IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 7TH DAY OF JANUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

WRIT APPEAL No.4762 OF 2017 (LB-BMP)

BETWEEN:

1. THE COMMISSIONER,
   BENGALURU MAHANAGARA PALIKE,
   N.R.SQUARE,
   BENGALURU-560002.
   REPRESENTED BY ITS COMMISSIONER.

2. THE ASSISTANT REVENUE OFFICER,
   BRUHATH BENGALURU MAHANAGARA PALIKE,
   HEBBAL DIVISION,
   MUNIREDDYPALLYA MAIN ROAD,
   OPPOSITE FUN WORLD,
   J.C.NAGAR,
   BENGALURU-560094.

   BOTH THE APPELLANTS ARE
   REPRESENTED BY
   THE HEAD OF LEGAL CELL
   SRI T.H. AVIN ...APPELLANTS

(BY SRI. PAWAN KUMAR, ADVOCATE FOR SRI H.DEVENDRAPPA, ADVOCATE)

AND:

SRI. JAI M. PATIL
SON OF M.S.PATIL,
AGED ABOUT 39 YEARS,
RESIDING AT NO.39,
MADESHWARA LAYOUT,
CHAMUNDINAGAR MAIN ROAD,
R.T.NAGAR,
BENGALURU-560032.

…RESPONDENT

(SMT. SREEDEVI K.B., ADVOCATE FOR CAVEATOR / RESPONDENT No.1)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 26.10.2016 PASSED IN THE WRIT PETITION NO.10976 OF 2015.

THIS WRIT APPEAL COMING ON FOR HEARING THIS DAY, NATARAJ RANGASWAMY J., DELIVERED THE FOLLOWING:

JUDGMENT

This writ appeal is filed by the respondents in Writ Petition No.10976 of 2015 challenging the order passed by the learned Single Judge dated 26.10.2016 by which the learned Single Judge allowed the Writ Petition and directed the respondents to restore the name of the petitioner in the 'A' Khatha register and

collect the property tax in respect of the flat owned by the petitioner.

2. The facts as evident from the writ petition are that the petitioner was the owner of the residential flat No.S-3 in an apartment complex known as 'Pratham Enclave' constructed on site Nos.11 and 27 and bearing BMP khata No.11, MLA layout, Lottegollahalli, Bengaluru-560 094, which he had purchased in terms of a deed of absolute sale dated 19.02.2008. It is stated that soon after such purchase, the petitioner applied for the khata to be issued in respect of the aforesaid residential flat and the officials of the respondents had visited the flat. After inspection of the building, the respondents issued a demand notice dated 27.01.2010 calling upon the owners to pay the property tax along with bifurcation of khatas with new municipal numbers assigned to each flat and claimed tax from 01.04.2008. The petitioner had paid the property tax as demanded and the Bruhat

Bengaluru Mahanagara Palike (BBMP) issued the khata in respect of the aforesaid flat bearing PID No.100-591-11-A-6. The petitioner claims to have paid the property tax to the respondents from the year 2008 till 2013. It is stated that when things stood thus, when the petitioner went to pay the property tax for the year 2014-15 at Bengaluru One Centre, he was shocked to see that no such PID number was assigned to the flat and hence, Bengaluru One Centre refused to accept the tax and instructed him to approach the ward office of the respondents. At the ward office of the respondents, the petitioner was informed that there might be a server issue and as such requested him to visit the office after ten days. Despite visiting several times, the petitioner claimed that there was no concrete answer forthcoming from the officials of the BBMP and thus, miffed by the callous attitude of the respondents, he approached the respondent No.2. The respondent No.2 initially assured him to redress his

grievance. However, during November 2014, the respondent No.2 informed the petitioner that the khata issued in respect of the aforesaid flat was withdrawn and directed the petitioner to pay the tax for the year 2014-15 for the 'B' khata. It is stated that the persistent attempts of the petitioner to obtain information as to why the khata was withdrawn, proved futile which prompted him to file an application under Section 6(1) of the Right to Information Act, 2005. However, the respondents stonewalled all the attempts of the petitioner to obtain information and consequently, the petitioner filed a writ petition before this Court claiming the following relief:

> *(i) Issue a Writ of Mandamus directing the respondents to restore the khatha of the schedule property in khata No.11 (PID No.100-591-11/A) MLA layout, Lottegollahalli, ward No.100, Sanjayanagar, to enable the petitioner to pay tax for the year 2014-15.*

3. The respondents entered appearance and filed their statement of objections contending that the petitioner had filed an application for transfer of khata and had also sought a sub number to the apartment that he had purchased under the sale deed, to be issued. The respondent No.2 after examining the application, issued a notice to the petitioner by assigning sub-number to the property and also showing the taxes to be paid by the petitioner in terms of the order dated 27.01.2010. It is stated that in the aforesaid order, it was specifically mentioned that the property of the petitioner and the owners of the other flats in the apartment complex would be recorded in 'B' register maintained by the respondents as completion certificate was not issued and also that the building was constructed in violation of the sanctioned plan. It is stated that the petitioner was aware of the fact that his property was registered in the 'B' register maintained by the respondents. The respondents

admitted that pursuant to registering of the khata, the petitioner had paid the property tax to the Corporation. It is further stated that the construction put up by the vendor of the petitioner was in gross violation of the sanctioned plan and the vendor had not obtained the completion certificate from the respondents as mandated under Section 310 of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as 'the Act' for brevity). The respondents also relied upon Section 108A(3) of the Act to contend that a building constructed in violation of the provisions of building bye-laws or lying in an unauthorized layout or in a revenue land or a building occupied without issuance of occupancy certificate or completion certificate except the building constructed illegally in Government land, land belonging to any local body, any statutory body or an organization owned or controlled by the Government would be maintained in a separate register called the 'B' register. It is also

stated that the collection of property tax under Section 108A of the Act would not confer any right to regularize violation made or title ownership or legal status to such building. The prime contention of the respondents seems to be that the name of the petitioner was included in the property 'B' register maintained by the respondents since the building was constructed in absolute violation of the sanctioned plan and that there was no occupancy certificate or completion certificate that was obtained by the owners of the property before the same was conveyed to the petitioner.

4. The Learned Single Judge after hearing both the parties, in terms of the order dated 26.10.2016, allowed the writ petition and directed the respondents to restore the name of the petitioner in Form 'A' under Rule 11 of the Property Tax Rules, 2009 and to forthwith remove the name of the petitioner from the Form 'B' register.

5. Being aggrieved by the aforesaid order, the respondents have filed this writ appeal.

6. The respondents strenuously contended that the building constructed by the petitioner was in absolute violation of the building plan and hence, the khata of the property in question was registered in Form 'B' and the khata certificate obtained by the petitioner in one of the centers of the BBMP is illegal as there were no entries to that effect even till date in the original ledgers maintained in the office of respondent No.2. It is also contended that the khata issued to the petitioner was not at all withdrawn and the question of issuing a khata in Form No.A to the petitioner would also not arise. It is also contended that by an order dated 27.01.2010, the tax in respect of all the flats in 'Pratham Enclave' including the flat of the petitioner was recorded and maintained in 'B' register. Consequently, there was no occasion for the respondents to issue the khata dated 10.03.2010 as if

it was registered in 'A' register. The respondents contended that since all the flats in the apartment complex were assessed for tax in 'B' register, the question of treating the petitioner separately and assessing the property and entering it in the name of the petitioner in Form 'A' khata, would amount to a premium on fraud played by the petitioner.

7. Having given our anxious consideration to the averments made in the writ petition as also the contentions urged by the respondents in this appeal, we are unable to accept the contentions of the respondents for the following reasons:

8. Petitioner had admittedly submitted a representation requesting the respondents to transfer the khata and also sought a sub-number to be assigned to the property purchased by the petitioner. It is also admitted that the respondent No.2 after examining the application, issued a notice to the

petitioner by assigning sub-number to the property and also informed the tax to be paid by the petitioner in terms of the order dated 27.01.2010. It is found from Annexure 'C' that the respondents had entered the name of the petitioner in 'A' register and had issued the khata and identified the property as bearing property identification No.100-591-11/A-6. The petitioner has paid the property tax as assessed by the respondents from time to time until the year 2014-15 when for the first time, the petitioner approached the respondents to pay the property tax at Bengaluru one centre, he was turned down and he was directed to approach the respondents. The respondents have not disputed the fact that the name of the petitioner was found in the 'A' register and that the petitioner had paid the up-to-date tax based on the representations or directions issued by the respondents from time to time.

9. The only contention urged before us is that the property in question was developed by the developer without complying with the building plan and that therefore, the property cannot be registered in the 'A' register and that it was registered always in the 'B' register. This does not appeal to us since Section 108A(3) of the Act clearly mandates that assessment of the property would not take away or compound the deviations in the construction of the building or in violation of the building bye-laws. It is always open for the respondents to take action as provided under Section 321 of the Act, if they desire. However, in the present case, since the respondents have already entered the name of the petitioner in the 'A' register and have already collected the property tax from the petitioner, it cannot now lie in the mouth of the respondents that the property of the petitioner is to be entered in the 'B' register and thereby keep the

petitioner on tenterhooks as to the valid title of the petitioner to the flat in question.

10. The respondents have not placed any material on record to show that they have taken action to bring the building in line with the sanctioned plan or the building bye-laws. Since the respondents have directed the petitioner to pay the property tax from time to time based on the representation that the property of the petitioner is entered in the Form 'A' register, the respondents cannot now turn around and claim that the property of the petitioner was wrongly entered in the 'A' register and that there was no occasion for them to issue the khata extract in 'A' register. We are unable to accept the contention of the respondents and there is no infirmity in the order passed by the learned Single Judge and therefore, we do not deem it proper to interfere with the findings of the learned Single Judge.

11. Hence, this Writ Appeal fails and is dismissed. Dismissal of this appeal, however, shall not come in the way of the respondents taking suitable action as provided under law to bring the building of the petitioner in line with the sanctioned plan.

Pending interlocutory application does not survive for consideration and the same stands dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

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