

(2015) 12 KAR CK 0190
In the Karnataka High Court
Case No : Writ Appeal No. 100122/2015 (GM-KHB)

Sharada M.

APPELLANT

Vs

The Housing Commissioner, Karnataka Housing Board and
Others

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Karnataka Housing Board Act, 1962 — Section 76

Citation : (2016) 1 KCCR 587

Hon'ble Judges : S. Abdul Nazeer and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : V. Vidya, Advocate, for the Appellant; Sharmila Patil, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—The appellant filed W.P. No. 30914/2008 for a direction to the respondents to execute the sale deed in respect of a site pursuant to the letter of allotment at Annexure A" dated 28.1.2006. According to the appellant, the respondents had invited applications for allotment of sites formed in Tilaknagar, Bellary (Old HP). The advertisement was published on 1.4.2001 and on 23.11.2001. Pursuant to the said advertisement, the appellant submitted her application bearing No. 1106775 for allotment of a site in the month of January, 2006 under MIG-II category.

2. In pursuance of the said application, site bearing No. 17/N, MIG-II in Tilaknagar, Bellary (Old HP) was allotted to the appellant. As per the allotment letter at Annexure A" dated 28.1.2006, she has paid a sum of Rs. 6,050/- on 29.3.2006. She was insisting for completion of the layout to pay the balance consideration. The respondents went on assuring that the layout would be ready and that she could pay the balance of the amount only after the completion of the layout. However, the appellant paid the balance sum of Rs. 1,45,000/- on 17.4.2008 as per Annexure "C. Even then, the respondents have failed to

execute the sale deed.

3. The respondents have filed their statement of objections contending inter alia that the site in question is a stray site left out at the time of allotment of the sites. The layout was developed as far back as in the year 1981 and it is in the heart of the city adjacent to the side of the District Court Complex and is just a furlong away from the bus stand. The application of the appellant was accepted and letter of allotment was issued as per Annexure "A". The appellant has only paid initial deposit of Rs. 6,050/-. The provisional cost of site was Rs. 1,51,050/- and the last date for payment of balance amount was 29.3.2006. Since the appellant did not make payment of the balance of the amount as per the conditions stipulated in the letter of allotment, the respondents cancelled the allotment of the site by order dated 27.9.2006. The respondents have produced a copy of the order of cancellation at Annexure "R1". It is contended that the final payment is made after the cancellation of the allotment of site. Therefore, the amount deposited is kept in suspense account in its office. With these contentions, they have sought for dismissal of the writ petition.

4. Taking note of the cancellation of the site at Annexure "R1", the learned Single Judge has held that the respondents cannot be directed to execute the sale deed pursuant to the letter of allotment at Annexure A". The appellant has called in question the validity of the said order in this appeal.

5. Learned Counsel for the appellant would contend that the appellant has filed rejoinder to the statement of objections contending that if the respondents had cancelled the allotment of the site, the normal course of conduct of any authority would have been to refund the entire amount with an information that the allotment has already been cancelled. No such steps were taken in the instant case. Without taking notice of the rejoinder filed by the appellant, the learned Single Judge has dismissed the writ petition. It is submitted that the respondents be directed to execute the sale deed in favour of the appellant having regard to the payment of the balance of consideration amount.

6. However, learned Counsel for the respondents submitted that the appellant has failed to pay the balance of the amount in terms of the conditions contained in the letter of allotment at Annexure A". Therefore, the allotment of site was cancelled as per Annexure "R1" dated 27.9.2006. The appellant has deposited the balance consideration amount long after the date fixed for payment i.e. 29.3.2006. Therefore, the said amount has been kept in suspense account.

7. Learned Counsel for the respondents have produced the original allotment file. Perusal of the file would indicate that the appellant had filed an application bearing No. 1106775 for allotment of site. The application does not contain the date of its filing it contains the date of the demand draft as 27.1.2006. However, the front page of the application indicates that it was forwarded to the Division on 28.1.2006. Thus, it can be inferred that the application was either presented on 27th or 28th January, 2006. The allotment letter shows that the site was

allotted on the very day on which the application was sent to the Division i.e. on 28.1.2006. However, the proceedings sheet/office note do not contain either the date of receipt of the application or the date of allotment of the site.

8. Perusal of the allotment letter at Annexure "A" shows that the application has been made in response to the notification issued by the respondents dated 1.4.2001 and 23.11.2001. It is un-understandable as to how the application can be made after a passage of nearly five years for allotment of the site. Normally, four to six weeks time is allowed for making an application. Learned Counsel for the respondents submits that the notification dated 23.11.2001 does not even relate to the residential layout in Tilaknagar, Bellary.

9. The appellant has sent a letter to the Executive Engineer, Karnataka Housing Board, Bellary dated 6.2.2009, which reads as under:

"To

Bellary, 6.2.2009.

The Executive Engineer, The Karnataka Housing Board, Bellary.

Respected Sir,

Sub: Regarding delay in remittance of consideration amount and permission to pay interest for the delay period at the rate fixed by K.H.B. authorities.

Reference: Writ Petition No. 30914/2008 (GM-KHB) interim order dated 26.9.08.

Pursuant to the allotment made in respect of site No. 17/N MIG-II, Tilaknagar, Bellary (Old HP), Bellary, has agreed to duly register a sale deed in respect of site referred to above. I the undersigned is ready and willing to pay the consideration interest thereon in view of the delay in remittance of the amount.

In view of this, I undersigned request your kindness to receive the interest amount fixed for the delay and register a due sale deed in favour of me. In which the undersigned would get the above writ petition dismissed as not pressed. Under the circumstances, I request your kindness to demarcate the above referred site and kindly take necessary steps for registering the above mentioned site.

Thanking you Sir,

Yours faithfully,

Sd/- (M. Sarada)

Copy To:

1. Asst. Executive Engineer, K.H.B. Sub-Dn. Bellary."

10. The above letter of the appellant with an unilateral offer to pay interest on delayed payment is ex-facie contrary to general principles of allotment of sites by

any statutory body.

11. However, surprisingly, the aforesaid letter was sent to the learned Advocate for the respondent-Board for his opinion under a covering letter dated 7.2.2009. Learned Advocate has tendered his opinion dated 10.2.2009 stating that the sale deed could be executed subject to the appellant paying interest on the cost of the site value from 29.3.2006 till the date of payment at the rate of 10% per annum. There is absolutely no reference to any of the statutory provisions relating to allotment of the site in his opinion. Nor there is any reference to the nature of the site, the manner of allotment and the effect of cancellation of allotment of the site.

12. In the statement of objections, the respondents have contended that the site in question is a "stray site". There is a well defined separate procedure for allotment of stray sites in the Karnataka Housing Board (Allotment) Regulations, 1983, which has been given a clear go-bye in the instant case.

13. It transpired during the course of hearing that several sites have been allotted in Tilaknagar Layout, Bellary in the year 2006 without inviting applications for allotment of sites and that sale deeds have also been executed. It is also relevant to note here that a news item was published in "Vijaya Karnataka", Kannada daily newspaper dated 10.9.2015 stating that the respondents have executed a sale deed in respect of a portion of the public road in the same layout in favour of a third party. It is clear that all is not well in the Housing Board at Bellary.

14. The Karnataka Housing Board Act, 1962 ("Act" for short) has been enacted to provide for measures to be taken to deal with and satisfy the need of housing accommodation. Karnataka Housing Board (Allotment) Regulations, 1983 have been made under Section 76 of the Act to effectuate the purpose of the Act. It is settled that the Regulations so made have the force of the statute and are deemed to be incorporated as a part of the statute. These Regulations provide for allotment of sites/houses to the general public. Regulation 9-A provides for allotment of stray sites/houses. There cannot be allotment of any site by the Housing Board contrary to these Regulations.

15. The Karnataka Housing Board is one of the custodians of public properties. It is not as free as an individual in selecting the recipients for its largess. It is well established that a public body invested with statutory powers has to take care not to exceed or abuse its powers. It must act within the limits of the authority committed to it. For allotment of the properties, a transparent, and objective criteria/procedure has to be evolved based on reason, fair play and non-arbitrariness. In such action, public interest has to be the prime guiding consideration. In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , the Apex Court has held that in the matter of grant of largesses including award of jobs, contracts, quotas, licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would

violate the law of land.

16. In *Common Cause A Registered Society Vs. Union of India and others*, , the Apex Court has held thus:

"The Government today-in a welfare State-provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases in contracts, quotas and licences etc., Government distributes largesses in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people....."

17. In *Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc.*, , the Apex Court has summarised the cardinal principles of governance, which is as follows:

"35. The expression "public interest" or "probity in governance" cannot be put in a straitjacket. "Public interest" takes into its fold several factors. There cannot be any hard-and-fast rule to determine what is public interest. The circumstances in each case would determine whether Government action was taken in public interest or was taken to uphold probity in governance.

36. The role model of governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base a transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window dressing. The act of governance has to be withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principles of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate."

18. It is a settled legal position that a public servant cannot arrogate to himself the power to act in a manner which is contrary to law. It is high time that the public servants should be held personally responsible for their malafide acts in the discharge of their functions as public servants. The Apex Court in *Common causes case* (supra) has held as under:

"We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such

public servant. No public servant can say "you may set aside an order on the ground of malafide but you cannot hold me personally liable". No public servant can arrogate to himself the power to act in a manner, which is arbitrary."

19. In the instant case, allotment of site in favour of the appellant is contrary to the aforesaid Regulations. Therefore, question of directing the respondents to execute the sale deed does not arise. Learned Single Judge was right in disposing of the writ petition without directing the respondents to execute the sale deed having regard to the cancellation of allotment of the site in question.

20. Having regard to the facts and circumstances of this case, we are also of the view that an enquiry needs to be conducted by the Housing Commissioner, regarding the allotments made in the residential layout in Tilaknagar, Bellary (old HP) to all the allottees. If it is found that the allotments are made contrary to law, action has to be taken for cancellation of such allotments. If the sale deeds have already been executed, appropriate proceedings have to be initiated for cancellation of the sale deeds and to take possession of the sites in accordance with law (See Binny Mill Labour Welfare House building Co-operative Society Limited Vs. D.R. Mruthyunjaya Aradhya, .

21. In the light of the above discussions, we pass the following:

"ORDER

(i) The writ appeal is dismissed and the order of cancellation of site in question at Annexure "R1" dated 27.9.2006 is sustained.

(ii) The first respondent is directed to hold an enquiry and initiate disciplinary/criminal proceedings against the officials, who were responsible for illegal allotment of the site in question in favour of the appellant.

(iii) The first respondent is further directed to verify the allotment of each of the sites in Tilaknagar Layout, Bellary and if the allotments made are found to be illegal, then to take action for cancellation of allotment of sites and if the sale deeds have been executed in respect of such sites, then for cancellation of such sale deeds and to take possession of the sites in accordance with law. Action both disciplinary and criminal should also be initiated against the officials of the Board, who were responsible for allotment of such sites.

iv) Registry is directed to return the original file of the site in question to the learned Counsel for the respondents after retaining photocopy of all the pages contained in the file duly authenticated by the learned Counsel for the respondents.

v) The compliance report of the directions contained in this order shall be filed by the first respondent before this Court within a period of six months from the date of receipt of a copy of this order."

22. In view of the dismissal of the appeal as above, I.A. No. 1/2015 does not survive for consideration. It is accordingly dismissed. No costs.