

(1980) 10 KAR CK 0020
In the Karnataka High Court
Case No : WP 10792/80

Sherly John

APPELLANT

Vs

Bda and Another

RESPONDENT

Date of Decision : 24-10-1980

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 14

Citation : (1981) 1 KarLJ 39

Hon'ble Judges : N. D. Venkatesh, J

Judgement

1. Notices were ordered re. Rule. The learned Counsel for the petitioner and respondents 1 and 2 agreed, to argue the matter on merits. They were accordingly heard.

2. The Bangalore Development Authority (the B.D.A.), the 1st respondent, has formed a layout of residential sites in Rajajinagar area of Bangalore City, and the scheme is known as West of Chord Road, II Stage, The plan of the layout showing therein the formation of sites is at Annexure-X produced along with I.A.I. and application filed by the petitioner seeking permission of the Court to raise additional grounds. It is not in dispute that the petitioner had been allotted site No. 1452 and that site No. 1451 is allotted to the 2nd respondent. The site allotted to the petitioner is marked in red ink at Annexure-X.

3. According to the petitioner, all the sites in that area, as shown at Annexure-X, are of the same dimension each measuring 40 feet north to south and 60 feet east to west. This means each site has a width of 40 feet only facing the road i.e., the 13th main road, It is stated by the petitioner that in the possession certificate issued by the 1st respondent to the 2nd respondent, allotting site No. 1451 on lease-cum-sale basis, a mistake has crept in, in that, instead of mentioning the dimensions 40 feet north to south and 60 feet east to west it is shown therein that that site measures 60 feet north to south and 40 feet east to west. According to the petitioner the certificate of grant issued in her favour allotting site No. 1452 shows the correct measurement. The complaint of the

petitioner is that the 2nd respondent, taking advantage of this mistake that has crept in in the description given in the possession certificate issued to him, had been trying to encroach upon a portion of her site, and has been creating trouble to her and has been preventing her from proceeding with the construction of a building on her site. It appears, she has approached the 1st respondent to recall the possession certificate issued to the 2nd respondent and to rectify the mistake crept therein. Her grievance is that the B.D.A., has not been taking any action at all. It is also stated that both the petitioner and the 2nd respondent have filed suits against each other and they are pending. Her apprehension is that the civil court will proceed, perhaps, on the basis of the possession certificates issued to the parties, and that, in the circumstances, the B.D.A., in the ends of justice has to rectify the mistake referred to above. She states that since it is not taking any action even though repeatedly requested she had filed this petition for a writ of mandamus against the B.D.A., directing it to recall the possession certificate issued to the 2nd respondent concerning site No. 1451 and to rectify the mistake crept therein.

4. The B.D.A., has filed its statement of objections (dated 5-9-1980). On facts it agrees with the petitioner. It has made an unequivocal statement in para-1 of the statement of objections that there has been no site measuring 60 feet facing the road and 40 feet depth-wise. According to the B.D.A. both the sites, 1451 and 1452, which adjoin each other, are of equal dimension. In para-2 it has stated that a clerical mistake has crept in while noting the dimension of the site of 2nd respondent and this mistake requires to be corrected. It denies that it is keeping quiet on the request of the petitioner, but states that it is also proceeding in the matter.

5. The 2nd respondent, in his statement of objections, has denied the averments made by the petitioner. He has stated that the measurement of the site, as shown in the possession certificate pertaining to site No. 1451, is correct and that he was put in possession of the said site of that dimension. It is also stated by him that he had got a plan prepared for construction of a house on the site in question, had got the approval of the BDA to the said plan, had mortgaged the site to the Government to obtain house building advance, and is proceeding with the construction and plans to complete the said structure in accordance with the plan. He denies about the petitioner having been granted any site measuring 40 feet north to south and 60 feet east to west. He refers to the suit for injunction filed by him against the husband of the petitioner and of his having obtained a temporary injunction against him, and the said suit still pending. He also refers to the suit filed by the petitioner and her futile attempt to obtain an ad interim injunction against him in the said suit. According to him the dispute between the parties relates to the respective agreements they have entered into with the BDA, and that that dispute cannot be resolved in writ proceedings, and that, if at all the same can be adjudicated upon in a regular civil suit.

6. Though the petitioner admits that the 2nd respondent has put up a structure,

she is emphatic on the point that the structure now put up does not extend beyond 40 feet north to south in his site. She pleads that a suit is not an efficacious remedy, and that since she has to complete the construction of her building within a particular time as has been agreed to by her with the Government while raising the loan from the Government, she required immediate relief, and in view of this urgency she has taken recourse to the writ jurisdiction of this Court. Counsel appearing for the petitioner argued that the B.D.A., is a statutory authority and it would be its duty to give effect to its own scheme and to prevent any deviation therefrom. He further argued that if, in the process of implementation of that scheme, any mistake is committed in the allotment of sites and, if by that injustice is done to any of the parties, the BDA is bound to take appropriate steps to effectively implement the, scheme so that none, who are allotted sites by it, are put to any disadvantage. The learned counsel argued that if the BDA were to fail in its statutory duty, this Court can compel it to perform the said duty imposed by statute on it.

7. Reference is made above to the stand taken by the BDA in this matter. The BDA is constituted under the Bangalore Development Authority Act, 1976 (the Act). It has replaced the City Improvement Trust Board formed under the City of Bangalore Improvement Act, 1945. The BDA has taken over the duty of completing the contracts entered into by the CITB in accordance, with the plan or schemes that had been formulated by the said Trust Board. Under Section 76 of the Act the rules framed under the City of Bangalore Improvement Act, 1945, providing guide lines in the matter of allotment of sites are continued in force till their supersession by new rules framed under the Act.

8. In the instant case the fact of the formulation of the scheme called the West of Chord Road, II Stage scheme and the authority of the BDA in implementing the said scheme are not denied. Such schemes are prepared as provided under the various provisions contained in Chapter III of the Act. Section 16 of the Act spells out as to what such a scheme prepared by the BDA may contain. That section reads as follows:

"16. Particulars to be provided for in a Development Scheme.-Every development scheme under section 15 - (1) shall, within the limits of the area comprised in the scheme, provide for- (a) the acquisition of any land which, in the opinion of the Authority will be necessary for or affected by the execution of the scheme;

(b) laying and re-laying out all or any land including the construction and reconstruction of buildings and formation and alteration of streets;

(c) drainage, water supply and electricity;

(2) may, within the limits aforesaid, provide for- (a) raising any land which the Authority may consider expedient to raise to facilitate better drainage;

(b) forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area;

(c) the sanitary arrangements required;

(d) establishment or construction of markets and other public requirements or conveniences; and (3) may, within and without the limits aforesaid provide for the construction of houses". Sub-section (3) of section 16, as can be seen, confers power on the BDA to make provision, under such a scheme for the construction of houses. Guide lines in the matter of allotment of sites are provided for in the rules framed under the Act. It is not in dispute that, in the instant case, sites had been distributed or allotted under the City of Bangalore Improvement (Allotment of Sites) Rules, 1972. Rule 3(1) says that whenever the Board has formed an extension or layout in pursuance of any scheme, the Board may, subject to the general or special orders of the Government, offer any or all the sites in such extension or layout for allotment to persons eligible for allotment of sites under these rules. Under Rule (7) the site allotted is deemed to have been leased to the allottee until the lease is determined or the site is conveyed in the name of the allottee in accordance with the rules. Sites are allotted after giving due publicity and inviting applications from the public. Under Rule (8) the application for allotment of sites shall be in the specified form (Form-I). The applicant shall indicate the dimensions of the site required by him in Form-I (see Rule 8(3)). In fact, the first sentence in Form I addressed to the Chairman of the CITB (now BDA) reads like this:

"Sir,

I wish to purchase a building site measuring in ... Extension"

Sites are allotted subject to the conditions stipulated in Rule 17. The allotment, is made under a lease-cum-sale agreement which is to be in Form-II. Rule 17(4) and sub-rule (5) of Rule 17 provides that "the allottee shall comply with the conditions of the agreement executed by him" There are various terms and conditions in that lease-cum-sale agreement (Form-II). I may refer to the 9th condition which reads like this:

"(9) On matters not specifically stipulated in these presents the Lessor/Vendor shall be entitled to give directions to the Lessee Purchaser, which the Lessee/Purchaser shall carry out and default in carrying out such directions will be a breach of conditions of these presents".

9. The object with which the authority is constituted is specified in S. 14 of the Act which reads like this:

"14. Objects of the Authority.-The objects of the Authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of the moveable and immoveable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto"

In implementing the schemes framed by it, it has powers generally to do all things necessary for the purpose of carrying out such a development scheme and also for purposes incidental thereto.

10. The learned Counsel for the 1st respondent has placed before me the papers of the BDA pertaining to this matter. The 2nd respondent was allotted site No. 1451, the dimension of which is 40" x 60". As per Annexure-X referred to above its measurement is given as 40 feet north to south and 60 feet east to west, and in terms of Sq. Yards it is 266.66 sq. yds. The petitioner's case is that while mentioning the dimensions of the site in the possession certificate given to the 2nd respondent, by a mistake, the dimension of the site north to south is shown as 60 feet instead of showing that measurement from east to west. The BDA, agreeing with this, owns its mistake and it says that that mistake has been committed by inadvertence on the part of its officials. No doubt the learned Counsel for the 2nd respondent submitted that no power vests in the BDA to recall any possession certificate already granted or to make changes either in the possession certificate or in the lease deed or sale deed entered into by it with the allottee. As already stated, it is the duty of the BDA to faithfully implement the scheme prepared by it. In the course of doing so if a mistake has crept in in the matter of allotment of a site to an allottee, it has powers to rectify the said mistake so as to correct an error crept in in the implementation of the scheme. As can be seen from Annexure-X all those sites facing the 13th main road measure 40 feet north to south and 60 feet east to west. That, in fact, is the dimension of the site allotted to the 2nd respondent as shown at Annexure-X. The mistake committed by the officials of the BDA in mentioning the measurement of the site north to south i.e., facing the 13th main road as 60 feet was, as admitted by the BDA, is a mistake. That mistake has not only adversely affected the interests of the petitioner, but is also contrary to the scheme prepared by the BDA. It has, in my view, all the powers to rectify this mistake.

11. In *D. Subba Rao & Sons v. N. Lakshman*, WA 2/75 dt. 24/25-10-75, the CITB had allotted, in a lay out, site No. 12 to the 1st respondent. Later it cancelled that allotment made in favour of the 1st respondent and allotted the same to the appellant. The 1st respondent had challenged that order of the CITB cancelling the allotment of site No. 12 to him and allotting the same to the appellant in W.P. No. 1046 of 1972. The learned single Judge had allowed his petition. On appeal preferred by the appellant against the order of the learned, single Judge, the Division Bench, while allowing the appeal, has observed as follows:

"It is also maintained by the learned Counsel appearing for the 1st respondent that there was no power in the Trust Board to cancel the allotment made in favour of the 1st respondent of site No. 12. We have already held that the allotment was made on account of the mistake. As the foundation for allotment was the mistake we are clearly of the opinion that the Trust Board had necessary competence to correct its own mistake". (Para 15).

12. If, in law, this statutory authority, the BDA, has the powers "generally to do

all things necessary" to give effect to its own scheme and "for purposes incidental thereto" as provided in S. 14 of the Act, it is duty bound to take appropriate action, in a case like this, where an allottee of a site complains that he is put to hardship by the officials of the BDA having committed an error in the allotment of an adjoining site to another person and also that that (the said mistake) has resulted in the violation of its own (BDA's) scheme or lay out plan. As observed by the Supreme Court in *K. Ramadas Shenoy v. Chief Officer, Town Municipal Council, Udupi*, (1974) 2 SCC 506, "the Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand the compliance by a local Authority with its duty to observe statutory rights alone." In that case, in fact, there was no complaint of any personal injury as in this case. The case was that by granting licence to the 3rd respondent to put up the picture house for exhibition of cinematographic films for public entertainment, the Municipality had committed violation of a scheme prepared under the Madras Town Planning Act and approved by the Central Ward Town Planning Scheme at Udupi town. The complaint against the Municipality was that it should not have granted licence to the 3rd respondent to use a particular building for exhibition of cinematographic films for public entertainment, and that had resulted in the violation of the scheme referred to above. In this connection the Supreme Court has further observed as follows:

"The scheme here is for the benefit of the public. There is special interest for the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction."

13. In the instant case the submission made on behalf of the BDA is that the complaint of the petitioner made in this regard is under examination and appropriate action will be taken on the same. The petitioner's complaint is that the BDA has simply postponed the issue and, therefore, suitable direction should be given to it.

14. Therefore, for the reasons mentioned above, Rule issued. The writ petition allowed. The Rule issued is made absolute; and the 1st respondent is hereby directed to take all appropriate action that is required to be taken, in the matter to correct the mistake said to have been committed by its officials in mentioning the measurement of the site No. 1451 granted to the 2nd respondent in the possession certificate and other connected papers executed by the parties concerned in this connection. Two months' time is granted to the B.D.A., to comply with this direction.

15. Parties are directed to bear their own costs.