IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 9^{TH} DAY OF FEBRUARY, 2021

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION No.52690/2019 (LB-RES)

BETWEEN:

SRI SHIVAKUMARASWAMY S/O PUTTAPPA AGED ABOUT 60 YEARS R/O # 14 (17) 1ST FLOOR 1ST MIAN ROAD SRI GANAPATHI SACHIDNANDA ASHRAMA POST GOWRISHANKARANAGAR MYSURU-570025.

...PETITIONER

(BY SRI. K R LINGARAJU, ADV.)

AND:

- 1. THE STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY URBAN DEVELOPMENT DEPARTMENT VIKASA SOUDHA DR.B.R AMBEDKAR VEEDHI BENGALURU-560001.
- 2. MYSURU URBAN DEVELOPMENT AUTHORITY REPRESENTED BY ITS COMMISSIONER JHANSI RANI LAKSHMI BAI ROAD MYSURU-570005.

3. THE SPECIAL TAHASILDAR
MYSURU URBAN DEVELOPMENT AUTHORITY
JHANSI RANI LAKSHMI BAI ROAD
MYSURU-570005.

...RESPONDENTS

(BY SMT. PRATHIMA HONNAPURA, AGA. FOR R1 SRI. T.P. VIVEKANANDA, ADV.F OR R2 & 3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENDORSEMENT DATED 20.11.2019 ISSUED BY THE R3 VIDE ANNX-A; THE RESOLUTION NO.5 DATED 22.03.2012 OF R2 VIDE ANNX-B IN SO FAR AS DECISION NO.1 IS NULL AND VOID AND IT IS NOT BINDING ON PETITIONER, AS THE SAID CONDITION IS CONTRARY TO RULES AND CONDITION NO.24 OF THE APPLICATION DATED 19.09.2011 AND NOTIFICATION DATED 23.01.1989 AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON **21/01/2021** COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court under Article 226 of the Constitution of India praying for the following reliefs:-

a. Issue a writ or order in the nature of certiorari quashing the endorsement bearing No.My.Na.Pra:A.Sha:20/2019-20 dated

20.11.2019 issued by the respondent No.3 vide Annexure-A.

- b. The resolution No.5 bearing No.My.Na.Pra/Aa.Aa.Sa.Sha./2011-12 dated 22.03.2012 respondent No.2 vide Annexure-B insofar as decision No.1 is null and void and it is not binding on petitioner, as the said condition is contrary to Rules and condition No.24 of the application dated 19.09.2011 and notification dated 23.01.1989.
- c. Direct the respondent No.2 to allot site measuring 40 x 60 feet in Layout known as Rabindranath Tagore Nagar, Mysuru as per the seniority list prepared before allotment."
- 2. Petitioner is a government servant. On 23.01.1989 the 2nd respondent Mysore Urban Development Authority (for short 'the MUDA') invited applications for allotment of sites. The petitioner applied seeking allotment of site claiming preference under quota meant for government servants. Petitioner was not allotted site under notification dated 23.01.1989. He made several attempts

seeking allotment of site before the 2nd respondent–MUDA. The 2nd respondent–MUDA again issued notification dated 19.09.2011 inviting application for allotment of sites in R.T. Nagar and other two layouts. Pursuant to the said notification, petitioner made application dated 17.10.2011 requesting allotment of site. During the beginning of the year 2012, the 2nd respondent-MUDA had commenced allotment of sites. The 2nd respondent-MUDA appears to have considered the case of the petitioner for allotment of site based on his seniority, as he had made six attempts. The Officers of the 2nd respondent-MUDA on 26.04.2012 visited the residence/address of the petitioner for enquiry as to whether the petitioner owns any other site or house. The officers assured that the petitioner would get letter of allotment through post. As the petitioner did not receive any communication with regard to allotment of site, he made representation dated 14.09.2017 requesting to consider his request for allotment of site at R.T. Nagar, Mysore. Thereafter, petitioner made one more

representation dated 11.06.2019 and the petitioner was issued with endorsement at Annexure-A dated 20.11.2019 stating that report was submitted indicating that petitioner possessed own house, as such petitioner's case is not considered for allotment of site in R.T. Nagar extension.

- 3. Heard Sri K.R. Lingaraju, learned counsel for petitioner, Smt. Prathima Honnapur, AGA for respondent No.1, and Sri T.P. Vivekananda, learned counsel for respondent Nos.2 and 3.
- 4. Learned counsel for the petitioner would submit that endorsement at Annexure-A dated 20.11.2019 and the resolution dated 22.03.2012 passed by the 2nd respondent-MUDA insofar as it resolves to allot sites only if the applicant has no site or house, is illegal and opposed to the Karnataka Urban Development Authority (Allotment of Sites) Rules 1991 (for short 'the 1991 Rules'). Learned counsel would submit that petitioner had made six

attempts and he had his seniority. Petitioner's application for allotment of site was not considered only because petitioner possessed own house. Learned counsel would submit that Rule 12 of the Rules prescribes eligibility for allotment of site, if a person is allotted a site or a house in any part of the State by any other Urban Development Authority or Karnataka House Board or any other Agency of Government, such person would be ineligible for allotment of a site. The petitioner was not allotted site or house either by any other Urban Development Authority or Housing Board or any other agency of the Government, but the petitioner had purchased a revenue site in the year 2000 and had built a house. It necessitated the petitioner to purchase a revenue site, since the petitioner was not allotted a site by the 2nd respondent-MUDA. Learned counsel would rely upon decision of Co-ordinate Bench of this Court dated 19.12.2019 in Writ Petition No.22649/2018 and connected matter. Thus he prays for allowing the writ petition.

5. Sri T.P. Vivekananda, learned counsel appearing for respondents 2 and 3 submits that only on the ground of delay and laches the writ petition is liable to be rejected. Learned counsel would submit that allotment of site in respect of R.T. Nagar was completed in the year 2012 itself and for the first time petitioner made representation to the 2nd respondent-MUDA onlv on 11.06.2019. The representation produced by the petitioner at Annexure-F dated 14.09.2017 is not received by the 2nd respondent-MUDA, thus he submits that as the petitioner has slept over the matter and as the allotment process has already been completed in the year 2012 itself, the petitioner would not be entitled for the relief sought for in this writ Further learned counsel invites attention to petition. Annexure-R2 notification dated 19.09.2011, which invited applications for allotment of sites in R.T. Nagar, Mysore, makes it clear that the applicant or applicant's wife or husband or dependants should not have acquired any site or house from any authority or Karnataka Housing Board

or Government Agency or from any other source. Relving on last portion of the condition, learned counsel would submit that as the petitioner possess own house, which is clear from Annexure-G sale deed dated 30.08.2000, the petitioner would not be entitled for allotment of site from Nextly learned counsel the 2nd respondent-MUDA. contended that even though petitioner possessed own house, petitioner filed false affidavit before the 2nd respondent-MUDA stating that petitioner nor his wife or children own possess site/house anywhere in or Karnataka State. For having filed false affidavit the petitioner would not be entitled for allotment of site. Lastly learned counsel for the 2nd respondent-MUDA contends that the petitioner accepted return of initial deposit of Rs.1,10,000/-, which was returned on 14.09.2017. Having accepted initial deposit, thereafter it is not open for the petitioner to request for allotment of Moreover, he submits that cause of action for the site. petitioner arose immediately after completion of allotment process and thereafter on receipt of the initial deposit. But whereas the petitioner is before this Court, only after more than two years, thus he prays for dismissal of the writ petition.

- 6. It is not in dispute that the petitioner had made application to the 2nd respondent-MUDA for allotment of site pursuant to notification dated 19.09.2011 and being a Government servant had sought preference for allotment of site under Government servant quota. It is also not in dispute that the petitioner had already made six attempts and had gained seniority for consideration of his application for allotment of a site.
- 7. The 2nd respondent-MUDA is governed by the 1991 Rules for allotment of site. Rule 12(2) of the 1991 Rules reads as follows:-

"12(2) No person shall be eligible for allotment of the site, if such person has been allotted a site or a house in any part of the State by any other Urban Development Authority or Karnataka Housing Board or any other agency of Government."

A reading of the above Rule indicates that if a person is allotted site or a house in any part of the State by any other Urban Development Authority or Karnataka Housing Board or any other agency of Government, such person would not be ineligible for allotment of a site.

8. In the instant case, the petitioner was not allotted site or house by any other Urban Development Authority or Karnataka Housing Board or any other agency of the Government. The petitioner acquired a revenue site and built house in the year 2000. That would not be ineligibility for seeking allotment of site from the respondent-MUDA. Acquisition of a site or house by any person by any other mode other than mentioned in the above Rule would not be a bar for allotment of a site to such a person by the Urban Development Authority. This

Court in a decision in SMT. PANKAJA PRABHUDEV ALIAS PANKAJA PRABHUDEV Vs. BANGALORE DEVELOPMENT **AUTHORITY** reported in **ILR 2012 KAR 268** considering Rule 10 of Bangalore Development Authority (Allotment of Site) Rules, which is similar or akin to above Rules has held that owning or possessing a site or house from any other source stated in the Rules, cannot be construed as ineligibility for seeking allotment of site. Therefore, the resolution Annexure-B of the respondent-MUDA dated 22.03.2012 to the effect that a person, who possesses site or house of his own would not be entitled for allotment of a site and endorsement Annexure-A dated 20.11.2019 rejecting the petitioner's request for allotment of site is opposed to Rule 12 (2) of the Rules.

9. This Court in similar circumstances, wherein MUDA was party in Writ Petition No.22649/2018 clubbed with writ petition 31341/2018 disposed of on 19.12.2019 at

paras 15 and 16 with regard to Rule 12(2) of the Rules has held as follows:-

- "15. The judgments referred to above relied upon by the petitioners are applicable for the present case. A plain reading of Rule 12(2) of the Rules would indicate that ineligibility is only if the applicant has been an allottee of a site or house by Urban Development Authority, Karnataka Housing Board or any other agency of the Government or a site allotted by Housing Co-operative Societies.
- 16. Clearly, the explanation of eligibility under Rule 12(2) of the Rules as contended by Urban Development Authority to include acquisition of house or site by any other source apart from what is specified is contrary to the plain wordings of the Rule. The condition excluding persons from applying for a site is an exclusionary clause and ought to be interpreted strictly. Accordingly, the endorsements at Annexure-A in both the writ petitions are rejected."
- 10. It is not open for the 2^{nd} respondent-MUDA to raise technical objections such as delay and that the petitioner has accepted the refund of initial deposit. When the 2^{nd}

respondent-MUDA has failed to discharge its statutory duty under the 1991 Rules and this Court has already interpreted similar Rule in PANKAJA PRABHUDEV's case cited supra in the year 2010 itself, the respondent-MUDA could not have passed a resolution contrary to Rule 12 of the 1991 Rules to exclude a person, who owns a site or house by any other mode, other than mentioned in Rule 12 (2) of the Rules. The other contention of the 2nd respondent-MUDA that the petitioner had filed false affidavit stating that he had no house or site even though house would he possessed own not merit consideration, since the facts and circumstance of the case would not disentitle the petitioner for allotment of a site. The affidavit filed by the petitioner which is produced as Annexure-R3 could be construed as affidavit in terms of Rule 12(2) of 1991 Rules and not more than that.

11. Taking note of the submission of the learned counsel for the 2^{nd} respondent-MUDA that allotment of site in

respect of R.T.Nagar, Mysore was completed in the year 2012, I deem it appropriate for the 2nd respondent-MUDA to consider the request of the petitioner for allotment of site in any of the layouts formed by 2nd respondent-MUDA.

12. For the reasons stated above, writ petition is allowed in part. The endorsement Annexure-A dated 20.11.2019 bearing No.My.Na.Pra:A.Sha:20/2019-20 is quashed. The 2nd Respondent-MUDA is directed to consider the petitioner's application for allotment of a site and allot a site in any of the layouts of 2nd respondent-MUDA.

SD/-JUDGE

NG* CT:bms