



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

WRIT PETITION NO. 7281 OF 2024 (GM-CON)

BETWEEN:

SRI. M. B. NAGAKUMAR,
S/O LATE MN BASAVARAJAIAH,
AGED ABOUT 62 YEARS,
PROPRIETOR OF M/S PREMIER PROPERTIES,
RESIDING AT NO 2270/1, CHITTARANJAN MAHAL,
VINOBA ROAD, JAYALAKSHMIPURAM,
MYSORE 570 012.

...PETITIONER

(BY SRI. SANDESH C R.,ADVOCATE)

AND:

1. SRI. S. R. RAVI KUMAR,
S/O LATE S RAMARAO,
AGED ABOUT 64 YEARS,
RESIDING AT NO 51/A 1ST CROSS,
JAYALAXMIPURAM, MYSURU - 570 012.

2. SRI. M B NAGARAJ,
S/O LATE MN BASAVARAJAIAH,
AGED ABOUT 68 YEARS,
DIRECTOR OF M/S PREMIER PROPERTIES,
RESIDING AT NO 2270/1, CHITTARANJAN MAHAL,
VINOBA ROAD, JAYALAKSHMIPURAM,
MYSORE - 570 012.

...RESPONDENTS

(BY SRI. MILASH ARROL NORONHA., ADVOCATE FOR R1;
R2 SERVED & UNREPRESENTED)

Digitally
signed by
CHETAN B C
Location:
HIGH COURT
OF
KARNATAKA



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS IN EXECUTION APPLICATION IN EA No-02/2023 PENDING CONSIDERATION BEFORE THE HON'BLE KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION (PRINCIPAL BENCH) BENGALURU VIDE ANNEXURE-A AND B) ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR ORDER QUASHING THE IMPUGNED ORDER 03.07.2023 IN ISSUING NBW AND ALSO ON 31.01.2024 IN REISSUING NBW AS AGAINST THE JUDGMENT DEBTOR No-1 PETITIONER BY THE HONBLE KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION (PRINCIPAL BENCH) BENGALURU IN EXECUTION APPLICATION IN EA No-2/2023 VIDE ANNEXURE-A AND ETC.,

THIS WRIT PETITION, COMING ON FOR ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

ORAL ORDER

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

Petitioner, a builder by occupation, is knocking at the doors of writ court for assailing the order dated 3.7.2023 whereby, NBW has been issued followed by its re-issuance on 31.1.2024 by the Karnataka State Consumer Disputes



Redressal Commission, Bangalore, in Execution Case i.e.,
E.A.No.2/2023.

2. Learned counsel for the petitioner argues that in the Execution Proceedings of the kind, issuance of NBW is uncalled for and that the Commission failed to see the repercussions of NBW on the liberties of citizens like the petitioner. He also took the court through the pages of Paper Book to buttress his point. Learned counsel appearing for the 1st respondent-Consumer *per contra* resists the petition making submission in justification of the measures take by the Commission in the subject Execution Proceedings. He emphasizes that his client has served Indian Navy for more than a decade and that despite making full payment, the subject flat has been sold to a third party, with no justification whatsoever.

3. Having heard the learned counsel for the parties and having perused the Petition Papers, we decline indulgence in the matter for the following reasons:



3.1 Admittedly, the 1st respondent had registered Consumer Complaint No.465/2017 alleging that despite full payment of agreed price, the builders have clandestinely sold the subject flat to some other person for a higher value vide registered sale deed dated 25.3.2015 and therefore, he should get refund of Rs.44,58,001/- with 12 % interest per annum along with a compensation of Rs.3,00,000/-. Despite sufficient opportunity, petitioner did not file his objections.

3.2 The State Commission vide order dated 4.4.2022 allowed the complaint and directed *inter alia* the petitioner to refund Rs.44,58,001/- with 12 % interest per annum and to pay Rs.10,00,000/- towards compensation in addition to Rs.25,000/-, being the cost of litigation. Time for compliance was three months. This was unsuccessfully challenged before the National Commission, we are told at the Bar. Despite that the petitioner has not complied with the direction of the State Commission, there being absolutely no justification whatsoever. However, learned counsel for the petitioner submits that his client has



already paid some amount to the contesting respondent.

No evidence to vouch the same is produced before us.

3.3 Learned counsel for the petitioner fairly concedes before us that his client had not filed any objections/version resisting the complaint and that he had sold the subject flat to another person for Rs.46,00,000/- vide registered sale deed dated 25.3.2015. This act on the part of the petitioner is nothing but a fraud on the consumer who had admittedly made entire payment. Once entire sale price is remitted, equitable interest is created in the property in favour of the buyer, absence of regular conveyance notwithstanding. In that view of the matter, the State Commission has granted the relief as aforementioned and that the challenge to the same before the National Commission has ended in vain.

3.4 It hardly needs to be stated that the 1st respondent herein namely the consumer, has served in the Defence Department of this Country i.e., in Indian Navy and now, is in the evening of his life. Having paid the hard earned



money, he wanted to have a shelter of his own. However, that dream did not come true because of the fraudulent act of the petitioner/builder who sold the very same flat to a third party for a higher sum. Even then he did not refund the money which the consumer had remitted by bank cheques, may be a small amount in cash. There is no dispute about the receipt of amount. A Navy man is made to fight the legal battle for more than eight years. This is absolutely unfair and treacherous on the part of builder. This leads us to the irresistible conclusion: "fraud has reached its crescendo". Deeds as foul as these are inconceivable. We are reminded of the words of Shakespeare:

*"Thus much of this, will make Black, white;
foul, fair; wrong, right; Base, noble; Ha, you
gods! why this?"*

3.5 A Coordinate Bench of this Court vide order dated 5.4.2024 had stayed the Execution Case No.2/2023 subject to petitioner depositing in the Registry a sum of Rs.10 Lakh on or before 8.4.2024 and another like sum on



or before 19.4.2024. Counsel for the petitioner submits that this amount is accordingly deposited. An application is also filed by the 1st respondent seeking release of the said amount. As already mentioned above, absolutely no case is made out by the petitioner for the grant of any relief in constitutional jurisdiction. Such a discretionary power is not meant for unscrupulous litigants like the petitioner. Granting relief to such persons amounts to placing premium on illegality.

In the above circumstances, this petition being devoid of merits, is liable to be and accordingly dismissed with a cost of Rs.5,00,000/- (Rupees Five Lakh) only, payable to the 1st respondent-Consumer, within four weeks, failing which he shall be liable to pay additional sum of Rs.500/- per day for the first month and Rs.1,000/- per day for the period next following. Petitioner is warned of contempt action should he fail to comply with this order.

Registry is directed to hand the entire amount in deposit along with interest if any, accruing thereon, to the 1st respondent-Consumer Sri.S.R.Ravi Kumar, forthwith. Delay in this regard will be viewed seriously.



The State Commission is requested to accomplish the execution on a warfooting keeping in view the decision of Apex Court in *RAHUL S SHAH vs. JINENDRA KUMAR GANDHI*, (2021) 6 SCC 418.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE**

LRS/cbc
List No.: 1 Sl No.: 17