

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF SEPTEMBER, 2022

PRESENT

THE HON'BLE MR. ALOK ARADHE
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

W.P.No.7039/2021(GM-RES-PIL)

BETWEEN:

AMRUTHESH N.P

...PETITIONER

(BY SRI S. P. SHANKAR, SR. COUNSEL FOR
SRI AMRUTHESH,ADV.)

AND:

1. THE CHIEF SECRETARY
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BENGALURU - 560 001.
2. THE PRINCIPAL SECRETARY TO GOVT.,
COMMERCE AND INDUSTRIAL DEPT.,
VIDHANA SOUDHA
BENGALURU - 560 001.
3. THE PRESIDENT/EXECUTIVE OFFICER
KIADB, NRUPATUNGA ROAD
BENGALURU - 560 001.

4. THE MANAGING DIRECTOR
M/S GRAPHITE INDIA LTD
REGD. & HEAD OFFICE AT
NO.31 CHORINGHEE ROAD
KOLKATA - 700 016
WEST BENGAL.

ALSO AT:
THE GENERAL MANAGER
M/S GRAPHITE INDIA LTD.,
DODDENAKUNDI INDUSTRIAL
AREA, WHITE FIELD
BENGALURU - 560 048.

...RESPONDENTS

(BY SMT. PRATHIMA HONNAPURA, A.G.A., FOR R-1 & R-2;
SRI UDAYA HOLLA, SR. COUNSEL FOR
SRI VIVEK HOLLA, ADV., FOR R-4;
SRI H.L. PRADEEP KUMAR, ADV., FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
ISSUE A WRIT OF MANDAMUS, DIRECTION TO THE
RESPONDENT NOS.1 TO 3 TO CONSIDER THE
REPRESENTATION OF THE PETITIONER VIDE ANNEXURE-G
DATED 16/01/2021 AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESEVED,
COMING ON FOR PRONOUNCEMENT THIS DAY,
VISHWAJITH SHETTY J., MADE THE FOLLOWING:

ORDER

This writ petition is filed as a public interest petition
inter alia seeking a writ of mandamus directing
respondent nos.1 to 3 to consider the representation of
the petitioner dated 16.01.2021 and also to prevent sale
of 41 acres of land granted by respondent no.3 to
respondent no.4 and to restore the said land allotted to
respondent no.4 and allot the same to new

entrepreneurs, manufacturing units or use the same as a major lung space of the locality.

2. We have heard the learned Counsel for the parties and also perused the material available on record.

3. Brief facts of the case leading to filing of this writ petition are, that in the year 1972 respondent no.3 - Karnataka Industrial Areas Development Board (for short, 'the Board') had allotted an extent of 43 acres 33 guntas of land to respondent no.4 herein in Plot Nos.10, 11, 12, 13, 14 & 15 in Sy. Nos.73, 74, 75 & 77 of Doddanekkundi village, K.R.Puram Hobli, Bengaluru District (hereinafter referred to as 'Schedule Property'), for the purpose of establishment of an industrial unit and the Board had put respondent no.4 in possession of the Schedule Property and an allotment letter as well as Possession Certificate was also issued. Subsequently, in the very same year, a lease-cum-sale deed was also executed by the Board in favour of respondent no.4 in respect of the Schedule Property. In the year 1973, respondent no.4 established a graphite plant industry in the Schedule Property after obtaining the required

permissions and consents from all the concerned authorities. In the year 1987, respondent no.3 had executed an absolute sale deed in favour of respondent no.4 in respect of the Schedule Property and ever since the said sale deed dated 24.04.1987, respondent no.4 has been the absolute owner in possession of the Schedule Property.

4. In the year 2012, complaints were received by the Karnataka State Pollution Control Board (for short, 'the Control Board') against respondent no.4 on the ground that respondent no.4 was polluting the environment, and accordingly, the Control Board had refused to renew the consent order issued by it for operation of respondent no.4-industrial unit. A closure order was also consequentially issued by the Control Board directing respondent no.4 to close down its activities in the Schedule Property and the said order was questioned in appeal by the Control Board. The Appellate Authority had allowed the appeal and the said order of the Appellate Authority was challenged by the complainants/respondents of the locality before the

National Green Tribunal (for short, 'the Tribunal') and the order passed by the Appellate Authority was set aside by the Tribunal.

5. It is under these circumstances, respondent no.4 had closed down its industrial operation in the Schedule Property in the year 2019 and had sought permission of the State Government in terms of Section 25(o) of the Industrial Disputes Act, 1947, for closure of the industry. The State Government on 28.06.2019 had granted permission to respondent no.4 to close down its industrial unit, and subsequently, respondent no.4 had settled dues of all its employees who were working in the industry as on the date of closure. Thereafter, this writ petition is filed in the year 2021 alleging that respondent no.4 was trying to dispose of the Schedule Property for commercial purposes.

6. Learned Senior Counsel appearing for the petitioner submits that the Schedule Property has been allotted to respondent no.4 for industrial purposes, and therefore, the same is required to be used only for the said purpose. He has referred to various provisions of the

Karnataka Industrial Areas Development Act, 1966 (for short, 'the Act of 1966') and submits that after completion of acquisition, the acquired land vests with the State, and therefore, the same can be disposed of only by the State and not by the Board or by the allottees. He submits that under the provisions of the Act of 1966 and the Rules framed thereunder, the Board can only allot the land which is acquired for its purpose and cannot sell the same to any third parties. He submits that no lease-cum-sale deed or an absolute sale deed can be executed by the Board in respect of the property acquired for its purpose under the provisions of the Act of 1966. He also submits that under Section 14-A of the Karnataka Town and Country Planning Act, 1961 (for short, 'the Act of 1961'), there is a restriction to convert the industrial land for residential/commercial purposes, and therefore, respondent no.4 cannot be allowed to sell the Schedule Property. In support of his contentions, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **M/S. VINAYAK HOUSE**

BUILDING COOPERATIVE SOCIETY LTD. VS STATE OF KARNATAKA & ORS.¹.

7. Per contra, learned Senior Counsel appearing for respondent no.4 submits that the petitioner has been set up by the employees of respondent no.4 who had earlier filed similar writ petition unsuccessfully. He refers to the provisions of the Act of 1966 and the Karnataka Industrial Areas Development Board Regulations, 1969 (for short, 'Regulations of 1969'), and submits that the execution of lease-cum-sale deed and an absolute sale deed by the Board is permissible. He submits that the Board has executed an absolute sale deed in favour of respondent no.4 in the year 1987 without any restrictions attached and ever since then respondent no.4 is the absolute owner in possession of the Schedule Property, and therefore, respondent no.4 alone is entitled to deal with the Schedule Property. He also submits that pursuant to the allotment of the Schedule Property, respondent no.4 had established an industry in the Schedule Property and for nearly about 47 years, the industry was operating and only in the year 2019 after

¹ AIR 2019 SC 4473

the Tribunal upheld the closure orders passed by the Control Board, respondent no.4 has closed its operations in the Schedule Property after obtaining necessary orders from the State Government in that regard. He submits that this Court has recognized the right of the Board to execute lease-cum-sale deeds and absolute sale deeds and directions have been issued in various matters for execution of the sale deed and in this regard, he has referred to the judgments of the coordinate bench of this Court in W.A.Nos.4844/2016 & 4063/2016.

8. We have considered the rival submissions. The undisputed facts of the case are that the Schedule Property was allotted to respondent no.4 and it was put in possession of the Schedule Property in the year 1972 and in the very same year, a lease-cum-sale deed was also executed in favour of respondent no.4 in respect of the Schedule Property. In the year 1973, respondent no.4 has established the graphite plant and industry in the Schedule Property. Thereafter, in the year 1987, a registered sale deed has been executed by the Board in favour of respondent no.4 in respect of the Schedule

Property. From the year 1973 till 2019, respondent no.4 has carried on its operation in the Schedule Property. Therefore, for a period of nearly 46 years, 4th respondent's industry was functioning in the Schedule Property. It is only because of the closure orders passed by the Tribunal, respondent no.4 was constrained to close down its industry which it has done after obtaining necessary permission from the State Government. It is also not in dispute that respondent no.4 has settled the dues of its employees who were working in the industry as on the date of its closure.

9. The Schedule Property was acquired by respondent no.1 under the provisions of the Act of 1966 and Section 28 of the said Act provides for acquisition of land by the State Government for the purpose of development by the Board or for any other purpose in furtherance of the objects of the Act of 1966. On such acquisition, the lands vest in the State Government. Section 28(8) of the Act of 1966 provides that the State Government after acquiring and taking possession of the land acquired for the purpose of the Board, may transfer

the land to the Board for the purpose of which the land has been acquired. Section 32 of the Act of 1966 specifies that the State may place at the disposal of the Board any land vested in the State Government and after such land has been developed by the Board, it shall be dealt by the Board in accordance with the Regulations made or directions given by the State Government. Section 41 of the Act of 1966 provides the power for the Board to make regulations consistent with the Act with the prior approval of the State Government.

10. In exercise of the powers under Section 41(2)(b) of the Act of 1966, the Board has framed the Karnataka Industrial Areas Development Board Regulations, 1969 (for short, 'the Regulations'). From a perusal of the said Regulations, it is clear that the Board has the power to execute the lease-cum-sale deed as well as the absolute sale deed in favour of the allottee of the land. Regulation 4 provides for applications for allotment of land in an industrial area, while Regulation 5 empowers the Board to decide the manner of disposal of land in each industrial area whether by lease, lease-cum-

sale, sale, auction sale, etc. Regulation 10 empowers the Board to make an allotment in favour of an applicant. Form Nos.4 & 5 set out in the Regulations specifies the form of lease-cum-sale agreement and form for sale of industrial plot in favour of the applicant after he sets out the project and fulfills all the conditions of the lease-cum-sale.

11. From a conjoint reading of the provisions of the Act of 1966 and the Regulations of 1969, it is clear that the land acquired under the Act of 1966 vests with the State Government and the State Government may transfer the land to the Board for the purpose for which the land has been acquired and after the land is developed by the Board it shall be dealt with by the Board in accordance with the Regulations. Under the Regulations of 1969, the Board is empowered to allot the land developed by it to the applicant either by lease-cum-sale, sale or auction sale. Therefore, we find no merit in the contention of the petitioner that the acquired land/schedule property which vested with the Government and was transferred to the Board for the

purpose of development, cannot be leased out or sold to any party by the Board. The judgment in the case of **M/S.VINAYAK HOUSE BUILDING COOPERATIVE SOCIETY LTD. VS STATE OF KARNATAKA & ORS.**² would not be applicable to the facts of the present case. It is trite law that judgments can be relied upon only if the same can be made applicable to the facts of the case.

12. The Hon'ble Supreme Court in the case of **THE STATE FINANCIAL CORPORATION & ANOTHER VS M/S. JAGDAMBA OIL MILLS & ANOTHER**³, has observed that judgments can be relied upon as precedents, if only the same is applicable to the fact situation of the case. In paragraph 19 of the said judgment, the Hon'ble Supreme Court has observed as under:

"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context

² AIR 2019 SC 4473

³ AIR 2002 SC 834

in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes."

13. The respondent no.4 was put in possession of the Schedule Property in the year 1972 and the lease-cum-sale deed was also executed in its favour in the very same year. Immediately thereafter, in the year 1973, respondent no.4 had established a graphite plant in the Schedule Property and the said industry was functioning till the year 2019. In the meanwhile, in the year 1987, an absolute sale deed was executed by the Board in favour of respondent no.4 in respect of the Schedule Property. Undisputedly, the said sale deed has been executed in favour of respondent no.4 without any restrictions. The material on record would go to show that in the year 2012 several complaints were made by the residents of

the locality with regard to the pollution caused by the functioning of respondent no.4-Industry. The said complaints had ultimately resulted in passing an order of closure by the Control Board against respondent no.4. Respondent no.4 had challenged the closure orders passed by the Control Board in vain and ultimately it had to close down its industry in view of the order dated 28.01.2019 passed by the Tribunal. Subsequent to the said order, respondent no.4 has obtained necessary closure orders from the State Government under the provisions of the Industrial Disputes Act, 1947. After execution of the absolute sale deed in respect of the Schedule Property by the Board in favour of respondent no.4 in the year 1987, respondent no.4 has become the absolute owner of the Schedule Property. Undisputedly, no conditions or restrictions were attached to the sale deed dated 24.04.1987 executed by the Board in favour of respondent no.4 in respect of the Schedule Property. Therefore, the contention of the learned Senior Counsel for the petitioner that after the closure of the industry, the Schedule Property has to revert back to the Government or the land should be brought to sale by the

State Government by public auction, etc., cannot be accepted and the same is liable to be rejected.

14. It is not the case of the petitioner that the Schedule Property was not utilized by respondent no.4 for the purpose for which it was allotted to it. Undisputedly, respondent no.4 had established an industry in the Schedule Property which had functioned for nearly about 46 years. The absolute sale deed executed in its favour is without any restriction on utilization of the land and even if there is any restriction, the same would be void under Section 11 of the Transfer of Property Act, 1882. Under the circumstances, we are of the considered view that the several prayers made by the petitioner for issuing a writ of mandamus including the writ of mandamus directing respondent no.3 to re-acquire the Schedule Property and allot it to upcoming entrepreneurs, or to use the Schedule Property as a lung space of the locality, cannot be granted.

15. For the purpose of claiming a writ of mandamus, the petitioner must establish an existing legally enforceable right, its infringement or invasion or

infraction. Exercise of the jurisdiction to issue a writ of mandamus is purely discretionary and the same cannot be issued as a matter of course. The petitioner herein has failed to establish any existing legally enforceable right or its infringement for claiming a writ of mandamus. Petitioner has also not established that the respondent-authorities have refused or neglected to perform their statutory duties. When the petitioner has failed to establish any legally enforceable right or its infringement and when he has also failed to point out that the respondent-authorities have failed or neglected to perform their statutory duties, the prayers made by the petitioner for issuing writ of mandamus cannot be granted.

16. Under the circumstances, we do not find any merit in this writ petition, and accordingly, the same is dismissed.

**Sd/-
ACTING CHIEF JUSTICE**

**Sd/-
JUDGE**