

(2011) 05 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 31317 of 2009 (BDA)

Sri T.N. Narayan Gowda

APPELLANT

Vs

The Principal Secretary, Urban Development Department and
Another.

RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Citation : (2011) ILR (Kar) 2597

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Omkaresha, for the Appellant; R.B. Sathyanarayana Singh, HCGP for R-1 and Smt. A.D. Vijaya, Advocate for R-2, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J

1. The petitioner contends that the State Government had directed the 2nd respondent as per Annexure-A for Allotment of a residential stray site measuring 30 x 40 ft under the "G" category as per the circular No. UDD 129 MNJ 97 dated 6.8.1997. Since the 2nd respondent did not allot site, the petitioner has filed this Writ Petition for a mandamus directing the 2nd respondent to allot a residential stray site in terms of the directions contained in Annexure-A dated 3.10.2007.

2. I have heard the Learned Counsel for the parties.

3. It is well established that no one can ask for a mandamus without a legal right. The applicant must show that he has a judicially enforceable right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. A mandamus cannot be issued to direct an authority to do a thing, which it has no legal power to do Mani Subrat Jain and Others Vs. State of Haryana and Others, and Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, .

4. This Court in case of Sri K. Raju Vs. Bangalore Development Authority, has declared that the State Government has no power or authority under the provisions of the Bangalore Development Act, 1976 and the Rules made thereunder to direct the BDA to allot "G" category sites to any person or persons under the aforesaid circular. The petitioner is admittedly a civil servant. He is not a person in public life. Therefore, question of directing the BDA to allot the site to the petitioner as per the direction contained in Annexure-A does not arise. It is well settled that every decision of the Supreme Court declaring the law is retrospective unless it is expressly or by necessary implication restricted to prospective operation. The above principles would apply not only to the decisions of the Supreme Court but binding decisions of the respective High Courts. Brindavan Roller Flour Mills Pvt. Ltd. Vs. Joint Commissioner of Commercial Taxes, confirmed by the Division Bench in Laxminarayan Flour Mills and Another Vs. Assistant Commissioner of Commercial Taxes and Others, Thus, the decision of this Court in K. Raju's Case (SUPRA) relates back to the date of circular i.e., 6.8.1997. In other words, the Government had no power or Authority to allot "G" category sites under the circular referred to above from 6.8.1997. Therefore, this Court cannot issue a mandamus directing the BDA to implement the direction of the State Government contained in Annexure-A. The BDA cannot allot the sites or execute sale deeds to any person/persons in respect of G" category sites even though the direction by the State Government is earlier to the date of decision in K. Raju's Case (Supra). Therefore, the petitioner cannot seek to enforce the direction contained in Annexure-A, though the direction is earlier to the date of declaration of law in K. Raju's Case. There is no merit in this Writ Petition. It is accordingly dismissed. No costs

5. Registry is directed to send a copy of this order to the Law Officer of the BDA forthwith, who shall place a copy of the Order before the Commissioner and the Secretary of the BDA.