ರ ಮೂಲಕ ಆಸ್ತಿಯನ್ನು ಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡು, ಪರಿವರ್ತನೆ ಆದೇಶವನ್ನು ಪಡೆದುಕೊಂಡಿದ್ದು, ಪ್ರಸ್ತುತ ಮಾಹಿತಿ ಹಕ್ಕು ಕಾಯಿದೆ-2005 ರ ಅಡಿಯಲ್ಲಿ ವಿಚಾರಣೆ ನಡೆಸಿದಾಗ ಸಂಬಂಧಪಟ್ಟ ಸ್ಥಾವರಜನಿಕ ಅಧಿಕಾರಿಗಳ ದಾಖಲೆಗಳಲ್ಲಿ ಆಸ್ತಿತ್ವದಲ್ಲಿಲ್ಲ, ಎಂದು ತಿಳಿದು ಬಂದಿದ್ದು, ಸರ್ಕಾರಕ್ಕೆ ಮಂಜೂರಾಗಿರುವ 16 ಗುಂಟೆ ಸರ್ಕಾರಿ ಪಿರಾಮಿ ಜಮೀನಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಪಂಚಿಸುವ ಉದ್ದೇಶಕ್ಕಾಗಿ ಸಾರ್ವಜನಿಕ ರಸ್ತಾವೇಜನ್ನು ವೈಜವಾದುದೆಂದು ನಂಬಿಸಿ ಸುಳ್ಳು ದಾಖಲಾತಿಗಳನ್ನು ಸೃಷ್ಟಿಸಿಕೊಂಡು ಮೋಸ ಮಾಡಿರುವುದಲ್ಲದೆ ಆಸಾಮಿಗಳು ಸದರಿ 16 ಗುಂಟೆ ಸರ್ಕಾರಿ ಪಿರಾಮಿ ಜಮೀನನ್ನು ತಮ್ಮ ಸ್ವಂತಕ್ಕೆ ಬಳಸಿಕೊಂಡು ಕೃತ್ಯವೆಸಗಿರುವುದು ಕಂಡು ಬಂದಿದ್ದು, ಆದ್ದರಿಂದ ಸದರಿ ಆಸಾಮಿಗಳ ಮೇಲೆ ಕಲಂ. 465, 466, 468, 471 ಮತ್ತು 477 ಐಪಿಸಿ, ಕಲಂ.192A ಕರ್ನಾಟಕ ಭೂಕಂದಾಯ ಕಾಯಿದೆ-1964 ಮತ್ತು ಕಲಂ. 4 ಮತ್ತು 5 ಕರ್ನಾಟಕ ಭೂಕಬಳಿಕೆ ನಿಷೇಧ ಕಾಯಿದೆ-2011 ರೀತ್ಯಾ ಕೇಸು ದಾಖಲು ಮಾಡಿಕೊಂಡು ತನಿಖೆ ಕೈಗೊಳ್ಳಲು ಕೋರಿದ ದೂರು ಇತ್ಯಾದಿ...

11. (a) ತೆಗೆದುಕೊಂಡ ಕ್ರಮ:

Investigation

(b) ಫೈ.ವ.ವರದಿಯನ್ನು ಪಿರ್ಯಾದಿಯವರಿಗೆ ಆವರಣ ಭಾಷೆಯಲ್ಲಿ ವಿವರಿಸಿ, ಓದಿ ಹೇಳಲಾಗಿದೆ ಅದರ ಪ್ರತಿಯನ್ನು ಪುಕಟ್ಟೆಯಾಗಿ ಕೊಡಲಾಗಿದೆ? : Yes

(c) ಪೊಲೀಸ್ ಅಧಿಕಾರಿಯು ತನಿಖೆಗೆ ಸ್ಥಳಕ್ಕೆ ಭಾವಿಸದಿದ್ದಲ್ಲಿ ಅಥವಾ ತನಿಖೆ ಮಾಡಲು ನಿರಾಕರಿಸಿದಲ್ಲಿ ಕಲಂ 157 ಸಿ.ಆರ್.ಪಿ.ಸಿ.ಯ ಕಲಂ (ಎ) ಅಥವಾ (ಬಿ) ಯಡಿ ಕಾರಣವನ್ನು ದಾಖಲಿಸಬೇಕು.

Procéeded

12. ಪಿರ್ಯಾದಿಯ ಸಹಿ/ ಹೆಬ್ಬೆರಳಿನ ಗುರುತು

13. ನ್ಯಾಯಾಲಯಕ್ಕೆ ಕಳುಹಿಸಿದ ದಿನಾಂಕ ಮತ್ತು ಸಮಯ : 14/06/2023 19:00:00

14. ನ್ಯಾಯಾಲಯಕ್ಕೆ ತೆಗೆದುಕೊಂಡು ಹೋದ ಪಿಸಿ/ ಹೆಚ್.ಸಿ : KUMARASWAMY J , HC 6191

ಓದಿ ಹೇಳಲಾಗಿ ಕೇಳಲಾಗಿ ಸರಿಯಿದೆ

ಠಾಣಾಧಿಕಾರಿಯ ಸಹಿ

ಠಾಣಾಧಿಕಾರಿಗಳು
ಹೆಬ್ಬಗೋಡಿ ಪೊಲೀಸ್ ಠಾಣೆ
ಬೆಂಗಳೂರು ನಗರ - 560 081.

231

1) Copy applied for on the 28/6/23

2) Copying fee required to be produced on the

3) Copying fee furnished on the

4) Applicant/s required to be present on 3/7/23

5) Copy ready on the 28/6/23

6) Copy delivered on the

7) Copied by

8) Examined by

232

TRANSLATED COPY of Annexure-B4

KARNATAKA POLICE DEPARTMENT

FIRST INFORMATION REPORT

(Section 154)

8th Additional Chief Metropolitan Magistrate Court, Nrupathunga Road, Bangalore City

1. From: Bengaluru City: Cubbon Park Sub-division
Police Station: Cubbon Park
Crime Number: 92023
Date: 14/06/2023

2. Sections: IPC 1860 (U/S-465, 466, 468, 471, 477); KARNATAKA LAND REVENUE ACT 1964 (U/s-192(A)); The Karnataka Land Grabbing Prohibition Act, 2011 (U/s-4, 5)

3. (a) Date of the act: Friday
From date: 28/01/2022
From time: 00:00:00
To date: 14/06/2023
To time: 00:00:00

Judicial/Magistrate reference

(b) Date of receipt of report at the station: 14/06/2023 18:30:00

(c) Reasons for delay in reporting by complainant/informant:

(d) General Diary reference number and time: 2, 18:30:00

4. (a) Place of occurrence:

In writing/statement: Manavarthe Village, Binnamangala, KR Puram, Bengaluru City, Karnataka

(b) Direction and distance from the police station: 00

(c) Village: Other PS Limits

Patrol name: Other PS-Limits

(d) If the place falls under another police station's jurisdiction, name of that police station:

5. Complainant/Informant:

(a) Name: Shreenath Shamanna
Father/Husband's Name: Shamanna
(b) Age: 35
(c) Occupation: Others (Please Specify)
(d) Religion: Hindu
(e) Caste:
(f) Phone:
(g) Passport Number:
(h) Email:
(i) Nationality: India
(j) Date of providing:
(k) Address: No. 23, 3rd Floor, HVR Layout, Bnatarane?, KR Puram, Bengaluru City, Karnataka
(l) Did the complainant see or hear about the incident: See

6. Details of known/suspected/unknown persons:

Sl No	Name/Father's Name/Caste/ Address	Type	Person Type	Gender	Age	Occupation
1	Vijay Shekhar (A1) No. 6, Commissionerate Road, Richmond Town, Bengaluru City, Karnataka	Accused	Adult	Male	63	
2	Chaitra Prabhakar (A2) No. 6, Commissionerate Road, Richmond Town, Bengaluru City, Karnataka	Accused	Adult	Male	54	
3	Sudeep Thangayya (A3) No. 6,	Accused	Adult	Male	36	

	Commissionerate Road, Richmond Town, Bengaluru City, Karnataka					

7. Details of the injured:

Sl .No	Name	Address	Type of injury	Gender	Age	Occupation

8. Details of stolen/involved properties:

Sl. No	Property Type	Item Description	Estimated Value (in Rs.)

9. Panchanama report/UD Case number:

10. First Information Report:

Shri. Shekhar, Mrs. Chaitra, Prabhakar N, and Sudeep Thangayya have fully encroached upon 3 acres 33 guntas of land in Survey Nos. 2, 27, 71, 7/18 of Manavarthe Kaval Village, KR Puram, Bengaluru East Taluk, belonging to the late Shri George Thangayya, who acquired the property through official memorandum/grant certificate number BDISLND(3)62/1975-76 dated 26.12.1975. Upon investigation under the Right to Information Act, 2005, it was found that the related public records do not exist. The accused have fraudulently created false documents to deceive the public and encroached upon 16 guntas of government kharab land, using it for their own purposes. Therefore, criminal cases have been registered against the accused under Sections 465, 466, 468, 471, and 477 of the IPC, Section 192(A) of the Karnataka Land Revenue Act, 1964, and Sections 4 and 5 of the Karnataka Land Grabbing Prohibition Act, 2011, and the complaint has been filed for investigation.

11. (a) Action Taken: Investigation

(b) Question

Has the report been read over and explained to the complainant in their language, and a copy provided free of cost? : Yes

(c) If the police officer did not proceed to the spot for investigation or declined to investigate under Section 157 Cr.P.C provision (a) or (b), the reason must be recorded, Proceeded

237 **ANNEXURE -35**

IN THE COURT OF THE VIII ADDL. CHIEF METROPOLITAN MAGISTRATE AT BANGALORE

P.C.R. No. /2023

C.C. No. /2023

BETWEEN:

SRI:SREENATH SHAMANNA
S/o Shamanna
Aged about 35 years
Residing at No.23, 3rd Floor,
H.V.R.Layout, Bhattarahalli,
K.R.Puram, Bengaluru-560049

.....COMPLAINANT

AND:

1. Sri.Vijay Shekar
S/o George Thangiah,
Aged about 63 years
Residing at No:6; Commissariat Road,
Richmond Town, Bengaluru - 560 025.

2. Mrs.Chitra Prabhakar,
D/o George Thangiah,
Aged about 54 years
Residing at No.6, Commissariat Road,
Richmond Town, Bengaluru - 560 025.

3. Mr.Sudeep Thangaiah
S/o Vijay Shekar Thangiah,
Aged about 36 years
Residing at No.6, Commissariat Road,
Richmond Town, Bengaluru- 560 025.

....ACCUSED

COMPLAINT FILED UNDER SECTION 200 OF THE CRIMINAL PROCEDURE CODE

The Complainant above named humbly submits as follows:

1. The address of the Complainant for the purpose of court summons, notices etc., from this Hon'ble Court are as shown in the cause

title above and the Complainant can also be served through their advocates Sri. Siddharth Suman; Sri. Suraj Chowdary; Sri. Bhairav. G.V, Kum. Raagini Raghu and Sri. Nirupan Gowda H.N, Advocates, No.206, 80 Feet Road, 6th Cross, RMV2nd Stage, Bangalore – 560 094.

2. The complainant is an aggrieved member of the society resulting from the criminal acts and offences committed by the Accused persons i.e Mr. Vijay Shekar, Mrs. Chaitra Prabhakar and Mr.Sudeep Thangaiah, the legal heirs of Late. George Thangaiah who are involved in the illegal misappropriation of public property situated at Municipal No.21, Sy.No.2, 2/7, 7/1a, 7/1b, totally measuring 3 acres 33 guntas, situated at Binnamangala Manvarthekaval, K.R Puram Hobli, Bangalore East Taluk (herein after referred to as the schedule property).

3. The complainant further submits that Late Mr.George Thangaiah claimed to have acquired the schedule property vide official memorandum/ Grant certificate bearing No.BDIS/LND(3)62/1975-76 dated 26.12.1975 purportedly issued by the Deputy Commissioner for grant of 16 guntas of Kharab Land, bearing No.BDIS/LND(3)62/1975-76 dated 31.12.1979. It is further submitted that on the basis of this grant certificate the above accused persons who are the legal heirs of Late.Mr.George Thangaiah have claimed ownership and are presently in possession of the aforementioned 16 guntas of Kharab land situated within the schedule property.

4. The complainant further submits that upon making inquiries under the Right to Information Act, 2005, it has come to light that the aforementioned Office Memorandum/ Grant Certificate dated 26.12.1975

as well as the conversion order dated 31.12.1979 do not exist in the records of the concerned public authorities. The complainants further submit that the aforementioned two documents have been fabricated and forged with an intent to cause unjust enrichment to Late Mr. George Thangaiah and the Accused persons, to the detriment of the State Government and the public at large. A copy of the RTI application dated 28.01.2022, and the reply thereto issued by the Deputy Tahsildar dated 08.03.2022 confirming that upon search of relevant catalogues and indexing records, no Conversion Order dated 31.12.1979 was found, is produced herewith and marked as **ANNEXURE-A & A1.** Also a copy of an RTI application dated 09.02.2022, and the reply thereto issued by the Tahsildar, Bangalore East Taluk dated 24.03.2022, confirming that Office Memorandum/Grant Certificate dated 26.12.1975 is not available in the official records of the said office, is produced as **ANNEXURE-B & B1.** Additionally the complainant produces a copy an RTI application dated 09.02.2022 and the reply thereto issued by Public Information Officers & Additional District Commissioner, Bangalore District dt 11/4/2022 confirming that upon a search of the records of that office, the Office Memorandum/Grant Certificate dated 26.12.1975 is not available, the same is marked as **ANNEXURE-C & C1.**

5. The complainant further submits that the aforementioned facts make it clear that the documents on the basis of which the Accused persons are presently in possession of the 16 Guntas of Kharab Land in the Schedule Property are fabricated. As such, the Accused have encroached upon public land and are claiming ownership thereof on the basis of concocted documents, which have been fabricated with a view to

cause wrongful loss to the public and unjust enrichment to the Accused persons.

6. These acts constitute an offence under Section 192A of the Karnataka Land Revenue Act, 1964 as well as Sections 4 and 5 of the Karnataka Land Grabbing Prohibition Act, 2011. In addition to this, the actions of the Accused also constitute offences punishable under Section 465, 466, 468 read with Section 471 and 477 IPC, since they are intentionally making use of forged documents, proclaiming the same to be genuine to establish their ownership and possession over the 16 Guntas of Phut Kharab Land in the Schedule Property, which is presently valued at over 3 Crore Rupees.

7. It is evident that the accused persons are guilty of having committed acts of forgery and fabrication only with the common dishonest intention of cheating the Government and the general public at large by entering into a criminal conspiracy, an intention which was nurtured right from inception. The documents referred to above i.e. Memorandum/ Grant Certificate dated 26.12.1975 as well as the conversion order dated 31.12.1979 are products of forgery aimed at causing wrongful loss to the society and wrongful gain to the accused persons. The complainant further submits that the accused persons knowing or having reason to believe that the documents on which they have placed reliance in support of their baseless and untenable claims are in fact forged, fabricated and concocted ones, proclaiming the same to be genuine to establish their ownership and possession over the 16 Guntas of Kharab Land in the Schedule Property, which is presently valued at over 3 Crore Rupees.

8. From the course of their conduct, the Accused persons have committed serious offences which are made penal under Sections 192A of the Karnataka Land Revenue Act, 1964 as well as Sections 4 and 5 of the Karnataka Land Grabbing Prohibition Act, 2011. In addition to this, the actions of the Accused also constitute offences punishable under Sections 465, 466, 468, 471 and 477 of the Indian Penal code.

9. Under these circumstances, the Complainant filed a Complaint dated 15/03/2023, against the Accused persons for the aforementioned offences committed before the jurisdictional Police Station, i.e Cubbon Park Police Station. Surprisingly, the Police authorities refused to register an FIR and investigate into the said offences committed by the Accused persons and on the contrary, issued an acknowledgement bearing NCR 09/2023 also dated 15/03/2023. The Complaint Copy and the acknowledgement issued by the police both dated 15/03/2023 are produced herewith and marked as **Annexure-D & D1**. Despite issuing the aforementioned acknowledgment no action was taken by the officials at Cubbon Park Police Station to apprehend the Accused persons for the offences aforementioned. No action has been taken by the police, let alone registering the FIR, though the complaint discloses the commission of cognizable offence, the police have strangely not complied with the provisions of Section 154 (1) of the Code of Criminal Procedure.

10. Under such circumstance, the Complainant had no other choice but to give a representation to the Deputy Commissioner of Police, Central Division, enclosing a copy of the complaint requesting him to investigate the said case or to direct the investigation to be conducted by the Cubbon Park Police Station or any other police station. The complainant has

therefore made the required representation as required under Section 154 (3) of the Code of Criminal Procedure. A copy of the acknowledgement by office of the Deputy Commissioner of Police, Central Division based on the representation of the Complainant dated 20/03/2023 is produced at Annexure-E. Quite shockingly till this day, no action has been taken by the Deputy Commissioner of Police, Central division, as well.

11. Under these circumstances, on account of the inaction of the police, the complainant has presented this complaint before this Hon'ble Court praying that this Hon'ble Court be pleased to prosecute and punish the accused persons.

12. It is submitted that the Accused named above have cheated the Government and the public at large by their acts of fraud, forgery and fabrication of documents with the dishonest intention of causing wrongful loss to the public and unjust enrichment to the Accused persons which they had nurtured and carried with them since inception by entering into a criminal conspiracy. The aforementioned acts of forgery and fabrication, conjointly committed by the Accused persons, in particular the documents i.e Memorandum/ Grant Certificate dated 26.12.1975 as well as the conversion order dated 31.12.1979 are acts of forgery committed by the Accused persons either directly by themselves or with the aid and assistance of some of their confidants. These documents are per se is not genuine.

13. Under the circumstances, the Complainant has filed the above complaint for taking action against the Accused persons for having committed offences punishable and made penal under Sections Sections

465, 466, 468, 471 and 477 of the Indian Penal code, Section 192A of the Karnataka Land Revenue Act, 1964 as well as Sections 4 and 5 of the Karnataka Land Grabbing Prohibition Act, 2011.

14. The offences committed by the Accused are within the jurisdiction of this Hon'ble Court. Hence this Hon'ble Court has jurisdiction to try this complaint.

PRAYER

WHEREFORE, the complainant above named humbly prays that this Hon'ble Court be pleased to refer the above complaint to the Cubbon Park Police Station for investigation and report in respect of the above complaint for prosecuting and punishing the above mentioned Accused persons, in the interests of justice and equity.

ADVOCATE FOR COMPLAINANT

COMPLAINANT

LIST OF WITNESSES:

1. Sri Shivakumar A
   S/o Anantha Padmanabha,
   Aged about 36 years
   Residing at No.23, 3rd Floor,
   16th cross, HVR Layout,
   K R Puram, Bengaluru- 560 048.
   Mob- 9902327894

2. Sri I. Rajashekar
   S/o P Lakshman,
   Aged about 56 years
   Residing at No. 162, 3rd A Cross,
   1st Stage, KHB Colony,
   Near GEM School, Basaveshwarnagar,
   Bengaluru- 560079.
   Mob: 7760042999

Bangalore
Date: 31/12/19

COMPLAINANT

LIST OF DOCUMENTS:

1. ANNEXURE – A & A1 - Copy of the RTI application dated 28.01.2022, and a reply thereto issued by the Deputy Tahsildar dated 08.03.2022;

2. ANNEXURE – B & B1- Copy of the RTI application dated 09.02.2022, and a reply thereto issued by the Tahsildar, Bangalore North Taluk dated 24.03.2022;

3. ANNEXURE – C & C1 – Copy an RTI application dated 09.02.2022 and the reply thereto issued by Public Information Officers & Additional District Commissioner, Bangalore District dated 26.12.1975

4. ANNEXURE – D1 & D2 – Copy of the police complaint and the acknowledgement issued by the police both dated 15/03/2023

5. ANNEXURE – E – Copy of the representation dated 20/03/2023 given by the complainant to the Deputy Commissioner of Police, Central division.

Bangalore
Date: 30/-3/2023

COMPLAINANT

[Sreenath.PCR]

245

1) Copy applied for on the 28/6/23
2) Copying fee required to be produced on the
3) Copying fee furnished on the
4) Applicant required to be applied on 1/7/23
5) Copy ready on the 28/6/23
6) Copy delivered on the
7) Copied by
8) Examined by

246

ANNEXURE - 36

HIGH COURT OF KARNATAKA
26 JUL 2023
BENGALURU

IN THE HIGH COURT OF KARNATAKA, AT BENGALURU

DATED THIS THE , 06TH DAY OF JULY , 2023

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO 5606 OF 2023

I.A.NO.1/2023 FOR STAY

BETWEEN

1. MR. VIJAYA SHEKAR THANG. IAH
S/O LATE MR. GEORGE THANGAIAH,
AGED 65 YEARS,
RESIDING AT NO. 6, COMMISSARIAT ROAD,
BENGALURU - 560 025
(SENIOR CITIZEN BENEFIT NOT CLAIMED)

2. MRS. RACHEL CHITRA PRABHAKAR
W/O MR. SATHI PRABHAKAR,
AGED 62 YEARS,
RESIDING AT NO. 6, COMMISSARIAT ROAD,
BENGALURU - 560 025
SENIOR CITIZEN BENEFIT NOT CLAIMED

3. MR. SUDEEP THANGIAH
S/O MR. VIJAY SHEKAR THANGIAH,
AGED 32 YEARS,
RESIDING AT NO. 6, COMMISSARIAT ROAD,
BENGALURU - 560 025

a) The date on which the application was made 27/7/23
b) The date on which charges and addl. charges if any, are called for
c) The date on which the charges and addl. charges if any, are deposited
d) The date on which the copy is ready 26/7/23
e) The date of notifying that the copy is ready for delivery 26/7/23
f) The date on which copy is delivered to the applicant 29/7/23

...Petitioner

(By Sri./Smt : ANIKETH B C, ADV.)

AND

1. STATE BY CUBBON PARK POLICE STATION
KASTURBA ROAD,
BENGALURU-560 001
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BENGALURU 560 001.

2. SHREENATH SHAMANNA
S/O SHAMMANA
AGED ABOUT 35 YEARS,
RESIDING AT NO.23, 3RD FLOOR,

HIGH COURT OF KARNATAKA

This Certified copy contains 4 Pages
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Received

247

H.V.R. LAYOUT,
BHATTARAHALLI, K.R. PURAM,
BENGALURU- 560 049

Respondent

(By HCGP FOR R1)

CRL.P FILED U/S 482 CR.PC BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO

1) TO QUASH THE COMPLAINT DATED 30.03.2023 (VIDE ANNEUXRE C) FILED BY THE RESPONDENT NO.2 BEFORE THE VIII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AND ALL ACTIONS PURSUANT TO THE SAME.

2) TO SET ASIDE THE ORDER DATED 02.06.2023 (VIDE ANNEXURE A) PASSED BY THE VIII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU IN PCR (FR) NO.5284/2023 DIRECTING INVESTIGATION AND REGISTERING OF FIR AND CONSEQUENTLY QUASH THE ALL FURTHER PROCEEDINGS IN PCR (FR) NO.5284/2023.

3) TO QUASH THE FIR DATED 14.06.2023 (VIDE ANNEXURE B) REGISTERED BY THE RESPONDENT NO.1 CUBBON PARK SUB DIVISION POLICE STATION IN CR.NO.99/2023 PENDING BEFORE THE VIII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU FOR THE OFFENCES P/U/S 465, 466, 468, 471 AND 477 OF THE IPC, SEC. 192A OF THE KARNATAKA LAND REVENUE ACT, 1964 AND SEC. 4 AND 5 OF THE KARNATAKA LAND GRABBING PROHOBITION ACT, 2011 AND CONSEQUENTLY ALL ACTIONS PURSUANT TO THE SAME.

READ: I.A.NO.1/2023 FILED BY THE ADVOCATE FOR THE PETITIONER PRAYING TO ALLOW THE INSTANT APPLICATION AND PASS AN ORDER STAYING FURTHER PROCEEDINGS PURSUANT TO THE ORDER DATED 02.06.2023 IN PCR (FR) NO.5284/2023 PENDING ON THE FILE OF THE VIII ADDL. CHIEF METROPOLITAN MAGISTRATE AT BENGALURU (VIDE ANNEXURE A), FOR THE REASONS STATED THEREIN.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION A/W I.A.NO.1/2023 FOR STAY, THIS DAY, THE COURT PASSED THE FOLLOWING:

ENCL:XEROX COPY OF THE ORDER DT: 06.07.2023.

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CRL.P NO. 3606/2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[MR. VIJAYA SHEKAR THANGAIAH AND OTHERS VS. STATE BY CUBBON PARK POLICE STATION AND ANOTHER]

MNPJ
06.07.2023
(VIDEO CONFERENCING / PHYSICAL HEARING)

ORDER

Heard Sri K.G.Raghavan, learned senior counsel for the petitioners.

Learned High Court Government Pleader waives notice for respondent No.1.

Issue emergent notice to respondent No.2.

Learned counsel for the petitioner to serve a copy of the petition papers upon the learned High Court Government Pleader, forthwith.

ORDER ON I.A.NO.1/2023

The petitioners are before this Court calling in question registration of a crime in Crime No.99/2023, pending before the VIII ACMM, Bengaluru, which is pursuant to a reference made by the learned Magistrate under Section 156(3) of the Cr.P.C., in P.C.R.No.5284/2023, for the offences under Sections 465, 466, 468, 471 and 477 of the IPC, Section 192A of the Karnataka Land Revenue Act, 1964, Sections 4 and 5 of the Karnataka Land Grabbing Prohibition Act, 2011.

The issue in the *lis* has a chequered history. Several proceedings are instituted against the petitioner, all of which have been stayed by the Co-ordinate Benches of this Court. Those were proceedings instituted under the Karnataka Land

Revenue Act or before the Land Grabbing Court against the petitioner. This Court quashed the same in W.P.8972 of 2020. The State challenged the said order in W.A.No.552 of 2020. The Division Bench in terms of its order dated 19.04.2021 affirmed the said order passed by the learned Single Judge.

Certain proceedings were sought to the instituted under Section 192(A) of the Karnataka Land Revenue Act, which is also stayed by a co-ordinate Bench of this Court in W.P.8073 of 2020.

After all the aforesaid proceedings, the 2nd respondent/complainant again seeks to register a private complaint invoking the offence under Section 192(A) along with 4 and 5 of the Karnataka Land Grabbing Prohibition Act, 2011 and the offences under the IPC. The learned Magistrate refers the matter for investigation and the reference becomes a crime in Crime No.99 of 2023. In the teeth of the aforesaid facts, permitting further investigation to continue, would become an abuse of the process of the law *albeit prima facie*.

Therefore, there shall be an interim order of stay of further investigation in Crime No.99/2023, till the next date of hearing.

// COPY //

SD/- JUDGE

HIGH COURT OF KARNATAKA

ASSISTANT REGISTRAR
CRIMINAL BRANCH (PENDING)

COPY TO:
1. BENGALURU ADDITIONAL CHIEF METROPOLITAN MAGISTRATE.
2. THE STATION HOUSE OFFICER, CUBBON PARK POLICE STATION, BENGALURU CITY.

AG210723

TRUE COPY

Section Officer
High Court of Karnataka
Bangalore-560 001

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Skip to main content

Official Website of
High Court of Karnataka

ANNEXURE -37

back

Status: Pending

Case Number: **WP 18582/2023 (KAHC010433582023)**

Classification: **KLGP**

Date of Filing: **18/08/2023 13:44:37**

Petitioner: **MR. VIJAYA SHEKAR THANGIAH**

Pet. Advocate: **SHRIKARA P K**

Respondent: **A. SHIVAKUMAR**

Resp. Advocate:

Filing No.: **WP 18596/2023**

Judge: **S.G.PANDIT AND C.M. POONACHA**

Last Posted For: **PRELIMINARY HEARING - B GROUP**

Last Date of Action: **05/04/2024**

Last Action Taken: **ADMIT/RULE**

Next Hearing Date:

Daily Orders: WP 18582/2023

1	S.G.PANDIT AND C.M. POONACHA	05/04/2024
	, Issue Rule. Taking note of the grounds urged, stay of further proceedings in L.G.C.(P) No.275/2023 before the Karnataka Land Grabbing Prohibition Special Court, Bengaluru. Post this petition during first week of June 2024. **Last Updated On:** 2024-04-18 16:56:33	
2	S.G.PANDIT AND C.M. POONACHA	14/03/2024
	,At the request of learned counsel for Caveator/respondent No.1, list on 22.03.2024. **Last Updated On:** 2024-03-15 11:29:56	
3	KRISHNA S DIXIT AND C.M. POONACHA	06/03/2024
	List on 14/03/2024, at request of petitioner counsel.,	
4	P.S.DINESH KUMAR AND T G SHIVASHANKARE GOWDA	12/12/2023
	Shri K.G. Raghavan, learned Senior Advocate appears for the petitioners. Vakalatnama filed by Smt. K. Chhaya, learned Advocate for respondent No.1 is accepted. Shri Vikas Rojipura, learned AGA is directed to take notice for respondents No.2 to 4-State. ORDER ON I.A.No.1/2023 For the reasons stated in the accompanying affidavit, I.A.No.1/2023 for dispensation is allowed. Production of typed copies of Annexures mentioned in the application is dispensed with for the time being. ORDER ON I.A.No.2/2023 For the reasons stated in the accompanying affidavit, I.A.No.2/2023 for dispensation is allowed. Production of English translated copies of Kannada Annexures mentioned in the application is dispensed with for the time being. **Last Updated On:** 2023-12-21 15:31:12	

5	P.S.DINESH KUMAR AND T G SHIVASHANKARE GOWDA	07/12/2023
	Shri. P.K. Shrikara, learned Advocate appears for the petitioners and Shri. D.R. Ravishankar, learned Senior Advocate appears for caveator/respondent No.1. By consent, call on 12.12.2023. **Last Updated On:** 2023-12-08 16:14:22	

6	K.SOMASHEKAR AND UMESH M ADIGA	01/09/2023
	Learned counsel Ms.Priya for the petitioners is present before the Court physically and represents Sri Shrikara P.K. who is on record. Learned counsel Ms.Chhaya K for respondent No.1 is present before the Court physically. At the request for counsel for the parties, list this matter week after next in the usual course. **Last Updated On:** 2023-09-04 15:28:20	

ANNEXURE -38

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ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ
Bangalore Development Authority

ಸಂಖ್ಯೆ :
No. : ಬೆಂಅಪ್ರಾ/ ನಯೋಸ/DLP-69/ 233ಕ್ /2011-12.

ದಿನಾಂಕ : 2/8/11
Date :

ಕಾರ್ಯಾದೇಶ

ವಿಷಯಃ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರಂ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಮನವರ್ತ ಕಾವಲ್ ಗ್ರಾಮದ ಆಸ್ತಿ ಸಂಖ್ಯೆ 4,4/1, 4/1-1,21,23 ಮತ್ತು 44/4 ರ 20713.02 ಚ.ಮೀ. ಪೈಕಿ ಅಭಿವೃದ್ಧಿಗೆ ಪರಿಗಣಿಸಿರುವ ವಿಸ್ತೀರ್ಣವಾದ 20484.47 ಚ.ಮೀ. ವಿಸ್ತೀರ್ಣ ಪ್ರದೇಶದಲ್ಲಿ 3 ತಳ+ನೆಲ + 05 ಅಂತಸ್ತಿನ ವಸತಿಯೇತರ ವಾಣಿಜ್ಯ ಅಭಿವೃದ್ಧಿ ನಕ್ಷೆಗೆ ಶ್ರೀ. ಜಾರ್ಜ್ ತಂಗಯ್ಯ ಇವರ G.P.A. ದಾರರಾದ M/s Nitesh Indiranagar Retail Pvt.Ltd., ಇವರ ಪರವಾಗಿ ಅನುಮೋದನೆ ನೀಡುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖಃ
1. ನಿಮ್ಮ ಮನವಿ ದಿನಾಂಕ 04-03-2011.
2. ಪ್ರಾಧಿಕಾರದ ಸಮಿತಿ ಸಭೆಯ ವಿಷಯ ಸಂಖ್ಯೆ120/2011, ದಿನಾಂಕ 13.06.2011.
3. ಈ ಕಛೇರಿಯ ಪತ್ರದ ಸಂಖ್ಯೆ ಬೆಂಅಪ್ರಾಸನಯೋಸಃ DLP-69/ 1624/ 2011-12, ದಿನಾಂಕ 27.06.2011 ರಂದು ವಿವಿಧ ಶುಲ್ಕಗಳನ್ನು ಪಾವತಿಸಲು ತಿಳಿಸಿರುವುದು.
4. ಅರ್ಜಿದಾರರು ದಿನಾಂಕ 01.07.2011 ರಂದು ವಿವಿಧ ಶುಲ್ಕಗಳ ಬಾಬ್ತು ₹ 21,10,000/- ಗಳನ್ನು ಪಾವತಿ ಮಾಡಿ ಚಲನ್ ಪ್ರತಿಯನ್ನು ಸಲ್ಲಿಸಿದ್ದು ಇದನ್ನು ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಆರ್ಥಿಕ ವಿಭಾಗದವರು ದೃಢೀಕರಿಸಿರುತ್ತಾರೆ.

ಉಲ್ಲೇಖ (1) ರಲ್ಲಿ ಅರ್ಜಿದಾರರಾದ ಶ್ರೀ. ಜಾರ್ಜ್ ತಂಗಯ್ಯ ಇವರ G.P.A. ದಾರರಾದ M/s Nitesh Indiranagar Retail Pvt.Ltd., ರವರು ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರಂ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಮನವರ್ತ ಕಾವಲ್ ಗ್ರಾಮದ ಆಸ್ತಿ ಸಂಖ್ಯೆ 4,4/1, 4/1-1,21,23 ಮತ್ತು 44/4 ರ 20713.02 ಚ.ಮೀ. ಪೈಕಿ ಅಭಿವೃದ್ಧಿಗೆ ಪರಿಗಣಿಸಿರುವ ವಿಸ್ತೀರ್ಣವಾದ 20484.47 ಚ.ಮೀ. ವಿಸ್ತೀರ್ಣ ಪ್ರದೇಶದಲ್ಲಿ 3 ತಳ+ನೆಲ + 05 ಅಂತಸ್ತಿನ ವಸತಿಯೇತರ ವಾಣಿಜ್ಯ ಅಭಿವೃದ್ಧಿ ನಕ್ಷೆಗೆ ಅನುಮೋದನೆ ನೀಡುವಂತೆ ಕೋರಿರುತ್ತಾರೆ.

ಪ್ರಸ್ತಾವನೆಯ ಬಗ್ಗೆ ಪರಿಶೀಲಿಸಿ, ವಿಷಯವನ್ನು ಉಲ್ಲೇಖ (2) ರಲ್ಲಿ ನಡೆದ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಸಮಿತಿ ಸಭೆಯಲ್ಲಿ ಮಂಡಿಸಿ, ಚರ್ಚಿಸಲಾಗಿರುತ್ತದೆ. ಚರ್ಚೆಯ ಸಮಯದಲ್ಲಿ, ಬಿನ್ನಮಂಗಲ ಮನವರ್ತ ಕಾವಲ್ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 2 ಮತ್ತು 7 ರಲ್ಲಿ ಅಧಿಸೂಚನೆ ಹೊರಡಿಸಿ ಭೂಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡಿರುವ ಜಮೀನನ್ನು ಭಾಗಶಃ ರಸ್ತೆಗಾಗಿ ಉಪಯೋಗಿಸಿಕೊಳ್ಳುವುದಕ್ಕೆ ಹಾಗೂ ಅರ್ಜಿದಾರರು ನಕ್ಷೆ ಮಂಜೂರಾತಿಗಾಗಿ ಕೋರಿರುವ ಪ್ರದೇಶದ ಬಗ್ಗೆ 1978 ರಲ್ಲಿ ಪ್ರಾರಂಭಿಕ ಅಧಿಸೂಚನೆಯನ್ನು ಮಾತ್ರ ಹೊರಡಿಸಲಾಗಿದ್ದು, ಅಂತಿಮ ಅಧಿಸೂಚನೆಯನ್ನು ಹೊರಡಿಸಿರುವುದಿಲ್ಲ. ನಂತರ ಇದುವರೆಗೆ ಭೂಸ್ವಾಧೀನ ಪ್ರಕ್ರಿಯೆಯನ್ನು ಮುಂದುವರಿಸಿರುವುದಿಲ್ಲವೆಂದು ಭೂಸ್ವಾಧೀನ ವಿಭಾಗ ನೀಡಿರುವ ವರದಿಯನ್ನು ಗಮನಿಸಲಾಯಿತು. ಸದರಿ ಜಮೀನನ್ನು ಮತ್ತೊಮ್ಮೆ ಭೂಸ್ವಾಧೀನ ಪ್ರಕ್ರಿಯೆಗೆ ಒಳಪಡಿಸುವ ಅವಶ್ಯಕತೆ ಇಲ್ಲವೆಂಬುದನ್ನು ಸಭೆಯಲ್ಲಿ ತೀರ್ಮಾನಿಸಲಾಗಿರುತ್ತದೆ.

....2.,

ಪ್ರಸ್ತಾವಿತ ಜಮೀನಿನಲ್ಲಿ ಫೂಲ್ ರಸ್ತೆಯ ಅಗಲವು 24.85ಮೀ. ಇರುವುದರಿಂದ ಸದ್ಯ ಅಗಲಕ್ಕೆ ಅನುಗುಣವಾಗಿ ಲಭ್ಯವಾಗುವ FAR 3.0 ನ್ನು ನೀಡಬೇಕೆಂದು ತೀರ್ಮಾನಿಸಿದ್ದು, ಅಲ್ಲದೆ ಅರ್ಜಿದಾರರು Basement ನಲ್ಲಿ Puzzal Car Parking ಮಾಡಲು ಉದ್ದೇಶಿಸಿದ್ದು, ಬೆಂಗಳೂರು ನಗರದಲ್ಲಿ ಪಾರ್ಕಿಂಗ್‌ನ ತೊಂದರೆಯನ್ನು ನೀಗಿಸುವ ದೃಷ್ಟಿಯಿಂದ ಇಂತಹ ಹೊಸ ತಂತ್ರಜ್ಞಾನದ ಅಡಿಯಲ್ಲಿ ಅಳವಡಿಸುವ Puzzal Car Parking ನ ವಿನ್ಯಾಸವನ್ನು ಅನುಮೋದಿಸಲು ತೀರ್ಮಾನಿಸಲಾಗಿರುತ್ತದೆ.

ಪ್ರಾಧಿಕಾರದ ಸಮಿತಿ ಸಭೆಯ ತೀರ್ಮಾನದಂತೆ ವಸತಿಯೇತರ ವಾಣಿಜ್ಯ ಅಭಿವೃದ್ಧಿ ಯೋಜನಾ ನಕ್ಷೆಯ ಅನುಮೋದನೆ ಸಂಬಂಧ ಅರ್ಜಿದಾರರಿಗೆ ಉಲ್ಲೇಖ (3) ರ ಪತ್ರದಲ್ಲಿ ವಿವಿಧ ಶುಲ್ಕಗಳ ಬಾಬ್ತು ₹21,10,000/- (₹ ಇಪ್ಪತ್ತೊಂದು ಲಕ್ಷದ ಹತ್ತು ಸಾವಿರ ಮಾತ್ರ) ಅನ್ನು ಪ್ರಾಧಿಕಾರದ ಅವರಣದಲ್ಲಿರುವ ಕೆನರಾ ಬ್ಯಾಂಕ್ ಶಾಖೆಯಲ್ಲಿ ಪಾವತಿಸಿ ಚಲನ್ ಪ್ರತಿಯನ್ನು ಸಲ್ಲಿಸಲು ತಿಳಿಸಲಾಗಿತ್ತು.

ಅದರಂತೆ ಅರ್ಜಿದಾರರು ದಿನಾಂಕ 01.07.2011 ರಂದು ₹ 21,10,000/- ಗಳನ್ನು ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಆವರಣದಲ್ಲಿರುವ ಕೆನರಾ ಬ್ಯಾಂಕ್‌ನಲ್ಲಿ ಚಲನ್ ನಂ. 54:9 ರ ಮೂಲಕ ಜಮಾ ಮಾಡಿರುವ ಬಗ್ಗೆ ಚಲನ್ ಪ್ರತಿಯನ್ನು ಉಲ್ಲೇಖ (4) ರಲ್ಲಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಮೊತ್ತವು ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಸಂದಾಯವಾಗಿರುವ ಬಗ್ಗೆ ಪ್ರಾಧಿಕಾರದ ಆರ್ಥಿಕ ವಿಭಾಗದ ಲೆಕ್ಕಾಧಿಕಾರಿಗಳು ದಿನಾಂಕ 05.07.2011 ರಂದು ದೃಢೀಕರಿಸಿರುತ್ತಾರೆ.

ಹಾಗಾಗಿ, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಕೆ.ಆರ್.ಪುರಂ ಹೋಬಳಿ, ಬಿನ್ನಮಂಗಲ ಮಜರೆ ಕಾಡುಗೋಡಿ ಗ್ರಾಮದ ಅಸ್ತಿ ಸಂಖ್ಯೆ 4,4/1, 4/1-1,21,23 ಮತ್ತು 44/4 ರ 20713.02 ಚ.ಮೀ. ಪೈ ಅಭಿವೃದ್ಧಿಗೆ ಪರಿಗಣಿಸಿರುವ ವಿಸ್ತೀರ್ಣವಾದ 20484.47 ಚ.ಮೀ. ವಿಸ್ತೀರ್ಣ ಪ್ರದೇಶದಲ್ಲಿ, 3 ತಳ+ನೆಲ + 15 ಅಂತಸ್ತಿನ ವಸತಿಯೇತರ ವಾಣಿಜ್ಯ ಅಭಿವೃದ್ಧಿ ನಕ್ಷೆಗೆ ಶ್ರೀ. ಜಾರ್ಜ್ ತಂಗಯ್ಯ ಇವರ G.P.A. ದಾರರಾದ M/s Nitesh Indiranagar Retail Pvt.Ltd., ರವರ ಪರವಾಗಿ ಕೆಳಕಂಡ ಷರತ್ತುಗಳಿಗೆ ಒಳಪಟ್ಟು ಅನುಮೋದನೆ ನೀಡಲಾಗಿದೆ.

1.	ಕುಡಿಯುವ ನೀರು ಹಾಗೂ ತ್ಯಾಜ್ಯ ನೀರು ವಿಲೇವಾರಿ ಸೌಲಭ್ಯವನ್ನು ಒಳಚರಂಡಿ ವ್ಯವಸ್ಥೆಯನ್ನು ಅರ್ಜಿದಾರರೇ ಕಲ್ಪಿಸುವುದು.
2.	ವಸತಿಯೇತರ ಅಭಿವೃದ್ಧಿ ಯೋಜನೆಯಲ್ಲಿ ಅರ್ಜಿದಾರರು ಕಡ್ಡಾಯವಾಗಿ ಮಳೆನೀರು ಕೊಯ್ಲಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಪೂರ್ಣ ವಿವರಗಳನ್ನು ನಕ್ಷೆಯಲ್ಲಿ ಗುರುತಿಸಿ ಉದ್ದೇಶಿಸಿ ಒಟ್ಟು ಕಟ್ಟಡಗಳಲ್ಲಿ ಯಾವುದೇ ರೀತಿಯು ಮಳೆ ನೀರು ವ್ಯರ್ಥವಾಗಿ ಹೊರಗೆ ಹೋಗದಂತೆ ಎಲ್ಲಾ ಜಮೀನಿನಲ್ಲಿಯೇ ಭೂಮಿಯ ಒಳಗಡೆ ಹಿಂಗುವಂತೆ ಮಾಡಲು ವಿನ್ಯಾಸವನ್ನು ಸಿದ್ಧಪಡಿಸಿ ಪೂರ್ಣ ವಿವರಗಳನ್ನು ನಕ್ಷೆಯಲ್ಲಿ ಗುರುತಿಸಿ ತೋರಿಸತಕ್ಕದ್ದು.
3.	ಪ್ರಾಧಿಕಾರವು ಅನುಮೋದಿಸಿರುವ ಅಭಿವೃದ್ಧಿ ಯೋಜನಾ ನಕ್ಷೆಯಂತೆಯೇ ಅಭಿವೃದ್ಧಿ ಕಾರ್ಯಗಳನ್ನು ಕಾರ್ಯಗತ ಮಾಡುವುದು. ಪ್ರಾಧಿಕಾರದ ಪೂರ್ವಾನುಮತಿ ಇಲ್ಲದೆ ಯಾವುದೇ ಬದಲಾವಣೆ ಮಾಡುವಂತಿಲ್ಲ.
4.	ಸದರಿ ಪ್ರದೇಶದ ಒಳಗೆ ಹೋಗಲು ಮತ್ತು ಹೊರಗೆ ಬರಲು ಸಂಚಾರ ವ್ಯವಸ್ಥೆಯಲ್ಲಿ ಅಡಚಣೆಯುಂಟಾಗದಂತೆ ವ್ಯವಸ್ಥೆ ಕಲ್ಪಿಸುವುದು. ವಾಹನ ತಪಾಸಣೆಗೆ ಮತ್ತು ಭದ್ರತಾ ವ್ಯವಸ್ಥೆಯನ್ನು ಅಳವಡಿಸಿದಲ್ಲಿ ಸೃಷ್ಟಿತ ಒಳಭಾಗದಲ್ಲಿ ನಿರ್ವಹಿಸುವುದು.

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5.	ಉದ್ಯಾನವನ ಮತ್ತು ಬಯಲು ಜಾಗೆಗಳನ್ನು ಹಾಗೂ ಸಿ.ಎ. ಜಾಗೆಗಳನ್ನು ಅನುಮೋದಿತ ನಕ್ಷೆ ಪ್ರಕಾರ ಅಳವಡಿಸುವುದು ಹಾಗೂ ಅಭಿವೃದ್ಧಿಪಡಿಸುವುದು.
6.	ಅಭಿವೃದ್ಧಿದಾರರು ಉದ್ಯಾನವನಕ್ಕಾಗಿ ಕಾಯ್ದಿರಿಸಿರುವ ಪ್ರದೇಶದಲ್ಲಿ ವಿವಿಧ ಜಾತಿಯ ಮರಗಿಡಗಳನ್ನು ಬೆಳೆಸಿ ಅಭಿವೃದ್ಧಿ ಪಡಿಸುವುದು.
7	ಅಭಿವೃದ್ಧಿದಾರರು ಉದ್ಯಾನವನ ಹಾಗೂ ಬಯಲು ಜಾಗಗಳನ್ನು ಹಾಗೂ ಉದ್ದೇಶಿತ ರಸ್ತೆ, ರಸ್ತೆ ವಿಸ್ತರಣ ಪ್ರದೇಶಗಳನ್ನು ನೊಂದಾಯಿತ ಪರಿತ್ಯಜನಾ ಪತ್ರದ ಮೂಲಕ ಪುಕ್ಕಟೆಯಾಗಿ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಹಸ್ತಾಂತರಿಸುವುದು.
8	ವಿವರವಾದ ಕಟ್ಟಡ ನಕ್ಷೆಗಳನ್ನು ಅನುಮೋದಿಸುವ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರವು Structural Stability ಬಗ್ಗೆ ಪರಿಶೀಲಿಸಿಕೊಳ್ಳತಕ್ಕದ್ದು.
9	ಕಟ್ಟಡ ಕಾಮಗಾರಿ ಪ್ರಾರಂಭವಾದ ನಂತರ ಕಟ್ಟಡ ಸುರಕ್ಷತೆಯ ಬಗ್ಗೆ ಸಂಬಂಧಿಸಿದ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರವು ಪರಿಶೀಲಿಸಿಕೊಳ್ಳತಕ್ಕದ್ದು.
10	ವಿವರವಾದ ಕಟ್ಟಡ ನಕ್ಷೆಗಳನ್ನು ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದಿಂದ ಅನುಮೋದಿಸಿಕೊಳ್ಳುವುದು.
11	ಅರ್ಜಿದಾರರು ಉದ್ದೇಶಿಸಿರುವ ಜಮೀನಿನಲ್ಲಿ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಅಥವಾ ಅನ್ಯ ಖಾಸಗಿ ಜಮೀನುಗಳೇನಾದರೂ ಸೇರಿಕೊಂಡಿರುವುದು ತಿಳಿದುಬಂದಲ್ಲಿ, ಅಂತಹ ಸಂದರ್ಭದಲ್ಲಿ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಆಯುಕ್ತರು ಅನುಮೋದಿತ ಅಭಿವೃದ್ಧಿ ನಕ್ಷೆಯನ್ನು ಮಾರ್ಪಾಡು ಮಾಡಲು ಅಥವಾ ಹಿಂತೆಗೆದುಕೊಳ್ಳಲು ಅಧಿಕಾರವುಳ್ಳವರಾಗಿರುತ್ತಾರೆ.
12	ಪ್ರಸ್ತಾವನೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಅರ್ಜಿದಾರರು ಸುಳ್ಳು ದಾಖಲೆ ಅಥವಾ ಇನ್ನಿತರೆ ಘೋರ್ಜರಿ ದಾಖಲೆಗಳನ್ನು ನೀಡಿರುವುದು ರುಜುವಾತಾದಲ್ಲಿ, ಈಗ ನೀಡಿರುವ ಅಭಿವೃದ್ಧಿ ಯೋಜನೆಯ ಅನುಮೋದನೆಯು ತನ್ನಿಂದ ತಾನೆ ರದ್ದಾಗುವುದೆಂದು ಭಾವಿಸತಕ್ಕದ್ದು.
13	ಅಭಿವೃದ್ಧಿ ಯೋಜನೆಯಲ್ಲಿನ ಘನತ್ಯಾಜ್ಯಗಳನ್ನು ಪ್ಲಾಸ್ಟಿಕ್ ಮತ್ತು ಇತ್ಯಾದಿಯಾಗಿ ವಿಂಗಡಿಸಿ, Compost ಮಾಡಲು ಸೂಕ್ತ ಸ್ಥಳವನ್ನು ಕಾಯ್ದಿರಿಸತಕ್ಕದ್ದು.
14	ದಿನಾಂಕ 16-01-2010 ರಂದು ಸರ್ಕಾರದ ಆಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿಗಳು, ನಗರಾಭಿವೃದ್ಧಿ ಇಲಾಖೆ ಇವರ ಅಧ್ಯಕ್ಷತೆಯಲ್ಲಿ ಜರುಗಿದ ಸಭೆಯ ಘಡಾವಳಿಯಲ್ಲಿನ ತೀರ್ಮಾನದಂತೆ ಹಾಗೂ ದಿನಾಂಕ 07-01-2011 ರಂದು ಜರುಗಿದ ಸಮಿತಿ ಸಭೆಯ ವಿಷಯ ಸಂಖ್ಯೆ 09/2011 ರ ತೀರ್ಮಾನದಂತೆ ಅಭಿವೃದ್ಧಿ ನಕ್ಷೆಯಲ್ಲಿನ Arrangement of Blocks ಗಳನ್ನು ಮಾತ್ರ ನಿಯಮಾವಳಿಯಂತೆ ಪರಿಶೀಲಿಸಲ್ಪಟ್ಟಿದ್ದು NOC ಮತ್ತು ಇನ್ನಿತರೆ ವಿವರಗಳನ್ನು ಕಟ್ಟಡ ನಕ್ಷೆ ಅನುಮೋದಿಸುವ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರವು ಅರ್ಜಿದಾರರಿಂದ ಪಡೆದು ನಿಯಮಾನುಸಾರ ಪರಿಶೀಲಿಸಿಕೊಳ್ಳತಕ್ಕದ್ದು.
15	ಅಭಿವೃದ್ಧಿ ಯೋಜನೆಯಲ್ಲಿ ಪ್ರಸ್ತಾಪಿಸಿರುವ ಎಲ್ಲಾ ರಸ್ತೆಗಳನ್ನು IRC Specification ಪ್ರಕಾರ ಅಭಿವೃದ್ಧಿಪಡಿಸತಕ್ಕದ್ದು. ಅದಕ್ಕೂ ಮುಂಚೆ ಅಂದಾಜು ಪಟ್ಟಿಯನ್ನು ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಅಭಿಯಂತರ ವಿಭಾಗದಿಂದ ಅನುಮೋದಿಸಿಕೊಳ್ಳತಕ್ಕದ್ದು. ರಸ್ತೆ ಅಭಿವೃದ್ಧಿಪಡಿಸುವ ಸಮಯದಲ್ಲಿ ಅಭಿಯಂತರ ವಿಭಾಗದಿಂದ ಸ್ಥಳ ಪರಿಶೀಲನೆಗೆ ಮತ್ತು ಕಾಮಗಾರಿ ಪರಿಶೀಲನೆಗೆ ಅನುವುಮಾಡಿಕೊಡತಕ್ಕದ್ದು.

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16	ಅಗ್ನಿಶಾಮಕ ಇಲಾಖೆಯವರು ದಿನಾಂಕ 25-5-2011 ರಲ್ಲಿ ನೀಡಿರುವ NOC ಯ ಪಕ್ಷ-1 ರಲ್ಲಿ, 4-Transformer ಗಳನ್ನು ಅಳವಡಿಸುವ ಬಗ್ಗೆ ನಮೂದಿಸಿದ್ದು, ಈ ಬಗ್ಗೆ ಕಟ್ಟಡದ ನಕ್ಷೆ ಅನುಮೋದನೆ ನೀಡುವ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರವು BESCOM ನಿಂದ NOC ಪಡೆದು ಪರಿಶೀಲಿಸಿಕೊಳ್ಳತಕ್ಕದ್ದು.
17	ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರವು ಅರ್ಜಿದಾರರು ಉತ್ಪತ್ತಿತೆ ಕರ (Betterment Tax) ಪಾವತಿಸಿರುವುದನ್ನು ಖಚಿತಪಡಿಸಿಕೊಂಡು ನಕ್ಷೆ ಮಂಜೂರಾತಿ ನೀಡುವುದು.
18	ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರವು ವಿಧಿಸುವ ಇತರೆ ಷರತ್ತುಗಳಿಗೆ ಬದ್ಧರಾಗಿರುವುದು.

ಅಡಕ: ಕಾರ್ಯಾದೇಶದೊಂದಿಗೆ ಅನುಮೋದಿತ
ನಕ್ಷೆಯ ನಾಲ್ಕು ಪ್ರತಿಗಳನ್ನು ಲಗತ್ತಿಸಿದೆ.

ಆಯುಕ್ತರು,
ಬೆಂಗಳೂರು.

ಇವರಿಗೆ,

M/s Nitesh Indiranagar Retail Pvt.Ltd.,
GPA holder for Sri. George Thangiah,
7th Floor, Nitesh Timesquare,
No.8, M.G.Road,
Bangalore-560 001.

ANNEXURE - 39

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"ಕರುಣಾನಗಿ ಕುತ್ರ"

ಬೆಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆ

BBMP/ಸಿಬಿಡಿ-ಇ1/ಎಸ್ಇ/0064/11-12

ಪತ್ರಿಕೆಯ ಕಛೇರಿಯ ವಿಳಾಸಕ್ಕಾಗಿ ನಕ್ಷೆ ಮಂಜೂರಾತಿ

No

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ಸಿಟ ಮಜಕೂರ್ ಕಛೇರಿಯಿಂದ ನೀವು ಡಿವಿಜನ್ ಕಛೇರಿಯಲ್ಲಿ ಸಲ್ಲಿಸಿರುವ

ನಂಬರು ಮತ್ತಿಗೆ ಮಾಲೀಕ/ವಾಸ್ತುದಾರರಾದ ಶ್ರೀ ಎಸ್.ಜಿ. ಸಿದ್ದಾರ್ಥ ಇವರ ಪರವಾಗಿ ಶ್ರೀ ಎಸ್.ಜಿ. ಸಿದ್ದಾರ್ಥ ಬಿನ್ ಲೇ ಎಸ್.ಎಂ. ಕೃಷ್ಣ, ಬೆಂಗಳೂರು ಇವರು ಸಲ್ಲಿಸಿರುವ ಕಟ್ಟಡ ನಕ್ಷೆಯ

ನೀವು ಸಲ್ಲಿಸಿರುವ ನಂಬರಿನಲ್ಲಿ ಕಟ್ಟಡ ಕಟ್ಟಬೇಕೆಂಬ ವಿಷಯ

ಕುರಿತು ಬರೆದುಕೊಂಡ ತಾರೀಖು 13/7/11 ನಲಿ ಕೊಟ್ಟ ಅರ್ಜಿ ಪ್ರಕಾರ ದಿನಾಂಕ 19/9/2011 ರಂದು ಉಪವಿಭಾಗಾಧಿಕಾರಿಗಳು ಮಂಜೂರಾತಿ ನಕ್ಷೆ ಪರಿಶೀಲಿಸಿ ದೃಢೀಕರಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಪ್ರಕ್ರಿಯೆಯು ನಿಲುಕುತ್ತಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ದಿ 16/4/2012 ಕ್ಕೆ ಅನ್ವಯವಾಗುವಂತೆ ಕಾನೂನು ಕಛೇರಿಯ ಸಲಹೆಯಂತೆ ಪರಿಷ್ಕೃತ ಮಾರ್ಗಸೂಚಿಯನ್ವಯ ತಾತ್ಕಾಲಿಕವಾಗಿ BP/JAM/NRT/01/2012-13 Mail/0024 ದಿ 7/8/13 ರಂತೆ ಪ್ರೀಮಿಯಂ ಶುಲ್ಕ - 968768=00 ಉಳಿಕೆ ಶುಲ್ಕ - 1) ಕಟ್ಟಡಕ್ಕೆ - 968768=00 2) ಮೂಲಸೌಕರ್ಯ - 968768=00 3) ಸ್ವಚ್ಛತೆ - 1211209=00 ಒಟ್ಟು ಶುಲ್ಕ - 10320208=00 ಪಾವತಿಸಿದ್ದು

ಸೂಚನೆ :- ಇದರ ಹಿಂಭಾಗದಲ್ಲಿ ಅಡಕವಾಗಿರುವ ಷರತ್ತುಗಳನ್ನು ಗಮನಿಸಿ ಅದಕ್ಕೆ ಒಳಪಟ್ಟು ನಡೆದುಕೊಳ್ಳಬೇಕು. ಅವುಗಳಲ್ಲಿ ಯಾವುದೇ ಒಂದು ಷರತ್ತುಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿರುವುದಾಗಿ ಕಂಡುಬಂದರೆ, ಬೆಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆ ಅಧಿನಿಯಮ 462ನೇ ನಿಬಂಧನೆ ಮೇರೆ ಕ್ರಮ ಜರುಗಿಸಲಾಗುವುದು. ಸಂಖ್ಯೆ - 10, ಬಿ.ಬಿ.ಎಂ.ಪಿ ಕಛೇರಿಯ ಕಲ್ಪನಾ ಸಿಬ್ಬಂದಿ ಎಲ್ಲಿಂದ ಪಾವತಿಯಾಗಿದೆ ಚಲನ್ ಸಂಖ್ಯೆ - 70924=00 ಸಂಖ್ಯೆ - 3626445345=00 Already Paid vide receipt No. 3747470 ದಿ 12/7/2011 ರಂ. 300000=00 ಸಂಖ್ಯೆಯುಳ್ಳ ರಸೀತಿಯಲ್ಲಿ ಪಾವತಿ - 3626445000=00 ಈಗಾಗಲೇ ಪಾವತಿಸಿರುವ ಮೊತ್ತ ಇತರೆ ವಿವರಗಳು ಕಛೇರಿಯ ದಾಖಲೆಗಳಲ್ಲಿ ಲಭ್ಯವಿರುತ್ತದೆ. ಚಲನ್ ಸಂಖ್ಯೆ - 70921591=00 ಕಾಮಗಾರಿ ಪ್ರಾರಂಭಿಸುವ ಮುಂಚೆ ಕಾಮಗಾರಿಯ ಸ್ಥಳದಲ್ಲಿ ಕಾಮಗಾರಿಯ ವಿವರಗಳನ್ನೊಳಗೊಂಡ ಫಲಕವನ್ನು ಹಾಕಿಸತಕ್ಕದ್ದು. ಕಾಮಗಾರಿ ಪ್ರಾರಂಭಿಸುವ ಮುಂಚೆ ಕಾಮಗಾರಿಯ ಸ್ಥಳದಲ್ಲಿ ಕಾಮಗಾರಿಯ ವಿವರಗಳನ್ನೊಳಗೊಂಡ ಫಲಕವನ್ನು ಹಾಕಿಸತಕ್ಕದ್ದು. ಕಾಮಗಾರಿ ಪ್ರಾರಂಭಿಸುವ ಮುಂಚೆ ಕಾಮಗಾರಿಯ ಸ್ಥಳದಲ್ಲಿ ಕಾಮಗಾರಿಯ ವಿವರಗಳನ್ನೊಳಗೊಂಡ ಫಲಕವನ್ನು ಹಾಕಿಸತಕ್ಕದ್ದು.

ತಾರೀಖು ....17..... ನೇ ಸಹಿ ಪ್ರಾಧಿಕಾರಿಯವರ ಪರವಾಗಿ

..... ಸೂಹೆ 20/3 ಇವರು ಅಧಿಕಾರಿ. ಬೃಹತ್ ಬೆಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆ - ಉಚ್ಚರ)

ಬೃಹತ್ ಬೆಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆ
ಬೆಂಗಳೂರು

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BBMP/Addl.Dir/JD NORTH/LP/0065/2011-12

I Conditions:

1. Sanction is accorded for the proposed Commercial Building at Khata No. 21, 80 feet road, Michael Palya, Binnamangala, Bangalore.
   a) Consisting of 3 UF+GF+5 UF (Five upper floors)
2. Sanction is accorded for **Commercial** use only. The use of the building shall not be deviated to any other use.
3. **Three Basement Floor area** reserved for car parking shall not be converted for any other purpose.
4. Development charges towards increasing the capacity of water supply, sanitary and power main has to be paid to BWSSB and BESCOM if any.
5. Necessary ducts for running telephone cables, cubicles at ground level for postal services & space for dumping garbage within the premises shall be provided.
6. The applicant shall construct temporary toilets for the use of construction workers and it should be demolished after the construction.
7. The applicant shall INSURE all workmen involved in the construction work against any accident / untoward incidents arising during the time of construction.
8. The applicant shall not stock any building materials / debris on footpath or on roads or on drains. The debris shall be removed and transported to near by dumping yard.
9. The applicant / builder is prohibited from selling the setback area / open spaces and the common facility areas, which shall be accessible to all the tenants and occupants.
10. The applicant shall provide a space for locating the distribution transformers & associated equipment as per K.E.R.C (Es & D) code leaving 3.00 mts. from the building within the premises.
11. The applicant shall provide a separate room preferably 4.50 x 3.65 m in the basement for installation of telecom equipment and also to make provisions for telecom services as per Bye-law No. 25.
12. The applicant shall maintain during construction such barricading as considered necessary to prevent dust, debris & other materials endangering the safety of people / structures etc. in & around the site.
13. The applicant shall plant at least two trees in the premises.
14. Permission shall be obtained from forest department for cutting trees before the commencement of the work.
15. License and approved plans shall be posted in a conspicuous place of the licensed premises. The building license and the copies of sanctioned plans with specifications shall be mounted on a frame and displayed and they shall be made available during inspections.
16. If any owner / builder contravenes the provisions of Building Bye-laws and rules in force, the Architect / Engineer / Supervisor will be informed by the Authority in the first instance, warned in the second instance and cancel the registration if the same is repeated for the third time.
17. Technical personnel, applicant or owner as the case may be shall strictly adhere to the duties and responsibilities specified in Schedule – IV (Bye-law No. 3.6) under sub section IV-8 (e) to (k).
18. The building shall be constructed under the supervision of a registered structural engineer.
19. On completion of foundation or footings before erection of walls on the foundation and in the case of columnar structure before erecting the columns "COMMENCEMENT CERTIFICATE" shall be obtained.
20. Construction or reconstruction of the building should be completed before the expiry of five years from the date of issue of license & within one month after its completion shall apply for permission to occupy the building.
21. The building should not be occupied without obtaining "OCCUPANCY CERTIFICATE" from the competent authority.
22. Drinking water supplied by BWSSB should not be used for the construction activity of the building.
23. The applicant shall ensure that the Rain Water Harvesting Structures are provided & maintained in good repair for storage of water for non potable purposes or recharge of ground water at all times having a minimum total capacity mentioned in the Bye-law 32(a).
24. The building shall be designed and constructed adopting the norms prescribed in National Building

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Code and in the "Criteria for earthquake resistant design of structures" [illegible] published by the Bureau of Indian Standards making the building resistant to earthquake.

25. The applicant should provide solar water heaters as per table 17 of Bye-law No. 29 for the building.
26. Facilities for physically handicapped persons prescribed in schedule XI (Bye laws – 31) of Building bye-laws 2003 shall be ensured.
27. The applicant shall provide at least one common toilet in the ground floor for the use of the visitors / servants / drivers and security men and also entrance shall be approached through a ramp for the Physically Handicapped persons together with the stepped entry.
28. The Occupancy Certificate will be considered only after ensuring that the provisions of conditions vide Sl. No. 23, 24, 25 & 26 are provided in the building.
29. The applicant shall ensure that no inconvenience is caused to the neighbours in the vicinity of construction and that the construction activities shall stop before 10.00 PM to avoid hindrance during late hours.
30. Garbage originating from Apartments / Commercial buildings shall be segregated into organic and inorganic waste and should be processed in the Recycling processing unit required capacity installed at site for its re-use / disposal (Applicable for Residential units of 50 and above and 5000 Sqm and above built up area for Commercial building).
31. The structures with basement/s shall be designed for structural stability and safety to ensure for soil stabilization during the course of excavation for basement/s with safe design for retaining walls and super structure for the safety of the structure as well as neighbouring property, public roads and footpaths, and besides ensuring safety of workman and general public by erecting safe barricades.
32. The NOC from KSPCB / State Level Environment Impact Assessment Clearance (SEIAC) / The Ministry of Environmental and Forest (MOEF) should be taken before commencement of work (if applicable)
33. Sufficient two wheeler parking shall be provided as per requirement.
34. Traffic Management Plan shall be obtained from Traffic Management Consultant for all high rise structures which shall be got approved from the Competent Authority if necessary.
35. The owner / Association of highrise building shall obtain clearance certificate from Fire Force Department every Two years with due inspection by the department regarding working condition of Fire Safety Measures installed. The certificate should be produced to the corporation and shall get the renewal of the permission issued once in Two years.
36. The Owner / Association of the highrise building shall get the building inspected by empanelled agencies of the Fire Force Department to ensure that the fire equipments installed are in good and workable condition, and an affidavit to that effect shall be submitted to the corporation and Fire Force Department every year.
37. The owner / Association of highrise building shall obtain clearance certificate from the Electrical Inspectorate every Two years with due inspection by the department regarding working condition of Electrical Installations / Lifts etc. The certificate should be produced to the corporation and shall get the renewal of the permission issued once in Two years.
38. The Owner / Association of the highrise building shall conduct two mock – trials in the building, one before the onset of summer and another during the summer and assure complete safety in respect of fire hazards.
39. In case of any false information, misrepresentation of facts, or pending court cases, the plan sanction is deemed cancelled.

0Note:

1. Accommodation shall be provided for setting up of schools for imparting education to the children of construction workers in the labour camps / construction sites.
2. List of children of workers shall be furnished by the builder / contractor to the Labour Department which is mandatory.
3. Employment of child labour in the construction activities strictly prohibited.
4. Obtaining NOC from the Labour Department before commencing the construction work is a must.
5. BBMP will not be responsible for any dispute that may arise in respect of property in question.
6. In case if the documents submitted in respect of property in question is found to be false or fabricated, the plan sanctioned stands cancelled automatically and legal action will be initiated.

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Sl. No.	Name of the Statutory Department	Reference No. & Date	Conditions Imposed
1	Fire Force Department	GBC(1)/109/2011, dated: 25-06-2011	All the conditions imposed in the letter issued by the Statutory Body should be adhered to.
2	Airport Authority of India	AAI/SR/NOC/RHQ/475/08 (BG 15308) dated: 04-09-2008	
3	KSPCB	PCB/59/CNP/11/H560 dated: 23-08-2011	
4	SEIAA	SEIAA/46/CON/2011, dated: 01-08-2011	
5	BWSSB	BWSSB/EIC/ACE(M)-I/DCE(M)/TA-9/16166/2011-12, dated: 22-06-2011	
6	BSNL	AGM(TP)/S-6/IX/10-11, dated: 31-05-2011	

III. The Applicant has paid the fees vide Receipt No. Mar/0027/2012-13 dated: 07-03-2013 Rs. 3,23,45,000 and Receipt No. Apr/0035/2013-14dated: 09-04-2013 Rs. 23,000/- for the following:-

1.	Licence Fees	:	1,18,12,098-00
2.	Ground Rent	:	98,89,678-00
3.	Betterment Charges		
	a) For Building	:	9,68,968-00
4.	Security Deposit	:	96,89,678-00
5.	Plan copy & Compound wall charges	:	1,13,200-00
6.	1% Service Charge on Labour 0043ess to be paid to BBMP		93,924-00
	TOTAL	:	3,23,67,546-00
	SAY Rs.		3,23,68,000-00

7. Labour Cess :Rs. 70,21,500/- paid vide DD No. 000991 dt:07-03-2013
Rs. 22,72,000/- paid vide DD No. 001514, dt: 09-04-2013

ನಕ್ಷೆ ಮಂಜೂರಾತಿಯನ್ನು ಮುಖ್ಯ ಆಯುಕ್ತರ ಆದೇಶದ ದಿನಾಂಕ 19/09/11
ಮೇರೆಗೆ ಸಂ.ಜಂ.ನಿ.ಪ್ರ.ಯೋ.(ಉ)/(ಪ್ರ)ಪಿಲ್ಲಾ.ಸ. ಸಂಖ್ಯ: ಬಿಬಿಎಂಪಿ/65/11-12
ದಿನಾಂಕ 12/4/13 ಹೆಚ್ಚುವರಿ ನಕ್ಷೆ ಮಂಜೂರಾತಿಯನ್ನು ಅವಧಿವರ್ಧನೆಗಾಗಿರುವ
ಪರವಾಗಿ ಒಳಪಟ್ಟು ಅನುಮೋದಿಸಲಾಗಿದೆ. ದಿನಾಂಕ: 17/04/13
ರಿಂದ: 16/04/15 ರವರೆಗೆ ಮಾತ್ರ ಮಾನ್ಯತೆ ಪಡೆದಿರುತ್ತದೆ.
(ಎರಡು ವರ್ಷಗಳ ಅವಧಿಗೆ ಮಾತ್ರ)

ಜಂಟಿ ನಿರ್ದೇಶಕರು (ನಗರ ಯೋಜನೆ-ಉತ್ತರ),
ಬೃಹತ್ ಬೆಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆ.

BEFORE THE ARBITRAL TRIBUNAL OF

JUSTICE S. VENKATARAMAN (RETD)
PRESIDING ARBITRATOR

JUSTICE G. PATRI BASAVANA GOUD (RETD.)
ARBITRATOR

JUSTICE V. JAGANNATHAN (RETD)
ARBITRATOR

IN THE MATTER OF ARBITRATION DISPUTE

DISPUTE NO.1/2016

BETWEEN:

1) **M/S. NITESH INDIRANAGAR RETAIL PRIVATE LIMITED**
Nitesh Time Square
7th Floor, No.8, M.G. Road,
BENGALURU 560 001
Represented by its Director
Mr. L.S. Vaidyanathan

2) **NITESH ESTATES LIMITED**
Nitesh Time Square
7th Floor, No.8, M.G. Road,
BENGALURU 560 001
Represented by its Director
Mr. L.S. Vaidyanathan

...**CLAIMANTS**

AND:

MR. GEORGE THANGIAH
s/o. late Mark Thangiah
Residing at No.21,
George Thangiah Complex East 6,
80 Feet Road, Indiranagar,
BENGALURU 560 075

Also at:
No.6, Commissariat Road,
BENGALURU 560 025

... **RESPONDENT**

DISPUTE NO.2/2016

BETWEEN:

MR. GEORGE THANGIAH
s/o. Late Mark Thangiah
Office at No.21, 'George Thangiah Complex East'
80 feet Road, Indiranagar,
BENGALURU – 560 075

....CLAIMANT

(By Sri K. G. Raghavan, Senior Counsel assisted by Sri George Joseph, Ms. Lavanya Ananth, Advocates, M/s. Dua Associates and Sri Shameer Ahmed Advocates)

AND:

1) **NITESH ESTATES LIMITED**
Nitesh Timesquare
7th Floor, No.8, M.G. Road,
BENGALURU - 560 001

2) **NITESH INDIRANAGAR RETAIL PRIVATE LTD**
Nitesh Timesquare
7th Floor, No.8, M.G. Road,
BENGALURU - 560 001

...RESPONDENTS

(By Sri Udaya Holla, Senior Counsel assisted by Sri Chandrashekar, Advocate, M/s. Holla and Holla, Advocates and Sri Prashanth V G, Advocate, M/s. J. Sagar Associates, Advocates)

AWARD

1. Claimants 1 and 2 in Dispute No.1 are the Respondents 2 and 1 respectively in Dispute 2. The Respondent in Dispute 1 is the Claimant in Dispute 2. By agreement of both sides, common evidence for both Disputes has been recorded and the documents produced by the claimants in Dispute 1 who are Respondents in Dispute 2, in both disputes 1 and 2 are marked as Exhibit C series and the documents produced by the Respondent in Dispute 1 who is the Claimant in Dispute 2, in both disputes 1 and 2 have been marked as Exhibit R

series. In the proceedings held on 22.11.2016 it has been decided that in the proceedings reference to claimant/s would indicate the claimants in Dispute 1 and that reference to Respondent would indicate the Respondent in Dispute 1 and Claimant in Dispute 2. The same method is adopted in this award while referring to the parties. Wherever there is necessity to refer to Claimant 1 alone, it will be referred to as Claimant. This award is common to both Disputes 1 and 2.

1.1 The Claimant No.1 is a Private Limited Company which is wholly owned by the 2nd Claimant and it is its subsidiary. The 2nd Claimant is a Public Limited Company. The 2nd Claimant is a Builder and Developer in Bangalore. The Respondent is the owner of non-agricultural converted land bearing Municipal Corporation No.21, measuring 2,20,496 sq ft and situated on 80 feet road of Indiranagar, Bangalore and it is the schedule property. The Respondent has constructed a building consisting of ground and 3 upper floors facing the 80 feet road. It is referred to as the front building. Immediately behind the front building, the Respondent has constructed a building consisting of basement, ground and 3 upper floors and it is referred to as rear building. The respondent had let out all the floors except a portion on the ground floor in the front building to M/s. Genesis Micro Chip (India) Private Limited (Genesis for short) and Acer India Private Limited (Acer for short). Portion of the ground floor of that building had been retained by the Respondent for office purposes. The

respondent had entered into an agreement with Genesis to lease the 2nd floor of the rear building also. The ground, first and third floor of the rear building had still not been let out to anyone after completion of the construction.

1.2 The claimant approached the respondent and offered to develop the schedule property into a world class shopping mall and undertook the responsibility of operating, managing and maintaining the mall so developed. The claimant and respondent came to some understanding with regard to the terms and conditions based on which a development agreement would be entered into. They executed a memorandum of understanding dated 19.10.2007 as per Ex.C2. The claimant undertook the development of the property at its cost, expenses and responsibility. The claimant paid a sum of Rs.1 crore to the respondent as part of non-refundable deposit of Rs.80 crores on the date of execution of Ex.C2 and agreed to deposit Rs.20.50 crores in escrow before 45 days with the understanding that that amount should be paid by the escrow agent to the respondent on execution of the development agreement. The balance of Rs.58.50 crores was agreed to be paid by the claimant simultaneously with the execution of the JDA. It was agreed that after the deposit of Rs.20.50 crores in escrow by the claimant, the respondent should procure valid and enforceable undertaking from the tenants Genesis and Acer certifying that within 12 months from the date of execution of the development agreement, they would vacate the premises leased to them. The

claimant also agreed to pay additional non-refundable deposit of Rs.25 lakhs per month for the period from 01.04.2007. On the date of Ex.C2, the claimant paid Rs.3 crores towards the additional non-refundable deposit for the period from 01.04.2007 to 31.03.2008. The claimant undertook to pay a non-refundable deposit of Rs.21 lakhs per month from the date Genesis hands over possession of the portion occupied by them and also Rs.4 lakhs per month from the date Acer hands over the portion occupied by them. Some conditions precedent which had to be fulfilled before the execution of the development agreement were stipulated in Ex.C2. The development agreement was to be executed within six months from the date of Ex.C2. Under clause 12 (1) of Ex.C2 the parties agreed that after signing of the development agreement the developer shall be entitled to create encumbrance on the developer's share in order to raise debt for the purpose of the project without any further reference to the owner subject however to certain conditions. Certain modifications of this MOU were effected by the parties by executing a supplemental MOU dated 26.10.2007 (Ex.C3). Pursuant to the MOU, the parties entered into an escrow agreement dated 03.12.2007 (Ex.C7) appointing HDFC Limited as escrow agent and the claimant deposited Rs.20.50 crores with them for a period of 3 months. The parties executed a second escrow agreement on 02.03.2008 (Ex.C8) for a further period of 30 days. The development agreement was not executed by 19.04.2008. The escrow agreement had lapsed. There was some exchange of correspondence

between the parties with regard to the extension of the period of the MOU. Ultimately, on the claimant paying a sum of Rs.4.50 crores with the understanding that the same should be adjusted towards non-refundable deposit of Rs.80 crores, the respondent agreed by his letter dated 07.06.2008 (Ex.C21) for extension of time for executing the development agreement, till 31.08.2008, subject to the conditions stated by claimant in their letter dated 03.06.2008 (Ex.C20). In Ex.C20 the claimant undertook to pay on 30.06.2008 an additional sum of Rs.1.50 crores to the respondent towards compensation for the delay in the signing of the Joint Development Agreement (JDA). As undertaken by the claimant in Ex.C20, the 2nd claimant furnished a corporate guarantee with regard to the claimant placing Rs.20.50 crores in escrow before 31.07.2008 and that if the claimant defaulted in doing so, agreeing to pay to the respondent Rs.10 crores. Instead of depositing Rs.20.50 crores in escrow, the claimant paid Rs.24 crores by cheque under Ex.C24 letter dated 31.07.2008. The respondent by letter Ex.C25 acknowledged that he had received in all Rs.35.50 crores by that date including Rs.29.50 crores towards non-refundable deposit, Rs.4.50 crores towards additional non-refundable deposit and Rs.1.50 crore for extending time for execution of the development agreement.

1.3 The development agreement was not executed by 31.08.2008. There was exchange of correspondence between the parties and ultimately a second supplementary memorandum of understanding dated

29.03.2010 (Ex.C4) was executed by the claimant and the respondent. Some of the relevant terms of Ex.C4 are as under:

1.4 The claimant acknowledged unequivocally that the respondent was entitled to appropriate the sum of Rs.35.50 crores paid by the claimant as per the terms of the MOU pursuant to the rights and claims which had accrued to the respondent in connection with the MOU. The claimant also acknowledged that the appropriation of the above sum by the respondent was valid and that that amount is not refundable to the claimant under any circumstances and that the claimant has no claim or right over that amount. The parties agreed that the MOU stands extended and be valid up to 30.06.2010 on altered conditions specified therein. A draft of the development agreement containing the agreed terms was enclosed to that MOU Ex.C4. The claimant agreed to ensure that the development agreement was executed on or before 30.06.2010. The claimant agreed to pay non-refundable deposit of Rs.74.50 crores to the respondent as security deposit. Out of this amount, Rs.49.50 crores was to be paid on 30.04.2010 failing which that amount had to be paid on or before 30.06.2010 along with interest at 15% per annum. Out of the balance Rs.10 crores had to be paid on or before 31.03.2011, Rs.5 crores on or before 30.09.2011 and Rs.10 crores on or before 31.03.2012. The respondent had acquired plots bearing No.4, 4/1, 95, 4/2 and another plot bearing municipal No.3 (house list No.44) all of which were adjacent to the MOU schedule property in

furtherance of an understanding with the claimant with regard to the development of the mall. The claimant undertook to pay to the respondent Rs.2.50 crores and Rs.3,99,520/- towards stamp paper and registration fee on or before 30.06.2010 for acquisition of those items/plots. These additional items were to be brought into the framework of the development agreement. In the agreed draft development agreement, it was stipulated that the claimant may create a charge on its developmental rights in order to raise a debt for the purpose of the project without creating any mortgage or encumbrance/charge on the schedule property or any portion thereof.

1.5 Though the development agreement had to be executed by 30.06.2010, it was ultimately executed on 11.02.2011 as per Ex.C5 by both the claimants and the respondent. In clause 16 of this agreement the claimants again acknowledged that the sum of Rs.35.50 crores paid under the MOU was non-refundable by the respondent under any circumstances. Apart from that amount, the claimants agreed to pay Rs.79 crores as non-refundable deposit. Out of this amount, Rs.50 crores including Rs.4.50 crores payable towards reimbursement of the cost of acquisition of items 2 to 5 of the schedule property was paid on the date of execution of that document. The claimant agreed to pay Rs.19 crores on or before 01.02.2012 and Rs.10 crores on or before expiry of 42 months from the date of execution of that agreement. The parties agreed that the claimant shall complete the construction of the building and apply for

occupancy certificate within 40 months from the date of the agreement.

1.6 The claimant obtained necessary no objection certificates from several authorities and also got the plan sanctioned and obtained licence from BBMP. The claimant also engaged L & T Company to carry out the construction. However, the claimants faced some problems in securing finance from the project lenders on account of the inability of the claimant to mortgage or create charge in respect of the schedule property. The Consortium of Banks led by Bank of Baroda who had to provide the finance, by letters Ex.C48 and Ex.C49 dated 02.03.2013 and Ex.C50 dated 09.05.2013 stipulated that the claimant should procure a legally enforceable commitment from the respondent to permit the claimant to mortgage its share in the schedule property after the initial three basements were constructed and to get the JDA suitably amended. The funding for the first 3 basements was agreed to be made by the banks on the claimant furnishing alternative security.

1.7 After negotiations, the claimants and respondent executed a supplementary development agreement dated 11.02.2014 (Ex.C6) modifying certain terms of development agreement Ex.C5. By amendment of clause 12(xiii) of the JDA, the respondent agreed to mortgage 50% of undivided right, tittle and interest in the schedule property in favour of the project lenders and the claimant was given

the right to call upon the respondent to create a mortgage of owner's property only after fulfilment of certain conditions. On the date of execution of this document, the claimant paid Rs.19 crores towards part of the non-refundable deposit and Rs.1 crore towards reimbursement of electricity, security and maintenance charges. The time for completion of the project was extended to 32 months from the dated of execution of Ex.C6.

1.8 The claimant sought from the project lenders revalidation of the project loan sanctioned earlier in view of the supplementary development agreement. However, Bank of Baroda in its letter dated 9.10.2014 (Ex.C59) informed the claimant that the supplementary JDA had to be amended "to address the observations of our bank and panel advocate and the legal department of our bank and create mortgage over project land before the first disbursement".

1.9 There was exchange of correspondence between the claimant and the respondent, the former seeking permission to start demolition of the existing structures and to commence construction, the latter declining the permission on the ground that the preconditions for demolition had not been complied with. While purporting to reply to claimant's letter dated 06.01.2015 [part of Ex.C60 (a)], the respondent in Ex.C62 dated 19.1.2015 asserted that the claimant had breached and repudiated their obligations under the development agreement and informed the claimant that he accepts the repudiation by the

claimant. The claimant however denied the repudiation of the JDA by them and asserted that they were keen to go ahead with the project. In about April 2015, the respondent got the barricades and hoardings put up by the claimant on the schedule property removed. There was exchange of letters between the parties in this regard. The claimant filed an application under Section 9 of Arbitration and C Act, herein after referred to as "the Act" seeking an interim order against the respondent in AA No. 395/2015 before the City Civil Judge, Bangalore who after hearing both sides passed an order dated 17.02.2016 restraining the respondent from encumbering the schedule property till the disposal of the arbitration proceedings to be initiated by the claimant. The claimant and respondent each issued arbitration notices to the other side appointing their arbitrators. The two nominated arbitrators having appointed the presiding arbitrator, these proceedings in respect of two disputes were commenced.

2. The claimants in their claim statement have sought for specific performance of the agreement as under:

> "(i) Granting specific performance of the registered Joint Development Agreement dated 11.02.2011 and the Supplementary Agreement dated 11.02.2011 entered into between the Claimants and the Respondent and direct the Respondent to comply with the terms of the Joint Development Agreement dated 11.02.2011, the Supplementary Agreement dated 11.02.2011 and the understanding relating to the

mortgage of the Schedule Property by the Claimant No.1 to the satisfaction of the lenders to the transaction (i.e., either the oral understanding concerning upfront mortgage of the schedule property or in the alternative the written understanding concerning creation of mortgage as contained in the Joint Development Agreement dated 11.02.2011 as amended by the Supplementary Agreement dated 11.02.2014"

2.1 Along with the above relief some monetary reliefs and permanent injunction are also sought. As an alternative to the above reliefs, a direction is sought to the respondent to pay Rs.180 crores with interest.

3. The respondent in his claim statement in Dispute No.2 has sought for recovery of damages of Rs.443,34,18,514/- after giving deduction to Rs.64.50 crores received by him as non-refundable deposit.

4. On the basis of the pleadings the following points for determination have been framed:

DISPUTE 1
POINTS FOR DETERMINATION

1. Whether the Tribunal has no jurisdiction to adjudicate on claims made jointly by claimants 1 and 2 as contended by the respondent?
2. Whether the respondent has become senile and does not have the mental capacity or soundness to verify if Ms. Chitra Poornima can file the statement of defence as his agent and whether the statement of defence filed in this

Dispute by Ms. Chitra Poornima as holder of Power of Attorney from the respondent has to be rejected as contended by claimants?

3. Whether the claimants prove that there was an understanding between the parties that the schedule property would be mortgaged by the 1st claimant to the satisfaction of the lenders to the transaction?

4. Whether the claimants have always been ready and willing to perform their obligations under the Joint Development Agreement (JDA) as amended by supplementary JDA?

5. Whether the JDA as amended was illegally terminated by the respondent by letters dated 19.1.2015 and 9.10.2015 as contended by claimants?

Or

5(a) Whether the claimants repudiated the JDA as amended, by their conduct and whether the JDA stood terminated by the acceptance of such repudiation by the respondent as contended by the respondent?

6. Whether the specific performance of the JDA and Supplemental JDA is barred under Section 14(1)(a)(b) and (c) and Section 14 (3)(c) of the Specific Relief Act?

7. If point No.6 is answered in the negative whether the claimant is entitled to the specific performance as sought for?

8. Whether the claimants are entitled to recover the amounts claimed under various heads in addition to the relief of Specific Performance?

9. If Specific Performance cannot be granted, whether the claimants are entitled to the alternative Relief sought for?

10. What Award?

DISPUTE 2
POINTS FOR DETERMINATION

1. Whether the claimant has turned fully senile and does not have the mental capacity or soundness to verify if Ms. Chitra Poornima can file the statement of claim as his agent under the GPA dated 13.2.2014 and whether the claim statement filed in this case is liable to be rejected as contended by the respondents?
2. Whether the respondents repudiated the JDA (as amended) by refusing to perform their obligations thereunder? If so, whether the said JDA came to be terminated by the claimant accepting the repudiation by letter dated 19.1.2015 as pleaded by claimant?
3. Whether the respondents committed breach/default in performance of their obligations under the JDA and other agreements? If so, whether the claimant is entitled to the declaration as sought and to all or any of the monetary claims made in the claim statement?

Or

3(a) Whether the claimant committed breach of contract by illegally terminating the subsisting JDA as contended by the respondents?

4. What Award?

On 22.11.2017 the following **additional issues** were framed

In dispute No. 1, point 2A: Whether this Tribunal has no jurisdiction to consider or adjudicate point No. 2 as contended by the Respondent?

In dispute No. 2, point 1A: Whether this Tribunal has no jurisdiction to consider or adjudicate point No. 1 as contended by the Claimant?

5. On behalf of the claimant, four witnesses have been examined. Smt. Chitra Poornima, wife of the respondent and holder of POA from the respondent is examined on behalf of the respondent. Both sides have been heard. The relevant pleadings of the parties would be referred to while dealing with the points for determination.

6. **Point No.1 in Dispute No.1**

6.1 The respondent has contended that because only 1st claimant invoked the arbitration clause and sought for reference of the dispute for arbitration, by notice dated 14.3.2016 (Ex.C73) and also nominated the arbitrator and as the 2nd claimant had not invoked the arbitration clause, the Tribunal has no jurisdiction to adjudicate upon claims made jointly by claimants 1 and 2.

6.2 Though Ex.C73 notice was issued only on behalf of claimant No.1, the respondent in his reply to that notice invoked the arbitration clause against both the claimants and sought for reference for arbitration of his claims against the two claimants and nominated his arbitrator. In that reply Ex.C74, the respondent called upon both the claimants to confirm in writing the nomination of the arbitrator named in Ex.C73 as the arbitrator appointed by both the claimants. The 2nd claimant, by letter dated 31.5.2016 Ex.C77 has confirmed the appointment of

arbitrator named in Ex.C73 as its arbitrator also. In view of this, it can be taken that both claimants have invoked arbitration. Hence, the objection regarding jurisdiction raised by the respondent is not tenable.

7. **Points 2 and 2A in Dispute 1 & Points 1 and 1A in Dispute2:**

7.1 The claimants in their rejoinder to statement of defence filed by the respondent through his POA Mrs. Chitra Poornima and in the statement of defence in Dispute 2 have contended that Mrs. Chitra Poornina does not have valid authority to represent the respondent, that claimants have reliably learnt that the respondent has now turned fully senile, that he does not have the mental capacity or soundness to verify if the said Mrs. Chitra Poornima can continue to act as his agent under the GPA dated 13.02.2014 and that as such the statement of defence filed by her in Dispute No.1 is liable to be rejected. The claimants as respondents in Dispute 2 have taken similar plea and have contended that the claim statement filed by her as holder of POA from the respondent (Claimant in Dispute 2) has to be rejected. The respondent represented by his POA holder Mrs. Chitra Poornina in his sur-rejoinder in Dispute 1 and amended rejoinder in Dispute 2 while denying the allegation that the respondent has become fully senile and does not have the mental capacity to verify if Mrs. Chitra Poornima can continue to act as his agent, has contended that the Arbitral Tribunal does not have the

jurisdiction to consider or adjudicate on the point regarding the mental status of the respondent.

7.2 The learned senior counsel for the respondent relying on the decision in Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited (2011) 5 SCC 532 contended that a dispute about the mental status of a person is not arbitrable, as a decision on such dispute would be a decision in rem. In para 36 of that judgment the Supreme Court has observed as under:

> "The well –recognised examples of non arbitrable disputes are; (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters)(grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy mattes governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

7.3 The above decision does not specifically refer to a dispute about mental infirmity or status of a person. Guardianship matters referred to above is with reference to appointment of a guardian under the Guardian and Wards Act or Minority and Guardianship Act and not to

the appointment of a guardian for a party for the purpose of particular case. Under Section 17(1) of Arbitration & Conciliation Act, a party may, during the arbitral proceedings apply to the Tribunal for appointment of a guardian for a minor or a person of unsound mind for the purpose of arbitral proceedings. That provision stipulates that the Arbitral Tribunal shall have the same power for making orders as the court has for the purpose of, and in relation to any proceedings before it. The power to appoint a guardian given to the Tribunal is not subjected to the condition that a person must have been declared or adjudged to be a person of unsound mind. If the question arises as to whether the person for whom a guardian is sought to be appointed, is or is not of unsound mind, the tribunal has the same power as that of a court to go into the question before appointing a guardian for the purpose of the arbitral proceedings. As such the objection regarding jurisdiction raised by the learned senior counsel in this regard cannot be accepted.

7.4 When the respondent raised the objection to evidence being adduced on Point No.2 in Dispute 1 and Point 1 in Dispute 2 on the ground that the Tribunal has no jurisdiction to go into that question and when the Tribunal enquired the claimants' counsel as to how the claimants had filed claim statement against the respondent without any guardian, if his mental condition due to senility was as indicated by them, the claimants' took time and then filed an application under Section 17 of the Act for appointment of a guardian to the respondent.

After hearing both sides, the Tribunal by order dated 11.12.2016 rejected that application holding that no case for appointment of guardian had been made out inter alia pointing out that the claimants themselves had initiated proceedings against the respondent in AA 395 of 2015 and obtained an interim order against him treating him as a man of sound mind and without appointment of any guardian.

7.5 The learned senior counsel for the claimants contended that when claimants alleged that the respondent had become fully senile and when this fact was admittedly informed by RW1 Mrs. Chitra Poornima to the respondent, it was necessary for the respondent to appear before the Tribunal and repudiate the allegation. He further pointed out that RW1 had stated that the respondent attends his office which is about 6 kms away from his residence and contended that if that was so, there was no difficulty for him to appear before the Tribunal. He therefore contended that an adverse inference has to be drawn on account of the non-examination of the respondent. In this connection, he relied on the decision reported in **AIR 1993 Allahabad 143** in the case of Mahendra Pratap Singh (Deceased)..... vs. Padma Kumari Devi. That was a case where the court found that the person who had given the POA was mentally unsound, suffering from mental infirmity and had no legal capacity to authorise. Under Section 201 of the Contract Act, the agency gets terminated only if the principal becomes of unsound mind. It is already held that respondent cannot be said to be of unsound mind. This is not a case where for the first time RW1 is

given POA by the respondent. RW1 has produced Ex.R77 copy of POA dated 31.3.2000 and Ex.CR78 copy of POA dated 17.3.2008 executed by the respondent in her favour. Admittedly, claimants were interacting in connection with this project with RW1 as representative of the respondent. Merely because the respondent due to old age has become forgetful or suffers from loss of memory, the agency does not come to an end. As the claimants' application for appointment of guardian is rejected on the ground that claimants had not placed any material to show that the respondent is of unsound mind at present and as the agency given by respondent can come to an end only if it is shown that respondent has become a person of unsound mind, the claimants plea in this regard has to be negatived. Admittedly RW1 who is respondent's wife has been acting on behalf of the respondent even in respect of the transaction in question and as she is examined, no adverse inference can be drawn on account of non-examination of the respondent who is admittedly old and frail.

7.6 Point No.2 in Dispute No.1 and Point 1 in Dispute 2 are answered in the negative and Point 2A in Dispute No.1 and Point No.1A in Dispute No.2 are answered by holding that there is no bar of jurisdiction.

8. **Point No.3 in Dispute No.1**:

8.1 In paras 80 and 81 of the claim statement the claimants have pleaded as under:

"Para 80: In the light of the above, the claimant No.1 had several meetings with Bank of Baroda in the presence of Chitra Thangiah (who was representing the Respondent in respect of the project in question) including one on 18.11.2014. The said Ms. Chitra Poornima expressed her satisfaction with the claimants and agreed to make certain modifications to the JDA to be able to obtain project finance from the Banks so that the contract was not frustrated. The representatives of the claimant also met the respondent in person on three occasions and on all three different occasions the respondent categorically expressed through Ms. Chitra Poornima his willingness to unconditionally mortgage 50% of the property and also expressed his full faith in the claimant No.1 to complete the mall.

Para 81: However, the same has not materialised since the respondent has gone back on his assurances and promises. It appears that there was a realignment of interest in respondent's family pursuant to which there were various pulls and pressures resulting in Ms. Chitra Poornima being side-lined because it was felt she was unduly benefiting from the proposed transaction because of the indulgence being offered by the respondent"

8.2 In the concluding portion of para 97 and in para 98 of the claim statement, the claimants have pleaded as under:

"Para 97: ..... The fact set out above bear out that there was an understanding that the schedule property would be mortgaged but based on the misinformation the respondent who is aged was persuaded to change his mind and take a conservative and commercially impractical approach.

Para 98: In fact categorical assurances were made in person by the Respondent that mortgage rights will be provided to the claimants to raise funds during several occasions in the meetings at his residence on Commissariat Road wherein Mr. Nitesh Shetty, the CMD of the claimants as well Mr. Vaidyanathan, the Executive Director were also present. The claimant even went on to comment that Ms. Chitra Poornima did not have any authority to deny the mortgage rights to the claimants"

8.3 On the basis of the above pleadings, in the claim statement, originally a prayer was made as under:

"(i) Granting specific performance of the registered Joint Development Agreement dated 11.02.2011 and the Supplementary Agreement dated 11.02.2014 entered into between the claimants and the respondent and direct the respondent to comply with the terms of the Joint Development Agreement dated 11.2.2011 and the understanding relating to

the mortgage of the Schedule Property by the clamant No.1 to the satisfaction of the lenders to the transaction"

8.4 Subsequently by amendment the above prayer was amended by adding the following portion:

"…. i.e., either the oral understanding concerning upfront mortgage of the schedule property or in the alternative the written understanding concerning creation of mortgage as contained in the Joint Development Agreement dated 11.2.2011 as amended by the supplementary Agreement dated 11.2.2014".

8.5 The respondent in the statement of defence has categorically denied the oral understanding between the parties that the schedule property would be mortgaged upfront to the extent of 50% share and has asserted that neither he nor Ms. Chitra Poornima had agreed for modification of the JDA (as amended) in any manner, much less to permit upfront mortgage of the schedule property.

8.6 The learned senior counsel for the respondent relying on certain authorities has contended that such a plea which is contrary to the terms of the registered agreement cannot be permitted to be raised and that no oral evidence to prove such an understanding can be adduced. He pointed out that as per Section 28(3) of the Act, the arbitral tribunal should take into account the terms of the contract and trade usage applicable to the transaction and that as the oral understanding sought to be set up by the claimants contradicts the

contract in question, the Tribunal would be exceeding its scope of authority if such an oral understanding is sought to be enforced. He also pointed out that under clause 37 of the JDA (Ex.C5) and clause 8.3 of the supplementary agreement, no modification of the development agreement and /or the supplementary agreement shall be effective unless the same is in writing and signed by both parties.

8.7 In Chandrakanth Shankar Machale vs. Parubai Bhairu Mohite **(2008) 6 SCC 745**, it has been held that the terms of a registered document can be varied or altered only by another registered document. In S. Shakthivel vs. M. Venugopal Pillai **(2000) 7 SCC 104** in para 6, it is held as under:

> "…. Where under law a contract of disposition is required to be in writing and the same has been reduced to writing, its terms cannot be modified or altered or substituted by oral contract or deposition. No parol evidence will be admissible to substantiate such an oral contract or disposition. A document for its validity or effectiveness is required by law to be in writing and, therefore, no modification or alteration or substitution of such written document is permissible by parol evidence and it is only by another written document the terms of earlier written document ca be altered, rescinded or substituted."

8.8 In Roopkumar vs Mohan Zadani **(2003) 6 SCC 595** the Supreme Court while holding that Sections 91 and 92 of Evidence Act supplement

each other, has held in para 13 that section 91 is in reality declaring a doctrine of the substantive law. Though under Section 19 (1) of the Act the Arbitral Tribunal shall not be bound by the Indian Evidence Act, Section 28 (1) (a) stipulates that the Tribunal shall decide the dispute in accordance with the substantive law. As decided by the Supreme Court, Sections 91 and 92 of the Evidence Act must be taken to declare a substantive law. The principle underlying the above sections will have to be followed by the Arbitral Tribunal, more so in view of the fact that the parties themselves in the development agreement and supplemental agreement have specifically agreed as under:

> "No modification, amendment or waiver of any provision of the Development Agreement and /or this supplementary Agreement shall be effective unless the same is in writing and signed by both parties and NEL".

8.9 For the above reasons, we agree with the learned senior counsel for respondent that neither the claimants can set up an oral understanding by respondent for the upfront mortgage of the schedule property nor can adduce oral evidence to prove such an oral understanding let alone seek to enforce the same. Possibly realising this position the claimants have amended the prayer portion subsequently.

8.10 Apart from the legal bar referred to above, the plea put forth by the claimants about the oral understanding is inconsistent and contradictory. While in para 80 of the claim statement it is stated that the respondent categorically expressed "through Ms. Chitra Poornima" his willingness on all three occasions to unconditionally mortgage 50% of the schedule property, in para 98 the respondent himself is alleged to have given the categorical assurance and he is also alleged to have stated that RW1 Ms. Chitra Poornima had no authority to deny the mortgage rights to the claimants. Even the oral evidence adduced is that the respondent himself gave the assurance. But in the rejoinder, filed by the claimants after the respondent denied any such oral understanding, the claimants again have categorically asserted that on all three occasions, it is through RW1 Ms. Chitra Poornima the respondent indicated his willingness to mortgage unconditionally. In the claim statement while in one portion it is indicated that RW1 was willing to get the JDA modified to make it bankable and that the respondent at the instance of other family members went back on his promise, in another portion RW1 is indicated as the culprit who came in the way of implementation of the oral understanding. Above all, in none of the correspondence between the parties, the claimants have, at any time alleged that there was such an oral understanding. This plea of oral understanding appears to have been put forth as an afterthought while filing the claim statement.

8.11 Point No.3 is answered in the negative and it is further held that the claimants cannot be permitted to put forth such a plea of oral understanding which is contrary to the terms of registered agreement.

9. **Points 5 and 5A in dispute 1 and Points 3 and 3A in dispute 2:**

9.1 The respondent has contended that the claimants had by their conduct repudiated the JDA (as amended) and that the respondent has accepted such repudiation vide his letter dated 19.1.2015 and thereby the JDA stood terminated. Hereafter reference to JDA may be taken as JDA as amended by supplementary JDA.

9.2 It is the respondent's case that as per clause 3(v) of the JDA, the claimant had to obtain project loan for development of the Mall from claimants project lenders in conformity with the terms of the JDA and obtain letter from the project lenders that they confirm receipt of the JDA and sanctioned the project loan based on the terms of the JDA before seeking permission to enter upon the schedule property to commence demolition of the existing buildings and to carry on development, that instead of obtaining project loan in conformity with the terms of the JDA, the claimant obtained project loan sanction letter dated 9.10.2014 which was totally not in conformity with the terms of the JDA and which stipulated that a fresh JDA had to be executed to suit the requirements of the bank and /or its legal advisers, that without complying with the pre conditions stipulated in clause 3(v) of the JDA the claimant repeatedly sought permission to

demolish the existing buildings, that though the respondent sent several letters to claimant pointing out the nonfulfillment of the preconditions and even gave a notice dated 6.6.2014 giving 60 days' time to the claimant to rectify the defaults, the claimant went on insisting that they had complied with all preconditions, thereby indicating that they were refusing to perform their obligations under the JDA, that by this conduct the claimants have repudiated the JDA and that the respondent by letter dated 19.1.2015 Ex.C62 accepted the said repudiation resulting in termination of the JDA.

9.3 The claimants deny that they at any time repudiated to perform their obligations under the JDA and point out that they had spent over Rs.189 crores in connection with the project and had taken several steps such as obtaining approvals and NOCs from several authorities, and entering into several agreements with other agencies and complied with all conditions stipulated in clause 3(v) which were possible, that though they had secured the sanction of loan of Rs.300 crores from the project lenders, the latter did not agree with the terms of the JDA as they contradicted with the lending norms of the bank.

9.4 The claimant, in order to execute the project had to first demolish the existing buildings. Clause 3(v) of the JDA as amended stipulates certain preconditions to be complied with by the developer before it becomes entitled to demolish the existing buildings. As this clause, has an important bearing not only on the point at issue, but also on

the point of readiness and willingness on the part of the claimant to perform their obligations under the contract the same is extracted as hereunder:

> "The Developer shall be entitled to commence demolition of the Front Building and/or the Rear Building only after: (a) the Developer has made payment to the Owner of the sum of Rs.19,00,00,000/- (Rupees Nineteen Crores only), towards part payment of the Non-Refundable Deposit, payable in terms of Clause 16 of this Development Agreement; (b) the Developer has obtained sanctioned building plans with respect to the Mall; (c) the Developer has provided alternate office space (outside the Schedule Property) as provided under Clause 3(vi) below, to the Owner; (d) the Developer has secured a project loan for a sum not exceeding Rs.310,00,00,000/ (Rupees Three Hundred And Ten Crores) ("Project Loan") (which term shall include the interest thereon or any related penalty or other levy) from its lenders/banks ("Project Lenders"), under a definitive arrangement, in conformity with the terms of this Agreement. The Project Loan shall have a moratorium of not less than 37 (thirty seven) months for the repayment of the principal amount of the Project Loan, from the date of availing such loan; (e) the Project Lenders have expressly confirmed receipt of the Development Agreement (as amended) and shall have also acknowledged in writing that the Project Loan has been

extended by them based on the terms of this Development Agreement (as amended); (f) the Developer has shown proof of having issued appropriate written instructions to the Bank, which is holding the Designated Deposit Account in furtherance to Clause 23(v) below, to the effect that 40% of the deposit received from the tenants of the Mall into the Designated Deposit Account (being the Developer's entitlement) must be credited into the Project Account (as defined herein below) by such Bank till the Commencement of the Mall (the Owner shall also confirm such instructions since the Designated Deposit Account is a joint account); (g) the Developer has shown proof to the effect that NEL has brought in 'Promoter's Contribution' by way of paid up equity share capital into the Developer, as promoter capital contribution for the Project, as per the Project Loan documents; (h) the Developer has informed the Project Lenders in writing that Project Loan must be credited to a pre-determined Project Account ('Project Account") inter-alia for being expended towards construction of the Mall only in terms of Clause 19(i)(f) below; and (i) the Developer has entered into a definitive and binding Letter of Acceptance with a reputed construction company/firm to carry out the civil works, in respect of the Mall. The developer shall ensure that all the above requirements are fulfilled as per the above terms and proof of compliance is provided to the owner, on or before expiry of 90

(ninety) days from February 11, 2014 (hereinafter the said date February 11, 2014) being referred to as **(extended date)**. After fulfilment of all the above requirements within the aforesaid time period, the owner shall vacate the Front Building within 30 (thirty) days from the date of the Developer providing the said alternate office space and the Developer may thereafter demolish such building. The Owner shall remove all the fit-outs, furniture, fixtures and fittings in the Front Building and the Rear Building within the aforesaid 30 (thirty) days period. The Developer is entitled to commence demolition of the Buildings and commence construction, as it may deem fit, after the said 30 (thirty) day period. The developer shall not be responsible for preserving any materials at the Schedule Property on and from the date of the Owner permitting demolition, as aforesaid. Also, immediately upon commencement of the demolition work as aforesaid at the Schedule Property, the Developer is entitled to barricade the Schedule Property, in a manner that it deem fit. Provided that, wherever there is reference to the name 'Nitesh' on such boards/barricades, as equally conspicuous reference to Mr. George Thangiah and the name of the Mall is also made".

9.5 Though the claimants secured a project loan for the construction of the mall it is not disputed that the sanction of project loan was not in conformity with the above clause. At this stage, it is not necessary to

go into the question whether the other conditions had been complied with. Let alone the project lenders confirming that they had extended the loan in terms of the development agreement, they on the other hand wanted an upfront mortgage of the schedule property before the disbursal of the loan and also an amendment of the JDA accordingly. It is in this situation, the claimant in its letter dated 6.1.2015 [part of Ex.C60(a) at page 1073 of Vol.3 of claimant's document] wrote as under:

> "Since we could not avail the earlier sanction for reasons well known to you, we again approached the consortium for revalidation of the same. As part of the revalidation, now Bank of Baroda, the consortium leader has again sanctioned loan for Rs.125,00,00,000/- (Rupees One Hundred and Twenty Lakhs Only) and said sanction letter stipulates for certain modification in the terms of JDA to satisfy the requirements of the Bank. Please understand that all the banks operate under RBI guidelines and rules and they cannot change them to suit any individual/company. Therefore, we need to discuss and resolve the issue of modifying certain JDA terms to comply with the requirements of the bank.
>
> The copy of the Supplementary JDA had already been shared with Bank of Baroda, the consortium leader vide our letter dated 12.02.2014 which was received by Bank of Baroda on 13.02.2014 (copy enclosed). As far as fresh Joint Development

Agreement is concerned, the bank has already agreed for simple and short addendum to the existing Supplementary JDA. This is already been discussed by Mr. L. S. Vaidyanathan, Executive Director, NEL with Mrs. Chitra Thangiah. Let us work towards that and close the same at the earliest"

9.6 It is in response to the above letter, the respondent in Ex.C62 dated 19.1.2015 in the concluding portion has stated as under:

"From the contents of your above referred Letter dated January 06, 2015, more particularly Paragraph No,1 thereunder., it is clear that you are not able to comply with the terms of the JDA. It is further clear that you are refusing to perform the JDA on the terms as in now concluded. Therefore, you have undoubtedly breached and repudiated your obligations under the JDA and I accept your repudiation of the JDA"

9.7 The claimants have treated the above letter as one by which the respondent terminated the contract and have contended that the contract could not have been unilaterally terminated and that as such the termination is not legal or valid. The learned senior counsel Sri Udaya Holla for claimants relied on the decision in **(1984) 1 SCC 728** in the case of The Workmen and others vs. M/s. Hindustan Levers Limited to contend that unilateral repudiation of an agreement does not result in termination of an agreement. The respondent has not purported to terminate the contract by the above letter. It is the

respondent's case that by his acceptance of the refusal by the claimant to perform an essential condition of the contract, puts an end or terminates the contract. As such, the plea of the claimants that the respondent unilaterally terminated the contract or that it is illegal is misconceived. Point No.5 in Dispute 1 and Point 3(A) in Dispute 2 are answered in the negative.

9.8 The question is whether the claimants can be said to have repudiated to perform their obligations under 3(v) and other relevant clauses of the JDA. Under Section 39 of the Contract Act, when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified by words or conduct, his acquiescence in its continuance.

9.9 Before considering the point at issue, it is made clear that repudiation of an essential term of the contract and readiness to perform such a term of the contract are two different aspects. For the present, we are considering only the aspect of repudiation and not claimant's readiness to perform certain obligations under the agreement.

9.10 In **MANU/SC/0227/2005** in the case of Smt. Claude – Lila Parulekar vs. Sakal Papers Private Limited, the Supreme Court has observed that "Repudiation is a serious matter, not to be lightly found or inferred". In this case all that the claimant has stated in the letter dated 6.1.2015 is that the Banks operate under the RBI Guidelines and

Rules and as such they (claimants and respondent) have to discuss and resolve the issue and modify certain terms of the JDA to comply with the Bank's requirement. The compliance with the conditions stipulated in the JDA required the project lenders to accept the same. Though the Banks had earlier agreed to provide the loan subject to 50% of the property being mortgaged after the construction of 3 basements, went back pursuant to the opinion given by the legal advisors based on RBI Guidelines and Rules and insisted on the upfront mortgage of the schedule property and suggested modification of the JDA. It is for that reason the claimant wanted this matter to be discussed with the respondent and to resolve the issue. By this, it cannot be inferred that claimant repudiated its obligations under the contract especially in view of the facts that claimant had already invested a considerable amount and had taken several steps to implement the project. Such an inference of repudiation cannot also be drawn from the claimants' conduct in repeatedly asserting that they had complied with the conditions of Clause 3(v) which in the circumstances would mean that they had complied with the conditions which were in their power. In their letters dated 11.4.2015 Ex.C63(a) and 13.4.2016 Ex.C63(b) the claimant has offered to meet the respondent and resolve any misunderstanding in the mutual interest of realizing the dream of building a world class shopping mall in Bangalore and has further assured that they had continuously shown commitment and focus to build the Mall. In Ex.C63(e) dated

30.4.2015 the claimant has informed the respondent about the meetings they had with India Head of HPM brand with regard to their coming to the Mall in question and about meetings the claimant had with other brands, who were stated to be keen to sign agreements. When the respondent in his letters dated 14.8.2015 and 17.8.2015 asserted that the claimant had repudiated the contract, the claimant in the letter dated 19.8.215 Ex.C63(f) specifically denied that they had repudiated the contract and asserted that the contract is still in force. According to claimants, they were trying to raise funds from Goldman Sachs. RW1 in answer to Qn.249 has stated that at the request of CW2 Mr. Nitesh Shetty, she met the personnel of Goldman Sachs somewhere in September/October 2015. Admittedly RW1 was acting on behalf of the respondent. Her participation in a meeting which CW2 had with Goldman Sachs indicates acquiescence on the part of the respondent to treat the agreement as being still in force. The claimants have also relied on a statement of RW1 before the Assistant Commissioner of Commercial Taxes in February 2015 wherein she has referred to the JDA but had not stated that the JDA had come to an end.

9.11 The learned senior counsel for the respondent Sri K. G. Raghavan, contended that in order to find out whether the letter dated 6.1.2015 amounts to repudiation, the surrounding circumstances will have to be taken into account and for that purpose he took us through the sequence of events from the beginning and the correspondence

between the parties and submitted that from the beginning the claimant was expressing that the terms of the JDA and even the MOUs were commercially impracticable and incapable of performance in their entirety. He further submitted that according to the claimant the banks could not lend without modification of the JDA and as such the respondent has to cooperate and agree to modify the terms and that in effect the claimant was expressing its inability to perform the contract in its entirety. He specifically referred to revised commercials to the draft JDA sent by the claimant along with letter dated 31.1.2009 in this connection. During the negotiations each party may make some proposals regarding the terms and when after the agreement is executed and many steps have been taken by the claimant in pursuance of that agreement, it would not be proper to infer repudiation to perform the entire contract on the basis of certain proposals made by it earlier or while interpreting a letter which highlights the problem faced by the claimants which problem is not an imaginary one and seeking to discuss the problem with the respondent and to resolve the same. Even after the execution of the development agreement, when the banks did not agree to give a loan without 50% of the schedule property being given by way of mortgage at least after the completion of three basements, the claimants held negotiations with respondent who subsequently agreed to modify the development agreement and executed the supplementary JDA. It is in this background, the claimants have sought to discuss again with the

claimant to explore the possibility of further modification of the development agreement.

9.12 Sri K.G. Raghavan has cited some authorities on the question of repudiation. The decisions would show that repudiation can be inferred from the conduct and surrounding circumstances which really show that the promisee had no intention to perform the contract, that where a party proclaims by words or conduct, his inability to perform, the other party could safely act upon it, that repudiation can be inferred on the insistence of the performance of "certain condition" which does not form part of the terms of the contract. These decisions have no application to the facts of the present case. Sri K. G. Raghavan also referred to the averments in the claim statement to point out that the claimants clearly wanted the respondent to agree to modify the JDA by agreeing for an upfront mortgage of the schedule property to secure loan from the banks. The averments in the claim statement may be relevant while considering the question of readiness and willingness of the claimant to perform its obligations. As the respondent has treated only the claimants' letter dated 6.1.2015 as amounting to repudiation, we have to mainly consider the contents of that letter and the surrounding circumstances at that juncture to decide whether there was repudiation on the part of the claimant.

9.13 After careful consideration of the material on record, we are unable to hold that the claimants' letter dated 6.1.2015 amounts to repudiation on the part of the claimant to perform the contract in its entirety.

9.14 Point No.5 (A) in Dispute and Point No.2 in Dispute No.2 are answered in the negative.

10. **Point No.4 in Dispute No.1**

10.1 In a claim for specific performance, it is necessary for the claimant to aver and prove that he has always been ready and willing to perform the essential terms of the contract which are to be performed by him. The claimants have averred in the claim statement that they are ready and willing and have always been ready and willing to comply with the terms of the JDA as amended. To prove their readiness and willingness to implement the project, the claimants rely on the following steps taken by them in pursuance of the JDA:

(i) Apart from paying Rs.35.5 crores prior the execution of the JDA, they have paid Rs.69 crores as non-refundable deposit to the respondent as per the terms of the JDA and have spent Rs.160 crores on the project (vide para 101 of the claim statement) and Rs.180 crores (vide para 114 of the claim statement);

(ii) Engaged L & T company as civil contractor under agreement dated 30.6.2014 (Ex.C36);

(iii) Engaging Jones Lang Lassalle (JLL) an International Property Consultant under agreement dated 20.5.2011 Ex.C37 who submitted a feasibility study and leasing plan;

(iv) Negotiations with potential tenants and entering into MOU dated 31.8.2011 with PVR;

(v) Integration of the additionally acquired land parcel as stipulated in the JDA;

(vi) Entering into 14 agreements with several consultants detailed in para 55 of the claim statement between 7.3.2011 and 18.10.2014;

(vii) Obtaining NOC from BESCOM, KPTCL, Airport Authority, Karnataka State Pollution Control Board, Fire Force, BWSSB, BSNL and Environmental Clearance from Ministry of Environment and Forest;

(viii) Obtaining clearance from the BDA for the development plan;

(ix) Obtaining license for the plan from BBMP;

(x) Providing alternate office space to the respondent;

(xi) Expensive ground breaking ceremony in the schedule property on 14.2.2013.

10.2 According to claimants as the civil contractor L & T wanted the site to be handed over, they requested the respondent to permit demolition of the existing buildings and to start construction by several letters, but

however, the respondent refused to give the permission asserting that unless all the conditions precedent mentioned in clause 3(v) of the agreement are fully complied with, no permission can be given. The claimants have alleged in para 77 that they have duly complied with all possible conditions under clause 3(v) as per tabular representation given therein. According to claimants, the remaining compliance was entirely dependent on the cooperation from the respondent by way of permitting upfront mortgage of claimants' share and the respondent arbitrarily refused permission to the claimant to carryout demolition and start construction. The claimant has asserted that it was unable to make any headway into the project because of want of cooperation from the respondent despite they being ready and willing to comply with their obligations in terms of the JDA. According to the claimants, they have the necessary funds, financial capacity and also the technical and professional competence for completing the project in question.

10.3 The respondent in his statement of defence has seriously disputed the claimants' assertion that it has always been ready and willing to perform its obligations under the contract. He has referred to the various delays caused by the claimants from the date of the 1st MOU and the enormous delay in executing the development agreement resulting in heavy loss to him. It is the case of the respondent that the claimant who was fully aware that it was not entitled to create any mortgage of the schedule property to raise any loan for development of

the Mall, agreed to develop the same and also represented that it had the financial capacity to do the same, that the claimant failed to fulfil the preconditions stipulated in the agreement though the respondent extended the time for payment of the non-refundable deposits and had also not sourced the required funds, that even though the respondent was averse to creating mortgage over his property, when the claimant approached him with a request to modify the JDA and to agree for mortgage of 50% share of the schedule property after construction of three basements as desired by the bankers, he agreed to the same subject to certain preconditions and executed the supplementary JDA, that when the bank subsequently insisted on upfront mortgage of the property, the claimants pressurized the respondent to agree to the same, that this shows that the claimants never had the financial capacity to undertake development of the Mall, that as the claimant had not complied with all the preconditions stipulated in clause 3(v) of the JDA as amended, the respondent declined to give permission to demolish the existing structure. The respondent has asserted that the claimants never had and do not even now have the financial capacity to undertake the development of the Mall and that the averments made in the claim statement would themselves show that the claimants are unable to comply with their obligations under the JDA.

10.4 Sri Udaya Holla, learned senior counsel for the claimants at the outset pointed out that the terms of the JDA would show that time was not the essence of the contract. He cited certain authorities to show that

in building contracts, time is not generally the essence of the contract. We may point out here itself that the question as to whether time was the essence of the development agreement does not arise for consideration as it is not the respondent's case that time was the essence or that on account of the non-performance within the stipulated time they are entitled to avoid the contract.

10.5 Sri Holla, laying great stress on the facts that claimants had paid Rs.105.5 crores to the respondent and had spent several crores to obtain various approvals and sanction of the plan and to take several steps to start the construction, contended that the financial capacity of the claimants to construct the Mall can never be doubted. He pointed out that as per Annexure D to letter of Bank of Baroda forming part of Ex.R19 series at page 649 of respondent's Vol.2, the total project cost was Rs.586.61 crores and that the facility to be provided by the Banks was Rs.300 crores and submitted that when the claimants could invest nearly 50% of the project cost, it has to be inferred that they had the requisite financial capacity. He also submitted that in Ex.C5 the Development Agreement which was admittedly drafted by the respondent's counsel, in para 5(iii) it is stated that the developer has the financial capabilities for undertaking development of the schedule property as contemplated therein. Here itself we may point out that clause 5 itself refers to the representations, warrantees and covenants of the developer and as such clause 5(iii) cannot be taken as either a joint statement of both

the parties or an admission by the respondent about the financial capacity of the claimant-developer.

10.6 Sri Holla, referred to the various steps taken by the claimant and submitted that there is no scope to doubt the readiness and willingness of the claimant to proceed with the project. He also referred to the MOU which the 2nd claimant had entered into with Goldman Sachs Investment Holdings (Asia) Limited to enter into joint ventures in which Goldman Sachs would invest funds and that the project in question is one of the projects of such proposed joint venture. Reliance also is placed on the fact that 2nd claimant in pursuance of that MOU purchased a Mall in Pune by investing Rs.250 crores. It is contended that the claimant could source funds from Goldman Sachs.

10.7 The claimants have also sought to rely on Ex.C84 letter dated 9.2.2016 and letter Ex.C88 dated 8.11.2017 issued by YES bank agreeing to provide term loan to the extent of Rupees 350 crores towards cost of proposed project at Indiranagar in terms of JDA as modified by the supplementary JDA.

10.8 Sri Holla, relying on the decisions in **(2000) 6 SCC 420** in the case of Motilal Jain vs Ramdasi Devi (Smt) and Others; **AIR 1970 SC 546** in the case of Nathulal vs. Phoolchand; **(1997) 2 SCC 200** in the case of Sukhbir Singh and others vs. Brij Pal Singh and others; and **(2017) 4 SCC 654** in the case of A. Kantamani vs. Nasreen Ahmed, contended

that to prove readiness and willingness it is not necessary either to produce ready cash or to vouch a concluded scheme for financing the transactions and that when a major portion of consideration is paid, it is apparent that the party has the capacity to pay the balance.

10.9 Sri K.G. Raghavan, the learned senior counsel for the respondent contended that starting from the 1st MOU in 2007 the claimant has committed series of defaults and delayed execution of the development agreement itself by more than 3 to 4 years, that the claimant has specifically admitted its default and has paid compensation for the same, that the payments made to the respondent were always delayed, that even though the claimant had to keep a sum of Rs.20,50,00,000/- in Escrow till the date of the execution of the development agreement, the claimant entered into an escrow agreement only for 3 months and extended it by one month and allowed the escrow agreement to lapse, that this was because the claimant did not have the funds, that the respondent relying on the claimants assurance had got his tenants to vacate the premises and had kept the front as well as rear buildings vacant incurring heavy loss of rent and incurring expenses for maintenance, that the core of the understanding with regard to the construction of the Mall was that the claimant would secure the loan for that purpose and that it has never been claimants' case that it can put up the construction out of its own funds, that it is for this purpose specific pre conditions were stipulated with regard to the availability of finance before the claimant

could be permitted to demolish the existing structures, that the respondent has throughout cooperated by extending the period of the MOU and agreeing to modify the development agreement as sought for by claimant, that the very fact that even for construction of three basements before the respondent could be called upon to mortgage 50% of the schedule property, the claimant had to take loan from the Bank shows that the claimant did not have the required finance, that the averments in the claim statement would themselves show that the claimant was unable to raise funds without the JDA being further amended and the respondent agreeing for an upfront mortgage of the schedule property, that the very fact that claimant had set up an oral understanding by the respondent to allow upfront mortgage of the schedule property in favour of the lenders and has sought for specific performance of that oral understanding shows that the claimants have not always been ready and willing to perform their obligations under the JDA as amended. He also pointed out that as per the JDA as amended, the claimants have to create second charge in favour of the respondent in respect of their Kochi property and that the claimants have disabled themselves of performing that term of the JDA by disposing of that Kochi property. With regard to the claimants case that they can raise funds from Goldman Sachs or YES Bank, he submitted that it is not the case of the claimants as put forth in the claim statement that they can raise funds from other sources and perform their obligations and that, that apart there has

not been any definitive arrangement with the above institutions to secure funds as stipulated in clause 3(v) of the JDA.

10.10 The material on record, no doubt, shows that the claimant has, apart from paying a sum of Rs.35.50 crores to the respondent prior to the execution of the JDA, which amount is agreed to be non-refundable under any circumstances, have also paid Rs.69 crores as non-refundable deposit and Rupees One Crore as maintenance charges, have also taken no objection certificates and approvals from several statutory authorities. The claimant has also obtained sanction and license for a plan, though it is pointed out by the respondent that that plan was not finalised with the respondent and that it is not in accordance with the JDA and the claimant has undertaken to get the same modified. These steps taken by the claimant would no doubt show that they are keen on putting up the Mall. The main controversy between the parties is on the question whether the claimant has always been ready with the requisite funds to construct the Mall.

10.11 At the outset, it has to be pointed out that the claimant intends to develop the property by constructing a mall not out of its own funds but by raising loan from the project lenders. CW1 in answer to Qn. 231, has admitted that one of the major conditions for commencement of the project was the financial closure in the form of debt to fund the project. CW4 who is the financial consultant, in answer to Qn. 29 has stated that at the management level it was decided to go by loan

arrangement to execute the project. As such, while considering the question of readiness of the claimant to perform its obligations under the contract, the financial condition of the claimant may not be very relevant except to the extent of showing that it is capable of raising loans. What has to be considered is whether the claimant has been able to secure funds by way of loan for starting the project in accordance with the terms of the JDA as amended. The facts that the claimant has paid Rs.105.50 crores to the respondent in instalments spread over a period of 6 to 7 years and has invested some more amount to secure NOCs and sanction of plan would not show that the claimant could raise a loan of Rs.300 crores without upfront mortgage of the schedule property and in accordance with the terms of the JDA. The decisions cited by Sri Holla deal with agreements to purchase immovable property where the purchaser had paid major portion of the consideration or had made out its capacity to pay the balance. This is a case where the agreement is for development of a Mall and the agreement contains several preconditions which had to be complied with before commencement of the construction. Clause 3(v) of the amended JDA has been earlier extracted. One of the preconditions is that the claimant should have secured project loan for a sum not exceeding Rs.310 crores under a definitive arrangement in conformity with the terms of the agreement. That clause stipulates that it is only after all the preconditions are fulfilled, the owner shall vacate the front building and that the developer may start demolition

of the building. The compliance with the preconditions is an essential term of the contract, as without such compliance the claimants cannot take possession or start demotion and construction. To prove their readiness, the claimants have to prove that they had been able to secure the loan to fund the project in strict compliance with the terms of the JDA. The decisions cited by Sri Holla, would not therefore be of much help on the facts of this case.

10.12 The question is whether the claimants have proved their readiness to comply with their obligations under clause 3(v) and relevant clauses of the JDA as amended. It is at this juncture, we have to take note of the fact that from the beginning the claimants considered the terms of the JDA to be unfair and incapable of performance. After the execution of Ex.C4, the 2nd supplemental MOU dated 29.3.2010 to which an initialled draft JDA was enclosed, Suresh Patil, General Manager – Legal Department of Claimant No.2, sent an email dated 12.6.2010 to the respondent as per Ex.C34. In this mail, he has stated in paras 4 and 5 as under:

> "Para 4: The draft JDA was initialized by us when we were in the midst of our initial public offering and you took advantage of the situation and used undue influence, duress, threat, economic coercion and all sorts of unethical and illegal means and resorted to pressurized tactics and blackmailed us into initializing the draft JDA which is totally one sided and in the

land lords favour and unfair and unequitable. The said JDA is incapable of being performed"

"Para 5: Upon a plain reading of the said JDA even by a layman it becomes abundantly clear that it is not in accordance with law, illegal, incapable of being performed, and initialized under the influence of undue & unfair advantage, induced and duressed to do so which has no sanctity in the eye of law"

10.13 On the same day, CW2 Sri Nitesh Shetty has sent sms to RW1 as per Ex.R76 characterising the agreed draft JDA as suicidal – ridiculous agreement and asserting that they would not sign such an agreement. The claimants have alleged in the claim statement about the circumstances under which they were coerced to agree to the terms of JDA and CWs 1 and 2 have also referred to the same in their evidence. When RW1 took serious objection to the contents of Ex.C34 and the sms of CW2, Suresh Patil by email dated 17.6.2010 Ex.C35(a) (produced by respondent along with application dated 1.2.2017), withdrew unconditionally the offensive mail and sms and assured that they were committed to build the Mall. When CW1 was questioned as to whether he stands by the contents of the email Ex.C34 sent by Mr. Suresh Patil, he stated that barring few statements in the said email, he agrees with the contents of the email. In answer to Qn.109 he has specified the statements in Ex.C34 with which he does not agree. His answer shows that he agrees with the averment in Ex.C34 that the terms are incapable of performance. It is

not necessary to deal with the allegations regarding the circumstances under which the claimant agreed to the terms of the JDA, as the claimants have not sought for recession of that JDA on the ground that they executed the same under coercion or undue influence. In fact, they want to specifically enforce that agreement. Sri K. G. Raghavan, drew our attention to Ex.R49 dated 11.2.2011 which is a certificate given by the claimants' legal adviser after discussions with respondent and his lawyers in the presence of CW1 spread over for a period of 6 months, that they are satisfied that the terms and conditions in the JDA reflects a fair and correct commercial understanding between the parties and had been confirmed by the claimants from time to time. Reference is made to the above communications to show that from the beginning the claimants considered that they would not be able to perform some of the terms of the JDA, but still entered into the agreement, possibly hoping to persuade the respondent to modify the terms when the problem arose. They were able to persuade the respondent to modify some of the terms of the JDA and execute a supplementary JDA. This inference is strengthened by the fact that in Ex.C73 legal notice dated 14.3.2016 sent by the claimant's advocate, in para 5 it is stated that the claimants requested the respondent to agree to create mortgage of 50% of the land at that stage itself instead of doing so after completion of the construction of three floors.

10.14 After the respondent agreed to modify the JDA and executed the supplementary JDA agreeing to mortgage 50% of the schedule property after the completion of three basements and subject to certain preconditions, Bank of Baroda, Lead Bank of Project lenders in Ex.C59 dated 9.10.2014 intimated the claimant that not only the 50% of the undivided interest in the project land should be mortgaged before the first disbursement, but also "to amend the supplementary agreement to address the observations of their banks panel advocate and the legal department of their bank". In that letter, at para 9 the pre disbursement conditions have been stipulated. Condition (b) stipulates that the claimant should amend the JDA/supplementary agreement or enter into another agreement with the land owner so that all those observations made by lenders legal counsel / legal department of Bank are addressed. The sanction of loan was subject to the conditions mentioned in Annexure D. Condition 9 in Annexure-D stipulates that the sanction is subject to clearance of the legal aspects regarding removal/amendment of the onerous / restrictive clauses of JDA and supplementary JDA to the satisfaction of the Bank's legal counsel / legal cell for ensuring clear and marketable title of the project land and creation of valid enforceable and effective equitable mortgage of the 50% of the project land / construction proposed thereof. The respondent has produced Ex.R19 series, copies of the project lenders sanction letters from pages 599 to 694 in volume 2. At pages 669 to 675 the legal opinion by bank's legal adviser is

given. Ex.R19 has been produced in dispute 2 showing it as Ex.C19 and the claimants advocate as the advocate for respondent in dispute 2 in the memo of admission/denials dated 22.9.2016 has admitted Ex.C19 which is now treated as Ex.R19. Though CW1 has not agreed that the above pages contained the legal opinion, the claimants have not produced any other legal opinion furnished by the bank's panel advocate to indicate as to what were the amendments which were required to be carried out. The legal opinion would indicate that many of the essential terms of the JDA as amended have to be modified. At any rate, there can be no dispute about the fact that the bank wanted amendment of the JDA/supplemental JDA modifying certain essential terms.

10.15 Sri Holla submitted that the bank wanted the mortgage to be created before the first disbursal of the loan and as such the claimant could have proceeded with the construction with other sources. But that is not the case put forth either in the correspondence or in the pleadings. Even for putting up the three basements, the claimant had secured loan from the bank by offering their Kochi property as security. Admittedly, the bank in view of the legal opinion released the Kochi property to the claimants and their offer to provide funds for the construction of three basements lapsed. After the bank wrote Ex.C59 in October 2014, the claimants apart from seeking cooperation of the respondent in agreeing to amend the JDA to comply with the bank's requirement, has not been able to arrive at a definitive

arrangement to secure the finance and comply with some of the preconditions in clause 3(v). The averments made in the claim statement in dispute 1 and statement of defence in dispute 2 have great relevance on the question of readiness of the claimant to perform its obligations under clause 3(v) and other terms of JDA.

10.16 In para 77 of the claim statement, after giving the conditions in clause 3(v) and compliance status in a tabular form, it is stated as under:

> "The remaining compliance was entirely dependent upon the cooperation from the Respondent by way of permitting the upfront mortgage of the claimant No.1's share"

10.17 In paras 80, 81, 97 and 98, portions of which have already been extracted, an oral understanding by the respondent agreeing to provide mortgage rights to the claimants in respect of the schedule property, has been set up.

10.18 In para 84, it is stated: ".... As the project work was getting delayed due to the lack of cooperation from the Respondent to make the JDA bankable and in the meanwhile commence the demolition work, the claimant No.1 issued further communication on 11.04.2015, 13.04.2015, 25.04.2015, 28.04.2015, 30.04.2015, 12.05.2015 and 19.08.2015. ..... However, the claimants were unable to start the

project on the schedule property due to lack of cooperation from the Respondent"

10.19 In para 91, it is stated that "the claimant No.1 was unable to make any headway into the project because of want of cooperation from the respondent as stated in detail in the above paragraphs".

10.20 In para 105, the following assertion is made: "In the instant case it is the respondent who has committed breach of contract by not allowing the documents to be made bankable or giving permission to commence the construction"

10.21 In the statement of defence filed by the present claimants in dispute No.2 after referring to Bank's letter dated 9.10.2014 Ex.C59 and about the respondent going back on his oral understanding, in para 95 the claimants have stated as under:

> "Under such circumstances, the proposed project once again met with roadblocks. The state of affairs continues even as of today".

10.22 The averments in the claim statement show that the claimants are not able to comply with preconditions 3(v), (d) and (e) and that to comply with the same they wanted the respondent to cooperate by agreeing for an upfront mortgage of the property in favour of project lenders. In order to make the respondent liable to give upfront mortgage rights, the claimants have set up an oral understanding and

alleging that the respondent committed breach of the said understanding, have sought for specific performance of the oral understanding also along with JDA as amended. The claimants have nowhere alleged in the claim statement that without the respondent agreeing to give upfront mortgage of the property, they were ready to comply with the preconditions in clause 3(v), (d) and (e) by securing funds from other sources or out of their own funds. The amendment of only the prayer column by purporting to seek specific performance of only JDA/supplementary JDA as an alternative relief is of no consequence as the claim averments made with regard to the alleged oral understanding and specific performance of the same along with JDA as the main prayer continues. It is obvious that the claimants could not have insisted on the respondent agreeing to amend the JDA.

10.23 Sri Holla the learned senior counsel sought to make out that the bank's letters dated 5.9.2014 and 9.10.2014 at pages 676 and 678 of Ex.R19 series (Vol.2 of respondent's volumes) show that the mortgage of the schedule property sought for by the bank was only prior to the first disbursal of the loan and that the claimant could comply with the condition of putting up the first three basements as stipulated in the JDA out of claimant's own funds, that only some minor modifications had been suggested and as such it cannot be said that conditions 3(v), (d) and (e) had not been complied with. He drew our attention to last para in the letter dated 5.9.2014 and clause (e) of the pre conditions

in para 9 of the letter dated 9.10.2014. Those relevant portions are extracted hereunder:

Letter dated 5.9.2014:

"Charge/Mortgage on project assets to be created in favour of the lenders before first disbursement. In case, as per agreement, the company is to achieve he milestone of construction of three basements and entering into contracts for civil, mechanical, electrical and plumbing works with a reputed contractor before the owner permits mortgage in favour of the lenders, the company may achieve the same by raising their own funds. The term loan from the lenders would be first disbursed only upon creation of valid and enforceable mortgage of the 50% of the project land"

Letter dated 9.10.214

"Para 9 (e):

"Mortgage to be created upfront over 50% undivided interest on land and building (borrower's share) (present and future) in favour of the lenders. The company is to bring in its own funds to comply with conditions of JDA/SA to ensure that charge can be created in favour of the lenders"

10.24 As already pointed out, the advocate of the bank's panel has opined that many of the clauses of the JDA have to be amended. He is of the opinion that many of the clauses in the JDA and

supplementary JDA are objectionable from bank's point of view. This opinion is relevant as bank's letter dated 5.9.2014 stipulates that a suitable supplemental agreement has to be entered into with the owner to address to all the observations made by their advocate in his report dated 4.9.2014. Even the bank's letter dated 9.10.2014 stipulates as under:

> "The company to amend the supplemental agreement to address the observations of our bank's panel advocate and the legal department of our bank and create mortgage over project land before first disbursement".

10.25 In effect not only did the bank stipulate that an upfront mortgage of the project land should be given before disbursement but also wanted amendment of the JDA or execution of another supplemental agreement changing many of the clauses in the JDA / supplemental JDA to satisfy the bank's panel advocate and legal department. Such conditions patently contradict the preconditions in clause 3(v), (d) and (e). It is the case of the claimants in the claim statement that to comply with the above conditions, respondent had to agree for an upfront mortgage. CW1 in answer to Qn.119 admits that they asked for modification of the terms and conditions of the JDA and supplemental JDA with a view to proceed with the project and he has added that certain conditions were unreasonably imposed on them in spite of they fulfilling their obligations and they asked for relaxation. In these circumstances, it is futile to contend that the conditions

imposed by the bank do not deviate from the preconditions agreed to by the parties in clause 3(v) or that the deviation was of a minor character.

10.26 With regard to the submission that even as per the bank's letters, the claimants could put up three basements and then take the loan, it must be pointed out that the bank was not prepared to give the loan even if the claimant constructed the three basements out of its own funds or from other sources without the JDA as amended being further amended or supplementary JDA being executed to address the observations of the bank's advocate and legal department. Above all, it is not the claimants' case as put forth in the claim statement. It is undisputed that earlier the claimants had given their Kochi property as collateral security to secure finance for putting up 3 basements. However, the bank released the Kochi property from its charge by letter dated 9.10.2014 and the reason for doing so is mentioned in the Note at page 685 of respondent's vol.2 produced in dispute 2. That Note reads as under:

> "Note: Earlier Company has offered above collateral security and requested for release of term loan to the extent of 60% of the value of alternate security (i.e., Rs.46.27 crores) as with release of term loan it shall be able to complete three level of basement and reach ground floor (milestone completion) till creation of stipulated charge on project land. Now company has

agreed to create mortgage over project land before first disbursement and since additional security so mortgaged was an interim arrangement, hence not proposed to continue"

10.27 The above Note shows that as the claimants agreed to create mortgage over the project land before first disbursement, the Kochi property which had been offered as security as interim arrangement was not required.

10.28 Even at the stage of filing of the claim statement the claimants had no idea of raising funds from other sources to put up the first three basements. In fact the specific case put forth in the claim statement is that as the respondent did not agree for the upfront mortgage of the schedule property they could not proceed with the project. As already pointed out the claimants required loan to put up the three basements and there was no other arrangement to secure that loan. As such the plea that even as per bank's revised sanction dated 9.10.2014 the claimants could have started construction of three basements cannot be accepted. There can be no doubt that the bank's sanction of loan by letter dated 9.10.2014 was not at all in conformity with the terms of the JDA as amended.

10.29 With regard to the claimants case as put forth during the stage of evidence that they could have secured funds from Goldman Sachs with whom the second claimant had entered into MOU dated 13.5.2015 Ex.C83, no such plea is put forth in the claim statement

though they have referred to the talks with the representatives of Goldman Sachs in the matter of proposed private equity investment in the project. Their specific case throughout the claim statement is that they have complied with all preconditions possible and compliance of other conditions depended on respondent's cooperation. In Ex.C83 MOU, it is indicated that Goldman Sachs shall evaluate and will have the right to invest in the company that owns/has rights over the Indiranagar Mall on terms and conditions that will be detailed in the definitive documentation. In the preamble of this MOU, it is made clear that except certain specific clauses in the MOU, the other provisions of the MOU will not be binding and that no other legal obligation on the part of any party will be created until definitive documents are signed. Subsequent to this MOU, no definite agreement/documentation with regard to the project in question has been arrived at. This MOU can neither be taken to comply with nor have the claimants put forth this MOU in the claim statement as indicating their compliance with the pre conditions stipulated in clause 3(v), (d) and (e) of JDA as amended. The fact that the 2nd claimant in partnership with Goldman Sachs has purchased a Mall in Pune as indicated in Ex. C86 - newspaper cuttings, would not be very relevant as we do not know the terms and conditions subject to which Goldman Sachs has entered into partnership with Claimant No.2 to purchase that Mall. The JDA in question stipulates specific conditions

which have to be complied with by any lender or financier who is prepared to lend or invest in this project.

10.30 With regard to the term loan of Rs.300 crores offered by YES Bank by their letter date d 9.2.2016 (Ex.C84) subject to terms and conditions therein, there is no reference to this in the claim statement filed in August 2016. The offer of this loan does not purport to be in conformity with the terms of the JDA as amended and it also does not confirm receipt of the development agreement as amended nor acknowledges that project loan has been extended by them based on the terms of the development agreement. In Ex.C84 under the heading "Project related - post disbursement" it is stipulated that the pamphlets/brochures/ advertisements related to project should disclose mortgage of property to YBL and that "The project site should display the board mentioning that the project has been funded by mortgage to YBL". Patently, this offer cannot be taken to comply with the preconditions. The claimant has produced another letter dated 3.4.2017 from YES Bank (Ex.C87) to the effect that the "Financing of the project based on the JDA and supplementary JDA will require resolution of ongoing disputes pending between Nitesh Indiranagar Retail Pvt Ltd and the landowners". In this letter, the Bank has indicated that land is a critical part of the entire project financing and the matter cannot be taken forward until requisite closure is achieved between the 1st claimant and the landowners. This letter does not indicate that the bank would provide finance as per the terms of the

JDA as amended. To get over this problem at the fag end of the case, the claimant has produced a letter dated 8.11.2017 (Ex.C88) stated to have been issued by YES Bank indicating their willingness to fund Rs.300 to 350 crores towards construction of proposed commercial / retail project at Indiranagar in terms of JDA dated 11.2.2011 as amended by supplementary JDA dated 11.2.2014 subject to successful resolution of ongoing dispute. In this letter, there is no reference to either Ex.C84 or Ex.C87. It does not purport to be in modification of the terms and conditions mentioned in Ex.C84. CW4 through whom Ex.C88 was produced admits that there was no correspondence with YES Bank in relation to Ex.C88. According to him, they had discussions with the representatives of the Bank. It is highly improbable that a bank would issue such a letter without even a written request from the claimants for sanctioning a loan in terms of the JDA as amended by supplemental JDA. Above all, it is significant to note that CW4 does not state in his affidavit evidence that the copies of the JDA and supplementary JDA were furnished to YES Bank. Ex. C88 also does not confirm that those documents had been furnished to the Bank and that after knowing the terms and conditions of the JDA as amended they have made the offer. For all these reasons, no value can be attached to Ex.C88. At the cost of repetition, it has to be mentioned that the attempt made by the claimants at the stage of evidence to show that they can raise funds from other sources to comply with the preconditions of the JDA as

amended is only an afterthought and contrary to the stand taken in the claim statement to the effect that they had complied with all conditions possible and that the compliance of other conditions depended on the respondent permitting the upfront mortgage of claimants' 50% share in the land.

10.31 Sri Holla, relying on the decisions in AIR 1960 Calcutta 361 DB and 1965 Madras 37 contended that violation of non-essential terms would not disentitle a party to the relief of specific performance. It is already pointed out that parties have agreed that all preconditions stated in clause 3(v) have to be complied with by the claimant before the claimant becomes entitled to demolish the existing structure and commence construction. Conditions (d) and (e) cannot be considered as non-essential terms. The respondent who did not want to encumber his property for the purpose of funding the project, agreed to mortgage 50% of the land in favour of lenders at a particular stage provided certain specific conditions were complied with to safeguard his interest. For the same purpose, the respondent wanted a second charge to be created in his favour on Kochi property belonging to claimant No.2. These are essential conditions which had to be complied with and noncompliance with them cannot be ignored. In fact, the claimants in the claim statement have not pleaded that the above terms were non-essential terms.

10.32 With regard to Kochi property belonging to the 2nd claimant, it is undisputed that the 2nd claimant had furnished this property as collateral security to Bank of Baroda to secure loan to put up the 1st three basements. By clause 6.1.19 of Ex.C6 supplemental JDA, clause 12(xiii) of the Development Agreement Ex.C5 was deleted and substituted by a new clause. The amended clause 12(xiii) is as under:

"(xiii) Subject to the provisions of Clause 12 (xiv) below and not otherwise, the Developer may avail the Project Loan and for this purpose, create a charge on the development rights secured to it under this Agreement. In order to enable the Developer to obtain the Project Loan, the Owner at the instance of the Developer has agreed to mortgage 50% undivided right, title and interest in the schedule property (herein referred to as 'Owner's Mortgaged Property') in favour of the Project Lenders. The Developer shall be entitled to call upon the Owner to create a mortgage of the Owner's Mortgaged Property, only after fulfilment of all the below stated conditions to the satisfaction of the Owner:

(i) NEL shall have created a second charge in favour of the Owner, over the immoveable properties admeasuring in all 405.837 cents comprised in (i) Survey No. 506/13 (measuring 26.685 cents), (ii) Survey No.506/1 (measuring 18.212 cents), (iii) survey No.514/10 (measuring 355 cents), and (iv) Survey No.514/10 (measuring 5.947 cents), all situated at Kakkanad

Village, Kanayannoor Taluk, Ernakulam District (collectively, referred to as 'Kochi Property'). The said second charge over the Kochi Property in favour of the Owner shall be created under a valid mortgage by deposit of title deeds (held by the Project Lenders for themselves and on behalf of the Owner as well), which is also recorded with the concerned Registrar of Companies. The said mortgage over the Kochi Property is for the purpose of providing security to the Owner to recover his dues/losses and other damages that he may suffer, due to default on the part of the Developer. The said mortgage may be enforced by the owner under the circumstances set out under this Development Agreement. In this regard, NEL has already created a first charge by way of mortgage in favour of the Project lenders over the Kochi Property in order to avail finance for the Project. NEL represents that it has not created any right, charge or encumbrance over the Kochi Property other than the first charge in favour of the Project Lenders and undertake that it shall, until the conveyance of the Owner's Mortgaged Property, ensure that apart from the Project lenders and the Owner (who shall have a second charge in terms of this clause), no other person shall have any right, charge or any encumbrance over the Kochi Property. Further, NEL shall ensure that the security created over the Kochi Property in favour of the Project Lenders

for repayment of the Project Loan, subsists up to the fulfilment of the 'Conveyance Pre-Requisites' (as defined in Clause 10(vii)"

10.33 The above clause shows that the claimants had agreed to create a second charge on Kochi property to provide security to the respondent to recover his dues/losses incurred on account of claimants' default and such a charge had to be continued even after the construction of the Mall and the bank's dues are discharged. CW1 in his answer to Qn. 74 read with Qn. 185 has admitted that Kochi property is no more available with the claimants as it had already been disposed of due to business exigencies. In answer to Qn.189, he agrees that in view of disposal of Kochi property, creation of 2nd charge over that property as per clause 6.1.19 of the supplementary JDA in favour of the respondent is impossible. However, he added that any other property of equal value could be offered as second charge. It is therefore clear that the claimants have disabled themselves of performing one of the essential conditions of the agreement. The claimants have nowhere disclosed in the claim statement about the sale of Kochi property. The question of offering some other property as second charge does not arise.

10.34 The learned senior counsel for the respondent contended that the claimants had also not complied with the condition of obtaining sanction of the plan as agreed to by them. According to him, the plan for which the sanction is obtained does not include cinema theatre

which ought to have been included and as such it cannot be said that even that condition has been complied with by the claimants. In Ex.C6, Clause 2.2.2 states that the developer had represented that the sanctioned plan does not include sanction for construction of cinema theatres at the Mall and other additional constructions as indicated in the project plan and that the developer undertook to obtain modifications to the sanctioned plan from the concerned authorities to include sanction for construction of cinema theatres at the mall and also to conform to the jointly confirmed project plan and that the developer undertook to obtain necessary permissions/licences to operate the cinema theatres at the Mall. This would no doubt show that the plan for which sanction had been obtained is not fully in accordance with the agreed plan. However, clause 2.2.1 shows that the owner acknowledged the receipt of the sanctioned plan and that he confirms that the developer has already provided the approved plans in terms of clause 7(iii) for the purposes of clause 3(v) as amended and that the developer should subsequently obtain modifications to the same in terms of the supplementary agreement. This would show that the respondent accepted the sanctioned plan for the purposes of clause 3(v) and the claimant was required to get it modified subsequently. The claimant could have got the modification even after starting the construction. As such, it cannot be said that the condition about obtaining sanctioned plan had not been complied with.

10.35 The learned senior counsel for the claimants relying on the decisions in Manzoor Ahmed Magray vs. Gulam Hassan Aram & Ors, **(1999) 7 SCC 703**; and in Mrs. Chandnee Vidya Vati Madden vs. Dr. C.L. Katiai & Ors, **AIR 1964 SC 978** contended that obligation to obtain permission from statutory authorities is not a bar to grant specific performance. These decisions have no application to the facts of this case. In the present case, parties have stipulated certain preconditions to be complied with by the claimant before commencement of the construction and relief of specific performance cannot be granted without those conditions being complied with.

10.36 After taking into consideration the material on record and the submissions made by the learned senior counsel for both parties, we are unable to hold that the claimants have always been ready to perform some essential terms of the JDA as amended which had to be performed by them. Point No.4 in Dispute No.1 is answered accordingly.

11. **Point No.6 in Dispute No.1**:

11.1 The respondent has contended that specific performance of the JDA / Supplemental JDA is barred under Section 14(1) (a), (b) and (d). At the time of framing the points for determination by mistake instead of mentioning 14(1)(a), (b) and (d) in Point No.6 it is mentioned as 14(1)(a), (b) and (c). The respondent has not pleaded that relief of

specific performance is barred under Section 14(1)(c). As such the point in question stands amended in accordance with the plea.

11.2 In view of the finding on Point No.4, the question of granting specific performance does not arise. As such, this point need not be gone into. However, as both sides have made elaborate submissions and cited authorities, we deal with this point.

11.3 The bar under Section 14(1)(a) would not apply as it cannot be said that compensation is an adequate relief for non-performance of the contract in question. The learned senior counsel for the respondent also did not contend that the present suit is barred under Section 14(1)(a). The bar under Section 14(1)(b) applies to a contract which runs into such minute or numerous details that the court cannot enforce specific performance. Section 14(1)(d) applies to a contract, the performance of which involves performance of a continuous duty which the court cannot supervise. The contract in question is not the usual joint development agreement where the owner and developer agree to put up a building as per agreed specifications and agree to share the built up portion along with land in a particular proportion. The JDA along with supplementary JDA in question is for developing the land by constructing a Mall and after completion managing the Mall for five years from the date of commencement of the mall through a management committee and to share the rents received. There are various conditions, pre-conditions to be complied with during the

subsistence of the contract. There are minute details regarding opening of accounts and operating the same. Specific performance of the JDA as amended involves performance of various obligations by the parties and it will not be possible for the Tribunal/Court to enforce performance of all those obligations. The contract also requires performance of duties by the parties spread over a period of 7 to 8 years.

11.4 Sri Holla, learned senior counsel submitted that once specific performance is granted, the Tribunal becomes functus officio and there is an inbuilt mechanism in the contract itself to take care of compliance with the terms and that any party aggrieved at any stage, can seek arbitration. When a decree/award for specific performance of a contract is given, it would be for the performance of the entire contract and not only some portion of it. A decree for specific performance is in favour of both the parties to the contract. If the contract contains minute and numerous details and if the obligations are to be performed by the parties over a period of time, a decree/award given would be for enforcement of all the mutual obligations under the contract. Enforcement of a decree for specific performance of such a contract would be very difficult and a prolonged one. It is to avoid such contingency that clauses (b) and (d) have been incorporated in Section 14. Even if the Tribunal becomes functus officio after granting an award for specific performance, the same has to be enforced by the court. The problem referred to above would be

faced by the executing court. The Tribunal or the Court which has to enforce the decree/award would have to ensure that both parties comply with all obligations under the contract. Considering the minute details and terms and conditions of the contract, this Tribunal is of the opinion that it would be difficult to enforce all the terms and conditions or to supervise the performance of the terms and conditions for over a period of 7 to 8 years. Hence, the bar under Section 14 (b) as well as (d) would be attracted.

11.5 Sri Holla, relying on the decisions in case of Ashok Kumar Jaiswal vs. Ahsim Kumar Kar **(AIR 2014) Calcutta 92 FB**; UP State Bridge Construction Co vs BDA and others **(2005) SCC online Karnataka 342**, Himalayan Engineers and Builders company and others vs. S. Ravichandran and others **(Manu/TN/2768/2017)** and Sri P.S. Walvekar and others vs Sri Anil Narasimha Annachhatre and another **(Manu/MH/1227/2012)** contended that suit for specific performance of a joint development agreement at the instance of the developer is maintainable. He also pointed out that in the JDA, the parties have agreed that the contract is specifically enforceable.

11.6 Merely because the parties have agreed that the contract can be specifically enforced, the Tribunal/ Court is not bound to give specific performance notwithstanding the legal bar if any under Section 14 of the Specific Relief Act. The full Bench of the Calcutta High Court has only held that a suit at the instance of a developer is not prohibited by

Section 14 (3) (c) of the Specific Relief Act. It has been further held that as to whether or not specific performance is to be granted will depend inter alia on the nature of the agreement, the conduct of parties and surrounding circumstances. In para 53 of that judgment it has been held that Section 14 (3)(c) permits, subject to compliance with all the conditions therein, the specific performance of a contract at the behest of the owner of the land against the person responsible for construction and that, that proviso would be applicable to an agreement for construction simpliciter and that development agreement is not an agreement simpliciter for construction of any building or for execution of any work only on the land. That decision does not lay down that the bar under Section 14 (1) (b) and (d) would not be applicable to a suit for specific performance of joint development agreement. In fact, that decision shows that the exception in Section 14(3)(c) can be pressed into service only by the owner of the land.

11.7 In the Karnataka case, the contract was for construction of a flyover and other works. The contractor had completed most of the works and the flyover had also been inaugurated. At that stage, the BDA had terminated the contract and the termination was challenged in a writ petition by the contractor. The Single Judge rejected the writ petition holding that there was a bar under Section 14 of the Specific Relief Act and directed the contractor to seek his remedy in the Civil Court. The writ appeal was allowed on the ground that Section 14(3)(c) would be

applicable to that case which was a case for construction only. The contract involved in that case was not a development agreement. The Madras and Maharashtra High Courts relying mainly on the full Bench decision of the Calcutta High Court have held that a suit for specific performance by a developer is maintainable. The question as to whether the contract can be enforced and whether Section 14(1)(b) and (d) would be applicable have not been considered. The Full Bench Decision of the Calcutta High Court has made it clear that Section 14(3)(c) which is in the nature of a proviso to Section 14(1)(a), (c) and (d) would not be applicable to a development agreement. That apart it is significant to note that Section 14(3) is a proviso only to Section 14 (1)(a) (c) and (d) and not to Section 14(1)(b). Even if a suit for specific performance of a development agreement cannot be said to be legally barred, the question as to whether such an agreement can be enforced will have to be decided with reference to the terms, conditions and nature of the agreement in the light of Section 14(1). In the instant case, we are of the opinion that even if the claimant had made out readiness on their part to perform their obligations, enforcement of the agreement would be barred by the provisions of Section 14(1)(b) and (d). We answer point No.6 by holding that enforcement of the development agreement as amended would be barred under Section 14(1)(b) and (d) and that Section 14(3)(a) is not applicable to the contract in question.

12. **Point Nos.7 and 8 in Dispute No.1**:

12.1 The learned senior counsel for the claimant made some caustic remarks about the conduct of the respondent throughout the transaction and cited some authorities in support of his contention that the Tribunal has to take into account the conduct of the parties. The learned senior counsel for the respondent, per contra, commented about the conduct of the claimants from the date of the first Memorandum of Understanding and highlighted the cooperation extended by the respondent from the beginning. It is only if the claimants had established that they were always ready and willing to perform their obligations, the question of conduct of parties would have become relevant to decide whether the relief of specific performance which is an equitable relief should be granted or not. If the claimants are unable to prove their readiness to perform their obligations at all times, the question about the conduct of the respondent would not be relevant. As in this case, Point No.4 has been held against the claimants, the question of granting specific performance would not arise. Point No.7 has to be answered in the negative. For the same reasons, point No.8 is answered in the negative.

13. **Point No.3 in Dispute No.2:**

13.1 It has already been held that the claimants have defaulted in complying with the preconditions, 3(v), (d) and (e) of the JDA as

amended and have also committed breach of clause 12(xiii) of the JDA as amended. The respondent has claimed various amounts as damages from the claimants in Dispute No.2.

13.2 The first claim under the heading Damages for Loss of Opportunity, is for a sum of Rs.353,39,67,142/- together with interest. In para 66 of the claim statement in Dispute No.2, it is stated that document No.38 illustrates that the respondent (George Thangiah) could have earned not less than the above amount by way of rents and other income from the respondent's entitlement in the Mall up to 19.7.2016. Document No.38 is a corporate guarantee. Document No.39 which is Ex.R39 indicates the loss of rent for respondent's share in the built up area and car parking as well as loss of interest etc. This claim is made on the basis of recitals in the 1st MOU. The loss of rent from the respondent's share in the mall would arise after the completion of the mall. In this case the construction itself had not commenced. It is no doubt true that if the contract had been performed, the respondent would have earned some profit by way of rent after the completion for which a period of 37 months had been provided in the supplementary JDA of 2014. In the event of the completion of the mall, the respondent would have had to convey 50% of the land to the developer. That factor will have to be borne in mind while assessing the profits by way of rents the respondent (Claimant in Dispute 2) could have earned. The assessment made by the respondent with regard to the loss suffered by him does not take that factor into

consideration. The respondent also had to bear various expenses in respect of the portion of the mall which would have come to his share. The sital value of the project land had increased enormously from 2007 onwards. The claimant has produced the estimated market value of immovable properties for 33 Sub Registrar's offices of Bangalore (Urban District) for the years 2007, 2011, 2013, 2014 and 2017. The respondent has also procured the estimated market value for the year 2014 at Ex.R55. It shows that in 2014 the value of land at 80 feet road, Indiranagar was Rs.11,600/- per sq ft. The material on record shows that the sital value in Indiranagar 80 feet road has gone up from Rs.4500/- per sq ft in 2007 to Rs.12,769/- per sq ft (Rs.1,37,400/- per sq mtr) in 2017. The sital value has gone up by nearly three times. This increase in the sital value of 50% of the land which would have gone to the claimants' share if the mall had been completed and which has now remained with the respondent will also have to be taken into account while assessing the loss. As all relevant factors have not been taken into account by the Respondent while assessing the loss suffered by him, the amount claimed by him cannot be accepted. We feel that a sum of Rs.10,00,00,000/- (Rupees Ten Crores) could reasonably be awarded as compensation for the loss suffered by the respondent in this regard.

13.3 The second claim is for Rs.55,50,87,543/- being loss of rents from the buildings that were constructed by the respondent on the land including interest etc. It is already pointed out that in pursuance of

the MOU the respondent got the tenants to vacate the premises occupied by them in the front building and had kept the rear building vacant. The two buildings are lying vacant till now. As per clause 17(b) of MOU dated 19.10.2007 the claimant agreed to pay as non-refundable deposit Rs.21 lakhs per month from the date the tenant M/s. GENESIS hands over possession of the portion occupied by them and Rs.4 lakhs per month from the date the tenant ACER hands over possession. In the letter dated 7.5.2008 which is part of Ex.R8 series the claimant had agreed to pay monthly rents subject to maximum of Rs.25 lakhs for the front building if the tenants vacate the premises even before execution of the JDA. The respondent has produced TDS certificates Ex.R59 series and auditor certificate Ex.R59 to show that he was getting a rent of Rs.25,57,348/- per month from the front building. Ex.R59 shows that the rent received was Rs.21,05,048/- and Rs.4,52,300/- as maintenance charges. As there is separate claim for maintenance charges, the loss of rent for the front building including periodical increases can be taken at Rs.25 lakhs which the claimant has agreed to pay. According to RW1, the rear building would have fetched the same rent. It is improbable that the rear building though newly constructed would have fetched the rent which the front building which was facing 80 feet road was fetching. It may have fetched at the most 60% of the rent fetched by the front building i.e., about Rs.15 lakhs per month. The total loss of rent can be taken to be Rs.40 lakhs per month. The respondent had been deprived of that

rent from April 2011 till now as the claimant had obtained an interim order restraining the respondent from encumbering the property. The loss of rent from April 2011 till date of award for 7 years and one month comes to Rs.34 crores. The other claims regarding loss of interest and the interest on possible security deposit cannot be accepted.

13.4 The next claim is for expenses incurred by the respondent towards security, maintenance and electricity in relation to schedule property. Under this heading, the first claim is for Rs.4 crores payable as per clause 3.4.1 (ii) of the supplementary JDA. As per the clause 3.4.1 of Ex.C6 the claimant has paid Rs. one crore on that date towards reimbursement of costs towards electricity, security and maintenance and has agreed to pay Rs.4 crores on or before 11th October 2015. The respondent has got the premises vacated and had to incur expenses towards maintenance, security and electricity charges. As the claimant had agreed to reimburse the expenses, the claimant is liable to pay Rs.4 crores under this heading for the period up to October 2015.

13.5 The respondent has claimed Rs.1.20 crore towards maintenance charges from March 2014 as per clause 3(ix) of the JDA. As the claimant has paid Rs.one crore and agreed to pay Rs. Four crores towards security, electricity and maintenance charges up to 11.10.2015, the respondent cannot claim the maintenance charges

from March 2014. The respondent is entitled to maintenance charges only from November 2015 up to the date of award at the rate of Rs.5 lakhs per month. The amount payable in this regard comes to Rs.1.50 crores.

13.6 Under clause 3(xiii) of JDA the claimant has agreed to reimburse electricity and security charges on the respondent providing proof of the expenses incurred. According to the respondent Rs.22,86,145/- is due in this regard from March 2014 to March 2016. As already pointed out, the expenses under this head also stands covered by the payment of rupees one crore and rupees four crores up to end of October 2015. The respondent has produced Ex.R52 series to show payment of security charges. Among these bills only bills dated 31.10.2015, 29.2.2016, 31.1.2016, 31.12.2015 and 30.11.2015 are for the period from October 2015. The security charges paid under these bills comes to Rupees 5,84,500/- The claim statement in Dispute 2 is filed on 31.7.2016. But the respondent has not produced any bills for the period from March 2016. As such, only Rs.5,84,500/- can be awarded towards security charges from October 2015 to February 2016.

13.7 With regard to electricity charges, the respondent has produced Ex.R53 series. Among them, only bills 1.12.2015, 1.1.2016, 1.2.2016 and 1.3.2016 are for the period subsequent to October 2015 and the amount paid comes to Rs.3,87,568/-. From the date of filing of the

claim statement in Dispute No.2 i.e., 31.7.2016, the respondent must have incurred on an average Rs.2,13,900/- per month towards security and electricity charges (Rs.1,16,900/- security charges plus Rs.97,000/- electricity charges). At that rate a sum of Rs.44,91,900/- is awarded as expenses towards electricity and security charges from the date of the claim statement up to the date of award. The total amount payable towards security and electricity charges up to the date of award is Rs.54,63,968/-.

13.8 The next claim is for Rs.5,17,36,384/- towards expenses incurred towards lawyers fee and auditors fee. The lawyers fee spent by the respondent, in these proceedings could be considered while deciding about the cost, if any, to be awarded. The expenses incurred by the respondent during the stage of preparation of several agreements and correspondence are not a loss arising in the usual course on account of the breach committed by the claimants. This claim is therefore disallowed.

13.9 The respondent has claimed Rs.4.20 crores towards loss incurred by him on account of the land transferred to Mr. Janakiraman and Mr. Samson in exchange for the lands acquired by him for the purpose of the mall as per claimants' instructions. It is no doubt true that at the instance of the claimants, the respondent acquired Schedule Items 2 to 5 for the purpose of the mall. As the mall had not come up the respondent has retained title to schedule items 2 to 5 which have

enhanced the value of respondent's land. Merely because the respondent gave an area in excess of items 2 to 5 to the vendors by way of exchange, it cannot be said that respondent has incurred loss, as the value of items 2 to 5 may be equal or more than the value of the lands which were given in exchange depending upon the location. That apart the alleged loss even if any is not directly related to the breach committed by the claimant. As such this claim is disallowed.

13.10 A sum of Rs.30,88,71,982/- is claimed towards expenses which the respondent has to incur towards reinstating the schedule property. According to the respondent the buildings require renovation and fresh interiors have to be provided. Ex.R42 and R43 photographs have been produced to show the condition of the buildings and interiors. Due to non-occupation, lapse of time and possibly non-maintenance, the buildings may require some renovation. The respondent has collected maintenance charges at Rs.5 lakhs per month from the claimant and he has also made a claim for the same even now. It was for the respondent to properly maintain the buildings. The interiors appear to have been damaged as could be seen from the photographs. It is not clear whether fresh interiors will have to be provided in all the floors of both buildings. Fresh interiors may have to be provided in the portions where they have been completely damaged. We feel that a sum of Rupees One Crore could

be awarded for providing fresh interiors wherever necessary. Under this claim, a sum of Rupees One Crore is allowed.

13.11 A sum of Rs.11,64,81,422/- is claimed towards cost to be incurred for restitution of buildings which stood on items 2 to 5 and which were demolished for the purpose of ground breaking ceremony. IN para 98 of the claim statement in Dispute No.2 it is admitted that the respondent himself got those buildings demolished though it is stated to be at the instance of the claimants to facilitate ground breaking ceremony. The loss allegedly incurred in this connection is not a loss arising in the usual course on account of the beach of the development agreement by the claimants and as such it cannot be allowed.

13.12 Another claim made by the respondent is for recovery of Rs.13,40,150/- by way of reimbursement of property tax. According to the respondent in clause 7 of 2nd Supplementary MOU Ex.C4, the claimant had undertaken to pay the property tax for 2009-10 amounting to Rs.6,70,075/- and that under clause 17 of JDA the claimant has undertaken to pay property tax from the date of execution i.e., 11.2.2011 and they have not paid the same till now. Firstly, the MOU got merged in the JDA and under this JDA the claimant has undertaken to pay the property tax only from the date of execution of the JDA. As such the respondent cannot now claim the tax for 2009-10. That apart, Clause 7 of Ex.C4 shows that claimant

had agreed to reimburse the property tax for 2009-10 on the respondent showing proof of payment. The respondent does not even allege that he had given the proof to the claimant for payment of property tax for 2009-10. For this reason also the respondent's claim for property tax for 2009-10 cannot be accepted. So far as property tax for 2010-11 is concerned the property tax is payable in advance, generally by April and May. By the date of execution of the JDA, the property tax for 2010-11 had already become payable and if the respondent had paid it before 11.2.2011, he would not be entitled to get reimbursement. The respondent has not produced any receipt for payment of property tax for 2010-11 to know as to when he had paid it. As such, this claim also cannot be allowed.

13.13 The respondent has claimed Rs.5,70,00,000/- towards interest on account of delayed payment of Rs.19 crores towards non- refundable deposit. The respondent himself has clearly waived his right to any interest on the delayed payment in Ex.C6 supplementary JDA and has accepted the delayed payment of Rs.19 crores. As such, this claim is patently untenable and is disallowed.

13.14 The respondent has claimed Rs.25 crores as damages for loss of reputation and Rs.100 crores as damages for mental agony and harassment. These claims are also untenable as there have been disputes only regarding contractual obligations.

14. The various amounts awarded to the respondent in respect of some of the claims made by him are as under:

Sl No.	Description	Amount In Rupees
1	Damages for loss of profits (Loss of opportunity)	10,00,00,000/-
2	Loss of rent from buildings	34,00,00,000/-
3	Amount payable towards security, maintenance and electricity charges as per clause 3.4.1 (ii) of supplementary JDA	4,00,00,000/-
4	Maintenance charges for the period from November 2015 up to the date of award at Rs.5 lakhs per month	1,50,00,000/-
5	Security charges from October 2015 to February 2016	5,84,500/-
6	Electricity charges for the month – November 2015 to February 2016	3,87,568/-
7	Security and electricity charges from the date of claim statement up to the date of award	44,91,900/-
8	Providing fresh interiors wherever necessary	1,00,00,000/-
	Total 1 to 8	51,04,63,968/-

15. The total loss suffered by him is rounded off to Rs.51,05,00,000/-.

16. The respondent in its claim statement in Dispute 2 while admitting that he has received Rs.69 crores as non-refundable deposit has pleaded that as that sum includes Rs.4.50 crores payable as reimbursement of the expenses incurred by respondent for acquiring schedule items 2 to 5, the actual sum received as non-refundable deposit is only Rs.64.50 crores. He has further pleaded that as per Clause 24(ii) of the JDA as amended, the non-refundable deposit received by him is deemed to have been appropriated as part settlement of the damages/loss caused to him.

16.1 Clause 24 of the JDA deals with termination. Clause 24(i) gives a right to the respondent owner to terminate the agreement on the grounds mentioned in clauses (a) and (b). Clause 24(ii) is titled as "Consequences of termination" and Clause (a) deals with consequences prior to conveyance. The relevant portion of clause 24 (ii)(a) is as under:

> "(a) Consequence Prior To Convevance: Without prejudice to any other consequence of termination of this Agreement provided elsewhere in this Agreement, immediately on termination of this Agreement by the Owner, for any default/breach/ misrepresentation of the Developer, at any time prior to conveyance of undivided interest in the Schedule Property to the Developer by the Owner in terms hereof, ..., the Owner shall, without prejudice to his rights and remedies available under law, also be deemed to have appropriated the non-refundable deposit of Rs.89,00,00,000/- (Rupees Eighty Nine Crores Only) or such other sum as may have been received by the owner as on such date from the Developer towards Non-Refundable Deposit, as damages (in addition to all other amounts paid by the Developer to the Owner till the date of the termination of this Agreement and / or such amounts that have been appropriated earlier). The said appropriation of the Non-Refundable Deposit by the owner is a reasonable estimation of the minimum loss that would be

caused to the owner by reason of termination of this Agreement. The developer acknowledges that appropriation of the non-refundable deposit by the owner is towards damages that would be caused to the owner by reason of termination of this agreement and agrees that such appropriation is not by way of a penalty".

16.2 The above clause would come into operation only if the respondent owner had terminated the agreement for the reasons stipulated therein. In the present case, the respondent did not terminate the agreement. He has taken a stand that the claimants repudiated to perform their obligations and that as he accepted such repudiation, the contract stood terminated. RW1 has also made it clear while answering Qns. 274 and 275 that respondent has not terminated the contract and that nobody also terminated the contract. The plea of repudiation by the claimants put forth by the respondent has not been accepted by the Tribunal. As such, the respondent cannot press into service the above provision. In the present case, the claimants' prayer for specific performance is refused and it is found that they have breached certain terms of the contract. In view of the breach committed by the claimants, the respondent is awarded reasonable compensation for the loss suffered by him.

16.3 The respondent's plea that only Rs.64.50 crores must be taken as the non-refundable deposit, that Rs.4.50 crores paid as reimbursement of expenses incurred in acquiring schedule items 2 to 5 property should

not be treated as non-refundable deposit, is untenable. Though out of Rs.69 crores paid as non-refundable deposit Rs.4.50 crores was intended to be towards cost of the acquisition of items 2 to 5, since the respondent has now retained title to those items, he has to repay Rs.4.50 crores paid by claimants and as such the non-refundable deposit has to be taken as Rs.69 crores. The reasonable compensation awarded to the respondent will have to be adjusted out of the non-refundable deposit received by the respondent and the interest derived therefrom by the respondent.

16.4 The respondent has received a sum of Rs.50 crores as non-refundable deposit on the date of execution of Ex.C5 development agreement i.e., 11.2.2011. He has further received Rs.19 crores as non-refundable deposit on 11.2.2014 (date of Ex.C6). Admittedly, the respondent has kept these amounts in fixed deposits and has been earning interest. RW1 was not prepared to reveal actual amount of interest earned by the respondent. While assessing the loss incurred by the respondent, the interest earned by him from the amount received as non-refundable deposit will have to be taken into account. The respondent being a senior citizen he must have earned on an average at least 8% per annum as interest on the above amounts. The interest at the rate 8% per annum on Rs.50 crores from 11.2.2011 up to the date of award comes to Rs. 28,66,66,666/-. Interest at 8% per annum on Rs.19 crores from 11.2.2014 up to date of award comes to Rs.6,33,33,333/-. The total interest earned up to the date of award

comes to Rs.34,99,99,999/- rounded off to Rs.35 crores. The respondent would have paid Income Tax on this amount at the rate of 30% which comes to Rs.10,50,00,000/-. The net income realised by the respondent by way of interest will have to be taken as Rs.24,50,00,000/-. This amount has to be set off against the loss suffered by the respondent and if that is done, the net loss suffered comes to Rs.26,55,00,000/- (i.e.,Rs.51,05,00,000/- minus Rs.24,50,00,000/-). This sum of Rs.26.55 crores has to be adjusted out of Rs.69 crores received by the respondent as non-refundable deposit. The respondent has to repay the balance amount of Rs.42.45 crores (i.e., 69 crores minus Rs.26.55 crores) to the claimants.

Point No.9 in Dispute No.1:

17. As the claimants have failed to prove readiness to perform their obligations under the JDA as amended, they are not entitled to the various monetary claims put forth by them as alternative to the relief of specific performance. However, they are entitled to only a sum of Rs.42.45 crores out of Rs.69 crores paid by them to the respondent as non-refundable deposit.

18. In view of the above findings, an award in both the Disputes is passed as under:

AWARD

(1) The main Prayer for Specific Performance of the Development Agreement and for other monetary reliefs sought for by the

Claimants in Dispute No.1 is rejected. The alternative Prayer made by the Claimants in Dispute No.1 is allowed in part directing the Respondent to pay to the Claimants a sum of Rs.42,45,00,000/- (Rupees Forty Two Crores Forty Five Lakhs Only) together with interest at the rate of 9% per annum from the date of Award till the date of payment.

(2) The Prayer of the Respondent who is the Claimant in Dispute No.2 is allowed in part awarding Rs.51,05,00,000/- (Rupees Fifty One Crores Five Lakhs Only) as Damages and after adjusting the same out of the Non-refundable Deposit and the interest earned thereon, the balance amount of Rs.42,45,00,000/- (Rupees Forty Two Crores Forty Five Lakhs Only) has to be refunded by him and a direction is given in this regard as above.

(3) Considering the facts and circumstances of the case, the parties are directed to bear their own costs.

(4) The requisite Stamp Duty on this Award shall be paid by the Claimants in Dispute No.1 in accordance with the provisions of the Karnataka Stamp Act.

Signed on this 25th day of April 2018 at Bengaluru

JUSTICE G. PATRI BASAVANA GOUD (RETD.) ARBITRATOR	**JUSTICE S. VENKATARAMAN (RETD.) PRESIDING ARBITRATOR**	**JUSTICE V. JAGANNATHAN (RETD.) ARBITRATOR**

True Copy

Presiding Arbitrator

350 ANNEXURE -41

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Com.A.S 134 of 2018

IN THE COURT OF LXXXVII ADDL.CITY CIVIL & SESSIONS JUDGE, (EXCLUSIVE DEDICATED COMMERCIAL COURT) AT BENGALURU (CCH.88)

THIS THE 23rd DAY OF FEBRUARY 2022

PRESENT:
SRI.CHANDRASHEKHAR U., B.Sc., LL.M.,
LXXXVII ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU.

Com.A.S.No.134/2018

PETITIONERS:

1. **M/s Nitesh Indiranagar Retail Private Limited,**
Nitesh Time square, 7th floor,
No.8, M.G. Road,
Bengaluru – 560 001
Represented by its General Manager – Litigation, Mr. K.B. Swamy,
S/o K. Veerabrahmam
Aged about 56 years

(Reptd by Sri. VH – Sr. Counsel)

2. **M/s Nitesh Estates Limited,**
Nitesh Time square,
7th floor, No.8, M.G. Road,
Bengaluru – 560 001
Represented by its General Manager – Litigation, Mr. K.B. Swamy,
S/o K. Veerabrahmam
Aged about 56 years

23/2

AND

RESPONDENTS: 1. **Mr. George Thangiah, since deceased Rep. by**

1(a) Mr. Vijayshekhar Thangiah
S/o Late George Thangiah
Aged about unknown
R/at No.6, Commissariat Road,
Bengaluru 560 025

Rectified as
Per orders on
IA 9 dated 23-3-2022

23/3

1(b) Ms. Chitra Prabhakar
D/o Late George Thangiah
Aged about 61 years
R/at No.6, Commissariat Road,
Bengaluru 560 025

(Reptd by Sri MK Sr. Counsel)

2. **Hon'ble Mr. Justice S.Venkataraman,**
Retired, High Court of Karnataka,
No. 161, 3rd Stage, 2nd Block
West of Chord Road,
Basaveshwaranagar,
Bengaluru 560 079.

(Reptd by Sri. MS Sr. Counsel)

3. **Hon'ble Mr. Justice G. Patri Basavana Goud,**
Retired, High Court of Karnataka,
No.58, 'Ganga', ISRO Road,
RMV II Stage, Sanjaynagar,
Bengaluru 560 094

23/3

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4. **Hon'ble Mr. Justice Jagannathan,**
Retired, High Court of Karnataka,
No.221, 7th Main, 2nd Cross,
Judicial Layout, Thalaghattapura
Kanakapura Road,
Bengaluru 560 062

Date of Institution of the suit	**23.06.2018**
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	**Arbitration Suit**
Date of commencement of recording of evidence	-
Date on which judgment was pronounced	**23.02.2022**
Total Duration	**Year/s 03 Month/s 08 Day/s 00**

(CHANDRASHEKHAR U),
LXXXVII Addl.City Civil & Sessions Judge,
(Exclusive dedicated Commercial Court)
Bengaluru.

JUDGMENT

The applicants have filed the above petition under Section 34 of the Arbitration & Conciliation Act, 1996, (hereinafter called as 'the Act') for setting aside the Arbitral Award, dated 25.04.2018, passed by the Arbitral Tribunal except to the extent that there is a finding that the applicants have not repudiated the Joint Development Agreement, (as amended by the supplementary Joint Development Agreement) and to allow the claim statement filed by the applicants in dispute No.1 and for setting aside other reliefs.

2. The brief facts of the case of the appellants are as hereunder:-

The first applicant is a private limited company incorporated under the provisions of Companies Act, 1956 is the developer of the schedule property and the second applicant is a public limited company, registered under the Companies Act, 1956, and first applicant is the

wholly owned subsidiary of second applicant and reputed builders and developers in Bengaluru. The respondent is the owner of the property, bearing Municipal Corporation No. 21, PID No. 82-82-21, situated at 80 feet Road, Indiranagar, Bengaluru and measuring 2,20,497 Sq.ft, which is more fully described in the schedule.

3. With an intention to develop the schedule property into a shopping mall and operating and maintaining the same, in a manner that would financially benefit to both the applicants and respondent, the applicant and respondent executed Memorandum of Understanding, dated 19.10.2007, supplementary Memorandum of Understanding, dated 26.10.2007, second supplementary Memorandum of Understanding, dated 29.3.2010, Joint Development Agreement, dated 11.2.2011 and supplementary Joint Development Agreement, dated [illegible]2014. It is further stated that one of the fundamental features of the Memorandum of Understanding, as is the case with such projects in general, was the permissibility

of the applicant No.1 as the developer of the schedule property to raise funds against its share of built up area and the leaseable built up area of the schedule property required for the project. Clause No. 12 (I) of Memorandum of Understanding stipulates that after signing of the Joint Development Agreement, applicant No.1 would be entitled to create encumbrance on its share of the schedule property in order to raise finance. The Memorandum of Understanding provides for what is built up area and right of the parties and they were modified by way of supplementary Memorandum of Understanding. However, the same underwent a drastic change to the complete prejudice of the applicants under coercion and duress exerted by the respondent. The term of the scheme of the Memorandum of Understanding, the parties had to to first comply with various conditions and precedents set out clause 2 of the Memorandum of Understanding. The main condition was that the respondent had to obtain Khata certificate in respect of schedule property in his

name as stipulated in clause No.2 (a) of Memorandum of Understanding. As per Clause No.2(a) of Memorandum of Understanding, the respondent had pending legal disputes with the BBMP in respect of betterment charges levied and also the quantum of the property taxes levied. Due to on going disputes, the BBMP had not issued Khata certificate in the name of respondent. Therefore, it was undertaken by the respondent under clause No.2 (a) of Memorandum of Understanding that he would secure the disposal/ settlement of the legal disputes with BBMP and obtain Khata certificate in his name. It was also agreed upon by the parties that if the respondent failed to comply with the above, the applicant No.1 had the option to pay the betterment charges/property taxes to the BBMP and recover the same from the amounts payable to the respondent under the Memorandum of Understanding. completion of the obligation as per clause No.2(a) parties were required to execute proposed Joint Development Agreement as per clause No.25(a) of

Memorandum of Understanding. It was only upon such execution of proposed Joint Development Agreement, that the respondent was required to issue a licence to the applicant No.2 under clause No.14 of Memorandum of Understanding. Without such licence, the applicant No.1 was dis-entitled to enter in the schedule property and start the construction activities. Escrow agreement dated, 3.12.2007, appointing HDFC Ltd., as Escrow Agent, and the applicant No.1 deposited a sum of Rs.20,50,00,000/- with the said Escrow Agent. The escrow agreement was valid for a period of 3 months. Before the expiry of the first Escrow Agreement, the parties on 2.03.2008, renewed the first escrow agreement by entering into another Escrow agreement, for a further period of 30 days.

4. In the meanwhile, the applicant conducted the topographic survey of the schedule property and collected all the preliminary data required for design and appointed as architects for the projects Callison from Seattle USA and

RK Associates, New Delhi. In view of the traffic management and there was some adverse affect on the proposed project due to interfering with utilisation of the frontage in design terms, etc. On 4.3.2008, the applicants informed the same to the respondents/applicants and proposed the acquisition of the parcel of land and also proposed to resolve the commercial terms relating to the mixed use of development in the schedule property before being able to finalise the proposed Joint Development Agreement. Since, there was no representation from the respondent by cryptic communication, dated 27.3.2008, the respondent refused to have an extended timeline for the execution of proposed Joint Development Agreement. In the said communication, the respondent chose to completely ignore the practical difficulties pointed out by the applicants based on the Architect's report and remained absolutely silent on the same. Since, the applicant constrained to submit to the whims of the respondent and agreed to deposit further Rs.4,50,00,000/-

before the proposed Joint Development Agreement engaging consultants, obtaining approvals, identification of financial investors. However, by his letter dated 15.5.2008, the respondent highhandedly informed the applicants that he was not inclined to react to the contents of the letter, dated 14.5.2008 from the applicants and threatened the applicants that if within 48 hours, an escrow agreement is not extended and if the additional amount of Rs.4,50,00,000/- was not paid, he would treat the MoU to have come to an end. Because of high handed arm-twisting tactics employed by the respondent, the applicants immediately issued two cheques for Rs.4,50,00,000/- and informing the respondent that extension of escrow agreement for the tune of Rs.20,50,000/- could be processed by the Bank, only if the Memorandum of Understanding is extended. Hence, the applicants once requested for the extension of Memorandum of Understanding till 30.8.2008. However, respondent refused to extend Memorandum of Understanding inspite of

extension of escrow agreement. The applicants again and again issued communication to the respondent to extend the Memorandum of Understanding, but, in vain, but, the respondent issued a cryptic two line reply communication stating that the proposal was not accepted. Further, he appointed his wife Ms. Chitra Poornima to act as his agent. The applicants soon realised that the above obstinacy of respondent was aimed to extract more amounts from the applicants, who had already invested heavily into the proposed project and could therefore, not afford the same being aborted. Thereafter, the applicant paid Rs.1,25,00,000/- towards compensation for the delay and offered corporate guarantee by second applicant. The delay was due to respondent not by the applicants. Therefore, the execution of proposed Joint Development Agreement was extended till 31.8.2008. On 31.7.2008, the applicants handed over a cheque for a sum of Rs.24,00,00,000/- to the respondent instead of the extension of the escrow arrangement for a sum of Rs.

20,50,00,000/-. However, issues which were required to be resolved before the proposed Joint Development Agreement was executed remained unresolved. Further, the respondent had also completely ignored his responsibility to fulfill the condition precedent set out under clause No.2 (a) of the Memorandum of Understanding.

5. It is further stated that though, the parties were in continuous negotiations by holding personal meetings on the way forward as is evidenced by the communication, dated 31.1.2009 from the applicants to the respondent, thereby, referring to the discussions between the parties and attaching the draft Joint Development Agreement, to the surprise of the applicants, the respondent started creating some documentation to create an impression that the delay in the execution of the Joint Development Agreement was on account of the applicants and that the respondent was not very keen on taking forward the project. The respondent, then issued a letter, dated

27.1.2009 to the applicant No.1 stating that the applicants had defaulted and giving notice to rectify the purported breach within 30 days. The applicants were shocked to see the conduct of the respondent when it was placed on record that the respondent had failed to comply with the Memorandum of Understanding. The respondent issued a response, dated 24.2.2009 alleging that the Memorandum of Understanding did not subsist, which is contrary to the fact that parties were under continuous negotiations as stated in the communication, dated 24.2.2009. The respondent could not have appropriated the amounts paid by the applicants, inspite of communications made by the applicants, on many occasions as per Ex.C33 series. Though, the necessary communications were exchanged, when, the applicant No.2 became a public company by listing its share on the Bombay Stock Exchange and the National Stock Exchange, the respondent in order to harass the applicants published about Memorandum of Understanding and other things, so as to project that

applicants are not trustworthy and thereby tried to tarnish the image. Though, the respondent obtained Khata in respect of property, there was some other problems with another land belonging to third party, which was a hindrance for preparing a perfect plan for the construction of the mall. The amount paid to the respondent to the tune of Rs.35.5 crores, was treated to be a non-refundable on account of the coercion and duress by the respondent. The applicants were made to agree for additional deposit of Rs.79 crores under clause No.16 of the Joint Development Agreement and respondent made to part with the properties of the applicant situated in Ernakulam district and the applicant made its best efforts to engage contract with L&T for civil works contract, providing alternate office space to respondent, engaged Jones Lang Lasalle (JLL) as the international property consultants and potential financier identified so as to proceed with the work. Further, a piece of the land was also regularised by the applicants and ground breaking ceremony was also held on the birth day

of the respondent, besides agreement entered into with various consultants as stated in the page No.20 of the petition. The applicants were also made available portable cabins and obtained NOC from BESCOM, KPTCL, Airport authority, Karnataka State Pollution Control Board, Fire Force, Ministry of Environment and Forest, Bangalore Water Supply and Sewerage Board and BSNL. Further, development plan was also obtained from BDA and licence plan from BBMP by spending huge amount. Inspite of getting everything cleared and inspite of getting loan facility from the Bank and also engaging international standard consultant, contractors, the respondent did not adhere to the terms of the contract and unilaterally terminated the Joint Development Agreement, which resulted in filing of the Arbitration Suit. The applicants have spent huge amount, besides amount paid to the respondent, but same not taken note of by the Arbitrator. Learned Arbitrator without going through the terms of the contract and evidence and documents placed passed an impugned

Award. Since, the respondent was not in good state of account, he being represented by his wife, who had hidden agenda to gain unlawfully and they were having different yardstick towards the applicant somehow to knock of the money.

6. The applicants have sought for setting aside the award on the grounds that the award, dated 25.4.2018, passed by the Arbitral Tribunal is erroneous in rejecting the application filed under Section 27 of the Act to cross-examine the respondent, which resulted in grave miscarriage of justice and it has rendered the impugned award opposed to public policy, in contravention of fundamental policy of Indian law, opposed to basic notions of justice and patently illegal, apart from being contrary to evidence on record. The order, dated 11.12.2016 passed by the Arbitral Tribunal under Section 17 of the Act, though got merged with main order was erroneous, self-contradictory and opposed to public policy. The Arbitral

Tribunal having held that the alleged theory of repudiation set up by the respondent is not true, ought to have directed specific performance. The Arbitral Tribunal failed to appreciate that nowhere in the communication, dated 19.1.2015 (Ex.C62), which was the letter under which, the respondent alleged that applicants had repudiated the contract. The respondent had alleged that applicant did not have funds of their own to build the first three basement floors. Infact, that was not even the case of the respondent in any of the pleadings filed before the Tribunal. The applicant clearly pointed out that it was never a requirement for the applicant to specifically prove that it had the necessary funds to commence the construction and complete three floors. It was at all points of time, very well known to the parties that the project loan covered only half of the project cost and the remaining amounts in any case to be infused by the applicant.

. The Arbitral Tribunal choose to completely ignore even the fact pointed out by the applicants about its

capacity to go on with construction, wrongly proceeded on the premises that the applicants did not specifically show that they were ready with the funds for the construction of the first three basement floors and that such deficiency amounted to lack of readiness and or willingness. The Arbitral Tribunal erroneously chose to ride roughshod over the facts of the matter which were amply evident on the face of the matter. On the one hand, the Arbitral Tribunal chose to ignore the vast majority of the fact placed before it. On the other hand, while, selectively considering aspect alone, the Arbitral Tribunal once again chose to ignore the crucial aspects. The Arbitral Tribunal has failed to make serious or in-depth factual analysis, on the material placed before it in the light of Joint Development Agreement and supplementary Joint Development Agreement. The approach of the Arbitral Tribunal is unwarranted and which resulted in gross miscarriage of justice. The Arbitral Tribunal adopted the same narrow and selective approach in respect of the communication on record pointed out by

the applicants, so as to establish readiness and willingness. Out of all the communications, the Arbitral Tribunal selected some and rendered its opinion. The respondent inspite of the applicants providing necessary contract with the L&T and other contentions raised by him has not considered the same and unilaterally terminated the Joint Development Agreement, which is against the terms of the contract. Inspite of furnishing letter from the Bank regarding financial assistance, the same was not considered by the Arbitral Tribunal. The Arbitral Tribunal has not considered the documents and various communications made by the applicants with respondent regarding its intention to proceed with the work obtaining of permission and consent for lending loan by the Bank, etc. The Hon'ble Tribunal failed to notice that the applicants have also independently established their continued efforts and commitments by drawing attention of the Hon'ble Tribunal to the agreement dated 30.1.5.2015 (Ex C63) entered into with Goldman Sachs and also

sanction letters of Yes Bank, Ex. C84, C85, C87 and C88. The Tribunal has failed to notice the said commitment was also proved by depositions of the claimant's witnesses, particularly CWs 1 and 2. The Arbitral Tribunal also erroneously held that since, the applicants have sold a property, they had earlier owned in Kochi and on which a second charge was required to be created by the applicants in favour of the respondent in terms of the Joint Development Agreement, the applicants were not ready and willing to perform the terms of the Joint Development Agreement. The Arbitral Tribunal has erroneously chose not to refer to this argument or decide on the validity or otherwise of this interpretation. The Arbitral Tribunal has failed to appreciate that the restraints on the grant of specific performance under Section 14 of the Specific Relief Act. It has failed to consider the decision of the Apex Court reported in **1979 (4) SCC, 393, AIR 1964 SC 978, ILR 1992 Kar 717, AIR 1996 Orissa 89, AIR 2014 Calcutta 92 (FB), 2005 SCC OnLine Kar 342 (DB),**

MANU/TN/2768/2017 and **MANU/MH/1227/2012 (DB)** and other decisions. The Arbitral Tribunal failed to notice that a bare perusal of the provisions of Section 14(3) (c) of the Specific Relief Act, 1963 itself showed that a building and works contract is specifically enforceable, inter-alia, if the terms of the contracts are sufficiently precise to enable the Court to determine the exact nature of the building or work. Further, in a contract relating to construction, the time is not essence for contract. The Arbitral Tribunal failed to notice that under Clause 26 of the Joint Development Agreement, both parties had agreed that they had the right to seek specific performance of the terms and conditions of the Joint Development Agreement. The Arbitral Tribunal has erroneously concluded that the instant Joint Development Agreement was not amenable to the relief of specific performance, despite specifically finding that this was not a case, which could be compensated by payment of damages. The Arbitral Tribunal failed to appreciate that in anticipation of future

breaches, for which, future remedies will have to be availed, the present relief cannot be denied. The respondent could terminate the Joint Development Agreement only in December 2015 for non-fulfillment of the set of 8 obligations under clause No. 6.1.19 of the supplementary Joint Development Agreement. The observation that the contract stood terminated by repudiation committed by the applicants is incorrect. There has not been any termination of the contract. The Tribunal had failed to notice that the applicants had paid Rs.105.5 crores, which has been kept in Fixed Deposit in Bank by the respondent and interest earned was received by the respondent. The respondent must have earned more than Rs.200 crores, out of interest for the last so many years. The impugned award also suffers from inherent contradictions, since on the one hand, it concluded that there was no repudiation of contract by the applicants and on the other hand, it awarded damages to the respondent, which is against the terms of the contract. The award of damages without any

material and evidence. The refusal of the Arbitral Tribunal drawing adverse inference for non-response of the respondent is incorrect and opposed to public policy. The Tribunal has committed fundamental error in appreciating that the applicants were not seeking to enforce any oral contract contrary to and in replacement of Joint Development Agreement, was a fatal error which is not the case of the applicants. The Tribunal has failed to consider clause No.35 of the Joint Development Agreement and observation is in conflict with most basic notions of justices and being vitiated by patent illegality perpetrated on the face of it. The impugned award is surrounded with perversity inconsistent findings and unsustainable in law and thus liable to be set aside as per well-established proof of law placed before it. Accordingly, it has prayed for setting aside the Arbitral Award by allowing the petition.

The first respondent has filed objection statement stating that application is not maintainable either in law or on facts and is liable to be dismissed in *limine*. The

jurisdiction of the Court to set aside the award is limited to the Court set out in Section 34 of the Arbitration Act. No grounds on which, the Court may interfere with an Arbitral Award have been made out by the applicant in the instant Arbitration Suit and the grounds urged are beyond the parameters of Section 34 of the Act. As is evident from the application, the applicants have completely failed to demonstrate that the Arbitral Tribunal has not acted in a bonafide, fair, reasonable and objective manner and that its decision is actuated by any extraneous consideration. Therefore, the instant application is without merits and ought to be dismissed.

9. It is further stated that there is no scope for reviewing the factual and legal issues arising out of the Arbitral Award in an application under Section 34 of the Act. This Court does not sit in appeal and cannot re-appreciate the evidence. The Arbitral Tribunal, after considering the material on record and the pleadings of the parties, has passed a well-reasoned award against the

applicants. It cannot be stated that the Award stands vitiated by non-receipt of material or non-consideration of relevant aspects of the matter, merely because on the same view, the Court could arrive at a different conclusion than the one arrived at by the Arbitral Tribunal. No grounds are made out, much less one mentioned under Section 34 of the Act to set aside. The first respondent by referring to clause No.10.10, 10.11. 10.12, 10.14, 10.22, 10.35, 10.30, 10.33 of the Award has stated that the controversy between the parties have been properly adjudicated by the Tribunal and there is no scope.

10. It is further stated that, very perusal of the Joint Development Agreement and supplementary Joint Development Agreement, it is clear that the applicants are incapable of performing their part of duty as rightly observed by the Arbitral Tribunal and there is no scope for interference. Further, it is specifically held by the Arbitral Tribunal about financial capacity of the applicants, to

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perform their part of contract and Tribunal had completely come to a conclusion and rejected the claim of the applicants herein. The applicants have given up their specious plea regarding the alleged oral understanding confirming, occupant mortgage and have thus given up the very basis on which they had hoped to put up construction of the mall. The Arbitral Tribunal has passed by considering that the applicants had no financial capacity and rightly rejected the claim and restricted the same. Further, on perusal of the order sheet, it is evident that the applicants do not have the requisite plan sanction and statutory approvals to put up construction of the mall and the same have lapsed long going, the applicants do not have capacity to put up construction of the mall and have to this date, not been able to secure a loan from the Project lenders in conformity with the terms of the Joint Development Agreement and supplementary Joint Development Agreement, by releasing the charge in favour of the Project lenders, in respect of the Kochi property and

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subsequently, disposing it off, the applicants have disabled themselves from performing their obligation, in terms of clause No.6.1.4 of the supplementary Joint Development Agreement. The applicant had agreed to achieve the total permissible built up area of 7,71,833 Sq.ft by procuring transferable development right. The applicants have even, till this date, not procured the required TDRs and the sanction obtained by the applicants is not for the total permissible built up area. The applicants were never ready and willing to perform their obligations under the Joint Development Agreement and the supplementary Joint Development Agreement. Therefore, there is no question of interference by this Court. Further, the first respondent has denied para Nos. 1 to 5, 9, 39 to 46, 51, 52, 54 and contended that para Nos. 55, 66 are not helpful to the applicants and further denied about para Nos. 63, 66, 67 and contended that para Nos. 68 and 69 are of no availed to the applicants. Further, he has denied para Nos.17 and contended that para Nos. 71 to 74 are misleading. Further,

he has denied para Nos. 75, 77 to 80 and contended that para No.81 is matter of record. He has further, denied about para Nos.85, 88, 89 to 91, 95, 98, 104, 107, 108, 113 to 124, 129, 132, 133 to 136 and contended that para No. 137 is misleading. He has further denied para No. 138 to 153 and admitted some of the paras, regarding the communication documents produced before learned Arbitrator, the decision taken by learned Arbitrator, etc. He has further denied para Nos. 154 to 166 and contended that para No. 168 (a) to (e) are misleading. He has denied para Nos. 168, 169, 171 to 183, 185 to 202. He has further, contended that Arbitral Tribunal has elaborately considered every aspects by giving fullest opportunity and there is no scope for interference. Some of the paras, he has stated that it is a matter of record and requires any denial. Accordingly, he has prayed for dismissal of the petition filed by the applicants.

11. After the death of defendant No.1 his legal heirs were brought on record and they have filed similar objection statement to the main petition.

12. The applicants have filed IA V under Order 41 Rule 27 of CPC to receive additional documents in support of their petition under Section 34 of the Act, contending that the documents produced are the copy of the complaint lodged by one Manjunath, advocate for cancellation of Khata certificate issued in favour of George Thangaiah in respect of schedule property and another complaint, dated 12.9.2020 before the Special Commissioner, BBMP, copy of letter, dated 11.9.2021 issued by the Thasildar East Taluk, Bengaluru to conduct spot inspection to report the alleged encroachment of Government land by the legal heirs of George Thangaiah, copy of complaint, dated 22.7.2021 by A. Shivakumar, advocate, regarding unlawful encroachment of public road by legal heirs of George Thangaiah and some more documents as listed therein.

13 The General Manager, Legal, has sworn to an affidavit in support of IA V, wherein, he has stated that the applicants have filed the above arbitration suit challenging the arbitral award, dated 25.4.2018, rejecting the claim for specific performance and partly allowing the refund of the amount, by partly allowing the counter claim. In the cross-examination of CW2, Nitesh Setty, the Managing Director of applicants has specifically stated on oath that due to various land related problems i.e.., legal hurdles in Khata transfer, land encroachment problem etc., project of the applicant got delayed and the tribunal without appreciating the same, disallowed the claim of specific performance. During the pendency of the arbitration suit, several proceedings have been initiated by the authority against the children and Ms. Chitra Poornima, the wife of the respondent herein in respect of land in question and so complaints have been filed before the Government authorities and unless and until, those legal hurdles were settled, one cannot expect to complete the project and the

Hon'ble Arbitral Tribunal has not considered the same. Further, the proceedings have been initiated before the BDA, Special Court for Land Grabbing, Bengaluru and the filing of Writ Petition on the file of High Court of Karnataka would go to show that there was some legal hurdles regarding encroachment of Government Karab land by the respondent and proceedings have been initiated by the Special Thasildar. So, the documents sought to be produced now, would throw light on those aspects and they are necessary to prove the case of the applicants and if the documents are not received, they will be put to loss and hardship. Those documents should not be produced inspite of due diligence and if they are not allowed, they will be put to loss and hardship.

14. The defendants 1 (a) and (b) have filed objection, stating that the application is not maintainable and same is liable to be dismissed. Since, the petition is filed under Section 34 for setting aside the award, the additional documents cannot be received for the reason that Civil

Procedure Code 1908 deals with making provisions for regular Civil Suits and appeals that arise out of the same. There is no automatic or wholesale import of all the provisions of CPC to proceed under Section 34 and therefore, Order 41 Rule 27 has no application. Since, the petition under Section 34 is not an appeal, there is no scope for receiving of additional evidence and since, proceedings under Section 34 is summary in nature, no documents can be received as per Section 34 (2) of the Arbitration & Conciliation Act, as amended by Arbitration & Conciliation Act, 2019. Since, documents are beyond the scope of the enquiry, the same cannot be received, that too when the case was posted for arguments. Without prejudice, it is contended that the documents sought to be produced are of recent origin and did not even exist at the time when the arbitration proceedings were pending and therefore, they cannot throw light on the disputed aspect. Since, there was no dispute about the land related problem, etc., it was within the knowledge of the party and issue

regarding ready and willingness to perform the contract, and the capacity of the applicants to raise project finance and nothing else. When the applicants were able to obtain No Objection Certificates from various departments, there is no question of production of these documents to show further legal hurdles. Further, the documents sought to be produced by the applicants relating to the proceedings that have been initiated at the instigation of the applicants themselves with an intention to arm twist the legal representative of the deceased defendant. Further, in those proceedings the applicants are not the parties and therefore, there is no question of receiving the same. The genuineness, legality and veracity of additional documents cannot be gone into by this Court under Section 34. In order to receive the original documents, the Court must have power of Appellate Court after appreciating the same having original jurisdiction and since, the procedure adopted is summary procedure and therefore, the provisions of Section 107 (d), 107(2) of CPC cannot be made

applicable. Since, the scope of Section 34 is limited the documents cannot be received, at this stage. Accordingly, they have prayed for dismissal of the IA V.

15. Heard learned counsel for the appellant and respondent.

16. Now, the points that arise for my consideration are:-

1. Whether the applicants prove that the award dated 25.4.2018 passed under dispute No.1/2016 is against the terms of the contract, the evidence placed before the Tribunal and the decisions cited by the applicants before the Arbitral Tribunal and as such it is opposed to public policy and patent illegality and as such it is liable to be set aside?

2. Whether the applicants have made out grounds to receive the documents filed under IA No V under Order 41 Rule 27?

3. What Order?

17. My findings on the above Points are as under:

Point No.1 :- In the **Negative**.

Point No.2 :- In the **Negative**.

Point No.3 :- As per the final Order .
for the following reasons.

REASONS

18. **POINT Nos.1 & 2:** Learned senior counsel for the applicants would argue that the defendant No.1 died, accordingly, his legal heirs were brought on record and they have stepped into the shoes of defendant No.1 and therefore, they are answerable to the claim made by the applicants as they have succeeded to the properties left out by the deceased defendant No.1. After submitting the same, he took the Court to Joint Development Agreement produced at ink page No. 365, it is dated 11th February 2011 entered into between George Thangaiah and the applicants and at ink page No. 371, there is a clause No.4, which deals with representation and warranties of the [illegible] who is none other than the deceased defendant. The said clause reads that (i) owner is the sole and absolute owner of the schedule property with inhibited rights of

alienation and development of the schedule property in the manner contemplated herein:

iii) the owner has not mortgaged /hypothecated his rights in schedule property or done any acts, deeds or things, which had or likely to contravene the terms and conditions of this agreement.

iv) no other person has any right, title, interest, or claims over the schedule property, except the owner. However, later it has come to know that a portion of Government land has been encroached by the owner and therefore, there was some difficulty in getting Khata and the defendant has not disclosed the said aspect to the applicants at the time of either entering into Memorandum of Understanding or Joint Development Agreement. When they applied for change of single Khata, they came to know about encroachment made by the defendant in the Government land, it was a hurdle to get the work done on

Thereafter, he took the Court to ink page No. 405, which deals with non-refundable deposit and clause

No.16(i) provides that the developers (applicants) has paid a sum of Rs.35,50,00,000/- to the owner under the Memorandum of Understanding and has acknowledged that the said sum is non-refundable in any circumstances whatsoever by the owner. Apart from that amount, the developer is now agreed to pay to the owner a sum of Rs.79 crores as refundable deposit. The non-refundable deposit shall be paid by the developer to the owner in the following manner. It is stated further in sub para No.(a) that a sum of Rs.50,00,000/- shall be paid simultaneously at the time of execution of the Joint Development Agreement and the same is paid under Bank cheque on 9.2.2011. A sum of Rs.19 crores was agreed to be paid on or before 1st February 2012 and failing which the owner is entitled to invoke Bank Guarantee and further a sum of Rs.10 crores was agreed to be paid before expiry of first two months of execution development agreement. So, the main contention of the applicants is that, he has paid huge amount to the respondent and first amount which was paid to the tune of

Rs.35,50,00,000/- was forfeited and balance amount has been paid from time to time, but, there was inordinate delay in getting Khata on account of encroachment of land and some other reasons and inspite of the same, the applicants obtained Khata from different authorities as contended in the plaint. Subsequently, since, there was issue regarding construction and providing financial arrangement for the construction of building, they entered into a supplementary agreement on 11.2.2014, whereunder, the defendant has consented for mortgaging 50% of right and interest over the schedule property in favour of the project lenders as collateral security and accordingly, the earlier development agreement was modified and regarding non-refundable deposit, it is available in clause No.3.1.1, wherein, it is stated that "in terms of clause 3 (v) and clause 15 (i) (b) and (iii) of the development agreement (prior to the amendment), the developer was required to pay to the owner a sum of Rs.19 crores towards a portion of non-refundable deposit or

provides to the owner a irrecoverable and un-conditional Bank Guarantee for a sum of Rs.19 crores, for payment towards a portion of the non-refundable deposit on or before 1st February 2012. The clause 3.1.2 provides that the developer has paid Rs.19 crores at the time of supplementary agreement including Rs.1 crore more, as per Demand Draft of HDFC Bank Ltd., and the same has been accepted by the defendant. So, in all, the applicants have paid Rs.105 crores and there is no dispute about the said fact. Further, it has paid Rs.2.75 crores as processing fee, paid to the project lenders and the account certificate is produced. Thereafter, he took the Court to Chartered Accountant certificate available at page No. 1165 in Volume IV and in total the applicants have paid Rs.169.38 crores and all the No Objection Certificates were obtained and contract was also entered into between the L & T, a reputed construction contractor and also referred to Ex. C37 to 46 to show that they have obtained permission from different departments. Further, thereafter, he referred Ex. C48 to 60

available in Volume III, regarding loan sanction and appointment of 14 consultants as shown in para No.55 of the claim petition. Further, in order to commencement of work, old building required to be demolished and there was inordinate delay in giving consent by the defendant and infact, the deceased defendant was not senile and he was not mentally fit to give evidence and therefore, non-examination of defendant goes against the case of the defendants and adverse interference has to be drawn. Though, the Power of Attorney was examined, her evidence cannot be accepted as she was not party to the any of the transaction or Joint Development Agreement. The observation of the Arbitrator that the applicants had no financial capacity is incorrect as the Power of Attorney Holder has also participated in the discussion with Goldman Sachs entity, which was ready to fund the project and same is not taken note of by the Arbitrator. The RW1 has admitted about the same at question No. 249 about meeting with Goldman Sachs company, which is one of the

lenders of the proposed project and there was no cross-examination to that effect. Further, regarding mental condition of the defendant, no medical records are produced and application filed for appointment of guardian came to be rejected and therefore, adverse interference has to be drawn.

19. Thereafter, he referred to Ex.C63 available in Volume IV and he referred to the repudiation and reply given by and infact, contract cannot unilaterally terminated as 35 months was there to complete the work and it was repudiated in the month of January 2015, though the time was available up to 2017. The clause No.6.1.9 of the supplementary agreement provides for time line for commencement and completion of construction, occupancy certificate, etc. Therefore, there cannot be any unilateral repudiation of the contract and observation of the same by the Arbitral Tribunal is highly incorrect and it requires interference. After arguing on the said aspect, he referred to the award at ink page No. 101 and internal page No.12,

which deals with the point for determination regarding dispute No.1 and point for determination for dispute No.2 and as far as repudiation is concerned, point No.5, 5(a), in dispute No.1 and point No.2 in dispute No.2 are similar and at ink page No.117, the Arbitral Tribunal considered point No.5, 5(a) in dispute No.1 and point No.3, 3(a) in dispute No.2 together.. He would argue that the respondent by treating the letter, dated 19.1.2015 as repudiation of the contract on account of their failure to obtain letter from the project lenders in conformity with Joint Development Agreement and supplementary Joint Development Agreement, is untenable and learned Arbitrators misconducted themselves by ignoring the evidence and when there is an admission of RW1 that whatever the amount paid by the applicants have been deposited, since 2007 in fixed deposit and therefore, there is no question of granting any damages in lieu of rent and therefore, the award is against the evidence on record and admission of documents.

20. He would further argue that the award passed by the Arbitral Tribunal is against the law laid down by the Apex Court and in the said connection, he would cite the decision in the case of **Ssangyong Engineering and Construction Company Ltd., Vs. National High ways Authority of India**, reported in **2019 (15) SCC 131,** wherein, at para No.34, it is held that:

> 34. "What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paragraphs 18 and 27 of Associate Builders (supra), i.e., the fundamental policy of Indian law would be relegated to the "Renusagar" understanding of this expression. This would necessarily mean that the Western Geco (supra) expansion has been done away with. In short, Western Geco (supra), as explained in paragraphs 28 and 29 of Associate Builders (supra), would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in paragraph 30 of Associate Builders".

In para No.36, it is held that:

36. "Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of Associate Builders (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of Associate Builders (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco (supra), as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with".

21. With the help of the above Judgment, he would argue that the Arbitral Tribunal has failed to deal with the decision relating to repudiation of contract and damages, then, it amounts to against public policy of Indian law. The termination of contract is provided under clause No. 24 of Joint Development Agreement, at running page No.75, which deals with the termination of the contract by issuing a 60 days' notice by the owner and consequences of termination is also provided under clause No.24. When that is the case, how the letter issued by the developers amounts to repudiation, having received, so much of amounts by the defendant. Further, when the contract

provides for a period of 35 months for completion of the work, how the defendant could repudiate the contract. Whether unilateral repudiation can be sustained, etc., has been discussed in various decisions. One such decision is reported in **1984 (1) SCC 728** in the case of **The Workmen and others Vs. M/s Hindustan Lever Ltd.,** wherein, at para No.24, it is held that:

> 24. "The emerging situation would be that neither the union repudiated the agreement nor the employer and till the present dispute, both swore by the agreement. The divergence in the approach was as to the interpretation the coverage, the ambit and the width of the agreement. Both the parties swore by the agreement but differed in their approach and interpretation and the forum namely the Industrial Tribunal consistently upheld at the instance of the employer that there was a binding valid agreement subsisting between the parties forbidding the union from raising a dispute of an all-India nature at the regional level and succeeded in getting the reference thrown out at the threshold on the ground that the dispute was of an all-India nature and not of a regional level as contended by the union. This constitutes adherence to agreement, performance of the agreement, implementation of the agreement and being bound by the agreement. This conduct in no sense can be said to constitute repudiation of agreement by the union. Unilateral repudiation of an agreement, as contended by Mr. Pai, does not result in termination of a solemn agreement because the

wrongful repudiation can be corrected by enforcement of agreement through machinery provided by the statute. And that is what the employer has succeeded in achieving. The employer relying on the agreement got a number of references rejected on the preliminary objection founded on the agreement. The employer cannot therefore be heard to say that the attempted repudiation by the union, if any, permits the employer to disown the same when it suits it. Unilateral repudiation is distinct from termination and an agreement/settlement remains in force and binding till terminated and does not come to an end by unilateral repudiation. But it must be made clear that there is no substance in the contention of Mr. Pai that the union repudiated the agreement.

22. He would cite another decision in the case of **Claude-Lila Parulekar (Smt) Vs. Sakal Papers (P) Ltd., and others,** reported in **(2005) 11 SCC 73,** wherein, it is held at para No. 53 that:

53. "Furthermore for an act to constitute a repudiation of a contract it must be ".such an act as indicated an intention to refuse to perform the contract and to set the other party free from performing his part. an act by which the party renounced all intention to perform his part of the contract and thereby set free the other party or an intimation that it was no use for you to go on, because I tell you that I do not mean to keep to the contract" . [See: Freeth v. Burr (Lord Coleridge, CJ

(1874- 80) All ER.753]. The question to be asked is "is the act to be relied on as rescission, an act which on the part of the person doing it amounts to an abandonment, or refusal by him to perform his part of the contract?" (ibid at pg.754) IV.4.I Repudiation of a contract is "a serious matter, not to be lightly found or inferred".

23. He has cited one more decision in the case of **Rash Behary Shaha Vs. Nrittya Gopal Nundy**, of **High Court of Calcutta**, reported in **MANU/WP/009/1906**, wherein, it is held at para No.20 that:

20. "There was a delay in fulfilling the obligation to pay the money; it may have been with or without good reason, but, it did not go to the root or essence of the contract, or do I think that there is any sound principle upon which it could do so".

24. So, merely because a party fails to perform a part of the contract does not tantamount to absolute renunciation or an absolute refusal to perform the contract, such as to tantamount to recession.

Regarding unilateral termination of contract, he would rely upon the decision in the case of **M.B. Desai & Bros, Vs. Coorg & Mysore Coffee Co. Ltd.**, reported in

1975 (2) Kar L J 46 and the decision in the case of **National Fertilizers Vs. Puran Chand Nangia,** reported in **200 (8) SCC 343,** wherein, it is held at para No.23 that:

> 23. "We may also state that under the general law of Contracts, once the contract is entered into, any clause giving absolute power to one party to override or modify the terms of the contract at his sweet will or to cancel the contract -even if the opposite party is not in breach, - will amount to interfering with the integrity of the contract (Per Rajamanner, CJ. In Maddali Thathiah Vs. Union of India AIR 1957 Mad.82). On appeal to this Court, in, that case, in Union of India Vs. Maddali Thathiah [1964(3) SCR 61 AIR 1966 SC 1724] the conclusion was upheld on other grounds. The said judgment of the Madras High Court was considered again in Central Bank of India Vs. H.F. Insurance Co. (AIR 1965 SC 1288) but the principle enunciated by Rajamanner CJ was not differed from. (See the discussion on this aspect in Mulla's Contract Act, (10th Ed.) PP.371-372, under Section 31 of the Indian Contract Act.)"

26. So, with the help of the above decisions, he would argue that when there is no scope for unilateral repudiation or termination of contract for non-fulfillment of part of contract, owing to various difficulties, then, it amounts to against the public policy of Indian law and therefore, liable to be set aside.

27. Regarding the 'time as essence of contract', he would argue that in construction contract, it depends upon the various factors, right from the obtaining of permission and various No objection certificates and due to delay either it may be attributed to the contractor or to the owner. Therefore, the time is not the essence of contract in construction contract and in the said regard, he relies upon the decision in the case of **McDermott International Inc. Vs. Burn Standard Co. Ltd., and others,** reported in **(2006) 11 SCC 181,** wherein, it is held at para No.59 that:

> 59. "Such patent illegality, however, must go to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the court. Where the Arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute would come within the purview of Section 34 of the Act. However, we would consider the applicability of the aforementioned principles while noticing the merit of the matter.

28. He has cited one more decision in the case of **Bangalore Development Authority Vs. Syndicate Bank,**

reported in **(2007) 6 SCC 711,** wherein, at para No.17, it is held that:

> 17. "In a self financing scheme, the installments paid by the allottees are used for construction. If an allottee does not pay the installments, he cannot obviously expect completion of construction. In this case, the payment was received by BDA (without charging any interest) by way of adjustment on .15.5.1989. Even if the reasonable period for construction is taken as two years, BDA had to explain the 'delay' only from 15.5.1991 and not from 1985 as assumed by the Commission. BDA delivered four houses in time, that is in 1989 and 1990. It did not deliver the remaining 11 houses, as its contractor delayed execution of the work. It may be mentioned that the project contemplated construction of 558 HIG houses and the work got stuck only in regard to 68 houses (including the 11 houses to be delivered to the Respondent). When the respondent wrote letters in 1989, 1990, 1993 and 1994 and also got in touch with BDA officers, seeking possession, BDA, explained that the delay was on account of its contractor (M/s Khoday Engineering) stopping work and raising a dispute. BDA took necessary steps, and even sought government intervention, to persuade the contractor to proceed with the work. Having failed in its effort, it ultimately cancelled the contract with the contractor and got the work completed through an alternative agency and immediately after completion, delivered the houses in January/March, 1997.

29. He has cited one more decision in the case of **M/s Hind Construction Contractors by its Sole Proprietor Bhikamchand Mulchand Jain (Dead) by LRs Vs. State of Maharashtra,** reported in **(1979) 2 SCC 70,** wherein, at para No.8, it is held that:

> 8. "It will be clear from the aforesaid statement of law that even where the parties have expressly provided that time is of the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental, for instance, if the contract were to include causes providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract.

30. So, with the help of the above three decisions, he would argue that in the construction contracts, time is not essence of the contract and it depends upon various factors, the same has not been taken note of by learned Arbitrators.

31. He would further argue about evidentiary value of evidence given by RW1, who is the Power of Attorney holder of deceased defendant, who according to the applicants was not senile and therefore, he could not have given Power of Attorney and non-examination of the defendant is fatal to the case of the defendant herein. But, learned Arbitrators have not considered the said aspect, which is against the decision in the case of **Mahendra Pratap Singh (deceased) and another Vs. Smt. Padam Kumari Devi** reported in **AIR 1993 All 143**, wherein, Allahabad High Court has held that "a person becoming weak or of frail health because of which he is unable to comprehend or take care of himself is a situation, which will result in the termination of agency. In the said matter it was also held that the agent will be committing a fraud, cheating and criminal breach of trust by acting on a Power of Attorney of a Principal, who he knows to be mentally infirm". So, with the help of this decision, he would argue that when the respondent was not mentally fit to give

answer, whether the power of attorney can act upon, the power of attorney already issued. In-fact, the guardian ought to have been appointed, the Arbitral Tribunal, by rejecting the application of the applicants herein proceeded to record evidence of RW1 on the basis of the power of attorney and the power has to be received under the said document, which is against the law of the land, therefore, it amounts to patent illegality.

32. So, when the best witness is not produced before the Court, an adverse inference has to be drawn as per the decision reported in **1999 (3) SCC 573** and **1999 (3) SCC 457**, but, the Arbitral Tribunal has failed to do the same. Though, it was canvassed before learned Arbitrators that the evidence of RW1 is of no significance on account of age and mental ill-health of the respondent, but, the same was not considered and non-examination of defendant is fatal to the case of the defendant, but, same has not been considered by the Arbitral Tribunal.

33. Regarding oral agreement, when could be admitted, has been held in the decision, reported in **AIR 1936 Privy Council 70** and **2003 (6) SCC 595** and when a departure can be made by way of oral evidence, when, there is a written deed.

34. He would further argue that a party cannot take advantage of his own wrong and he cannot be permitted to form a claim of his own inequity. He who prevents the thing from being done shall not avail himself of the non-performance he has occasioned and in the said connection he would cite the decision in the case of **Shamumal Vs. State of Rajasthan and others** reported in **AIR 1998 Raj 248** and according to learned counsel for the applicants, because of the unbearable conditions put forth by the defendant and each and every step, there was objection by the defendant, which made the applicants to suffer huge loss, for getting so many no objection certificates from different departments as contended in the plaint and after receipt of huge amount to the tune of Rs.105 crores, the

defendant repudiated the contract as if as applicants have expressed their inability to proceed with the construction. Though, the applicants have been successful in getting project lender to lend huge amount, because of the attitude of the defendant that was not materialised. Therefore, the respondent cannot take advantage of his own wrong and retained the entire amount. The Arbitral Tribunal has committed error in deducting the rent and receivable out of the amount paid as the defendant has derived interest right from the year 2007 till date, which is more than Rs.100 crores and therefore, the award is not justifiable one. Regarding party cannot take advantage of his own wrong, he has cited two more decisions in the case of **Ashok Kapil Vs. Sanaullah (dead) and others,** reported in **(1996) 6 SCC 342** and in the case of **Devendra Kumar Vs. State of Uttaranchal and others,** reported in **(2013) 9 SCC 363.** So, with the help of these decisions, he would argue that the defendant unilaterally repudiated the contract and having received more than Rs.105 crores as non-refundable

deposit and further, the applicants have spent more than Rs.60 crores for obtaining various permission, the claim of the respondent to the tune of Rs.350,39,67,142/- is unjustifiable and it is nothing, but, making unlawful enrichment, if possible. The total claim made by the respondent is 507,84,18,514/-and after deducing non-refundable deposit of Rs.64,50,00,000/-, he has claimed 443,34,18,514/- which is unjustifiable. On the other hand, the applicants have claimed specific performance, which was subsequently not pressed. The amount paid by it and Arbitral Tribunal granting Rs.42,45,00,000/- out of the amount paid by it by awarding Rs.55,05,00,000/- is against the terms of the contract and unjustifiable and it is nothing, but, perverse order. Since, the applicants have not pressed the relief of specific performance, this Court is not required to consider the same and as far as refund is concerned, the value of the property has now increased, which benefit goes to the defendant and therefore, the Arbitrator ought not to have deducted the amount by

treating the rent and receivables on account of demolition of the building. Further, on account of the initiation of the proceedings by the Government authority for encroachment of land, it was not disclosed by the defendant, made the applicants to suffer and therefore, application was filed under Order 41 Rule 27 to receive additional documents. In the additional documents, the order of the Government, Survey map, etc., are produced to support the claim that there was suppression of encroachment of land by the defendant which is also one of the reasons. Therefore, the Arbitral Tribunal has failed to consider these aspects, which required attention of the Court. Since, the building has been demolished as per the amended agreement, general agreement, there is no question of claiming rent, and it is the defendant who repudiated the contract, he cannot claim rent, etc., and therefore, that part of the award directing the applicants to pay damages to the tune of Rs.55,00,00,000/- is against the decisions and the order becomes perverse. When the

time is not essence of contract and when the witness is prevented from appearing before the Court to speak about the truth and when inspite of production of various NOCs obtained by the applicants from various authorities and having failed to pay Rs.105 crores and having held meeting with Goldman Sachs, then, awarding the damages is highly incorrect and same is not sustainable. So, when the arbitrator is go against the evidence on record and terms of the contract and failure to follow the decisions laid down by the Apex Court as well as our High Court and various Hon'ble High Courts, then, it amounts to patent illegality and what is the consequences has been held in the decision in the case of **ONGC Limited Vs. Garware Shipping Corporation Limited** reported in **(2007) 13 SCC 434, Sumitomo Heavy Industries Limited Vs. Oil and Natural Gas Corporation Limited,** reported in **(2010) 11 SCC 296,** to the effect that when the Arbitral Tribunal failed to consider the terms of the contract and goes against the law laid down by the Apex Court, then it amounts to

against the public policy of Indian and is liable to be set aside.

35. Now, regarding award against the terms of contract is concerned, he relies many decisions and one in the case of **Hindustan Zinc Ltd., Vs. Friends Coal Carbonsisation,** reported in **(2006) 4 SCC 445,** wherein, it is held that when the Award is contrary to the contract and in conflict with the price variation formula in the contract then, it is liable to be set aside. Similarly, he has cited seven more decisions and among them the latest is the decision in the case of **Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India** and **PSA SICAL Terminals Pvt. Ltd., Vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and others,** which is the latest decision on the aspect at para Nos. 43, 81, 85 it is held that:

43. "It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and re-appreciate the evidence. The

scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, re-appreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award".

81. "In this scenario, the finding of the Arbitral Tribunal, that there was a law when the Agreement was entered into between the parties, which provided royalty as a pass through and that the said law has been changed for the first time in 2003 and subsequently again changed in 2005, in our view, is a finding based on 'no evidence'. Had the Arbitral Tribunal perused the tariff orders of 1999 and 2002, it would have found that in the 1999 tariff order TAMP has specifically observed that its approval of the tariff should not be

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construed as its implicit approval of royalty related issue and the 2002 tariff order specifically states that royalty was not permitted to be factored in the cost while determining tariff. The Arbitral Tribunal has totally failed to take into consideration this aspect of the matter".

85. "However, ignoring the stand of TPT, by the impugned Award, the Arbitral Tribunal has thrust upon a new term in the Agreement between the parties against the wishes of TPT. The 'royalty payment method' has been totally substituted by the Arbitral Tribunal, with the 'revenue sharing method'. It is thus clear, that the Award has created a new contract for the parties by unilateral intention of SICAL as against the intention of TPT".

36. So, since, other decisions which are not mentioned, also speak about the same aspect, the latest decisions are taken note of and when we go through these decisions, one thing is clear that the award is perverse, which amounts to patent illegality and if the award is contrary to the contract and against the law laid down by the Apex Court and other High Courts, then, the same is liable to be set aside.

37. Per contra, learned senior counsel for the defendant would argue by referring to the award passed by

learned Arbitrators, wherein, Arbitral Tribunal has categorically held that the applicants herein are not entitled to specific performance of contract, but, ordered for refund of the amount, after deducting the rent and receivables that would have been received, had the building not been demolished for the purpose of construction. Thereafter, he would refer to Ex. C11, which is the Joint Development Agreement produced before the Arbitral Tribunal in connection with the dispute No.2, which is dated 11.2.2011 and it is contended that though damages was granted, it was not adequate as claimed by the defendant in his counter claim and there is no proper findings on the repudiation of contract. He would refer to Section 39 of the Indian Contract Act and the applicants herein set up a contention that the defendant has agreed for creating mortgage in respect of the property, which is inconsistent with the Memorandum of Understanding and terms of the Joint Development Agreement and therefore, that was not accepted by the Arbitral Tribunal. Section 39 deals with

effect of refusal of party to perform promise wholly; when a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance. On the basis of the provisions of law, when the applicants expressed their inability to obtain huge loan from the project lenders on account of the terms stated by the lenders to create mortgage in respect of entire property or undivided share of the applicants which was not available in Joint Development Agreement or supplementary Joint Development Agreement and therefore, the Tribunal has rightly concluded that the applicants disabled themselves from performing their promise in its entirety and therefore, there is no question of breach on the part of the defendant. The oral understanding as contended by the applicants was not accepted. The letter written by the Bank insisting for up front mortgage, has not been contemplated in Joint

Development Agreement. Therefore, the applicants were not in a position to fund the project, which culminated in repudiation by conduct and there was no such oral understanding between the applicants and the defendant. Learned Arbitrators have decided the same while deciding the point No.5 , 5(a) in dispute No.1, point No.3, 3(a) in dispute No.2 and it is contended by the applicants that they have repudiated to perform their obligations under Joint Development Agreement and it was argued that they had spent over Rs.189 crores in connection with the project and it has taken several steps such as obtaining approvals and No objection certificates from several authorities and entering into several agreements with other agencies and complied with all conditions stipulated in clause No.3.5, which were possible that though they had secured sanction of loan of Rs.300 crores from the project lenders, later did not agree with the terms of the Joint Development Agreement. The Arbitrators have observed that the letter issued by the defendant after the letter by the applicants

regarding their inability to obtain the loan for want of conditions to be fulfilled by the defendant. The defendant terminated the contract and in this regard, the Arbitrators have categorically held that the letter issued by the applicants dated, 6.1.2005 does not amount to repudiation. The non-consideration of repudiation of error by Arbitrator becomes patently illegal as held in the case of **Ssangyong Engineering & Construction Company Limited**. Thereafter, he refers to Ex C11 and Ex. C20. As I have already stated Ex. C11 is the Joint Development Agreement and Ex. C 20 is the supplementary Joint Development Agreement, dated 11.2.2014 and he referred to the terms therein. Learned counsel for the defendant drew the attention of the Court to clause No. 6.1.2, which deals with aspect that clause Nos.3, 4, 5 of development agreement shall stand deleted and (b) substituted as follows:

1. "the developer shall be entitled to commence demolition of the front building or rear building only after the (a) the developer has made payment to the owner for a sum of Rs.19 crores towards part payment of non-refundable deposit, payable in terms of clause No. 16 of the development agreement, (b) the

developer has obtained sanction building plans with respect to the mall (c) the developer has provided alternative office space ..... (d) the developer has secured a project loan for a sum not exceeding Rs.310 crores from its lenders/bank, under an arrangement, in conformity with the terms of this agreement.... (e) the project lenders have expressly confirmed the receipt of the development agreement as amended and shall have also acknowledged in writing that the project loan has been extended by them based on the terms of the development agreement as amended. But, the amended Joint Development Agreement, does not provide for upfront mortgage of the schedule property or the shares of the property of the applicants after development. Therefore, when the defendant did not agree for mortgaging of property, actually there was no financial capacity for the applicants to get huge amount and infact, the Bank insisted for modification of Joint Development Agreement, which the defendant did not agree. What type of amendment sought for by the Bank has been stated in the Joint Development Agreement dated 11.2.2011 at ink page No. 515, clause No.13, which states that subject to provisions of clause No.12 (iv) below and not otherwise. The developer may create any charge on its development rights accrued to it under this agreement, in order to raise a debt for the purpose of the project, without creating any mortgage, encumbrance, charge, (i) on the schedule property or any portion thereon or (ii) on the rights of the owner to the schedule property and the mall, so that the developer shall permitted to create any charge encumbrance on its development rights inform the owner of the same and satisfy the owner that creation of such charge on the development right of the developer shall not in any manner create any mortgage or encumbrance on the schedule property. So, according to learned senior counsel for the

defendant, when the Joint Development Agreement does not provide for mortgaging of property, how to believe that the project lenders were ready to lend Rs.310 crores for the development of the land and when they sought for modification of the award. In this regard, he refers to ink page No. 723 available in Vol No. III, which relates to supplementary agreement, dated 11.2.2014, wherein, clause No. 6.1.19 has been substituted as "subject to provisions of clause No. 12, 14 below and not otherwise, the developer may avail the project loan for this purpose, create a charge on the development rights accrued to it under this agreement. In order to enable, the developer to obtain the project loan, the owner at the instance of developer has agreed to mortgage 50% undivided right, title and interest in the schedule property in favour of the project lenders, the developer shall be entitled to call upon the owner to create a mortgaging of the owners mortgage property only after fulfillment of the below conditions to the satisfaction of the owner. The conditions are mentioned in column No.1 regarding the property situated in Kochi and mortgage of the same and payment of Rs.70 crores or furnishing the Bank Guarantee, etc., and payment of Rs. 3 crores as non-refundable deposit and the above clause shows that there was no any agreement for upfront mortgage of the property to the project lenders and it was agreed for creating second charge in respect of property owned by the applicant at Kochi, but, subsequently, the said property was sold out by the applicant and therefore, they have not acted in accordance with the terms of the contract and therefore, the Arbitrators have rightly refused to grant specific performance.

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38. Learned counsel for the defendant would further argue by referring to Ex. C 19, at page No.678, produced by them in dispute No.2, which is the sanction of project loan of Rs.120 crores by Bank of Baroda and the conditions mentioned in the letter dated 9.10.2014, reveals that the additional collateral security, which is the immovable property and measuring in all 405.83 cents situated in Survey No.506/13, 506/1, 514/10 of Kakanadu village, Kanayur taluk, in Ernakulam district value of Rs.77.12 crores to be released. The condition No.3 states that the company to amend the supplementary agreement to address the observation of our bank panel advocate and legal department of our bank and create mortgage over the project land before 1st disbursement. In the very same document at page No. 669, the bank has imposed certain conditions to release the property at Kochi and also give upfront mortgage of the property and the observation of the Bank reveals that unless and until upfront mortgage is provided, no lending can be granted which shows that the

applicant has no financial capacity to proceed with the construction; which is the reason for why the defendant has issued termination notice. Para No. 29 of the observation of the project lenders stipulates about the restriction imposed in the Joint Development Agreement, which hampers the lending and come in the way of recovery and therefore, the applicants were aware of this aspect. Further, CW2 and 4 have admitted about the observation made by the Bank and necessity to provide upfront mortgage of the schedule property for at least 50% of the property. Thereafter, he refers to the legal notice issued at Ex.C37, which is available in Volume V, at page No. 1471, which was issued by learned counsel for the applicants, invoking arbitration clause available in Joint Development Agreement. In the para No.5 of the legal notice, discloses that "on account of various delays attributed to your non-cooperation, our client was constrained to mobilize to raise fund, and our client has requested you to agree to create mortgage of 50% of the land and that stage itself, insisted

of doing so, after completion of the construction of three floors. However, much to our client shock and dismay, instead of co-operating with our client, he would decide to use opportunity to arm-twist of our client and permit Ms. Chitra Thanggiah to negotiate and make personal demand". The said statement is against the fact as the observation of the project lenders at para No.29 goes to show that they were not happy with the terms of the Joint Development Agreement as there is no provisions for upfront mortgage of the schedule property or at least 50% of the share of the development of the schedule property, etc. Therefore, according to learned counsel for the defendant the contention of the applicants that they were ready and willing to perform their part of contract and their project lenders were ready to finance the project is a myth and cannot be considered and the arbitrators have rightly rejected the same. Thereafter, he refers to statement of defence submitted by the defendant. After referring to the same, learned senior counsel referred to the award passed

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by referring to dispute No.1 and issues raised therein and issue No.8 is the entitlement of defendant to claim the amount under various heads. Regarding issue No.2 relating to repudiation of contract and tribunal has held that there is no repudiation of contract, but it was terminated by the defendant. He refers to ink page No.165 of the award and internal page No.75, wherein, under point No.13 the Arbitrators have taken point No.3 in dispute No.2 which relates to the breach of contract committed by the applicants herein and respondent in their counter claim and the said issue has been elaborately discussed by the Arbitral Tribunal and learned senior counsel took the Court to para No. 13.2, which deals with the claim under the head damages for loss of opportunity at Rs.353,39,67,142/- with interest and various contentions taken by the defendant herein, about the amount which could have been earned by the defendant George Thangiah from 19.7.2016 by way of rent and failure to get the same on account of failure to commencement and

complete the building. Further, he refers to the observation made by learned Arbitrator that if the project had been completed, the defendant would have earned some profits after completion of 37 months provided in the supplementary Joint Development Agreement, of the year 2014. Further, the chance of getting profit of 50% after completion of the mall, is also taken note of by the Arbitrators and rent receivables by the defendant and he has referred the documents produced by the defendant at Ex.R 55 i.e., estimated market value in the year 2014 and on the basis of the value of schedule property has gone up by nearly three times and by taking consideration of the same, Arbitral Tribunal has assessed the loss, but, the awarding of Rs.10 crores as damages is not correct and the same requires to be interfered. Further, the additional claim has not been touched it and these aspects will be considered in the separate paras while dealing with the connected arbitration suit filed by the defendant herein in Arbitration Suit No. 153/2018. So, the main attack of

learned senior counsel for the defendant is that the order of the Arbitral Tribunal directing the defendant to pay a sum of Rs.42,45,00,000/- is unsustainable as the defendant has lost the building, rent and the reputation has also lowered on account of boosting of the project and non-completion of the project. Further, while ordering for refund of the balance amount, the tribunal has erred in calculating rent and it is a grave error and it requires to be interfered. Further, regarding other claim there is no whisper by the arbitration tribunal and the same will be taken note of in the connected Arbitration suit. Further, the Arbitrators have not taken note of the land dispute and exchange of land having more value for the lesser value on account of the so called project which also culminated in huge loss. Therefore, the awarding of Rs.15,00,05,000/- is not proper and without any basis and orders for refund is also incorrect. Further, the tribunal has not considered the cost relating to restoration of the demolished portion and not considered the other documents, etc. These aspects will be

considered in the connected case. So, the sum and substance of arguments of learned senior counsel for the defendant is that, the Arbitrators have not taken note of the repudiation of the contract by the applicants herein and considered only unilateral termination by the respondent and the award for refund of Rs.42,45,00,000/- is incorrect and against the terms of the contract and therefore, the applicants are not entitled to the same.

39. Learned senior counsel for the defendant would cite the decision in the case of **Oil and Natural Gas Corporation Ltd., Vs. Saw Pipes Ltd.**, reported in **(2003) 5 SCC, 705,** which deals with when a arbitral award can be set aside , wherein, at para Nos. 74 (A) and (B) it is held that:

74. "In the result, it is held that;-

74A. (1) The Court can set aside the arbitral award under Section 34(2) of the Act if the party making the application furnishes proof that:-

(i) party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration;

2) The Court may set aside the award:-

(i) (a) if the composition of the arbitral tribunal was not in accordance with the agreement of the parties,

(b) failing such agreement, the composition of the arbitral tribunal was not in accordance with Part-I of the Act.

(ii) if the arbitral procedure was not in accordance with:-

(a) the agreement of the parties, or

(b) failing such agreement, the arbitral procedure was not in accordance with Part-I of the Act.

However, exception for setting aside the award on the ground of composition of arbitral tribunal or illegality of arbitral procedure is that the agreement should not be in conflict with the provisions of Part-I of the Act from which parties cannot derogate.

(c) If the award passed by the arbitral tribunal is in contravention of provisions of the Act or any other substantive law governing the parties or is against the terms of the contract.

(3) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to:-

(a) fundamental policy of Indian law;

(b) the interest of India; or

(c) justice or morality, or

(d) if it is patently illegal.

(4) It could be challenged:-

(a) as provided under Section 13(5); and

(b) Section 13(6) of the Act".

74 (B). "(1) The impugned award requires to be set aside mainly on the grounds:-

(i) there is specific stipulation in the agreement that the time and date of delivery of the goods was the essence of the contract;

(ii) in case of failure to deliver the goods within the period fixed for such delivery in the schedule, ONGC was entitled to recover from the contractor liquidated damages as agreed;

(iii) it was also explicitly understood that the agreed liquidated damages were genuine pre-estimate of damages;

(iv) on the request of the respondent to extend the time limit for supply of goods, ONGC informed specifically that time was extended but stipulated liquidated damages as agreed would be recovered;

(v) liquidated damages for delay in supply of goods were to be recovered by paying authorities from the bills for payment of cost of material supplied by the contractor;

(vi) there is nothing on record to suggest that stipulation for recovering liquidated damages was by way of penalty or that the said sum was in any way unreasonable.

(vii) In certain contracts, it is impossible to assess the damages or prove the same. Such situation is taken care by Sections 73 and 74 of the Contract Act and in the present case by specific terms of the contract".

40. He has cited another decision in the case of **Delhi Development of Authority Vs. R.S. Sharma and Company, New Delhi,** reported in **(2008) 13 SCC 80,** by referring the decision in the case of **State of Rajasthan Vs. Navabharath Construction Company** has held at para No.21 that:

21. "From the above decisions, the following principles emerge:

(a) An Award, which is

(i) contrary to substantive provisions of law ; or

(ii) the provisions of the Arbitration and Conciliation Act, 1996 ; or

(iii) against the terms of the respective contract ; or

(iv) patently illegal, or

(iv) prejudicial to the rights of the parties,

is open to interference by the Court under Section 34(2) of the Act.

(b) Award could be set aside if it is contrary to :

(a) fundamental policy of Indian Law; or

(b) the interest of India; or

(c) justice or morality;

(c) The Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

(d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India."

Associated Builders Vs. Delhi Development Authority reported in **(2015) 3 SCC 49** to the very same effect, and next decision in the case of **Ssangyong Engineering and Construction Company Limited Vs.**

National Highways Authority of India, which elaborately discussed about when an Arbitral Award can be set aside.

41. Learned Senior counsel has also cited the decision in the case of **PSA Sical Terminals Pvt. Ltd., Vs. Board of Trustees of V.O Chidambaranar Port Trust Tuticorin and others**, reported **2021 SCC online 508** to the very same effect.

42. The next decision is in the the case of **MMTC Limited Vs. Vedanta Ltd.,** reported in **(2019) 4 SCC 163,** wherein, it is held that at para No.11,

> 11. "As far as Section 34 is concerned, the position is well settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2) (b), i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial

approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."

43. Next decision is in the case of **Union of India Vs. M/s Warsaw Engineers in Com Appeal No. 25/2021** of **High Court of Karnataka,** to the effect that what are the requirements to be followed by the Court dealing with Section 34 of the Act by referring to the decision in **Dyna Technologies Private Limited Vs. Crompoton Greaves Limited.** With the help of the above decisions, he would argue that the observation of the Arbitral Tribunal that there is no repudiation of contract by the applicants by sending a letter about their inability to borrow money on account of stringent conditions in Joint Development Agreement is highly incorrect and further, the Arbitral Tribunal has considered the case of the applicants in detail and since scope under Section 34 is very limited as observed in the above decisions, the decision in support

of refund of money cannot be entertained by this Court as this Court is not sitting in appeal. Further, the documents sought to be produced cannot be looked into, as they were not in existence during the arbitral proceedings and they were of the recent origin and therefore, since this Court does not exercise jurisdiction on original suits like Civil Court, or in appeal, there is no scope for receipt of evidence under Order 41 Rule 27 CPC.

44. With this background, I have to go through the award. The main attack of the applicants is that the award is against the fundamental policy of Indian law and opposed to basic notions of justice and patently illegal, as learned Arbitrators have not followed the terms of the contract and mis- interpreted the same and further, the decision quoted by the applicants have not been considered regarding appointment of guardian and the repudiation of contract etc. So, when it is specific contention that the Arbitral Tribunal has erroneously rejected the application, then, it is to be seen whether the reason assigned by the

Arbitral Tribunal is against the law of the land. In this regard, the Arbitral Tribunal, while considering the issue No.2 in dispute No.1 and issue No.1 in dispute No.2 has considered the same. Therefore, let me go through the reasons assigned by the Arbitral Tribunal to the point No.2 and 2(a) in dispute No.1 and point No.1 and 1(a) in dispute No.2. It is specifically contended that the wife of the first defendant Mrs. Chitra Poornima does not have valid authority to represent the respondent before the Arbitral Tribunal on the ground that the power of attorney given to her has no application as the respondent was not mentally fit and therefore, automatically it comes to an end. Learned Arbitrator while rejecting the application filed for appointment of guardian has referred to the decision in the case of **Booz Allen and Hamilton Inc. Vs. SBI Home Finance Limited**, reported in **(2011) 5 SCC 532**, has come to the conclusion by referring to para No.36 of the Judgment, when guardian can be appointed and it is specifically stated in para No. 7.3 that the decision is not

applicable to a dispute about mental infirmity or status of a person. According to the Arbitral Tribunal, the guardianship matters referred to above is with reference to appointment of guardian under the Guardian and Wards Act or Minority and Guardianship Act and not to the appointment of a guardian for a party for the purpose of particular case. No doubt, under Section 17(1) of the Act, the party may, during the arbitral proceedings seek for appointment of a guardian for a minor or a person of unsound mind for the purpose of arbitral proceedings. However, learned Arbitrators have referred to the very claim statement filed by the applicants herein by making the respondent as party, wherein, they were not stated about his mental condition and just because he was sufficiently aged and unable to recollect certain aspects, it does not mean that he was mentally incapable of taking decision. Therefore, by rejecting the contention of the applicants herein and the decision cited by learned counsel for the applicants herein reported in **AIR 1993 Allahabad 143** in

a case of **Mahendra Pratap Singh (deceased) Vs. Padma Kumari Devi,** has held categorically by interpreting Section 201 of the Contract Act that the appointment of guardian is not necessary, accordingly, the IA came to be rejected. The Arbitral Tribunal has given elaborate reasons and even in the arbitration application filed under Section 9, the claimant have obtained interim order by showing the respondent without alleging anything about his mental condition. Therefore, the Tribunal has rightly rejected the claim, as rightly pointed out learned senior counsel for the first defendant. Absolutely there is no mistake committed by the Arbitral Tribunal in arriving at conclusion about mental condition of the deceased defendant and fact that the RW1 who has been assisting her husband right from the date of Memorandum of Understanding till the death of the defendant and in somewhere it is stated that she herself attended the meetings along with the claimant for the purpose of project lending, etc., it cannot be held that RW1 was not

conversant with each and every aspects of the project and therefore, I do not find any irregularity in the decision regarding appointment of guardian. Therefore, I am of the view that the Arbitral Tribunal has rightly interpreted the case regarding alleged mental illness and has rightly concluded the same and it cannot be held that the tribunal has not considered the decision cited by learned senior counsel for the applicants

45. Now, coming to the aspect of repudiation of contract or/unilateral termination of the contract, etc. Learned senior counsel for the applicants has cited almost five decisions and the said aspect has been taken note of by the Arbitrators, while dealing with issue Nos.5, 5(a) in dispute No.1 and issue No.2 in dispute No.2 and the reasons are available in para No.9 of the award. It is specifically contended by the respondent that he accepted the letter issued by the applicants stating that if the Joint Development Agreement is not suitably amended for the purpose of availing loan from the project lenders, then, it is

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difficult to proceed with the contract and the respondent expressed that if applicants are not able to proceed with the construction for want of fund and the defendant was not prepared for modification of Joint Development Agreement as desired by the opinion given by the advocate for the project lender, then, whether it amounts to repudiation, etc. Learned Arbitral Tribunal by referring to the clause No.3 (a) of the Joint Development Agreement has stated that it is the obligation on the part of applicants to obtain loan for development of the mall from project lenders in conformity with the terms of the Joint Development Agreement (underlined by me)and obtained letter from the project lenders that they confirmed the receipt of the Joint Development Agreement and sanctioned the project loan based on the terms of the Joint Development Agreement; the project loan sanctioned letter dated 9.10.2014, which was not in conformity with the terms of the Joint Development Agreement and which stipulated that a fresh Joint Development Agreement is to be executed to suite

the requirement of the Bank/ or its legal advisers without complying the pre-condition stipulated in clause No.3 and 5 of Joint Development Agreement. The applicants repeatedly sought consent of the defendant to modify the Joint Development Agreement which was not accepted by the defendant. Therefore, according to the applicants the respondent has repudiated the contract unilaterally and according to the defendant it is by conduct, the applicants have repudiated the contract. The Arbitral Tribunal by referring to the various NOCs obtained from the various authorities and payment made by it towards non-refundable deposit to the tune of Rs.69 crores and obtaining of project loan for a sum of Rs.310 crores, etc., and by referring to the clause No. 23 (5) of Joint Development Agreement, regarding 40% of deposit received from the tenant of the mall into designated deposit amount and other conditions and documents furnished by the parties, has rightly come to the conclusion that the applicants have not repudiated the contract. The

applicant no.1, vide its letter dated 6.1.2015 at Ex. C60(a) has expressed that it is able to secure loan of Rs.124 crores from Bank of Baroda and the sanction letter stipulates certain modification to the Joint Development Agreement and therefore, same may be accepted. However, the defendant has not agreed for it. Thereafter, the respondent as per Ex.C62, dated 19.1.2015 has expressed that the applicants have breached and repudiated the obligation under Joint Development Agreement and he accepted the same. The Arbitral Tribunal by referring to the decision in the case of **Workmen and others Vs. M/s Hindustan Levers Limited,** reported in **(1984) 1 SCC 728** to the effect that unilateral repudiation of an agreement does not result in termination of agreement, has opined that there is no repudiation on the part of the applicants. The Arbitral Tribunal has not considered unilateral termination as alleged by the applicants or deemed repudiation by the applicants as contended by the defendant and the decision quoted by the applicants in the case of **Smt. Claude – Lila**

Parulekar Vs. Sakal Papers Private Limited of the Apex Court has also been taken note of by the Arbitral Tribunal and the attempt made by the applicants to secure loan from Goldman Sachs Ltd., by entering into contract with said company and in view of the RBI guidelines, requested the defendant to modify the Joint Development Agreement to suit the condition. The above two decisions have been considered by the Arbitral Tribunal and the decision which was not cited before the Arbitral Tribunal i.e., MANU/WP/009/1906 though cited, it has come within the line of above decision and the ratio laid down is one and the same. The Arbitral Tribunal, by referring to the decision cited by learned counsel for the respondent regarding repudiation, has come to the conclusion that the claimant wanted to respondent to agree for modifying the Joint Development Agreement by agreeing for upfront mortgage of the schedule property to secure the loan, which was not the desire of the defendant as per the Joint Development Agreement. So, by referring to the evidence

as well as materials on record, concluded by holding that there was no repudiation by the applicants and further, the respondent have not unilaterally terminated the contract by holding that mere acceptance of letter, dated 19.1.2015 cannot be treated as repudiation of contract. Accordingly, negatived contention of both the parties regarding termination of contract.

46. Learned counsel for the applicants has submitted two more decisions before this Court, i.e., one in the case of **M.B. Desai & Bros, Vs. Coorg & Mysore Coffee Co. Ltd.,** reported in **1975 (2) Kar L J 46** and the decision in the case of **National Fertilizers Vs. Puran Chand Nangia,** reported in **200 (8) SCC 343,** that unilateral termination of contract is not permissible under law. However, the facts of the case are different here and learned Arbitrators have correctly considered this aspect in their impugned award and I do not find any error or any grounds, much less one mentioned in Section 34 are made out. Hence, above decisions are not applicable to the case on hand.

47. The another leg of arguments of learned counsel for the applicants is that non examination of the respondent is fatal to their case as best witness has been prevented from appearing before the Tribunal and therefore, adverse inference has to be drawn and this aspect has not been considered by the Arbitral Tribunal. Learned Arbitrators, while dealing with issue No.2 in the dispute No.1 and 2, has categorically held that the evidence of RW1 cannot be thrown out as she has participated in many meetings with respondent and even the applicants, have admitted her presence at the time of meetings with Goldman Schs, a project lender and the various communications produced before the tribunal goes to show that it is the RW1, who was taking active role on account of the age of the defendant and therefore, the contention that the non-examination of defendant is fatal and adverse inference has to be drawn etc., cannot be considered. Though, point No.2 in dispute No.1 and point No.1 in dispute No.2, the Arbitral Tribunal has held in para No. 7.5

of the award that the applicants were interacting in connection with this project with RW1 as representative of the respondent. Merely, because the respondent due to old age has become forgetful or suffers from loss of memory, the agency does not come to an end. Further, since, RW1 who is the respondent's wife had been acting on behalf of the respondent even in respect of the transaction in question and as she is examined, no adverse inference can be drawn and the said opinion is based upon the finding and their question, who recorded the evidence of RW1 and RW1 was also subjected to cross-examination. Therefore, the opinion expressed by the tribunal regarding the evidence of RW1 cannot be substituted with any other view by this Court under Section 34. Though, the applicants cited a decision in the case of **Vidyadhar Vs. Manikrao and another** reported in **1999 3 SCC 573**, to the effect that if the party does not appear and subject him for the cross-examination, then, the presumption would arise that the case set up by him is not correct. But, the above

decision is not applicable for the reason that here, the wife of the defendant who has been actively participating along with her husband as admitted by applicants in all the meetings, then, it cannot be held that adverse inference has to be drawn on account of non-examination of the defendant George Thanngaiah. Therefore, above decision is not helpful to him.

48. The next decision is in the case of **Iswar Bhai C. Patel & Bachu Bhai Patel Vs. Harihar Behera and another** reported in **(1999) 3 SCC 457,** which is also the decision come under the same aspect, but, the facts are different and above decision is also not applicable to the case on hand, as the RW1 was actively participating with all right from 2007 and most of the meetings she was present along with her husband. Therefore, it cannot be held that the award suffers from to patient illegality on account of non-consideration of the decisions cited by the learned senior counsel for the applicants.

49. Since, the applicants have not pressed the relief of specific performance, the question requires to be determined is to whether the award suffers from non application of terms of the contract regarding refund of the amount and whether it is against the evidence placed by the parties before the learned Arbitral Tribunal. As far as the contention of the applicants that the defendant has not produced the documents regarding mental condition of the respondent so as to examine the power of attorney holder is of no consequence for the reason assigned by the Arbitrator and same cannot be found fault with. It is contended by learned senior counsel for the applicants that they have spent Rs.169 crores for the purpose of payment of non-refundable deposit, obtaining of various permissions, NOCs, besides other expenses of earth breaking ceremony which was done by spending huge amount as desired by the defendant, etc., the submission made by the both the counsels also documentary evidence placed before the Arbitral Tribunal, this Court has to see whether the

findings given by the learned Arbitrator regarding the refund of money is just and proper. Learned Arbitrators on the basis of the records and also the contention taken by the applicants that a sum of Rs.69 crores have been paid as non-refundable deposit to the respondent, which he has earned lot of interest and Rs.116 crores of rupees have been spent on the project as stated in the claim statement by engaging so many consultants as stated in the claim statement and it is contended that major portion of amount has been paid by the applicants and therefore, it cannot be held that the applicants were not in a position to arrange fund for the development of the property and these aspects have been considered by the Arbitrators by referring to the Ex.C84 and C88, letter issued by the Yess Bank stating that they are ready to lend Rs.350 crores and the contention of learned senior counsel for the defendant is that the applicants were not able to even keep the amount of Rs. 20,50,00,000/- in the escrow account for more than three months and it could be gathered from the financial

position of the applicants that they were not in a position to arrange huge fund, unless, the Joint Development Agreement is suitably amended as per the opinion of the legal advisors of the project lenders. Learned Arbitrators have taken into account, the e-mails sent by the applicants to respondent, which also disclose problems faced on account of the stringent conditions imposed by the defendant in the Joint Development Agreement and as per Ex. R76, SMS sent to RW1 goes to show that the draft Joint Development Agreement has been prepared etc., and subsequently, portion of the same has been withdrawn by the CW2. The project lender insisted for upfront mortgage of a portion of the share of the developer though, it was agreed to by the defendant by modifying Joint Development Agreement, but the upfront mortgage of schedule property was not permissible as per the clause of Joint Development Agreement, which cannot be termed as the reason for the developer to get the proper loan from the project lenders. The defendant has claimed sum of Rs.353,39,67,142/-

under the head of damages for loss of opportunity and document No. 38 was placed, how the damages has to be ascertained and rents and other income from the mall up to 19.7.2016 and the Arbitral Tribunal has considered all these aspects, while dealing with refund of money paid by the defendant, while deciding the claim of the defendant, it has taken into account the estimated market value for the year 2014 at Ex.R55 and the hike in the market value in the year 2014 and the title value in the year 2017, etc., has taken into consideration, to assess the loss and by assessing the same, Tribunal has granted Rs.10 crores towards loss. As far as, loss of rent is concerned, it has taken into account the interest portion also and it is specifically stated that since, the tenants were vacated still they are vacant and the building requires repair also and by taking into account, the rent which the defendant was receiving from Escer as well as M/s Genisis, and also by calculating maintenance charges and other aspects, has granted Rs.34 crores and regarding security maintenance

and electric charges, which required to be paid by the respondent has also taken note and a sum of Rs.4 crores was awarded. Regarding the maintenance charges, the Tribunal has awarded Rs.1.5 crores and regarding reimbursement of electric charges about Rs.5,84,500/- was ordered and a sum of Rs.54,63,968/- is ordered to be given towards security and electric charges and regarding reinstating of schedule property on account of partial demolition the Tribunal has granted Rs.1 crore and regarding cost incurred for restoration of the building was not allowed and reimbursement of property tax was not allowed for the year 2009-10, but for the year 2010-11 was also considered, but the same was not allowed. Regarding interest on account of delay in payment of Rs.19 crores was also not allowed and in all the Tribunal has ordered to refund Rs.51,04,63,968/- and after deducting the amount paid by the defendant a sum of Rs.42.45 crores were ordered to be paid to the claimant and the Arbitral Tribunal has given correct account how, they have arrived at. The

main argument of learned senior counsel for the applicants is that the awarding of Rs.10 crores towards compensation for loss suffered is without any basis, but, the reason is assigned. According to him, the defendant has earned huge interest as admitted by RW1 and therefore, the amount paid by it ought not to have been deducted and the portion of amount is not correct, etc. But, learned Arbitrators have taken into account each and every aspect, in its rights perspective by referring the documents and evidence and has rightly pointed out by the learned counsel for the defendant, the award regarding refund of the amount of Rs.42.45 crores cannot be touched as right from the year 2007 till 2015, nothing has happened, except obtaining licence, NOCs and earth breaking ceremony exchange of property and the defendant has lost huge rent on account of vacating the premises and maintaining the same. Therefore, in view of the above facts, I do not find any mistake in the award regarding refund of the amount paid by the defendant and as the applicants have not

pressed the relief of specific performance, I am of the view that the award does not suffer from any patent illegality as contended.

50. Ofcourse, he has referred to various documents as stated in the previous paras and whether an award of this nature can be set aside as stated in the various decisions cited by learned counsel for the defendant and when an award can be set aside. Ofcourse, the applicants contend that the defendant who himself is wrong cannot be allowed to take benefit of his own wrong by referring to two decisions reported in **AIR 1998 Rajasthan 248** and **1996 6 SCC 342** and also latest decision reported in **(2013) 9 SCC 363**.. It is contended that the above award is perverse it can be set aside and if it is contrary to the contract, the same is liable to be set aside under Section 34 of the Act, and in the said regard both the counsels have cited the decisions in the case of **Ssangyong Engineering and construction Company Ltd.**, and the some more decisions which I have already stated in the previous paras. An

award can be set aside only if it is against the public policy, terms of the contract and failure to apply the decision of the Apex Court and High Courts regarding terms of the contract which amounts to patent illegality. When we read the entire award, there is nothing to show that the Arbitral Tribunal has failed to consider the case of the applicants and that they have failed to interpret the terms of the contract and further, the Arbitral Tribunal has elaborately discussed, each and every aspect by raising proper points and therefore, there is no scope for interference under Section 34 of the Act. Hence, I find no merits in the application.

51. Further, the documents sought to be produced now, are pertaining to the period after the award and they were not available at the time of Arbitral proceedings and therefore, they cannot be receive like in Appeal and there is no question of appreciation of those facts by this Court and there is no scope for production of the documents. The Court has to decide the case on the basis of the documents

produced before the Tribunal and not before this Court and Court cannot opine anything on those documents to show that the applicants were vigilant and to prove ready and willing to perform their part of contract. Since, the Arbitration is the chosen forum, Arbitrators are the chosen Judges of the parties and when the parties are governed by the contract between the them and when they failed to perform their part of contract in a reasonable time, then, this Court cannot interfere with such findings as scope is very limited. Hence, I answer point Nos.1 and 2 in the **Negative**.

52. **Point No.3:-** For the aforesaid reasons, I proceed to pass the following Order.

ORDER

The suit/petition filed by the applicants under Section 34 of Arbitration & Conciliation Act, 1996 is hereby dismissed. No costs.

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Consequently, I.A V filed for receiving additional documents, stands rejected.

(Dictated to the Stenographer, typed by him, corrected and then pronounced by me in open Court on this the **23rd day of February, 2022**).

(CHANDRASHEKHAR U),
LXXXVII Addl.City Civil & Sessions Judge,
(Exclusive dedicated commercial Court)
Bengaluru.

CR. 5409/23
24/1/23

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ANNEXURE -42

Order Sheet

In the Court of COMMERCIAL COURT, BENGALURU

FR No. : Com.EX./180/2022

Registration No. : Com.EX./178/2022

Decree Holder Vs Judgement Debtor

Com. Ex. 178/2022

1) M/S NITESH INDIRANAGAR RETAIL PVT LTD	1) GEORGE THANGIAH SINCE DECEASED BY HIS LRS VIJAYA SHEKAR THANGIAH 2) RACHEL CHITRA PRABHAKAR
Nature of Case :	**Transactions of merchants, financiers, traders relating mercantile documents (enforce, interpret)**
Provision of Law :	U/O 21 RULE 11 OF CPC ,
Advocate for Decree Holder Sri./Smt. :	VIVEK HOLLA
Date of Filing :	11-04-2022
Date of Registration :	11-04-2022

Relief :
PRAYS FOR RECOVERY OF RS.59,92,00,000/-

DISPUTE NO.1/2016 DATED 25/4/2018 PASSED BY SOLE ARBITRATOR AT BENGALURU

Date of Cause of action :

Receipt No. Date	Purpose and Mode	Bank Name	Amount
231/2022-2023 11-04-2022	Process Fee Cash		20.00

CAO/CMO

Registered and made over this case to CCH-89 LXXXVIII ADDL. CITY CIVIL AND SESSIONS JUDGE court for disposal according to law.

COMMERCIAL COURT, BENGALURU
BENGALURU
Principal City Civil and Sessions Judge
City Civil Court
Bangalore

Office note :-
Stamp duty paid is sufficient.
RB
11/04/2022.

11.4.2022

COURT OF THE CITY CIVIL AND SESSIONS JUDGE

Plnr is present.
V.H. Advocate is present.
Heard
Issue Caveat notice

CRM No. 128/23

has deposited a sum of Rs.15,75,30,240/- towards the interest. Therefore, both the M/c are rejected.

The J.Dr shall pay the balance amount of Rs.65,385/- by 30.06.2023, failing which the D.Hr shall take steps to recover the same.

C/c LXXXVIII A.C.C. & S.J.,
(CCH-89) Bengaluru

30.06.23
Dhr. VH
J.dr.1,2 - GJ
for balance

Presiding Officer is on leave
Case adjourned to 10/7/23.
30/6
I/c Addl. CCJ

10/07/23
Dhr - VH
J.1,2 - GJ
for balance

Case advanced as fresh
for J.dr filing
for arrangement sum
10/7/23 to today
board otherwise

J.Dr's counsel files memo with DD bearing No.166682 dated 30.06.2023 in favour of the Registrar, City Civil Court, Bengaluru drawn on Union Bank of India, Indiranagar, Branch for the balance amount of Rs.65,385/-.

Copy of the memo furnished to D.Hr's counsel. Office to deposit the

Com(Ex) 178/22

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DD and release the amount in favour of the D.Hr if necessary particulars are furnished.

Ex.P. is dismissed as fully satisfied.

C/c LXXXVIII A.C.C. & S.J.,
(CCH-89) Bengaluru

File with DD RD from Peshkar on 11/7/23

11/7/2023

Received DD of Union bank of India, bearing No 166682 dt 30/6/2023 for Rs 65,385/- vide RO No. 854/2023 dt 11/7/2023 & sent to SBT for clearance.

11/7/2023

Sheristedar (Accounts)
City Civil Court, Bangalore

OF THE CITY CIVIL AND SESSIONS JUDGE

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ANNEXURE -43

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪೊಲೀಸು
ನಮೂನೆ ಸಂಖ್ಯೆ 157
ಜಿಲ್ಲೆ: ಬೆಂಗಳೂರು ನಗರ
ಪೊಲೀಸು ಠಾಣೆ: ಅಶೋಕನಗರ

(ಅದೇತ ಸಂಖ್ಯೆ:1539 ಮತ್ತು 154)

ಮೋಷಾರೋಪಣಾ ಪಟ್ಟಿ

ದೋಷಾರೋಪಣ ಸಂಖ್ಯೆ:
ಪ್ರಥಮ ಮಾಹಿತಿ ಸಂಖ್ಯೆ- 97/2020

ದಿನಾಂಕ: 25.06.2020
ದಿನಾಂಕ:16.03.2020

ದೂರು ಅಥವಾ ಮಾಹಿತಿ ನೀಡಿದವರ ಹೆಸರು, ವಿಳಾಸ ಮತ್ತು ವೃತ್ತಿ : ಶ್ರೀ ಕೆ.ಬಿ.ಸ್ವಾಮಿ, ಅಡ್ಜೆನ್, ನಿತೇಶ್ ಇಂದಿರಾನಗರ ರೀಟೈಲ್ ಪ್ರೈ. ಲಿ, ನಂ.110, ಆಂಡ್ರೋವ್ಸ್ ಬಿಲ್ಡಿಂಗ್, ಎಂ.ಜಿ.ರಸ್ತೆ, ಬೆಂಗಳೂರು.

ಕಲಮುಗಳು ಕೊಂಡವರು ಸರಿಯಾಗಿ ಬಂಧಿಸಿರಲಿ ಇಲ್ಲವೆ ಬಂಧಿಸಿದವರು ವಿಚಾರಣೆಗೆ ಒಪ್ಪಿಸುವ ಅಧಿಕಾರವುಳ್ಳ ಹೆಸರು & ವಿಳಾಸ (ಕಲಮುಗಳು ಕೊಂಡವರನ್ನು ಕೊಯ್ದು ಮಾಡಿಯಲ್ಲಿಗೆ ಬರೆಸಿ)	ವಿಚಾರಣೆಗೆ ಕಳುಹಿಸಿದ ಅಪಾದಿತರ ಹೆಸರುಗಳು ಮತ್ತು ವಿಳಾಸಗಳು		ಎಫ್.ಯಾವಾಗ & ಯಾರಿಂದ ಜಪ್ತಿಯಾಗಿ ಮತ್ತೆ ಬಂದ ವಿವರ ಗಳೊಂದಿಗೆ ಪ್ರಸ್ತುತ (ಜೋತೆ ಇರುವ ಆಯುಧಗಳು ನೇರವಾಗಿ ಅದನ್ನು ಮ್ಯಾಜಿಸ್ಟ್ರೇಟರಿಗೆ ಕಳಿಸಲಾಗಿದೆಯೇ ?) ವಿವರ ಮತ್ತು	ಸ್ವಾಧೀನಗಳ ಹೆಸರುಗಳು ಮತ್ತು ವಿಳಾಸಗಳು	ಅಪಾದನೆ ಮಾಹಿತಿ ಮತ್ತು ಅಪಾದನೆ ಸಂಬಂಧಿಸಿದ ಸಂಬಂಧ ಸಂಬಂಧಿಸಿದ ಕಾಲದಲ್ಲಿ ವಿದ್ಯಮಾನಗಳು ಹಾಗೂ ಯಾವ ಕಾನೂನು ಪ್ರಕರಣದಲ್ಲಿ ಮೇಲ್ಮಾಮ ಮಾಡಲು ಮೊದಲಾಗಿದೆ
	ದಸ್ತಗಿರಿ ಆದವರು	ಜಾಮೀನು ಮೇಲೆ ಅಥವಾ ಮುಚ್ಚಳಿಕೆಪತ್ರದ ಮೇಲೆ			
1	2	4	5	6	7
		1)ಶ್ರೀಮತಿ ಚಿತ್ರ ಸೂರ್ಯಮಾ ಕೋಂ ಲೇಟ್ ಜಾರ್ಜ್ ತಂಗಯ್ಯ, 52ವರ್ಷ, ವಾಸ ನಂ.6, ಕಮಿಷರಿಯೇಟ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು, 2)ವಿಜಯ್ ಶೇಖರ್ ತಂಗಯ್ಯ (ಗ್ರಾಜೇಖರ್ ತಂಗಯ್ಯ, ಬಿನ್ ಲೇಟ್ ತಂಗಯ್ಯ, 62ವರ್ಷ, ವಾಸ ನಂ.6, ಕಮಿಷರಿಯೇಟ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು. (ಮುಂದುವರೆದಿದೆ)	1)ಅಶೋಕನಗರ ಪೊಲೀಸ್ ಠಾಣೆ ಮೊ.ನಂ. 97/2020 ಕಲಂ 406,420 ಐಪಿಸಿ ಪ್ರಕರಣದ ಸ್ಥಿರಾಸ್ತಿ ವಿವರಿಯ ನೆಲು. 2)ಕೃತ್ಯ ನಡೆದ ಸ್ಥಳದ ಪಂಚನಾಮೆ ಅಸಲು 3)ಕೃತ್ಯ ನಡೆದ ಸ್ಥಳದ ಪಂಚನಾಮೆಗೆ ಸಹಕರಿಸಲು ಪಂಚಾಯಿತಿದಾರರಿಗೆ ನೀಡಿರುವ ಪೊಲೀಸ್ ನೋಟೀಸ್ ಸ್ವೀಕೃತಿ ಅಸಲು (ಮುಂದುವರೆದಿದೆ)	1) ಶ್ರೀ ಕೆ.ಬಿ.ಸ್ವಾಮಿ, ಅಡ್ಜೆನ್, ನಿತೇಶ್ ಇಂದಿರಾನಗರ ರೀಟೈಲ್ ಪ್ರೈ ಲಿ, ನಂ.110, ಆಂಡ್ರೋವ್ಸ್ ಬಿಲ್ಡಿಂಗ್, ಎಂ.ಜಿ.ರಸ್ತೆ, ಬೆಂಗಳೂರು (ಮುಂದುವರೆದಿದೆ)	ಕಲಂ 406, 420 ಸಹಿತ 34 ಐಪಿಸಿ (ಮುಂದುವರೆದಿದೆ)

ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್
ಅಶೋಕನಗರ ಪೊಲೀಸ್ ಠಾಣೆ
ಬೆಂಗಳೂರು-25.

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ಅಂಕಣ–4 ಮುಂದುವರಿದಿದೆ.

ಎ3) ರೇಚಲ್ ಚಿತ್ರ ಪ್ರಭಾಕರ್ @ ಚಿತ್ರ ಪ್ರಭಾಕರ್ ಕೋಂ ಪ್ರಭಾಕರ್, 59ವರ್ಷ, ವಾಸ ನಂ.6, ಕಮಿಷರಿಯೇಟ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು.

ಅಂಕಣ–5 ಮುಂದುವರಿದಿದೆ.

4) ಪಿರ್ಯಾದಿದಾರರಿಗೆ ಈ ಪ್ರಕರಣಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟ ಸಾಕ್ಷಾಧಾರಗಳನ್ನು ಮತ್ತು ದಾಖಲಾತಿಗಳನ್ನು ಒದಗಿಸುವಂತೆ ನೀಡಿರುವ ಪೊಲೀಸ್ ನೋಟೀಸ್ ಸ್ವೀಕೃತಿ ಅಸಲು

5) ಪಿರ್ಯಾದುದಾರರು ನೀಡಿರುವ ಅಸಲು ಪತ್ರ ದಿನಾಂಕ:17–03–2020. ಜೊತೆಗೆ ಮೃತ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರೊಂದಿಗೆ ಮಾಡಿಕೊಂಡಿರುವ ಎಂ.ಓ.ಯು, ಜೆ.ಡಿ.ಎ, ಅಗ್ರಿಮೆಂಟ್, ಜೆ.ಡಿ.ಎ ರದ್ದುಪಡಿಸಿರುವ ಪತ್ರ ಹಾಗೂ ಮೃತ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು ಎ1 ಆರೋಪಿತೆ ಚಿತ್ರ ಪ್ರಭಾಕರ್ ರವರಿಗೆ ಕೊಟ್ಟಿರುವ ಜಿ.ಪಿ.ಎ ಪತ್ರದ ದೃಢೀಕೃತ ಪ್ರತಿಗಳು

6) ಪಿರ್ಯಾದುದಾರರ ಕಂಪನಿಯವರು ಆರೋಪಿಗಳೊಂದಿಗೆ ವ್ಯವಹರಿಸಿರುವ ಸಂದರ್ಭದಲ್ಲಿ ತಗೆದಿರುವ ಫೋಟೋಗಳು.

7) ಮಾನ್ಯ ತಹಸೀಲ್ದಾರ್, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕ್ ರವರಿಗೆ ದೃಢೀಕೃತ ದಾಖಲಾತಿಗಳನ್ನು ನೀಡುವಂತೆ ಕೋರಿರುವ–ಮನವಿ ಪತ್ರಗಳ ಸ್ವೀಕೃತಿ ಅಸಲುಗಳು: -

8) ಮಾನ್ಯ ತಹಸೀಲ್ದಾರ್, ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕ್ ರವರು ನೀಡಿರುವ ಪತ್ರದ ಅಸಲು. ದಿನಾಂಕ:08–06–2020 ಮತ್ತು ರಾಜಸ್ವ ನಿರೀಕ್ಷಕರ ವರದಿ, ಭೂಮಾಪಕರ ವರದಿ, ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳಿಗೆ ಬರೆದಿರುವ ಪತ್ರ ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿಗಳಿಗೆ ಬರೆದಿರುವ ಪತ್ರ, ಹೆಚ್ಚುವರಿ ಆಯುಕ್ತರ ಮಹಾ ನಿರ್ದೇಶಕರಿಗೆ ಬರೆದಿರುವ ಪತ್ರ, ಕರ್ನಾಟಕ ಭೂ ಕಂದಾಯ ನಿಯಮ ಕಾಯ್ದೆ 2011 ರ ಸೆಕ್ಷನ್ 9 ರ ಉಪ ಸೆಕ್ಷನ್(1) ರ ಅಡಿಯಲ್ಲಿ ಸಲ್ಲಿಸಿರುವ ಅರ್ಜಿ ಮತ್ತು ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹೊಸದಾಗಿ ಆರಂಭಿಸಿರುವಂತೆ ಆರೋಪಿಗಳಾದ ಚಿತ್ರಪೂರ್ಣಮಾ ಹಾಗೂ ಇತರರಿಗೆ ನೀಡಿರುವ ನೋಟೀಸ್ ಹಾಗೂ ಪಹಣಿ ಪತ್ರಿಕೆಗಳು.

9) ಮ್ಯಾನೇಜರ್ ಆಂದ್ರ ಬ್ಯಾಂಕ್ ರವರಿಗೆ ಮೃತ ಜಾರ್ಜ್.ತಂಗಯ್ಯ ರವರ ಆಂದ್ರ ಬ್ಯಾಂಕ್, ಅಕೌಂಟ್ ನಂ. 028911011001526 ಇವರ ಅಕೌಂಟ್ ಸ್ಟೇಟ್‌ಮೆಂಟ್ ನೀಡುವಂತೆ ಕೋರಿರುವ ಮನವಿ ಪತ್ರದ ಸ್ವೀಕೃತಿ ಅಸಲು.

10) ಮ್ಯಾನೇಜರ್ ಆಂದ್ರ ಬ್ಯಾಂಕ್ ರವರು ನೀಡಿರುವ ಮೃತ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಆಂದ್ರ ಬ್ಯಾಂಕ್, ಅಕೌಂಟ್ ನಂ. 028911011001526 ಇವರ ಅಕೌಂಟ್ ಸ್ಟೇಟ್‌ಮೆಂಟ್ ದೃಢೀಕೃತ ಪ್ರತಿ.

11) ಮ್ಯಾನೇಜರ್ ಆಂದ್ರ ಬ್ಯಾಂಕ್ ರವರಿಗೆ ಮೃತ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಆಂದ್ರ ಬ್ಯಾಂಕ್, ಅಕೌಂಟ್ ನಂ. 028911011001526 ಇವರಿಂದ ಬೇರೆ ಅಕೌಂಟ್‌ಗಳಿಗೆ ಹಣ ವರ್ಗಾವಣೆಯಾಗಿರುವ ಬಗ್ಗೆ ಮಾಹಿತಿ ನೀಡುವಂತೆ ಕೋರಿರುವ ಮನವಿ ಪತ್ರದ ಸ್ವೀಕೃತಿ ಅಸಲು.

12) ಮ್ಯಾನೇಜರ್ ಆಂದ್ರ ಬ್ಯಾಂಕ್ ರವರು ಮೃತ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಆಂದ್ರ ಬ್ಯಾಂಕ್, ಅಕೌಂಟ್ ನಂ. 028911011001526 ಇವರಿಂದ ಹಣ ವರ್ಗಾವಣೆಯಾಗಿರುವ ಅಕೌಂಟ್ ಗಳ ಬಗ್ಗೆ ನೀಡಿರುವ ಮಾಹಿತಿಯ ಅಸಲು ಪ್ರತಿ.

13) ಮೃತ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಮರಣ ಪ್ರಮಾಣ ಪತ್ರದ ಜೆರಾಕ್ಸ್

14) ಶ್ರೀ ನಿತೇಶ್ ಶೆಟ್ಟಿ ರವರ ಸಾಕ್ಷಿ ಹೇಳಿಕೆ ಅಸಲು

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15) ಶ್ರೀ ವೈಧ್ಯನಾಥನ್ ತಂದ ಸಾಕ್ಷಿ ಹೇಳಿಕೆ ಅಸಲು.
16) ಶ್ರೀ ಶ್ರೀನಾಥ್ ರವರ ಸಾಕ್ಷಿ ಹೇಳಿಕೆ ಅಸಲು.
17) ಆರೋಪಿಗಳ ಜಾಮೀನು ಬಂಧಪತ್ರ ಅಸಲು.
18) ಆರೋಪಿಗಳು ಮಾನ್ಯ ಸಿಸಿಹೆಚ್-1ನೇ ನ್ಯಾಯಾಲಯದಿಂದ ಪಡೆದಿರುವ ನಿರೀಕ್ಷಣಾ ಜಾಮೀನು ಆದೇಶದ ಜೆರಾಕ್.

ಅಂಕಣ-6 ಮುಂದುವರಿದಿದೆ.

2) ಶ್ರೀ ನಿತೇಶ್ ತೆಟ್ಟಿ ಬಿನ್ ಜಿ.ವಿ.ತೆಟ್ಟಿ, 43ವರ್ಷ, ಮ್ಯಾನೇಜಿಂಗ್ ಡೈರೆಕ್ಟರ್, ನಿತೇಶ್ ಎಸ್ಟೇಟ್ಸ್ ಲಿ, ನಂ.08, 7ನೇ ಮಹಡಿ, ವಿಜಿರಸ್ತೆ ಬೆಂಗಳೂರು.
3) ಶ್ರೀ ವೈಧ್ಯನಾಥನ್ ಬಿನ್ ಲಾಲ್‌ಗುಡಿ ಅರುಣಾಚಲಂ ಸಪ್ತರಿಷಿ, 60ವರ್ಷ, ಎಕ್ಸಿಕ್ಯೂಟಿವ್ ಡೈರೆಕ್ಟರ್, ನಿತೇಶ್ ಎಸ್ಟೇಟ್ಸ್ ಲಿ. ನಂ.08, 7ನೇ ಮಹಡಿ, ಎ.ಜಿ.ರಸ್ತೆ, ಬೆಂಗಳೂರು.
4) ಶ್ರೀನಾಥ್ ಬಿನ್ ರಾಮಣ್ಣ,32ವರ್ಷ, ಸೀನಿಯರ್ ಮ್ಯಾನೇಜರ್, ನಿತೇಶ್ ಎಸ್ಟೇಟ್ಸ್ ಲಿ. ನಂ.08, 7ನೇ ಮಹಡಿ, ವಿ.ಜಿ.ರಸ್ತೆ, ಬೆಂಗಳೂರು.
5) ಶ್ರೀ ಮಹೇಶ್ ಬಿನ್ ರಾಜೇಗೌಡ,30ವರ್ಷ, ವಾಸ ನಂ.269, 3ನೇ ಮೈನ್, 2ನೇ ಕ್ರಾಸ್, ಆರ್.ಬಿ.ಐ ಲೇಔಟ್, ಜೆ.ಪಿ.ನಗರ 7ನೇ ಹಂತ, ಬೆಂಗಳೂರು.
6) ಶ್ರೀ ಅಭಿತೇಜ್ ಬಿನ್ ಚಿಕ್ಕೋನು, 26ವರ್ಷ, ವಾಸ ನಂ.280, 3ನೇ ಕ್ರಾಸ್, 5ನೇ ಮೈನ್, ಕೋರಮಂಗಲ 1ನೇ ಬ್ಲಾಕ್, ಎಕ್ಸ್‌ಟೆಂಷನ್, ಬೆಂಗಳೂರು
7) ಶ್ರೀ ಎಪ್.ತೇಜಸ್ ಕುಮಾರ್, ತಹಸೀಲ್ದಾರ್, ಬೆಂಗಳೂರು ನಾರ್ತ್ ತಾಲ್ಲೂಕ್, ಕೆ.ಆರ್.ಪುರಂ, ಬೆಂಗಳೂರು
8) ಶ್ರೀ ಶ್ರೀನಿವಾಸ್, ಮ್ಯಾನೇಜರ್, ಆಂಧ್ರ ಬ್ಯಾಂಕ್, ಇಂದಿರಾನಗರ ಬ್ರಾಂಚ್, ಬೆಂಗಳೂರು ನಗರ.
9) ಶ್ರೀ ರಮೇಶ್.ಎಂ.ಎಸ್, ಪಿಎಸ್ಐ, ಅಶೋಕನಗರ ಪೊಲೀಸ್ ಠಾಣೆ ಬೆಂಗಳೂರು ನಗರ.
10) ಶ್ರೀ ಜಗದೀಶ.ಎನ್, ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್, ಅಶೋಕನಗರ ಪೊಲೀಸ್ ಠಾಣೆ, ಬೆಂಗಳೂರು ನಗರ.

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ಅಂಕಣ–7 ಮುಂದುವರಿದಿದೆ.

ಬೆಂಗಳೂರು ನಗರ. ಇಂದಿರಾನಗರ, 80 ಅಡಿ ರಸ್ತೆಯಲ್ಲಿರುವ ಮುನ್ಸಿಪಲ್ ಕಾರ್ಪೊರೇಷನ್ ನಂ. 21ರಲ್ಲಿ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ಎಂಬುವರ ಹೆಸರಿನಲ್ಲಿ ಸುಮಾರು 2.16.283 ಚದುರ ಅಡಿ ವಿಸ್ತೀರ್ಣವಿದ್ದು, ಇದನ್ನು ಕಂಡ ನಿತೇಶ್ ಎಸ್ಟೇಟ್ ಕಂಪನಿಯ ಮ್ಯಾನೇಜಿಂಗ್ ಡೈರೆಕ್ಟರ್ ರವರಾದ ಸಾಕ್ಷಿ–2 ಶ್ರೀ ನಿತೇಶ್ ಶೆಟ್ಟಿ ಮತ್ತು ಎಕ್ಸಿಕ್ಯೂಟಿವ್ ಡೈರೆಕ್ಟರ್ ಆದ ಸಾಕ್ಷಿ–3 ಶ್ರೀ ವೈದ್ಯನಾಥನ್ ರವರು ಸದರಿ ಜಾಗವನ್ನು ಜೆ.ಡಿ.ಎ ಮಾಡಿಕೊಂಡು ವರ್ಲ್ಡ್ ಕ್ಲಾಸ್ ಶಾಪಿಂಗ್ ಮಾಲ್ ನಿರ್ಮಾಣ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಸದರಿ ಜಾಗವನ್ನು ತಮ್ಮ ಕಂಪನಿಯ ಹೆಸರಿಗೆ ಜೆ.ಡಿ.ಎ ಮಾಡಿಕೊಡುವಂತೆ ಜಾಗದ ಮಾಲೀಕರಾದ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ಮತ್ತು ಅವರ ಕುಟುಂಬದವರಾದ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಹೆಂಡತಿ ಎ1 ಆರೋಪಿತೆ ಶ್ರೀಮತಿ ಚಿತ್ರ ಪೂರ್ಣಿಮಾ ಮತ್ತು ಅವರ ಮಕ್ಕಳಾದ ಎ2 ಆರೋಪಿ ಕೇಖರ್ ತಂಗಯ್ಯ ಹಾಗೂ ಎ3 ಆರೋಪಿತೆ ಚಿತ್ರ ಪ್ರಭಾಕರ್ ಎಂಬುವರನ್ನು ಆರೋಪಿತರ ಮನೆ ನಂ.06, ಕಮಿಷರಿಯೇಟ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು ಇಲ್ಲಿ ಬೇಟಿ ಮಾಡಿ ಮಾತುಕತೆ ಮಾಡಿದ್ದು, ಆ ಸಮಯದಲ್ಲಿ ಎ1, ಎ2 ಮತ್ತು ಎ3 ಆರೋಪಿಗಳು ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರಿಗೆ ವಯಸ್ಸಾಗಿದ್ದು, ಅವರು ಅನಾರೋಗ್ಯದಿಂದ ಬಳಲುತ್ತಿದ್ದು, ಅವರ ಪರವಾಗಿ ಎಲ್ಲಾ ವ್ಯವಹಾರವನ್ನು ಎ1 ಆರೋಪಿ ಮತ್ತು ಮಕ್ಕಳಾದ ಎ2 ಮತ್ತು ಎ3 ಆರೋಪಿಗಳೇ ನೋಡಿಕೊಳ್ಳುತ್ತೇವೆ ಎಂದು ಹೇಳಿ ನಂಬಿಸಿ, ಜಾರ್ಜ್ ತಂಗಯ್ಯ ಅವರ ಮರಣದ ನಂತರ ಈ ವ್ಯವಹಾರಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಅವರು ಮಾಡಿದ್ದ ಯಾವುದೇ ಪ್ರಕ್ರಿಯೆಗಳು ಊರ್ಜಿತವಾಗುವುದಿಲ್ಲವೆಂದು ಹಾಗೂ ಇವರಿಂದ ತಮಗೆ ಕಾನೂನು ಪ್ರಕ್ರಿಯೆಯಲ್ಲಿ ತೊಡಕಾಗುವುದಿಲ್ಲವೆಂದು ಮನಗಂಡು ಆರೋಪಿಗಳು ಸಾಕ್ಷಿ–1 ರವರ ಕಂಪನಿಗೆ ಮೋಸ ಮಾಡಿ ಅಕ್ರಮ ಲಾಭಗಳಿಸುವ ದುರುದ್ದೇಶದಿಂದ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಜಾಗದಲ್ಲಿ ಸರ್ಕಾರಿ ಖರಾಬು ವಿಸ್ತೀರ್ಣ ಸೇರಿದೆ ಎಂದು ಗೊತ್ತಿದ್ದರೂ ಸಹ ಅದನ್ನು ಮರೆಮಾಚಿ, ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಸಮಕ್ಷಮದಲ್ಲಿ ಎ1, ಎ2, ಎ3 ಆರೋಪಿತರುಗಳು ಸಾಕ್ಷಿ–2 ಮತ್ತು 3 ರವರೊಂದಿಗೆ ತಮ್ಮ ಜಾಗವನ್ನು ಶಾಪಿಂಗ್ ಮಾಲ್ ನಿರ್ಮಾಣ ಮಾಡಲು ಜೆ.ಡಿ.ಎ ಕೊಡುತ್ತೇವೆ ಎಂದು ಹೇಳಿ ಮಾತುಕತೆ ಮಾಡಿ, ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರಿಂದ ಎಂ.ಓ.ಯು ಮತ್ತು ಜೆ.ಡಿ.ಎ ಮಾಡಿಸಿಕೊಟ್ಟು, ಸದರಿ ಎಂ.ಓ.ಯು ಮತ್ತು ಜೆ.ಡಿ.ಎ ಪತ್ರಗಳಿಗೆ ಎ1 ಆರೋಪಿತೆಯು ಸಾಕ್ಷಿಯಾಗಿ ತಾನೇ ಮುಂದೆ ನಿಂತು ಸಹಿ ಮಾಡಿ, ಸಾಕ್ಷಿ–1 ರವರ ಕಂಪನಿಯಿಂದ ಹಂತ ಹಂತವಾಗಿ 105.5 ಕೋಟಿ ಹಣವನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತಾರೆ.

ಇದಾದ ನಂತರ ಸಾಕ್ಷಿ–1 ರವರ ಕಂಪನಿಯವರು ಸದರಿ ಜಾಗವಲ್ಲಿ ಮಾಲ್ ನಿರ್ಮಾಣ ಮಾಡುವ ಪ್ರಕ್ರಿಯೆಗಳನ್ನು ಕೈಗೊಂಡಾಗ ಆರೋಪಿಗಳ ಸ್ವಾಧೀನದಲ್ಲಿದ್ದ ಜಾಗದ ಸರ್ಕಾರಿ ಖರಾಬು ವ್ಯಾಪ್ತಿಗೆ ಒಳಪಟ್ಟಿರುವುದು ಮತ್ತು ಸದರಿ ಆರೋಪಿಗಳು ಸರ್ಕಾರಿ ಖರಾಬು ಜಾಗವನ್ನು ಒತ್ತುವರಿ ಮಾಡಿಕೊಂಡು ಅಕ್ರಮವಾಗಿ ರಸ್ತೆ ಮತ್ತು ಕಟ್ಟಡವನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿರುವುದು ಸಾಕ್ಷಿ–7 ರವರಾದ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕ್ ತಹಸೀಲ್ದಾರ್ ರವರು ನೀಡಿರುವ ವರದಿಯಿಂದ ಕಂಡುಬಂದಿರುತ್ತದೆ. ಸದರಿ ಆರೋಪಿಗಳು ಮೋಸ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ತಮ್ಮ ಮಾಲೀಕತ್ವದಲ್ಲಿರುವ ಜಾಗವು ಸರ್ಕಾರಿ ಖರಾಬು ವ್ಯಾಪ್ತಿಗೆ ಒಳಪಟ್ಟಿರುವುದನ್ನು ಮರೆಮಾಚಿ ಸಾಕ್ಷಿ–1 ರವರ ಕಂಪನಿಗೆ ಎಂ.ಓ.ಯು ಮತ್ತು ಜೆ.ಡಿ.ಎ ಮಾಡಿಕೊಟ್ಟು ಎ1, ಎ2 ಮತ್ತು ಎ3 ಆರೋಪಿತರು ಮೇಲ್ಕಂಡ ವ್ಯವಹಾರದ ಪ್ರತಿ ಸಂದರ್ಭದಲ್ಲಿ ಹಾಜರಿದ್ದು, ಸದರಿ ಜಮೀನಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಲೋಪಗಳನ್ನು ಮುಚ್ಚಿಟ್ಟು, ಮೋಸಮಾಡಿ ನಂತರ ಸಾಕ್ಷಿ–1 ರವರ ಕಂಪನಿಯಿಂದ 105.5 ಕೋಟಿ ಹಣವನ್ನು ಪಡೆದುಕೊಂಡು ತಮ್ಮ ಸ್ವಂತಕ್ಕೆ ಬಳಸಿಕೊಂಡು ಸಾಕ್ಷಿ–1 ರವರ ಕಂಪನಿಗೆ ಅಕ್ರಮ ನಷ್ಟ ಉಂಟು ಮಾಡಿ ನಂಬಿಕೆ ದ್ರೋಹ ಎಸಗಿ ಮೋಸಮಾಡಿರುವುದು ಇದುವರೆಗಿನ ತನಿಖಾ ಕಾಲದಲ್ಲಿ ಸಂಗ್ರಹಿಸಿದ ಸಾಕ್ಷಾಧಾರಗಳಿಂದಲೂ ಮತ್ತು ಸಾಕ್ಷಿ–7 ರವರು ನೀಡಿರುವ ವರದಿಯಿಂದಲೂ ಎ1, ಎ2 ಮತ್ತು ಎ3 ಆರೋಪಿಗಳ ವಿರುದ್ಧ ಆರೋಪ ದೃಢಪಟ್ಟಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಮೇಲ್ಕಂಡ ಕಲಂಗಳ ಅನ್ವಯ ಆರೋಪಿಗಳ ವಿರುದ್ಧ ದೋಷಾರೋಪಣ ಪಟ್ಟಿಯನ್ನು ಸಲ್ಲಿಸಲಾಗಿದೆ.

ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್

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ನಿವೇದನೆ:-

ಈ ಪ್ರಕರಣದಲ್ಲಿ ಇನ್ನೂ ಹೆಚ್ಚಿನ ಸಾಕ್ಷಾಧಾರಗಳು ಲಭ್ಯವಾದಲ್ಲಿ ಕಲಂ 173(8) ಸಿಆರ್‌ಪಿಸಿ ಪ್ರಕಾರ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ನಿವೇದಿಸಿಕೊಳ್ಳಲು ಅನುಮತಿಯನ್ನು ನೀಡುವಂತೆ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಕೋರಿದೆ.

(ಜಗದೀಶಯ್ಯ)
ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್
ಅಶೋಕನಗರ ಪೊಲೀಸ್ ಠಾಣೆ
ಬೆಂಗಳೂರು-25.

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ದಿನಾಂಕ:17-03-2020

ನಾನು ಮೇಲೆ ಹೇಳಿರುವ ವಿಳಾಸದ ನಿತೇಶ್ ಎಸ್ಟೇಟ್ಸ್ ಎಂಬ ಕಂಪನಿಯಲ್ಲಿ ಸೀನಿಯರ್ ಮ್ಯಾನೇಜರ್ ಆಗಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ನಮ್ಮ ಕಂಪನಿಯು ಪ್ರಾಪರ್ಟಿ ಕನ್ಸಟ್ರಕ್ಷನ್ ಮತ್ತು ಡೆವಲಪ್ಮೆಂಟ್ ಮಾಡುವ ಕಂಪನಿಯಾಗಿರುತ್ತದೆ. ಶ್ರೀ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ಎಂಬುವರ ಮಾಲೀಕತ್ವದಲ್ಲಿ ಖಾತೆ ನಂ.21, 80 ಅಡಿ ರಸ್ತೆ, ಇಂದಿರಾನಗರ, ಬೆಂಗಳೂರು-75 ಇಲ್ಲಿ ಸುಮಾರು 5 ಎಕರೆ ಜಾಗ ಇರುವುದಾಗಿ ಈ ಜಾಗದ ಮಾಲೀಕರು ಅಭಿವೃದ್ಧಿಗಾಗಿ ಜೆ.ಡಿ ಕೊಡುವುದಾಗಿ ನಮಗೆ ತಿಳಿದು ಬಂದ ಕಾರಣ 2007ನೇ ಜನವರಿ ತಿಂಗಳಲ್ಲಿ ಮತ್ತು ನಮ್ಮ ಕಂಪನಿಯ ಮ್ಯಾನೇಜಿಂಗ್ ಡೈರೆಕ್ಟರ್ ಶ್ರೀ ನಿತೇಶ್ ಶೆಟ್ಟಿ ಮತ್ತು ಎಕ್ಸಿಕ್ಯೂಟಿವ್ ಡೈರೆಕ್ಟರ್ ಶ್ರೀ ವೈಧ್ಯನಾಥನ್ ರವರು ಶ್ರೀ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಮನೆ ಮತ್ತು ಆಫೀಸ್ ಬಳಿ ಹೋಗಿ ಅವರಿಗೆ ನಿಮ್ಮ ಜಾಗದಲ್ಲಿ ಶಾಪಿಂಗ್ ಮಾಲ್ ನಿರ್ಮಾಣ ಮಾಡುವುದಾಗಿ ಸದರಿ ಜಾಗವನ್ನು ತಮಗೆ ಜೆ.ಡಿ.ಎ ಮಾಡುವಂತೆ ಜಾಗದ ಮಾಲೀಕರಾದ ಶ್ರೀ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರೊಂದಿಗೆ ಮಾತುಕತೆ ಮಾಡಿರುತ್ತಾರೆ. ಮಾತುಕತೆ ಪ್ರಕಾರ ಅವರಿಗೆ 105 ಕೋಟಿಗೂ ಹೆಚ್ಚು ಹಣ ಕೊಡುವಂತೆ ಮತ್ತು ಸದರಿ ಜಾಗದಲ್ಲಿ ನಿರ್ಮಾಣ ಮಾಡುವ ಶಾಪಿಂಗ್ ಮಾಲ್‌ನಲ್ಲಿ 50:50 ಅನುಪಾತದಲ್ಲಿ ಶೇರು ತಗೆದುಕೊಳ್ಳುವಂತೆ ಒಪ್ಪಂದ ಮಾಡಿಕೊಳ್ಳಲಾಗಿತ್ತು. ಈ ಮಾತುಕತೆ ನಡೆದಾಗ ಜಾರ್ಜ್ ತಗಯ್ಯ ರವರ ಪತ್ನಿ ಶ್ರೀಮತಿ ಚಿತ್ರ ಪೂರ್ಣಿಮಾ ಮತ್ತು ಅವರ ಮಕ್ಕಳಾದ ಶೇಖರ್ ತಂಗಯ್ಯ, ಚಿತ್ರ ಪ್ರಭಾಕರ್ ರವರು ಸಹ ಹಾಜರಿದ್ದುದ್ದಾಗಿ ತಿಳಿದು ಬಂದಿರುತ್ತದೆ. ನಂತರ 2007ನೇ ಸಾಲಿನಲ್ಲಿ ನಾವು ಮತ್ತು ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು ಎಂ.ಓ.ಯು ಮಾಡಿಕೊಂಡೆವು. ಎಂ.ಓ.ಯು ಪ್ರಕಾರ 6 ತಿಂಗಳ ಒಳಗಾಗಿ ಜೆ.ಡಿ.ಎ ಮಾಡಿಕೊಂಡು ಕೆಲಸ ಪ್ರಾರಂಭ ಮಾಡುವುದಾಗಿಯೂ ಮತ್ತು ಸದರಿ ಜಾಗದಲ್ಲಿದ್ದ ಬಾಡಿಗೆದಾರರನ್ನು ಖಾಲಿ ಮಾಡಿಸಿ ನಮ್ಮ ಸ್ವಾಧೀನಕ್ಕೆ ಬಿಟ್ಟುಕೊಡುವಂತೆ ಒಪ್ಪಂದ ಮಾಡಿಕೊಳ್ಳಲಾಗಿತ್ತು.

ನಂತರ ನಾವು ಮತ್ತು ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು ಮತ್ತೆ 2010 ಮಾರ್ಚ್ ತಿಂಗಳಲ್ಲಿ ಮತ್ತೊಂದು ಮಧ್ಯಂತರ ಎಂ.ಓ.ಯು ಮಾಡಿಕೊಂಡೆವು. ನಂತರ ದಿನಾಂಕ:11-02-2011 ರಂದು ಶ್ರೀ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರೊಂದಿಗೆ ನಿತೇಶ್ ಇಂದಿರಾನಗರ ರೀಟೈಲ್ ಪ್ರೈ ಲಿ ಎಂಬ ಹೆಸರಿನಲ್ಲಿ ಜೆ.ಡಿ.ಎ ಮಾಡಿಕೊಂಡೆವು. ನಂತರ ನಾವು ದಿನಾಂಕ:02-09-2011ರಂದು ಸದರಿ ಜಾಗದಲ್ಲಿ ಶಾಪಿಂಗ್ ಮಾಲ್ ನಿರ್ಮಾಣ ಮಾಡಲು ಬಿ.ಡಿ.ಎ ಅನುಮತಿ/ಮಂಜೂರಾತಿ ಪಡೆದುಕೊಂಡೆವು. 2011ನೇ ಸೆಪ್ಟಂಬರ್ ತಿಂಗಳಲ್ಲಿ ಬಿಬಿಎಂಪಿ ಯಿಂದ ಸಹ ಅನುಮತಿ/ಮಂಜೂರಾತಿ ಸಹ ಪಡೆದುಕೊಂಡೆವು. ಬಿ.ಬಿ.ಎಂ.ಪಿ ರವರಿಗೆ ಸುಮಾರು 3.5 ಕೋಟಿ ಶುಲ್ಕವನ್ನು ಕಟ್ಟಲಾಗಿರುತ್ತದೆ.

ದಿನಾಂಕ: 04-02-2012ರಂದು ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಹುಟ್ಟು ಹಬ್ಬದ ದಿನದಂದು ನಾವು ಸದರಿ ಜಾಗದಲ್ಲಿ ಗುದ್ದಲಿ ಪೂಜೆ ಮಾಡಿದೆವು. ಮತ್ತೆ ನಾವು ಮತ್ತು ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು ಈ ಹಿಂದೆ ಮಾಡಿಕೊಂಡಿದ್ದ ಜೆ.ಡಿ.ಎ ಷರತ್ತುಗಳನ್ನು ಸಡಿಲಗೊಳಿಸಿ ದಿನಾಂಕ: 14-02-2014 ರಂದು ಮತ್ತೊಂದು ಮಧ್ಯಂತರ ಜೆ.ಡಿ.ಎ ಮಾಡಿಕೊಂಡೆವು. ಈ ವೇಳಗೆ ನಾವು 2007 ರಿಂದ ಹಂತ ಹಂತವಾಗಿ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರಿಗೆ 105.5 ಕೋಟಿ ಹಣವನ್ನು ಕೊಟ್ಟಿದ್ದೆವು. ನಾವು ಸದರಿ ಜಾಗದಲ್ಲಿ ಮಾಲ್ ನಿರ್ಮಾಣ ಕೆಲಸವನ್ನು ಪ್ರಾರಂಭ ಮಾಡಲು ಸಿದ್ದತೆ ಮಾಡಿಕೊಳ್ಳುತ್ತಿದ್ದಾಗ ಸದರಿ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು 2015ನೇ ಜನವರಿ ತಿಂಗಳಲ್ಲಿ ನಮ್ಮೊಂದಿಗೆ ಮಾಡಿಕೊಂಡಿದ್ದಂತಹ ಜೆ.ಡಿ.ಎ ರದ್ದುಗೊಳಿಸಿದರು.

ಜೆ.ಡಿ.ಎ ರದ್ದಾಗಿದ್ದ ಕಾರಣ ಸೆಪ್ಟಂಬರ್ 2015 ರಲ್ಲಿ ನಾವು ಸದರಿ ಜಾಗದಲ್ಲಿ ಕನ್ಸಟ್ರಕ್ಷನ್ ಪ್ರಾರಂಭ ಮಾಡಲು ಅನುಮತಿ ನೀಡುವಂತೆ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ವಿರುದ್ಧ ಸಿಟಿ ಸಿವಿಲ್ ಕೋರ್ಟ್

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ಸದರಿ ಎ.ಎ. ನಂ. 8362/2013 ರಲ್ಲಿ ನಮ್ಮ ಬಗ್ಗೆ ದಾವೆ ಹೂಡಿದರು. ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ಆರ್ಬಿಟ್ರೇಷನ್ ನಲ್ಲಿ ಬಗೆಹರಿಸಿಕೊಳ್ಳುವಂತೆ ಆದೇಶ ಮಾಡಿ, ನಮ್ಮ ದಾವಾ ಅರ್ಜಿಯನ್ನು ವಜಾ ಮಾಡಿರುತ್ತದೆ ನಂತರ ನಾವು ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ವಿರುದ್ಧ ಆರ್ಬಿಟ್ರೇಷನ್‌ಗೆ ಹೋದೆವು. ಆರ್ಬಿಟ್ರೇಷನ್‌ನಲ್ಲಿ ಮೂರು ಜನ ಹೈಕೋರ್ಟ್ ನಿವೃತ್ತ ನ್ಯಾಯಾಧೀಶರಾದ 1)ಜಸ್ಟೀಸ್ ಎಸ್.ವೆಂಕಟರಾಮನ್ 2) ಜಸ್ಟೀಸ್ ಜಿ.ಪತ್ರಿ ಬಸವನಗೌಡ (3) ಜಸ್ಟೀಸ್ ವಿ.ಜಗನಾಥನ್ ರವರುಗಳು ವಿಚಾರಣೆ ನಡೆಸಿ ಉಭಯಸ್ತರಿಗೂ ಹೆಚ್ಚಿನ ನಷ್ಟ ಆಗಬಾರದೆಂದು ಪರಿಗಣಿಸಿ ನಮಗೆ 42.45 ಕೋಟಿ ಹಣವನ್ನು ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು ವಾಪಸ್ಸು ಕೊಡುವಂತೆ ತೀರ್ಪು ನೀಡಲಾಗಿರುತ್ತದೆ.

ಆರ್ಬಿಟ್ರೇಷನ್ ತೀರ್ಪನ್ನು ಪ್ರಶ್ನಿಸಿ ಮೇಲ್ಕಂಡ ಜಾಗದಲ್ಲಿ ಪ್ರಾಜೆಕ್ಟ್ ನಿರ್ಮಾಣ ಮಾಡಲು ನಮಗೆ ಬಿಟ್ಟುಕೊಡುವಂತೆ ನಾವು 2018ರಲ್ಲಿ ಮಾನ್ಯ ಸಿಸಿಹೆಚ್-82ನೇ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಎ.ಎಸ್ ನಂ.134/2018 ಪ್ರಕಾರ ದಾವೆ ಹೂಡಿರುತ್ತೇವೆ. ಈ ಪ್ರಕರಣ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ವಿಚಾರಣೆಯಲ್ಲಿರುತ್ತದೆ.

ಆರ್ಬಿಟ್ರೇಷನ್ ನಲ್ಲಿ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ನಮಗೆ 42.45 ಕೋಟಿ ಹಣವನ್ನು ವಾಪಸ್ಸು ನೀಡುವಂತೆ ಆದೇಶವಾಗಿದ್ದು, ಈ ಆದೇಶದ ವಿರುದ್ಧ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು ಮಾನ್ಯ ಸಿಸಿಹೆಚ್-82ನೇ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಎ.ಎಸ್.ನಂ.153/2018 ಪ್ರಕಾರ ದಾವೆ ಹೂಡಿದ್ದು, ಇದು ಸಹ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ವಿಚಾರಣೆಯಲ್ಲಿರುತ್ತದೆ.

ನಾವು ಮೇಲ್ಕಂಡ ಜಾಗದಲ್ಲಿ ಮಾಲ್ ಕನ್ಸ್ಟ್ರಕ್ಷನ್ ಪ್ರಕ್ರಿಯೆಗಳನ್ನು ಪ್ರಾರಂಭ ಮಾಡಲು ಸಿದ್ಧತೆಯಲ್ಲಿದ್ದಾಗ ಸದರಿ ಜಾಗದಲ್ಲಿ ರೆಡ್ ಜೋನ್ ಮತ್ತು ಖರಾಬು ಜಾಗವಿದ್ದು, ಸದರಿ ಜಾಗವನ್ನು ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು ಒತ್ತುವರಿಮಾಡಿಕೊಂಡು ಅಕ್ರಮವಾಗಿ ಕಟ್ಟಡವನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿರುವದಲ್ಲದೆ ಸಾರ್ವಜನಿಕ ರಸ್ತೆಯನ್ನು ಸಹ ಒತ್ತುವರಿ ಮಾಡಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ. ಸದರಿ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು ನಮಗೆ ಎಂ.ಓ.ಯು ಮತ್ತು ಜೆ.ಡಿ.ಎ ಮಾಡಿಕೊಡುವಾಗ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಹೆಂಡತಿ ಎ1 ಆರೋಪಿತೆ ಚಿತ್ರ ಪೂರ್ಣಿಮಾ ಮತ್ತು ಅವರ ಮಕ್ಕಳಾದ ಎ2 ಆರೋಪಿ ಶೇಖರ್ ತಂಗಯ್ಯ ಹಾಗೂ ಎ3 ಆರೋಪಿತೆ ಚಿತ್ರ ಪ್ರಭಾಕರ್ ರವರು ಪ್ರತಿ ಹಂತದಲ್ಲೂ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರಿಗೆ ವಯಸ್ಸಾಗಿದ್ದ ಕಾರಣ ಅವರು ಅನಾರೋಗ್ಯದಿಂದ ಬಳಲುತ್ತಿದ್ದು, ಅವರ ಪರವಾಗಿ ಎಲ್ಲಾ ವ್ಯವಹಾರವನ್ನು ನೋಡಿಕೊಳ್ಳುತ್ತೇವೆ ಎಂದು ಹೇಳಿ ನಂಬಿಸಿ, ಇವರುಗಳೇ ಮುಂದೆ ನಿಂತು ಮಾತುಕತೆ ಮಾಡಿ ಅಕ್ರಮವಾಗಿ ಹಣ ಸಂಪಾದನೆ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಸ್ವಾಧೀನದಲ್ಲಿದ್ದ ಜಾಗದಲ್ಲಿ ರೆಡ್ ಜೋನ್ ಮತ್ತು ಖರಾಬು ಜಾಗವಿರುವುದನ್ನು ತಿಳಿಸದೆ ನಮಗೆ ಮರೆಮಾಚಿ ಎಂ.ಓ.ಯು ಮತ್ತು ಜೆ.ಡಿ.ಎ ಮಾಡಿಕೊಟ್ಟು ನಮ್ಮಿಂದ 105.5 ಕೋಟಿ ಹಣವನ್ನು ಪಡೆದುಕೊಂಡು ನಮಗೆ ಮೋಸ ಮಾಡಿದ್ದು, ನಮ್ಮ ಕಂಪನಿಗೆ ಒಟ್ಟು ಸುಮಾರು 180 ಕೋಟಿ ನಷ್ಟವನ್ನು ಉಂಟು ಮಾಡಿರುತ್ತಾರೆ. ಹಾಗೂ ದಿನಾಂಕ:13-02-2014 ರಂದು ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು ತನ್ನ ಹೆಸರಿನಲ್ಲಿರುವ ಎಲ್ಲಾ ಚರ & ಸ್ಥಿರ ಆಸ್ತಿಗಳನ್ನು ಮತ್ತು ಎಲ್ಲಾ ವ್ಯವಹಾರವನ್ನು ನೋಡಿಕೊಳ್ಳಲು ಎ1 ಆರೋಪಿತೆಗೆ ಜಿ.ಪಿ.ಎ ನೀಡಿರುತ್ತಾರೆ. ಸದರಿ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರು ಹಾಲಿ ಮೃತರಾಗಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಆರೋಪಿಗಳಾದ ಮೃತ ಜಾರ್ಜ್ ತಂಗಯ್ಯ ರವರ ಹೆಂಡತಿ ಶ್ರೀಮತಿ ಚಿತ್ರ ಪೂರ್ಣಿಮಾ ಮತ್ತು ಅವರ ಮಕ್ಕಳಾದ ಶೇಖರ್ ತಂಗಯ್ಯ ಹಾಗೂ ಚಿತ್ರ ಪ್ರಭಾಕರ್ ರವರ ವಿರುದ್ಧ ಸೂಕ್ತ ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ.

ಓದಿಸಿ ಕೇಳಿದೆ ಸರಿಯಿದೆ

ನನ್ನ ಸಮಕ್ಷಮ

(ಜಗದೀಶ.ಎನ್)

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Annexure - 43

Karnataka State Police Form Number 157 District: Bangalore City - Police Station: Ashoknagar

Charge Sheet Charge Sheet Number: First Information Number-97/2020

(Order Number 1539 and 51540)

Date: 25.06.2020

Date: 16.03.2020

Name, Address, and Occupation of the Informant or Person Providing Information: Mr. K.B. Swami, Admin, Nitesh Indiranagar Retail Pvt. Ltd, No.110, Andreams Building, M.G. Road, Bangalore.

Including those who are absconding, 19 have been arrested without granting bail. Names & Addresses of the absconding individuals are marked in red ink.

1) Mrs. Chitra Poornima, wife of late George Tangayya, aged 52 years, residing at No. 6, Commissionerate Road, Bangalore,

2) Vijay Shekhar Tangayya, son of Shekhar Tangayya, aged 62 years, residing at No. 6, Commissionerate Road, Bangalore.

(Continued)

Column-4 continues.

E3) Rachel Chitra Prabhakar, Chitra Prabhakar Kom Prabhakar, 59 years, residing at No.6, Commissioncrate Road, Bangalore.

1) Ashoknagar Police Station Case No. 97/2020
Sections 406, 420 IPC Case Investigation Report Copy,

2) Original Panchanama of the Crime Scene,

3) Original Police Notice issued to Panchayatdars to assist in the Panchanama of the Crime Scene,

(Continued)

Column-5 Continued.

4) Original Police Notice issued to the Complainants to provide evidence and documents related to this case,

5) Original Letter dated 17-03-2020 submitted by the Complainants. Along with the M.O.U, J.D.A, Agreement, J.D.A Cancellation Letter, and the Certified Copies of the J.P.A Letter given by the deceased George Thangayya to the accused Mrs. Chitra Poornima

6) Photographs taken during the transactions between the Complainants' company and the accused,

7) Original Acknowledgment Letters requesting the Honorable Tahsildar, Bangalore East Taluk to provide certified records,

8) Original Letter dated 18-06-2020 issued by the Honorable Tahsildar, Bangalore East Taluk, and the Revenue Inspector's Report, Assistant Director of Land Records' Letter, Surveyor's Report, Letter to the Honorable District Commissioners, Letter to the Principal Secretary of the Government, Letter to the Additional Director General of Police, Karnataka Land Grabbing Prohibition Act 2011: Section 9 Subsection (1) Application, and the Notices and Pahani Documents issued to the accused Chitra Poornima and others to appear before the Honorable District Commissioner's Court

9) Original Acknowledgment of the Request Letter to the Manager, Andhra Bank, to provide the Account Statement of the deceased George Thangayya's Andhra Bank Account No. 928911011001526,

10) Certified Copy of the Account Statement of the deceased George Thangayya's Andhra Bank Account No. 028911011001526 issued by the Manager, Andhra Bank,

11) Original Acknowledgment of the Request Letter to the Manager, Andhra Bank, to provide information on fund transfers from the deceased George Thangayya's Andhra Bank Account No. 028911011001526 to other accounts,

12) Original Copy of the information provided by the Manager, Andhra Bank, regarding the accounts to which funds were transferred from the deceased George Thangayya's Andhra Bank Account No. 028911011001526,

13) Xerox Copy of the Death Certificate of the deceased George Thangayya,

14) Original Witness Statement of Mr. Nitesh Shetty,

15) Original Witness Statement of Mr. Vaidyanathan,

16) Original Witness Statement of Mr. Srinath,

17) Original Bail Bond of the accused,

18) Xerox Copy of the Interim Bail Order obtained by the accused from the Honorable CCH-1 Court.

1) Mr. K.B. Swamy, Addl., Nitesh Indiranagar Retail Pvt. Ltd., No. 110, Andrews Building, M.G. Road, Bangalore.
(Continued)

Column- 6 Continued.

2) Mr. Nitesh Shetty, S/o P.V. Shetty, 43 years, Managing Director, Nitesh Estates Ltd., No. 8, 7th Floor, M.G. Road, Bangalore.

3) Mr. Vaidyanathan, S/o Lal Gudi Arunachalam Saptarishi, 60 years, Executive Director, Nitesh Estates, No. 8, 7th Floor, M.G. Road, Bangalore.

4) Mr. Srinath, S/o Ramanna, 32 years, Senior Manager, Nitesh Estates Ltd., No. 98, 7th Floor, M.G. Road, Bangalore.

5) Mr. Mahesh, S/o Rajegowda, 30 years, Residing at No. 269, 3rd Main, 2nd Cross, RBI Layout, J.P. Nagar 7th Phase, Bangalore.

6) Mr. Abhishek, S/o Chikkonu, 26 years, Residing at No. 280, 3rd Cross, 5th Main, Koramangala 1st Block, Jakkasandra, Bangalore.

7) Mr. N. Tejas Kumar, Tahsildar, Bangalore East Taluk, K.R. Puram, Bangalore.

8) Mr. Srinivas, Manager, Andhra Bank, Indiranagar Branch, Bangalore City.

9) Mr. Ramesh M.S., PSI, Ashoknagar Police Station, Bangalore City.

10) Mr. Jagadish N., Police Inspector, Ashoknagar Police Station, Bangalore City.

Sections 406, 420 along with 34 IPC

(Continued)

Column-7 Continued.

Bangalore City, Indiranagar, at Municipal Corporation No. 21 on 80 Feet Road, there is a plot of approximately 2.16,283 square feet in the name of George Thangayya. Witness-2 Mr. Nitesh Shetty, Managing Director of Nitesh Estates Company, and Witness-3 Mr. Vaidyanathan, Executive Director, had discussions with the landowners George Thangayya and his family members, including Mrs. Chitra Poornima, Mr. Shekhar Thangayya, and Ms. Chitra Prabhakar, at their residence No. 16, Commissionerate Road, Bangalore, with the intention of developing a world-class shopping mall on the said plot under a J.D.A. agreement. The accused convinced George Thangayya, who was elderly and ailing, that they would handle all transactions on his behalf. After George Thangayya's death, the accused, with the intention of defrauding, concealed the fact that the land included government land and obtained an M.O.U and J.D.A from George Thangayya. The accused, being aware that the land included government land, falsely assured Witness-2 and Witness-3 and obtained 105.5 crores from their company in phases.

When the company began the mall construction, it was discovered that the land was government land and that the accused had illegally occupied it and constructed roads and buildings. This was revealed in the report by the Tahsildar of Bangalore East Taluk. The accused concealed the fact that the land was government land and obtained an M.O.U and J.D.A from Witness-1's company,

defrauding them of 105.5 crores, causing illegal loss to Witness-1's company. The investigation and the report by the Tahsildar confirm the charges against the accused.

Therefore, based on the above facts, a charge sheet has been filed against the accused.

Police Inspector's Report:

If more evidence is found in this case, permission is requested from the Honorable Court to submit it under Section 173(8) CrPC.

(Jagadish N)
Police Inspector
Ashoknagar Police Station
Bangalore-25

No. 97/2020 Section 405,420 IPC

Statement of the Complainant:

Srinath, S/o Shamanna, 32 years, Senior Manager, Nitesh Estates Ltd., No. 08, 7th Floor, M.G. Road, Bangalore, Mobile No. 7353144104

On 17-03-2020, I have been working as a Senior Manager at Nitesh Estates, a property construction and development company. We learned that there was approximately 5 acres of land owned by George Thangayya at Account No. 21, 80 Feet Road, Indiranagar, Bangalore-75, and that the owners were willing to develop it under a J.D.A. In January 2007, our Managing Director Mr. Nitesh Shetty and Executive Director Mr. Vaidyanathan visited George Thangayya's house and office to discuss constructing a shopping mall on the said land and to enter into a J.D.A. agreement. The agreement was made to pay over 105 crores and to share the mall in a 50:50 ratio. During the discussions, Mrs. Chitra Poornima and their children Shekhar Thangayya and Chitra Prabhakar were also present. Subsequently, in 2007, we entered into an M.O.U with George Thangayya, agreeing to commence work within six months and to vacate the tenants on the land.

Later, in March 2010, we entered into another interim M.O.U with George Thangayya. On 11-02-2011, we entered into a J.D.A with George Thangayya under the name Nitesh Indiranagar Retail Pvt. Ltd. On 02-08-2011, we obtained BDA approval/permission to

construct a shopping mall on the said land. In September 2011, we also obtained BBMP approval/permission, paying around 3.5 crores in fees.

On 04-02-2012, on George Thangayya's birthday, we performed the groundbreaking ceremony on the said land. On 14-02-2014, we relaxed the terms of the previous J.D.A and entered into another interim J.D.A. By this time, we had paid 105.5 crores to George Thangayya in phases since 2007. When we were preparing to start the mall construction, George Thangayya canceled the J.D.A with us in January 2015.

Due to the cancellation of the J.D.A, we filed a case against George Thangayya in September 2015 in City Civil Court, Case No. A.A. 395/2015, seeking permission to start the construction. The Honorable Court dismissed our case, directing us to resolve it through arbitration. We then proceeded to arbitration against George Thangayya.

In arbitration, three retired High Court judges, 1) Justice S. Venkataraman, 2) Justice G. Patri Basavanagowda, and 3) Justice B. Jaganathan, conducted the hearing and, considering the interests of both parties, ordered George Thangayya to return 42.45 crores to us.

Challenging the arbitration decision, we filed a case in 2018 under A.S. No. 134/2018 in the Honorable CCH-82 Court to allow us to

construct the project on the aforementioned land. This case is currently under trial in the Honorable Court.

In the arbitration, George Thangayya was ordered to return ₹42.45 crores to us. Against this order, George Thangayya filed a case under A.S. No. 153/2018 in the Honorable CCH-82 Court, which is also currently under trial in the Honorable Court.

When we were preparing to start the mall construction process on the aforementioned land, it was found that the said land included a Red Zone and barren land, and that George Thangayya had illegally occupied the land and constructed buildings and encroached upon public roads. When George Thangayya executed the M.O.U and J.D.A with us, his wife, Accused No. 1 Chitra Poornima, and their children, Accused No. 2 Shekhar Thangayya and Accused No. 3 Chitra Prabhakar, convinced us by stating that George Thangayya was old and ailing and that they would handle all transactions on his behalf. They took the lead in the discussions and, with the intention of making illegal gains, concealed the fact that the land included a Red Zone and barren land and executed the M.O.U and J.D.A with us, thereby defrauding us of ₹105.5 crores and causing a total loss of approximately ₹180 crores to our company. Additionally, on 13-02-2014, George Thangayya executed a G.C.A in favor of Accused No. 1 to manage all his movable and immovable properties and all transactions. The said George Thangayya is now deceased.

Therefore, I request appropriate action to be taken against the accused, namely the deceased George Thangayya's wife Mrs. Chitra Poornima and their children Shekhar Thangayya and Chitra Prabhakar.

In my presence,
(Jagadish N)

O.V.C. has asked for this to be filed.

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ANNEXURE -44

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2nd DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

CRIMINAL PETITION NO.2720 OF 2020

BETWEEN:

1. MRS. G. CHITRA POORNIMA,
W/O LATE MR. GEORGE THANGIAH,
AGED ABOUT 52 YEARS,
RESIDING AT NO.6,
COMMISSARIAT ROAD,
BENGALURU-560 025.

2. MR. VIJAYA SHEKAR THANGIAH
S/O LATE MR. GEORGE THANGIAH,
AGED 62 YEARS,
RESIDING AT NO.6,
COMMISSARIAT ROAD,
BENGALURU-560 025

Digitally signed by BS RAVIKUMAR
Location: HIGH COURT OF KARNATAKA

3. MRS. RACHEL CHITRA PRABHAKAR
W/O MR. SATHI PRABHAKAR,
AGED 59 YEARS,
RESIDING AT NO.6,
COMMISSARIAT ROAD,
BENGALURU-560 025

...PETITIONERS

(BY SRI. K.G. RAGHAVAN, SENIOR ADVOCATE FOR
SRI. HEGDE GANAPATI, ADVOCATE)

AND:

1. STATE BY
ASHOK NAGAR POLICE STATION,

ASHOK NAGAR, BENGALURU-560025.
REPRESENTED BY
STATION HOUSE OFFICER,
SPP, HIGH COURT OF KARNATAKA,
BANGALORE-1.

2. NITESH INDIRANAGAR RETAIL
PRIVATE LIMITED,
7TH FLOOR, NITESH TIMESQUARE,
NO.8, M.G. ROAD,
BENGALURU-560 001
REPRESENTED BY MR. SWAMY K.B.
GENERAL MANAGER-LEGAL

...RESPONDENTS

(BY SMT. WAHEEDA M.M., HIGH COURT GOVERNMENT PLEADER FOR RESPONDENT NO.1;

SRI. K. SUMAN, SENIOR ADVOCATE FOR SRI. SIDDHARTH SUMAN, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE FIR DATED 16.03.2020 (VIDE ANNEXURE-A) REGISTERED BY THE RESPONDENT NO.1 P.S., IN CR.NO.97/2020 PENDING BEFORE THE 4TH A.C.M.M., AT BENGALURU FOR THE OFFENCE ALLEGED UNDER SECTIONS 406, 420 OF THE IPC AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON 15.12.2023 AND COMING ON FOR PRONOUNCEMENT OF ORDER THROUGH VIDEO CONFERENCE THIS DAY, THE COURT MADE THE FOLLOWING:-

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ORDER

The petitioners have challenged the FIR registered by the respondent No.1 against them in Crime No.97/2020 pending consideration before the 4th Additional Chief Metropolitan Magistrate, Bangalore, for the offences alleged under Section 406 and 420 of IPC. They have also sought to quash the complaint dated 16.03.2020 filed by the respondent No.2. They have challenged the consequent charge sheet dated 25.06.2020 filed by the respondent No.1 before the 4th Additional Chief Metropolitan Magistrate, Bangalore, for the offences punishable under Section 406, 420 read with section 34 IPC.

2. An investigation was launched by respondent No.1 against the petitioners in Crime No.97/2020 on the basis of information provided by respondent No.2 where, it was stated that the husband of petitioner No.1 and father of petitioner Nos.2 and 3 (Mr. George Thangaiah) was the owner of property bearing municipal No.21, 80' road,

Indiranagar, Bangalore and four small adjacent plots totally measuring 2,20,497 sq.ft. The accused No.1 was stated to be the power of attorney of Mr.George Thangaiah. It was alleged that respondent No.1 approached Mr. George Thangaiah with a proposal to develop the property into a world class shopping mall at its cost, which after development could be owned by both in equal portions. The respondent No.2 alleged Mr.George Thangaiah and accused No.1 hatched a criminal conspiracy, in furtherance of which, they induced respondent No.2 to enter into various MOUs and JDAs where by they allegedly induced the respondent No.2 to part with Rs.105,50,00,000/-. The respondent No.2 alleged that Mr.George Thangaiah and the accused No.1 deliberately did not disclose a crucial fact that there were several issues related to the property such as some portion of it was a kharab land, while some portion was encroachment into the nalas. The respondent No.2 alleged that these defects in the title of the property was deliberately suppressed with a criminal intent to extract

money from respondent No.2, which they misappropriated. The respondent No.2 claimed that it had issued a notice for appointment of an arbitrator and during the arbitration proceedings when accused No.1 was cross-examined whether she knew that the property lay within the red-zone, she admitted it. However, this was not disclosed at the time of entering into MOUs and JDAs. The respondent No.2 alleged that it was unable to procure the required approvals and sanctions to develop the property as envisioned in the JDA, which resulted in delay in implementation of the project. The respondent No.2 alleged that after the death of Mr.George Thangaiah, his children joined hands with accused No.1 to cheat and defraud it. Thus, it alleged that due to such fraudulent acts, the accused had all misappropriated a sum of Rs.105,50,00,000/-.

3. The respondent No.1 after conducting an investigation filed a charge sheet alleging the commission of offences punishable under Sections 406, 420 read with

Section 34 of IPC. The Trial Court took cognizance of the said offences and registered CC No.6912/2020 and issued process to the petitioners. Being aggrieved by the registration of Crime No.97/2020 and the charge sheet, this petition is filed.

4. The learned Senior counsel for the petitioners contended that the petitioners admitted the execution of the MOUs and JDAs as stated by respondent No.2 and also that they received Rs.105,50,00,000/- from respondent No.2. He contended that the property in question was an urban property which was assessed to tax by the Municipal Corporation and all revenue documents stood in the name of Mr.George Thangaiah. He submits that the respondent No.2 had represented that it was builder of high repute and transaction of this size could not have been finalised without a thorough check and a due diligence report. He submitted that the alleged defects in title of Mr.George Thangaiah were introduced by respondent No.2 to browbeat the petitioners and to shift the blame on them

that it was due to such defect that the project could not commence. He submits that the respondent No.2 was not in a position to take up the development of the project, which perforced the petitioners to terminate the JDA's and initiated proceedings for arbitration of the dispute. He contended that the petitioners claimed damages before the arbitrator for non execution of the project in time, while the respondent No.2 sought specific performance of the MOUs and JDAs. The Arbitrator in terms of a reasoned award dated 25.04.2018 allowed the claim of the petitioners and rejected the claim of the respondent No.2. The learned Senior counsel contends that the fact of the award passed by the Arbitrator was not even mentioned in the complaint lodged with respondent No.1. He further submitted that the respondent No.2 had challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 in Com A.S.153/2018. He contended that as per the award of the arbitrator, out of a sum of Rs.105,50,00,000/- a sum of Rs.51,05,00,000/- was appropriated towards damages and the remaining was

refunded to the respondent No.2. He submits that the respondent No.2 having lost its claim before the arbitrator has launched the instant prosecution. He submits that the respondent No.2 has therefore abused the process of law in collusion with respondent No.1. He contends that respondent No.2 has attempted to give a civil dispute a criminal flavour to launch a false prosecution against the petitioners. In this regard he relied upon the following judgments:

a) *Dalip Kaur and Others V. Jagnur and Another, (2009) 14 SCC 696;*
b) *Prof. R.K. Vijayasarathy and Another V. Sudha Seetharam and Another – 2019 SCC online 208;*
c) *G. Sagar Suri and Another v. State of U.P. and Others – (2000) 2 SCC 636;*
d) *Indian Oil Corporation v. NEPC India Ltd. And Others – (2006) 6 SCC 736;*
e) *V.Y. Jose v. State of Gujarat and Another – (2009) 3 SCC 78;*
f) *Vinod Natesan v. State of Kerala and others – (2019) 2 SCC 401.*

5. He contended that respondent No.1 did not even take into consideration the award passed by the arbitrator, which indicated that the investigation done by respondent No.1 was thoroughly one-sided. He submitted that if there was any defect in title, the respondent No.2 should not have sought for specific performance before the arbitrator, which only meant that there was no defect in title of Mr. George Thangaiah and hence the allegations now made are newly invented and therefore the impugned prosecution is liable to be quashed.

6. Per contra, the learned Senior counsel for respondent No.2 submitted that the investigating officer has unearthed some startling facts which indicate that part of the property owned by Mr. George Thangaiah was Government land. He referred to the report of the ADLR dated 04.11.2019 and contended that 'B' kharab land was also claimed by Mr. George Thangaiah. He also referred to a letter dated 13.11.2019 addressed by the Tahsildar recommending to the Deputy Commissioner to cancel the

grant of land as well as the conversion of the land. He then referred to the report of the Revenue Inspector, where he reported that phut kharab of 0-13 guntas was wrongly granted and 0-16 guntas of kharab was wrongly converted for non-agricultural use. He then referred to a communication dated 17.12.2019 addressed by the Revenue Secretary to the Principal Secretary of Revenue Department to cancel grant of 0-13 guntas of kharab in Sy.No.2/2, 0-01 gunta in Sy.No.7/A3, 0-02 guntas in Sy.No.7/1B. He then referred to the letter dated 19.03.2020 addressed by the Tahsildar to the Additional DGP, MTF to take suitable action against the usurpers of the kharab land. He referred to a letter dated 08.06.2020 addressed by the Tahsildar to the Inspector of police, where it was stated that 'B' kharab of 0-19 guntas existed in the total extent of 5-38 acres. He then referred to the proceedings initiated against the petitioners before the Special Court for Prevention of Land Grabbing. He therefore contended that the investigation officer has conducted a thorough investigation and submitted a

charge sheet. He submits that the contentions urged by the petitioners are their defences which they have to establish at a trial and therefore, cannot invoke the inherent jurisdiction of this Court. He submitted that the case does have criminal overtones and is not a civil dispute as contended and therefore, submits that this petition be dismissed.

7. In reply, the learned Senior counsel for petitioners contended that the allegations made now are concocted for the purpose of launching an ill-designed prosecution. He submits that the order passed by the Revenue Secretary to cancel the grant is already quashed by this Court in W.P.No.8972/2020. Similarly, proceedings before the Special Court is also stayed. He therefore contends that the respondent No.2 is not leaving any stone unturned to harass the petitioners. Even otherwise, he contends that Mr. George Thangaiah has expired and these petitioners cannot be prosecuted for the alleged illegal acts of Mr. George Thangaiah.

8. The learned High Court Government Pleader submitted that since the investigating officer has invested sufficient time and energy and has collected immense material to file a charge sheet, this Court may not exercise jurisdiction to quash the proceedings. He submits that the petitioners may as well approach the trial Court for their discharge. In reply, the learned senior counsel for the petitioners submitted that the proceedings initiated by the Revenue authorities for cancellation of grant is already set at naught in W.P. No.8972/2020. He also submits that the investigation launched by Bangalore Metropolitan Task Force (for short 'BMTF') Police Station is questioned in W.P. No.8073/2020 and this Court in terms of an order dated 29.06.2020 has stayed the proceedings. He therefore submits that the contentions urged by the learned senior counsel for the respondent No.2 to sustain the charge sheet are liable to be rejected.

9. I have considered the submissions made by the learned senior counsel for the petitioner, learned

senior counsel for the respondent No.2 and the learned High Court Government Pleader.

10. It is evident from the records placed before this Court that the predecessors of the petitioners and the respondent No.2 had locked horns over the development of a property in terms of a JDA dated 11.02.2011 and Supplementary JDA dated 11.02.2014. The predecessor of the petitioners alleged non performance of the JDA and the Supplementary JDA and claimed that they stood terminated. The respondent No.2 therefore invoked the Arbitration Clause stipulated in the JDA and Supplementary JDA and initiated proceedings for appointment of an Arbitrator. Likewise, the predecessor of the petitioners invoked the Arbitration Clause to claim various reliefs. Consequent thereto, after an Arbitrator was appointed, the predecessors of the petitioner and the respondent No.2 made their respective claims before the Arbitrator. While the predecessor of the petitioners claimed that the JDA and the Supplementary Agreement was repudiated by him

in terms of a letter dated 19.01.2015 in view of the breach of contract by the respondent No.2, the respondent No.2 contended to the contrary and alleged that it was the predecessor of the petitioners who had committed breach of contract and therefore sought for specific performance of the JDA and the Supplementary JDA.

11. The Arbitrator after considering the mutual claims of the respondent No.2 and the predecessor of the petitioners held as follows:

> *"The main prayer for specific performance of the development agreement and for other monetary reliefs sought for by the respondent No.2 is rejected. The alternate prayer is allowed in part directing the predecessor of the petitioners to pay a sum of Rs.42,45,00,000/- together with interest at the rate of 9% p.a. from the date of the award till payment.*
>
> *The prayer of the predecessor of the petitioners is allowed in part awarding Rs.51,05,00,000/- as damages after adjusting the same out of the non refundable deposit and the interest thereon. The balance of*

Rs.42,45,00,000/- has to be refunded to the respondent No.2."

12. The award of the Arbitrator was passed on 25.04.2018 and the predecessor of the petitioners died on 24.12.2019. The award of the Arbitrator was challenged under Section 34 of the Arbitration & Conciliation Act, 1996 which was numbered as Com.A.S No.134/2018. The said petition was disposed of in terms of the judgment dated 23.02.2022 dismissing the challenge to the award of the Arbitrator by the respondent No.2. Subsequent thereto, certain proceedings were initiated for cancellation of the grant made in favour of the predecessor of the petitioners which culminated in an order dated 19.08.2020 cancelling the grant made on 26.12.1975 and the order dated 20.01.1976, by which, the land was converted for non agricultural purposes. This was challenged by the petitioners herein in W.P. NO.8972/2020 and this Court in terms of the dated 10.09.2020 allowed the writ petition and set aside the order dated 19.08.2020 and restored the grant made in favour of the predecessors of the petitioner.

An appeal was filed by the State Government in W.A. No.552/2020 which was dismissed on 19.04.2021. A parallel proceeding was also initiated by the BMTF Police Station alleging that the predecessor of the petitioners had encroached into Government Kharab Land which is presently questioned by the petitioners in W.P. No.8073/2020 and the proceeding initiated by BMTF police station is stayed. The respondent No.2 has now chanced upon another method to harass the petitioners by lodging the instant complaint dated 16.03.2020 accusing the predecessors of the petitioners and the petitioner No.1 that it was induced into entering into various memorandum of understanding and JDA and had extracted Rs.105,50,00,000/-. The respondent No.2 alleged that several crucial facts indicating the defects in the schedule property were not disclosed, which affected the development of the project. Curiously, though the respondent No.2 referred to arbitration notices were exchanged between the parties and that the petitioner No.1 had admitted that she was aware that the property

lay within a red zone and that she had suppressed it from the respondent No.2, the respondent No.2 did not disclose about the conclusion of the arbitration proceedings and the passing of an award. This therefore speaks voluminously of the conduct of the respondent No.2 in trying to keep the issue burning though it was found that it was the respondent No.2 who was responsible for the breach of the JDA and other incidental agreements. As rightly contended by the learned senior counsel for the petitioners, the process of criminal law cannot be misused to harass persons such as the petitioners and in the present case it is evident that the respondent No.2 has desperately attempted to give a criminal flavour to an otherwise civil dispute. This is one of the finest cases where this Court should exercise jurisdiction to set at naught the prosecution of the petitioners else it would be a licence to misuse the process of criminal law and the Courts.

13. In view of the above, this petition is allowed.

(i) The charges sheet dated 25.06.2020 filed by the respondent No.1 in Crime No.97/2020 pending consideration before the 4th ACMM at Bengaluru is quashed.

(ii) The respondent No.2 is warned not to initiate any such proceedings against the petitioners concerning the JDA dated 11.02.2011 and the supplementary JDA dated 11.02.2014, or the property involved therein, which are fully concluded by the award of the Arbitrator dated 25.04.2018.

Any pending applications also stand disposed off.

Sd/-
JUDGE

bvv