

(1988) 09 KAR CK 0011
In the Karnataka High Court
Case No : W.P. No. 1444/1986

M.B. Sadashiviah and Others

APPELLANT

Vs

City Improvement Trust Board, Mysore and Others

RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

City of Mysore Improvement (Disposal of Corner Sites and Commercial Sites) Rules, 1973 — Rule 3

Citation : (1988) 3 KarLJ 91

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The petitioners are the tax payers of Mysore living in different localities and they have questioned the order of respondent-2 who is the Chairman, City Improvement Trust Board, Mysore, allotting a corner site in favour of respondent-3 at Rs. 400/- per square yard.

2. The material facts are that on the formation of a new road known as "Sri D. Devaraja Urs Road", respondent-1 constructed buildings on either side of the road and the shops therein were auctioned and some of them allotted. According to the petitioners, a site had been reserved by respondent-1 for putting up a shopping complex and later a portion of the site shown as shop No. 125 and measuring 30" x 30" was allotted to respondent-3 by respondent-2. According to the petitioners, it is a commercial site and any allotment of the commercial site by respondent-1 is governed by the City of Mysore Improvement (Disposal of Corner Sites and Commercial Sites) Rules, 1973 ("the Rules" for short). The petitioners place strong reliance on Rule 3 of the Rules which reads thus:

"3. AUCTION OF CORNER SITES AND COMMERCIAL SITES:

(1) Whenever the Board has formed an extension or layout in pursuance of any scheme, the Board may, subject to the general or special orders of Government dispose of any or all the corner sites or commercial sites in such extension/layout by auction in accordance with these rules;

(2) Due publicity shall be given in respect of the Corner Sites or Commercial Sites to be auctioned specifying their location, number, dimensions and the percentage of the highest bid amount to be deposited and such other particulars as the Chairman may consider necessary, by affixing a notice to the notice board of the office of the Board and any other office as the Chairman may decide from time to time and by publication in not less than two daily newspapers published in the City of Mysore in English and Kannada or in other language as the Chairman deems necessary having a wide circulation in the City."

3. The contention of the petitioners is that the site in question can only be auctioned in public after due publicity and the rules do not permit mere allotments as in other instances. The other contention is that the allotment in question has resulted in huge loss of revenues to respondent-1 and if it had been sold by public auction it would have fetched not less than Rs. 2,00,000/-. The remaining contention is that it has been virtually given away for a song inasmuch as the site has been granted for a sum of Rs. 40,000/-. It is also stated that a residential site was allotted to respondent-3 earlier and the allotment in question was only in exchange and that exchange of commercial site for a residential site is impermissible. Lastly it is contended that it is only the Board which could make the allotment and not the Chairman alone without any supporting resolution of the Board.

4. In the statement of objections filed on behalf of respondent-3, it is stated that the rule itself permits allotment of a commercial site if there is any general or special orders of the Government. In this case, according to respondent-3, there are three special orders issued in respect of the very same area by the State Government. In fact, the learned Counsel for respondents-1 and 2, has made available to me for my perusal copies of the said special orders. According to respondent-3, the allotment is in accordance with the Rules and, therefore, beyond challenge. It was next contended by the learned Counsel for respondent-3 that, soon after the allotment of the site, respondent-3 obtained a Commencement Certificate on 25-10-1935 and that the plan submitted by him to the Mysore City Corporation along with the concurrence of the Planning Authority was also sanctioned on 29-10-1985. Thereafter, the petitioner substantially completed the construction and photographs of the construction were produced before the Court. The submission of the learned Counsel for respondent-3 is that the writ petition was filed on 21-1-1986 and the petitioners were sitting on the fence and watching the developments and it is only after the construction was put up they have approached the Court with ulterior motives. Therefore, it was contended that not only the writ petition lacks bona fides but also suffers from a conduct which amounts to acquiescence.

5. The point for consideration is whether the allotment of the site under Annexure-A is contrary to law and, therefore, liable to be quashed.

6. It is beyond dispute that sub-rule (1) of Rule 3 of the Rules contains an exception in the case of allotment of corner sites and commercial sites to be

allotted only by auction. The exception is available where there is a general or special order of the State Government to dispose of any or all the corner sites or commercial sites in their related extension or layout whenever the Board has formed an extension or layout in pursuance of a scheme. The orders passed by the State Government which are produced before this Court empower the allotment made by the C.I.T.B. to respondent-3. There can be no doubt about that on a reading of these orders which are clear and unambiguous. Therefore, applying the said Government Orders to the facts of this case, I am of the opinion that the allotment is within jurisdiction. The learned Counsel for the petitioners had tried to make a distinction between allotment of a site and exchange between a residential site and a commercial site. It was submitted by the learned Counsel for respondents-1 and 2 as well the learned Counsel for respondent-3 that factually the allegation that earlier a residential site was allotted to respondent-3 is incorrect because what was allotted was a site meant for commercial purpose in the commercial locality. There is nothing on record to dispute the fact that the site so allotted to respondent-3 earlier is non-residential and commercial in nature. Even assuming that it was a residential site, the moment it is surrendered to the C.I.T.B., the allotment no longer survives and what comes into picture is only the subsequent allotment as if it was made afresh and what was allotted to respondent-3 is a commercial site in accordance with Rule 3(1) of the Rules.

7. So long as the allotment order is in accordance with the relevant and prescribed rules, the question whether the money realised and the benefit or loss sustained by the Board therein becomes inconsequential. It cannot be forgotten that the nature of the site is such that it could be characterised as a stray site and not a regular site intended for allotment in the usual course. The profit making factor does not assume relevance in an instance of this nature when it has the necessary legal recognition.

8. The conduct of the petitioners who profess good deal of interest in vindicating the general interest of the public does not appear to be bona fide. If these petitioners did have the laudable objective which inspired them to approach this Court with this writ petition of safeguarding public interest and for preventing abuse of power, nothing prevented them from being vigilant and prompt in approaching this Court, the moment they learnt of the allotment in favour of respondent-3 and the moment the construction work was commenced. In the absence of such diligence and promptness, it would not be unfair to draw the presumption that the petitioners did not act bona fide and that their real interest is not in safeguarding public interest and in vindicating public rights. It would be proper to draw the inference that there was unmistakable acquiescence on the part of the petitioners. In an instance of this kind, I am of the opinion that the rule of estoppel negatives the rule of equity. I am confirmed in my opinion that the C.I.T.B. represented by its Chairman has acted with jurisdiction. To separate the Chairman from the Board is opposed to the niceties of law. It is not an individual passing an order in his personal capacity, but it is the Chairman

passing an order in the capacity of Chairman of the C.I.T.B. The argument that the Board did not pass a resolution and that the Chairman has acted independently of the Board is fallacious and if, in fact, the Chairman had acted beyond his jurisdiction, it is a matter to be taken up by the responsible body in the Trust Board itself. At this stage, it was also pointed out by the learned Counsel for respondent-1 and 2 that by virtue of a resolution passed by the Board, the Chairman had already been empowered to make allotment of stray sites only. It is not disputed that the site in question is a stray site.

9. For the reasons stated above, the writ petition is dismissed. But, in the circumstances, there shall be no order as to costs.