

# IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 16th day of August, 2001

BEFORE

THE HON' BLE MR JUSTICE R.V.RAVEENDRAN

Writ Petition No. 34468 of 1997 (GM)

ARUNA DATTATRAYA BEDRE

OCC: TAILORING

R/O HOUSE NO. 54

HIGH STREET

CAMP: BELGAUM -590001 & Others

Vs

GOVT. OF INDIA & OTHERS

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

## ORDER

1. Petitioners 1 to 5 are the sons and respondents 4 to 7 claim to be the daughters of Dattatraya Bendre and Muktabai D. Bendre. The leasehold of an extent of 53.07 sq m in GLR Sy. No. 251/682 was granted to the ancestors of petitioners and respondents 4 to 7 about 100 years ago by the Government with permission to put up the superstructure and enjoy the property. The petitioners claim that their father Dattatraya was accordingly in possession of the said plot and house constructed thereon bearing No. 54 [Sy. No. 251/682] measuring 53.07. Sy mtrs as also backyard measuring 16.44 sq.m consisting of bathroom etc [in Sy No. 251/6]. The said Dattatraya died in the year 1966 and thereafter the name of his wife Muktabai was entered as occupier the General Land Register and she continued as Leaseholder under the Government of India (Ministry of Defence). Petitioners claim that their mother Muktabai submitted an application for grant of free hold rights in regard to the said property in the year 1988.
2. The Ministry of Defence [Director General of Defence Estates] considered the said request and took a decision to convert the old lease hold right in regard to 53.07 sq.m in GLR Sy. No. 251/682 into a free hold and also transfer on outright sale basis the encroached area of 16.44 sq.m. out of GLR No 251/6, in all 69.512 sq.m to Muktabai and

petitioners 1 to 5 subject to payment of conversion charges of Rs 44,625.00, plus rent from 6-5-1980 to the date of actual payment of sale value in regard to 16.44 sq .m.in GLR Sy No. 251/6 at the rates applicable to residential premises on the basis of the STR in force from time to time. The first respondent communicated the said decision to the Director (Defence Estates) and second respondent, by letter dated 22-3-1993 (Annexure-R1).

3. In pursuance of said decision, a communication dated 12-7-1993 (Annexure-R2) was addressed to Smt Mukta Bai, calling upon her to pay the conversion charges of Rs.44,625.00 along with arrears of rent of Rs 1,730.00 in respect of 16.44 sq.m at an early date to finalise the sale. As the said letter was returned with an endorsement 'Mukta Bai was no more', second respondent sent a letter dated 25-8-1993 (Annexure-R3) to the petitioners 1 to 5 to pay the said amounts aggregating to Rs.46,355/and also to produce the death certificate of Mukta Bai and legal heir certificate with affidavit confirming that the petitioners were the only legal heirs of Mukta Bai.
4. It is stated by petitioner that there was some dispute as to who is entitled to said premises, among the legal heirs of Dattatraya and Muktabai, and, therefore, there was a delay in payment of the amount demanded. As no payment was made for more than four years, the second respondent sent a communication dated 19-9-1997 [Annexure-'H'] to petitioners 1 to 2 stating that the offer made in the letter dated 22-3-1993 (to convert the leasehold into a free hold ought in regard to GLR Sy.No.261/682 and to convey on outright sale basis an additional area in GLR Sy No.251/6) had to be implemented within one year from 22-3-1993 and as it was not done, the sanction stood lapsed. The second respondent, however, further informed the petitioners 1 and 2 that if they were still interested in conversion of the property to free hold, they may be approached the Belgaum Cantonment Board with a fresh application signed by all the recorded holders of occupancy rights.
5. Feeling aggrieved first petitioner filed this petition for the following reliefs:
  - a) to quash the communication dated 19-9-1997 [Annexure 'H'] issued by the second respondent;
  - b) a direction to second respondent to permit the petitioners to deposit a sum of Rs 46,355.00 and grant them free hold rights in regard to Sy.No251/682 (House No.54) and convey on outright sale the back yard portion in Sy.No.251/6, as indicated in the letters dated 12-7-1993 and 28-8-1993 in his favour.
  - c) a direction to the third respondent restraining him from initiating or proceeding with the Case No. 1/80-EO/1054 under the Public Premises [Eviction of Unauthorized Occupants] Act, 1971.

The first petitioner had impleaded his brothers as respondents 4 to 7 They made appli-

cations for transposing themselves as petitioners 2 to 5 and those applications were allowed and they were transposed as petitioners 2 to 5.

6. In the meanwhile, the four sisters of petitioners filed IA-I for impleading, alleging that their father, his brother and sister had on-third share each in the lease hold rights of the said property; that their brothers (petitioners 1 to 5) had purchased the two third share of their uncle and aunt; and that on the death of their father Dattatraya and mother Muktabai, their father's one third share devolved on the 5 sons and four daughters and therefore each of them have a share (that is 1/27th share) and therefore they are necessary parties. The said application was filed on 27.9.1999 and was ordered to be heard along with the main petition. The said application was therefore heard today along with the main petition. The applicants claim to be legal heirs of Dattatraya Bendre and Mukta Bai D. Bendre, entitled to a share in the property in question. It is stated that a partition suit is also pending. Having regard to the subject matter of the petition, they are necessary and proper parties and therefore IA-I for impleading is allowed and the applicants in IA-I are ordered to be impleaded as respondents 4 to 7. Cause title amended.
7. Petitioners admit that they are in occupation of the premises in question as lessees/licences under respondents 1 to 3. They do not have any right, statutory or contractual, to convert their leasehold right into free hold rights or any right for sale of encroached portion. However, having considered their request, the Ministry of Defence decided to convert the old lease hold grant rights into free hold rights, in regard to GLR Sy. No. 251/682 and also convey on outright basis the encroached portion subject to payment of Rs 46,355.00 vide its letter dated 25.8.1993. Even though the said letter dated 25-8-1993 did not specify that the amount should be paid within any particular period, as there was no acceptance of the offer, nor payment, the second respondent was justified in withdrawing the offer. In fact the standing Instructions on land matters relating to Defence lands make it clear that when an offer of free hold rights is not accepted within one year of the offer, Ministry may resume the land and sell by public auction (vide Instructions contained in the letter dated 18-6-1982 from the Government of India to the Director General, Defence Lands and cantonments). The second respondent waited for more than four years to enable the petitioners to accept the offer and make payment. Only thereafter the second respondent informed the first petitioner that the offer stood lapsed on failure to accept within one year. However, he further made it clear that if the petitioners were still interested they can make a fresh application. Petitioners have not been able to demonstrate any error, arbitrariness or unreasonableness in the said communication dated 19-9-1997 [Annexure 'H'] The Ministry of Defence, being the absolute owner of the premises in question, is entitled to deal with the property in any manner it deems fit and in the absence of any right, statutory or contractual, the

petitioners are not entitled to the relief sought, in law. Hence, the first and second prayers are liable to be rejected.

8. The petitioners had however the benefit of interim order of stay of eviction proceedings during the pendency of these proceedings. Petitioners and their ancestors have been lease holders for nearly a century. The Ministry has also very fairly stated that if the petitioners are still interested, they can make fresh application for conversion of land into freehold. In fact in the communication dated 19-10-1994, the Ministry had made it clear that land will be given subject to payment of present rate of market value as fixed by the Ministry of Defence is paid. Petitioners, however, dispute receipt of said letter dated 19-10-1994. Be that as it may.
9. It is clear that non-payment was due to inter-se dispute among the children and Dattatraya (petitioners 1 to 5 and respondents 4 to 7). Petitioners 1 to 5 also state that they are willing to pay Rs.46,355/- with interest at 12% PA from 25-8-1993 to date of payment plus any nominal penal fee.
10. In the circumstances, interests of justice would be met if the respondents 2 and 3 are directed to reconsider the request of the petitioners for converting the lease hold grant into a free hold, (regarding 53.07 sq.m in GLR Sy. No. 251/682) and for conveyance on outright sale basis (regarding 16.44 Sq. M in GLR.Sy.No.251/6) subject to payment of Rs 46,355.00 mentioned in the letter dated 25-8-1993 with interest at 12% p.a. thereon from that date till date of payment, apart from such other additional payments, that may be fixed by the Ministry of defence. Ordered accordingly.
- 10.1) The second and third respondents shall inform their decision as to the amount payable to the petitioners within three months from the date of receipt of a copy of this order. Petitioners 1 to 5 shall make payment within three months from the date of receipt of said communication.
- 10.2) It is needless to say that if petitioners do not make payment within the time stipulated, the Ministry of Defence will be at liberty to proceed with the eviction proceedings in accordance with law, and deal with the property in any manner it deems fit.
- 10.3) If payment is made and the property is conveyed, then the rights or shares inter-se among petitioners 1 to 5 and respondents 4 to 7 will have to be decided in appropriate Civil Proceedings, either pending or to be instituted.  
The petition is disposed of accordingly.

Date :16.8.2001

Sd/-  
(R. V. RAVEENDRAN)