

(2013) 12 KAR CK 0069

In the Karnataka High Court

Case No : Writ Petition No. 23855 of 2012 (BDA)

M/s. Golden Gate Properties Ltd.

APPELLANT

Vs

The State of Karnataka and Commissioner, Bangalore
Development Authority and Golden Blossom Apartment
Owners Association

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0069

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

Bench : Single Bench

Advocate : B.V. Acharya, for Sri Shivaprabhu S. Hiremath, for the Appellant; S. Lakshminarayana, AGA for R1, Sri G.S. Kannur, for R2 and R3 and Sri Chandan T.J., for R4, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—The petitioner is a housing project developer. BDA vide Resolution No. 227/05 dated 25.08.2005, approved "Golden Blossom Group Housing Project" to be developed by the petitioner. Petitioner executed on 25.11.2005, a relinquishment deed in favour of the BDA, in respect of civic amenity areas in the said housing project. The work order in pursuance of the said resolution was issued by the BDA on 15.12.2005. On 25.06.2007, Government of Karnataka approved the Revised Master Plan - 2015 under the Karnataka Town and Country Planning Act, 1961. Petitioner submitted representations to the BDA requesting to handover civic amenity areas formed in "Golden Blossom Group Housing Project". Finding no response, petitioner filed W.P. 12689/2011, to direct the respondents to permit it to develop the civic amenity areas mentioned in the Relinquishment Deed dated 25.11.2005 and to handover the same for being maintained as the park and open area, apart from seeking other directions. The writ petition was disposed of on 13.07.2011, with a direction to the BDA to consider the representation of the petitioner as well as of the Residents' Association, in the context of Regulation 7 of the Revised Master

Plan - 2015 and not under the BDA (Allotment of Civic Amenity Sites) Rules, 1989.

2. The petitioner submitted a representation dated 16.08.2011 and sought compliance of the order dated 13.07.2011 passed in W.P. 12689/2011. BDA issued three allotment letters dated 10.11.2011, in respect of civic amenity site Nos. 1, 2 and 3 vide Annexure-E series and allotted the said three sites for 30 years" lease period and directed the petitioner to deposit the sums shown therein. Finding the said action as being not in conformity with the order dated 13.07.2011 passed in W.P. 12689/2011, petitioner submitted representations dated 21.11.2011 and 02.12.2011 and sought permission to develop the C.A. sites as contemplated in the Regulations and further finalise the mode and manner of handing over of developed civic amenities to the Residents Association. It also sought sanction of building plan.

3. The building plan was sanctioned on 09.02.2012, for health club and gymnasium in C.A. Site Nos. 1 and 2. When the construction work was in progress, Engineering Member of BDA sent a notice dated 20.03.2012 and demanded the petitioner to pay the allotment charges of C.A. sites for health club and gymnasium and till such time, the development plan approved on 15.12.2005 was stayed and the petitioner was instructed not to carry out any construction activity. Though the petitioner submitted a reply dated 14.04.2012, the Engineering Member of BDA having reiterated that there is liability on the part of the petitioner - developer, to pay the allotment charges from the date of allotment or from the date of submission of application for sanction of the building plan and having directed the petitioner to approach the allotment section and get finalized the mode of allotment charges, feeling aggrieved, this writ petition was filed on 11.07.2012.

4. The respondents 2 and 3 filed statement of objections and stated that as per the order dated 13.07.2011 passed in W.P. No. 12689/2011 and the resolution No. 301/11 dated 26.08.2011 of the BDA, the civil amenity site Nos. 1, 2 and 3, measuring 3062.00 sq.mtrs, 383.63 sq.mtrs and 1.32.30 sq.mtrs., respectively, were allotted in favour of the petitioner and allotment letters were issued on 10.11.2011, on 30 years" lease basis and the lease amount at the rate of Rs. 4,384/- per sq. mtr., has been charged and the petitioner was informed to pay Rs. 1,34,23,808.00 for C.A. Site No. 1, Rs. 16,81,834.00 for C.A. Site No. 2 and Rs. 5,80,004.00 for C.A. Site No. 3 within a period of 90 days. They have acknowledged the receipt of the representations, vide Annexures - F and G, from the petitioner. It was stated that the writ petition is bad for non-impleading of necessary party-Flat Owners Association. It has been submitted that in view of non-payment of lease amount, the lease agreement and the possession certificates were not issued and the sanction of plan by the Engineering Section on 09.02.2012 is without ascertaining the fact with regard to execution or otherwise of lease agreement in respect of civic amenity sites. It has been stated that the mode of handing over of the civic amenity sites by the petitioner to the

Apartments owners is required to be decided by the BDA and that the sites vide Annexure-E series were allotted on lease basis under the BDA (Allotment of Civic Amenity Sites) Rules, 1999. It has been further stated that in case the Flat Owners Association is made a party, the case of the petitioner for allotment of civil amenity sites will be considered.

5. On 14.11.2013, the petitioner undertook to implead the "Golden Blossom Apartment Owners" Association", registered under the Karnataka Societies Registration Act, 1960, as respondent No. 4. A memo along with affidavit-cum-undertaking sworn to by Sri. Krishnan K., son of Late M.P. Karunakaran Nair, Director of the petitioner, undertaking to put the proposed respondent No. 4, in possession of the three civic amenity sites as developed for the purpose of maintenance, as required by Regulation 7 of the Zoning Regulations in the RMP-2015 with due intimation to the BDA, was filed.

6. I.A. No. 1/2013 was fled to grant permission to implead the "Golden Blossom Apartment Owners Association", as respondent No. 4. The said application was allowed on 10.12.2013 and the "Golden Blossom Apartment Owners Association" has been impleaded as respondent No. 4. Consequently, the preliminary objection of the respondents 2 and 3, that the writ petition is bad for non-joinder of necessary party i.e., "Golden Blossom Apartments Owners Association", does not survive for consideration.

7. Sri. B.V. Acharya, learned senior counsel, firstly, contended that the allotment intimations issued by the respondent No. 2, vide Annexure-E series and the notices vide Annexures-J and L, issued by the 3rd respondent are illegal and contrary to the findings recorded in the order dated 13.07.2011 passed in W.P. No. 12689/2011. He submitted that instead of allowing development of the civic amenity sites and permitting the petitioner to handover the developed property to the Apartment Owners Association, suo-motu, allotment of the three civic amenity sites, vide Annexure-E series, directing the petitioner to deposit the sums shown therein and the notices of the Engineering Member, vide Annexures J and L issued being arbitrary and illegal, are unsustainable. He contended that the BDA having been directed in the order dated 13.07.2011 passed in W.P. No. 12689/2011 to consider the case of the petitioner in the light of the Regulation-7 of the RMP-2015 and not under 1989 Rules, the allotment intimation of three sites, vide Annexure-E series being ex facie illegal are liable to be quashed. Secondly, the BDA having not challenged the order dated 13.07.2011 passed in W.P. No. 12689/2011 and also the order dated 05.09.2012 passed in W.P. No. 6826/2012, with regard to an identical issue, the impugned action being highly illegal, warrants interference. Thirdly, as per the Regulations, the owner or the developer shall develop the civic amenity sites, which should be handed over to the local residents Association for maintenance and the BDA can decide the mode of handing over. Instead of permitting the petitioner to develop the civic amenity sites and handing over the developed properties to the local residents Association for maintenance, unnecessary obstacle has been caused by issue of the notices,

vide Annexures - J and L, apart from illegal demand of the sums shown in Annexure-E series. He submitted that the petitioner is entitled to develop the civic amenity sites reserved to housing project and enjoy the benefits by the members of the Residents Association, which has been deprived due to improper understanding of the provisions of law and failure of the BDA to act in accordance with law. He submitted that in any view of the matter, the impugned action of the respondents 2 and 3 being arbitrary is unsustainable.

8. Sri G.S. Kannur, learned advocate for the respondents 2 and 3 on the other hand submitted that the 4th respondent was deliberately not impleaded by the petitioner. He submitted that the action of the respondents 2 and 3 being in accordance with law, no interference is warranted.

9. Sri Chandan T.J., learned advocate for the 4th respondent submitted that the petitioner should develop at its cost the civic amenity sites in question and thereafter should handover the same to the 4th respondent for maintenance and that the 4th respondent would abide by the terms and conditions as may be lawfully imposed by the respondents 2 and 3.

10. Perused the writ record. In view of the rival contentions, the point for consideration is, whether Annexures - E, L & J are sustainable?

11. Writ Petition No. 12689/2011 filed by the petitioner was decided on 13.07.2011 and it was held that the Regulations under Revised Master Plan-2015 would be applicable and not the BDA (Allotment of Civic Amenity Sites) Rules 1989. Annexure-E series shows that the allotment has been made by the BDA in terms of the Rules and the petitioner was directed to remit the sums shown therein. The action of the BDA with regard to allotment, on lease basis vide Annexure-E series being in utter violation of the specific findings and directions issued in the order dated 13.07.2011 passed in Writ Petition No. 12689/2011, is arbitrary and illegal. Consequently, the notices of the Engineering Member of the BDA vide Annexures - J and L being without any lawful basis, Annexures - E, J & L cannot be sustained.

12. Identical petitions filed by Sobha Developers Limited and another against the BDA and others, in W.P. Nos. 5445-5455/2012, this Court has quashed one time payment of lease amount and yearly rental or such other charges demanded by the BDA.

13. The Group Housing Project of the petitioner was approved by the BDA on 25.08.2005 and the relinquishment deed in respect of civic amenity areas of housing project was executed by the petitioner in favour of the BDA on 25.11.2005 and the work order relating to the project was issued by the BDA to the petitioner on 15.12.2005. The development work of the housing project having been completed, to develop the civic amenity areas and to handover the same to the local Residents Association i.e., 4th respondent, for the maintenance thereof, approval was sought and the matter was ultimately decided on 13.07.2011 in W.P. No. 12689/2011. In view of the findings recorded in the said

order, the BDA is wholly unjustified in not considering the case of the petitioner in the light of the Regulation-7 of the RMP-2015 and in issuing the allotment intimations vide Annexure-E series under 1989 Rules, which has been specifically held as not applicable. The demand made vide Annexure-E series and the directions issued vide Annexures - J & L being contrary to the directions issued in W.P. No. 12689/2011, have to be necessarily quashed.

14. In view of the relinquishment deed dated 25.11.2005 executed by the petitioner and the BDA having become the absolute owner of the civil amenity areas, should permit the petitioner to develop the civic amenity sites in question, in accordance with law, for handing over the same to the 4th respondent i.e., for maintenance. The petitioner is not entitled to make any profit out of the developed civic amenity areas or collect any sums from the 4th respondent and its members. The 4th respondent should maintain the civic amenity areas, upon being handed over, in terms of the orders as may be passed by the BDA. Since the issue involved in this writ petition is identical to the point involved and decided in W.P. Nos. 5445-5455/2012, the BDA cannot be permitted to take different stand in this writ petition.

In the result, the writ petition is allowed and Annexures - E, J and L are quashed. Civic amenity areas in question shall be developed by the petitioner, at its cost and as per the plan approved on 09.02.2012, vide Annexure - H. Soon after completion of the development of civic amenity areas in question, the petitioner shall handover the same through the BDA, which shall decide the modalities of handing over, to the 4th respondent. However, it is made clear that the BDA shall continue to be the owner of the civic amenity areas in question, which can only be maintained by the 4th respondent.

No costs.