

(2010) 04 KAR CK 0034

In the Karnataka High Court

Case No : Regular First Appeal No. 761 of 2006

The Bangalore Development Authority

APPELLANT

Vs

Kethamaranahalli House Building Co-Operative Society Ltd.

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 64

Citation : (2010) 04 KAR CK 0034

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Ashwin S. Halady, for the Appellant; Ramdas, for Sundaraswamy Ramdas and Ananad, for the Respondent

Final Decision : Dismissed

Judgement

V. Jagannathan, J.—Heard the learned Counsel for the parties finally in respect of the appeal preferred lay the defendant Nos. 1 and 2 before the Trial Court in the suit filed by the respondent-plaintiff for possession of sites bearing Nos. 58, 203, 230, 257, 258, 259 and 260 from the appellants herein.

2. The brief facts of the case are that the respondent-plaintiff being a registered Society purchased 20 acres 15 guntas of land comprising of Survey Nos. 72/1, 73/2, 73/1, 74/1, 74/2, 77/1, 77/2A, 77/2B, 77/4 and 83/3 of Saneguruvanahalli Village under the various sale deeds and the Kathas were also transferred in the name of the plaintiff-Society and there afterwards the land was got converted for the purpose of forming the sites and for distribution among the members of the Society. The plaintiff approached the first defendant-B.D.A. seeking permission to form a private layout The permission was accorded and thereafterwards the land measuring 18 acres 5 guntas bearing the abovementioned survey numbers was handed over to the B.D.A. by the plaintiff for the formation of layout at per the plan and a sum of Rs. 13,92,805/- was paid by the plaintiff is the first defendant-B.D.A. towards the expenses for the formation of layout An agreement was entered into between the parties on 21.7.1997 and the B.D.A. formed the layout

consisting of 273 sites of various dimensions in the year 1986 and released 262 sites to the plaintiff-Society for allotment to its members. In 1989, the first defendant-BDA released four more sites, but the remaining seven sites were not released despite the request made by the plaintiff-Society. In the meanwhile, there was an attempt to encroach upon the sites bearing Nos. 259 and 260 by one Krishnappa and his brothers and the Society therefore had to file a suit in O.S. No. 5727/90 against them contending that the defendants-BDA did not comply with the terms of the agreement and despite the plaintiff-Society having performed its obligation under the contract, the defendants did not deliver the vacant sites and therefore the suits became inevitable.

3. On the other hand, the appellants-defendants contested the said suit contending that the plaintiff-Society did not execute the Relinquishment Deed in respect of the roads, civic amenities sites, etc. and therefore there was a breach of the contract committed by the plaintiff-Society and apart from that, the plaintiff-Society did not carry out the work of asphaltting and on three grounds the defendants sought for dismissal of the suit

4. The Trial Court framed the following issues

1. Whether the plaintiff proves that the defendants are liable to deliver 7 sites as noted in the schedule annexed to the plaint?
2. Whether the defendants prove that the plaintiff has committed the default of the terms of the agreement and as such, it is not entitled for any more sites?
3. Whether the valuation of the suit schedule property is proper and payment of court fee thereon is sufficient?
4. What decree/order?

After the evidence let in by the parties and on appreciation of the said evidence, the Trial Court recorded a finding on issue No. 1 by holding that the appellants herein are liable to release 4? sites and held the issue No. 2 against the appellants in respect of the breach of the terms of the contract entered into by the plaintiff-Society and the defendants and ultimately, the suit of the plaintiff was decreed and the appellants-defendants were directed to release the sites bearing Nos. 58, 203, 230, 259 (half portion) and 260 to the plaintiff Society.

5. This appeal is preferred by the defendants questioning the said judgment and decree of the Trial Court The two grounds put forward by the Sri Aawin S. Halady learned Counsel for the appellants are that, no notice was served on the BDA by the plaintiff-Society required under the law. Secondly, the plaintiff-Society had not executed the Relinquishment Deed as required under the terms of the contract. Elaborating the above grounds and referring to the judgment of the Trial Court, learned Counsel for the appellants contended that the Trial Court was in error in applying the decision of the Delhi High Court in the case of Lucky Star Estates (India) Pvt. Ltd. v. Delhi Development Authority reported in AIR 2004 DELHI 426, as the facts are different and secondly, the plaintiff did not execute

the Relinquishment Deed as required under the terms of the contract and therefore the Trial Court could not have decreed the suit of the plaintiff-Society.

6. On the other hand, Sri Ramdas, learned Senior Counsel appearing on behalf of the plaintiff-Society argued that both the grounds put forward as above by the appellants have been considered by the Trial Court Insofar as the notice is concerned, learned Senior Counsel referred to the documents produced at Exhibits P31, P32 and P33 to submit that the requirement of notice was complied by the plaintiff-Society and as far as the Relinquishment Deed is concerned, teamed Senior Counsel argued that the plaintiff-Society had written to the appellants in this regard and even had furnished the embossed stamp paper for the BDA to put in the terms of Relinquishment Deed and hand over the same to the plaintiff-Society, which was not done and therefore no fault can be found with the plaintiff-Society. However, learned Senior Counsel also submitted that the plaintiff-Society is ready to do the needful in respect of the Relinquishment Deed and is prepared to give the area required for the purpose of road, park, civic amenities sites, etc.

7. Having thus heard both sides, I am of the view that the judgment of the Trial Court does not call for interferences, as both the grounds urged by the learned Counsel for the appellants do not carry much substance in them, inasmuch as Exhibit P-31, which is the copy of the legal notice, Exhibits P-32 and P-33, which are the acknowledgements, indicate that the plaintiff-Society did issue legal notice as required under the law. As far as executing the Relinquishment Deed is concerned, apart from the letter referred to by the learned Senior Counsel it is submitted that the plaintiff-Society is also ready to do the needful. Notwithstanding the said submission made, the Trial Court has rightly observed that, when this BDA had released 262 sites out of 273 sites in favour of the plaintiff-Society and further released four more sites leaving only seven sites, it only indicates that the plaintiff-Society had complied with the terms of the contract substantially. As far as the decision referred to by the Trial Court is concerned, though there is some force in the submission made by the learned Counsel for the appellant that decision was rendered in respect of the case dealing with the cancellation of the bid, but in the instant case, the documents produced by the plaintiff-Society and the letter written by the plaintiff-Society to the BDA in respect of the Relinquishment Deed goes to indicate that the plaintiff was not at fault and it was the BDA, who did not act promptly. Under these circumstances and having regard to the facts and circumstances of the case and the appellant also having not raised the plea of limitation u/s 64 of the B.D.A. Act. I am of the view that the judgment of the Court below does not call for interference.

8. In the result, the appeal is dismissed and the respondent-plaintiff Society shall comply with the requirement of the execution of the Relinquishment Deed within one month of the B.D.A. providing them the necessary format as provided under the Bangalore Development Act, 1964 and Rules, 1975 and the aforesaid

directions given shall not become a precedent for the future.