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**(1998) 03 KAR CK 0067**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 1092 of 1998**

B. Shivanna

APPELLANT

Vs

Bangalore Development Authority, Bangalore and Others

RESPONDENT

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**Date of Decision :** 16-03-1998

**Acts Referred:**

Bangalore Development Authority (Allotment of Sites) Rules, 1984 — Rule 10 (3)  
Civil Procedure Code, 1908 (CPC) — Section 35 A  
Constitution of India, 1950 — Article 226, 38, 39

**Citation :** AIR 1998 Kar 336 : (1998) 4 KarLJ 276

**Hon'ble Judges :** Hari Nath Tilhari, J

**Bench :** Single Bench

**Advocate :** Sri Shekar Shetty, for the Appellant; Sri N.K. Patil, Sri M.H. Ibrahim, Government Advocate and Sri M.P. Eswarappa for Sri J.V. Hulsoor, for the Respondent

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## Judgement

1. By this petition under Article 226 of the Constitution of India, the petitioner has sought the issuance of writ of certiorari for quashing of the impugned letter dated 29-5-1996, issued by the Secretary, Housing Development, Government of Karnataka and has sought quashing of impugned notice dated 2nd of July, 1996, bearing Reference No. BDA-4 : MUB : 165 : 96-97, issued by the first respondent, B.D.A., Bangalore. The petitioner has also sought the setting aside of the allotment of site, to the third respondent, of schedule property i.e., Site bearing No. 165, situated at Matadahalli Further Extention Layout and for grant of such other writ, order or direction, as the Court deems fit.

2. This petition has been filed by a former holder of the Constitutional Office of the Minister-Sri B. Shivanna. No doubt third respondent is also the former holder of the Constitutional Office of the Minister, in the Government of Karnataka. Petitioner has described himself in the petition as a Former Minister of the Government of Karnataka, vide, paragraph 1. A person who occupies the Constitutional Office is always expected to keep pace with the Constitutional obligations and he is expected to act keeping pace with his oath, its spirit, and

with spirit of the Constitution with which he takes the oath to bear true allegiance. The petitioner's case is that in 1981, he was the Member of Legislative Assembly of the Karnataka Legislature. That the Legislators Housing Development Co-operative Society devised a scheme by which it had sought to allot sites to legislators including the Ministers. As per the scheme, all the Legislators were entitled to apply for allotment of sites. The petitioner's case is that the petitioner being M.L.A., at the relevant time had been entitled to apply for the site and that he did apply for allotment of a site at Ravindranath Tagore Nagar, popularly known and called in Bangalore by residents of Bangalore as R.T. Nagar. For what best reasons people call here area such as Ravindranath Tagore Nagar as R.T. Nagar and Mahatma Gandhi Road as M.G. Road, instead of taking pride in calling the places named after the name of great figures of India, by name of those great men whose name such places or roads bear, is not clear. Here I am referring R.T. Nagar as "Ravindranath Tagore Nagar" as well in the judgment.

3. Petitioner's case is that pursuant to the application, he was allotted scheduled property namely Site No. 165, situated in Ravindra Nath Tagore Nagar i.e., R.T. Nagar and he paid consideration for the purchase of the said property to the Legislators Housing Co-operative Society. The petitioner has stated in Paragraph 5, that the first respondent, by its letter dated 18-11-1992 sent to the petitioner, informed that he (the petitioner) has in his name two sites allotted to him, namely, Site No. 1133, HAL II Stage, since 1973 and Schedule Site No. 165, R.T. Nagar, in the year 1981. Petitioner was informed by that letter dated 18-11-1992 that the petitioner was entitled to hold only one site and was called upon to relinquish his rights over one of the two sites allotted to him. Petitioner's further case is by letter dated 16-2-1993, petitioner gave a reply to the notice issued by the first respondent, alleging that first respondent was not entitled to call upon the petitioner to relinquish one of the sites allotted to him and he asserted that site bearing No. 1133, HAL II Stage, was allotted by the first respondent, that is B.D.A., in the year 1973 and not in 1979, as wrongly mentioned in the notice. He mentioned that he had paid full consideration towards the purchase of the said site. He asserted in the reply that Site No. 165 was allotted to the petitioner under a scheme devised by Legislators Housing Development Co-operative Society and petitioner being a member of the Legislative Assembly of the State of Karnataka at the relevant time was entitled to purchase the site offered to him by the Legislators Housing Development Co-operative Society, under the scheme. Petitioner's case is that in his reply he further stated that first respondent-B.D.A. was not entitled to call upon him to relinquish one of the sites. B.D.A.'s letter dated 18-11-1992 and the petitioner's reply thereto dated 16-2-1993 have been annexed as Annexure-C and D to the petition. Petitioner has further stated that subsequently on 13-9-1993, respondent 1 sought for certain clarification regarding the allotment of site in favour of the petitioner in the year 1973-74 and the petitioner gave a reply on 23-9-1993 and stated that the site at HAL IIInd Stage was bought by him out of financial assistance rendered by his family

members and as HAL site was allotted as early as in 1973-74, for full consideration paid to it, it was not open to the first respondent to call upon the petitioner in the year 1992, after two decades from the date of purchase to relinquish that site. Copy of the letter of the respondent dated 13-9-1993 and petitioner's reply have been annexed by the petitioner as Annexure-E and F. Petitioner's case is that on 25-7-1994, petitioner requested the first respondent to execute the sale deed in his favour in respect of Site No. 1133, HAL II Stage, Indiranagar. But there was no response and thereafter petitioner addressed another letter on 4-2-1995 with a request to the first respondent to execute the sale deed in respect of both the site Nos. 1133, HAL II Stage, Indiranagar and No. 165, Ravindranath Tagore Nagar i.e., R.T. Nagar, but there was no reply. Petitioner annexed those letters as Annexure-G and H. At this stage it may be mentioned that it appears from the record of the B.D.A., that the petitioner has not disclosed, nor brought on record what happened between 25-7-1994 to 4-2-1995, namely that the petitioner himself had written a letter Annexure-R1 -- to the counter affidavit filed by respondent 3, the original of which has been placed before me as per the record of Corporation on 15-12-1994, in which it has been stated-"with reference to the above, I would like to inform you that / am surrendering Site No. 165, of Mattadahalli, R.T. Nagar, Bangalore measuring 60" x 90" allotted by the Karnataka Legislature Co-operative Housing Society, as I have been allotted another site by the then City Improvement Trust Board (B.D.A.), during the year 1973-74.

4. In view of the above, please arrange to issue absolute TITLE DEED of the site allotted to me at Indiranagar, Bangalore as I am intended to start construction". This fact has not been mentioned in the writ petition. Petitioner's case is that to the letter dated 4-2-1995 there was no response. The letter dated 25-7-1994 is one whereunder the petitioner has sought the execution of the sale deed in his favour only with respect to Site No. 1133, HAL II Stage, Indiranagar.

5. Learned Counsel for the parties who read this letter translated it into English, for me. It, as per translation, reveals to me that there was no prayer in the letter for execution of the sale deed in respect of Site No. 165. This letter is confined to only Site No. 1133, HAL II Stage, Indiranagar. No doubt in the letter whereunder the petitioner has sought execution of the title deeds, with reference to both the sites i.e., Site No. 1133, HAL II Stage, Indiranagar and Site No. 165, R.T. Nagar is dated 4-3-1995. The last but one paragraph in the Xerox copy of the letter dated 4-3-1995, which is Annexure-H, to the writ petition. In the petition it is wrongly been mentioned as dated 4-2-1995, it has been stated as under:

6. It is written the Commissioner, B.D.A., had informed the petitioner that the sale deed could be executed in favour of the petitioner only in respect of one site and not two sites and it could be executed in respect of one site, provided the petitioner surrendered the other site. It has been written in this letter, as such the petitioner had given a letter surrendering Site No. 165 at R.T. Nagar, Bangalore, for the reasons as mentioned above in the letter. He further mentions

that the petitioner had decided to withdraw that letter of surrender.

7. It is not known why this fact has not been mentioned clearly and specifically in the body of this petition. That the petitioner himself had surrendered - in whatsoever circumstances it may be, -- Site No. 165 by a letter of surrender issued by the petitioner himself to the B.D.A. In the petition, only it has been mentioned that he had sought execution of the sale deeds in respect of both the sites. It gives an impression as if both the sites continued under two allotment orders and the petitioner wanted the sale deeds relating to the sites. No doubt as contended by the petitioner's counsel that the letter had been annexed and no doubt a reading of the letter dated 15-12-1994 along with Annexure-H clearly establishes and the petitioner appears to have sent that letter of surrender to the respondent 1, surrendering site No. 165, referred to above. In paragraph 8, petitioner has mentioned that he had been granted certificate of possession as far back as 3rd of April, 1982. He has stated that he had paid the taxes and furnished the receipt dated 1-4-1996, and possession certificate, the copies thereof were annexed as Annexure-J and K to the petition. Petitioner in Para 9 has stated that on 2-7-1996, vide, Annexure-B to the petition, issued to the petitioner, the petitioner was intimated about the cancellation of the allotment of Site No. 165. The petitioner's case is first respondent had acted in pursuance of letter issued by the second respondent, that is Secretary of the Housing Department, Government of Karnataka. The letter of the second respondent is dated 29th of May, 1996 and has been annexed as Annexure-A to the writ petition. The second respondent that is the Secretary of the Housing Department had informed the B.D.A., that the schedule property has been allotted as an alternate site to the third respondent. Pursuant to this letter, first respondent issued notice on 2-7-1996 and intimated the cancellation of allotment of Site No. 165, which had earlier been made in favour of the petitioner. The petitioner has challenged these two letters, that is Annexure-A and B. The petitioner had approached this Court on two earlier occasions as well. Firstly, the petitioner had filed Writ Petition No. 2471 of 1997, before this Hon'ble Court, challenging the letter of first respondent dated 5-11-1996, whereby the petitioner was informed again in reply to his letter dated 1-11-1996, that on account of cancellation of allotment of Site No. 165, the sale deed cannot be executed in the name of the petitioner. So this petitioner has challenged this letter dated 5-11-1996 and prayed for the grant of relief in the nature of mandamus, directing the B.D.A. to execute the sale deed in regard to Site No. 165. The second prayer he has sought was that the B.D.A. be directed to execute the sale deed in relation to Site No. 1133.

8. At this stage it would be proper to mention that this Court rejected the petitioner's prayer namely the prayer which was to the effect that B.D.A., be directed to execute the sale deed with reference to Site No. 165, taking the view that vide, intimation dated 5-11-1996, the petitioner was intimated as stated therein that the petitioner by his letter dated 15-12-1994 had surrendered Site No. 165, M.F. Extension, R.T. Nagar and sought the sale deed regarding Site No.

1133, HAL II Stage. Therefore, the allotment of Site No. 165, M.F. Extension was cancelled as per Government Order dated 29-5-1976 and as allotment of Site No. 165, M.F. Extension had already been cancelled, the question of executing the sale deed in regard to said site, as requested in petitioner's application dated 12-9-1996 does not arise. Learned Single Judge mentioned, Site No. 165 was cancelled not by Endorsement dated 5-11-1996, but it was cancelled much earlier by letter dated 2/16-7-1996, Annexure-J to the petition. The Court mentioned that the petitioner for the reasons known to himself has not challenged Annexure-J, dated 2/16-7-1996 and so long as the order of cancellation is not challenged, the question of petitioner's challenging or this Court quashing the subsequent communication dated 5-11-1996, does not arise. No doubt it has observed that it is always open to the petitioner to challenge the order by which allotment of Site No. 165 was cancelled. But it finally observed that as the allotment of the Site No. 165 was cancelled, the question of issuing direction to the B.D.A., does not arise.

9. Petitioner thereafter filed another Writ Petition No. 7001 of 1997. In that petitioner again prayed for issuance of direction to the respondent B.D.A., to execute the sale deed in favour of the petitioner in respect of Site No. 165, Matadahalli Further Extension Layout, Bangalore and site bearing No. 1133, HAL II Stage, Indiranagar. On the date of preliminary hearing that is on 10-11-1997, on behalf of the petitioner a request was made for permitting him to withdraw the petition, with liberty to file a fresh writ petition, challenging the Government order also. The writ petition was dismissed as withdrawn, with liberty to the writ petitioner to file fresh petition. This order which had been passed by Hon'ble Mr. Justice K.H.N. Kurunga is dated 10-11-1997. Thereafter the petitioner has filed this petition on 12-1-1998. This per se reveals that this is the third round of litigation.

10. On the notice being issued to the respondents, respondent 3 who is also an Ex. Minister of the State Government filed the counter affidavit on 18-2-1998. The copy of this counter affidavit has been received on 18-2-1998 by the petitioner's Counsel. No doubt on the earlier occasion that is on 26-2-1998 when this case was listed before this Court, a request was made on behalf of the petitioner for grant of time till 3rd of March, 1998, to file the rejoinder and the case was fixed on 4th of March, 1998. The B.D.A. was also directed to keep the records for verification by the Court if necessary. On 4-3-1998, again case was listed. It appears Sri S. Shekhara Shetty and Sri G.A.K. Gowda, filed their powers on behalf of the petitioner, along with the endorsement to have been made by Sri B.K. Sampath Kumar, who thereto has no objection. Sri B.K. Sampath Kumar had applied for withdrawal from the case and was allowed to withdraw and retire. The petitioner's newly engaged Counsels wanted time to be ready with the case and request was granted and the case was directed to be listed on 16-3-1988. Petitioner was required to file the English translation of the Annexures as well. Today, the case had been listed. The petitioner did not comply with the order of the Court for furnishing the English translation of the relevant Annexures. No

doubt the Counsels for the parties have been helpful by explaining the Annexures by translating them in English.

11. I may mention it that no rejoinder has been filed to the counter filed by respondent 3. It appears on 13-3-1998, B.D.A., also filed an affidavit along with producing the record before the Court. In the counter filed by respondent 3, these facts have been brought to the notice of the Court. As per paragraph 1, it had been stated in the counter affidavit of respondent 3 that the petitioner has suppressed the material fact that the petitioner had surrendered Site No. 165 of Matadahalli, R.T. Nagar vide, letter dated 15-12-1994 to the Commissioner, B.D.A. Respondent 3 has annexed the letter of surrender as Annexure-R1. It had further been stated that the petitioner had given an affidavit stating - "that the petitioner had no sites within the jurisdiction of B.D.A. neither in his name, nor in the name of his wife, children, parents, sisters, brothers own any house or site within the area of B.D.A. jurisdiction". This was the affidavit given by the petitioner on 5-11-1981 to the B.D.A. to allot the site in his favour at Matadahalli layout extension. It was stated that at the time when he had applied for allotment of Site No. 165, petitioner was having Site No. 1133, HAL II Stage, Indiranagar allotted by the B.D.A. The possession certificate in respect thereof had been issued by the City Improvement Trust Board on 14-5-1978. Therefore, it was urged that false affidavit was filed by the petitioner-applicant making incorrect assertions. It has been stated that the petitioner had been a bachelor. However, he had been allotted two sites and this matter appeared in certain local news papers on 4-8-1992 and thereafter this fact was revealed and therefore authorities asked the petitioner which one of the two sites the petitioner wanted to retain and which site he wanted to surrender. Based on the said request, petitioner himself voluntarily surrendered Site No. 165, R.T. Nagar Extension, as per Annexure-R1 and the B.D.A. passed the cancellation of allotment of site order as regards Site No. 165, after following the rules relevant and thereafter allotted Site No. 165, Matadahalli, R.T. Nagar in favour of third respondent and delivered possession certificate to the third respondent on 31-8-1996, vide, Annexure-R3. The respondent thereafter applied for the change of Katha in favour of third respondent. Third respondent asserted that he is paying tax and he has produced the copy of the tax payment receipts Annexures-R5 and R6 and alleged that tax up to 1997 as per Annexure-R6 has been paid. Respondent 3 asserted that third respondent had been allotted Site No. 165, after the relevant procedure has been followed. Third respondent denied the petitioner's right and title or possession over Site No. 165. He asserted when petitioner himself has volunteered surrender of the said site, there is no reason for the petitioner to claim that he is still owner of the said site. He stated that Writ Petition No. 2471 of 1997, had been filed without impleading the third respondent as the party. Respondent 3 has stated however the writ petition came to be disposed of with liberty to the petitioner to file the writ petition, challenging the cancellation order. But he has stated, in the said petition, petitioner has not stated that he has surrendered Site No. 165 and the B.D.A. has executed the cancellation deed in

the year 1996. Respondent has mentioned that the petitioner had filed two writ petitions in which B.D.A. was only party for executing the sale deed in his favour. The case of respondent 3 is that petitioner has suppressed the fact of surrendering Site No. 165, which had been voluntary on his own accord and is misrepresenting the Court. Respondent 3 has asserted that as per allotment rules, no person can get hold of two sites and the Government after verification and after following the rules, had come to the conclusion that Site No. 165 of Matadahaili was wrongly allotted to the petitioner and that Site No. 165 has been allotted to the third respondent after the allotment in favour of the petitioner has been cancelled. The respondent's case is that Site No. 165 has been allotted as an alternate site to him. Respondent 3 denied that he made misuse of the powers. Respondent 3 has stated that after having surrendered the site, petitioner had no right to file the petition and petitioner cannot claim any relief. In such circumstances, respondent stated, the petitioner cannot either challenge the cancellation order or seek quashing of order of allotment, which is made in favour of the respondent. Respondent has stated that this petition has only been filed in order to harass the third respondent.

12. I have given brief narration of the case of respondent, in particular the allegations which are made in the statement of objections filed by respondent 3 supported by the affidavit have not been countered by filing rejoinder by the petitioner. No doubt, respondent 1 has also filed the counter affidavit and a copy of which was served on 13-3-1998. The petitioner could neither, nor did, file counter to the third respondent's counter affidavit filed on 18-2-1998, nor to the counter affidavit filed by respondent 1. For a moment as counter affidavit had been filed by respondent 1 on 13-3-1998, and petitioner did not file the rejoinder affidavit, I may take that only 3 days time was there in between the rejoinder affidavit and the date of hearing. But no reason is assigned why rejoinder is not filed with reference to the counter affidavit filed by respondent 3. For a moment I may take that counter of respondent 1 may not be taken note of, but the facts asserted in the affidavit of respondent 3 remain uncontroverted. From the narration of the facts and reading of the petition, it is very much clear that the petitioner has not averred in the body of the writ petition, I mean to say, that he did not state in the writ petition that he himself had surrendered Site No. 165, vide, letter dated 15-12-1994. It cannot be said that the Counsel drafting the petition was not aware. If Counsel was not aware, it was the duty of the petitioner to point out this fact, having supplied the copy of the letter dated 15-12-1994 to his Counsel and should have got this fact stated in the petition. In Annexure-H dated 4-3-1995, no reference has been made to this letter dated 15-12-1994, but vaguely it has been stated that as the Commissioner has intimated the petitioner that two sites cannot be allotted and the petitioner is not entitled to hold two sites, he may opt to one and surrender one, so to get the sale deed he opted to surrender one site, that is Site No. 165. Now he has decided to withdraw the letter of withdrawal dated 15-12-1994, and this has been brought to my notice. A person might have decided to take some action,

but if he does not take any action, it will not amount to that action being taken and so the letter dated 15-12-1994 was only thought of to be withdrawn in letter dated 4-3-1995. As mentioned in the order of this Court under Annexure-M that the allotment of Site No. 165 was cancelled by order dated 2/16-7-1996. No doubt in reply to the letter of the petitioner the authority again pointed out that since allotment has already been made, no deed could be executed. The petitioner no doubt has challenged in this petition the letter dated 2-7-1996. Why this letter dated 2-7-1996 was not challenged in the earlier petitions, neither in W.P. No. 2471 of 1997 nor in W.P. No. 7001 of 1997. In both the petitions only petitioner sought a direction for execution of the sale deed with respect to Site No. 165. The Government had allotted Site No. 165, in favour of third respondent vide, Annexure-A and intimated the B.D.A. to cancel the allotment of the site which was in favour of the petitioner. The B.D.A. record produced before the Court reveals that the cancellation deed, cancelling the allotment of Site No. 165, which was made in favour of M. Shivanna had been executed on a stamp paper and which is registered deed dated 22nd of August, 1996. The intimation of cancellation no doubt has been sent vide, notification dated 5-11-1996. This deed of cancellation dated 22nd August, 1996 has been executed after petitioner's failure to execute the deed in compliance with the communication dated 2-7-1996/16-7-1996, Annexure-B.

13. The petitioner has now by this petition challenged the Government order dated 29-5-1996, Annexure-A and dated 2-7-1996, Annexure-B to the writ petition. From the narration of the facts it becomes very clear that in whatsoever circumstances it may be, the petitioner had voluntarily surrendered Site No. 165, R.T. Nagar, Bangalore referred to above, vide, communication dated 15-12-1994, by which communication petitioner had sought and prayed that the deed of transfer be executed with reference to either Site No. 1133, HAL II Stage, Indiranagar, which was allotted in favour of the petitioner. This fact really the petitioner has in the body of the petition not stated and appears to have concealed. Once a person surrendered himself the site and opted to retain one site i.e., Site No. 1133, it is not open to the petitioner to blow hot and cold. Really when intimation dated 2-7-1996/16-7-1996 was addressed to him, he should have been fair enough to have gone to execute the deed of surrender, but he did not comply. He could not dare to challenge that deed in the earlier two writ petitions, because one cannot be allowed to blow hot and cold. Though he took the two innings of litigation, in the third innings he wanted to conceal the factum of surrender he himself has volunteered. That no such thing appears from the record, as withdrawal of letter of surrender dated 15-12-1994 by the petitioner. How could he have withdrawn that deed of surrender or letter of surrender, of Site No. 165, dated 15-4-1994, nothing in law has been placed to the notice of the Court which could have entitled the petitioner to withdraw it. When the petitioner has surrendered Site No. 165, it was the duty of the authority to pass cancellation order even if the petitioner does not come to execute the deed of surrender and once the site had been surrendered and the



letter had been executed, it was open to the authority to allot it to a person who was eligible for allotment in his favour, according to law. Learned Counsel for the parties, including Sri Shekar Shetty, very fairly pointed out that there is a rule in the Legislators Housing Co-operative Society Scheme, similar to the Rule 10(3) of Bangalore Development Authority (Allotment of Sites) Rules, 1984.

14. Rule 10(3) of the Bangalore Development Authority (Allotment of Sites) Rules, 1984, provides.-

"10. Eligibility - No person.-

(1).....

(2).....

(3) Who or any member of whose family owns a site or a house or has been allotted a site or a house by the Bangalore Development Authority or any other Authority within the Bangalore Metropolitan Area shall be eligible to apply for allotment of a site";

Similar is provision in bye-law No. 10 of the Legislators Housing Cooperative Society Rules.

15. That being the position, when Site No. 165 was allotted in favour of the petitioner, petitioner was not eligible for the site being allotted in his favour, as he had already got Site No. 1133, HAL II Stage, Indiranagar, as long back as in 1973-74. But the petitioner, it appears had made a false affidavit before the authorities of the Co-operative Society and got the allotment of Site No. 165, in R.T. Nagar. This fact came to the notice of the public, when the matter had come to the notice of the Press and then authorities thought it fit that the petitioner be required to surrender either of the site, before any deed of transfer executed. Petitioner, in such circumstances, it appears from his letter dated 4-3-1995 also, admittedly executed the letter of surrendering Site No. 165. Once he has surrendered, he has no right to challenge the cancellation and say that no doubt he is withdrawing the letter by which he has surrendered the site.

16. Article 38 of the Constitution, firstly provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may by a social order in which justice, social, economic and political shall inform all the institutions of the national life. This principle is as well applicable to the persons in the public and political life. Article 39 of the Constitution also again provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally have the right to an adequate means of livelihood; that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

17. This is one of the basic principles of economic and social justice and social

norms. The Preamble of the Constitution from the very beginning talks of socialist order and of justice -- social, economic and political. Persons who take oath to the Constitutional Office -- whether they be Members of Legislative Assembly or the State Political Executive, they take the Oath of the Constitution and their Oath as per proforma prescribed reveals: I. .... do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will uphold the sovereignty and integrity of India and conscientiously discharge my duties as a Minister for the State and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

18.1 may quote herewith the Oath, which is taken by the Members of the Legislature:

"I. .... having been elected or nominated as member of the Legislative Assembly do swear in the name of God, solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter".

19. Those holding the Constitutional Office are expected to keep pace with the Oath they take of the Constitutional Office. They be members of Legislature, be the member of a State Cabinet or holder of other Constitutional Office, when a person takes the Oath to bear true faith and allegiance to the Constitution of India, which ordains it shall be the duty to direct its policy that Citizens, men and women, equally may be secured the right to an adequate means of livelihood and that ownership and resources of the community have to be distributed to subserve the common good and the economic system is not allowed to result in the concentration of wealth in one or few hands, it also applies to them, when the rule so provides, particularly such as the Rules of Legislators Housing Co-operative Society or E.D.A. Rules, that no person shall be eligible to apply for allotment of a site, if he or any members of his family owns a house or site or he or any member of his family has been allotted a site or house either by the B.D.A. or any other authority, within the Bangalore Metropolitan Area. The Legislators and others have to take note that this Rule being with utmost caution so that the same is not or does not stand violated, knowingly or unknowingly. Here is the case in which a person who held the Office of Minister and was a Member of Legislative Assembly at the relevant time, he, I feel sorry to find, has filed a false affidavit before the Authority in 1981 or so, when he had applied for Site No. 165 being allotted to him, whereunder the false affidavit he stated that "neither he, nor the members of his family did own any site or house allotted to him in Bangalore Metropolitan Area, either allotted by the B.D.A. or any other authority", The Legislators Housing Co-operative Society has also been a Governmental Co-operative Society. It can be termed to be an authority. When he had applied for allotment of the site in 1981, he had already Site No. 1133 allotted by the B.D.A. But this petitioner who was a Legislator having ignored the

letter and spirit of his Oath and doctrine of social and economic justice filed a false affidavit with an object to and with intention to get more than one site allotted to him, quite contrary to the basic scheme of the Constitution, read with Rule 10(3) of the Bangalore Development Authority (Allotment of Sites) Rules and Rule 10 of the Legislators Housing Co-operative Society Rules, and resulting in an attempt to by-pass those rules. If persons holding such Offices clandestinely behave like that, a day will not be too far off, when people may completely lose faith. Persons holding public offices need be very cautious in their conduct and behaviour in life private or public and need to move keeping pace with their Oath and affirmance to values of life enshrined in Constitution and its basic principles.

20. I remember Dr. Rajendra Prasad on the eve of the Sessions of the Constituent Assembly, when the Constitution was given final touch stated:

"Whatever the Constitution may or may not provide welfare of the Country will depend upon the way the Country is administered. That will depend upon men who administer it..... If the people who are elected are capable and men of character and integrity they would be able to make best even of a defective Constitution. If they are lacking in these, Constitution cannot help the Country. .... and India needs today nothing more than a set of Honest men who will have the interest of the Country before them". See Constituent Assembly Proceedings, dated 25-11-1949.

21. If such persons i.e., those who are expected to be the men of character and integrity and honest persons, as has been indicated by Dr. Rajendra Prasad in Constituent Assembly, behave in such a fashion and go to the extent of filing such false affidavit only to procure the trivial benefits at the cost of and detriment to the common man, then it may be a sad day or indication of sad day to our Democracy. Looking to such circumstances in my opinion, such persons do not deserve exercise of writ jurisdiction under Article 226 from this Court in their favour.

22. The writ petition, in view of the fact that the material facts have been concealed, has to be dismissed. Apart from it there have been three innings in this case and a final close up has to be given. With all these things in view, I dismiss this petition with these observations, though learned Counsel for the petitioner at one stage submitted that he may be allowed time to withdraw the petition, but taking these things in view, I have refused to grant him any adjournment for the purpose.

23. The writ petition is hereby dismissed with exemplary costs being imposed in exercise of powers u/s 35-A of the Civil Procedure Code. Exemplary costs which are imposed are to the tune of Rs. 15,000/- to be deposited by the petitioner with the Registry of this High Court, disbursable as Rs. 10,000/- to the funds of State Legal Aid Board, Karnataka and out of the remaining sum of Rs. 5,000/-, the sum of Rs. 1,750/- each to go to the first and second respondent and Rs. 1,500/-

to respondent 3.

24. The petitioner is directed to deposit this sum of Rs. 15,000/- of exemplary cost in the Registry of this Court within three months.