

(2012) 04 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No. 38923 of 2009 (BDA)

Vokkaligara Sangha

APPELLANT

Vs

The Bangalore Development Authority and Mitra Wrunda
Youth Association (R)

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 —
Rule 7, 7 (2)
Constitution of India, 1950 — Article 14

Citation : (2012) ILR (Kar) 2256 : (2012) 4 KarLJ 673

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : S.G. Bhagavan, for the Appellant; Ashwin S. Halady, for R1; Sri Jayakumar S. Patil, for Sri Mahesh R. Uppin, for R2, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda

1. The petitioner, a society registered under the Karnataka Societies Registration Act, 1960 and an "Institution" as defined in Rule 2(d) of BDA (Allotment of Civic Amenity Sites) Rules, 1989 (for short, the Rules), has filed this writ petition questioning the decision of Bangalore Development Authority (for short "BDA") in allotting Civic Amenity Site No. 1, Nagarabhavi Layout, II Stage, II Block, Bangalore, in favour of the 2nd respondent - Mitra Wrunda Youth Association (r), Bangalore - 84. The material facts and circumstances which have given rise to this writ petition are that:

(i) BDA issued a Notification dated 31.01.2009 vide Annexure-A, offering 100 Civic Amenity Sites for allotment on lease basis and invited applications, stipulating the last date as 28.02.2009, for submission of the applications. Site No. 1, Nagarabhavi Layout, II Stage, II Block, Bangalore, (for short, "site in question") was one of the Civic Amenity Sites offered for allotment. The purpose

mentioned therein is community halt. Eligibility criterion stated was that, allotment would be to an "institution" which is registered under Rule 5. On 28.02.2009, petitioner submitted an application bearing No. 2199 in the prescribed Form seeking allotment of the site in question.

(ii) The 2nd respondent had been allotted on 02.02.2008, Civic Amenity Site No. 3, measuring 795.43 Sq.mtrs., situated at the Railwaymen House-building Co-operative Society, Mallathahalli Extn., Bangalore. Pursuant to the offer made as per the Notification, as at Annexure-A, 2nd respondent did not submit an application in the prescribed Form, seeking allotment of the site in question. However, 2nd respondent submitted a representation to the BDA, stating that the said site No. 3, allotted on 02.02.2008, as not suitable, on the ground that, it consists of a Halla and has no proper road access, thereby, causes grave inconvenience and hardship to the patients of the "proposed maternity centre". It requested the BDA to allot an alternate Civic Amenity Site. BDA, in the first instance, allotted on alternate basis, a portion of the site in question i.e. 795.43 Sq. mtrs., to the 2nd respondent and issued allotment letter on 11.03.2009. The purpose of allotment shown is construction of "Maternity Home".

(iii) According to BDA, in response to the Notification dated 31.01.2009 i.e., Annexure-A, eight applications were received. The "Civic Amenity Site Allotment Committee" constituted under Sub Rule (2) of Rule 7, having met on 16.02.2010, while considering the applications received seeking allotment in respect of the 100 Civic Amenity Sites offered in the Notification dated 31.01.2009, resolved that the "site in question" was unavailable for allotment and withdrew the same from the Notification. However, the Committee resolved to allot to the petitioner, Civic Amenity Site appearing at Serial No. 55 of the Notification, as at Annexure-A, situated at Karnataka Gruha Nirmana Sahakara Sangha Layout

iv) Petitioner having noticed certain activity on the site in question on 25.11.2009, submitted a representation dated 30.11.2009, to stop the work and to allot the site in its favour. Finding no response, information was sought under the Right to Information Act, on 02.12.2009, from the Public Information Officer. In response thereto, on 17.12.2009, petitioner was furnished with the particulars and also a copy of the resolution passed on subject No. 149 dated 08.05.2009, reflecting the allotment of site in question, to the 2nd respondent. Aggrieved, this writ petition was filed on 17.03.2010, to quash the decision of BDA in allotting the site in question in favour of the 2nd respondent and to direct the BDA to consider petitioner's application submitted on 28.02.2009.

2. Sri S.G. Bhagavan, learned Advocate for the petitioner, firstly, argued that the BDA having issued a Notification on 31.01.2009 and having offered the site in question for allotment in favour of an eligible applicant and the petitioner having submitted application on 28.02.2009 and there being no application submitted in the prescribed Form before the last date by the 2nd respondent, seeking allotment of site in question, BDA has acted arbitrarily and illegally in allotting

the site in question in favour of the 2nd respondent. Secondly, there is flagrant violation of the Rules by the BDA, in allotting the site in question in favour of the 2nd respondent. Thirdly, the impugned action of the BDA is opposed to the principles underlined in Article 14 of the Constitution of India and is also in derogation of the legal maxim, where a power is given to do a particular thing in a particular manner, it has to be done in that manner only, other modes of performance being necessarily forbidden. Learned counsel finally, submitted that the petitioner fulfils the eligibility criteria stipulated in the offer notification as at Annexure-A and the Rules and hence, the BDA may be directed to consider the petitioner's application and allot the site in question.

3. Sri Ashwin S. Halady, learned Advocate appearing for the BDA, on the other hand submitted that, the 2nd respondent, an allottee of site No. 3, situated at Railwaymen HBCS Layout, sought alternate allotment and hence, based on a report submitted by the Executive Engineer, decision was taken on 21.02.2009, to allot a portion of the site in question, and an allotment letter was issued on 11.03.2009 to the 2nd respondent. He further submitted that the site in question being not available for allotment, when the Committee met on 16.02.2010, it was resolved to withdraw the site from allotment process and that, the petitioner was allotted a Civic Amenity Site situated at Karnataka HBCS Layout. Learned counsel submitted that, in the circumstances, petitioner cannot feel aggrieved and sought dismissal of the writ petition.

4. Sri Jayakumar S. Patil, learned Senior Counsel, appearing for the 2nd respondent, firstly, submitted that a portion of site in question was allotted to the 2nd respondent on 21.02.2009 and the remaining portion was allotted to the 2nd respondent on 08.05.2009. He contended that the allotment made on 21.02.2009 having not been questioned, the writ petition is not maintainable. Secondly, 2nd respondent possessed the eligibility, on account of which, site No. 3, Railwaymen HBCS Layout was allotted and since the same could not be made use of for intended purpose, alternate allotment was sought and the site in question being at the disposal of the BDA, was allotted on 21.02.2009, pursuant to which an allotment letter dated 11.03.2009 was issued and in view of the decision taken to allot the balance site, possession certificate was issued on 07.04.2010. Learned counsel submitted that, since the petitioner has been allotted with a Civic Amenity Site in the Karnataka HBCS Layout, the Court may not nullify the allotment made in favour of the 2nd respondent.

5. The 1st respondent is an Authority created under the Bangalore Development Authority Act, 1976. The Act was enacted to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith. Indisputedly, BDA has a number of public duties and functions to perform. Ss.15 to 34 in Chapter III of the Act relate to the Development Schemes. Ss.37 to 48 in Chapter V of the Act relate to Property and Finance of the BDA. S.38 is with regard to the power of the BDA to lease, sell or transfer the property. S.38-A relates to Grant of area

reserved for civic amenities etc. S.69 of the Act is with regard to the power of Government to make rules to carryout the purposes of the Act. In exercise of the said power, Government of Karnataka has made Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989, which was notified on 15.03.1989 and published in the Karnataka Gazette, dated 30.03.1989.

6. Perused the writ petition, statement of objections separately filed by the respondents and a rejoinder statement filed by the petitioner and considered the respective submissions made by the learned Advocates appearing on behalf of the parties. The main point for consideration is:

Whether the decision of the Bangalore Development Authority to allot the site in question to the 2nd respondent, without an application being made by it in response to the Notification / offer made by the BDA as per its Notification dated 31.01.2009, as at Annexure-A, is arbitrary and illegal?

7. For deciding the question, it will be useful to notice the relevant provisions in the Rules. Rule 3 is with regard to the offer of Civic Amenity Sites for allotment. Sub-rule (3) of Rule 3 mandates that, due publicity shall be given in respect of Civic Amenity Sites offered for leasing to the Institutions, specifying their location, number, dimension, purpose and last date for submission of application and such other particulars as the Commissioner may consider necessary. The publication shall be by way of affixing a notice on the notice board of the Office of BDA and also by publishing in not less than two daily newspapers, in English and Kannada, having wide circulation in the City of Bangalore. Rule 5 mandates that, every Institution applying for Civic Amenity Site shall register with BDA on payment of prescribed fee, in the table thereunder. Rule 6 (1) empowers the BDA to allot such site on lease basis only to an Institution registered under Rule 5. Sub-rule (2) inhibits the BDA from allotting such sites to any Institution unless it has capacity to provide the type of Civic Amenity for providing of which the site is offered. Rule 7 is with regard to principles of selection of Institutions for leasing out Civic Amenity Sites. Sub-rule (1) mandates that, Authority shall consider the case of each Institution on its merits, by having regard to the principles in making the selection, as indicated therein, the main criteria being, the objectives and the activities of the Institution and the public cause served by it since its establishment and also the financial position, its location etc. Sub-rule (2) enables the Authority, to constitute a separate Committee for the purpose of selection of Institutions for leasing out Civic Amenity Sites. Rule 9 is with regard to Application and enables the Institutions registered under Rule 5 to apply in Form -II, for allotment of a Civic Amenity Site along with the initial deposit at 10% of the notified lease amount of the site. Rule 10 declares the conditions of the allotment of Civic Amenity Sites. Rule 11 is with regard to voluntary surrender of Civic Amenity Site by the allottee to the Authority and the refund of the amount.

8. It is trite that, the State or its instrumentalities cannot give largesse to any person according to the sweet will and whims of the decision maker. Every

action / decision of the State or its instrumentalities to give largesse or confer any benefit must be founded on the well defined policy or the Rules made known to the citizens. Allotment of Civic Amenity Site by the BDA should always be done in accordance with the provisions contained in the Rules. An allotment made by the BDA, contrary the Rules, has to be termed as arbitrary, discriminatory and an act of favouritism, violating the equality clause contained in Art.14 of the Constitution.

9. Apex Court, in catena of decisions has held that, in the matter of granting largesse, the Government or its instrumentalities have to act fairly and without any semblance of discrimination. In *RAMANA DAYARAM SHETTY V. INTERNATIONAL AIRPORT AUTHORITY OF INDIA*, 1979 (3) SCC 489, it has been held that, the Government in a welfare State is in a position of distributing largesse in a large measure and in doing so, the Government cannot act at its pleasure. It has been further held that, the Government is not and should not be as free as an individual in selecting the recipients for its largesse. In *Common Cause A Registered Society Vs. Union of India and others*, , Apex Court, while considering the legality of discretionary powers exercised by a Minister in the matter of allotment of petrol pumps and gas agencies, while declaring that allotments made by the Minister were wholly arbitrary, nepotistic and motivated by extraneous considerations, has held as follows:

22. The Government today - in a welfare State - provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences, etc. Government distributes largesse in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesse. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner.

10. In *Humanity and Another Vs. State of West Bengal and Others*, , the material facts are that an advertisement was issued by the Government of West Bengal, earmarking plot No. BF-158 in Sector I, Salt Lake, Kolkata, for setting up an integrated school. Applications were invited for allotment of the plot on lease basis. An application having been made on 17.11.2006, an allotment was made on 22.02.2007 and a lease-deed was executed on 29.10.2007 and possession of the plot was given on 14.02.2008. The allottee offered to surrender the said plot and simultaneously sought the allotment of a plot of bigger area. By a communication dated 17.02.2009, allottee was informed about the allotment of another plot bearing No. CA-222 in Sector I, which was challenged on various grounds. The allotment of alternate plot was held unsustainable. Apex Court, has inter alia held as follows:

22. When the Government decided to allot a substantial plot for setting up of a school by private organisations and when on the basis of an advertisement to that effect various organisations responded, the action of the Government was

one of granting largesse inasmuch as land of which the Government is owner and which was allotted is a very scarce and valuable property.

30. Admittedly, no advertisement was issued and no offer was sought to be obtained from the members of the public in respect of the new allotment of a much bigger plot. In view of the principles laid down by this Court, the impugned allotment is clearly in breach of the principles of Article 14 explained by this Court in *Ramana (supra)*, *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and other subsequent events.

31. This Court cannot persuade itself to hold that this allotment is in exercise of the right of the Government in the first advertisement dated 5-11-2006, where the Government reserved its right to change the location of the land. The second allotment is not only about a change in the location of the land, but the subsequent allotment is also of a much larger plot of land, brought about in terms of the request of the allottee for a bigger plot. The subsequent change was not brought about by the Government in its own discretion, assuming but not admitting that the Government could exercise its discretion in such a fashion but was in response to a written request of the allottee.

33. It is, therefore, clear that the Government made allotment of the new plot to the allottee on terms which were even more generous than the ones suggested by the allottee in his letter dated 19-1-2009. Such action of the Government definitely smacks of arbitrariness and falls foul of Article 14.

53. In the instant case, the impugned allotment of a different and higher plot by the Government in favour of the allottee without any advertisement, when initially advertisement was resorted to, and then it was given up and everything was rushed through in hot haste, is unreasonable and arbitrary, and the High Court was wrong in upholding the same.

11. The main grievance of the petitioner is that, the BDA has acted arbitrarily and in utter violation of the Rules, in the matter of allotment of the site in question in favour of the 2nd respondent. It is not in dispute, that the site in question is a Civic Amenity Site and was offered on lease basis by the BDA as per a Notification dated 31.01.2009, for the purpose of construction of "community hall". The petitioner, after registration, submitted an application in the prescribed Form. Indisputedly, 2nd respondent, in pursuance of the said Notification, did not even submit an application to allot the site in question. The request made by the 2nd respondent was for allotment of an alternate site, for the purpose of construction of "Maternity Home". As per Rule 11, if the allotted site is not acceptable to the allottee, such site can be surrendered and refund of the

amount claimed by the allottee. The 2nd respondent, on 02.02.2008, having volunteered to surrender Site No. 3, Karnataka HBCS Layout, BDA, by obtaining the return of allotment records and after their cancellation, should have refunded the amount paid by the 2nd respondent. BDA has not been conferred with the power to allot a Civic Amenity Site, without even an application being submitted in terms of Rule 9, that too, when such site was offered for allotment by issue of a Notification under Rule 3(3), inviting applications from the Institutions at large. Once the BDA offered the Civic Amenity Site, by the process of advertisement under Rule 3(3), it cannot jettison the process and allot the site to a non-applicant.

12. The Civic Amenity Site Allotment Committee, constituted under sub-rule (2) of Rule 7 by the BDA, has limited role to perform i.e., select the Institution/s, for leasing out of the offered Civic Amenity Site/s. The Committee's role is limited for consideration of case of each of the Institution on its merits having regard to the principles enlisted in clauses (a) to (f) of Rule 7. In the instant case, the Committee, in passing the resolution to withdraw the site in question from the offer Notification, as at Annexure-A, has travelled beyond its scope. It is not the job of the "Committee" to pass a resolution to withdraw the site from the offer Notification, and allot a site in respect of which, no application had been submitted. The BDA has mechanically accepted the decision of the Committee in withdrawing the site in question from the offer Notification and the resolution to allot to the petitioner Civic Amenity site situated at Karnataka Gruha Nirmana Sahakara Sangha layout, meant for Institute for Research and Development, as against the purpose shown in the application of the petitioner "community hall".

13. The site in question, as per the Notification dated 31.01.2009, is meant for community hall. The Civic Amenity Site situated at Karnataka HBCS Layout, is meant for Institute for Research and Development, Petitioner applied for allotment of site in question for construction of a community hall. 2nd respondent did not apply for allotment of site for construction of a community hall. Site No. 3, Railwaymen HBCS Layout was allotted to the 2nd respondent for construction of maternity home. The petitioner cannot construct a community hall in the site situated at Karnataka HBCS Layout. Similarly, the 2nd respondent cannot construct a maternity home in the site in question, since the site was offered and is meant for the purpose of community hall. Viewed from any angle, the arbitrariness on the part of the BDA is writ large. Firstly, the site having been offered for allotment, without even an application being filed by the 2nd respondent, the site specified for the purpose of community hall could not have been allotted to the 2nd respondent, which had proposed to construct maternity home. Secondly, petitioner and other Institutions having submitted applications seeking allotment of the site in question, before the same could be withdrawn by the BDA, from the allotment process, for valid reasons, if any, "the Committee" has no power to withdraw the site from allotment Notification. Thus, the decision taken by the BDA to allot the site in question in favour of the 2nd respondent is highly arbitrary and illegal. In the result, I pass the following:

ORDER

(i) The writ petition is allowed and the allotment of Civic Amenity Site No. 1, in Nagarbhavi Layout, II Stage, II Block, Bangalore, in favour of respondent No. 2 is hereby quashed. All the consequential actions of the BDA, to lease the site in question in favour of the 2nd respondent shall stand quashed.

(ii) The BDA is directed to consider the claim of the petitioner and all other applicants, for allotment of site in question, in accordance with the principles set out in Rule 7 of the Rules.

(iii) Time for compliance is 3 months.

(iv) There shall be no order as to costs.