
(2001) 02 KAR CK 0102
In the Karnataka High Court
Case No : Writ Petition No. 16526 of 1996

Marawwa B. Bevinagida

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Citation : (2001) 02 KAR CK 0102

Hon'ble Judges : Hari Nath Tilhari, J.

Bench : Single Bench

Judgement

Hari Nath Tilhari, J.—Heard the learned Counsel for the Petitioner Sri Srinivasa Reddy holding brief for Sri P. Deshraj and Sri Vijaya Kumar, G.P. for Respondent No. 1 and Sri T.P. Rajendra Kumar Sungey for Respondent No. 2 and Sri K. Suman for Respondent No. 3.

2. The Petitioner prayed for the grant of mandamus declaring the action of the Respondent 2 in allotting the house in question in favour of the 3rd Respondent as illegal, arbitrary and violative of Article 14 of the Constitution and further to direct the Respondents 1 and 2 to allot the house in question in favour of the Petitioner by cancelling the allotments made in favour of the 3rd Respondent and to grant such other reliefs, as this Court deems fit.

3. The Petitioner's case is that the Petitioner belongs to Scheduled Caste Community and she is a vegetable vendor. That the Respondent No. 2 formulated a scheme known as "Economically Weaker Section/Low/Middle/ Higher Income Group Housing Scheme and invited applications for allotment of houses under these categories from persons belonging to weaker sections of society. The Petitioner made an application for allotment of a house under Middle Income Group in OPD Extension, II Stage, Bellary, in the month of April, 1994 and that the application was numbered as 14326. According to the Petitioner, she had deposited the Earnest Money Deposit of Rs. 3,000.00 with the Respondent No. 2. According to the Petitioner, the Respondent No. 2 sent a proposal for rectification to the Government and for its approval, for allotment of house-sites under the

said scheme. According to the Petitioner, the 2nd Respondent had proposed the allotment of a house in MIG-I Group in OPD Extension, II Stage, Bellary, in favour of the Petitioner as the only house available for allotment. The Petitioner has annexed the copy of the letter dated 16.6.1994 (Annexure-"C") along with the statement showing the details of allotment of houses to different persons. As per Annexure-C and in particular the list of allotments as regards Bellary Division, the Petitioner's name has been mentioned with application No. 14326. The accommodation mentioned is OPD, II Phase, Bellary, Category MIG-I. It appears after the allotment of house in her favour, as proposed by the Housing Board, as approved by the Chairman on 2.4.1994, was referred to the Government for approval. The Government-Respondent No. 1 instead of approving the allotment in favour of the Petitioner as proposed, it directed allotment of the said house in favour of the 3rd Respondent who had applied only on 12.9.1995 much long after the date of the approval by the Chairman of proposal of allotment made in favour of the Petitioner. Feeling aggrieved therefrom, the Petitioner has come up before this Court.

4. On notice being issued, counter-affidavit has been filed on behalf of Respondent No. 2 and Respondent No. 3. But no counter- affidavit has been filed on behalf of the Respondent No. 1-the State Government.

5. In counter-affidavit filed on behalf of the Respondent No. 2, it has been stated that the allotment of stray sites and houses are governed by the Karnataka Housing Board (Allotment) Regulations 1983. According to the Respondent's case, Regulation 4(1) provides as under:

4(1) The Board may on their own or under directions from Government reserve sites/houses in any area for allotment to any specified class of persons and such class of persons may consist of employees in any office or establishment in the city, town or other places in which the sites are formed/houses are constructed. There shall be reserved in each area where houses/sites are notified, a discretionary quota upto 20% in each category of houses/sites which may be disposed by the Board at its discretion. 6. The Respondent No. 3 has also filed the counter-affidavit. It has been stated in that affidavit that the Respondent No. 3 is an Income Tax Consultant working in Bellary and is a permanent resident of Bellary. According to Respondent No. 3, his case was considered as genuine and bona fide claim and then only the Hon'ble Minister for Housing wrote to Respondents No. 1 and 2 on 4.9.1995 directing that house be allotted in favour of this Respondent. It has nowhere been stated why Petitioner's case for allotment was ignored when her case was recommended by the Board for house being allotted in favour of the Petitioner. On behalf of the Respondent, it had been contended that it is a matter of policy and the Board followed the directions of the Government.

7. From a reading of the order, it appears that only because the Minister recommended the allotment of the accommodation in favour of the Respondent No. 3 and for no other reason, the allotment had been made by the Board in

favour of the Respondent. But, no specific cause has been shown as to why the Petitioner who is a lady, who belongs to Scheduled Caste community and who is a vegetable vendor and also belongs to middle income group, why her case had not been considered and why she had been deprived when she had already deposited the amount of Rs. 3,000.00 and when she had made the application earlier to that of Respondent No. 3. The Respondent No. 3 made application after a long time when the recommendation had been made by the Board for approval of allotment in favour of persons mentioned in Annexure-"C" and list thereto.

8. It is a trait principle of law, as laid down in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , as under:

It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory. 9. In the present case, nothing has been shown nor any valid principle had been brought to my notice on the basis of which the Petitioner, who had applied earlier to the Respondent No. 3, had been deprived of allotment of the site M.I.G. building house site and why preference had been given to a person who had applied later to her. An arbitrary action is negation of rule of law and hit by Article 14.

10. Thus considered in my opinion, in the present case, the authorities acted arbitrarily in the matter of making allotment. Merely because the Minister recommends and directs the allotment to be made which is not a good ground. The Minister should atleast have considered why the person whose application had been made earlier for allotment, in favour of whom the Board had made recommendation, should not have been allotted and preference should be given to a person who had made the application much later to her.

11. In this view of the matter, allotment of site in favour of Respondent No. 3 appears to be in breach of provisions of Article 14 and the principles laid down in *Ramanna Shetty's* case.

12. In view of the above, the allotment of house made in favour of the Respondent No. 3 is illegal, null and void and is hereby quashed. If a person during the pendency of the case puts any construction of the building when the matter is sub-judice, he has to bear the loss himself. The allotment made in

favour of the Respondent No. 3 is hereby quashed and the Board and the Government are directed, while exercising the discretion, to keep the principles quoted above in the matter of grant of allotment of site/house. Let the question of allotment of the house in question be considered afresh in the light of the observations made in this judgment and if Petitioner's case deserves, then only it may be allotted to her.

The writ petition is allowed with costs. Let the direction to the above effect may be issued to the Respondents 1 and 2.