

(2016) 07 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition Nos. 877 and 878 of 2015 (GM-KIADB)

Sambegowda

APPELLANT

Vs

Karnataka Industrial Areas Development Board

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Citation : (2017) 1 KantLJ 154

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Sri Lourdu Mariyappa A, Advocate, for the Petitioner; Sri K. Krishna, Advocate, for the Respondent No. 1; Sri P. Nataraju, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Aravind Kumar, J. - Petitioners are seeking for quashing of order bearing No. KIADB/MYS/4090/1010/2014-15, dated 25-6-2014, Annexure-C, passed by first respondent allotting land bearing Sy. Nos. 122/4 and 122/6 of Hebbal Village, Kasaba Hobli, Mysore Taluk, Mysore measuring 608.00 sq. mtrs. in favour of second respondent and also for a writ of mandamus being issued to first respondent to consider the representation dated 13-8-2014, Annexure-E, where under petitioners have sought for allotment of land in question (land allotted to second respondent) to be allotted to them contending inter alia that it is the only plot which is available for ingress and egress to their property.

2. I have heard the arguments of Sri Lourdu Mariyappa, Sri K. Krishna and Sri P. Nataraju, learned Counsel appearing for petitioner, respondents 1 and 2 respectively. Perused the records.

3. Petitioner has challenged the allotment of land granted by first respondent-KIADB in favour of second respondent contending that land bearing Sy. Nos. 122/4 and 12.2/6 measuring 24 guntas and 16 guntas belong to petitioners 1 and 2 and they are in possession and enjoyment of the same. It is the grievance

of petitioners that second respondent had applied for grant of land with first respondent and a plot bearing No. 428/G in Sy. No. 64 of Hebbal Village, Mysore Taluk, Mysore was allotted and agreement was also executed on 1-3-2013 and later on representation submitted by second respondent to first respondent for allotment of an alternate land and considering said request land in question namely land abutting petitioners' land, has been allotted as per Annexure-C. It is the further grievance of petitioners that second respondent has commenced construction work in the land so allotted by first respondent, which is situated towards southern side of petitioners' land and since said land is the only ingress and egress for their land, petitioners had submitted a representation on 13-7-2010. On account of non-consideration of said representation, one more representation was submitted on 13-8-2014, Annexure-E and after securing information through Right to Information Act, they have obtained the order copy of allotment made in favour of second respondent and on account of non-consideration of their representation, legal notice was also issued on 29-10-2014 - Annexure-G to first respondent, which is duly replied on 25-11-2014 as per Annexure-H on untenable grounds.

4. Petitioners have further contended that construction work carried out by second respondent in the land in question would totally affect the right of petitioners to have ingress and egress to their land and non-consideration of representations of petitioners dated 13-7-2010 and 13-8-2014 by the first respondent has resulted in great injustice meted out to petitioners. On account of inaction on the part of first respondent in not considering their representations, they have sought for issue of writ of mandamus. Petitioners have also relied upon Annexure-J - sketch to buttress their arguments that there is no road available to enter the petitioner's land and as such, they have sought for quashing of allotment made by first respondent in favour of second respondent.

5. On service of notice both the respondents have appeared, filed their statement of objections and first respondent has specifically contended that petitioners had not submitted any representation or application on 13-7-2010 and question of consideration the same does not arise and apart from that representation submitted on 13-8-2014 not being in the prescribed form, allotment of land in question in favour of petitioners did not arise and said land already been allotted to second respondent. Hence, on the grounds urged in the statement of objections first respondent has sought for rejection of writ petitions.

6. The allottee namely, second respondent reiterating the contentions raised by first respondent and also contending that allotment which was made in the first instance was abutting railway lane and on commencement of construction, railway authorities had objected to such construction and as such, an application was submitted to first respondent to allot alternate land and after considering the application of second respondent, land in question has been allotted and there is no illegality in the allotment and as such, quashing of allotment made in favour

of second respondent does not arise and as such, second respondent has prayed for dismissal of writ petitions.

7. Having heard the learned Advocates appearing for the parties and on perusal of the records, it is noticed that 2nd respondent had submitted an application on 9-4-2012 to the 1st respondent seeking allotment of 25 guntas of land in Mysore Industrial Area, Mysore for its proposed project of General Engineering and Fabrication as per Annexure-R1, which was followed by another application dated 27-4-2012. First respondent, in its meeting held on 2-7-2012 resolved to allot 25 guntas of land in Kadakola Industrial Area to 2nd respondent and the requisite amounts being deposited by 2nd respondent, allotment letter dated 9-10-2012 came to be issued allotting Plot No. 77-A, in favour of the 2nd respondent. Subsequently, on 10-10-2012, the 2nd respondent has submitted an application seeking for allotment of alternate land at Hebbala Industrial Area, Mysore contending that 1st respondent-authorities had acquired the land bearing Sy. No. 128/1 measuring 7.35 acres of land belonging to him and his family and as such sought for allotment of land/plot in Hebbala Industrial Area in lieu of the plot allotted at Kadakola Industrial Area. The 1st respondent having considered said representation resolved to allot plot bearing No. 428-G measuring 550 sq. mts. at Hebbal Industrial Area, Mysore to 2nd respondent and accordingly, it was allotted on 21-2-2013, which was in lieu of earlier allotment of Plot No. 77A at Kadakola Industrial Area. On amount being deposited by the 2nd respondent, allotment letter dated 21-2-2013 came to be issued, and Possession Certificate was issued on 28-2-2013 and Lease-cum-Sale Agreement came to be duly executed. The building plan submitted by 2nd respondent was also approved on 24-4-2013 by 1st respondent. However, on commencement of construction in the said" plot allotted to the 2nd respondent, the Officers of the Railway Authority is said to have been preventing him from putting up construction on the premise that Railways are intending to widen the Railway Track and the plot, which is abutting the railway track would also be required for them and on being prevented by the Railway Authorities from putting up construction in the plot bearing No. 428-G allotted to 2nd respondent, 2nd respondent has submitted a representation to 1st respondent to allot alternate land available for allotment in the Hebbal Industrial Area. In that regard an application came to be submitted by 2nd respondent to 1st respondent on 3-10-2013 Annexure-R5. This was followed by several applications filed by the 2nd respondent on 2-12-2013, 17-2-2014 and 24-3-2014 as per Annexure-R6. After considering the said request, 1st respondent-Board on 6-5-2014 resolved to allot alternate plot namely, site in question measuring 608 sq. mts., which is the subject-matter of the present writ petition, which was in lieu of the earlier allotment of Plot No. 428-G. Accordingly, letter of allotment was issued on 7-6-2014 and 2nd respondent was called upon to deposit the requisite amounts and on such deposit being made, possession was delivered on 23-7-2014 and Lease-cum-Sale Agreement was also executed on 11-11-2014 i.e., after the Deed of surrender was executed by 2nd respondent on 25-9-2014 in respect of Plot No. 428-G. On

such allotment being made, 2nd respondent has commenced construction over the plot allotted to him and at that point of time, petitioners herein have submitted an application on 13-8-2014 Annexure-E (Annexure-R8) seeking for allotment of said land namely, allotted to 2nd respondent.

8. Though Sri A. Lourdu Mariyappa, learned Counsel appearing for petitioners would vehemently contend that a representation had already been submitted on 13-7-2010 to the 1st respondent, which was also duly acknowledged by the Central Office of 1st respondent on 25-8-2010, this Court is not inclined to accept the said submissions for reasons more than one. Firstly, neither office copy of the representation dated 13-7-2010 submitted to 1st respondent is produced along with the writ petition nor the acknowledgement said to have been issued by the Central Office of the 1st respondent has been produced. Secondly, the Statement of Objections filed by the 1st respondent-Board would clearly indicate the thatre was no such representation submitted by the petitioners to 1st respondent. At paragraph 8 of the Statement of Objections 1st respondent has emphatically denied the fact of application/representation submitted by the petitioners on 13-7-2010 to 1st respondent. In that view of the matter, burden being on the petitioners to establish the fact of having submitted the said representation and petitioners having failed to prove the said fact, no fault can be laid at the doors of the 1st respondent for having not considered the alleged representation dated 13-7-2010 claimed to have been submitted by petitioners.

9. Insofar as the representation dated 13-8-2014 at Annexure-E (Annexure-R8) said to have been submitted by the petitioners for allotment of the land in question is concerned, it requires to be noticed that said representation according to 1st respondent has not been submitted in the prescribed form. Even otherwise, by the time the said representation came to be submitted, allotment of the plot or land in question had already been made in favour of 2nd respondent as per allotment letter dated 7-6-2014 vide Annexure-R7 and 2nd respondent had also deposited the amount on 21-6-2014 and possession was delivered in favour of the 2nd respondent on 23-7-2014 as such, consideration of the representation dated 13-8-2014, by the 1st respondent would have been only an exercise in futility. It is because of these reasons, 1st respondent has not examined the representation submitted by the petitioners on 13-8-2014 and for these cumulative reasons, no fault can be found with the 1st respondent in not considering the representation of the petitioners on 13-8-2014.

10. Yet another ground, which was raised by Sri A. Lourdu Mariyappa, learned Counsel for the petitioners in these petitions is with regard to the ingress and egress to their property getting restricted on account of plot now allotted to the petitioners and the land belonging to them bearing Sy. No. 121/1 would be land locked, which requires to be considered for the purposes of rejection. In order to ascertain as to whether there is any truth in the said contention raised by the petitioners, this Court had appointed a Commissioner to ascertain the factual

matrix. Report has been submitted by the DDLR on 6-8-2015 enclosing thereto the spot report along with a sketch, which would clearly indicate that for approaching petitioners plot, there is an approach road earmarked and left out by the 2nd respondent, which would be the ingress and egress to the petitioner's property. Though this Court in writ jurisdiction is not required to enter into question of fact, considering the thatre is already a report available on record, same has been looked into and found the that allotment of land in question in favour of the 2nd respondent by the 1st respondent would not act as a deterrent for the petitioners to use their land nor the property would become landlocked or their would be any restriction for using their plot/site/land. In that view of the matter, contentions raised by Sri A. Lourdu Mariyappa cannot be accepted. Hence, following order is passed:

ORDER

Writ petitions are hereby dismissed.

No order as to costs.