

(2005) 06 KAR CK 0062
In the Karnataka High Court
Case No : Writ Petition No. 41873 of 2004

B. Narayana Reddy and Another	Vs	APPELLANT
State of Karnataka and Others		RESPONDENT

Date of Decision : 08-06-2005

Acts Referred:

Karnataka Industrial Areas Development Board Regulations, 1966 — Regulation 10, 4C, 7, 8, 9

Citation : (2005) ILR (Kar) 4081 : (2006) 4 KarLJ 407 : (2005) 3 KCCR 207 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : H. Kumara Swamy, for the Appellant; A.R. Sharadamba, HCGP for R1, B.R. Srinivasa Gowda, for R2, A.S. Bopanna, for R3 and Rego and Rego for R4, for the Respondent

Judgement

V. Gopala Gowda, J.—The petitioners have challenged the validity of the order dated 7th September 2004 passed by the 2nd respondent rejecting their claim with regard to allotment of land in plot Nos. 173 and 174 in EPIP area, II Phase, White field, Bangalore in lieu of 28 guntas of land acquired in Survey No. 38 of Sonnenahalli village, K.R. Puram Hobli, Bangalore, belonging to the first petitioner urging various facts and legal contentions have sought for quashing of the same and by way of an amended prayer, they have also sought for quashing of the order of allotment bearing No. IADB/15084/7522/2004-2005 dated 16.9.2004 vide Annexure-U and the possession certificate vide Annexure-V issued in favour of the 3rd respondent and the allotment letter bearing No. IADB/15032/8653/2004-2005 dated 8.10.2004 vide Annexure-W issued in favour of 3rd respondent and holding that the issue of allotment orders vide Annexure-U and W and Possession Certificate vide Annexure-V issued by the 2nd respondent are illegal, null and void and further sought for holding that respondents-3 and 4 are not entitled for allotment of Plot Nos. 173 and 174 urging various facts and legal contentions.

2. The necessary brief facts are stated for the purpose of considering the various

legal contentions urged on behalf of the parties:

It is the case of the petitioners that the property which was acquired by the 2nd respondent-Karnataka Industrial Areas Development Board (hereinafter referred to as "Board" in short) belongs to the 1st petitioner who is the father of the 2nd petitioner. They belong to Hindu joint and undivided family. It is the case of the petitioners that Survey No. 38 measuring 28 guntas and Survey No. 10/4 measuring 23 guntas of Sonnenahalli village, K.R. Puram Hobli, Bangalore East Taluk were the properties of the petitioners. The land bearing Sy. No. 10/4 measuring 23 guntas was acquired under the provisions of the Karnataka Industrial Areas Development Board Act, 1965 [hereinafter referred to as "Act"] that was the subject matter which was challenged before this Court in Writ Petition No. 7865/ 2000. The 2nd respondent has allotted the land in favour of some industrial establishments, despite the interim order granted by this Court in the above said writ petition. Besides the above said fact, in order to accommodate the power requirement of the said industrial establishment, the 2nd respondent applied to the BESCOM to shift the then existing HT line from EPIP area through the land in Survey No. 38 belonging to the petitioners although the said land was not notified for acquisition by the Board. The petitioners objected for carrying shifting of the HT line over their property. When the facts stood thus, it is the case of the petitioners that the 2nd petitioner being one of the Co-owner of land bearing Sy. No. 38 made representation to the 2nd respondent-Board on 20th September 2000 vide Annexure-A stating the illegal acts of allotment of land in Sy.No. 10/4 which belongs to the petitioners in violation of the interim order granted by this Court as well as shifting of HT power lines upon the land bearing Sy. No. 38 and under those circumstances, the 2nd petitioner requested the Board for allotment of alternate land, if, the Board requires the said land for their requirements. It is the fact that on the basis of the said representation, the 2nd respondent conceded the request and allotted Plot Nos. 130 and 130-B of EPIP area on 21st October 2002 in exchange of the aforesaid lands of the petitioners with a condition that the petitioners should unconditionally withdraw the Writ Petition filed and surrender the land to the Board and also shall undertake to forego compensation amount for 28 guntas in Sy. No. 38 and 23 guntas in Sy. No. 10/4 and they shall pay the development cost in respect of 28 guntas and further they must bear the stamp duty and registration charges of the document. Thereafter, the petitioners obtained the lease-cum-sale agreement in respect of PlotNo. 130-B. In respect of Plot No. 130 which is the adjacent site where the HT power line was passing through, they requested for alternate plots for that plot. The said request was considered by the Committee of the Board and communicated its decision dated 29th November 2002 stating that the Board had agreed to allot 28 guntas of land in lieu of Plot No. 130 at the earliest in exchange of said land and requested the petitioners to comply with the terms and conditions and directed to file necessary application in the prescribed form. It is their case that Board had communicated to consider the request made by them for grant of 28 guntas of land in lieu of

Plot No. 1309 as requested in letter Annexure-C which is enclosed and marked as Annexure-D. The said offer was accepted by the petitioners as evidenced by letter Annexure-E dated 4th December 2002. The further case of the petitioners is that the 2nd respondent in its letter dated 14th February 2003 informed the 2nd petitioner that the Board in its meeting dated 3rd February 2003 resolved to grant alternate 28 guntas land in Phase II, EPIP Area in lieu of land in Plot No. 130 of the same area and called upon the 2nd petitioner to select any alternate plot measuring 28 guntas among the available plots in Phase II, EPIP area in consultation with the site Engineer. The true copy of this letter is produced as Annexure-F. When the facts stood thus, the grievance of the petitioners is that the Board has issued the impugned order Annexure-T dated 7th September 2004 with reference to the letter dated 12th July 2004 by the 2nd petitioner stating that the practice of allotting industrial land in lieu of agricultural land acquired for the formation of industrial areas does not exist and in fact the other land losers who lost more than 500 acres of land for formation of EPIP area have not been allotted in the industrial land and that he had already been allotted 23 guntas land in Plot No. 130 of EPIP area in exchange of 23 guntas of land in Sy. No. 10/4 acquired and that you are yet to start implementation of your proposed project; hence, your request for allotment of additional land in plot Nos. 173 and 174 of EPIP are in exchange of 28 guntas of land acquired in Sy. No. 38 cannot be conceded and therefore rejected.

3. The correctness of this order is questioned by the petitioners urging legal grounds namely. It is urged that the Board is estopped from cancelling the resolution of the committee by not granting the suitable plot in lieu of allotment of plot No. 130 equivalent to land measuring 28 guntas for having been acquired a part of land in Sy. No. 38 to an extent of 28 guntas of land; and to further declare that during pendency of this petition, the order of allotment and issuance of Possession Certificate to respondents-3 and 4 is in contrary to the resolution of the Executive committee of the Board as the land which was proposed to be allotted to the petitioners and therefore the above said allotment letters are bad in law. The impugned order at Annexure-J is in violation of principles of natural justice. Therefore, it is contended that the orders of allotment made in favour of respondents-3 and 4 are sought to be quashed as the same is illegal for the reason that a right was accrued in favour of the 2nd petitioner on the basis of the decision of the Executive Committee and that the earlier writ petition was withdrawn on the assurance given by the Board that two industrial plots in lieu of acquisition of lands of the petitioners will be allotted in their favour. Admittedly, assurance was given for allotment of alternate land in so far as plots Nos. 173 and 174 which is now been allotted in favour of respondents-3 and 4 and thereby, right to get allotment letter and possession certificate has been denied. Therefore, the Learned Counsel appearing for the petitioners submits that the impugned allotment made in favour of respondents-3 and 4 is liable to be quashed and a writ of mandamus is required to be issued to the Board to comply with the allotment process and allot plot Nos-173 and 174, II phase EPIP area

measuring 28 guntas of land in favour of 2nd petitioner.

4. The statement of counters are filed by the Board and respondents-3 and 4 along with the documents in support of the decision of the Board for not allotting the alternate plots to the second petitioner for the reasons stated at Annexure-"T" and in justification of allotment of plots made in favour of respondents 3 and 4, urging various facts and legal contentions.

5. Sri Srinivasa Gowda, Learned Counsel for the 2nd respondent has sought to justify the impugned order contending that the 2nd petitioner has already been allotted Plot No. 130-B and he has been put in possession in terms of lease-cum-sale agreement and he has not started an industry so far. Without complying with the terms and conditions of the lease-cum-sale agreement in respect of Plot No. 130-B, even though an assurance was given by the Board to allot alternate plots equivalent to land measuring 28 guntas in lieu of acquisition of land of the petitioners in Sy. No. 38, it is urged by him that the 2nd petitioner is not eligible for the same. Further, he has contended that the resolution passed by the Committee of the Board for grant and allotment of alternate plots in lieu of plot No. 130 in favour of second petitioner he has not acquired statutory right by virtue of the above resolution. Therefore, he contends that this Court cannot interfere with the impugned order and quash the impugned order Annexure "T" and issue a writ of mandamus as prayed by the petitioners for the reason that they are not entitled for the same under the provisions of the Act and Regulations. The Committee of the Board for allotment of alternate plot Nos. 173 and 174 at II Phase, EPIP Area in favour of second petitioner in lieu of Plot No. 130, cannot be enforced by the petitioners contending that they have acquired a right for allotment is not tenable in law, as the same is opposed to the policy of the State Government and Board and that the second petitioners is not eligible under the provisions of the Regulations for allotment of alternate plots.

6. The learned Counsel Mr. A.S. Bopanna and Mr. Rego on behalf of respondents-3 and 4 have sought to defend the allotment letters issued in their favour contending that respondent No. 3 is a public limited and fourth respondent is a private limited company. They submitted application in prescribed Form No. 1 as provided under Regulation-4 of the Karnataka Industrial Areas Development Board Regulations, 1966 [hereinafter called as "Regulations"] to the Board. The Board has examined their claim with reference to the request made in the application. It has carefully examined their need and requirement and thereafter, the Executive member of the Board who has been entrusted with the power under Regulation 10 of the Regulations for allotment of industrial plots has passed an order allotting an area of 2051 Sq. Meter in plot No. 173 and 1/2 acre in Plot No. 174 E.P.I.P Industrial area in their favour respectively for the market value and an amount of Rs. 30,05,559/- is deposited and improvement has been made by developing the land in question by respondent No. 3. The Possession Certificate vide Annexure-V was also issued to it. Further it is contended that for the interim order passed in this petition the

other formalities could not be completed by the Board by executing necessary documents in their favour. Further the learned Counsel on behalf of respondents 3 and 4 submits to the Court's question wherein it is pointed out to them, that the application filed by respondents-3 and 4 are incomplete as certain relevant material facts are not furnished by them in the applications under relevant columns, and therefore, the applications were to be rejected under Regulation 4(c) of the Regulations by the Board, instead the Executive Member has allotted plots in favour of respondents-3 and 4 without scrutinizing the applications, Sri A.S. Bopanna and Sri Rego, submits that the Executive Member of the Board who is empowered to grant and allot plots has carefully diligently verified and examined their applications with reference to the project reports submitted by them and after being satisfied by himself that they are running the industries has passed an order for allotment of plots in favour of respondent Nos.3 and 4 on lease/ sale basis for a fair market value, and therefore, public interest is not suffered. Further, it is contended by Mr. A.S. Bopanna that by mere allotment of plot, the Board has not sold its property to the Company, it is only a lease-cum-sale therefore, the Board can still monitor scrupulously whether the purpose for which industrial plots are allotted will be utilized by the above respondents for that purpose or not and therefore, this Court need not go into this aspect of the matter at this stage in the proceedings at the instance of the petitioners. They further submitted that since the grant and allotment of plot is for a market price, the allotment of plots in their favour cannot be said that the public interest has suffered and therefore, this Court need not exercise its discretionary and extraordinary power and quash the impugned allotment orders made in favour of respondents 3 and 4.

7. With reference to the above said legal contentions urged on behalf of the parties, this Court has to examine as to whether the impugned order Annexure-T and the impugned allotment letters at Annexure-U, W and possession certificate issued to respondent No. 3 at Annexure-V requires to be interfered with in these proceedings?

8. To answer the above framed question it is necessary for this Court to extract certain relevant provisions of Regulations for the purpose of appreciating the rival legal contentions urged on behalf of the parties.

Regulation.-4 reads as follows: (a) An application for allotment of land or shed in an industrial area shall made to the Executive member in the prescribed form (form 1) obtained from the Board in duplicate along with an earnest money of Rs. 100/

Regulation.-4(c) States that applications which are incomplete or not accompanied by earnest money for Rs. 100/- shall not be considered.

Regulation.-7 provides for inviting of applications.

Regulation. -8 provides for deposit of money towards cost of land, lease amount, rent, interest or any other sums due from the allottee of the land.

Regulation.-9 provides for registration of the applications which are complete and in order in a Register in Form No. 2.

Regulation.-10(a) states that the Board on being satisfied that the person, firm or company who has made an application is likely to start production within a reasonable period and is not one which is declared abnoxious under Regulation 14 may make allotment in their favour.

Regulation.-10(b) provides that Board may constitute sub-committees for considering allotment of plots and also delegate its power to the Executive member, if necessary.

9. With reference to the above said Regulations, for not allotting the alternate industrial plots in favour of petitioners/land owners in lieu of their land acquired for the purpose of formation of industrial plots as per the resolution of the committee is examined by this Court to find out whether the reasons assigned in the impugned order by the Board at Annexure-T are legal and valid or not. No doubt, the Board has agreed with the petitioners when they withdrew their earlier Writ Petitions wherein they have challenged the acquisition of land on certain terms and conditions as stated supra for allotment of two industrial plots in their favour in lieu of compensation amount for acquiring their lands for formation of industrial plots and accordingly two industrial plots No. 130 and 130B are allotted in favour of second petitioner to establish an industry. The 2nd petitioner though he has not filed an application in the prescribed form in Form No. 1 the Board has allotted two plots as per the assurance given by it and understanding arrived between the parties in the earlier Writ Petition proceedings referred to supra. It is seen from the original record that in respect of Plot No. 130B in the EPIP II phase area lease-cum-sale agreement was executed in this favour, possessing certificate was issued and he was put in possession. However, in respect of Plot No. 130, he requested for allotment of alternate plot, conceding his request favourably the resolution was passed by the Executive committee of the Board for allotment of alternate plot measuring 28 guntas of land. The resolution has not been implemented by the Board is the grievance of the petitioners, instead it has passed the impugned order stating that it is opposed to the policy of the Board for allotment of alternate plot and he was yet to start implementation of the project in the allotted plot. This impugned order is challenged by the petitioners urging various grounds referred to supra. The impugned order is perfectly justified in law as it has assigned valid reasons for not allotting alternate plots in favour of second petitioner. I am satisfied from the original record wherein the application submitted by the second petitioner in the prescribed form for allotment of alternate plot, his eligibility and requirement for allotment of alternate plot in the Area in question is not shown and his application is incomplete for not furnishing relevant facts in the Column No. 4 and other columns which are very relevant for the Board to consider the same with a view to find out whether the 2nd petitioner is eligible under the Regulations for allotment of industrial plot. Therefore by mere passing of the

resolution by the Committee of the Board for allotment of alternate plot in favour of the second petitioner on basis of incomplete application by itself does not confer right upon him for allotment of alternate plot as he should show that he is eligible for allotment of the same by giving all factual material particulars in the application as the same are required to be scrutinized by the Board to find out as to whether he is eligible for grant of plot or not. The Resolution passed by the Executive Committee of the Board for allotment of alternate plots in favour of the 2nd petitioner by itself is not a right accrued in his favour as the same is not in conformity with the Regulations, as it was required to examine and scrutinize the application submitted by him in the prescribed form, which is mandatory in law. Therefore, the reason assigned by the Board in the impugned order Annexure-T is strictly legal, valid and does not warrant interference by this Court and therefore, the petitioners are not entitled for any relief in so far as quashing the impugned order at Annexure "T" as they have not acquired any right for allotment of alternate industrial plots as requested by the second petitioner.

10. Since for the aforesaid reasons this Court is declined to quash the impugned order Annexure-T, it has proceeded to examine the legality and validity of the impugned orders of allotment of industrial plots made in favour of respondents-3 and 4 by the Executive member and issuance of the other documents in favour of respondent No. 3 as the petitioners have challenged the same in this petition urging various grounds.

11. The correctness of the orders of allotment of plots in favour of respondents-3 and 4 are examined with reference to the provisions of Regulation-4, and the Form No. 1 and the original records produced by the Board. In the instant case as could be seen from the applications filed by respondents-3 and 4, the same are incomplete and therefore, their applications should have been rejected by the Executive Member of the Board for non-furnishing relevant material particulars at Column No. 4 and other columns as provided under Regulation 4(c) of Regulations. The Executive member of the Board without applying his mind to the provisions of the Regulations and examining whether the applications are in order or not, has simply agreed with the proposal put-up by the Project Officer of the Board in the original records and granted the plots in favour of respondents No. 3 and 4. This Court has perused factual aspect from the original records of the Board in relation to the above respondents. In the original filed of respondents No. 3 and 4 project report note is put up by the project officer, he has not stated therein regarding their eligibility with reference to the material particulars in the applications furnished by them. He has also not examined the correctness of the facts furnished in the applications of respondents-3 and 4 at the time of allotting industrial plots in their favour. As could be read from the provision of Regulation No. 4, it is mandatory on their part to given certain material particulars in the prescribed form No. 1 application, as the same are very relevant for consideration of the Board to find out whether applicants are genuine or not and that they are going to establish industry in the near future and that they would provide employment to unemployed youth in the country.

Further the object and intentment of the Act and Regulations is to see that the industrial plots are formed in the notified industrial area allotted in favour of genuine industrialists who are going to establish industries in the allotted industrial plots. It is the statutory duty of the Board that industrial plots should be allotted to eligible applicants under the Regulations with a view to achieve the industrial policy of the State Government, as the allotment of industrial plots are being public property shall be allotted to the eligible applicants by strictly adhering to the mandatory Rules and Regulations of the Board. Regulation 4(a) provides that an application should be made in the prescribed Form No. 1 to the Board by furnishing all material particulars when they are invited as provided under Regulation 7 of the Regulations. Non-furnishing of relevant material particulars by the applicants in the relevant columns of the application disentitles the Board to consider their claim and allot the plots to them. The applications of respondents-3 and 4 should have not been considered by the Executive Member of the Board, as the same were not submitted to the Board in pursuant to the notification which is required to be issued by it inviting applications from the eligible persons for allotment of industrial plots. There is total non-application of mind on the part of the Project Officer and the Executive Member of the Board in allotting the plots in favour of respondents 3 and 4 as they have not scrutinized their applications. The Executive Member of the Board in exercise of his delegated power conferred upon him under Regulation 10(b) of the Regulations has allotted plots in favour of respondents No. 3 and 4 though he was required to carefully examine the applications and scrutinize the same and find out whether the applications submitted by the above respondents are in order or not with reference to the provisions of the Act and Regulations. If the applications are incomplete the same are liable to be rejected under Regulation 4(c). It is relevant at this stage to refer to the decision of the Supreme Court wherein, the Apex Court in the case of Babu Verghese and Others Vs. Bar Council of Kerala and Others, while examining certain provisions of Advocates' Act 1961, after referring to its earlier decision and also the decision of the Privy Council and Chancellor's Court at Para-31 and 32, law has been succinctly laid down as under:

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* which was followed by Lord Roche in *Nazir Ahmad v. King Emperor* who has stated as under:

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of V.P.* and again in *Deed Chand v. State of Rajasthan*. These cases were considered by a three Judge Bench of this Court in *State of U.P. v. Singhara Singh* and the rule laid down in *Nazir Ahmad* case was again upheld. This rule

has since been applied to the exercise of jurisdiction by Courts and also being recognised as a salutary principle of administrative law."

Emphasis is made by this Court

The ratio laid down in the above case with all fours applicable to the fact situation of the case, as the applications submitted by respondents 3 and 4 to the Board are not in pursuant to the notification issued by it under Regulation No. 7, inviting applications and the applications are incomplete, these important aspects are not considered by the Executive member of the Board at the time of exercising his power as he has exercised his power mechanically and allotted the plots in their favour without following the mandatory statutory provisions of the Regulations and therefore his action is void abinitio in law.

12. In view of the law laid down by the Supreme Court in the above said case and keeping in view the decision of the Executive member, as he being a trustee of the public property of the Board and allotment of the same must be made in favour of the eligible applicant in a fair manner and it has not been in that manner. In this regard it would be appropriate to refer to the decision of the Supreme Court in the case of *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, has held thus:

"On consideration of the relevant cases cited at the bar the following proposition may be taken as well established; State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain percepts and principles have to be observed. Public opinion is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situation where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

(emphasis supplied by the Court)

13. For the reasons stated supra and from the perusal of the original records of the Board, the ratio laid down in the above case by the Apex Court with all fours apply to the fact situation of the present case, as the Executive Member of the Board has not acted fairly in allotting the plots to respondents-3, and 4, which is the public property and he being the Trustee of the same, he is expected in law to act fairly, keeping in view the public interest, which has not been done by him and therefore the allotment of plots made in favour of the said respondents is bad in law and therefore the same are liable to be rejected.

14. The submissions of the Learned Counsel appearing for respondent 3 and 4 that the plots were allotted for market value in favour of respondents-3 and 4 on

lease cum sale basis, therefore, it is contended that it is fair allotment. Though certain material particulars are not furnished in their applications, the allotment made in their favour by the Executive Member of the Board need not be interfered with by this Court in exercise of its power in these proceedings at the instance of the petitioners, as public interest will not be affected and the Board will have the power to cancel the allotment by way of lease cum sale, if they do not comply with the terms and conditions of the allotment and lease/sale agreements that would be executed by it in their favour.

15. The above contention is examined by this Court with reference to original records, the allotment of industrial plots might have been made by the Board for market value, but the question that requires to be considered by this Court is whether the applications were submitted by them on the invitation by the Board by publishing notification as required under Regulation No. 7 of Regulations. Further it is found that they have failed to furnish relevant particulars, in the applications which is mandatory on their part to find out their eligibility for allotment of plots by the Board. From the original records produced in the case. I do not find the. notification issued by the Board inviting applications for allotment of plots at PPIP area as required under Regulations. The mandatory procedure laid down in the Regulations for allotment of respondents No. 3 and 4 should have been strictly adhered to by the Board at the time of passing an order of allotment in favour of respondents No. 3 and 4 as held by the Apex Court in BABU VERGHEESE at the time of disposal of public property. Further disposal of the public property must be in a fair manner is the law laid down by the Apex Court in another case of SACHIDANAND. The Executive Member who is the delegated authority of the Board who is entrusted with the power of allotment of plots was required to strictly and scrupulously follow the mandatory procedure as prescribed in the Regulations at the time of making allotment of plots in favour of respondents-3 and 4. That has not been done by him and therefore, the allotment of plots made in favour of respondents-3 and 4 and consequently, issuance of possession certificate in favour of respondent 3 which is under challenge before this Court are also required to be quashed as the same are not in accordance with the Regulations and laid down by the Apex Court in the above referred cases. Accordingly, the impugned allotment by means of order at Annexure-U and W only to the extent of allotment made in favour of respondents-3 and 4 and possession Certificate produced at Annexure-V issued in favour of respondent No. 3 are hereby quashed. Liberty is given to respondents-3 and 4 to submit their applications by giving all particulars in the prescribed Form No. 1 as prescribed in the Regulations as and when the applications are invited by the Board as provided under Regulation No. 7 and the same shall be examined by the Board. The Board, on such examination finds that the applicants/respondents 3 and 4 are eligible, then only the allotment of plot can be made as per market value of the same which was prevalent as on the date of impugned allotment/orders made which are quashed in this petition.

16. With the above said direction and observation, this petition is partly allowed.