IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C
AT GOWRIBIDANUR

Dated this 2nd day of March 2023

:: PRESENT ::

SRI. SACHIN P.M.
B.A., L.L.B., (Hons)
Prl. Civil Judge & J.M.F.C,
Gowribidanur

CC No.774/2019

Complainant: Gowribidanur Town Police
(State by Asst. Public Prosecutor)

-Vs-

Accused : 1. Srinivasa Murthy T.A
S/o Ashwath
Narayana Shetty.T.G
Aged about 54 years,
R/at No.978, 2nd Cross,
3rd Phase, Kathriguppe
Water TA, Bangalore City.
(Abated)

2. Sundar Shekar
S/o Arunachalappa
Aged about 68 years,
R/at Vinayaka Nagara,
Gowribidanur Town,
Chikkaballapur District.

3. Govindappa.K
S/o Late. Narasaiah
Aged about 65 years,
R/at Madanahalli Village,
Kasaba Hobli,
Gowribidanur Taluk,

Chikkaballapur District.

4. Dastagiri Sab
S/o Late. Imam Sab
Aged about 67 years,
R/at Vinayaka Nagara,
Gowribidanur Town,
Chikkaballapur District.

5. Nagendra R
S/o Rama Murthy P.J
Aged about 36 years,
R/at Incharge Village
Accountent, Hirebidanur,
Gowribidanur Taluk,
Chikkaballapur District.

6. Narasimhamurthy C.R
S/o Late. Ramalinga Reddy,
Aged about 53 years,
R/at Chandanaduru Village,
Gowribidanur Taluk,
Chikkaballapur District.

7. Ravinarayana Reddy N.M
S/o Late. Madana Gopala Reddy,
Aged about 64 years,
R/at H. Nagasandra Village,
Gowribidanur Taluk,
Chikkaballapur District.

(Represented by Sri.R.R, Advocate)

ORDERS ON APPLICATION FILED BY THE ACCUSED No.2 TO 7 UNDER SECTION 239 OF CRPC.

The accused No.2 to 7 have filed an application under section 239 of Cr.P.C., seeking their discharge from the alleged offence punishable under Section 192-A(3) of the Karnataka Land Revenue Act.

2. It is stated the complainant police have registered an FIR in Cr.No.42 of 2019 on the basis of the complaint lodged by the Thahashildar of Gowribidanur Taluk. That the land bearing Sy.No.185 measuring 31 guntas situated at Madanahalli village, Kasaba Hobli, Gowribidanur Taluk belonged to R.Govindappa and that the said R.Govindappa executed a registered sale deed in favor of the Town Municipality at Gowribidanur on 07/10/1970. That the Thahashildar mutated the name of the Gowribidanur Town Municipality vide M.R No.17/371 on the basis of the said registered sale deed, but the Thahashildar failed to enter the name of the Gowribidanur Town Municipality in the R.T.C, which is a public document maintained to give notice to the public regarding the name of the person in whose name the land is standing. The R.T.C of the said property continued in the name of R.Govindappa.

3. That after verifying the R.T.C standing in the name of R.Govindappa, the accused No.6 purchased the property from the said R.Govindappa and that the accused No.6 has not created any document in the revenue records. That the Thahashildar at

Gowribidanur has illegally continued the name of R.Govindappa in the revenue records inspite of M.R.No.17/371 and that the Thahashildar at Gowribidanur failed to enter the name of the Gowribidanur Town Municipality.

4. That after the purchase of the said property, the name of the accused No.6 was mutated in the revenue records by the Thahashildar of Gowribidanur and subsequently, the accused No.6 sold the said property in favor of the accused No.7. That the accused No.7 verified the R.T.C as well as the registered sale deed and khatha standing in the name of the accused No.6 and purchased the said property that the accused No.6 and 7 have not created any documents as alleged by the Thahashildar.

5. That after coming to know that the property was earlier sold by R.Govindappa in favor of the Gowribidanur Municipality, the accused No.7 executed a registered gift deed in favor of the Governor of Karnataka State represented by the Chief Officer of Gowribidanur Town Municipality on 07/09/2011 and delivered the possession of the said land bearing Sy.No.185 measuring 31 guntas situated at Madanahalli Village, Kasabi Hobli, Gowribidanur Taluk. That on the basis of the said gift deed, the Thahashildar at Gowribidanur has mutated the name of the Governor of Karnataka State represented by the Chief Officer of Gowribidanur Town Municipality in respect of the said Sy.No.185 measuring 31 guntas vide MR No.H20/2011-12. That since 2011-12, the R.T.C of the said property is standing in the name of the Governor of Karnataka State represented by the Chief Officer of Gowribidanur Town Muncipality.

6. It is further stated that the Thahashildar at Gowribidanur lodged the complaint only on the basis of the letter bearing number LNDCR 169/2018-19 issued by the Deputy Commissioner of Chikkaballapur directing the Thahashildar to take action against the persons who are involved in the transactions pertaining to the above said land. That the Thahashildar of Gowribidanur failed to intimate the Deputy Commissioner that the said property bearing Sy.No.185 measuring 31 guntas is now standing in the name of the Governor of Karnataka State represented by the Chief Officer of Gowribidanur Town Muncipality and that nobody is in illegal possession of the said land. That the Thahashildar filed a complaint against the accused on the basis of the letter issued by the Deputy

Commissioner of Chikkaballapur, without any enquiry regarding the land as per the provisions of the Karnataka Land Revenue Act.

7. That the final report has been filed against the accused No.2 to 7 without following the due procedure under law as the Thahashildar has not issued any cause notice calling upon the accused No.2 to 7 nor gave an opportunity to the accused to be heard. That the said property bearing Sy.No.185 measuring 31 guntas situated at Madanahalli Village, Kasaba Hobli, Gowribidanur Taluk is in possession of the government itself as on the date of the complaint filed by the Thahashildar. That the Thahashildar has no power to lodge a complaint in respect of land belonging to the City Municipal Council at Gowribidanur and it is the Commissioner of City Municipal Council who has to lodge the complaint in case of illegal possession or creation of documents pertaining to property belonging to the City Municipal Council.

8. That the complainant police have failed to place sufficient materials before this Court to make out a prima-facie case against the accused for the offence punishable under Section 192-A of the Karnataka Land Revenue Act. That the final report filed by the complaint police is misconceived and that the accused No.2 to 7 deserve to be discharged of the alleged offense. That the accused No.2 to 7 are innocent of the alleged offences and on these grounds, it is prayed that the accused No.2 to 7 may be discharged of the offence alleged against them.

9. The Learned A.P.P has filed objections to this application contending that the property bearing Sy.No.185 measuring 31 guntas originally belonged to one Govindappa who executed a sale deed in favor of the Gowribidanur Town Municipality for the purpose of a cemetery and that the revenue document pertaining to the said property continued in the name of one Muddarangappa from 1965 to 1987. That the accused No.3 sold the said property to the accused No.6 on 12/06/2008 even though the accused No.6 knew all the information related to the said property and that the accused No.6 sold the said property to the accused No.7 on 26/09/2008. That the accused No.1, 2, 4 and 5 are Government employees, who connived in the alienation of the said property and that these facts have come to light during the course of the investigation.

10. It is further contended that the offence under Section 192-A of the Karnataka Land Revenue

Act is serious in nature and that the accused persons have not made out any grounds to be discharged in this case. That the accused are politically strong and if they are discharged, it may cause chaos in the society and that the possibility of the accused committing similar offences cannot be ruled out. On these grounds, it is prayed that the application may be dismissed.

11. Heard the learned A.P.P and the learned counsel for the accused No.2 to 7 and perused the application and objections in light of the case papers.

12. The points that arise for the consideration of this Court are:-

Point No.1:- *Whether the application filed by the accused No.2 to 7 under Section 239 of Cr.P.C deserves to be allowed?*

Point No.2:- *What order?*

13. My findings on the above points are as:-

Point No.1:- In the ***Negative***
Point No.2:- *As per final order for the following*:

REASONS

14. Point No.1:- The accused No.2 to 7 are alleged to have committed the offence punishable under Section 192-A of the Karnataka Land Revenue Act. This Court has taken cognizance of the alleged offence against the accused No.1 to 7 and issued summons for their appearance. The accused No.1 was reported as dead and hence the case against him was held to have been abated on account of his death. The accused No.2 to 7 have filed this application, when the case was posted for hear before charge, seeking their discharge from the alleged offences as they are innocent and are being falsely implicated as the accused.

15. It is necessary to refer to the relevant provision of law pertaining to this case i.e., Section 192-A of the Karnataka Land Revenue Act, which reads as follows:

> **Section 192-A.- Offences and Penalties**.- Notwithstanding anything contained in the Act or the rules made thereunder whoever commits any of the offence specified in column (2) of the Table below, shall on conviction by a judicial Magistrate of first class for each of such offence be punishable with the sentence indicated in column (3) thereof,-
>
> **(3)** Creates a forged document regarding Government lands with an intention to use it for that purpose or to grab such lands-Imprisonment for three years and fine of rupees five thousand.

In a plethora of decisions of the Hon'ble Supreme Court of India as well as of our Hon'ble

High Court of Karnataka it has been held that if the allegations leveled against the accused are not made out on a careful perusal of the case papers, the Court may exercise its discretion and discharge the accused persons, even in the absence of application being filed by the accused seeking their discharge. In the light of the above principle, on examining the entire papers on hand it, this Court is of the opinion that there are sufficient materials found to proceed with the case against the accused persons for the commission of the alleged offence punishable under Section 192-A of the Karnataka Land Revenue Act.

16. Firstly, the accused No.2 to 7 have admitted in their application that the property bearing Sy.No.185 measuring 31 guntas originally belonged to R.Govindappa i.e., the accused No.3. It is also admitted that the accused No.3 executed a registered sale deed in favor of the Gowribidanur Town Municipality on 07/10/1970 and the same was also reflected in the mutation records vide MR No.17/371. It is further admitted that the name of Gowribidanur Town Municipality was not entered in the R.T.C pertaining to the said property and that the accused No.6 purchased the said property from the accused No.3 after verifying the R.T.C standing in the name of the accused No.3. It appears that the accused No.3, being the executant of the sale deed in favor of Gowribidanur Town Municipality, was aware of the prior sale deed before and during the execution of the sale deed in favor of the accused No.6.

17. Secondly, it is stated in the application that the Thahashildar of Gowribidanur mutated the name of the Gowribidanur Town Municipality in his record vide MR No.17/371. Any common prudent man would check the revenue records, mutation records, encumbrance certificates and original title deeds before purchasing an immovable property. It is also a well settled principle of law that revenue documents are not documents of title but are merely records maintained for fiscal purposes. In this case, the burden of proof is upon the accused No.6 and 7 to prove that at the time of purchasing the property bearing Sy.No.185 measuring 31 guntas, they had no knowledge regarding the prior sale deed executed by the accused No.3 in favor of the Gowribidanur Town Municipality or regarding the mutation entry in MR No.17/371 and this burden of proof can only be discharged after leading evidence.

18. Thirdly, the accused No.2, 4 and 5 are stated to be government employees who connived with the accused No.3, 6 and 7 in creating documents pertaining to the land belonging to the Gowribidanur Town Municipality bearing Sy.No.185 measuring 31 guntas. It is stated in the application that the accused are innocent of the alleged offence and that no case is made out against them which entitles them to be discharged from this case. On perusal of the final report, it is observed that the accused No.2 and 4 are arrayed as retired Government employees whereas the accused No.5 is arrayed as a serving Revenue Officer. In any department of the Government, vast responsibilities are vested with Government employees.

19. In the case at hand, it was the duty of the concerned Government authorities to verify all the documents pertaining to the property bearing Sy.No.185 before approving and recording its alienation in the revenue records. There appears to have been serious lapses by the Government authorities in recording and maintaining proper records pertaining to the property bearing Sy.No.185. The burden of proof is upon the accused No.2, 4 and 5 to prove that they had no intention of aiding the creating of documents pertaining to Sy.No.185 and this burden can only be discharged after evidence is led in that regard. This Court cannot decide upon the innocence or guilt of the accused No.2, 4 and 5 at this preliminary stage of the proceeding.

20. It is also contended that the accused No.7 has already gifted the property bearing Sy.No.185 measuring 31 guntas in favor of the City Municipal Council before the Thahashildar lodged his complaint in this case and that the accused No.7 has right the wrong as soon as it came to his knowledge. Nonetheless, there appears to be a wrong that was committed which cannot be ignored or brushed aside just because the accused No.7 has executed a gift deed in favor of the City Municipal Council at Gowribidanur. An offence once committed cannot be erased from time and history by any subsequent event and a trial is necessary to determine the innocence or guilt of the accused persons in this case.

21. At this juncture, the papers submitted along with the final report by the Investigating Officer prima-facie establishes the chance of commission of the alleged offence which cannot be discarded without proceeding with the trial of the case. Hence, on the overall consideration of the case papers on hand, the ingredients of the offence punishable under Section 192-A of the Karnataka Land Revenue

Act are made out and the accused persons have failed to discredit the version of the prosecution and have failed to establish the non-existence of grounds to frame charge against them for the alleged offence. Hence, this Court is of the opinion that there are sufficient grounds to proceed against the accused No.2 to 7 and frame charge and the ***Point No.1*** is answered in the ***Negative***.

22. Point No.2:- In view of the reasons stated above, this Court proceeds to pass the following:

ORDER

The application filed by the accused No.2 to 7 under section 239 of Cr.P.C., is hereby rejected.

Accused No.2 to 7 are hereby directed to answer the charge for the offence punishable under Section 192-A(3) of the Karnataka Land Revenue Act.

Call on for charge.

(Typed, corrected, revised by me and then pronounced in the open court this 2nd day of February 2023).

SD/-
(SACHIN P.M)
Prl. Civil Judge & J.M.F.C.
Gowribidanur