HC-KAR
NC: 2026:KHC:42343
WP No. 23165 of 2026
CNR: KAHC010512602026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 23165 OF 2026 (GM-RES)

BETWEEN:

1. MR. M. GOVIND REDDY
SON OF P. MUNIKRISHNA REDDY
AGED ABOUT 71 YEARS,
NO. 40, DOMLUR VILLAGE,
BANGALORE 560071.
EMAIL LOCHAN.REDDY@GMAIL.COM

2. MRS. M. YASHODAMMA
W/O V. KRISHNA REDDY
AGED ABOUT 75 YEARS
NO. 109, 2ND 'A' CROSS MUNNEKOLALA,
MARATHALLI POST,
BANGALORE - 560037.
EMAIL KVINUKAR@GMAIL.COM

...PETITIONERS

(BY SRI. ADITH.S. JAHGIRDAR.,ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY CHIEF SECRETARY,
VIDHANA SOUDHA,
BENGALURU – 560 001.

2. THE TAHSILDAR,
OFFICE OF THE TAHSILDAR,
BENGALURU EAST TALUK,
MINI VIDHANA SOUDHA,

DIESEL LOCO SHED ROAD,
DURAVANI NAGAR,
KRISHNARAJAPURA (K.R. PURAM),
BENGALURU, KARNATAKA - 560 036.

3. THE SPECIAL TAHSILDAR,
KRISHNARAJAPURA TALUK OFFICE,
MINI VIDHANA SOUDHA,
DIESEL LOCO SHED ROAD,
DURAVANI NAGAR,
KRISHNARAJAPURA,
BENGALURU, KARNATAKA - 560 036.

4. THE DEPUTY COMMISSIONER
BANGALORE NORTH TALUK OFFICE,
KANDAYA BHAVAN,
KEMPEGOWDA ROAD,
NEXT TO CAUVERY BHAVAN,
BENGALURU – 560 009.

5. VENKAT ESTATES PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT 1956
REPRESENTED BY ITS RESOLUTION PROFESSIONAL,
MR. VENKATA SUBBARAO KALVA,
HAVING REGISTRATION NO.
IBBI/IPA-002/IP-N00419/2017-18/11200
NO. 41/1, 2ND FLOOR, 11TH CROSS,
8TH MAIN ROAD, 2ND BLOCK,
JAYANAGAR, BENGALURU - 560 011

6. KARNATAKA REAL ESTATE REGULATORY AUTHORITY,
REPRESENTED BY ITS CHAIRMAN
NO. 1/14, 2ND FLOOR,
SILVER JUBILEE BLOCK,
BEHIND UNITY BUILDING,
C.S.I COMPOUND,
3RD CROSS, MISSION ROAD,
BENGALURU – 560 027.

7. PRAKASH KUMBHAKAR

S/O KALACHAND KUMBHAKAR,
AGED 39 YEARS,
RESIDING AT NO. 2866,
NEW D-27 1ST FLOOR,
8TH CROSS, VV MOHALLA,
MYSURU – 570 002.
(PRO-FORMA RESPONDENT)

...RESPONDENTS

(BY SRI. MOHAMMED JAFAR SHAH, AGA FOR R1 TO R3;
SRI. GOUTHAMDEV ULLA, ADVOCATE FOR R4 & R6)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE AND CONSEQUENTIALLY QUASH THE PUBLIC AUCTION NOTICE PUBLIC AUCTION NOTICE DATED 06.06.2026 BEARING NO. MSC/BERA/CR/32/23-24 ISSUED BY THE R3 FOUND AT ANNX-A OF THE INSTANT PETITION.ISSUE A WRIT OF MANDAMUS TO THE R2-4 DIRECTING THEM TO REFRAIN FROM TAKING ACTION IN ENFORCING ANY ORDER, AWARD OR RECOVERY CERTIFICATE ISSUED AS AGAINST THE R5/CORPORATE DEBTOR.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioners are before this Court seeking for the following relief/s:

> *"A. Set aside and consequentially quash the Public Auction Notice Public Auction Notice dated 06.06.2026 bearing No. MSC/RERA/CR/32/23-24 issued by the Respondent No. 3 found at Annexure - A of the instant Petition.*
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> *B. Issue a writ of mandamus to the Respondent Nos. 2-4 directing them to refrain from taking any action in*

enforcing any Order, Award or recovery Certificate issued as against the Respondent No. 5/Corporate Debtor.

C. Pass any other writ or order as may be deemed fit in the interest of justice and equity."

2. The petitioners state that they are aggrieved by the Public Auction Notice dated 06.06.2026, bearing No. MSC/RERA/CR/32/23-24, issued by respondent No.3, the Special Tahsildar, pursuant to a Recovery Certificate issued under Section 41 of the Real Estate (Regulation and Development) Act, 2016 ("RERA").

3. Sri Adith S. Jahgirdar, learned counsel appearing for the petitioners, submits that the petitioners are the absolute owners of the subject property and had entered into a Joint Development Agreement with respondent No.5 for development thereof. It is submitted that respondent No.5 has since been admitted into the Corporate Insolvency Resolution Process ("CIRP") under the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC"), by order dated 04.06.2025, and that the CIRP is presently pending before the National Company Law Tribunal ("NCLT") in C.P. (IB) No.88/2025.

4. Learned counsel contends that, consequent upon the commencement of the CIRP, all assets over which respondent No.5 claims any right, title or interest, including its rights arising under the Joint Development Agreement, fall within the ambit of the insolvency proceedings pending before the NCLT. According to him,

the insolvency framework envisages that all questions relating to the management, preservation, realization and disposition of the assets of the corporate debtor are to be dealt with exclusively by the Resolution Professional under the supervision of the NCLT. Any independent coercive action against such assets, it is submitted, would interfere with the insolvency resolution process and defeat the objective of maintaining the corporate debtor as a going concern.

5. It is, therefore, argued that the Public Auction Notice issued by respondent No.3, in pursuance of the Recovery Certificate issued under Section 41 of RERA, seeks to bring to sale property and rights which are intrinsically connected with the assets forming part of the ongoing CIRP. Such action, according to the learned counsel, amounts to initiating a parallel recovery process outside the insolvency framework and has the effect of bypassing the jurisdiction of the NCLT. It is submitted that permitting the auction to proceed would not only prejudice the interests of the corporate debtor and its stakeholders but would also have the potential to adversely affect the insolvency resolution process.

6. Learned counsel accordingly submits that once the CIRP has commenced, any action affecting the assets or interests of respondent No.5 can be undertaken only with the leave of, or under the supervision of, the NCLT in the

pending insolvency proceedings. Consequently, the Public Auction Notice dated 06.06.2026 is contended to be without jurisdiction and liable to be stayed pending adjudication of the present writ petition.

7. Learned counsel for the petitioners relies upon the decision of the Hon'ble Apex Court in '***VISHAL CHELANI & ORS. V. DEBASHIS NANDA***'[1] and more particularly para-12 thereon which is reproduced herein for ease of reference:

> **"***12. As held in Natwar Agrawal [Natwar Agrawal v. Ssakash Developers & Builders (P) Ltd., 2023 SCC OnLine NCLT 682] by the Mumbai Bench of National Company Law Tribunal the underlying claim of an aggrieved party is crystallised in the form of a court order or decree. That does not alter or disturb the status of the party concerned — in the present case of allottees as financial creditors. Furthermore, Section 238 IBC contains a non obstante clause which gives overriding effect to its provisions. Consequently its provisions acquire primacy, and cannot be read as subordinate to the RERA Act. In any case, the distinction made by the RP is artificial; it amounts to "hyper-classification" and falls afoul of Article 14. Such an interpretation cannot therefore, be countenanced."*

8. By relying on '***VISHAL CHELANI***', his submission is that the Hon'ble Supreme Court has unequivocally held that by virtue of the non obstante clause contained in Section 238 of the Insolvency and Bankruptcy Code, 2016, the provisions of the IBC have overriding effect over any inconsistent provision contained in any other enactment, including the provisions of the Real Estate (Regulation

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[1] 2023 10 SCC 395

and Development) Act, 2016. It is, therefore, contended that once the Corporate Insolvency Resolution Process has commenced, the statutory framework under the IBC assumes primacy and any proceedings or measures under the RERA Act which have the effect of interfering with, diminishing or dealing with the assets of the corporate debtor must necessarily yield to the insolvency process being conducted under the supervision of the National Company Law Tribunal.

9. Learned counsel accordingly submits that the Recovery Certificate issued under Section 41 of the RERA Act and the consequential Public Auction Notice cannot be enforced in a manner that would circumvent or frustrate the ongoing Corporate Insolvency Resolution Process. According to him, any recovery action that has the effect of dealing with assets in which the corporate debtor has subsisting rights or interests can be undertaken only in accordance with the scheme of the IBC and subject to the jurisdiction and control of the National Company Law Tribunal. The impugned auction proceedings are, therefore, contended to be unsustainable in law.

10. He also relies on a judgment of the Co-ordinate Bench of this Court in ***M/S.DREAMS INFRA INDIA PVT. LTD. vs. COMPETENT AUTHORITY, DREAMZ INFRA INDIA***

PVT.LTD.[2] in para-22 thereon which is reproduced hereunder for easy reference:

"22. It is also important to note that the Apex Court in Innoventive Industries Limited's case had discussed with regard to the repugnancy of State law and in Anand Rao Korada, Resolution Professional's case, the Apex Court discussed with regard to Sections 14 and Section 238 of the Code in respect of the moratorium which has got overriding effect over other laws and so also in Alchemist Asset Reconstruction Company Limited's case, the Apex Court held that the IBC prevails over the State enactment. In the case on hand, already the matter has been seized before the NCLT before initiating the present proceedings. The Apex Court recently in J.Manivannan's case held that there cannot be any other civil proceedings when the matter has been ceased and already some homebuyers have approached the NCLT and so also the Resolution Professional was also appointed. Under the circumstances, I am of the opinion that there is a force in the contention of the petitioner's counsel that the provisions of the IBC is having overriding effect over other laws and the same would prevail in view of Section 238 of the Code. Hence, the petitioner has made out grounds to quash the proceedings initiated against the petitioner under Section 7(1) of the Act, 2004."

11. Relying on '***M/S.DREAMS INFRA INDIA,***' his submission is that a Co-ordinate Bench of this Court has recognised the overriding effect of the provisions of the Insolvency and Bankruptcy Code, 2016, particularly Sections 14 and 238 thereof, over proceedings initiated under other enactments. It is submitted that the Co-ordinate Bench, after considering the decisions of the Hon'ble Supreme Court in **Innoventive Industries Ltd., Anand Rao**

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[2] W.P.No.13477/2020 DD 24.05.2021

Korada, Alchemist Asset Reconstruction Company Ltd. and J. Manivannan, held that once the National Company Law Tribunal has assumed jurisdiction over the affairs of the corporate debtor and the Corporate Insolvency Resolution Process has commenced, parallel proceedings under another statute affecting the assets of the corporate debtor cannot be permitted to continue.

12. Learned counsel further submits that although the Co-ordinate Bench was dealing with proceedings initiated under the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004, the principle enunciated therein is of general application. According to him, the ratio of the decision is that the statutory scheme of the IBC, by virtue of Section 238, prevails over any inconsistent provisions contained in other enactments, whether Central or State, where such proceedings have the effect of impinging upon the insolvency resolution process or the assets of the corporate debtor.

13. It is, therefore, contended that the same principle squarely applies to the present case. According to the learned counsel, once respondent No.5 has been admitted into the Corporate Insolvency Resolution Process and the proceedings are pending before the National Company Law Tribunal, no independent recovery proceedings, including proceedings initiated pursuant to a Recovery Certificate issued under Section 41 of the Real

Estate (Regulation and Development) Act, 2016, can be permitted to continue if such proceedings have the effect of dealing with, encumbering or bringing to sale assets or development rights forming part of the insolvency estate. Any such action, it is submitted, would directly undermine the statutory moratorium and the comprehensive insolvency framework contemplated under the IBC.

14. Learned counsel therefore submits that the impugned Public Auction Notice deserves to be quashed, as its continuation would result in parallel proceedings concerning the assets and rights of the corporate debtor, a course of action which is impermissible in view of the overriding provisions of Sections 14 and 238 of the Insolvency and Bankruptcy Code, 2016, as interpreted by the Hon'ble Supreme Court and by the Co-ordinate Bench of this Court.

15. Heard Sri Adith S. Jahgirdar, learned counsel appearing for the petitioners. The petition papers and the documents placed on record have been carefully perused.

16. The present writ petition challenges the Public Auction Notice bearing No. MSC/RERA/CR/32/23-24 dated 06.06.2026 issued by respondent No.3–Special Tahsildar. The auction notice has not been issued independently. It has been issued only for the purpose of enforcing a Recovery Certificate issued under Section 41 of the Real

Estate (Regulation and Development) Act, 2016 ("RERA").

17. The records disclose that the Recovery Certificate has been issued pursuant to an order passed by the competent authority under the RERA Act against respondent No.5–Developer. The petitioners admittedly were not parties to the proceedings before the RERA Authority. It is also not in dispute that the Recovery Certificate continues to remain in force. There is nothing placed on record to indicate that either the order passed by the RERA Authority or the Recovery Certificate issued in pursuance thereof has been stayed, modified or set aside by any competent forum.

18. The execution of the Recovery Certificate has also been undertaken pursuant to the directions issued by this Court in W.P. No.257/2024 by order dated 10.12.2025. It is further brought to the notice of this Court that contempt proceedings in C.C. No.241/2026 have also been initiated with regard to the implementation of the said directions. Thus, the impugned auction notice is merely a step taken in execution of an existing and enforceable Recovery Certificate.

19. The principal contention urged by the petitioners is not that the Recovery Certificate is illegal or without jurisdiction. Their contention is that respondent No.5 has been admitted into the Corporate Insolvency Resolution

Process ("CIRP") under the Insolvency and Bankruptcy Code, 2016 ("IBC"), and therefore no auction of the subject property can be undertaken without the permission of the National Company Law Tribunal ("NCLT").

20. This submission, at first blush, appears attractive. However, on a closer examination of the statutory scheme and the facts of the present case, this Court is unable to accept the same.

21. The petitioners themselves state that they are the owners of the land and had entered into a Joint Development Agreement with respondent No.5 for development of the property. It is on the basis of this Joint Development Agreement that they seek to contend that they are stakeholders in the insolvency proceedings pending before the NCLT.

22. Once such a Joint Development Agreement has been entered into, the legal consequences flowing from the provisions of the RERA Act cannot be ignored. Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 defines the expression "promoter". The Explanation appended to the said provision specifically provides that where the person who develops the project and the person who sells the apartments or plots are different persons, both shall be deemed to be promoters

and shall be jointly responsible for the obligations and liabilities arising under the Act.

23. Clause zk of Section 2 of the Real Estate Regulation and Development Act, 2016 defines a promoter as under:

2.(a) xxxxx

(b) xxxxx

(c) xxxxx…..

(zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

> *(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*
>
> *(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name

or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder;"

24. The effect of the above provision is that a land owner who permits development of his property through a developer under a Joint Development Agreement does not remain a mere owner of the land. For the purposes of the RERA Act, such a land owner is also treated as a promoter or co-promoter and assumes the statutory responsibilities attached to that status. The liability created by the statute cannot be avoided merely because the development activities are carried out by the developer.

25. Therefore, the petitioners cannot simultaneously claim the benefits arising out of the Joint Development Agreement and yet contend that the proceedings initiated under the RERA Act concern only respondent No.5. The statute itself treats both the developer and the land owner as promoters wherever the circumstances contemplated by Section 2(zk) exist.

26. It is also necessary to notice that the petitioners have not challenged either the order passed by the RERA Authority or the Recovery Certificate issued pursuant thereto. If the petitioners were genuinely aggrieved by the adjudication made by the RERA Authority, the appropriate course open to them was to challenge the adjudicatory order or the Recovery Certificate before the forum known to law. They have not chosen to do so.

27. Instead, the petitioners have challenged only the consequential Public Auction Notice. In the opinion of this Court, such a challenge is misconceived. The auction notice is merely an execution proceeding. So long as the Recovery Certificate remains valid and enforceable, the executing authority is under a legal obligation to execute the same. Unless the Recovery Certificate itself is stayed or set aside by a competent forum, the execution proceedings cannot ordinarily be interdicted merely because a person incidentally affected by such execution raises objections.

28. The reliance placed upon the decisions in **Vishal Chelani and M/s. Dreams Infra India Pvt. Ltd.** also does not advance the case of the petitioners. There can be no quarrel with the proposition that Section 238 of the IBC gives overriding effect to the provisions of the Code wherever there is an inconsistency with any other enactment. Equally, the law is well settled that the NCLT

exercises exclusive jurisdiction over matters relating to the Corporate Insolvency Resolution Process and that the assets of the corporate debtor are subject to the control of the Resolution Professional and the NCLT.

29. However, those principles do not automatically render every proceeding initiated under another statute illegal. Whether a particular proceeding can continue, whether any asset forms part of the insolvency estate, whether a Recovery Certificate can be executed, whether the moratorium under Section 14 is attracted, and whether any protective orders are required are all questions which fall squarely within the jurisdiction of the National Company Law Tribunal while supervising the Corporate Insolvency Resolution Process.

30. The petitioners themselves assert that they are stakeholders in the insolvency proceedings pending before the NCLT. If that be so, the IBC itself provides them with an effective and complete remedy. It is always open to the petitioners to approach the National Company Law Tribunal in the pending insolvency proceedings and seek such directions, interim protection or clarification as they may be advised in law. If the petitioners contend that the proposed auction would adversely affect the Corporate Insolvency Resolution Process, prejudice the interests of the creditors, or interfere with the jurisdiction of the Resolution Professional, those are precisely the

issues which the NCLT is competent to examine and decide.

31. This Court, while exercising jurisdiction under Article 226 of the Constitution, cannot assume the role assigned by Parliament to the National Company Law Tribunal under the Insolvency and Bankruptcy Code. Any order passed by this Court staying the execution proceedings solely on the basis of the pendency of the CIRP would necessarily require this Court to enter into questions relating to the scope of the moratorium, the extent of the insolvency estate, the rights of the Resolution Professional and the effect of the Recovery Certificate on the insolvency proceedings. Those are matters which properly fall within the domain of the NCLT.

32. Thus, if the petitioners are of the view that the continuation of the auction proceedings would affect the ongoing insolvency proceedings or defeat the object of the Corporate Insolvency Resolution Process, the proper and efficacious remedy available to them is to move the National Company Law Tribunal in the pending proceedings and seek appropriate relief. This Court sees no reason to bypass that statutory forum, particularly when the insolvency proceedings are admittedly pending before it.

33. As on date, the Recovery Certificate remains valid. The Public Auction Notice is only a consequential step taken in

execution thereof. The petitioners have not challenged the Recovery Certificate, nor have they obtained any order from the National Company Law Tribunal restraining its execution. In the absence of any such order, respondent No.3 cannot be faulted for proceeding with the execution of the Recovery Certificate in accordance with law.

34. For all the aforesaid reasons, this Court is of the considered opinion that no case is made out for interference with the impugned Public Auction Notice in exercise of the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

35. Accordingly, the writ petition is liable to be **dismissed.** The petitioners are, however, reserved liberty to approach the National Company Law Tribunal in the pending Corporate Insolvency Resolution Process and seek such reliefs or protective directions as may be available to them in law. Any such application, if filed, shall be considered by the NCLT on its own merits and in accordance with law, uninfluenced by any observations made in the present order.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

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List No.: 1 Sl No.: 7