
(1989) 02 KAR CK 0008
In the Karnataka High Court
Case No : W.P. No. 6115 of 1988

Tharamandalpet House Building Co Operative Society Ltd.,	APPELLANT
Vs	
The Bangalore Development Authority and Others	RESPONDENT

Date of Decision : 25-02-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 2 KarLJ 1

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The material facts of the case are as follows:

The petitioner is a Co-operative Society, registered under the Karnataka Co-operative Societies Act, 1959. The object of the Society is to acquire lands, have the converted, from lay-outs and then proceed to distribute the sites to its members. The society had purchased lands measuring 15 guntas in Sy.No. 68 and 4 acres and 11 guntas in sy.No. 69 of Sarakki village, Uttarahally Hobli, Bangalore South Taluk. At the time of purchase, the lands were agricultural and the vendors were B. Somashekar and Eeramma of Bangalore City. The purchase was under the sale deed registered on 29.5.1963. Thereafter, the petitioner applied for conversion of the lands for non-agricultural purpose and by order dated 30.5.1964 sanction was accorded subject to the payment of a sum of Rs. 8,202-60 paise being the conversion charges. On payment of the said amount, the Tahsildar, Bangalore South Taluk issued a conversion certificate on 18.2.1965. On 30.5.1974 the City Improvement Trust Board, Bangalore approved and sanctioned the formation of private layout in Sy. Nos. 68 and 69 of Sarakki village, Bangalore South Taluk for residential purpose only in response to the application of the petitioner dated 9.10.1973. In pursuance of the sanction, the petitioner deposited a sum of Rs. 12,000/- being the supervision charges and requested the City Improvement Trust Board to facilitate the petitioner to form the layout by providing water supply, underground drainage work, electricity supply etc., by its letter dated 3.7.1974. Thereupon, the City Improvement Trust Board sent an abstract of the calculation for providing water facilities,

underground drainage, installation of street lights and other developmental activity for provision of civic amenities.

2. On 13.9.1978 the 1st respondent directed the petitioner to deposit layout charges in respect of Sy.Nos. 68 and 69 and the petitioner did deposit a sum of Rs. 70,000/- on 4.8.1978, a sum of Rs. 5,000/- on 14.11.1978 and another sum of Rs. 10,800/- on 27.12.1978 by demand drafts. Thereafter, the Executive Engineer, South Division, Bangalore Development Authority, which took over from the erstwhile City Improvement Trust Board, by a letter dated Nil informed the petitioner that the request of the petitioner for waiving of interest of Rs. 42,947 00 on account of belated payment of layout charges was rejected and therefore, the petitioner was called upon to pay the said amount of Rs. 42,947/-. The petitioner also was warned that failure to make good the amount would entail withdrawal of the permission to form the proposed layout. The petitioner requested the respondents to consider reduction of the rate of interest and there was a positive response from the 1st respondent, who directed the petitioner to execute a deed of relinquishment giving up certain portions of the land reserved for drainage, roads, other amenities etc., so as to be vested in the Board of the Bangalore Development Authority. The deed of relinquishment was executed on 13.7.1982, and thereafter, the 1st respondent demanded from the petitioner a deposit of a sum of Rs. 7,534.00 towards what is known as "penal interest". According to the petitioner, this amount also was paid. Having paid the amount, the petitioner asked for release of the sites in its letter dated 23.2.1982. The 1st respondent by letter dated 6.5.1983 informed the petitioner that an order has been passed releasing 40 sites in favour of the society and called upon the petitioner to furnish a statement of sites, dimensions and boundaries, the particulars of the allottees etc. On 4.10.1983, the petitioner furnished in writing all the information required by the 1st respondent. Significantly enough, on 21.3.1983 the Executive Engineer, South Division, Bangalore Development Authority, Bangalore intimated the petitioner in his letter that the B.D.A. has approved the layout plan in Sy.Nos. 68 and 69 of Sarakki village and further directed the Bangalore Water Supply and Sewerage Board and Karnataka Electricity Board, Bangalore to send estimation for providing water and underground drainage facilities as well as street lighting by enclosing two sets of plan.

3. On 19.4.1985 the 1st respondent called upon the petitioner to deposit another sum of Rs. 56,641-00 stated to be the balance due to the B.D.A. under orders of the Commissioner dated 15.2.1984. On 4.5.1985 the petitioner informed B.D.A. that no amount is owed by the petitioner to B.D.A., since all payments had already been made. The grievance of the petitioner is that despite fulfilment of all the demands of the 1st respondent and legal formalities, no steps have been taken by the respondents to release the sites to the petitioner society, which is charged with the responsibility of distribution of the sites to its members. It is also stated that the Special Officer has been appointed on 29.10.1985 to look after the affairs of the petitioner society and management vested in him until

1988. Further grievance of the petitioner is that no action is taken by the Special Officer to pursue the matter and the matter has remained static as a result of inaction. In these circumstances, the petitioner was constrained to approach this Court for legal remedy.

4. The petitioner has sought a mandamus directing the respondents to hand over possession of the sites and the possession certificates forthwith to the petitioner-society.

5. The question which arises for consideration is:

Whether in the facts and circumstances of the case, the petitioner is entitled to a mandamus directing the respondents to deliver possession of the sites in question along with the possession certificates?

6. Statement of objections was filed by the respondents and the high lights may be summed up as follows:

The allegation of fact made by the Bangalore Development Authority is that the B.D.A. has not yet approved the layout plan on account of alleged failure of petitioner to deposit what is stated to be the balance amount due to B.D.A. in a sum of Rs. 3,10,996/-, and therefore, the petitioner is not entitled to the relief sought.

7. Secondly, the allegation of fact is that the respondent B.D.A. demanded on 25.2.1975 payment of the sum of Rs. 97,800/- and again on 16.8.1985 another sum of Rs. 4,16,000/ whereas the petitioner society paid only a sum of Rs. 1,55,335/- According to the respondents, out of the sum of Rs. 4,16,000 stated to be due to B.D.A. as on 16.8.1985, the petitioner had paid only a sum of Rs. 1,05,334/- and the balance of Rs. 3,10,996/- remains unpaid and it is on account of default in payment by the petitioner that the respondents have not approved the plan of the petitioner society for formation of the layout.

8. Thirdly, it is alleged that the petitioner did not approach the 3rd respondent to find out the actual amount due to be paid to the respondents nor did it approach the 2nd respondent for extension of time for payment, and that the petitioner has approached this Court without availing the alternative remedy provided under Section 63 of the B.D.A. Act.

9. In order to verify the allegations of fact made by the respondents, I called upon the learned Counsel for the respondents to make available the original records and the records were placed in my hands. After scanning through the original records, I found no evidence of any correspondence or ledger to substantiate the allegation of fact made by the respondents that a demand was made on 25.2.1975 regarding payment of a sum of Rs. 97,800/- nor of the demand for payment of Rs. 4,16,000/- on 16.8.1985. On being confronted with the records, the learned Counsel for the respondents was unable to point out or produce any documents to show that such demand was made or served on the petitioner-society. At any rate, there is no document forthcoming in the records

to support these allegations of fact made by the respondent. The learned Counsel for the petitioner categorically denied that the petitioner has received such orders. In fact when assertions are made in the nature of allegation of fact, particularly in the matter of demand and non-payment of arrears alleged to be due to the respondents, and more so when the sums involved are heavy, it is natural to expect that such allegations should be supported by documentary evidence. However, the learned Counsel for the respondents pointed out that in the original records there is a letter dated 21.7.1975 making out a demand for payment of Rs. 97,800/- by the petitioner. But, there is nothing on record to show that such a demand was made on the petitioner and that such a demand notice was served on the petitioner. It is manifestly clear from the letter addressed to the petitioner dated 19.4.1985 by the Assistant Executive Engineer, No. 2 (South) Sub Division, B.D.A. Bangalore-20 that what was ultimately demanded on 19.4.1985 from the petitioner, was payment of balance of Rs. 56641-00 only. It is convenient to reproduce an excerpt from the said letter and the same reads as follows:

"With reference to the above, you are hereby directed to pay a balance amount of Rs. 56641-00 towards arrears of your society as per the orders of the Commissioner of the authority dated 15.2.84."

In spite of repeated grant of time, the respondents were unable to produce any correspondence or documents to show that after receipt of the reply from the petitioner dated 4.5.1985 (Annexure-0) that any demand was made on the petitioner for payment of alleged arrears. It is also significant to note that in the letter dated 4.5.85 addressed by the petitioner to the Commissioner, B.D.A., Bangalore in the concluding portion, the petitioner has made the following prayers:

"We therefore request you kindly to waive off the interest at an early date and request you kindly release i) 40 Sites out of 100 sites;

ii) Transfer the Fund to B.W.S. & S.B. towards the water supply and sanitary duly countersign the estimates.

Further in case if any escalation charges to be paid, we hereby undertake to pay in future."

This letter is signed by the secretary of the petitioner society. Thereafter, according to the petitioner, there was no further intimation or communication from the respondents. When I was examining the records produced by the learned Counsel for the B.D.A., I saw a note prepared by Assistant Engineer, B.D.A., Bangalore which shows the following particulars:

"The amount due from the petitioner is shown as Rs. 43,051/- and penal interest is calculated at the rate of 18% is shown as Rs. 21,124/- and the total amount due is shown as Rs. 64,175/- and deduction has been given in a sum of Rs. 7,534/-, ultimately the balance due is shown as 56,641/-.

10. The reasonable probability in the circumstances of the case would be that it is on the basis of this figure arrived at by the Assistant Executive Engineer, B.D.A., Bangalore South Taluk that a notice had been served on the petitioner by the respondents in the letter dated 19.4.85 demanding payment of arrears of Rs. 56,641-00 and this letter was replied to by the petitioner as already stated, by his letter dated 4.5.1985. Thereafter, nothing has transpired.

11. It is in this predicament, the petitioner has approached this Court for relief. It is extremely difficult for me to rely upon the allegations of fact which are not substantiated by any documentary evidence, though found in the statement of objections filed by the respondents in this case. The maximum that I could assume in the circumstances of the case is that there was a demand for payment of Rs. 56,641/- from the respondents on the petitioner stated to be arrears due from the petitioner and there was a reply denying the existence of any arrears and coupled with a request for release of 40 sites assuring payment if there are any escalation charges to be paid. Unfortunately, there has been total inaction on the part of the respondents leaving the petitioner stranded and desperate. The case has become a historical relic ever since 9.10.1973 when the petitioner made an application for permission for formation of layout in Sy. Nos. 68 & 69 of Sarakki Village, Bangalore South Taluk. Permission was granted on 30.5.1974 and between 1974 and 1989 is a painfully long period during which developmental activities came to a stand-still without settling the controversy in issue, despite the earnest endeavour of the petitioner, who cannot be accused of not having made diligent efforts to solve the tangle. In the circumstances, it has to be assumed that the problem eluded solution not on account of lethargy or want of diligence on the part of the petitioner, but on account of intransigence and administrative anaemia on the part of the respondents. What is of concern is the way a human problem relating to accommodation is treated in so casual a manner as if the B.D.A. is not intended to promote developmental activities, notwithstanding a special enactment called B.D.A. Act, 1976. Private layouts no doubt could be formed by conforming requirements of law, but the B.D.A. is duty-bound to ensure that all the rules and regulations for grant of permission to form a private layout are promptly complied with. The human problem will get aggravated if timely action is not taken in satisfying the requirements of law. What is objectionable in the instant case is the inordinate delay in settling a very simple issue and the issue being alleged non-payment of certain amounts due to the B.D.A. and nothing else. A faint effort was made by the learned Counsel for the respondents that the layout plan was not approved at all by the B.D.A. and therefore the petitioner is not entitled to the relief sought in this petition. In the entire correspondence commencing from 30.5.74 and ending as on today there is not a shred of evidence nor any indication either in the records produced before me or in the correspondence exchanged that there existed a controversy or dispute in this regard. But on the other hand, as rightly contended by the learned Counsel for the petitioner all the necessary civil works have been carried out by the department of B.D.A. and as is evidenced by the letter of the Assistant

Executive Engineer, B.D.A. dated 21.3.1983 which is about six years ago. There are reliable indications that the stage is reached when what remains to be done by the B.D.A. is the release of the sites to the petitioner society, which appears to have been held up on account of alleged non-payment of arrears stated to be due to the respondents by the petitioner. As already pointed out, even after going through the records produced before me by the learned Counsel for the respondents, I could not persuade myself to accept the plea of the respondents. Subsequent to the reply issued by the petitioner on 4.5.85 in response to the demand made by the B.D.A. by a letter dated 9.5.1985, there is no correspondence on the subject nor any further demand from the B.D.A. calling upon the petitioner to make good any amount whatever. In these circumstances, I am convinced that there is no legal justification for the respondents to deny the release of the sites to the petitioner-society.

12. For the reasons stated above, I pass the following:

ORDER

The writ petition is allowed and a mandamus is hereby issued to the respondents directing them to release the sites to which the petitioner is entitled in the circumstances of the case and to complete all the legal formalities enjoined upon the B.D.A. for putting the petitioner in possession of the said sites within a time limit of ninety days from the date of receipt of a copy of this order. It is made clear that if the petitioner is due any arrears to the respondents, the same may be worked out by proper verification of accounts and if any amount is found to be due, the petitioner will be liable to make good that amount to the respondents after the sites are released and possession delivered to the petitioner within a period of thirty days of fresh demand. If the amount legitimately found due and payable by the petitioner is discovered within a period of ninety days from the date of receipt of this order by the B.D.A., the petitioner will be liable to make good the said amount forthwith.

If despite determination of the arrears payable by the petitioner, the arrears are not paid, it is open to the respondents to move this Court for necessary relief.

Writ Petition allowed.