(2021) 04 KAR CK 0086

In the Karnataka High Court

Case No : Writ Petition No. 20651 Of 2007 (BDA-PIL)

B.V. Shivaswamy APPELLANT

Vs

Government Of Karnataka & Others RESPONDENT

Date of Decision : 15-04-2021

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 2(a), 3, 38B, 38B(iv), 38B(v)
Karnataka Land Revenue Act, 1964 — Section 71
Bangalore Development Authority (Bulk Allotment) Rules, 1995 — Rule 7, 7(1), 9, 10(b)
Karnataka Land Revenue Rules,1966 — Rule 97
Constitution Of India, 1950 — Article 14

Citation : (2021) 04 KAR CK 0086

Hon'ble Judges : Abhay S. Oka, CJ;S. Vishwajith Shetty, J

Bench : Division Bench

Advocate : B.N. Harish, V. Sreenidhi, M.N. Ramanjaneya Gowda, K. Sachindrakaranth

Final Decision : Dismissed

Judgement

Abhay S. Oka, CJ

1. By this public interest litigation, bulk allotment of a land to an extent of 33 acres 02 guntas situated at Doddakallasandra village, Uttarahalli Hobli,

Bangalore South Taluk in Sy.Nos.15, 16 and 17 (the Schedule Land) made by the Bangalore Development Authority (for short â??the BDAâ??) to

the Bangalore Development Authority Employeesâ?? Welfare Association (4th respondent) has been questioned on various grounds. The BDA has

been established under Section 3 of the Bangalore Development Authority Act, 1976 (for short â??the BDA Actâ??)

2. When this petition came up for hearing before the first Court on 16th January, 2019, it was noticed that the Advocate for the petitioner is no more.

Therefore, Court notice was ordered to be issued to the petitioner. After service of Court notice, none appeared for the petitioner and, therefore, this

Court by Order dated 3rd June 2019 appointed Shri. B.N. Harish, Advocate as amicus curiae to assist the Court.

3. On 17th November, 1998, a notification was issued by the Commissioner of the BDA for acquisition of 1111 acres of the land for formation of a

layout known as Jayaprakash Narayan Nagar, 9th stage. The Schedule Land was included in the said notification. Thereafter, the lands comprising in

various survey numbers including the Schedule Land which is the subject matter of this writ petition were acquired for formation of the said layout.

According to the case of the petitioner, on 7th October, 2005, the department of Stamp and Registration had issued a notification revising the guideline

market value of the immoveable properties in the jurisdiction of various sub-registrar offices in Bengaluru (urban) District. According to the case of

the petitioner, the land value of the agricultural land situated at Doddakallasandra village was fixed at Rs.63,00,000/- per acre. On 9th November,

2006, a sale deed was executed on behalf of the BDA in favour of the 4th respondent in respect of three parcels of land comprised in Sy.Nos. 16, 17

and 18 of Doddakallasandra village, Uttarahalli Hobli, Bangalore South Taluk, totally admeasuring 33 acres 02 guntas (the Schedule Land) for

consideration of Rs.88,31,587/-. The 4th respondent is a Welfare Association of employees of the BDA. According to the case of the petitioner, the

Schedule Land was sold to the 4th respondent at a peanut price and there was huge loss to the State exchequer to the tune of rupees twenty crores.

4. It is contended in the petition that granting of such a valuable land at a lower price and that too to an association of the employees of the BDA is a

gross illegality. It is pointed out that it is not clear from the sale deed when the 4th respondent applied for bulk allotment. Even a copy of the order

passed by the Government dated 19th April 2006, as described in the sale deed was not provided to the petitioner. Various other illegalities such as the

breach of the provisions of the Bangalore Development Authority (Bulk Allotment) Rules, 1995 (for short, â??the Bulk Allotment Rulesâ??) have

been pointed out. It is contended that a part of the Schedule Land admeasuring 30 acres is a Gomal land which is exclusively reserved for grazing of

animals. But the Schedule Land was allotted to the 4th respondent for residential use without following the procedure contemplated under Section 71 of the Karnataka Land Revenue Act, 1964 (for short, â??the KLR Actâ??) and the Karnataka Land Revenue Rules,1966 (for short, â??KLR Rules).

5. A statement of objections has been filed by the BDA. Placing reliance on the communication dated 19th April 2006, (Annexure-R4), it is contended

that the Government has accorded permission to the BDA to allot bulk land to the 4th respondent. The manner in which the cost of the land is

calculated is pleaded in paragraph 4 of the statement of objections. It is contended that the Gomal land has ceased to be as such due to urbanization.

6. The learned counsel appearing as Amicus Curiae firstly submitted that the Schedule Land allotted to the 4th respondent is a Gomal land. His

submission is that the allotment has been made in gross violation of Section 71 of the KLR Act and KLR Rules. He relied upon Rule 97 of the KLR

Rules and submitted that due to violation of the said provision, the allotment made in favour of the 4th respondent is illegal. He invited our attention to

Section 38-B of the BDA Act and pointed out that the bulk allotment can be made only with the prior approval of the State Government. He invited

our attention to proviso sub-rule (1) of Rule 7 of the Bulk Allotment Rules and submitted that said proviso specifically provides that the bulk allotment

can be made only in respect of an area of five acres and if allotment is to be made of a land having an area more than five acres, such allotment can

be made provided that the Government, for the reasons recorded in writing, accords approval for allotment of such land.He stated that the reasons

recorded by the Government have not been placed on record. He invited our attention to Rule 9 of the Bulk Allotment Rules containing the principles

of selection. He submitted that the factors which are mentioned in Rule 9 have not been considered at all. While drawing the attention of the Court to

clause (b) of Rule 10 of the Bulk Allotment Rules, he submitted that the value of the land per acre ought to have been fixed by the authority having

regard to the prevailing market value. He invited our attention to the provisions of various laws.

7. The learned counsel appearing for the second and third respondents submitted that there is an order made by the State Government in terms of

proviso to sub-rule (1) of Rule 7 of the Bulk Allotment Rules and the State Government is not expected to record detailed reasons for according

approval for the bulk allotment. He invited our attention to the fact that the Schedule Land has already been converted into sites and various sites were allotted to various persons who are not made as parties to the writ petition. He would, therefore, submit that the allottees of the sites being

necessary parties were required to be made parties. As, the allottees of the sites have not been made as parties, the writ petition is liable to be

rejected for non-joinder of necessary parties. He submitted that the issues which are now canvassed by the learned amicus curiae has not been

raised specifically in the writ petition. He submitted that several subsequent events have happened. And, therefore, it is not necessary for this Court to

interfere at this juncture. Various factual details were pointed out by the learned counsel for the 4th respondent which support the stand of the BDA.

8. The learned Additional Government Advocate appearing for the State Government supported the contentions urged by the BDA and submitted that

no interference is called for.

9. We have considered the submissions made across the Bar and the relevant provisions of law. Under Section 38-B of the BDA Act, the BDA is

empowered to make bulk allotment by way of sale, lease or otherwise of any land which belongs to it or is vested in it or acquired by it for the purpose

of any development scheme. It is further provided that prior approval of the Government shall be obtained for allotment of bulk land to any categories

listed in Section 38-B. It is necessary to make a reference to Section 38-B which reads thus:

â??38-B. Power of Authority to make bulk allotment.- Notwithstanding anything contained in this Act or Development Scheme sanctioned under

this Act, the authority may, subject to any restriction, condition and limitation as may be prescribed, make bulk allotment by way of sale, lease or

otherwise of any land which belongs to it or is vested in it or acquired by it for the purpose of any development scheme.-

(i) to the State Government; or

(ii) to the Central Government; or

(iii) to any Corporation, Body or Organisation owned or controlled by the Central Government or the State Government; or

(iv) to any Housing Co-operative Society registered under the Karnataka co-operative Societies Act, 1959 (Karnataka Act 11 of 1959); or

(v) to any society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960); or

(vi) to a trust created wholly for charitable, educational or religious purpose:

Provided that prior approval of the Government shall be obtained for allotment of land to any category listed above.â??

(underlines supplied)

The Authority as defined by section 2(a) of the BDA Act is BDA. The other provisions which are relevant for the consideration of the questions

involved in this petition are the provisions of the Bulk Allotment Rules. The terms and conditions on which bulk allotments can be made have been

prescribed by the Bulk Allotment Rules framed under the BDA Act. Rule-7 of the said Rule is material which reads thus:

â??7. Restrictions.- (1) The extent of land allotted under these rules shall not exceed five acres:

Provided that the Government may, for reasons to be recorded in writing accord approval for allotment of land exceeding five acres but not exceeding

One Hundred acres and the Authority may in turn make allotment accordingly.

(2) The land allotted shall be used only for the purpose for which it is allotted.â??

(underline supplied)

10. Thus, bulk allotment of a land having an area exceeding five acres can be made by the BDA only on approval being granted by the State

Government for the reasons recorded in writing.

11. The first question which arises for consideration is whether the State Government had passed an order, as required by proviso to sub-rule (1) of

Rule 7 and the second question is whether fair and transparent procedure has been followed while allotting a large extent of land to the 4th

respondent. The other issue is whether the market value of the land allotted to the 4th respondent has been fixed in accordance with law. All these

questions will have to be considered in the context of the fact that the 4th respondent is an association of the employees of the BDA.

12. In the writ petition, specific reliance has been placed on the statutory requirement incorporated in the proviso to sub-rule (1) of Rule-7 of the Bulk

Allotment Rules. In paragraph-31, reliance is placed on the said provision. There is a specific contention raised to the effect that the market value of

the allotted land has not been fixed in accordance with law. We find that the contentions regarding the failure to make proper valuation in respect of the Schedule Land and the violation of the Bulk Allotment Rules, inasmuch as there was a failure on the part of the State Government in not recording

reasons in writing, as required by the proviso to sub-rule (1) of Rule-7 of the Bulk Allotment Rules have been specifically pleaded in the writ petition.

13. In the statement of objections filed by the BDA (2nd and 3rd respondents), reliance is placed on the acquisition proceedings of the Schedule Land.

Reliance is also placed on the Government Order dated 19th April 2006 (Annexure-R4) under which, the Government has accorded approval for the

bulk allotment of the land in favour of the 4th respondent. Reliance is placed on the proceedings of the BDA dated 14th February, 2008 (Annexure-

R5) on the subject of bulk allotment of the land to the 4th respondent. Various contentions have been raised regarding the manner in which the market

value of the land is fixed.

14. In the statement of objections filed by the 4th respondent, it is pointed out that the BDA has made similar bulk allotments to the Association of the

IAS officers, to the Judicial Officers Society etc. It is pleaded that the 4th respondent has spent huge amount on development of the Schedule Land. It

is stated that for development of the property, the 4th respondent has so far spent more than eight crores rupees and a sum of rupees two crores has

been paid to the authorities such as BDA, BESCOM etc. In short, the contention of the 4th respondent is that totally a sum of rupees ten crores has

been spent by it on the development of the Schedule Land. Various factual details have been pleaded to justify the market value fixed by the BDA

while making bulk allotment to the 4th respondent. In Annexure-R1, the details of the expenditure allegedly incurred on development of the land have

been set out. Annexure-R6 is the list of allottees. It is stated therein that allotment of sites was made on 7th December, 2007 to 759 members of the

fourth respondent and they have been placed in possession of the sites allotted to them. The names, site numbers, area of the respective sites and sital

value received have been set out in the Annexure-R6. Along with the statement of objections filed by the 4th respondent on 29th June, 2011,

photographs have been annexed as Annexures-R3 and R4 showing that work of making internal roads has been done and poles for street

lights/electricity supply have been erected.

15. It is to be noted here that the contents of the statement of objections

regarding formation of sites, allotment of sites out of the Schedule Land to 759 members of the 4th respondent Association have not been denied by the petitioner by filing a rejoinder. Therefore, this Court will have to proceed on the footing that in the year 2007, various sites mentioned in Annexure-R6 to the statement of objections filed by the 4th respondent forming part of the Schedule Land were allotted to its 759 members after receiving the value of the sites from them. None of the said allottees have been made parties to the petition. Even in representative capacity, some of them have not been made parties. Thirteen years have passed after the sites were allotted to the members of the 4th respondent. The allottees who are in large numbers will be directly affected by the orders that may be passed in this petition. With the passage of time, some of them might have constructed houses on the sites allotted to them and some of they must have created third parties interests over the sites allotted to them. Therefore, even assuming that there is an illegality associated with the bulk allotment made to the 4th respondent, no effective relief can be granted in this petition, in the absence of the allottees. Nevertheless, we are required to examine the legal contentions raised in this petition.

16. It is an admitted position that the Schedule Land was acquired by the BDA for public purpose after paying compensation to the landowners. Therefore, the Schedule Land being a valuable public property was vesting in the BDA which is an agency and instrumentality of the State being a body corporate created under the BDA Act, 1976. Any land which has been vested in the Government or public authorities like the BDA should be dealt with only by following a fair and transparent procedure. As far as law regarding disposal of the public property is concerned, the law is well settled. At this juncture, we may refer only one leading decision of the Apex Court rendered in the case of Akhil Bhartiya Upbhokta Congress â? vs- State of Madhya Pradesh and another (2011) 5 SCC 29. In paragraphs 64 to 67 of the said decision which are relevant read thus:

â??64. In New India Public School v. HUDA (1996) 5 SCC 510, this Court approved the judgment of the Division Bench of the Punjab and Haryana High Court in Seven Seas Educational Society v. HUDA [AIR 1996 P&H 228 : (1996) 113 PLR 17] , whereby allotment of land in favour of the appellants was quashed and observed: (New India Public School case

[(1996) 5 SCC 510] , SCC p.515, para 4)

â??4. A reading thereof, in particular Section 15(3) read with Regulation 3(c) does indicate that there are several modes of disposal of the property

acquired by HUDA for public purpose. One of the modes of transfer of property as indicated in sub-section (3) of Section 15 read with sub-regulation

(c) of Regulation 5 is public auction, allotment or otherwise. When public authority discharges its public duty the word â??otherwiseâ?? would be

construed to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and not at the whim and fancy of the

public authorities or under their garb or cloak for any extraneous consideration. It would depend upon the nature of the scheme and object of public

purpose sought to be achieved. In all cases relevant criterion should be predetermined by specific rules or regulations and published for the public.

Therefore, the public authorities are required to make necessary specific regulations or valid guidelines to exercise their discretionary powers;

otherwise, the salutary procedure would be by public auction. The Division Bench, therefore, has rightly pointed out that in the absence of such

statutory regulations exercise of discretionary power to allot sites to private institutions or persons was not correct in law.â??

65 What needs to be emphasised is that the State and/or its agencies/ instrumentalities cannot give largesse to any person according to the sweet will

and whims of the political entities and/or officers of the State. Every action/ decision of the State and/or its agencies/instrumentalities to give largesse

or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication

in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and

non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment

of land, grant of quota, permit licence, etc. by the State and its agencies/ instrumentalities should always be done in a fair and equitable manner and the

element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the

State.

66 We may add that there cannot be any policy, much less, a rational policy of

allotting land on the basis of applications made by individuals, bodies,

organisations or institutions dehors an invitation or advertisement by the State or its agency/ instrumentality. By entertaining applications made by

individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons

from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the

exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the

equality clause embodied in Article 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or

philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of

land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in

a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein

the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment,

whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be

preceded by a wholesome exercise consistent with Article 14 of the Constitutionâ??.

(underlines supplied)

17. In the case on hand, we have carefully perused the proceedings of the meeting dated 14th February, 2008 of the BDA and the resolution passed

therein, which is produced as Annexure-R5 along with the statement of objections filed by the BDA. In the said proceedings, a decision was taken by

the BDA to allot the Schedule Land to the 4th respondent under the Bulk Allotment Rules. It is not the case of the BDA that a public notice was

given inviting the applications for bulk allotment from the societies falling under any categories covered by clauses (iv) and (v) of Section 38-B of the

BDA Act. Without inviting applications for bulk allotment, the case of the 4th respondent was directly considered. While making bulk allotment to the

4th respondent, the procedure followed by the BDA shows that there was lack of transparency and no process which is fair and transparent was

followed by the BDA. The Apex Court in the case ofA khil Bhartiya Upbhokta Congress (supra) categorically held that once a piece of land is

earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a

manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein

the conditions of eligibility so as to enable all similarly situated eligible persons/ institutions/ organisations to participate in the process of allotment,

whether by way of auction or otherwise. In a given case, the Government may allot land at a concessional price, but in that case also the allotment

must be preceded by a fair process consistent with Article 14 of the Constitution of India. Thus, as held by the Apex Court, the action of the BDA

being discriminatory and arbitrary, the same will amount to violation of Article 14 of the Constitution of India.

18. Now we turn to the second issue as to whether the approval allegedly accorded by the State Government under purported exercise of its powers

and by following the procedure contemplated under the proviso to sub-rule (1) of Rule 7 of the Bulk Allotment Rules. We have perused the said letter

dated 19th April 2006 sent by the Government which is at Annexcure-R4 to the statement of objections filed by the BDA. It is claimed to be

permission accorded by the State Government. The relevant portion of the said letter read thus:

â??Sub: Allotment of bulk land to BDAâ??s Employees Association to allot sites to its members-employees-Reg.

Ref: Letter No.BDA/Commissioner/2861/2005-06 date: 12/1/2006

With reference to the above, your above referred proposal has been considered.

Government has given approval in principle to the proposal for allotment of bulk land to BDAâ??s Employees Association to allot sites to its

members-employees. However, I have been directed to inform that Authority may choose land, depending upon the availability of landâ??.

(underline supplied)

19. Firstly, this letter does not record any reasons for according approval for allotment of the bulk land having an area exceeding five acres to the 4th

respondent. Secondly, even the area of the land permitted to be allotted to the 4th respondent is not mentioned. Thirdly, the approval accorded by the

State Government is not qua a particular land as the details of the land to be allotted to the 4th respondent are not incorporated in the said letter. But it

is a general approval granted. The proviso to sub-rule (1) of Rule-7 of the Bulk Allotment Rules carves out an exception to sub-rule (1) which lays

down a mandatory rule that if the area is more than five acres, the State Governmentâ??s prior approval for the reasons to be recorded in writing is

necessary. Thus, the benefit of the exception can be taken provided that the condition laid down under the proviso to sub-rule (1) of Rule-7 of the Bulk

Allotment Rules is fulfilled. The condition was of the State Government recording the reasons in writing for granting approval for allotment of land

exceeding five acres but not exceeding one hundred acres. As, no reasons in writing have been admittedly recorded by the Government in its order

dated 19th April, 2006, the bulk allotment of the land made by the BDA in favour of the 4th Respondent is completely illegal being manifestly arbitrary

and the same will have to be held violative of Article 14 of the Constitution of India.

20. As regards fixation of the market value of the allotted land is concerned, the petitioners have not placed on record any material to show what was

the exact market value was on the relevant date. Only the details of the components which are required to be taken into consideration have been

placed record.

21. Thus, on consideration of the above materials, the scenario which emerges is that the allotment made by the BDA in favour of the 4th respondent

appears to be completely illegal. However, only on the ground of non-joinder of 759 members (allottees of the sites), this Court cannot grant any

reliefs sought in this petition. Moreover, the purchasers/members/allottees may have created third party interests.

22. We must place on record our appreciation for excellent assistance rendered by the learned counsel appointed as amicus curiae.

23. Hence, we pass the following:

ORDER

i) The writ petition is rejected only on the ground of non-joinder of more than 759 members of the BDA Employeesâ?? Welfare Association (4th respondent) who are allottees of the sites formed out of the Schedule Land;

ii) There shall be no order as to the costs.