

(1998) 08 KAR CK 0090
In the Karnataka High Court
Case No : Writ Petition No. 33995 of 1997

Ganapathyraja Enterprises

APPELLANT

Vs

Bangalore Development Authority and Another

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 65
Constitution of India, 1950 — Article 226

Citation : AIR 1999 Kar 107

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : N.D. Ramachandra Rao, for the Appellant; Sampath Anandashetty, for No. 1 and Huleppa Herur, H.C.G.P. for No. 2, for the Respondent

Final Decision : Partly Allowed

Judgement

V. Gopala Gowda, J.—The petitioner is a proprietorship concern and its proprietor is one Ganapathiraja. He is an Ex-defence employee and belongs to Scheduled Caste. He is before this Court seeking writ of mandamus or any other appropriate writ or order or direction to the first respondent-Bangalore Development Authority hereinafter called as "Authority" in respect of Civic Amenity Site No. 30 situated at 4th Block, Koramangaia. A further direction is sought against respondent to receive Bangalore Development Authority Act, 1976 (Karnataka Act, 12 of 1976), the Government of Karnataka hereby specifies the following amenities to be "Civic Amenities" for the purpose of the said Act, namely :--

1. Liquified Petroleum Gas Godowns,
2. Retail domestic fuel depots,
3. Petrol retail outlets,
4. Motor repair/servicing garages,

5. Crematoria/graveyards and other such places for the, disposal of the dead;

6. Areas for dumping city garbage.

3. The petitioner pursuant to notification Annexure-B submitted an application. It is also further made clear under Condition No. 3 the eligibility of person required to file an application. Condition 3(a) & (b) read thus :

"3(a) The authority may allot C.A. site on lease basis only to an institution which is registered under rule 5.

(b) Institution means on institution or an association registered under the Karnataka Societies Registration Act, 1960 or a co-operative society registered under the Karnataka Co-operative Societies Act, 1960 or a trust created wholly for charitable educational or religious purpose."

4. It is stated on behalf of the petitioner that, petitioner was registered with the first respondent on payment of Rs. 2,500/- vide Registration No. 133 as per Annexure-C. Thereafter, petitioner submitted his application on 1-1-1992 seeking allotment of civic amenity site which was earmarked for LPG Godown and as a matter of fact site in question is earmarked for LPG Godown and further, he had deposited with the Authority the required initial deposit amount of Rs. 27,850/- by cash and the same was acknowledged by the authority. It is also further stated that, pursuant to the said application submitted by the petitioner against notification at Annexure-B, the authority in its meeting held on 28-9-1992 vide subject No. 306 of 1992 passed a resolution allotting the said site in favour of the petitioner and accordingly, the Executive Engineer of the Authority has informed vide Annexure-E to the petitioner on 28-9-1992 stating that the Authority has resolved to allot Site No. 30, Koramangala 4th Block is allotted in favour of the petitioner and the necessary formalities in that regard and amount to be deposited would be intimated to the petitioner.

5. It is the grievance of the petitioner that, after the above resolution, no action has been taken by the BDA for taking further steps in executing the lease deed, issuing possession certificate and to put him "in possession in the site in question. Therefore, there was an in action on the part of the BDA in not discharging the statutory duty as contemplated under the Rules referred to above. It is also further stated that, the petitioner submitted representations in the first week of 1992 to the Secretary of the second respondent explaining the delay caused by the first respondent in not discharging the statutory duty and not collecting the balance amount in respect of site in question and not giving possession certificate. He also further states that, pursuant to the said representations, the second respondent by its letter dated 16-7-1992 Annexure-G requested the first respondent to look into the matter and report the same. In spite of said letter written by the second respondent to the first respondent, no action was taken by it. Petitioner patiently waited for more than five years did not receive any intimation by the authority which had slept over the matter. It is the further case of the petitioner that, he has repeatedly approached the

respondent-Authority in this regard requesting the authority to receive the balance amount and discharge its statutory duty in executing necessary documents as required under the relevant Rules in respect of the site in question in his favour.

6. When facts stood thus, to utter dismay and shock to the petitioner, the authority vide its letter dated 28-2-1997 called upon the petitioner to get clearance from the Director of Explosives, South -Zone, Madras and submit the same to the authority and further it was stated that request of the petitioner for restoration of civic amenity site in question has been examined. Therefore, it is alleged that contents of the letter written to him is a clear case of mischief committed by the authority in the matter of allotment of site in question.

7. From the records, it is noticed that, BDA, for the reasons mentioned in its resolution and the second respondent's letter dated 24-11-1992 by which letter it was directed to the authority to freeze all the allotment of sites made by it during the period from 1 -7-1992 to 24-11 -1992. Therefore, the authority has resolved that, there was resolution of the authority dated 24-9-1992 allotting the site in question in favour of the petitioner and the second respondent had issued the Government Order referred to above. Therefore, the allotment of the site in question could not be made in favour of the petitioner. Therefore, it had resolved and taken a decision to re-notify the same in respect of the site in question for offering it as civic amenity site as mentioned therein inviting applications for allotment from the eligible applicants.

8. Pursuant to the said resolution, Annexure-L the notification was issued as required under Sub-rule (3) of Rule 3 of Rules wherein site in question was also notified at SI. No. 40 and the purpose for which it was reserved was shown as "LPG Godown" and also reserved for SC category. The lease amount is mentioned as Rs. 9,28,688/- p.a. Pursuant to the said notification, the petitioner submitted an application without prejudice to his rights to insist upon to take necessary steps and action in executing the documents in his favour and put him in possession in respect of the site in question referring to various facts of the previous notification and inaction on the resolution of the Authority in allotting the site in question in favour of the petitioner, the authority is not giving effect to the resolution referred to above. It is also relevant to state that, before submitting the said application petitioner had elaborately submitted a petition before the authority vide Annexure-M dated 11-6-1997 narrating the facts referred to above. It is the further case of the petitioner that the authority should not have resorted to publish the impugned notification even though the site in question was allotted in his favour vide Annexure-E on the basis of the resolution of the authority. Therefore, the site in question was not available for grant of further lease by issuing notification regarding Annexure-L It is stated that action of the authority in notifying the site in question is bad and without authority of law as the same is in contravention of the rules and the law in this regard.

9. It is also further noticed from the documents produced by the petitioner that,

pursuant to the said notification, the application submitted by the petitioner was considered and disposed of following the procedure contemplated under Rule 4 of Rules i.e. the Disposal of Sites Rules and further the authority has issued allotment letter dated 16-9-1997 intimating the petitioner that authority vide its resolution No. 181/97 dated 28-7-1997 has approved the Civic Amenity Site No. 30 in Koramangala 4th Block measuring 952 sq. mtrs. in his favour for the purpose of establishing LPG Godown on 30 years lease basis.

10. Learned counsel Mr. N.D.R. Ramachandra Rao appearing for the petitioner vehemently argued that, action of the Authority is arbitrary unreasonable and without authority of law as it has raised the lease amount very high. Further it is also contended that, the Bangalore Development Authority being a statutory body has failed to discharge its statutory duty and having considered his application, passed the resolution referred to above and has not discharged its statutory duty in executing the documents. Therefore he has been compelled to approach this Court seeking the relief referred to above. He also strongly relies on a judgment of this Court reported in E.R. Manjaiah and Others Vs. Bangalore Development Authority and Others, wherein this Court has held that, action of the BDA in escalating the lease amount in respect of site in which notification and allotment at relevant point of time fixing the lease amount when it was offered, it is not open for the authority to escalate the lease amount therefore, the action of the authority is bad in law therefore, the learned counsel submits that, the petitioner is entitled for the relief prayed in this writ petition.

11. The Authority has filed its counter. The substance of the objections filed by the authority is that:--

No doubt pursuant to notification the petitioner has submitted the application. His application was considered under the rules, resolution was passed by the authority in the year 1992 vide Annexure-E as a matter of fact there was no allotment of site in question was made in favour of the petitioner, therefore, the learned counsel appearing for the respondent-BDA Mr. Sampath Anand Shetty submits that, there was no allotment of site in favour of the petitioner therefore, no legal right has been accrued in his favour. Therefore there is no statutory duty cast upon the respondent and this Court should not exercise its power under Article 226 of the Constitution of India to issue writ of mandamus as sought for by the petitioner. Further, it is also stated that BDA is subject to the administrative control of the second respondent-Government u/s 65 of the Act and has got power to give such direction to the authority as in its opinion are necessary which are acceptable for carrying out the purpose for which is established, and this Court need not interfere with the action of the Authority in re-notifying the site in question for grant of lease in favour of the eligible applicants, petitioner having submitted his application for grant of lease of the site in question and on consideration the same has been allotted in his favour vide its resolution referred to above, at this stage it is not open for him to question the authority of the BDA in re-notifying the same for allotment on lease

basis. Further it is contended by the BDA that the petitioner had slept over the matter in not taking action for nearly five years in respect of the previous resolution dated 24-9-1992, of the allotment of site in his favour at an earlier occasion and therefore he is not entitled for the reliefs sought for in this petition at this belated stage. Therefore, the first respondent has prayed for rejection of this petition.

12. After hearing the learned counsel appearing for the parties, perusing the petition averments and statement of objections and documents produced by the parties, this Court proceeds to examine the case on merits in the light of the reliefs sought for by the petitioner.

13. In the Notification at Annexure-B the site in question was notified at SI. No. 9 for LPG Godown. The petitioner applied for the same by registering himself and depositing the requisite amount. Under Annexure-E dated 28-9-1992 the petitioner was informed that the B.D.A. vide Subject No. 306/92 in the meeting held on 24-9-1992 has approved the allotment of a portion of C.A. Site No. 30 in favour of the petitioner and the necessary formalities to be complied with and the amount to be deposited would be intimated in due course. The submission made on behalf of the first respondent is that the Government exercising its power u/s 65 of the Act by order No. HUD 723 MNX 92 dated 24-11-1992 has frozen all the resolutions/decisions taken by the B.D.A. during the period from 1-1-1992 to 24-11-1992 as the Government wanted to review all the decisions taken by the B.D.A. during the said period.

14. The question is, whether the aforesaid Government order is passed by the Government in exercise of its power u/s 65 of the B.D.A. Act? Section 65 of the Act reads thus :--

"65. Government's power to give Directions to the Authority :--

The Government may give, such directions to the Authority as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Authority to comply with such directions".

The aforesaid Government Order states that several irregularities are alleged to have been committed in respect of denotification of land, deletion of land, allotment of sites (inclusive of Stray Sites) from 1-7-1992 till date and in order to have a thorough review of all such cases, it has been decided to stay the decisions/resolutions of the Authority during the aforesaid period. Accordingly, the Government has stayed all the decisions/resolutions of the B.D.A. from 1-7-1992 till date.

15. The aforesaid Government Order has been applied to the resolution by which the site, in question was allotted in favour of the petitioner and the resolution has been stayed. Neither the B.D.A. nor the Government have arrived at a conclusion that the allotment of site in question in favour of the petitioner was irregular. The Government has not independently considered that there was

irregularity in (he allotment of site in favour of the petitioner. In view of the aforesaid Government Order, the B.D.A. sought to justify its action with regard to the renotification of the site in question by publishing the notification at Annexure-L. In paragraph 12 of the counter it is stated that the Authority is perfectly justified in notifying the availability of civic amenity sites including the site involved in this petition by means of notification at Annexure-L. However, in paragraph 10 it is stated thus :--

"When this authority has not proceeded further in pursuance of the resolution being frozen by the Government, the question of allotment of the site or the demanding of lease amount etc., did not arise at all".

If the Authority did not proceed further pursuant to freezing of the resolution, there was no need to re-notify the site. It is not stated that the Government order freezing the resolution was withdrawn by the Government subsequently or the same has not been made applicable to the resolution in question. The stand taken in the counter is nothing hut blowing hot and cold simultaneously.

16. Instead of re-notifying the site in question the Authority should have proceeded to issue allotment letter to the petitioner on the basis of the resolution passed by it. Nowhere it is stated that the allotment made in favour of the petitioner had been cancelled or it was an irregular allotment. That being the position, this Court has to conclude that the allotment of the site in question in favour of the petitioner was legal and valid and it was in accordance with the notification and the Rules.

17. In the matter of allotment of sites, the Authority is required to follow the Rules. When the Authority has plotted the site in question in favour of the petitioner in accordance with the Rules, if it wanted to re-notify the same on the ground that the allotment was irregular or the petitioner was not entitled to the same, it should have first cancelled the resolution and should have stated so in the counter. Except the aforementioned Government Order, no other reason is assigned for re-notifying the site in question under Annexure-L. Therefore, it has to be held that the renotification of the site under Annexure-L is bad in law and the same was not warranted.

18. As regards the Prayer at (a) for a direction to the first respondent to receive the balance lease value of Civic Amenity Site No. 30 situated at Koramangala at the old rate as mentioned in Annexure-B and to execute the necessary deeds is concerned, in the objection filed by the petitioner pursuant to the Notification inviting application for allotment of the site it is not stated that the resolutions dated 3-6-1992 and 24-9-1992 have been given effect to by issuing the allotment letter. The fact remains that the application filed by the petitioner pursuant to the notification at Annexure-B the petitioner applied for the site in question and resolution has been passed to allot the same in favour of the petitioner. On the basis of the said resolution the B.D.A. was required to issue the allotment letter. That has not been done. Since the allotment letter was not

issued to the petitioner, the contention of the B.D.A. that the petitioner did not derive any right over the site in question, is not tenable and the same is misconceived. Therefore, the prayer sought for at (a) by the petitioner has to be granted suitably.

19. Pursuant to the resolution resolving to allot the site in question in favour of the petitioner and in view of the communication at Annexure-E dated 28-9-1992 and having regard to the peculiar facts and circumstances of this case, it is sufficient to direct the first respondent B.D.A. to proceed further in the matter giving effect to the resolution dated 24-4-1992 on Subject No. 306/92.

20. So far as the prayer at (b) sought for by the petitioner to declare the notification at Annexure-L dated 31-5-1997 as null and void is concerned, for the reasons already given and since it has been held to be bad in law and as the first respondent B.D.A. should not have re-notified the site for allotment, the notification at Annexure-L is not legal and valid and the same is null and void.

21. As regards the prayer at (c) sought for by the petitioner to direct the respondents jointly or severally to pay a sum of Rupees Five Lakhs as damages to the petitioner for the hardship, inconvenience and mental agony caused to the petitioner and in view of the increase in the cost of construction, it has to be said that the said prayer is wholly misconceived and cannot be granted for the following reasons :--

(a) The first respondent could not give effect to its resolution in view of the Government order referred to above staying all the resolutions/decisions of the B. D. A. The B. D. A. cannot be held responsible for the delay that has occurred in the matter. As regards the State is concerned, it has made an attempt to safeguard the public proper ties and passed the Government order staying the resolutions/decisions of the B. D. A. The action taken appears to be bona fide and with good intention in public interest. Therefore, neither the B. D. A. nor the State can be made liable to pay the damages claimed by the petitioner.

(b) The amount of Rs. 5.00 lakhs claimed by way of damages is claimed by the petitioner without any basis. The amount is neither quantified nor arise out of any contractual obligation.

(c) The damage has been claimed for the alleged hardship, inconvenience and mental agony caused to the petitioner and on account of increase in the cost of construction of L. P. G. Godown. Such things are not uncommon to the citizens. Day in and day out people are struggling hard to get the sites allotted in their favour and there are several instances in which 7 to 8 attempts have been made and failed in getting the sites allotted. Petitioner alone has not faced these problems. Whatever hardship, inconvenience and mental agony undergone by the petitioner ipso facto will not entitle him to claim damages nor a right is accrued in that regard. The amount of Rs. 5.00 lakhs is speculative and imaginary.

(d) The claim for damages can be neither considered nor granted in the writ proceedings under Article 226 of the Constitution of India. If at all the petitioner is very much fond of claiming the damages, it could not have been claimed in writ proceedings.

(e) Vide Annexure-E dated 28-9-1992 the petitioner was informed that necessary formalities and the amount to be deposited will be intimated in due course. Thereafter, the petitioner made representation on 8-7-1992 to the Government seeking the allotment and the same was forwarded to the Commissioner of the B. D. A. as is evidenced from Annexure-G dated 16-7-1992. Thereafter the petitioner has not taken any steps to get the site allotted in their favour by filing writ petition seeking a direction to implement the resolution passed on Subject No. 306/92. Having kept quiet for a period of nearly 5 years, he has approached this Court only in the year 1997 inter alia with the claim for damages. Under these circumstances, the prayer for damages is wholly misconceived, imaginary, speculative and untenable.

(f) The claim for damages has been made by the petitioner as if the site in question has already been allotted to it and thereby a right has accrued to claim damages for the alleged inconvenience, hardship and mental agony on account of the delay that has occurred in the matter. In fact, there is no allotment letter issued to the petitioner regarding the allotment of the site. Hence, no right is accrued to the petitioner in the matter of allotment. Such being the position, the claim for damages is baseless and untenable.

22. For the aforesaid reasons, this writ petition is partly allowed. The notification at Annexure-L dated 31-5-1997 is held as bad in law, null and void. The first respondent is directed to take necessary steps and give effect to the Resolution dated 24-9-1992 on Subject No. 306/92 in accordance with the Rules. The other prayers of the petitioner are rejected. No costs.