R & M Trust vs Koramangala Resi. Vigilance Group & Ors on 19 January, 2005

Equivalent citations: AIR 2005 SUPREME COURT 894, 2005 AIR SCW 736, 2005 AIR - KANT. H. C. R. 551, (2005) 1 JT 507 (SC), 2005 (1) SLT 565, 2005 (2) SRJ 481, 2005 (1) SCALE 425, 2005 (3) SCC 91, (2005) 3 KANT LJ 17, (2005) 2 KCCR 1257, (2005) 1 SCJ 763, (2005) 1 SUPREME 405, (2005) 1 SCALE 425, (2005) 1 WLC(SC)CVL 405

Author: A.K. Mathur

Bench: Ashok Bhan, A.K. Mathur

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           CASE NO.:
Appeal (civil)  1415 of 1999

PETITIONER:
R & M Trust

RESPONDENT:
Koramangala Resi. Vigilance Group  & Ors.

DATE OF JUDGMENT: 19/01/2005

BENCH:
ASHOK  BHAN & A.K. MATHUR

JUDGMENT:
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J U D G M E N T WITH Civil Appeal No. 1416 of 1999 Civil Appeal No. 1417 of 1999 A.K. MATHUR, J.

This appeal and connected appeals were filed against the order passed by the Division Bench of the Karnataka High Court dated 2nd July, 1998 whereby the Division Bench disposed of Writ Appeal No. 1955 of 1993 alongwith Writ Appeal No. 777 of 1993.

Facts which are necessary for disposal of these appeals are the Respondent Association Koramangala Residents Vigilance Group filed a Public Interest petition challenging the building licence issued for construction of multi-storeyed/ multi-apartments on Site Nos. 403 and 443 in IInd and IIIrd Cross in III Block, Koramangala Layout, Bangalore, on the ground that it is illegal, void and prayed for quashing of the licence and direction to demolish the building already constructed on the site. It was submitted that the residents in the area had acquired sites and built houses on the understanding and under the bona fide belief that the lay out would be developed and maintained in accordance with law. Grievance of the Association was, the menace of multi-storeyed

and multi-apartments buildings in the Bangalore city particularly in Koramangala lay-out which is considered to be a posh and prestigious lay-out, had been increasing. Many property developers, investors in buildings and speculators in real estate were alleged to have started their activities which are detrimental to the quality of life of the residents of the area. Multi-storeyed buildings and multi-apartment buildings were causing strain on the public amenities. It was alleged that the property developers by using their influence and money are getting licences against the statutory prohibitions. The appellant relied upon the decision given in case of Chandrashekar Hegde Vs. B.C.C. [ILR 1988 Karnataka 356], (Single Bench) to contend that the Corporation was not empowered to grant licences to the owners of the sites to build multi-storeyed and multi-family dwelling units. It was alleged that the scheme under the City of Bangalore Improvement Act, 1945 and Bangalore Development Authority Act, 1976 provided for construction of residential houses and not for exploitation of those sites for construction of buildings in violation of law and with the object of inflating the money market of the builders. It was alleged that in Writ Petition No. 7599 of 1987, the Karnataka High Court directed the Corporation not to issue licences to any third party for putting up multi-storeyed and multi-family dwelling apartments in the sites allotted by the B.D.A. It was further alleged that after the judgment in December, 1987, one of the appellants represented to Respondent Nos.1 and 2 to re-examine the licences already issued for putting up multi-storeyed building and multi-family apartments in the light of the law laid down by the Karnataka High Court. In response to that, respondent sent communications to all the licensees to stop further construction. The Writ Appeal No. 306 of 1988 filed against the order of the learned Single Judge was dismissed by the Division Bench on 14th December, 1988 which is noted as Pee Kay Constructions Vs. Chandrashekar Hegde, [ILR 1989 Karnataka, 241].

In this background, the present Public Interest Litigation was filed which came up before a single Judge. In this petition, the building licence No. LP 169/87-88 issued in favour of Respondent No.4 i.e. M/s R&M Trust by Respondent No.1 - the Corporation of the City of Bangalore, for construction of multi-storey building was stopped by letter dated 4.4.1988. This letter was withdrawn by Respondent No.3 i.e. Deputy Director of Town Planning Corporation of the City of Bangalore, by its letter dated 26th March, 1991. On receipt of this letter, Appellant /Respondent No.4 resumed the construction. This action of the Respondent No.3 permitting the Appellant /Respondent No.4 to proceed with the construction was challenged to be arbitrary, illegal, unjustified and violative of Article 14 of the Constitution besides being in violation of law, by the Respondent Association, alleging that issue of licence in favour of Appellant/ Respondent No.4 is illegal and without jurisdiction. The following prayers were made in the Writ Petition which reads as under:

> (i) Call for records from Respondents 1 to 3 pertaining to building licence issued in R-1's No. LP.353/87-88 for putting up a Multi-storyed/Multi-apartment building on Site No. 443, III Cross, III Block, Koramangal, Bangalore 560 034;
>
> (ii) Declare as illegal and void building licence No. LP.353/87-

88 issued by R-1 for the construction of a Multi-

storyed/Multi-apartment building on Site No. 443, III Cross, III Block, Koramangala, Bangalore 560 034;

(iii) Direct R-1 to demolish the construction already put up on Site No.443, III Cross, III Block, Koramangala, Bangalore 560 034 by having recourse to Section 321 of the K.M.C. Act, 1973 (Karnataka Oct 14 of 1977) and other related provisions of that Act; and

(iv) Grant such other or further relief that this Hon'ble Court may deem fit under the circumstances including costs."

This was contested by the Respondents and the learned single Judge after hearing the parties held "I have no hesitation to hold that licences granted to Respondent No. 4 in these Writ Petitions are contrary to law in view of the law laid down in the case of Pee Kay Constructions."

But the learned Single Judge felt that the petition filed by the Writ Petitioner suffered from laches and delay and, therefore, dismissed the Writ Petition on the grounds of delay and laches. It was observed that the dismissal of Writ Petitions will not prevent the Corporation from taking any action permissible under the law. Aggrieved against the present order passed by the learned Single Judge, the present Writ Appeal was filed and it was alleged that the Writ Petition does not suffer from any delay or laches nor any third party interest was created. However, the respondents contested this Writ Appeal, they did not file the appeal against the aforesaid order but submitted that the law laid down in Pee Kay Constructions case (Supra) was not a good law and the learned Single Judge was not justified in holding that licence granted to respondents was contrary to law. The Division Bench after hearing the parties observed that the law laid down in Chandrashekar Hegde Vs. B.C.C. [ILR 1988 Karnataka 356] and Pee Kay Constructions case (Supra) is correct law. Thereafter, the Division Bench examined the question of delay and laches. After reviewing the facts the Division Bench held that there is no delay and laches in preferring the writ petition. It was held that building licence was issued in favour of appellant-builder on 19th August, 1987 and on 3rd October, 1987. The Commencement Certificate was issued on 13th October, 1987 and 23rd November, 1987 and the Chandra Shekhar Hegde's Case was decided on 14/15/16th December, 1987 wherein it was held that the Corporation was not justified in granting licence to the owners of the sites to put up multi-storyed/multi-family dwelling units and the appeal was dismissed on 14th December, 1988. On 4th April, 1988, the Respondent Corporation issued a letter to the builders directing them to stop construction. The construction remained suspended upto 26th March, 1991, when letter was issued to builder revoking to stop construction order, permitting them to proceed with the construction. This Writ Petition was filed in the first week of November, 1991, as public interest litigation. The explanation for the delay was that the office bearers made enquiries from the office of Corporation the reasons for withdrawing of direction to stop work but in vain, met the authorities of Corporation Respondent No.3 on several occasions and then by a letter dated 7th October, 1991, requested to furnish the copies of certificate but the copies were not furnished. They protested that there was no justifiable reason for such withdrawal. They also explained that the building is permitted to be constructed at Site No.403 which is a narrow road, the residents of area will be subjected to great inconvenience but without any result. It was also contended that the third party right had not been created. After the grant of permission, the construction proceeded. However,

Appellant/Respondent in their turn submitted that the third party interest had already been created because the 4th Respondent has issued shares on 21st May, 1988 and some of the flats have been sold out. However, Division Bench did not accept the plea of the third party interest being created in the matter. The Division Bench observed that when the original files of Corporation were summoned by the Court, it was found that between 4th April, 1988 and 14th February, 1991 nothing transpired. However, the builder on 14th February, 1991 requested for permission to complete the construction mainly on the ground that substantial amount has been spent on purchase of site and on construction of ground with three floor building. This letter was perused by the Deputy Director of Town Planning on 20th March, 1991 which was submitted to Commissioner on 21st March, 1991. It was observed that all similar cases be put up where building is completed with full structural work as per sanctioned plan prior to judgment. It was found that there was no note by the Deputy Director regarding Appellant/Respondent. Thereafter on 25th March, 1991, the order was passed by the Commissioner that he perused the note and discuss the matter with CE and the DDTP and considered the matter, he directed that the notice be withdrawn and permission be accorded to complete the building as per sanctioned plan. The Division Bench observed that these notes clearly show non-application of mind and that the action of the respondent was not in accordance with law and was passed without giving any reasons. Thereafter, the Division Bench concluded that the view taken by the learned Single Judge is right that the licence granted in favour of Respondent Nos. 4 and 5 is contrary to law and liable to be quashed. The Division Bench further held that they did not agree with the view taken by the learned Single Judge that the Writ Petition suffered from delay and laches and accordingly, allowed the Writ Appeal, set aside the order of learned Single Judge dismissing the same on the ground of delay and laches and affirmed the finding that the licence granted in favour of Respondent Nos. 4 and 5 is illegal and quashed the licence issued in favour of Repondent-builder, and also quashed the order of Respondent Corporation dated 26th March, 1991 allowing Respondent-builder to continue with the construction and directed Respondent No.1 to demolish the illegal construction put up on Site Nos. 403 and 443. It was further directed that the construction as raised by them is illegal and they were liable to bear the expenses for demolition of the construction and Respondent Nos. 1 and 3 are liable to pay costs to the writ petitioner.

Aggrieved by this order, the present special leave petitions were filed and leave was granted and operation of the order was stayed.

The learned counsel for the appellant has seriously raised the objection of entertaining this belated Public Interest Litigation and he submitted that this was nothing but abuse of the process of the Court. Secondly, he submitted that the licence which had been granted for construction by the Respondent-Corporation was fully justified and no illegality was committed.

All the three appeals Civil Appeal No.1415 of 1999, Civil Appeal No. 1416 of 1999 and Civil Appeal No. 1417 of 1999 arise against the order passed by the Division Bench. Civil Appeal No. 1417 of 1999 have been filed by bona fide purchasers of flats in the building, whereas CA 1415/99 & CA 1416/99 have been filed by builders..

Now, in order to appreciate the contention raised by the appellants, it may be necessary to dilate upon some facts of CA 1415/99. Property No. 443, 2nd Cross, 3rd Block, Koramangala Extension,

Bangalore, was allotted by the City Improvement Trust Board to Dr. Alice Duraiswamy on 4th March, 1971 and he was also put up in possession of this schedule land. The Bangalore Development Authority, successors in interest of City Improvement Trust Board sold the schedule land in favour of Dr. Alice Duraisamy under a registered Sale Deed dated 27th March, 1981. Dr. Alice Duraiswamy then sold the land in favour of one M/s Batra Developments under a registered Sale Deed dated 12th June, 1987. The development and planning of the City of Bangalore and construction of the building thereon were governed by the Karnataka Town and Country Planning Act, the Outline Development Plan and the Comprehensive Development Plan as well as the Zoning Regulations framed thereunder. The Corporation of the City of Bangalore also framed Bye-Laws in conformity with the Development Plan and the Zoning Regulations. In accordance, therewith, M/s Batra Developments applied for and obtained licence from the Corporation of the City of Bangalore for construction of basement, ground and three upper floors on 3rd October, 1987. And thereafter, the construction commenced and by 3rd April, 1988, the basement and ground floor of the building had been completed. On 4th April, 1988, the construction was stopped on the basis of the decision of the Karnataka High Court in Pee Kay Constructions Case. Thereafter, the High Court of Karnataka in a case known as Happy Home Builders Case held that when once a licence is granted by the Corporation Authorities, the Corporation cannot stop construction of building. M/s Batra Developments thereafter made a representation to the Corporation Authorities and submitted that the substantial portion of the building has been completed and considerable investment have been made and the licence granted thereof is in accordance with the Building Plan and therefore, they may be permitted to complete the construction. The Corporation Authorities after taking into consideration the representation, permitted M/s Batra Developments to proceed with the construction. M/s Batra Development entered into an agreement of sale with M/s Raj Trust on 16th June, 1989. Consequent to the said agreement under the Development Agreement dated 8th May, 1991 between M/s Raj Trust and the appellant, the construction proceeded. When the building was practically completed during November, 1991, the present Writ Petition was filed challenging the very licence issued on 3rd October, 1987. The learned Single Judge dismissed the Writ Petition on the ground of laches. It was pointed out that the building was occupied by 12 families and the grant of licence has been declared to be invalid after 11 years, but the Division Bench did not agree and directed demolition of building on the basis of Pee Kay Constructions case. Therefore, the question now arises for our consideration is whether the issue of licence on 3rd October, 1987 by Corporation was valid or not.

Similarly, in the another Civil Appeal No. 1416 of 1999, the question of law is identical but facts are little different. In this case, on 16th July, 1969, City Improvement Trust Board allotted a site bearing No. 403, Kormangala measuring 80' x 120 (9600 sq.ft.) (Schedule property) to Mr. U.L. Nagraj. On 13th July, 1982, absolute Sale Deed was executed by Bangalore Development Authority in favour of Mr. U.L. Nagraj with following conditions:

> "That the schedule site shall be held by the second party and enjoyed the rents and profits etc. received thereof, be enjoyed subject to the following conditions:-
>
> (1) The building to be constructed shall be used whole for human habitation and shall not include any apartments to the building whether attached thereto or not used as a

> shop or a building of warehouse or building in which manufactory are conducted by mechanical power or otherwise."

Thereafter, on 4th March, 1982/16th April, 1987, a Sale Deed executed by Mr. U.L. Nagraj in favour of Mrs. Ratna Lachman Bhojwani. Mrs. Ratna Lachman Bhojwani sold schedule property in favour of the appellant. On 17th August, 1987, the plan was approved for construction of ground plus three upper floors plus mezzanine floor. A licence was issued by the Corporation of City of Bangalore. The plan was sanctioned for a period of two years as per orders of the Commissioner from 17th August, 1987 to 16th August, 1989. One of the conditions was that the construction should be done within two years. The appellant started the construction immediately. On 13th October, 1987, the Commencement Certificate was issued, as per Building Bye-Laws. On 21st May, 1988, a share certificate was issued entitled them to ownership of flats.. Then, on 4th April, 1988 the B.C.C. asked the respondent to stop the work in the light of Pee Kay Constructions case. It was alleged by appellant that the entire building except the terrace of last floor had been completed. On 29th March, 1989, another decision was given by the Karnataka high Court in the case of Happy Home Builders wherein it was held that the construction have been carried out in pursuance of the sanction given by the B.C.C. and Corporation is estopped from stopping such construction. This order of learned Single Judge was affirmed by Division Bench which reads as under :

> "Delay of 14 days in filing W.A.Nos. 1145 to 1151 of 1989 and 18 days in filing of W.A. No. 1182/89 is condoned as sufficient cause is shown.
>
> 2. We have heard the learned counsel and find that in the circumstances of this case, without going into the question of the powers of the authorities to grant licence contrary to section 505 of the Karnataka Municipal Corporation Act, the judgment of the learned Single Judge can be sustained on the ground that there has been an unexplained delay on the part of the Corporation in taking timely action against the builders/owners. The Corporation is estopped from taking any action in view of its own conduct in allowing the builders to raise construction on the basis of the licences which were granted in contravention of the provisions of Section 505 and in allowing the building to be occupied.
>
> 3. In this view of the matter, we find that the judgment of the learned Single judge, without expressing any opinion on the question of law, does not call for interference. Consequently the appeals are dismissed. However time is granted to the Corporation for compliance of the judgment of the learned Single Judge upto 5th August, 1989."

On the basis of this judgment a representation was made by appellant & Corporation revoked their letter of stopping construction. That gave rise to present PIL.

It is also relevant to mention here that a Special leave Petition was filed against the Pee Kay Constructions Case before this Court and this Court disposed of that S.L.P. without going into the merits of the judgment of the High Court. The order of the High Court was modified in following terms :

" Leave granted.

After hearing counsel for both the parties and giving them sufficient time to obtain instructions, we are of the opinion that, in the circumstances of the case, it is not necessary to go into the merits of the judgment of the High Court but that the judgment of the High Court be modified as set out below.

It is a fact that the appellants have constructed two floors of the building : the ground floor and the first floor alongwith the basement. In our opinion, the interests of justice require that they should not be asked to demolish it. It is enough if they are restrained from constructing a second and third floor as originally planned.

The High Court has also held that the appellants can have only one residential unit on the site. Counsel for the respondents points out that the appellants have submitted a revised plan to the Corporation, subsequent to the judgment of the High Court, by which they seek approval of the construction of a single residential unit on the ground floor and a single residential unit on the first floor, and that, in the circumstances, they will not object to this revised plan being approved. On the other hand, counsel for the appellant requests that he may be allowed to construct three residential units on the ground floor and the first floor as originally planned. After hearing both sides at some length, we are of the opinion that the appellants may be permitted to have two (not three) residential units on each of the two floors. There should however be no construction above and beyond the first floor of the property and the property should not be used for any purpose other than residential purpose. We direct accordingly. This is an arrangement broadly agreed to by both the parties.

The appeal is disposed of accordingly. There will be no order as to costs.

We direct that the revised plan submitted to the Corporation by the appellants subsequent to the decision of the High Court but modified so as to have two flats or apartments on each of the floors instead of one be approved by the Corporation and the authorities. Constructions on the site will stand otherwise restricted on the lines already indicated above."

The S.L.P. was accordingly disposed of but the ratio laid down in the Pee Kay Constructions case was not examined by this Court on merit. In fact, the S.L.P. was disposed of with the agreement of both the parties.

And the third C.A. No. 1417 of 1999 was filed by Motor Industries Company Limited who have purchased two flats in this building for about Rs. 21.1 lakhs on 21.2.1994 and the same are in occupation of its employees. It is alleged that the petitioner who had bought these flats, was neither aware of the controversy pertaining to the building nor about any order by any court. It was also alleged that the number of persons has purchased flats in this residential building and they are facing the similar predicament. Hence, these three appeals are before us for the final disposal.

Before we address to the questions raised with regard to the maintainability of the present public interest litigation and the delay in filing the same, we may examine necessary provisions of law bearing on the subject. The first Act with which we are concerned is the Karnataka Town and Country Planning Act, 1961 (hereinafter to be referred to as the Act of 1961). This Act primarily deals with the planned growth of land use and development and for the making and execution of Town Planning Scheme in the State of Karnataka. By this Act the entire planning of State governed and the Town Planning Schemes are made for development of the State. Development plan means Outline Development Plan or Comprehensive Development Plan prepared under this Act. Section 14 of the Act lays down enforcement of the outline development plan and the regulations. It says that from the date when this Act come into force every land use, every change in land use and every development in the area covered by the plan shall conform to the provisions of this Act, the Outline Development Plan and the regulations. It further stipulates that no such change in land use or development shall be made except with the written permission of the Planning Authority. Therefore, the whole purpose of this Act is the plan development of the State.

The next is the City of Bangalore Improvement Act, 1945 (hereinafter to be referred to as the `Act of 1945`) and the Rules framed therein with which we are concerned, are known as the City of Bangalore Improvement (Allotment of Sites) Rules, 1964 (hereinafter to be referred to as the `Rules of 1964 `). We are primarily concerned with this Act and the Rules, subsequently this Act of 1945 and Rules of 1964 have been repealed and they have been replaced by the Bangalore Development Authority Act, 1976, and the Bangalore Development Authority (Allotment of Sites) Rules, 1982. The entire controversy centres around these Acts and the Rules. The third Act with which we are concerned is the Karnataka Municipal Corporations Act, 1976. Under this Act the Bangalore Municipal Corporation granted permission to the appellant for raising one plus three floors. As per the Act of 1945 , allotment was to be made with conditions that they will have to deposit certain amount and then they will construct and complete the building in the manner provided. As per the Act of 1945 schemes are prepared by the Board and after preparation of the scheme and obtaining necessary approval from the Government, allotments are made as per the Rules and Bye-laws. The sites are allotted as per Rule 5 of the Rules of 1964. The allottees are treated as lessee under Rule 6. Rule 7 deals with the applications for allotment in Form I and after completion of necessary deposits those who are eligible for allotment, sites are allotted to them under Rule 10. Rule 17 deals with the conditions of allotment and sale of site. Under sub-rule (4), after all other formalities have been made i.e. payment of the lease money, allottee is intimated about the actual measurement of the site and particulars thereof and a lease-cum-sale agreement in Form II is executed by the allottee and the Board and the same is required to be registered by the allottee after constructing the building on the site in accordance with the plans and designs approved by the Board. It further stipulates that in case it is considered necessary to add any additional conditions in the agreement the Board may make such additions. It also lays down that the approval of the City of Bangalore Municipal Corporation for the plans and designs shall be necessary when the lay-out in which the site is situated is transferred to the control of the said Corporation. Sub-rule (5) of Rule 17 says that the allottee shall comply with the conditions on the agreement executed by him and the Buildings and other bye-laws of the Board for the time being in force. Under Sub-rule (6) the allottee has to construct the house within a period of two years and if the building is not constructed within the said period of allotment, the Board reserves the right to revoke the agreement. Sub-rule (7) lays

down that the site or the building constructed on the plot shall not be alienated during the period of tenancy. Relevant rules which have bearing on the subject read as under :

> " 17. Conditions of allotment and sale of site.- xx xx xx (4) After payment under sub-rule (2) is made the Board shall intimate the allottee the actual measurement of the site and the particulars thereof and a lease-cum-sale agreement in Form II shall thereafter be executed by the allottee and the Board and registered by the allottee. If the agreement is not executed within forty-five days after the Board has intimated the actual measurement and particulars of the site to the allottee, the earnest money paid by the allottee may be forfeited, the allotment of the site may be cancelled, and the amount paid by the allottee after deducting the earnest money refunded to him.

Every allottee shall construct a building on the site in accordance with the plans and designs approved by the Board. If in any case it is considered necessary to add any additional conditions in the agreement the Board may make such additions. Approval of the City of Bangalore Municipal Corporation for the plans and designs shall be necessary when the lay-out in which the site is situated is transferred to the control of the said Corporation.

(5) The allottee shall comply with the conditions on the agreement executed by him and the Buildings and other bye-laws of the Board for the time being in force.

(6) The allottee shall construct a building within a period of two years from the date of execution of the agreement or such extended period as the Board may in any specified case by written order permit. If the building is not constructed within the said period the allotment may be cancelled, the agreement revoked, the lease determined and the allottee evicted from the site by the Board, and after forfeiting twelve and a half per cent of the value of the site paid by the allottee, the Board shall refund the balance to the allottee.

(7) The site or the building constructed thereon shall not be alienated during the period of the tenancy."

The lease agreement is required to be executed in Form II. This lease agreement is called Lease-cum-sale agreement. Form II of the lease agreement reads as under :

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        "      FORM NO.II
        [See rule    .]
        LEASE-cum-SALE AGREEMENT
An Agreement made this     .day
of    . 196
BETWEEN the City of Bangalore Improvement
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Trust Board, Bangalore, hereinafter called the Lessor/Vendor which term shall wherever the context so permits, mean and include its successors in interest and assigns of the ONE PART and ..hereinafter called Lessee/Purchaser (which term shall wherever the context so permits mean and include his/ her heirs, executors, administrators and legal representatives) of the Other

PART;

Whereas the City of Bangalore Improvement Trust Board advertised for sale building sites in Extension;

And Whereas one of such building site is Site No more fully described in the Schedule hereunder and referred to as Property;

And Whereas there were negotiation between the Lessee/ Purchaser on the one and the Lessor/Vendor on the other for allowing the Lessee/ Purchaser to occupy the property as Lessee until the Payment in full of the price of the aforesaid site as might be fixed by the Lesser/ Vendor as hereinafter provided;

And Whereas the Lessor/ Vendor agreed to do so subject to the terms and conditions specified in the City of Bangalore Improvement (Allotment of Sites) Rules, 1964, and the terms and conditions hereinafter contained; And Whereas thus the Lessor/ Vendor has agreed to lease the property and the Lessee /Purchaser has agreed to take it on lease subject to the terms and conditions specified in the said Rules and the terms and conditions specified hereunder;

Now this indenture witnesseth:

1. The Lessee/ Purchaser is hereby put in possession of the property and the Lessee/ Purchaser shall occupy the property as a tenant thereof for a period of ten years from (Here enter the date of giving possession) or in the event of the lease being determined earlier till the date of such termination. The amount deposited by the Lessee /Purchaser towards the value of the property shall, during the period of tenancy, be held by the Lessor/ Vendor as security deposit for the due performance of the terms and conditions of these presents.

" 2. The lessee /purchaser shall pay a sum of rupees ..per year as rent on or before .commencing from "

3. The Lessee/ Purchaser shall construct a building in the property as per plans, designs and conditions to be approved by the Lessee/ Vendor and in conformity with the provisions of the City of Bangalore Municipal Corporation Act, 1949, and the bye-laws made there under within two years from the date of this agreement:

Provided that where the Lessor/ Vendor for sufficient reasons extends in any particular case the time for construction of such building, the Lessee/ Purchaser shall construct the building within such extended period.

4. The Lessee/ Purchaser shall not sub-divide the property or construct more than one dwelling house on it; The expression "dwelling house" means a building constructed to be used wholly for human habitation and shall not include any apartments to the building whether attached thereto or

not, used as a shop or a building of warehouse or building in which manufactory operations are conducted by mechanical power or otherwise.

5. The Lessee/ Purchaser shall not alienate the site or the building that may be constructed thereon during the period of the tenancy. The Lessor/ Vendor may, however, permit the mortgage of the right, title and interest of the Lessee/ Purchaser in favour of the Government of Mysore, the Central Government or bodies corporation like the Mysore Housing Board of the Life Insurance Corporation of India, Housing Co-

operative Societies or Banks to secure moneys advanced by such Governments or bodies for the construction of the building

6. The Lessee/ Purchaser agrees that the Lessor/ Vendor may take over possession of the property with the structure thereon if there is any misrepresentation in the application for allotment of site.

7. The property shall not be put to any use except as a residential building without the consent in writing of Lessor/ Vendor.

8. The Lessee/ Purchaser shall be liable to pay all outgoings with reference to the property including taxes due to the Government and the Municipal Corporation of Bangalore.

9. On matters not specifically stipulated in these presents the Lessor/ Vendor shall be entitled to give directions to the Lessee/ Purchaser which the Lessee/ Purchaser shall carry out and default in carrying out such direct5ions will be a breach of conditions of these presents.

10. In the event of the Lessee/ Purchaser committing default in the payment of rent or committing breach of any of the conditions of this agreement or the provisions of the City of Bangalore Improvement (Allotment of Sites) Rules, 1964, the Lessor/ Vendor may determine the tenancy at any time after giving the Lessee/ Purchaser fifteen days' notice ending with the month of the tenancy, and take possession of the property. The Lessor/ Vendor may also forfeit twelve and a half percent of the amount treated as security deposit under clause 1 of these presents.

11. At the end of ten years referred to in clause 1 the total amount of rent paid by the lessee/ purchaser for the period of the tenancy shall be adjusted towards the balance of the value of the property.

12. If the lessee / Purchaser has performed all the conditions mentioned herein and committed no breach thereof the Lessor/ Vendor shall, at the end of ten years referred to in clause 1, sell the property to the Lessee/ Purchaser and all attendant expenses in connection with such sale such as stamp duty, registration charges, etc., shall be borne by the Lessee/ Purchaser.

13. On complying with the terms and conditions of this agreement in the manner stated above but not otherwise the Lessor/ Vendor shall be obliged to execute the sale deed in favour of the Lessee/ Purchaser.

14. The Lessee/ Purchaser hereby also confirms that this agreement shall be subject to the terms and conditions specified in the City of Bangalore Improvement (Allotment of Sites) Rules, 1964, and agreed to by the Lessee/ Purchaser in his/ her application for allotment of the site.

15. In case the Lessee/ Purchaser is evicted under clause 9 he shall not be entitled to claim from the Lessor/ Vendor any compensation towards the value of the improvements or the superstructure erected by him on the scheduled property by virtue of and in pursuance of these presents.

16. It is also agreed between the parties hereto that Rs (Rupees ..) in the hands of the Lesser/ Vendor received by them from the Lessee / Purchaser shall be held by them as security for any loss or expense that the Lessor/ Vendor may be put to in connection with any legal proceedings including eviction proceedings that may be taken against the Lessee/ Purchaser and all such expenses shall be appropriated by the Lessor/ Vendor from and out of the moneys of the Lessee/ Purchaser held in their hands.

THE SCHEDULE SITE No formed by the City of Bangalore Improvement Trust Board in Block No in the ..Extension.

Site bounded on East by:

West by:

North by:

South by :

And measuring east to west . North to south ..

In all measuring Square Feet. In witness whereof the parties have affixed their signatures to this Agreement.

Chairman The City of Bangalore Improvement Trust Board Witnesses:

1.

2.

Lessee/ Purchaser Witnesses:

1.

2. ."

The conditions which have been set out in the lease agreement and which is relevant for our purpose is condition No.4. Condition No.4 has already been reproduced above which provides that lessee/purchaser shall not sub-divide the property or construct more than one dwelling house. Condition No.12 says if the Lessee/ Purchaser has performed all the conditions mentioned herein and committed no breach thereof the Lessor/ Vendor shall, at the end of ten years referred to in clause 1, sell the property to the Lessee/ Purchaser and all attendant expenses in connection with such sale such as stamp duty, registration charges, etc., shall be borne by the Lessee/ Purchaser. Condition No.13 says that on complying with the terms and conditions of this agreement in the manner stated above but not otherwise the Lessor / Vendor shall be obliged to execute the sale deed in favour of the Lessee/ Purchaser. Therefore, looking to the scheme of the Act, the Rules and the terms and conditions of the lease cum sale agreement, it transpires that once an allotment is made to the lessee and he makes all payments then after the payment the lesser/ vendor shall at the end of ten years sell the property to the lessee/ purchaser and the lessee/ purchaser will get the sale deed registered. Therefore, if all the conditions of the lease agreement are fulfilled, at the end of the stipulated period of ten years then outright agreement of sale shall be executed by the lessor/ vendor with the lessee/ purchaser and the lessee will have absolute right. The lease agreement also says that during the currency of the lease, the lessee/ purchaser shall abide by the terms and conditions of the lease. As per condition 17 (7) reproduced above, the lessee/ purchaser shall not alienate the property during the period of tenancy. Once all the payments have been fulfilled by the lessee, then the land is registered in favour of the lessee by the lessor and the lessee becomes absolute owner of the land. So long as the \building is not constructed under condition No.4 of the agreement the lessee is neither entitled to alienate the property under condition 17 (7), nor shall be sub-divide the property or construct more than one dwelling house on it. These restrictions are there so long as the complete sale agreement is not executed under condition No.12 of the lease-cum-sale agreement. As soon as the lease agreement is executed conforming full title to the lessee, then the conditions of the lease cum sale agreement come to an end and the lessee acquires full right to deal with the said property in accordance with the Act and the Rules bearing on the subject. After acquiring this full right the lessee has right to alienate the property or whenever either lessee or his successor wants to construct a building thereon he can do so in accordance with the provisions of law. Condition No.4 of the lease agreement was only to survive so long as the lessee continued to be lessee as his rights of lessee are restricted i.e. he cannot alienate the property nor can he subdivide the property and he has to construct one dwelling house. The moment the lease cum sale agreement is executed after following the conditions of the lease as laid down, then there is no further hurdle or condition like not to construct multi-storeyed building or multi-dwelling house. The only condition that he will construct only one dwelling house is contained in Condition No.4 of the lease cum sale agreement and so long as the full rights are not transferred to the lessee-purchaser, this condition would survive and after the sale is made, this condition will no longer survive and conditions contained in absolute sale deed will govern. If the lessee or his successor wants to raise a construction, then the provisions of the Karnataka Municipal Corporation Act will come into play and he has to obtain prior sanction for construction of the building. As soon as the permission is granted by the Corporation, then he is to abide by those conditions along with the condition laid down in absolute sale deed.

Now, adverting to the facts in C.A.No.1416 of 1999, an absolute sale deed was executed on 13.7.1982 in favour of U.L.Nagaraj after he constructed the house. The only condition which was incorporated

in Clause 2 of the sale deed reads as under:

> " The building to be constructed shall be used wholly for human habitation and shall not include any apartments to the building whether attached thereto or not used as a shop or a building or warehouse or building in which manufactory operations are conducted by mechanical power or otherwise."

Therefore, the only condition was that it shall be used for human habitation and it shall not allow any apartments to the building whether attached thereto or not , used as a shop or a building or warehouse or for manufacturing operation. There is no condition that one cannot raise any multi-storeyed building over the schedule property. The condition not to have more than one dwelling house was the condition No.4 of the lease cum sale agreement but that condition has not been repeated when the absolute sale was made in favour of a party. As such, the condition No.4 of the lease cum sale agreement survived during the currency of that agreement. As soon as absolute sale is made then prohibition comes to an end. The lease cum sale agreement was to continue for a period of ten years or till all the conditions are fulfilled. The moment the conditions laid down in the lease cum sale agreement are fulfilled i.e. the entire money is paid and the registration is done and thereafter final absolute sale agreement is executed then the so called lease cum sale agreement comes to an end and the condition No.4 cannot subsequently guide the sale purchase agreement. The sale purchase agreement has its own terms and conditions and the condition as reproduced above, only says that the building to be constructed shall be used wholly for human habitation and shall not include any apartments to the building whether attached thereto or not used as a shop or a building or warehouse or used for manufactory operations by mechanical power. Therefore, in this final agreement which has come to be executed and which has been registered the condition is that the building has to be used for human habitation and there is no prohibition contained therein that it cannot raise multi-storeyed building. In this connection, much emphasis was laid on the decision in Pee Kay Constructions case. With respect we do not see any condition under the provisions of the Act and the Rules which prohibits raising of multi-storeyed building after final sale agreement has been executed. This condition was to remain in force so long as the absolute agreement has not been executed. The condition to construct one dwelling house was only so long as the other conditions laid down in the lease agreement were not complied and final sale agreement has not been executed. Therefore condition 17(4) lays down that within 10 years the lessee-purchaser has to complete all the formalities or earlier than 10 years , then in that case, the final agreement for absolute purchase could be executed. Once the final agreement is executed then the lessee- purchaser becomes absolute owner of the schedule property and he has to abide by the conditions of the final agreement for sale and other provisions bearing on the subject. The final agreement only contains the condition that the lessee purchaser should use the schedule property for human dwelling purpose and it will not be used in apartment of that building for purpose of shop or for warehouse or for manufacturing process, therefore, the view taken in Pee Kay Constructions case cannot be said to be a good law.

Learned counsel for the respondents has tried to raise certain objections that in the final agreement the expression "apartment" has been used which shows that there cannot be more than one dwelling house. We regret to say that this interpretation does not bear out in the face of the language used in the clause 2 of the final agreement which says that the building to be constructed shall be used

wholly for human habitation and shall not include any apartments to the building whether attached thereto or not for shop or warehouse or manufacturing purposes but that does not make out a case for prohibition of raising of the multi-storeyed building. Once the Municipal Corporation has permitted to raise construction more than three floor then this condition for construction will hold good and they are not contrary to any of the provisions of the Act. Section 505 of the Karnataka Municipal Corporation Act, 1976 only says that the Corporation shall exercise power in conformity with the provisions of the Karnataka Town and Country Planning Act, 1961. Therefore, the Corporation at the time of granting permission has to keep in mind the provisions of the Karnataka Town and Country Planning Act, 1961. But we have not been able to find any provisions of the Karnataka Municipal Corporation Act or Karnataka Town and Country Planning Act, 1961 where any ceiling has been applied on the construction of the multi-storeyed building. Therefore, we do not find that the Municipal Corporation has committed any illegality in granting permission to the appellant for raising construction up to third floor.

In view of the discussions made above, we are of opinion that permission granted by the Bangalore Municipal Corporation to the appellant for raising the construction up to third floor is not in violation of any of the provisions of the Act and the Rules.

Next question is whether such Public Interest Litigation should at all be entertained & laches thereon. This sacrosanct jurisdiction of Public Interest Litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.

Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought very bad name. Courts should be very very slow in entertaining petitions involving public interest in a very rare cases where public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to issue certain directions without understanding implication and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities. The parameters have already been laid down in a decision of this Court in the case of Balco Employees' Union (Regd.) v. Union of India & Ors. reported in (2002) 2 SCC 333, wherein this Court has issued guidelines as to what kind of public interest litigation should be entertained and all the previous cases were reviewed by " .

77. Public Interest litigation, or PIL as it is more commonly known, entered the Indian Judicial process in 1970. It will not be incorrect to say that it is primarily the Judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public

interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to means nothing more than what words themselves said viz.

> "litigation in the interest of the public".

78.While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres, Prof. S.B. Sathe has summarized the extent of the jurisdiction which has now been exercised in the following words::

> "PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive;
>
> - Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates.)
>
> - Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganized labour, etc.)
>
> - Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children, bonded labour, unorganized labour, etc.)
>
> - Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).
>
> - Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums.)
>
> - Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water."

79. There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive.

80. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the Court for relief. There has

been in recent times, increasingly instances of abuse of PIL. Therefore, there is a need ;to reemphasize the parameters within which PIL can be resorted to by petitioner and entertained by the Court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and reemphasize the same."

In this connection reference may be made to a recent decision given by this Court in the case of Dattaraj Nathuji Thaware Vs. State of Maharashtra & Ors. (S.L.P.(c) No.26269 of 2004) in which Hon'ble Pasayat J. has also observed as follows:

> " Public Interest Litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta."

We fully share the views expressed in the aforesaid decision of this Court and reiterate that it should go a warning to the Courts that this extra-ordinary power should be used sparingly and absolutely in necessary matter involving down trodden people.

In this connection learned counsel has rightly pointed out that delay is very material. He has invited our attention to a number of decisions of this Court where this Court has declined to interfere on account of delay.

In the case of State of Madhya Pradesh & Anr. v. Bhailal Bhai & Ors. reported in AIR 1964 SC 1006, it was observed as follows:

> " The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art.226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable."

In the case of Rabindra Nath Bose & Ors. v. Union of India & ors. reported in AIR 1970 SC 470. it was observed as follows:

> " No relief can be given to petitioners who, without any reasonable explanation, approach Supreme Court under Art. 32 of the Constitution after inordinate delay. The highest Court in this land has been given Original Jurisdiction to entertain

> petitions under Article 32 of the Constitution. It could not have been the intention that the Supreme Court would go into stale demands after a lapse of years. Though Article 32 is itself a guaranteed right, it does not follow from this that it was the intentionof the Constitution makers that Supreme Court should discard all principles and grant relief in petitions filed after in ordinate delay."

In the case of Durga Prasad v. The Chief Controller of Imports and Exports & Ors. reported in AIR 1970 SC 769 Their Lordships observed as follows:

> " Where an applicant for an Import licence in 1959 received a licence only for a fraction of the amount for which he had asked for, chooses to wait and comes to a Court in 1964 requesting for a writ of mandamus even if his fundamental rights are involved, the matter is still in the discretion of the High Court, and the High Court in its discretion can refuse the issue of a writ because of the laches of the applicant."

In the case of Ramana Dayaram Shetty v. The International Airport Authority of India & Ors. reported in AIR 1979 SC 1628, even five months delay was considered to be fatal. It was observed as follows:

> " Moreover, the writ petition was filed by the appellant more than five months after the acceptance of the tender of the 4th respondents and during this period, the 4th respondents incurred considerable expenditure aggregating to about Rs.1,25,000/- in making arrangements for putting up the restaurant and the snack bars and started running the same. It would now be most inequitous to set aside the contract of the 4th respondents at the instance of the appellant. The position would have been different if the appellant had filed the writ petition immediately after the acceptance of the tender of the 4th respondents but the appellant allowed a period of over five months to elapse duringwhich the 4th respondents started their position. We are, therefore, of the view that this is not a fit case in which we should interfere and grant relief to the appellant in the exercise of our discretion under Article 226 of the Constitution."

In the case of Ashok Kumar Mishra & Anr.v. Collector, Raipur & Ors. reported in AIR 1980 SC 112, it was observed that when the final electoral roll was published in Nov. 15, 1978 it was notified that the nominations could be filed on and after Nov.25,1978 and the poll , if necessary, would take place on Dec.31,1978. After Nov. 25, 1978, a large number of nominations were received by the Returning Officer. It was only on Dec.5,1978 for the first time that a letter was addressed by petitioner to the Collector drawing his attention to the error that had crept into the notice published under Rule 4(1) of the Rules. By that time, the nominations had all been received. The final list of candidates for the election with their symbols was published on Dec.20,1978. The writ petition itself was filed on Dec.28,1978 when the poll had to take place on Dec. 31,1978. In that context, Their Lordships observed as follows:

" No satisfactory explanation was given in the course of the petition by the petitioners, as to why they delayed the filing of the petition till Dec.28,1978 even though they knew that there was an error in the notice issued under R.4(1) of the Rules in the month of Oct.1978 more than 2 months before the date on which it was filed." Their Lordships dismissed the petition as there was no satisfactory explanation for the delay in preferring it.

In the case of State of Maharashtra v. Digambar reported in (1995) 4 SCC 683, Their Lordships observed as follows:

" The power of the High Court to be exercised under Article 226 of the Constitution, if it is discretionary, its exercise must be judicious and reasonable, admits of no controversy. Persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the latches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where the High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as latches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State."

There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb the third party interest created on account of delay. Even otherwise also why Court should come to rescue of person who is not vigilant of his rights ?

We are of the opinion that delay in this case is equally fatal, the construction already started by the appellants in 1987 and building had come up to three floors. Thereafter it was stopped in 1988 and in March, 1991 it resumed after permission was granted. The Writ Petition was filed in November, 1991 meanwhile almost construction was complete. Therefore, delay was fatal in the present case and learned single judge rightly held it. It was also brought to our notice that 46 multi storey buildings have come up in this area. Learned counsel has produced photographs to show that buildings more than three and four floors have been constructed in and around this area.

However, we are satisfied that there is no prohibition under the provisions of the Act and Rules putting the ceiling on construction of the multi storey building. We are also satisfied that the delay is also fatal in the present case.

It was also contended by the learned counsel for the Appellant that the appellant had no locus standi to file this petition as the present association is neither representative association nor a registered body. Therefore, the Court should not have entertained the PIL on behalf of ; such unregistered and unrecognized body. It is true locus in such Public Interest Litigation is very relevant factor & Court

should always inquire into the locus of person before entertaining such petition. We have already observed above that Public Interest Litigation should be entertained in very rare cases.

Learned counsel has also invited our attention to Section 11 of the Transfer of Property Act to urge that once absolute right has conferred on the property then no rider can be put to enjoyment of that property. It is not necessary to go into this question in this case.

As a result of our above discussion, we set aside the judgment of the Division Bench of the High Court and allow the appeal i.e. C.A.No.1416 of 1999. The facts of C.A.No.1415 of 1999 are identical with that of C.A.No.1416 of 1999. Therefore, this appeal is also allowed for the reasons mentioned aforesaid. C.A.No.1417 of 1999, has been filed by persons who have already purchased the flats and they are living in the said flats of the multi-storeyed buildings. Therefore, third party interest has already been created. As such this appeal is also allowed for the reasons mentioned above. However, there will be no order as to costs.