

(1998) 03 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition No's. 10142 and 10143 of 1997

Felicia Fali Variava And Another

APPELLANT

Vs

The Bangalore Development Authority, Bangalore

RESPONDENT

Date of Decision : 19-03-1998

Acts Referred:

Bangalore Development Authority (Allotment of Sites) Rules, 1984 — Rule 10 (1)
City of Bangalore Improvement (Allotment of Sites) Rules, 1972 — Rule 3
Constitution of India, 1950 — Article 226

Citation : (1999) 2 KarLJ 684

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri T.S. Ramachandra, for the Appellant; Smt. Shobha Patil, for the Respondent

Judgement

1. Heard the learned Counsel for the petitioner.
2. By this petition, petitioner has sought for issuance of writ of certiorari or any other writ, order or direction quashing the endorsement No. BDA/DS-II/288/96-97 dated 8-1-1997 issued by the Deputy Secretary-II, Bangalore Development Authority, Bangalore, and for issuance of writ of mandamus directing Bangalore Development Authority to allot Site Nos. 288 and 289 formed in Sarakki VI Stage Layout or in any other layout formed by the Bangalore Development Authority of sites measuring 50" x 80".
3. The facts of the case in the nut-shell are that, the petitioners claimed to have made applications for allotment of site in Rajamahal Vilas II Stage extension under a special scheme of allotment called "The Dollar Scheme". The applications were alleged to have been made on 4-12-1979. According to the petitioners, the opposite party having found it not possible to allot site in Rajamahal Vilas II Stage to all the dollar registrants, the Bangalore Development Authority decided to allot sites to such persons in other layouts. According to the petitioners, vide resolution dated 26-3-1986 passed by the authority, Site No. 289 in Sarakki V

Phase measuring 50" x 80" was allotted in favour of the petitioner and the same was communicated vide allotment Intimation No. B-11/289/SRK-VI/86-87. This allotment was made in favour of the petitioner 1. According to the petitioners in the same resolution Site No. 288 was allotted in favour of the 2nd petitioner in the same order by resolution dated 26-3-1986 and allotment was communicated in 1987. Petitioner, however, says that on 8-2-1988 guardian of the petitioners received a letter from the Bangalore Development Authority stating that the applicants were minors and were not eligible for allotment of sites under the scheme. On 3-3-1988, the guardian addressed a letter stating that the Bangalore Development Authority having accepted payment was not right in discovering an [illegibility] nearly ten years later and the petitioners requested the Bangalore Development Authority to transfer one plot reserved in the name of the 1st petitioner to the guardian and that reserved in the name of her daughter to Ms. Prenny M. Variava. The letter has been annexed as Annexure-C. Petitioner's case is that though the guardian of the petitioners met the Commissioner several times, no firm reply was given except it was stated that the authorities are seriously considering the matter. On 8-1-1997 vide Annexure-F the respondent with reference to letter dated 3-3-1988 informed the petitioners that their request for revoking of cancellation of Site Nos. 288 and 289 of Sarakki VI Phase was placed before the authority for consideration and the authority at its meeting held on 30-1-1989 vide subject No. 1494 has rejected the request. It was mentioned in the letter that the petitioner may claim refund of the deposit made towards allotment of site. Feeling aggrieved from that order, the petitioners have filed these petitions under Article 226 of the Constitution of India.

4. At the time when the allotment had been made in 1986, Rules of 1984 were in operation. Learned Counsel for the petitioners contended that these Rules of 1984 are not to be applicable. He submitted that the dollar scheme is a special scheme and Rules of 1984 will not be applicable. He further submitted that applications were made in 1979, so Rules of 1984 are not applicable.

5. I have applied my mind to the contentions of the learned Counsel for the parties. The applications, might, have been made in 1979, but the applications should be entertained and considered in accordance with the rules. The applications were considered in 1986 and admittedly resolution for allotting the site was passed on 26-3-1986 Resolution No. 1060 wherein Site Nos. 289 and 288 were allotted to the petitioners. At that time, the rules that were applicable were Rules of 1984. Earlier rules had already been repealed namely City of Bangalore Improvement (Allotment of Sites) Rules, 1972. These rules have been repealed by Rules of 1982 and after Rules of 1982 have been repealed the Bangalore Development Authority (Allotment of Sites) Rules, 1984 came into force. At the time when the applications were entertained and were considered, Rules of 1984 were operative. There are no other rules which may be said to have been specifically framed for the purpose of being applicable to such things such as the schemes bearing non-Indian name, "Dollar-Colony" nor any has been brought to the notice. Rule 3 of the Bangalore Development Authority

(Allotment of Sites) Rules, 1984 reads as under.--

3. Offer of sites for allotment.--(i) Whenever the Authority forms an extension or layout in pursuance of any scheme, the Authority may, subject to the general or special orders of the Government, offer any or all the sites in such extension or layout for allotment to persons eligible for allotment of sites under these rules.

Rule 10 provides that at the time when the application for allotment being considered, it provides that,

"10. No person who is a minor shall be eligible for allotment of the site".

Rule 10 also provides that,

"(2) A person who is not a domicile of Karnataka for not less than ten years immediately prior to the date of registration: and

(3) A person who or any member of whose family owns a site or a house or has been allotted a site or a house by the Bangalore Development Authority or any other Authority within the Bangalore Metropolitan Area shall be eligible to apply for allotment of a site".

Provision to sub-rule (3) no doubt provides that the requirement of ten years domicile may be relaxed,

"(i) in the case of person who are domiciled in the State of Karnataka but being in the armed forces of the Union and serving outside the State of Karnataka:

(ii) in the case of persons who are domiciled in the State of Karnataka but have gone outside the State for employment, business, studies or training and who bona fide intend to reside in Bangalore Metropolitan Area.

(iii) with the prior permission of Government, in the case of persons who have achieved outstanding distinction in the field of art, science, sports, or in any other field".

6. In the present case, the applicants at the time of allotment were minors i.e., in the year 1986 and even in the year 1988. Once the notice and intimation had been given thereafter in March 1988, petitioners' guardian filed the reply. The authority in January 1989 cancelled the allotment. No doubt, petitioner made another request for recalling of that order. With reference to the petitioners' application for recalling the order dated 8-2-1988 as well, the petitioners had been informed vide letter dated 8-1-1997 that the request of the petitioners cannot be accepted and they may claim the refund of deposit made towards allotment of sites. In my opinion, in view of Rules 3 and 10, itself, if it is a special scheme under the special order of the Government, allotment could be made only in favour of the persons who are eligible for the allotment of sites under the rules. A minor is always taken to be not competent to enter into contract. Even under law, of contract, a guardian cannot fasten any liability on minor under the contract. In such circumstances, when an application is made for allotment of

site, terms under the allotment could not be made binding on the minor. So, therefore, Rule 10(1) can be said to be reasonable when it provides that a minor shall not be eligible to make application for allotment either by themselves or through their guardian.

7. In this view of the matter, when the application was of a person who is not eligible at the time when the application for allotment was being considered by the authority, but somehow allotment had been made, it was open to the authority to rectify the mistake. Because allotment was made in favour of a person who is not competent. So authority, definitely, acted in accordance with law when it sent a letter dated 8-1-1997 that the request of the petitioners for recalling the order dated 8-2-1988 cannot be accepted and asked the petitioners to claim refund of deposit made towards allotment of sites. So it cannot be said that letter dated 8-1-1997 is in violation of principles of natural justice and it cannot be said that it was passed without notice to the petitioners. It was not open to the authority to review the order and to make allotment in favour of two petitioners.

8. In this view of the matter, in my opinion, the order impugned contained in Annexure-F or order of cancellation of allotment dated 8-1-1997 cannot be said to be illegal or null and void nor they do suffer from any jurisdictional error. The order dated 8-1-1997 is nothing but communication of the earlier resolutions of the authority passed in the meeting held on 30-1-1989. In this view of the matter, petitioners are not entitled to get the relief No. 2 as claimed in the writ petition. As the petitioners had no right to get the allotment, writ of mandamus also cannot be issued. In order to claim mandamus, a person must show a legal valid right and seek its enforcement by the authority. Here no right has been established by the petitioners.

In this view of the matter, in my opinion, these petitions are devoid of merits and are hereby dismissed. It is kept open to the petitioners to file fresh application if they so desire according to law and rules, and authority then may consider if any sites are available. Subject to these observations, writ petitions are dismissed.