

(1997) 01 KAR CK 0047

In the Karnataka High Court

Case No : W.A. 553/96 C/w W.P. 35957/93 and Other Connected Writ Petitions

E.R. Manjaiah and Others

APPELLANT

Vs

Bangalore Development Authority and Others

RESPONDENT

Date of Decision : 10-01-1997

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 16
Constitution of India, 1950 — Article 13 (2), 14, 19, 21, 226

Citation : (1997) ILR (Kar) 1025 : (1997) 4 KarLJ 1

Hon'ble Judges : R.P. Sethi, C.J.; S. Rajendra Babu, J

Bench : Division Bench

Advocate : N.D.R. Ramachandra Rao, Y.N. Nagaraja and G.A. Srikante Gowda, Noel Consalves, H.J. Sanghavi, Jayakumar S. Patil, R. Narayan and K.R. Bindu, Kumar, J.V. Hulsoor, K.S. Manjunath, M.V. Seshachala, M.R. Rajagopal, S.R. Narasimhan and S.V. Srinivasan, for the Appellant; Shobha Patil and B.S. Patil, Rammohan Reddy, K.L. Mamjunath, K. Sridhar, N.K. Patil, S.A. Najeer for R-1 and K. Vishwanath, HCGP for R-2, for the Respondent

Final Decision : Allowed

Judgement

R.P. Sethi, C.J.—Aggrieved by the order of the Bangalore Development Authority (hereinafter referred to as "Authority") dated 16.1.93 attached to the petitions as Annex-T, various allottees of the plots under the scheme advertised vide Annex-A have filed these petitions with the prayer of quashing the resolution of the authority under subject No. 235/92 dated 19.12.1992 holding the same to be illegal, unconstitutional and void. It is further prayed that the authority be directed to fix the sital value of the sites allotted to the petitioners strictly in proportion to the actual Cost of forming the sites of different dimensions and receive the balance of sital value from the petitioners only after completing the development scheme strictly in accordance with the requirements of Section 16 of the B.D.A. Act. In some of the petitions, a prayer has been made for declaring Rule 12 of the Bangalore Development Authority Rules, 1984 (hereinafter called the Rules) as unconstitutional and thus void. The relief is claimed mainly on the

ground that the action of the respondents being discriminatory violates the fundamental right of equality as enshrined in Article 14 of the Constitution of India. It is further prayed that as the authority has admittedly been constituted for the purpose of planned development of the City of Bangalore and is not a commercial institution entitle to earn profits, the announcement of the value of the plots decided to be allotted to the petitioners consequent upon the issuance of Notification vide Annex-A being against the provisions of the Act, rules made thereunder and the schemes formulated was illegal and not liable to be acted upon.

2. It is submitted that the petitioners mostly civil servants having no house of their own were persuaded to apply for the allotment of sites in response to the notification of the authority dated 10.3.88 and annexed with the petitions as Annex-A. Vide Annex-A, the authority had announced the availability of residential sites for allotment to the general public in various layout specifying therein the dimension of the sites, area of the sites, the provisional value and the registration fee and the initial deposit to be paid along with the application. In various layouts about 2500 sites of the sizes 20" x 30", 30" x 40", 40" x 60" and 50" x 80" with provisional value at Rs. 6,000/-, Rs. 25,000/- Rs. 55,000/- and Rs. 90,000/- respectively were advertised. It was notified that the allotment of the sites shall be made in accordance with the Bangalore Development Authority (Allotment of Sites) Rules, 1984. The petitioners were intimated during the year 1988 (Annex-B) that after consideration of their applications seeking allotment of sites in response to Annex-A, sites of various sizes had been allotted to them. The petitioners were further intimated that the site no. and other particulars and conditions relating to the allotment shall be sent at their address through registered post shortly. They were further directed not to contact the authority personally, The petitioners thereafter did not receive any further communication for a considerable period of 4 1/2 years and finally received the allotment /orders attached with the petitions as Annex-C intimating the enhanced value of the sites allotted to them. Various petitioners have detailed their economical position and the status held by them to impress upon that the escalated value was likely to adversely affect them which ultimately may deprive the petitioners of owning a house of their own and getting a shelter to hide their family members. It is submitted that the authority totally ignored the value of the sites mentioned in Annex-A without taking into consideration the actual cost incurred for forming a layout and sites of various dimensions, allegedly with ulterior motives and malafide intention of not only making wrongful gain but also to make illegal exaction of monies from the members of the public in general and the petitioners in particular. The announcement of the sital value is alleged to be far in excess of the actual cost incurred by the authority for forming the layout and the sites. The announcement is said to have been made to swell the Bangalore Development Fund through illegal means at the cost of the innocent general public including the petitioners. The announcement is said to be opposed to the rules of natural justice and equity. The respondents are alleged to have been guilty of hostile

discrimination towards the petitioners. The unreasonable and exorbitant enhancement of the sital value as per Annex-T is said to be violative of Article 13(2), 14 and 21 of the Constitution of India.

3. It is contended that under the scheme of the Act and the rules made thereunder, the obligations, functions and responsibilities of the authority come to an end after the allotments are made. The Government thereafter has to issue necessary notification u/s 4 of the Karnataka Municipal Corporation Act, 1976. The respondent-authority is stated to be entrusted with the responsibility of effecting a balanced development and expansion of the city and to check any haphazard growth of the city. According to the petitioners, the only major items of expenditure towards the cost of forming a layout by the BDA are regarding the cost of acquisition in respect of the lands acquired and the expenditure incurred for executing the Government scheme u/s 16 of the Act. At the relevant time, the cost of the land acquired is stated to be less than Rs. 50,000/- per acre. The cost of forming layout in one acre of land cannot exceed Rs. 2,00,000/- as asserted by the petitioners. According to the petitioners, in one acre of land, about 13 sites of the size 40"x 60" can be formed after providing adequate space for roads and sanitary etc. It is alleged that the actual cost for forming a site measuring 40"x60" cannot be more than Rs. 15,384.61 and the amounts sought to be recovered from the petitioners being in excess of the actual cost tantamounts to illegal exaction of monies from them. The action of the BDA is attributed to be made with ulterior motive. The impugned enhancement of the sital value is likely to be 10 times in excess of the actual cost of the site. The respondent-authority is alleged to be in the habit of making illegal exaction of monies from the public in collusion with the Government of Karnataka. The authority is alleged to be indulging in violating various laws, so called regulations, the demands of the comprehensive plan etc.

4. In the statement of objections filed by the respondents, it is submitted that the Writ Petitions were misconceived and not maintainable as no statutory or fundamental right of the petitioners has been violated or infringed. The issuance of Annex-A dated 10.3.88 is admitted but it is submitted that the allotments were to be made in accordance with Bangalore Development Authority (Allotment of Sites) Rules, 1984. It is contended that the petitioners applying for allotment of sites had full knowledge and notice of the fact that the value of the sites notified were only provisional and the entire allotment process was to be completed in accordance with the relevant rules. Under Rule 12 of the Rules, the value of the site notified could be altered and enhanced. The cost of the sites formed by the Authority is said to have been worked out considering the cost of land as per acquisition proceedings, development cost and other relevant factors. The Government is said to have issued a circular on 6.11.89 directing the Urban Development Authority to ensure to earn revenues to cover obligatory items of expenditure, such as establishment cost, administrative overheads, anticipated exculpation in land acquisition cost etc. The Government by its order dated 5th Oct. 1990 is said to have further directed that the Urban Development

Authorities should set apart 5 per cent of the total land in every new project having an area of not less than 5 acres for the purpose of providing shelter to the poor. The actual pattern of compensation awarded by way of enhancement in the Civil Court including the award of solatium and the additional benefits apart from the higher rate of interest at 15 per cent all of which put together the approximate cost of land acquisition as enhanced and awarded by the Courts comes to around Rs. 2,25,000/- per acre.

5. It is further submitted that the B.D.A. has taken up the formation of Ring Road which has to pass through many layouts for which huge amounts are required. As the formation of Ring Road is said to have become a matter of urgent necessity, the sites have been decided to be allotted with additional cost/burden. While preparing the scheme and issuing the notification vide Annexure A, the estimates of the scheme regarding the provisions for water supply, underground drainage and electrification were made on an approximate rate per running meter. It is contended that the estimate of the approximate rates were made without consulting the KEB and BWSSB. There has been a substantial variation in the scheme estimate and the actual expenses. It has been further contended that even in the matter of carrying out the civil works there is delay in finalisation of acquisition proceedings on account of litigation resulting in increase in the cost every year by 10 to 15 per cent over the scheduled rates of 1985 and phenomenal increase of cost for providing water supply, underground drainage facilities and electricity. The respondents in support of their contentions have produced annexure R1 attached to the objections. On account of delay in the completion of the acquisition proceedings and other circumstances, the respondents urge that there has been enormous increase in the costs. The respondents have referred to various details of expenditure incurred or likely to be incurred for completion of the scheme. The Authority is said to have resolved to revise the value of the sites by its resolution dated 19.12.92 after due deliberations and careful consideration. The revision of sital value has been made applicable to all future allotments. It is contended that the revision of the sital value has been made applicable uniformly to all the allotments made after the date of resolution passed by the authority approving the revision of sital value. The petitioners cannot be permitted to invoke the jurisdiction of this Court for substituting its opinion for the needs of the authority. The allegations and assertions made by the petitioners are termed as baseless and false. It is contended that unless the revised rates are made applicable and the financial requirements are met, the respondents will not be in a position to complete the projects, as they have no other source of revenue or income. The revised rates are claimed to be fair and reasonable. It is submitted that if compared to the prevailing rates in the open market, the revised rates are not even 1/4th of the prevailing rates. No fundamental right of the petitioners as enshrined in Articles 14, 19 and 21 of the Constitution is said to have been violated.

6. The action of the respondent has been challenged mainly on the twin grounds : (a) that the respondent-authority had no power to revise the sital

value after the petitioners and similarly situated others were intimated allotment of sites, (b) that the action of the respondent in passing the resolution impugned in the Writ Petitions amounted to discrimination violating Article 14 of the Constitution which has resulted in hostile treatment between similarly situated persons.

7. Regarding the right of the respondent to revise the sital value, it has been argued that no jurisdiction has been vested in the respondent either under the Act or the Rules and alternatively it has been submitted that Rule 12 of the Bangalore Development Authority Rules, 1984 was discriminatory and liable to be quashed. A perusal of Annex-A shows that the respondent-authority had announced the availability of residential sites for allotment to the general public on the prices indicated against respective sites, it was specifically mentioned that the allotment of sites shall be made in accordance with the Rules. Rule 12 of the Rules provides that the value of site notified while inviting applications may be altered by the authority and an allottee may accept the site at the altered price or decline allotment. The submission of the Learned Counsel that the Rule was arbitrary or against the provisions of the Act is without any substance. No vice in the Rule has been pointed out which could render it unconstitutional. The Rule is equally applicable to all persons similarly situated having applied for the allotment of a site in response to a notification issued by the authority. The Rule is intended to meet such exigencies where the alteration of the notified sital value may be necessitated on account of the circumstances not within the power and control of the respondent-authority. The exculpation of the prices of the land, the enhancement of compensation, the payment of development charges and other expenses incurred by the authority may justify the alteration/revision of the sital value. The schemes initiated by the respondent-authority are welfare schemes and cannot be used to their disadvantage. This does not however mean that the authority has right to alter the sital value according to its convenience or whims without furnishing any explanation. The authority is under an obligation to explain and to satisfy the Court regarding its action of enhancing the prices. This Court can examine whether the decision making process for enhancing the sital value was reasonable or rational and not arbitrary being violative of Article 14. Once it is prima facie established that the procedure adopted by the authority was against the mandate of Article 14, the Court has authority to intervene and protect the rights of the affected allottees. It is however settled principle of law that while exercising power under Article 226 of the Constitution, the High Court does not sit as the Court of appeal and cannot substitute its opinion for the opinion of the concerned authorities. Exercise of jurisdiction under Article 226 of the Constitution is limited to the extent of only determining the fairness and reasonableness of the action taken by the authority. The High Court is not expected to examine the disputed facts and would not normally go into the complicated process of computation of the sital value. The Court would decline to interfere by the use of magnifying glasses to look or ascertain the action of the respondent in determining the prices. If the process of fixation of the prices is

not unfair, unreasonable or arbitrary, the Court would not interfere. But where the position is otherwise, appropriate directions shall be issued.

8. The Supreme Court in *Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others*, held that when a person enters into an agreement with an authority undertaking construction of dwelling houses, purely contractual obligations are brought into existence determining their respective rights and obligations. In *Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others*, , it was held that in price fixation, the executive had wide discretion and is only answerable in cases where there is any statutory control over its policy of price fixation and it is not the function of the Court to sit in judgment over such matters of economic policy which must be necessarily left to the Government of the day to decide. The experts alone can work out the mechanics of price determination; Court cannot be expected to decide without the assistance of the experts. In that case, it was further held:

"In the leading judgment it has been observed that mechanics of price fixation have necessarily to be left to the executive and unless it is patent that there is hostile discrimination against a class the processual basis of price fixation has to be accepted in the generality of cases as valid. This Court in *Avinder Singh and Others Vs. State of Punjab and Others*, approved the following dictum of Willis on Constitutional Law, page 587.

The State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does not reasonably.... The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation."

What is forbidden by Article 14 is discrimination amongst persons of the same class and for the purposes of allotment of flats scheme-wise allottees of flats in the same scheme, not different schemes in the same income bracket, will have to be treated as a class and unless in each such class there is unequal treatment or unreasonable or arbitrary treatment the complaint that Article 14 is violated cannot be entertained."

9. Under the common law, the settled position is that the fixation of prices primarily is under the domain of the seller. Various considerations have to be taken note of by the seller who is entitled to have its cost. The only exception carved out is in the case of public undertakings or instrumentalities of the State, who are supposed to be fair and reasonable. In such cases, the costing is expected to be not suffering from the element of arbitrariness. After referring to various judgments of the Apex Court, a Division Bench of Punjab and Haryana High Court in "*CHANDIGARH HOUSING BOARD v. K.K. KALSI AND ORS* 1996 (2) AIJ 554 held:

"In view of the settled principles of law, we are of the view that the jurisdiction under Articles 226/227 of the Constitution of India cannot be extended for entering into serious controversies with regard to accountancy. The Court is

mainly concerned with the reasonableness and an appropriate explanation by the Board. It may not be permissible to go into principles of accountancy in its minutest forms. Where the Court while exercising writ jurisdiction will have to investigate matters itself because writ jurisdiction may not be a very appropriate jurisdiction for such disputed accounts and especially into the reasons leading to such minute additions and alterations in the accounts.

Niceties of accounts would depend on various factors and even may be on evidence. Components of costing and element of profit in such component has to be correctly construed and interpreted so as to avoid injustice or unfairness, but this scrutiny has to be within a narrow compass and cannot be gone into in details and minuteness. Some element of profit on various components, by itself, cannot be termed as arbitrary or entirely justifiable. The element of profit even in social welfare schemes is neither unknown nor it will be termed as unfair.

The Supreme Court itself in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , has held as under :

"It cannot be gainsaid that profiteering is an evil. If a public utility like electricity could be controlled, certainly, the professional colleges also require to be regulated."

In Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others, , it is held as under :

"It is a public utility monopoly undertaking which may not be driven by pure profit motive not that profit is to be shunned but that service and not profit should inform its actions. It is not the function of the Board to so manage its affairs as to earn the maximum profit even as a private corporate body may be inspired to earn huge profits with a view to paying large dividends to its shareholders. But it does not follow that the Board may not and need not earn profits for the purpose of performing its duties and discharging its obligations under the statute. It stands to common sense that the Board must manage its affairs on second economic principles. Having ventured into the field of commerce, no public service undertaking can afford to say it will ignore business principles which are as essential to public service undertaking as to commercial ventures"

...."The Board may not allow its character as a public utility undertaking to be changed into that of a profit motivated private trading or manufacturing house. Neither the tariffs nor the resulting surplus may reach such heights as to lead to the inevitable conclusion that the board has shed its public utility character. When that happens the Court may strike down the revision of tariffs as plainly arbitrary."

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"This decision of the Supreme Court was reiterated in a recent judgment of the Supreme Court in Indore Development Authority v. Smt. Sadhana Agarwal and Ors. J.T. 1995 (3) S.C.I. The Supreme Court while interfering in such matters - has upheld the costing from time to time. But that does not give an absolute right to the Board to escalate the costing from the initial proximate cost. This right is regulated by the initial proximate cost. This right is regulated by the doctrine of reasonableness and fair play. But the extent to which such reasonableness and fairness is open to judicial review was expressed by the following words :

"The High Court was justified in saying that in such circumstances, the authority owed a duty to explain and satisfy the Court, the reasons for such escalation. We may add that this does not mean that the High Court in such disputes, while exercising the writ jurisdiction, has to examine every detail of the construction with reference to the cost incurred. The High Court has to be satisfied on the materials, on record that the authority has not acted in an arbitrary or erratic manner."

From the present trend settled by the judgments of the Supreme Court the decision making process and the decisions of the authorities taken thereupon are certainly open to judicial review, but what is more material is the extent of judicial review. Distinction has to be drawn between appellate authority, Appellate Court and the courts exercising such powers under writ jurisdiction. If the basis of the decisions are apparently unreasonable, wholly irrational, unfair, arbitrary or erratic, the court would interfere in such process and consequently interfere in the action taken pursuant thereto, but once a proper and satisfactory explanation is tendered, then it may not be permissible for the Court to go into the niceties of accountancy and minute details of accounts in such cases. Some element of bonafides would have to be attached to such welfare schemes and their implementation. Every hardship or unreasonableness pleaded by the petitioner or an applicant may not fall within this purview and scope of judicial review."

10. In view of various pronouncements of the Apex Court and the High Courts in the Country, it cannot be said that the respondent-authority had no right to enhance the sital value under any circumstance. The impugned action of the respondent cannot be challenged on this one ground alone. There is no vice of discrimination illegality or unconstitutionality in Rule 12 of the Rules.

11. It has been argued in the alternative that even if the respondent-authorities are held to be possessing the power of enhancing the sital value of the plots, yet, the resolution passed by them which is impugned in these Writ Petitions is liable to be quashed on the ground of being violative of the guarantee of equality as enshrined in Article 14 of the Constitution. It is submitted that persons similarly situated have been subjected to hostile treatment without any justification. The action of the respondents in discriminating the petitioners is alleged to be neither fair nor proper or reasonable. It is contended that in response to the notification Annex-A, the petitioners along with about 2,500 persons had applied for the

allotment of sites as per the rates specified in the said notification and were intimated by various letters, one of such annex-B, during September, 1988 that they had been held entitled to the allotment of a plot as detailed therein and the other details such as number of the plot and conditions relating to allotment shall be intimated to them separately at a later date. They were advised to await for the further communication and not to personally contact the authority. The petitioners did not receive any communication for a period of more than 4 1/2 years and ultimately received communication in March 1993 intimating that the cost of the site had been enhanced allegedly disproportionately. It is contended that vide Annex-A, the respondent-authority had notified the availability of residential sites for allotment and was therefore not justified in deferring the process of handing over of the possession of the site allotted to the petitioners and for compliance of the other formalities. It is contended that the petitioners are being forced to pay the enhanced price for no fault of theirs. It is submitted that if the action of the respondent is not corrected, the petitioners would be subjected to double jeopardy in as much as they will be forced to pay the enhanced price for no fault of theirs and be subjected to incurring heavy expenses for raising/construction of houses on account of escalation of the cost of building materials. It is alleged that even if the authority had the right to enhance the value of the site, the petitioners alone could not be subjected to enhancement. According to them, the escalated cost should have been directed to be shared by all concerned who had applied in response to the notification-Annex-A and were held entitled for allotment of sites in consequence thereto.

12. The Bangalore Development Authority Act, 1976 was enacted to provide for establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith. The main object of the Act and the Rules framed thereunder was to provide a scheme for the development of the City after acquiring the land and converting the same into residential sites/layouts, allotment of sites in those areas to the individual applicants for the purpose of satisfying the requirements of thousands of people who have settled in the City to eke out a decent livelihood or to spend their days of retirement.

The authority was not intended to earn profits on the basis of transactions carried on by it. It appears that the authority was constituted for a purpose as was noticed by the Supreme Court in Premji Bhai's case (supra), wherein it was observed:

"In this country where weaker and poorer sections are unable to enjoy the basic necessities, namely, food, shelter and clothing, a body like the authority undertaking a comprehensive policy of providing shelter to those who cannot afford to have the same in the competitive albeit harsh market of demand and supply nor can afford it on their own meagre emoluments or income, a little more for those who need succour ..."

13. It is not disputed that under the Act, the lands are acquired for a particular

purpose and after acquisition, the areas are developed and sites allotted to the needy. The respondent-authority being entrusted with the sacred duty, is required to follow a definite procedure and lay down norms for the purpose of disposal of sites uniformly and in accordance with the rules made thereunder. For inaction of the authority or for their acts of commission and omission, a citizen applying for the allotment cannot be penalised if he is shown to be not in any way responsible for facilitating the authority to suffer the losses.

14. The right to equality guaranteed by the Constitution is in fact, the heart and soul of our democratic polity. Articles 14, 15 and 16 are set under the common caption and their language unmistakably show that all the aforesaid three Articles belong to one family. Article 14 has been termed to be a genus, whereas Articles 15 and 16 have been held to be its species. Article 14 is the basic Article which guarantees right of equality before law in a general way and shows equality amongst persons similarly situated both in the matter of imposing liability or granting privileges. It prevents discrimination between one person and another if as regards the subject matter of the legislation in their positions they are similarly situated. It does not however mean that all persons similarly situated have always to be treated alike. Reasonable discrimination is permissible under the Constitution. Mandate of law is that once it is prima facie shown that the action of the respondent was discriminatory, the onus falls upon the authority concerned to show that the discrimination made was reasonable and permissible under law. The classification or discrimination made is required to be established as not arbitrary, but should be shown to be rational. Such classification should be based upon some qualities or characterizes which are to be found in all persons grouped together and not in others who are left out of those qualities or characteristics. It must have a reasonable relationship to the object sought to be achieved by the intended discrimination. In order to pass the test of permissible classification, two conditions are to be fulfilled, namely:

(a) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and

(b) that, the differentia has a rational relation to the object sought to be achieved by it.

If the classification is found to be illogical, unfair, unjust and unreasonable, the same is liable to be quashed.

15. In *Satwant Singh Sawhney Vs. D. Ramarathnam*, Assistant Passport Officer, Government of India, New Delhi and Others, , the Apex Court held that the doctrine of equality before the law was necessary corollary to the high concept of the rule of law accepted by the Constitution of India. The important aspect of the rule of law is that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative authority and such law or action of the executive would be void if it discriminates between persons without

just classification. What a legislature could not do, the executive could not obviously do. The rule of equality is referable to the evolution of human history over the globe. Liberty and equality were the watch words of the French Revolution and the foundation upon which the "magna carta" of England stood. Abraham Lincoln in his Gettysburg address declared that all men are created equal. Article 7 of the Universal Declaration of Human Rights States declares that all are equal before law and are entitled without any discrimination to equal protection of law. Jennings in his Law of the Constitution (5th Edition Page 50) stated "Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike." Dicey's Law of the Constitution (10th Edition Page 202) asserted equality before the law as a corollary from his famous doctrine of Rule of Law. The preamble of our Constitution promises equality which is explained and detailed under Articles 14 to 16.

16. The Learned Counsel appearing for respondent submitted that the impugned resolution was neither discriminatory nor violative of the Article 14 of the Constitution. It is submitted that the petitioners constituted a separate class and they were subjected to enhancement of the cost on account of escalation in prices in relation to the development activities and the higher compensation paid by the authority. Reliance is placed upon a judgment of the Supreme Court in Chandigarh Administration and another Vs. Jagjit Singh and another, . Reliance is also placed on a judgment of this Court in Bangalore Development Authority Vs. Dr. H.S. Hanumanthappa, .

17. It is not disputed that on the basis of Annex-A about 2,500 persons who had applied for the sites were held entitled for allotment of sites including the petitioners. It is not also disputed that a majority of those persons were allotted the sites almost according to the sital value mentioned in Annex-A. It is also admitted that the petitioners along with others were intimated of their entitlement of allotment of a site vide letters issued in September 1988. It is not disputed that the petitioners were willing and prepared to pay the sital value at the time they were intimated about their entitlement. The respondents have not placed on record any document to show that any of the petitioners had nay disqualification disentitling him the allotment of a site in the year 1988. No act of commission or omission is attributed to the petitioners, for no execution of the requisite documents in response to the letters annex-B communicated to them. The petitioners are shown to have been advised not to contact the respondent-authority and were admittedly not communicated about further progress regarding the completion of the allotment formalities for a period of more than 4 1/2 years. A faint attempt is made by the respondents to show that the petitioners were allotted the sites on the sital value as specified in Annex-A has no legs to stand. The classification contemplated by Article 14 cannot be artificial but should apparently be real and effective. The classification resulting in discrimination cannot be left at the whims and caprice of the authority concerned. The discrimination on the basis of classification would not be

reasonable if it has been occasioned on account of some acts of commission and omission attributable to the respondent and not justified by them by any definite ground or reason. The conduct of the respondents clearly and unambiguously establishes that they had taken up the case of petitioners very casually and opted to enhance the site value according to their convenience which ultimately adversely affected the financial position of many including the petitioners. The respondents have failed to establish the promptness with which they were expected to take action in accordance with the Act, Rules and the notification Annex-A. It may not be out of place to mention that under the Act and the Rules framed thereunder, whenever authority forms an extension or layout in pursuance of a scheme, it has powers to take over any or all of the sites of such extension or allotment for allotment to persons who are eligible for allotment of sites under the Rules. Rule 3 of 1984 Rules, clearly and unambiguously provides that sites can be offered for allotment only after the authority forms an extension or layout in pursuance of a scheme and not prior to it. Annex-A shows that the action for allotment was initiated only after the authority was satisfied that the sites for allotment were available. In the aforesaid annexure, it is specifically mentioned that "the Bangalore Development Authority announces the availability of residential sites for allotment to the general public. The details of the sites available for allotment are as under." (emphasis supplied).

18. In view of the statutory provision and the unambiguously declared action of the respondent, it cannot be said argued that the sites were not available at the time when the petitioners were held entitled to such allotment or that with the passage of time, the respondent authority had to incur more expenses which are required to be compensated by the petitioners alone. On the basis of the pleadings of the parties, the record produced before the Court and the position of law as enunciated hereinabove, it is established that the petitioners along with persons similarly situated were allotted sites after requisition and notification on the basis of their eligibility in the year 1989. It is further established that the respondent authority even though had the knowledge of escalation of prices, had failed to complete the process of allotment to the petitioners within a reasonable time. The delay of 4 1/2 years has not been satisfactorily explained by the authority. The petitioners and similarly situated persons have been subjected to hostile treatment and discrimination without reasonable cause and justification. The petitioners could not be penalised for the inaction of the respondent-authority. The petitioners and similarly situated persons cannot be deprived of the allotment of sites for no fault of theirs.

19. Even if the respondent-authority had incurred more expenditure, the same could have been directed to be paid proportionately by all the persons who had applied in response to annex-A and the petitioners alone could not be held responsible/ liable for compensating the losses allegedly suffered by the respondent in acquiring land for allotment which admittedly had benefited about 2,500 persons besides the petitioners.

20. Apprehensions have been expressed on behalf of respondents that if these petitioners are granted relief, other allottees who had paid the enhanced sital value may approach this Court on the basis of this judgment and if their pleas are accepted, the respondent-authority would be subjected to huge losses rendering it unworkable. The apprehension expressed on behalf of respondents is apparently imaginary and without any substance. If on the basis of this judgment any further petition is filed the same may not be entertained by the Court in its dissertation on the ground of delay, laches and acquiescence. The Court may in that event refuse to exercise its power under Article 226 of the Constitution of India holding that such persons who had no grievance regarding the action of the respondent enhancing the prices and actually paid such enhanced price may not be entitled to the similar relief as is being granted to the petitioners in these cases. The relief in the instant case is being moulded and granted under peculiar circumstances which by itself would not confer any right upon the persons and with their own free will and dissertation have paid the price and taken the possession of the sites. However on the grounds of mere apprehensions expressed by the respondent, petitioners who have been held entitled for allotment and subjected to discrimination cannot be deprived of the Constitutional guarantees.

21. Under the circumstances, the writ petitions are allowed by holding that the respondent authority had the right to enhance the prices under the circumstances noted hereinabove and Rule 12 of the Rules was neither discriminatory nor violative of any Constitutional guarantee. The resolution passed by the Bangalore Development Authority under Subject No. 235/92 dated 19.12.92 and consequent notices (Annex-T) issued are held to be discriminatory and violative of Constitutional guarantees and as such declared to be illegal and void. A command is issued to the respondent to handover the possession of sites allotted to the petitioners after completing the development schemes strictly in accordance with requirements of the Act and upon payment by the petitioners of the sital value as was fixed and prevalent on 8.9.1988, i.e., when the petitioners were intimated allotment of sites. Appropriate action shall be initiated and positively completed within three months. Costs are made easy.