

(2011) 12 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No. 33422 of 2011 (BDA)

Sri Seetharam Iyengar

APPELLANT

Vs

The Commissioner of Bengalooru Development Authority
(BDA) Kumar Park West: Extension. T Chcwdaiah Road,
Bengalooru-560020

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Citation : (2011) 12 KAR CK 0033

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : M.C. Veerabhadraiah, for the Appellant; Poornima N. Advocate, for the Respondent

Judgement

Ashok B. Hinchigeri

1. The petitioner has sought a writ in the nature of mandamus to the respondent to allot alternative site.

2. The facts of the case in brief are that the City Improvement Trust Board (CITB for short) respondent's predecessor, allotted site bearing No. 194, measuring 50 ft.x 30 ft. at Gokula 1st Stage. 1st Phase, Bangalore in 1968. The lease-cum-sale agreement, was executed on 27.11.1968. The petitioner found that one Rangaswamy was in occupation of the site. Thereafter the petitioner has been representing to the respondent to allot him an alternative site. The representations in this regard dated 18.02.1976, 26.07.1980, 24.10.1983, 26.02.2002 and 23.11.2010 are produced as Annexures K. M. O. Q & S. respectively. As none of the representations evoked any response from the respondent, this petition is filed.

3. Sri Veerabhadraiah, the learned counsel for the petitioner submits that the respondent did not give the possession to the petitioner despite the persistent requests made by the petitioner. He submits that CITB had passed a resolution in

its meeting held on 02.05.1973 for giving the alternative sites to the allottees wherever the constructions have already come up on the allotted site by the previous owners. He submits that one Padma, a similarly placed allottee was given the alternative site in 1988.

4. Per contra, Ms. Poornima, the learned counsel for the respondent submits that the petitioner has not complied with condition Nos.3 and 10 of the lease-cum-sale agreement and is therefore not entitled to any relief. The said conditions read as follows:

3. The lessee/ purchaser shall construct a building in the property as per plans, designs and conditions to be approved by the lessor/vendor and in conformity with the provisions of the City of Bangalore Municipal Corporation Act, 1949 and the bye-taws made thereunder within two year's from the date of this agreement :

Provided that where the lessor/vendor for sufficient reasons extends in any particular case the time for construction of such building, the lessee /purchaser shall construct the building within such extended period.

10. In the event of the lessee/purchaser committing default in the payment of rent or committing breach of any of the conditions of this agreement: or the provisions of the City of Bangalore Improvement (Allotment of Sites) Rules, 1964, the lessor /vendor may determine the tenancy at any time after giving the lessee/purchaser fifteen days notice ending with the month of the tenancy, and take possession of the property. The lessor/ vendor may also forfeit twelve and a half per cent of the amount treated as security deposit under Clause I of these presents.

5. She also takes exception to the petitioner approaching this Court belatedly. She brings to my notice that the petitioner has approached this Court after 43 years of the allotment.

6. This is a case in which much can be said against both the parties. The petitioner has chosen to approach this Court after 43 years of the allotment. My perusal of the memorandum of the writ petition reveals that no explanation whatsoever is offered for the inordinate delay on the part of the petitioner in approaching this Court. For the reasons best known to the petitioner, the petitioner has not challenged the order/agreement/sale deed made by the respondent in favour of Rangaswamy in respect of the site in question.

7. The condition No. 3 is incapable of being complied with if the possession itself is not made over by the respondent to the petitioner. Even assuming that the petitioner has violated the terms and conditions of the allotment, the respondent Ought to have rescinded the agreement and effected forfeiture. For the reasons best known to the respondent, it has not been done.

8. Thus, this being a case of contributory neglectfulness on the part of both the parties, there cannot be any blanket direction to the respondent to give

alternative site to the petitioner. The respondent is directed to consider the petitioner's request for the allotment of alternative site in accordance with law and on such terms that the respondent deems fit and taking into account the precedents in similar cases. The respondent shall take a decision in the matter within three months from the date of the issuance of the certified copy of today's order.

9. This petition is accordingly disposed of. No order as to costs.