

(2016) 02 KAR CK 0115

In the Karnataka High Court

Case No : Writ Petition No. 110507/2015 (GM-KIADB)

Skytech Technical Training Foundation

APPELLANT

Vs

Karnataka Industrial Area Development Board and Others

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 21, Article 226

Citation : (2016) 02 KAR CK 0115

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Ravivarma Kumar, Senior Counsel for Mahesh Wodeyar, Advocates, for the Appellant; Sharmila M. Patil, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Veerappa, J.—1. The petitioner filed the above writ petition for a writ of mandamus to direct the respondents to allot 5 acres of land to the petitioner in Sy. No. 152, 154 & 155 of Mummigatti Village of Dharwad Taluk and also for a direction to the respondents to consider the representation dated 27.02.2015 vide Annexure-U for allotment of land at Tarihal, Rayapur Gamanagatti and Kelageri Industrial areas.

2. It is the case of the petitioner that the petitioner's society is registered under the provisions of the Karnataka Societies Registration Act, 1960 and it is engaged in imparting training in the field of Tool and Dye making as autonomous organization and imparting technical training in the field of tool and dye making to the students of the area and is possessing necessary technical know-how, infrastructure machinery etc., the AICTE, New Delhi after enquiry and after being satisfied with the infrastructure, faculty and course contents of the petitioner as per its own norms, has granted recognition to the institution and the same was also approved by the Director of Technical Education, Government of Karnataka on 1.6.2009. It is further case of the petitioner that Govt. of Karnataka issued New Industrial Policy, wherein as per the clause 13(i) and (ii) of the said policy

provides for grant of up to 5 acres of Govt. land and other financial aids for establishment of the specialized skill developments institutions suitable for the manufacturing industries and emerging vocations in the service sector like technical training institutions being run by the petitioner. Number of students are increasing every year after launch of Technical training diploma course and other proportionate other infrastructural and other requirements having been required to be increased. Since petitioner institution was in acute need of the proportionate land for running the institution. As such petitioner during the year 2007 submitted an application dated 23.4.2007 to respondent No. 1 along with the necessary documents, project report and initial deposit etc., requesting to allot 3 acres 17 guntas of land belonging to respondent No. 1 in R.S. No. 193 at Kelgeri Village, Dharwad as per Annexures C and D. During the year 2009 the regional officer by letter dated 25/26.3.2009 intimated the petitioner to submit the application through the Dist. Level Clearance Committee to the State Level Clearance Committee and returned the application. Accordingly, the petitioner filed the application before the 1st respondent for allotment of 3 acres 17 guntas of land in R.S. No. 193 of Kelageri Village in Dharwad and deposited initial land cost as per the revised rates as per Annexures-E and F. Since the petitioner did not receive any response, it made fresh application as per Annexure G. In spite of repeated representation made by the petitioner, the respondents have not responded. Again the petitioner filed representation dated 20.07.2009 requesting respondent No. 1 to consider the representation and allot the land as per Annexure-H, without considering the petitioner's application the 2nd respondent recommended the name of one M/s. Chennabasaveshwar Center for Research and Training for establishment of Education and Research Center for allotment of the said land for Technical Training Foundation, which is already functioning till date.

3. Aggrieved by the said allotment dated 28.08.2009 the petitioner filed writ petition before this Court in W.P. No. 16033/2010. This Court by an order dated 29.02.2012 dismissed the petition with liberty to the petitioner to take advantage of the decision taken by the State Level Single Window Clearance Committee in respect of the alternative land that is acquired.

4. Against the said order passed by this Court the petitioner also preferred W.A. No. 30598/2012 (GM-KIADB). A Division Bench of this Court by an order dated 19.03.2013 disposed of the appeal as not pressed and observed that the respondents shall consider the application of the appellant's for alternative site sympathetically in accordance with law.

5. It is the further case of the petitioner that in pursuance of the order passed by this Court by the learned single Judge as well as the Division Bench, he made another representation as per Annexure-L on 10.06.2013 requesting the respondents to allot 3 acres of land at Tarihal Industrial Area out of R.S. Nos. 153, 157 to 160. In response to the said representation the respondents replied vide letter dated 16.08.2013 stating that 3 acres of land is not available at

Tarihal Industrial Area vide Annexure-M. Against the said reply petitioner made another representation dated 21.8.2013 requesting the respondents to allot 3 acres of land at Tarihal Industrial Area and respondent No. 2 sent letter dated 5.10.2013 and stated that there is no land available vide Annexure-P and vide another letter dated 10.10.2013 at Annexure-Q stated that 3 acres of land will be allotted subject to payment of Rs. 61,00,000/- per acre by the petitioner.

6. In response to the said demand made by the respondents, the petitioner made another representation dated 5.11.2013 requesting the respondents to allot 3 acres of land at Tarihal Village in R.S. No. 153, 157 to 160 and also brought to the notice of the respondents that they have been discriminating the petitioner in spite of orders passed by this Court and approval of the said State Level Single Window Clearance Committee (for short "the SLSWCC) in its meeting held on 31.07.2009, in the letter dated 5.11.2013 it is specifically stated by the petitioner that for the last 5 to 6 years even after paying Rs. 3,00,000/- to Rs. 4,00,000/- the respondents are doing injustice without allotting any land and further directed the petitioner to pay Rs. 61,00,000/- per acre which amounts to Rs. 1,83,00,000/-. Therefore it is stated that it is not possible for the petitioner to pay the amount. In response to the said representation the 2nd respondent issued two letters dated 22.11.2013 and 27.11.2013 stating that the land is not available at Rayapur or Tarihal Industrial Area as per Annexures - S and T and finally the petitioner filed another representation dated 27.2.2015 requesting the respondents to allot 5 acres of land at Kelageri Industrial Area at an early date to avoid any legal obligation. It is the further case of the petitioner that respondents have not considered the request of the petitioner as approved by the said SLSWCC and submitted that the land is available for allotment from KIADB in R.S. Nos. 152, 154 and 155 of Mammighatti Village, Dharwad Taluk. To substantiate its contention the petitioner produced RTC entries viz., Annexures-V 1 to V3 to an extent of 16 1/2 acres of land. In spite of the same, the respondents have not considered the representations of the petitioner, nor passed any orders. Therefore, the petitioner is before this Court for the relief as sought for.

7. The respondents filed statement of objections to the writ petition denying all the petition averments made in the writ petition and contended that the lands at Mummigatti Village bearing Sy. Nos. 152, 154 and 155 are part of 507 acres of land which have already been earmarked and included in the area which is proposed to be allotted for the establishment of the Indian Institute of Technology (IIT) at Dharwad. Accordingly intimation was sent by the Addl. Chief Secretary, Government of Karnataka to the Deputy Commissioner, Dharwad dated 8.12.2015 and in turn Deputy Commissioner Dharwad, sent the same to the Development Officer, KIADB dated 11.12.2015 and also contended that the petitioner has not produced any document in support of his contention with regard to up-gradation of existing institutions and the Institution already established and further allotment is required for up-grading the Institution. Therefore, the allotment as sought is with malafide intention to hold the land for

other purposes and contended that the land in Sy. No. 139 at Kelageri was already allotted to M/s. Channabasaveshwar Centre for Research and Training Institute, Dharwad as the said institution had sought allotment through SLSWCC and the said allotment is legal and valid for all legal intents and purposes in accordance with KIAD Act. In response to the representation dated 10.06.2013 by the petitioner, the respondents have already intimated that there is no land available at Tarihal Industrial Area.

8. The respondents further contended that as rightly admitted by the petitioner, the respondents intimated regarding the approval by SLSWCC for allotting 3 acres of land at Gamanagatti Industrial Area at the Board rate. However, the petitioner without depositing the said amount has filed one or the other representation for allotment of sites at different industrial areas not with a view to set up an industry, but for his other business activities and hence petitioner seeking allotment with the Board is totally malafide and the petitioner cannot insist the Board to allot a particular survey number in different industrial area. The allotment of sites by the petitioner is made in accordance with the KIAD Rules and Regulations and in accordance with law. The conduct of the petitioner is only to harass the respondents by filing applications and petitions one after the other. The petitioner does not have any legal right to file the said writ petition. Therefore, respondents sought for dismissal of the petition.

9. I have heard the learned counsel for the parties to the lis.

10. Professor Ravi Varma Kumar, learned Senior Counsel along with Sri Mahesh Wodeyar, learned counsel for the petitioner contended that the action of the respondents in not considering the representation dated 27.2.2015 vide Annexure U is highly arbitrary, illegal and opposed to law. Though there are lands available to an extent of 16 1/2 acres at Mummigatti Village as per Annexures - V.1 to V.3 the respondents have not allotted the land to the petitioner for reasons best known to them and the action of the respondents in not allotting the land is a discrimination between the other applicants and the petitioner who has already deposited initial amount as directed by the respondents. In spite of the same, the respondents have not considered the representation of the petitioner nor passed any order. Therefore, the learned Senior counsel submits that, it is a fit case to issue a writ of mandamus. He sought reliance on the dictum of the Hon'ble Supreme Court in the case of The Comptroller and Auditor General of India, Gian Prakash, New Delhi And Another v. K.S. Jagannathan and Another reported in , AIR 1987 SC 537.

11. Per contra, Smt. Sharmila M. Patil, learned counsel for the respondents reiterated the statement made in the objections and contended that the petitioner has no right to file the writ petition to demand for allotment of land, therefore, she sought to dismiss the writ petition.

12. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record.

13. In view of the rival contentions urged by the learned counsel for the parties, the question that arises for consideration by this Court is:--

"Whether the respondents are justified in not allotting the land as per the representation dated 27.2.2015 in favour of the petitioner?"

14. It is an admitted fact that the petitioner -Institution is engaged in imparting training in the field of Tool and Dye making as autonomous organization and is possessing necessary technical know-how, infrastructure, machinery etc. The AICTE, New Delhi, after enquiry and after being satisfied has granted recognition to the institution and the same is also approved by the Director of Technical Education, Government of Karnataka and it is also not in dispute that the Government of Karnataka issued New Industrial Policy and as per Clause 13(1) and (2) of the said policy provides for 5 acres of land for establishment of the specialized skill developments Institutions suitable for the manufacturing industries and emerging vocations in the service sector like technical training institutions and the petitioner is also one such institution. It is also not in dispute that the petitioner made application as long back as 23.4.2007 along with necessary documents, initial deposit etc. The authorities postponed the same on one or the other pretext and ultimately the petitioner was driven before this Court in W.P. No. 16033/2010. This Court by order dated 29.02.2012 dismissed the writ petition with an observation as follows:--

"8. It is also pointed out by the learned Counsel for the respondent No. 4, that the petitioner had been intimated by the State Level Single Window Clearance Committee, that its project proposal has been considered on 25.6.2011 and has been approved for the allotment of 3 acres of land at Gamanagatti Industrial Area, Dharwad District. This decision taken is produced at Annexure-R-2. Therefore, it will be open to the petitioner to take advantage of the decision taken by the State Level Single Window Clearance Committee in respect of the alternative land that is acquired."

15. The said order was confirmed by the Division Bench in writ appeal in W.A. No. 30598/2012 which came to be disposed of on 19.3.2013 and specifically observed as under:--

"Writ appeal is disposed of as not pressed. We hope and trust that the respondents shall deal with the appellant's application for seeking alternative site sympathetically and as expeditiously as possible in accordance with law."

16. The observations made by the learned Single Judge by this Court with regard to the alternative land i.e., acquired for allotment is confirmed by the Division Bench of this Court. Admittedly the petitioner made several applications/representations for allotment of alternative land and the final representation is made as per Annexure U dated 27.2.2015 and specifically stated that

"(1) It is learnt that 28 acres of land at Kelageri out of R.S. No. 116 to 119 has been resumed by KIADB.

(2) We are struggling since 2007 for allotment of 3 1/2 acres of land for which a sum of Rs. 3,61,000/- has been deposited before the KIADB.

(3) Due to non-allotment of required land we are unable to implement our proposed project."

Hence requests for grant of 5 acres of land at Kelageri Industrial Area out of R.S. Nos. 116 to 119 at an early date to avoid legal complications.

17. It is also not in dispute that in the entire statement of objections they have not denied the fact that lands are available either at Tarihal, Rayapur, Gamanagatti, Kelageri Villages for allotment.

18. It is specifically urged by the learned Senior Counsel for the petitioner that there are several allotments made in favour of several persons, subsequent to the application filed by the petitioner i.e., 23.4.2007 but what is the extent of land allotted and what is the amount fixed per acre is not forthcoming in the statement of objections.

19. It is also not in dispute that after considering the arguments of both the counsel, this Court by an order dated 9.2.2016 specifically recorded that as per Annexures-V.1, V.2 and V.3 the KIADB is still holding 16 1/2 acres of land and there is no impediment to allot 5 acres to petitioner's Institution. It also brought to the notice of the Court that KIADB allotted the lands to other applicants, who had filed applications subsequent to 23.4.2007 on which date the petitioner filed an application and recently KIADB has allotted 200 acres of land to the Astarc Infra Developers in Dharwad. Admittedly in the statement of objections the respondents have not whispered anything about the availability of the land as per Annexures-V1 to V3, except the statement that the respondents propose to allot the land to IIT on 8.12.2015, 11.12.2015 i.e., after writ petition filed by the petitioner on 28.9.2015, it clearly indicates that the respondents are discriminating between the applicants who filed their application in response to the New Industrial policy made by the State Government, the yardstick adopted by the respondents should be uniform for allotment of land and also in fixing the rates per acre.

20. It is not the case of the respondents that there are no lands available for which the petitioner has made application in respect of the villages for allotment and it is not the case of the respondents that they have not allotted any lands or any area to any persons subsequent to the application for allotment filed by the petitioner. It is also not the case of the respondents that they have allotted the land to others at the same rate of Rs. 61,00,000/- per acre.

21. In the present case, the material on record clearly indicates that the procedure adopted by the respondents is discriminatory, arbitrary and in violation of Articles 14 and 21 of the Constitution of India. Therefore, it is a fit case to issue a writ of mandamus directing the respondents to consider the representation of the petitioner for allotment of 5 acres of land as prayed for, in

the present writ petition. The Hon'ble Supreme Court in the case of The Comptroller and Auditor General of India, Gian Prakash, New Delhi and Another v. K.S. Jagannathan and Another reported in , AIR 1987 SC 537 held as under:--

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

22. In view of the admitted facts stated above and the law declared by the Hon'ble Supreme Court, it is a fit case to issue a writ of mandamus. Accordingly the writ petition is allowed. A writ in the nature of mandamus is issued to the respondents to take necessary steps to consider the representation of the petitioner dated 27.2.2015 for allotment of 5 acres of land in favour of the petitioner in R.S. No. 152, 154, 155 of Mammighatti Village or the lands available at Tarihal, Raipur, Gamanagatti, Kelageri Industrial Area and pass appropriate orders in accordance with law within a period six weeks from the date of receipt of a copy of this order.