

(2009) 07 KAR CK 0085
In the Karnataka High Court
Case No : Writ Petition No. 16811 of 2008

B.K. Suresh Reddy

APPELLANT

Vs

Chief Executive Officer and Executive Member Karnataka,
Industrial Area Development Board and Smt. Sudha
Venkatesh

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 3 (h), 6
Karnataka Industrial Areas Development Board Regulations, 1966 — Regulation 10,
13, 4, 7

Citation : (2009) ILR (Kar) 3634 : (2009) 5 KCCR 3750 : (2010) 7 RCR(Civil)
2262

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : H.T. Jagannatha, M.V. Srinivasa Reddy, B.R. Manjunath and A.R.
Sharadamba, AGA, for the Appellant; Basavaraj V. Sabarad, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.

The petitioner is an allottee of a plot adjacent to Plot No. 257-A of Bommasandra Industrial Area, Bangalore by the Karnataka Industrial Areas Development Board. The plot allotted is adjacent to Narayana Hrudalaya, a reputed hospital treating heart patients and is stated to be in the process of commencing a cancer institute. The case of the petitioner is that with an intention to have tie-up with the business agencies, he approached the Tourism Department invoking the Tourism Policy of 2002-2007. The said department informed the petitioner that he requires 575 sq. meters of land as per the tourism policy. The plot allotted to petitioner measures 360 sq. meters. Therefore, the petitioner requested the KIADB to allot 1300 sq. meters C.A. site adjacent to his plot. Without considering his request, as per Annexure-H dated 11-12-2008 the said plot was allotted in favour of 2nd respondent. The petitioner is seeking to quash the said allotment

and to direct the first respondent to consider his representations at Annexures-E, F and G.

2. The contention of learned Counsel for the petitioner is that 2nd respondent got the plot in question allotted in her name by misrepresenting the facts. According to him, 2nd respondent is neither eligible nor entitled for allotment of the plot in question and the allotment made in her favour is bad in law and cannot be sustained and therefore prayed to quash the same by allowing this writ petition.

3. The 2nd respondent though represented, has not filed statement of objections justifying and defending the allotment of plot made in her favour by first respondent. Prima facie, the allotment, of plot in favour of 2nd respondent is bad in law and liable to be quashed for the reasons stated in the succeeding paragraphs.

4. Allotment of plot has to be made by the Board as provided under Chapter II of Karnataka Industrial Areas Development. Board Regulations 1969 (hereinafter referred to as Regulations). A perusal of the impugned allotment letter at Annexure-H dated 11-12-2008 reveals that the allotment of plot in favour of 2nd respondent is not made by the Board in accordance with the Regulations. The allotment letter is not in the letter-head of the Board but it is in a plain paper. The allotment letter is signed by the Chief Executive Officer and Executive Member. Not even a seal is affixed on the letter. In the reference, the date of the application is not mentioned. Very strangely, the letter is in the form of a personal letter as the words used therein are "I wish you a warm welcome....", "I feel it is necessary that you are in the know of all issues....." and "I am happy to inform you.....". All these aspects goes to show that the 2nd respondent-allottee has not got the site allotted in accordance with the Regulations after satisfying that she is eligible for allotment. On this score alone the impugned allotment of the site in question in favour of the second respondent is liable to be quashed as being bad in law.

5. The petitioner has produced additional documents containing copies of legal notice got issued by the wife of the petitioner to KIADB, application submitted by the 2nd respondent to the Minister for Large and Medium Industries, Entrepreneur Certificate obtained by the 2nd respondent from the Directorate of Industries and Commerce. This Court is not concerned with the legal notice. However, the application dated 4.10.2008 for allotment of plot submitted by second respondent to the Minister on 7-10-2008 is very relevant. The allotment letter is dated 11-12-2008. But, the Entrepreneur Certificate obtained by the 2nd respondent is dated 3-1-2009, which is subsequent to the allotment of plot. Thus, as on the date of allotment, the 2nd respondent was not entitled for allotment of plot as she had not possessed the Entrepreneur Certificate.

6. The application is not submitted pursuant to any notification issued under Regulation 7 of the Regulations. The application is also not submitted to KIADB.

The application submitted to the Minister is not in Form 1 prescribed under Regulation 4 of the Regulations. In the application, purpose for which allotment of plot sought is to construct Guest Houses and to eke-out livelihood out of the rent derived there from. In the industrial area, allotment of plot cannot be made for such purpose for earning rent. The plots in industrial areas should be utilised for industrial activities. "Plot" is defined u/s 3(h) of the Regulations as under:

"Plot" means any land set apart for constructing a factory or building or for any Industrial purposes, demarcated and numbered or otherwise indicated as plot in the layout plan approved by the Board.

This Industrial plot is meant for construction of factory for industrial purposes and not for construction of Guest house. For this reason also, the allotment made in favour of 2nd respondent is bad in law. Further as per the additional document produced by the petitioner the second respondent has filed memorandum to the Directorate of Industries and Commerce expressing her intention to set up an enterprise. The nature of enterprise is manufacturing of condiments. This clearly shows that she got the plot allotted by misrepresenting the fact.

7. The allotment of plot in question is not under Regulations 10, 13 or 5 by following the procedure contemplated in Chapter II of the Regulations. The petitioner also sought allotment of same plot. Without considering his request, the allotment made in favour of 2nd respondent is arbitrary and illegal. Both applications should have been clubbed together and disposed of. Since the request of 2nd respondent alone is considered, the action amounts to favouritism.

8. For the reasons stated above, the impugned allotment being bad in law, cannot be allowed to sustain and therefore liable to be quashed. However, the prayer of the petitioner seeking a Mandamus to direct the first respondent to dispose of his representations along with the application of 2nd respondent cannot be granted. The plot has to be allotted to eligible persons by following the procedure prescribed under the Regulations and in accordance with law.

9. In the result, the writ petition is allowed and the impugned allotment letter at Annexure-H dated 11.12.2008 is quashed. The first respondent is directed to allot the plot in question as indicated in the penultimate paragraph of this order.

10. Before parting, it is necessary to direct, the Chairman of KIADB to conduct an enquiry against first respondent as to how, why and on what basis he allotted the plot in question without placing the matter before the Board for consideration and take action against him. The first respondent is warned not to engage in said activities in future.

11. Send a copy of the order to the Secretary to Government of Karnataka, Commerce & Industries Department, who is the ex-officio Chairman of the Board u/s 6 of the Act for compliance of the direction issued to him.