
(2010) 10 KAR CK 0124
In the Karnataka High Court
Case No : Writ Petition No. 6909 of 2009

Ranojirao T.K.

APPELLANT

Vs

Bangalore Development Authority and State of Karnataka

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Bangalore Development Authority (Allotment of Sites) Rules, 1984 — Rule 10 (3)
Karnataka Civil Services (Conduct) Rules, 1966 — Rule 21, 23

Citation : (2010) ILR (Kar) 5144 : (2011) 3 KarLJ 47

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : S.M. Chandrashekar, for the Appellant; Ashwin S. Nalady, Adv for Respondent 1 and Raghavendra G. Gayathri, G.P., for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Petitioner joined the services of the Respondent - Department of Industries and Commerce as a Manager, on 1.7.1982 and is at present a Joint Director of Industries, Bidar. On 23.11.2001, the Petitioner having made an application for allotment of a site in a layout at Tumkur, formed by the Karnataka Housing Board (for short "KHB") in response to a notification, was allotted Site No. 3, HIG. A.M. Palya, Tumkur Extension, Tumkur, measuring 23 mts. x 12 mts. on 22.1.2002, followed by execution of the sale deed dated 6.5.2003 Annexure-"C", conveying the site, for a valuable consideration of Rs. 1,94,656/-. There after wards, on 20.12.2002 the Petitioner applied to the Bangalore Development Authority (for short "BDA") for allotment of a site at Sir. M. Visweswaraiiah Layout, Bangalore, whence, by allotment letter dated 7.4.2003 was allotted Site No. 558, measuring 24 x 15 mts, followed by execution of a sale deed dated 19.06.2004 Annexure-"E" conveying the property for a valuable consideration of Rs. 5,72,400/-. The Respondent - State Government issued a notice dated 25.08.2007 Annexure-"G" proposing to cancel the site on the premise that the Petitioner having secured allotment of a site at a subsidised rate from KHB, was disentitled to allotment of a site by BDA, in terms of the circular

dated 29.10.2002 Annexure-"F". which the Petitioner did not respond. The BDA, by communication dated 19.02.2009 Annexure-"A", cancelled the allotment on the premise of violation of Rule 10(3) of the BDA (Allotment of Sites) Rules, 1984 for short "Allotment Rules of BDA". Hence this writ petition.

2. Petition is opposed by filing Statement of objections of the 1st Respondent - BDA inter alia contending that the sale deed Annexure-"C" of the Karnataka Housing Board conveying the site No. 3, HIG, AM Palya, Tumkur was at a subsidised rate and not the prevailing market value which when suppressed in the application to the BDA for allotment of a site, the Secretary, Department of Commerce and Industry having addressed a letter dated 12.07.2005 to the Petitioner to surrender one of the sites, when not responded, the Government of Karnataka issued a show cause notice dated 28.11.2007 Annexure-"R2", to which too, there was no reply. It is further contended that in terms of the circular dated 29.10.2002 prohibiting a Government servant or a member of his family from owning more than one site in any part of the State of Karnataka, the allotment of site by the BDA, being in contravention of the said circular, was accordingly cancelled. According to the BDA, Petitioner was extended a reasonable opportunity to show cause over the proposal to cancel the site and, therefore, can have no grievance.

3. Petition is also opposed by filing Statement of objections of the 2nd Respondent - State contending that the Petitioner while at Tumkur forwarded a requisition on 11.02.2002 for permission to purchase site bearing HIG No. 3 allotted by the KHB, to which the 2nd Respondent sought clarifications relating to Petitioner's assets, liabilities and savings, by letter dated 3.5.2002 which remained without a response. In the absence of permission sought for, the Petitioner purchased the said site from KHB and thereafter submitted the statement of assets and liabilities for the year 2001-2002 disclosing the acquisition of the said site. As regards the site allotted and purchased from the BDA, it is stated that the Petitioner did not seek prior permission of the competent authority but disclosed the same in the list of assets submitted for the year 2003-04 on 14.02.2005. According to the 2nd Respondent, as the 1st Petitioner is disentitled to own and possess two sites, contrary to the circulars dated 5.11.1989 & 29.10.2002, the Government addressed the letter dated 19.12.2008 to the 1st Respondent - BDA to cancel the site allotted to the Petitioner. In addition, it is stated that the department issued notices dated 26.07.2010 and 31.08.2010 to the Petitioner initiating a Departmental enquiry.

4. Petitioner filed a rejoinder dated 20.09.2010 stating that the allotment of the site by the KHB was not at a subsidised rate and that the conveyance being at the market value, the circular issued by the state is inapplicable. In addition it is stated that the Petitioner had sufficient source of income, from out of the nucleus of the joint family funds as well as his savings to purchase the sites, and that the financial assistance extended by Canara Bank, Bijapur was on securing a mortgage of the site allotted by the BDA and repayment in instalments of Rs.

5,550/- per month, the particulars of which were placed on record as per Rule 23 of the Karnataka Civil Service (Conduct) Rules, 1966. It is lastly contended that though the Petitioner was under no obligation to seek permission of the competent authority while applying for allotment of a site, nevertheless did bring to the notice of the head of the department through proper channel regarding the acquisition of the properties.

5. Having heard the learned Counsel for the parties, perused the pleadings and examined the order impugned, at the threshold, the question is, "whether the communication dated 19.02.2009 Annexure-"A" of the BDA cancelling the allotment of site No. 558 at Sri. M Vishweshwariah Layout, Bangalore, in exercise of jurisdiction under Sub-rule (3) of Rule 10 of the Rules is vitiated on account of violation of principles of natural justice?"

6. Rule 10(3) of the "Allotment of sites by BDA", as it stood on 7.4.2003, the date of allotment, reads thus:

10. Eligibility: No person,--

(1) x x x

(2) x x x

(3) who or any member of whose family owns a site or a house or has been allotted a site or a house by the Bangalore Development Authority or (a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1969 or any other Authority) within the Bangalore Metropolitan Area shall be eligible to apply for allotment of a site.

7. However, this Rule as substituted by notification dated 14.12.2005, reads thus:

(3) who or any dependent member of whose family, owns a site or a house or has been allotted a site or a house by the Bangalore Development Authority or a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) or any such other Authority within the Bangalore Metropolitan Area or has been allotted a site or a house in any part in the State by any other Urban Development Authority or the Karnataka Housing Board or such other Agency of the Government; shall be eligible to apply for allotment of a site.

8. The term "Family" is defined in Rule 2(e) and reads thus:

2. (e). "Family" in relation to a person means such person, the wife or husband as the case may be of such person, and the children, parents, sisters and brothers of such person, and wholly dependent on him;

9. The amended Rule 10(3) having been brought into force w.e.f. 14.12.2005 is inapplicable to the allotment of the site in favour of the Petitioner as on 7.4.2003. Thus under the pre amendment to Rule 10(3), the embargo on an applicant seeking allotment of a site is, he or members of his family ought not to

own a site or house or secured an allotment by the BDA or Cooperative Society within Bangalore Metropolitan Area. In the instant case, there is no material forthcoming as to whether the Petitioner or any member of his family, which is said to be HUF, consisting of brothers and sisters and parents dependent upon him or otherwise and whether those persons own a site or a house allotted by the Bangalore Development Authority or a Co-operative Society within the Bangalore Metropolitan area, having regard to the definition of the term "family" in Rule 2(e).

10. Had the BDA issued a show cause notice in terms of Rule 10(3) as in force on the date of allotment of the site, the Petitioner would have had an opportunity to put forth his defence and that having not been done, the order impugned of the BDA, suffers from the vice of violation of the Rule of "Audi Alterem Partem".

11. Counsel for the Respondents next contend that the Petitioner did neither seek prior permission of the State for raising a loan to purchase a site, as required by Rule 21 nor brought to the knowledge of the prescribed authority over the proposed acquisition of the immovable property as required by Rule 23 of the Karnataka Civil Services Rules, 1966. The action of the State against its employees for non-compliance of Service Rules, cannot constitute to direct the Respondent - BDA to cancel the allotment. The conduct of the Petitioners vis-a-vis the employer - the State is subject matter in the correspondence dated 12.07.2005 of the Secretary, Department of Commerce and the show cause notice dated 28.11.2007 Annexure-"R2", which is yet to attain a finality and on that score too there is no justification for the BDA to cancel the allotment.

12. The contention that the KHB conveyed the site in favour of the Petitioner for a consideration which was at a subsidised rate, cannot be gathered from the covenants in the sale deed Annexure-"C", except that it states Rs. 1,94,656/- is the sital value. The contention of the learned Counsel for the BDA that site value not being the market value and therefore, it must be deemed a subsidised rate is a fantastic plea which finds support neither under the BDA Act, 1976 or the "Allotment Rules of BDA". If truly the KHB conveyed the site under the sale Deed Annexure-"C" at a subsidised rate, the BDA and the State Government ought to have made necessary enquiries from KHB to ascertain whether the Petitioner did secure an allotment of a site at a subsidised rate. In the absence of such an enquiry, the contention being unsubstantiated, cannot be countenanced.

13. The Government circular dated 29.10.2002 Annexure-"F" states that a Government servant or a member of his family when allotted a site or house in any part of the State of Karnataka on or after 18.1.1997 at a subsidised price, shall not be eligible to get a site allotted by the BDA or other authorities. "Subsidised price" is not defined in the circular. In the absence of relevant material constituting substantial legal evidence of the said fact, it is not possible to accept the plea of the Respondents that the sale of the site by the KHB was at a subsidised price and in terms of the circular the Petitioner was ineligible to apply for and obtain allotment of a site at Bangalore from the Respondent -BDA.

14. Be that as it may, what is surprising is that the Petitioner holding a post of authority in the Commerce Department of the State Government, secured allotment of a site from the BDA in the first attempt though by now it is common knowledge that at least four to five attempts are required for consideration of allotment of a site in the General category, under the "Allotment Rules of the BDA". It is not known as to the compelling reason for the Commissioner, and the Board of the BDA to allot the site in undue haste, within five months of the application dated 20.12.2002 of the Petitioner, that too in the first attempt to issue the letter dated 7.4.2003 allotting the site. It is for the BDA to enquire into the said allotment to satisfy itself over the legality in the matter of allotting the said site. In my opinion, the allotment requires to be enquired into not only over the clout that the Petitioner had with the officers of the BDA at that time, but also misuse of the office held by the Petitioner in the Department of Industries and Commerce, since there appears to be something more than what meets the eye.

15. In the result, the writ petition is allowed in part. The cancellation of the site allotted by communication dated 19.02.2009 Annexure-"A" of the BDA is quashed and in the circumstances, there is no necessity to quash the circular Annexure-"F". Liberty is reserved to

(i) the 2nd Respondent - State to conclude the action initiated, if so advised, over the conduct of the Petitioner, in accordance with the Karnataka Civil Service (Conduct) Rules, 1966 and

(ii) the Respondent - BDA to enquire into the allotment of the site at the very first attempt of the Petitioner, and pass orders strictly in accordance with law.