

N.R. Sreenivasappa Vs. the Commissioner, Bangalore Development Authority

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Court : Karnataka

Decided On : Feb-26-2014

Judge : A.N. Venugopala Gowda

Appeal No. : Writ Petition No. 7548 of 2014 (BDA)

Appellant : N.R. Sreenivasappa

Respondent : The Commissioner, Bangalore Development Authority

Judgement :

(Prayer: This petition is filed under Articles 226 and 227 of the Constitution of India, praying to direct the respondents to consider the representations of the petitioners dated 21.10.2011 which is enclosed along with the writ petition as Annexure- R.)

1. Petitioner has asked for mandamus to consider his representation dated 21.10.2011 vide Annexure-R and grant consequential reliefs.

2. In a nutshell, the material facts of the case could be stated as under:-

The Bangalore Development Authority allotted site No.2EC-941, HRBR 1st Block Extension, Bangalore, on 02.12.1997 to Mr. Munaf, son of Bashamiya. Absolute sale deed was executed on 08.10.1999. Khata of the site was registered in favour

of the said allottee, who sold it on 20.07.2000 in favour of Mrs. Lourdummy M.A., wife of Sri. Francis Choudary, in whose name the khata was transferred and sanction plan for construction was approved on 16.08.2000. Petitioner having purchased the said property on 11.08.2005, approached the respondent to issue possession certificate. A representation dated 21.10.2011 having been submitted and an endorsement dated 03.12.2011 having been issued, this writ petition was filed asking for mandamus.

3. Sri K.R. Bharadwaj, learned advocate, contended that the petitioner is claiming the title to the property pursuant to the allotment made and the sale deed executed by the respondent in favour of Mr. Munaf and the petitioner is entitled to the relief prayed in the writ petition. He submitted that, since the respondent has acted arbitrarily in the matter, interference is called for.

4. Perused the writ record.

5. Petitioner having submitted a representation dated 10.09.2007, to issue the possession certificate of the said site, the respondent has issued an endorsement dated 10.12.2007. The relevant portion thereof reads as follows:-

6. Another representation dated 23.04.2008 seeking to issue possession certificate having been submitted by the petitioner, an endorsement dated 23.07.2008 has been issued and the relevant portion reads as follows:œ(LANGUAGE)?

7. Petitioner having submitted one more representation dated 21.1.0.2011, was issued with an endorsement dated 03.12.2011. The legality and correctness of the said endorsements has not been questioned. Be that as it may.

8. Mere making of representations cannot justify a belated approach. Delay or laches is one of the factors, which is to be kept in view, when relief is sought in exercise of the power under Article 226 of the Constitution.

9. In RABINDRANATH BOSE AND OTHERS Vs. THE UNION OF INDIA AND OTHERS, 1970 (1) SCC 84, Apex Court has held that, no relief should be given to the petitioner, who, without any reasonable explanation, approaches this Court

under Article 32 of the Constitution after inordinate delay.

10. In *STATE OF ORISSA Vs. PYARIMOHAN SAMANTARAY AND OTHERS*, 1977 (3) SCO 396, Apex Court has held, that making of repeated representations after rejection of one representation cannot be said to be a satisfactory explanation of delay.

11. In *ODAI SHANKAR AWASTHI Vs. STATE OF U.P. AND ANOTHER,,* (2013) 2 SCC 435, Apex Court has held as follows:-

œ43. Approaching the court at a belated stage for a rightful cause, or even for the violation of the fundamental rights, has always been considered as a good ground for its rejection at the threshold. The ground taken by the learned counsel for Respondent 2 that the cause of action arose on 20-10-2009 and 5-11-2009, as the appellants refused to return money and other materials, articles and record, does not have substance worth consideration. In case a representation is made by the person aggrieved and the same is rejected by the competent statutory authority, and such an order is communicated to the person aggrieved, making repeated representations will not enable the party to explain the delay."

(emphasis supplied by me)

12. In the instant case, to the first representation of the petitioner dated 10.09.2007, an endorsement dated 10.12.2007, noticed supra, was issued and in response to the second representation dated 23.04.2008, an endorsement dated 23.07.2008, noticed supra, reiterating the decision taken and communicated on 10.12.2007 was issued. Even to the representation made vide Annexure-R, an endorsement dated 03.12.2011 as at Annexure-S was issued.

13. In *UNION OF INDIA AND ANOTHER Vs. ASHOK KUMAR AGGARWAL*, (2014) 1 SCJ 115, Apex Court has held as follows

"6. Representation may be considered by the competent authority if it is so provided under the statutory provisions and the court should not pass an order directing any authority to decide the representation for the reasons that many a times, unwarranted or time-barred claims are sought to be entertained before the

authority. More so, once a representation has been decided, the question of making second representation on a similar issue is not allowed as it may also involve the issue of limitation etc."

14. Though the petitioner has been informed that his representation for issue of possession certificate cannot be considered on 10.12.2007 and the said decision was reiterated on 23.07.2008 and also on 03.12.2011, this writ petition was filed on 11.02.2014, to grant mandamus for consideration of the representation dated 21.10.2011 vide Annexure-R, which has already been considered and decision taken by the respondent, on 03.12.2011, was communicated. The said endorsements having remained unchallenged, the petition seeking mandamus cannot be entertained.

In view of the aforesaid position, there being no justification to issue a writ of mandamus, petition is rejected.

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