

(2013) 12 KAR CK 0293

In the Karnataka High Court

Case No : Writ Petition No. 44328 of 2012 (BDA)

MICO Employees" House Building Co-operative Society
Limited

APPELLANT

Vs

Bangalore Development Authority, Public Library Department,
Indian Water Works Association and Bruhat Bangalore
Mahanagara Palike

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2014) 1 AKR 799 : (2014) ILR (Kar) 2153 : (2014) 1 KCCR 660

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Kesthur N. Chendra Shekher, for the Appellant; G.S. Kannur, for R1, Sri S. Lakshminarayana, AGA for R2, Sri H.N. Shashidhara, for Kesvy and . Co. for R3 and Sri G. Nagarajulu Naidu, for R4, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—The petitioner, a House Building Co-operative Society, registered under the provisions of Karnataka Cooperative Societies Act, 1959, having formed layout of residential sites in the area popularly known as "BTM Layout", filed this writ petition, on 30.10.2012, to hold the allotment of C.A. Site No. 10, situated in MICO II Stage Layout, by the Bangalore Development Authority, in favour of Public Library Department, Government of Karnataka and Indian Water Works Association, i.e., respondent Nos. 2 & 3 respectively and for directing the BDA to take possession by demolishing the Convention Hall built by the 3rd respondent and for granting of consequential reliefs. Material facts of the case are that;

The petitioner executed a deed of relinquishment dated 11.04.2001 in favour of the BDA, in respect of the civic amenity sites in its MICO Layout II Stage at Tavarekere Village, Begur Hobli, Bangalore South Taluk, which includes C.A. Site No. 10. On 17.01.2003, Indian Water Works Association, represented to the

Chief Minister, Government of Karnataka, for allotment of a C.A. site for locating its Office. The Hon"ble Chief Minister having directed the Commissioner of the BDA, to allot a site, a portion of C.A. Site No. 10, BTM Layout II Stage, MICO HBCS I Stage, Bangalore, measuring east-west-36.90 meters, north-south-15.10 meters, in all measuring 557.19 sq. meters was allotted and the possession was delivered on 24.06.2003.

The Chief Librarian, Public Library Department, Government of Karnataka, made an application dated 24.12.2002 to the Commissioner of BDA, seeking allotment of a site in BTM Layout for locating Southern Zone library of City Central Library. The remaining portion of the said C.A. Site No. 10 was allotted on 05.12.2003. Lease amount of Rs. 24,54,229/- was remitted on 02.08.2003. Administrative approval for construction was accorded by the Government on 10.03.2006 by sanctioning Rs. 3,25,000/- for construction. The foundation stone for construction of the library building having been laid on 24.08.2012, the work was taken up by the Public Works Department.

2. On 03.12.2013, Sri Kesthur N. Chendra Shekher, learned advocate for the petitioner, presented a memo, signed by the President of the petitioner Society, giving up the challenge in this petition to the portion of C.A. Site No. 10 made in favour of the 2nd respondent and restricting the challenge to the allotment made in favour of the 3rd respondent. Memo was read and recorded.

3. Sri. Kesthur N. Chendra Shekher vehemently contended that;

(a) when the petitioner society surrendered the civic amenity site, there is a statutory obligation for the BDA to maintain the same as a civic amenity site only and for converting the C.A. site into any other purpose, BDA should have taken steps in accordance with provisions of the Karnataka Town and Country Planning Act, 1961, by giving due publication about the change of use, which was not done.

(b) The site in question, before bifurcation and allotment being made, public notice ought to have been issued and after consideration of the objections, the bifurcation, if any, could have been resorted to, which was not done.

(c) The allotment of C.A. sites being governed by the BDA (Allotment of Civic Amenity Sites) Rules, 1999 (for short "Rules"), without issuance of a notification regarding availability and allotment of the site and without inviting applications from interested persons/organizations, for securing allotment by getting registered, the allotment was illegally made in favour of respondent No. 3 i.e., by giving complete go by to the Rules.

(d) Respondent No. 3 being ineligible for allotment of site in question, the allotment made in its favour is ab initio void.

(e) The 3rd respondent is not making use of the building for the purpose for which the allotment was obtained. The 3rd respondent having constructed a convention hall in the building, is exploiting the property by hiring out to various

programmes and has even let out portions of the building in favour of different tenants and though the BDA is aware of the misuse of the building by the 3rd respondent, on account of collusion, has turned a blind eye. He submitted that the building having been put to commercial exploitation, the BDA should take immediate action for cancellation of the lease and resume possession of the property for being dealt with in accordance with law.

(f) The petitioner was under liquidation from 26.12.2001 till 22.10.2011 and in view of the order of revival passed, an elected Committee having come into existence on 22.10.2011, the petitioner being in need of a C.A. site for the purpose of its activities, such as establishment of cultural center, Indoor Stadium, library etc, submitted representations dated 30.07.2012 and 02.08.2012, bringing to the notice of BDA, the violation of the conditions of the allotment by the 3rd respondent and sought allotment in its favour.

(g) Though the petitioner sought the initiation of appropriate action, there being inaction or only a make believe action, before and after filing of this petition, appropriate direction is required to be issued.

(h) Learned counsel submitted that since the petitioner was under liquidation, it could not challenge the illegal allotment made in favour of respondent No. 3. He sought the condonation of delay in filing of this petition.

4. The 1st respondent filed counter contending that the petition is liable to be dismissed in limine, on the ground of inordinate delay of more than 10 years in questioning the allotment made in favour of respondent No. 3, which is a reputed association, actively engaged in management of water and in fact assisting the Union and State Governments, in their activities with respect to the management of water and the allotment having been made in public interest. It stated that the allotment made in favour of respondent No. 3 is within the power conferred under S. 38-A of the BDA Act, 1976. It further stated that, if there were to be any misuse or violation by the allottee, necessary action would be taken.

5. Respondent No. 3 filed counter and contended that the writ petition is highly belated and is liable to be rejected in limine. It stated that after obtaining approval of the plan, the building was constructed and was inaugurated on 28.03.2004 and having obtained a trade licence from the BBMP, the building is being made use of for conducting International Summits etc. It stated that the building constructed is mainly utilized for achieving its objects and serving the society at large and that it has not rented out the hall or any other portion of the building, on regular rental basis i.e., to exploit commercially. It stated that the premises is being used as regular office and the income received is accounted and audited.

6. Learned advocates appearing for the respondents contended that the writ petition suffers from inordinate delay and the petitioner having no legal right, the writ petition is liable to be rejected in limine. By referring to counters filed and the documents produced along with the counters, they submitted that the

members of the petitioner, who are residing in the same layout, had the knowledge of the allotment, the building construction, its inauguration by the WIPs and the activities being carried therein for more than 10 years. They submitted that the petitioner has no case for condonation of delay on the guise of having been under an order of liquidation.

7. Perused the writ record. A preliminary point raised by the learned advocates for the respondents, with regard to the delay in filing of this writ petition, particularly on account of the building constructed by the respondent No. 3, is required to be decided first.

8. Petitioner surrendered the site in question on 11.04.2001. C.A. Site No. 10 was bifurcated and allotted by the 1st respondent, in favour of the respondents 2 and 3. Allotment in favour of the 3rd respondent was made on 30.04.2003 and lease-cum-sale agreement was executed and registered on 13.06.2003. The possession having been delivered on 28.03.2004, the 3rd respondent obtained approval for construction of building on 27.08.2003 and constructed the building, which was inaugurated on 28.03.2004. The members of the petitioner had the knowledge of the building constructed by the 3rd respondent and the purpose for which it was used for past 10 years. Merely because the petitioner was under liquidation, it cannot maintain the writ petition after lapse of nearly 10 years. Nothing prevented the members of the petitioner, who are the residents in the area wherein the site in question is situated, from questioning the allotment made in favour of the 3rd respondent, which has been making use of the property from 20.03.2004 onwards. There is a delay of about 10 years in questioning the allotment made in favour of the 3rd respondent.

9. Under Article 226 of the Constitution, the power to issue an appropriate writ is discretionary. One of the grounds to refuse relief in writ jurisdiction is unexplained delay and the laches. A writ petitioner should approach the court at the earliest point of time. Inordinate delay and unexplained laches in filing the writ petition is an adequate ground to dismiss the petition.

10. In the case of Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, , the allotment of a plot was made in the year 1995 and a writ petition challenging the said allotment was filed after one year. By that time, the allottee having taken possession of the plot, made sufficient investment for development. In the writ petition, it was found, that without inviting applications and without notifying the availability of plot to the general public, by arbitrary exercise of the power, the allotment had been made. Opposition to the writ petition by the allottee, on multiple grounds, including delay and laches was not accepted and the writ petition was allowed. In the appeal filed by the allottee and while allowing the appeal, Apex Court has held that the delay of the nature being of vital importance, should have been considered by the writ court.

11. In the case of The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others, , a plot admeasuring 1 acre 20 guntas in BTM Layout was allotted. The allotment

price having been deposited, a sale deed was executed by the BDA on 29.06.1985 and the allottee having been put in possession thereof, fenced the property by obtaining licence. In 1988, a writ petition was filed questioning the said alienation on the ground that it is against public policy and thus, illegal and void, having regard to the fact that neither any tender called therefore; nor was any public advertisement for sale of the land, issued. Writ petition having been allowed and the writ appeal filed having been dismissed, the allottee approached the Apex Court for relief and while allowing the appeal and dismissing the writ petition, on the question of delay and laches, it has been held as follows:

25. Furthermore, the writ petition should not have been entertained keeping in view the fact that it was filed about three years after making of the allotment and execution of the deed of sale. The High Court should have dismissed the writ petition on the ground of delay and laches on the part of the first respondent. The Division Bench of the High Court also does not appear to have considered the plea taken by the appellant herein to the effect that the first respondent had been set up by certain interested persons. In a public interest litigation, the court should, when such a plea is raised, determine the same.

12. In the case of Amey Co-op. Housing Society Ltd. Vs. Public Concern for Governance Trust and Others, , the respondent filed a public interest litigation challenging the manner in which certain residential plots in the Navi Mumbai municipal area had been allotted by the City and Industrial Development Corporation, which was an Authority constituted by the State of Maharashtra under the Maharashtra Regional and Town Planning Act, 1966, for development of Navi Mumbai and other townships. The main ground of Challenge was to the allotment and disposal of six plots, to be in violation of the existing regulations which provided for allotment either by public auction or at a fixed price for co-operative housing societies or on individual applications. Allotments made having been found to be illegal, were quashed and direction was issued to stop the construction activities. When the said order was questioned before the Apex Court, while deciding the appeals, it was found that the writ petition had been filed at the stage when the construction on the allotted plots was already underway with the due sanction of the municipal authorities and had been raised upto several floors after incurring heavy expenditure. Finding that, in the writ petition, an alternate relief for re-valuation of the plots and grant of compensation to the Development Authority had been sought, it was held that, instead of forfeiture of the land and the construction, writ court ought to have adopted a more pragmatic approach and granted the alternate relief of compensation. The appeals were allowed with directions.

13. In the case of U.G. Hospitals Pvt. Ltd. Vs. State of Haryana and Others , two hospital plots were offered for allotment. Even though application of respondent No. 5 for plot in Sector-51 for building a hospital was not in prescribed form, allotment was made and respondent No. 5 had constructed and was even running a hospital on the said plot. Appellant, who had also applied for the same

plot, filed writ petition challenging the allotment made to respondent No. 5, nearly 1-1 1/2 years after the allotment. The writ petition having been dismissed on the ground that there was considerable delay in filing the writ petition challenging the allotment, in the appeal filed. Apex Court has held that the writ court was justified in not interfering with the allotment that was made to the 5th respondent, whose application was not in the prescribed form. Though there was irregularity in allotment, there being delay and laches in challenging the same, the beneficiary of irregular allotment having acted to its prejudice in the meantime, an exercise of balancing of equities and moulding the reliefs was adopted.

14. The site in question was leased on 13.06.2003 for a period of 30 years for benefit and use of the site for the construction of "office building". The 3rd respondent has undertaken to abide by the conditions and restrictions imposed under the Rules, as far as they are not inconsistent with the terms of C.A. site lease agreement. The 3rd respondent has undertaken that it shall not violate or infringe any of the terms and conditions mentioned in the agreement and, if there were to be any violation by it, the BDA has reserved to itself the right to resume the property with 30 days" notice to the 3rd respondent and to re-enter the property, free from all encumbrances. The photographs as at Annexures-K to K5, show the building constructed, having also been put to use, other than "office building". 3rd respondent in the affidavit filed on 28.11.2003 has stated that, it having agreed to provide the premises to general public on various dates till the end of January, 2014, has undertaken that the premises will not be utilised for any other purposes from February, 2014. The petitioner in the objections filed to the said affidavit of the 3rd respondent has stated that the 3rd respondent has illegally sublet a portion of the building to a software company by name "Suffix Treet Technologies (P) Ltd." and that the building is also let out to general public for private and family functions. Sri G.S. Kannur submitted that a show cause notice dated 02.12.2013 was issued with regard to the violation of the terms of the lease agreement. He submitted that BDA would take further action in the matter. Submission of the learned counsel is recorded. It is for the BDA to decide as to the course of action to be taken for violation of the terms and conditions of the lease by the 3rd respondent. Be that as it may. Keeping in view the facts and circumstances noticed supra, the 3rd respondent having constructed the building in 2003-04, it is impermissible to ignore the long delay in the matter of challenge to the order of allotment of portion of the civic amenity site in question. Delay defeats equity. Consequently, the writ petition should fail on the preliminary point, as being hit by inordinate delay.

Accordingly writ petition is dismissed without going into the merit of the allotment made in favour of the 3rd respondent, with no order as to costs.