
(1997) 02 KAR CK 0043
In the Karnataka High Court
Case No : Writ Appeal No. 10187 of 1996 (LB)

Dr. K.T. Shivaiah	Vs	APPELLANT
The Chairman, Bangalore Development Authority and Others		RESPONDENT

Date of Decision : 12-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 4 KarLJ 64

Hon'ble Judges : R.P. Sethi, C.J.;G. Patri Basavana Goud, J

Bench : Division Bench

Advocate : Dr. K.T. Shivaiah, for the Appellant; Sri S. Shekar Shetty, for the Respondent

Judgement

R.P. Sethi, C.J.—After having fought and lost his battle in the State Consumers Disputes Redressal Commission, National Consumers" Disputes Redressal Commission, and the Supreme Court, the appellant herein filed a writ petition with prayer for quashing the resolution of the respondent 1 dated 23-3-1982 by which alleged marginal land was allotted in favour of the purchasers of sites bearing Nos. 670 and 671 with a further prayer to direct the respondent to take all appropriate action for marking-out Site No. 669 as per the sketch submitted by the appellant. The learned Single Judge considered all aspects of the matter and agreeing with the conclusions arrived at by the State Consumers Disputes Redressal Commission dismissed the writ petition vide the order impugned in this appeal.

2. In order to appreciate the submissions made by the appellant it is necessary to have a resume of the facts as detailed by him in his petition filed under Article 226 of the Constitution of India. It is submitted by the appellant that on an application made by him to the respondent-authority, the site bearing No. 669 in layout, West of Chord Road, II Stage in the City of Bangalore, was allotted on 12-8-1970 vide letter Ex. B. It is alleged that due to inadvertance on the part of the officials of the respondent a triangular piece of land was left out from being

handed-over to the appellant in Site No. 669 on the West. The request made for rectification of the measurements were not accepted by the officials of the respondent. It is contended that the respondent-authority wrongly treated the left-out land as marginal land and allotted the same to three sites bearing Nos. 669, 670 and 671. Such an action is allegedly to be against the circular instructions of allotment of marginal land attached with writ petition as Ex. E. The action of the respondents was termed to be a deliberate fraud. When the purchaser of Site No. 670 started construction, the petitioner protested and was allegedly got arrested by the police on a complaint filed by the aforesaid respondent. It is alleged that no action was taken against purchaser of site bearing No. 671 when he started construction. Various representations filed by the appellant were not considered. The petitioner thereafter filed a complaint before the State Consumers Disputes Redressal Commission (hereinafter called "the State Commission") which was dismissed vide order attached with the writ petition as Ex. R. His appeal filed against the order of the State Commission was rejected by the National Commission vide order Ex. S. The appellant thereafter filed an SLP in the Supreme Court which was dismissed vide order of the Supreme Court dated 7-11-1990 with the observation that the appellant was at liberty to move the High Court for the redressal of his grievances. In the writ petition filed in this Court it was submitted that the respondent being a public authority has failed to perform its statutory functions and also violated its own layout plan. The respondent was allegedly bound to honour its own commitments and was not permissible for it to allegedly submit false submissions which according to appellant amounted to fraud. It was stated that the respondent-authority could not arbitrarily violate substantive rights of the parties which involved by shifting the border between Site Nos. 668 and 669 by 2 ft. which amounted to encroachment on Site No. 669.

3. We have heard the appellant who appeared in person at length and perused the record.

4. It is submitted by the appellant that the learned Single Judge was not justified in dismissing his writ petition only on the ground of res judicata. It is contended that as the learned Judge has not decided the case on merits, the impugned order was liable to be quashed. A perusal of the judgment of the learned Judge belies the submissions of the appellant. Despite noting the submission made on behalf of the respondent that the writ petition was barred by the principle of res judicata in view of the decision in the suit in O.S. No. 1120 of 1987 the learned Judge considered the matter on merits in detail before dismissing the writ petition. The appellant had relied upon the circular dated 7-5-1977 (Annexure-E) in support of his contention. After referring to the aforesaid circular the learned Judge rightly concluded:

"Thus while the circular says that the adjacent allottees should be given an opportunity to give their consent, it does not say that such an allotment of marginal land should not be made to the purchasers from the original allottees.

There is no such bar in the circular. The petitioner has not brought to my notice any other provision of law which has created such a bar".

5. In his order the learned Single Judge referred to the judgments of this Court in W.P. No. 10792 of 1980, DD: 24-10-1980, the decision in K.S. Prakash Vs. Bangalore Development Authority, and also judgment of the Apex Court in Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, , which were relied upon by the appellant and after referring to the aforesaid judgments, the learned Judge found that the findings of the State and National Commission as also in the O.S.. No, 1120 of 1987, barred the appellant to raise same dispute a fresh. Despite such a tentative conclusion the learned Judge dealt with the facts of the case and concurred with the view taken by the State Commission. It is worthwhile to mention that the State Commission had on facts held:

"The first point that arises for determination in this case is whether any mistake has been committed by the BDA, in issuing the Possession Certificate in respect of the site allotted to the complainant in the matter of recording measurements and in the matter of allotting marginal land to him and to the purchasers of Site Nos. 670 and 671. The first ground on which the complainant seeks more area than what is allotted to him is the price quoted in his allotment order (Enclosure-A to his Written Argument) was Rs. 21/- per sq. yard and the amount collected from him for the site measuring 80" x 120" is Rs. 25,480/- and so he must get an area of 10,920 sq. ft. instead of 9,600 sq. ft. In the copy of the allotment order (Enclosure "A" produced by the Complainant) it is no doubt stated that the value of the site was Rs. 21/- per sq. yard. But it has also been stated in it that the value was Rs. 25,600/-and the break-up is given in the tabular form. From that it is clear that the value of the site was Rs. 24/- per sq. yard and not Rs. 21/-per sq. yard. Hence it was obvious mistake in the copying. Therefore, I see no substance in the said contention of Dr. Shivaiah.

From the allotment order, it is clear that he was allotted site measuring 80" x 120". Due to the curvature the complainant could not be given the site with the said measurements. Hence, he was given possession of an area measuring 80" x 126".9" + 118".6" / 2 equal to 9810 sq. ft. (see Annexure-A produced by the complainant along with his letter dated 25-5-1990). That is also clear from the statement filed by the Advocate for the respondent. That fact also is not disputed by the complainant. It is for that area of 9810 sq. ft. that the complainant executed lease-cum-sale agreement. A copy of which has been produced by the learned Advocate for the respondent. The said agreement was executed on 25-11-1972 and it was registered on 8-2-1973. From this, it is clear that the complainant agreed to take 9810 sq. ft. in respect of the site allotted to him.

No doubt, there was a triangular bit of land remaining after giving possession of Site Nos. 669, 670 and 671 in between Site Nos. 669 and 670. That was treated as marginal land by the BDA and after taking into consideration of all circumstances and the claims made by the owners of Site Nos. 669, 670 and 671

the BDA allotted the said land to all the three of them as follows:

Site No. 669: 0" + 14" x 118"6"

Site No. 670: 0" + 13" x 118" 0"

Site No. 671: 0"+ 13"x118" From the minutes of the BDA meeting dated 23-3-1982 regarding the allotment of the said marginal land, a copy of which has been produced by the learned Counsel for the respondent, it is clear that Site Nos. 670 and 671 were measuring 9460 sq. ft. and 9440 sq. ft. respectively as per the original allotment. Hence, their claim for the marginal land was also justified. The contention of the complainant is that the whole of the triangular bit was included in his Site No. 669 as per the original plan and so he must have been given the whole of it. In the copy of the plan produced as Annexure-A to the complaint, the exact measurements of the sites have not been given and so it is not possible to state that the whole of the triangular bit was included in Site No. 669. In the order of allotment of the marginal land, it is nowhere stated that the western side of the site allotted to the complainant including the marginal land should measure 118" x 6". From the sketch it is clear that one side of the triangle formed after including the piece of triangular area allotted to the complainant measures 118" x 6". In the allotment order it is clearly stated that the base of the triangle measures 14" and so the complainant is not entitled to anything more than that. Hence, we see no force in the contention of the complainant that the whole of the triangular bit must be allotted to him. It cannot be said from the materials on record that the discretion to allot the said triangular bit of land to the three site owners has been exercised improperly".

6. On an independent analysis of the position of facts we do not find any ground to come to any different conclusion. Annexure-A which is the extract of the sketch shows that the Site No. 669 is surrounded by Site Nos. 668 and 670. The appellant was allotted Site No. 669 vide Annexure-B. The approximate area of the site was shown to be 80" x 120" sq. yards. Vide Annexure-C the appellant had taken possession of Site No. 669 which measured 80" x 126".9" + 118".6(sic). This is not the case of the appellant that he is not in possession of the area to the extent specified in Annexure-B and C. The appellant wanted to take advantage of the circular Annexure-D with the object of usurping the adjacent land. The circular has rightly been held to be not applicable in the case of the appellant. The circular deals with the marginal lands located adjacent to the lands of the allottees and does not deal with the lands allegedly lying vacant or forming parts of the sites sold. The appellant appears to have unnecessarily litigated for over a decade.

7. In the objections statement filed on behalf of the respondents it was clearly mentioned that the appellant was allotted land measuring 80" x 120" totalling 9600 sq. ft. He however, got the possession of 9600 sq. ft. He was further allotted the land including marginal land as per the revised PC measuring 987.07 sq. metres. The total area in possession of the appellant was held to be

10869.10 sq. ft. which was admittedly more than the area allotted to him vide Annexure-B.

8. It appears that by resorting to the luxury of litigation the appellant intends to usurp other areas of land which are in the vicinity or adjacent to the land allotted to him. The claim of the appellant is without any basis and substance and apparently a mala fide.

9. There is no merit in the appeal which is accordingly dismissed with costs.