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Court : Karnataka

Decided On : Apr-13-2016

Judge : The Honourable Mrs. Justice B.V. Nagarathna

Appeal No. : Writ Petition No. 13113 of 2015 (BDA)

Appellant : Chinnathaye

Respondent : The Commissioner Bangalore Development Authority, Bangalore

Judgement :

1. Petitioner has assailed cancellation order dated 5.4.2004(Annexure-E) though mentioned as 10.4.2000 in the prayer column) and has sought a direction to the respondent to consider representations dated 10.1.2008 , 26.3.2012 and subsequent representations with regard to the allotment and cancellation of site bearing No. 329, measuring 20x30 feet, situated at J.P.Nagar 9th Phase, 3rd Block, Bengaluru.

2. It is the case of the petitioner that he had applied for allotment of site in the year 1989 on the premise that he belongs to scheduled caste category. On 10.4.2000, the site in question was allotted to the petitioner and the (Balance sital value of Rs.33, 490/- had to be paid by her. Admittedly, the same was not paid in time. The respondent issued show cause notice to the petitioner and thereafter cancelled the

allotment on 5.4.2004. Petitioner thereafter made an attempt to deposit the entire sital value through demand draft bearing No.483722 dated 12.5.2004 vide representation- dated 24.7.2004 (Annexure-F). The grievance of the petitioner is that the said amount has not been accepted by the respondent - BDA. Subsequently, the respondent issued two circulars dated 18.10.2007 and 18.11.2010. It is the case of the petitioner that said circulars were issued in the interest of the persons such as the petitioner and thereafter she intended to pay the balance sital value, but the respondent has not considered the representation made by the petitioner dated 15.2.2011 and 26.3.2013 at Annexures - L and M respectively. Hence, the petitioner has challenged the cancellation of allotment dated 5.4.2004 and has sought a direction to consider his representation.

3. I have heard learned counsel for the petitioner and learned counsel for the respondent and perused the material on record.

4. It is contended on behalf of the petitioner that on 12.3.2003 balance amount was tendered, but the same was not accepted by the BDA and allotment of site was cancelled on 5.4,2004 Subsequently, once again balance sital value was tendered though after cancellation of allotment on 27.4.2004, no steps have been taken by the BDA with regard to acceptance of the balance sital value. He contended that thereafter pursuant to the circulars dated 18.10.2007 and 18.11.2010, petitioner once again made representation for considering her case for acceptance of the balance sital value, but the respondent has not considered her case. In the circumstances, petitioner is constrained to challenge the cancellation of allotment dated 5.4.2004 and seek a direction to the respondent to consider her representation for the purpose of re-allotment of the site in question by accepting the balance sital value which would be tendered, if some time is granted.

5. Per contra, learned counsel for the respondent contends that the cancellation of allotment dated 5.4.2004 was perfectly justified, as the petitioner did not tender the balance sital value in time and even the demand draft dated 12.3.2003 was beyond time and therefore the same was not accepted. He further contended that any payment of the sital value after the date of cancellation was without any basis,

as the contract between the petitioner and the respondent had come to an end vide cancellation order dated 5.4.2004. Therefore, respondent was not bound to consider the representation dated 24.7.2004. Even after the enforcement of the circulars, the petitioner did not take steps to tender the balance sital value on or before 31.12.2010 and only representations have been made by her. In these circumstances, he contended that the challenge to the cancellation order dated 5.4.2004 is delayed and that no relief can be granted to the petitioner and that the writ petition may be dismissed on the ground of delay and laches.

6. Having heard learned counsel for the parties, it is noted that though the cancellation of the allotment was made on 5.4.2004, petitioner did not take steps to assail the same till the filing of this writ petition on 27.3.2015, as the challenge made to that order in the year 2015 is delayed and therefore the writ petition cannot be entertained on the ground of delay and laches.

7. Be that as it may, had the petitioner tendered the balance sital value on or before 31.12.2010, possibly the respondent was duty bound to accept the balance sital value and consider the case of the petitioner in accordance with the circulars, but the petitioner did not pay the balance amount on or before 31.12.2000, instead she only made a representation subsequent to 31.12.2010. Therefore the petitioner though could have taken advantage of the circular did not choose to do so by tendering the balance amount on or before 31.12.2000. In the circumstances, the respondent was not under any obligation to consider the representation made by the petitioner. Hence, no relief can be granted to the petitioner having regard to the fact that there is delay and laches in approaching this court and the fact that the petitioner has not complied with the terms and conditions of the circulars referred to above.

8. In this regard, reliance could be placed on the following decisions of the Hon'ble Supreme Court.

a) In a recent decision of the Apex Court reported in 2011 AIR SCW 1332 (State of Orissa and Anr. V/s. Mamata Mohaniy) the consideration of an application where delay and laches could be attributed against a person who approaches in a writ petition is discussed by stating that though the Limitation Act, 1963 does not apply

to writ jurisdiction, however, the Doctrine of Limitation being based on public policy, the principles enshrined therein are applicable and writ petitions could be dismissed at the initial stage on the ground of delay and laches.

b) In the case of Shankar Co-op Housing Society Ltd. V/s. M.Prabhakar and Ors (2011 AIR SCW 3033), the Apex Court at para 1)³ has given the relevant considerations, in determining whether delay or laches in approaching the writ court under Article 225 of the Constitution of India. The same reads as follows;

"53. The relevant considerations; in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled, They are: (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay."

c) Similarly, the Apex Court in 2010(4) SCC 532 in the case of SAWARAN LATHA AND OTHERS V/s. STATE OF HARYANA AND OTHERS has held that when the notification under Section 4 of the Land Acquisition Act, 1894 was issued in the year 2001 and the award was passed in the year 2004, writ petitions filed for quashing of the notification in the year 2009 have to be dismissed on the ground of

delay as the litigants who dare to abuse the process of the Court in disregard of the law of limitation, delay and laches should not be encouraged.

d) Reference can also be made to another decision of the Apex Court in the case of (1995) 6 SCC 445 STATE OF RAJASTHAN and OTHERS V/s. D.R.LAKSHMI and OTHERS), wherein it has cautioned the High Court not to entertain the writ petitions where there is inordinate delay while exercising jurisdiction under Article 226 of the Constitution of India.

e) Similarly, in the case of The Municipal Council, Ahmednagar and Anr. V/s. Shah Hyder Beig and Ors. [(2002) 2 SCC 48], it has been opined thus:-

"The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the Writ Court, the rights of the third parties have come into being which should not be allowed to disturb unless there is reasonable explanation for the delay."

f) In fact in S.S.Balu and others V/s. State of Karnataka [(2009) 2 SCC 479], it has been held that delay defeats equity and that relief can be denied on the ground of delay alone even though relief is granted to other similarly situated persons who approach the courts in time.

g) To a similar effect is the decision of the Hon'ble Supreme Court in Andhra Pradesh Industrial Infrastructure Corporation Ltd. v. Chinthamaneni Narasimha Rao and others [(2012) 12 SCC 797].

9. The said decisions are squarely applicable to the facts of the present case.

10. Hence, the writ petition is dismissed.

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