

Yallappa Vs. The Commissioner

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Court : Karnataka Dharwad

Decided On : Aug-09-2024

Judge : H.P.Sandesh

Appeal No. : WP 107883/2016

Appellant : Yallappa

Respondent : The Commissioner

Judgement :

- 1 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE9H DAY OF AUGUST, 2024 BEFORE THE HON'BLE MR. JUSTICE H.P.SANDESH WRIT PETITION No.107883 OF2016(LB-) BETWEEN1 YALLAPPA S/O. SOMAPPA KORI, AGE:

53. YEARS, OCC: AGRICULTURE, R/O. HIREMALLIGWAD, TQ & DIST: DHARWAD.

2. NINGAPPA BHIMANIG HULAGANNAVAR, SINCE DECEASED BY HIS LRS BASAPPA S/O. NINGAPPA HULGANNAVAR, AGE:

49. YEARS, OCC: AGRICULTURE, R/O. HIREMALLIGWAD, TQ & DIST: DHARWAD.

3. NINGANGOUDA S/O. SIDDANGOUDA PATIL, AGE:

60. YEARS, OCC: AGRICULTURE, R/O. HIEMALLIGWAD, TQ & DIST: DHARWAD.

4. HULEGAPPA S/O. BASAPPA MALLIGWAD, SINCE DECEASED BY HIS LRS YALLAWWA W/O. BEERAPPA KITTUR, AGE:

43. YEARS, OCC: HOUSEHOLD WORK, R/O. CHIKKAMALLIGWAD, TQ & DIST: DHARWAD. ...PETITIONERS (BY SRI. V.M. SHEELVANT, ADVOCATE) - 2 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 AND1 THE COMMISSIONER, KARNATAKA HOUSING BOARD, CAUVERY BHAVAN, BENGALURU.

2. ASSISTANT EXECUTIVE ENGINEER, KARNATAKA HOUSING BOARD, CHANUKYAPURI, HUBBALLI, DIST: DHARWAD.

3. ASSISTANT REVENUE OFFICER, ALLOTMENT SECTION, KARNATAKA HOUSING BOARD, CHANUKYAPURI, HUBBALLI, DIST: DHARWAD. RESPONDENTS (BY SRI. BASAVARAJ V. SABARAD, SR. COUNSEL FOR SRI. H.R. GUNDAPPA, ADV. FOR R1-R3) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER

ORDER

, DIRECTION OR WRIT QUASHING THE NOTIFICATION DATED: 03.09.2016 BEARING NO. KHB/LAQ/88/2008-09 ISSUED BY RESPONDENT NO.1, PRODUCED AT ANNEXURE-D IN SO FAR AS CONDITION NO.2 IS CONCERNED; ISSUE WRIT IN THE NATURE OF MANDAMUS DIRECTING THE RESPONDENTS TO ALLOT 40 SHARE IN COMMERCIAL AND CORNER SITES ALSO TO THE PETITIONERS. THIS PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON 07.08.2024, COMING ON FOR PRONOUNCEMENT OF

ORDER

S THIS DAY, THE COURT MADE THE FOLLOWING: - 3 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 CAV

ORDER

(PER: THE HON'BLE MR. JUSTICE H.P.SANDESH) The petitioners in this petition have prayed this Court to issue a writ of certiorari or any other order, direction or writ quashing the notification dated 03.09.2016 bearing No.KHB/LAQ/88/2008-09 issued by the respondent No.1 produced at Annexure-D insofar as condition No.2 is concerned and also sought for issuance of writ in the nature of mandamus directing the respondents to allot 40% share in commercial and corner sites also to the petitioners and other suitable order as deemed fit in the circumstances of the case.

2. The factual matrix of the case of the petitioners in the petition that they are the owners of lands described in paragraph No.1 of the petition in different survey numbers and that there was a proposal for housing scheme by the Karnataka Housing Board (for short, KHB) and approval was also obtained from the KHB for purchase of 300 acres of land for the purpose of housing scheme.-. 4 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 As the KHB had issued notification in Kannada daily newspaper calling for applications for general allotment, the said notification was challenged by the petitioners herein and 5 others in W.P.Nos.109723-727/2015 and in W.P.Nos.109839-842/2015 before this Court on the ground that respondents in the said petitions did not keep up their promise of 60:40 joint venture and as the request of the petitioners were turned down, they filed the writ petitions. The said writ petitions were disposed of on 31.08.2016 as the respondent No.1 herein vide proceedings dated 19.10.2015 bearing No.459 agreed to allot 40% of the sites to the respective owners. The copy of the order is also produced at Annexure-A.

3. It is contended that the petitioner No.1 herein applied to the respondent No.1 to know as to which are the sites allotted to him as per joint venture, the respondent No.1 replied that totally 9 sites will be allotted to him and on verification from the layout map, the petitioner No.1 came to know that he is not allotted corner - 5 -

NC:

2024. KHC-D:11376 WP No.107883 of 2016 sites. Out of total extent of land taken under joint venture, the land losers are entitled for 40% of developed plot as their share in the layout. The respondents are projecting that they are giving only residential sites on one side which is remote even though the land of the petitioner is coming in the corner sites. The KHB is auctioning the corner sites to the public and petitioners are deprived of 40% share in the commercial or corner sites. Hence, petitioner Nos.1 to 4 made representation in terms of Annexures-B, B1, B2 and B3 to allot corner sites or commercial sites in the scheme of 60% x 40% and the respondent cannot say that the petitioners are entitled to only residential sites. It is also contended that by retaining all commercial sites for themselves, the KHB is not only cheating the land losers but acting contrary to the scheme. The respondent taking undue advantage of their position are allotting sites which are valueless and are denying the petitioners a share in the corner and commercial sites. The copy of symbolic allotment of sites is produced as Annexure-C.-. 6 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 4. It is also contended that respondent No.1 issued a notification vide Annexure-D denying corner sites and commercial sites to the petitioners vide condition No.2. It is also contended that respondent No.2 issued paper publication dated 09.09.2016 that the applicants will be allotted sites by drawing lottery on 16.09.2016 and on 17.09.2016 at Annexure-E.

5. It is contended that there are 100 residential sites and commercial sites in the lay out and the land losers are entitled to 40% share in all the sites irrespective of the nature of the sites. The respondent now cannot say that only residential site and not commercial or corner sites. Hence, it is contended that insofar as denying 40% site in commercial or corner sites as stipulated in condition No.2 of the notification, the petitioners having no other efficacious remedy, have approached this Court by filing this Writ Petition.

6. The counsel for the petitioners reiterated the grounds urged in the petition contending that the - 7 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 respondents cannot impose condition No.2 as per Annexure-D and petitioners are entitled for sites inclusive of commercial and corner sites and hence, sought to quash Annexure-D and also to give direction in the nature of mandamus to allot 40% share in commercial and corner sites. The counsel brought to the notice of this Court the Annexure-A wherein a decision was taken to allot 60:40 ratio and even discussion was made with regard to the interim order granted by this Court on 09.07.2015 and also the decision was taken to allot 40% of developed sites and even Annexure-A also discloses with regard to take immediate steps for vacating the interim order granted by this Court. In the writ petitions filed earlier the counsel also relied upon Annexures-B, B1, B2, B3 wherein the lands of the petitioners were included in formation of sites. Annexure-C also relied upon regarding allotment of sites. The counsel would vehemently contend that condition No.2 imposed in Annexure-D is against Annexure-A.-. 8 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 7. Per contra, counsel for the respondents relying on Annexure-R1 which is the order of the Government of Karnataka dated 02.12.2010 issuing sites in the ratio of 60:40. The counsel brought to the notice of this Court Annexure-R2 circular of KHB dated 20.10.2012 wherein the model of memorandum of agreement is annexed. The counsel also brought to the notice of this Court Annexures- R3, R4, R5, R6, R7 and R8 are the provision selection letters issued to the petitioners under 60:40 ratio. Annexure-R9 is the layout map of the KHB layout and so also Annexure-R10 and Annexure-R11. Annexure-R12 is the copy of the Writ Petition Nos.109723-109727/2015 and Writ Petition Nos.109839-109842/2015 wherein the petitioners were also parties to the said Writ Petitions. A prayer was sought to include the petitioners property within the ratio of 60:40 but contended that till today the respondent has neither allotted plots nor handed over the possession of the plots but pretending not accepted the joint venture proposal which is arbitrary and illegal. He would further contend that there cannot be two yardsticks - 9 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 and the same is violation of Article 14 of the Constitution of India. The respondents have filed additional statement of objections and contended that Annexure-R13 i.e., the certified copy of the order

dated 01.09.2016 passed in W.P.Nos.109625-28/2015 and connected writ petitions wherein the respondents have accepted for extending the benefit of 60:40 scheme and in view of this order, W.P.Nos.109723-727/2015 and connected writ petitions were also disposed of vide order dated 06.09.2016 which is marked as Annexure-R14. The counsel relied upon Annexure-R-15, the copy of the interim order dated 12.08.2010 passed in SLP No.13203-13312/2016. The counsel also relied upon Annexure-R16 copy of the judgment passed in W.A.Nos.100203-100236/. The counsel for the respondents also produced some of the documents along with a memo dated 22.06.2024 stating that some of the land losers have opted sites under 60:40 scheme and the allotment of sites and executed documents also produced along with memo. He would - 10 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 vehemently contend that the petitioners cannot seek for corner and commercial sites.

8. The counsel would also contend that Section 16 of the Land Acquisition Act, 1894 (for short, the LA Act) is very clear that when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. Section 16 of the KHB Act reads as under:

16. Delegation- The State Government may, by notification, authorise the delegation by the Housing Commissioner to such person or class of persons and subject to such conditions as may be specified in such notification, of any powers conferred or duties imposed upon him by or under this Act.

2. The Board may, by notification, direct that any power exercisable by it under this Act except the power to make regulations may also be exercised by the Housing Commissioner or such other officer of the Board as may be specified in the notification subject to such - 11 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 restrictions and conditions as may be specified therein.

9. It is also contended that the petitioners cannot contend that they may be allotted the commercial and corner sites. The counsel also relied upon the Chapter IV Section 38 of the Karnataka Housing Board Act 1962 (for short, the KHB Act) and brought to the notice of this Court power to dispose of the land. The counsel rely on the Regulation 5 of the Karnataka Housing Board (Allotment) Regulations, 1983 to contend that allottees to be a lessee of the site until the lease is terminated or the site/house is conveyed to the allottee in accordance with the regulations.

10. The counsel referring these provisions of law would vehemently contend that when once the property acquired, the property vests with the State and the land losers cannot demand particular corner as well as commercial sites. The counsel also relied upon the letter of the Government of Karnataka dated 06.12.1990 addressed - 12 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 to the KHB. Referring the said letter, the counsel brought to the notice of this Court that the allotment of sites and house constructed by KHB is revoked with immediate effect subject to the conditions wherein held that a corner site shall, however not be deemed to be a stray site and shall be disposed off only through public auction. The counsel referring this letter would contend that the corner sites shall be disposed of only through public auction and the same will not come in the ratio of 60:40. The counsel in support of his arguments relied upon the judgment of this Court in the case of M/s Sri Balaji Amenity Center Vs. The Chairman, KIADB and others¹ wherein it is held that the communication on which the petitioner relies does not give any right to the petitioners to invoke doctrine of legitimate expectation. The board can decide the manner of disposal of land by lease, lease-cum-sale which would also include auction sale. Therefore, the auction of plot in question cannot be faulted. 1 ILR 2007 KAR2946- 13 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 11. The counsel also referring the judgment in the case of Tata Cellular Vs. Union of India² to contend that in the administration auction there cannot be any judicial review. The principle of judicial review is applied by the Government bodies in order to prevent arbitrariness or

favoritism. However, there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finance of the state. It is expected to protect the financial interest of the State. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation.

12. The counsel also rely upon the judgment of this Court dated 07.11.2012 passed in W.P.No.64417/2021 c/w W.P.No.66130/2011 wherein it was the grievance of the petitioners that in response to the invitation to sell corner sites by public auction, though petitioners offers were highest, the respondent-Belgaum Urban 2 AIR 1996 SC11- 14 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 Development Authority declined to accept the offers. This Court, in the said Writ Petitions made an observation that the jurisdiction to decide the price at which the corner sites are to be sold is that of the authority and this Court does not sit as a court of Appeal, since it has no expertise to correct the administrative decision, but merely reviews the manner in which the decision is made.

13. Having heard the petitioners counsel and also the counsel appearing for the respondents, the questions that would arise for consideration before this Court are:

1. Whether the petitioners are entitled for commercial or corner sites in the ratio of 60:40 as per the decision of the respondents as contended in the Writ Petition?.

2) What order?.

14. It is not in dispute that the lands were acquired by the respondents for housing scheme. It is also not in dispute that a decision was taken to allot 40% of the sites in the lands of the petitioners. It is also not in dispute - 15 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 that these petitioners have earlier filed the writ petitions before this Court and having perused the earlier writ petitions, which is at Annexure-R12 wherein it is prayed to issue writ in the nature of certiorari or any other appropriate writ, order or direction and to quash the

notification dated 27.08.2015 published in Kannada daily newspaper in Vijayavani dated 29.08.2015 for general allotment issued by second respondent at Annexure-H and also a direction was sought in the nature of mandamus directing the second respondent KHB to handover 40% developed plots to the petitioners in KHB layout developed in Hiremalligawad village and thereafter to make general allotment to the general public in the interest of justice and equity.

15. The counsel brought to the notice of this Court the prayer sought wherein the writ of mandamus was sought for allotment of sites in favour of land losers at the first instance and thereafter initiation of auction for allotment to the general public. Having perused the writ - 16 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 petitions, nowhere it is prayed that commercial and corner sites to be allotted in favour of the petitioners and also these writ petitions are disposed of taking note of the decision taken in other connected Writ Petitions as per Annexure-R13 wherein the petitioners accepted 60:40 scheme to the petitioners-land owners. Accordingly, in terms of Annexure-R14, the petitioners are concerned, writ petitions were disposed of on the ground that the present writ petitions stand squarely covered by the order passed in the Writ Petitions as per Annexure-R13 and no order as to allotment of commercial sites or corner sites.

16. Now the very contention of the petitioners before this Court is to allot the commercial and corner sites. The counsel appearing for the respondents brought to the notice of this Court the letter of the Government of Karnataka bearing No.JD111KHB90dated 06.12.1990 wherein a decision was taken that a corner site shall not be deemed to be a stray site and shall be disposed off only through public auction. It is important to note that this - 17 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 letter dated 06.12.1990 has not been challenged before this Court. The only challenge is made with regard to condition No.2 stipulated in Annexure-D wherein land losers are barred from opting for corner site, commercial site and CA site. The said condition is in accordance with the letter dated 06.12.1990. It is also important to note that when the property was acquired, it vests with the State in terms of Section 16 of the LA Act and once the

Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the State and there cannot be any restriction on KHB.

17. It is important to note that Section 38 of the KHB Act is very clear that KHB may retain, lease, sell, exchange or otherwise dispose of, any land, building or other property vesting in it and situate in the area comprised in any housing scheme sanctioned under the KHB Act, which is extracted below:

38. Power to dispose of land.-Subject to any rules made by the State Government under - 18 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 this Act, the Board may retain, lease, sell, exchange or otherwise dispose of, any land, building or other property vesting in it and situate in the area comprised in any housing scheme 1 [or land development scheme]. sanctioned under this Act.

18. On reading the above Section, it is important to note that the words used vesting in it and situated in the area compared in any housing scheme sanctioned under the Act. No doubt, in the case on hand the question of any lease for any period does not arise but Regulation No.5 of the Karnataka Housing Board (Allotment) Regulations 1983 is regarding lapse to the lessee, which reads as under:

5. Allottees to be a Lessee:- Allottee of a site/houses notified under these regulations shall be deemed to be lessee of the site/house, until the lease is terminated or the site/house is conveyed to the allottee in accordance with these regulations. During the period of the leases the allottee shall pay the Board a rent of Rs.10 only per annum at the beginning of each year.-. 19 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 19. There is a force in the contention of the respondents counsel that this Court in the judgment M/s Sri Balaji Amenity Center (supra) held that the communication on which the petitioner relies does not give any right to the petitioners to invoke doctrine of legitimate expectation. The board can decide the manner of disposal of land by lease, lease-cum-sale which

would also include auction sale. Therefore, the auction of plot in question cannot be faulted.

20. It is also important to note that this Court while coming to such conclusion, taken note of the judgment of the Apex Court in the case of TATA Cellular (supra). Regarding judicial review is concerned, this Court would like to refer paragraph 21 of the judgment of this Court in M/s Sri Balaji Amenity Center (supra). 21. The scope of judicial review has been stated by the Apex Court in innumerable decisions. The judicial review under Article 226 of the Constitution of India is set at rest. This Court can interfere with an administrative action only when it is shown that the decision - 20 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 making process is wrong but not when the decision itself is wrong. The scope of interference in these matters, which would fall within the realm of contract are not open to judicial review. The Apex Court in the Case of TATA CELLULAR vs UNION OF INDIA has stated the following principles in respect of judicial review. The principle enumerated from the above are the modern traits in administrative action. Note: The Court does not sit as a Court of appeal as it reviews in the manner in which the decision was made. The Government must have freedom of contract. In other words, a fair claim is necessarily concomitant from administrative body functioning or quasi-administrative sphere. However, the decision is not only tested by the 'Wednesbury principle of unreasonableness (including its other facts) must be free from arbitrariness and not affected by bias actuated by malafides. Quashing of decisions may impose heavy administrative burden on the un-objected expenditure". If one were to keep these principles in mind, judicial intervention in the present proceedings is not at all called for.

21. Having considered the same, keeping mind the principles laid down in the said judgment by the Honble - 21 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 Apex Court, the judicial intervention in the present proceedings is not at all called for. The Honble Apex Court also held in paragraph 94 of the judgment that the Court cannot make any judicial review. The same is extracted below:

94. Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under: (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision- making power and must give effect to it. (ii) Irrationality, namely, Wednesbury unreasonableness. (iii) Procedural impropriety. (emphasize supplied) 22. Having considered the principles laid down in the judgment referred supra and also the provisions of Section 16 of the Land Acquisition Act, it is very clear that the lands vest with the State and in view of Section 38 of - 22 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 the KHB Act and also it has to be noted that in terms of Annexure-A, a decision was taken to allot properties in the ratio of 60:40. The counsel for the respondents would vehemently contend that in the 60:40 policy, it is not included corner or commercial site. Hence, the petitioners are not entitled to claim corner site or commercial site. The counsel also pointed out the letter of the Government dated 06.12.1990 and the same was issued prior to the acquisition of the lands of the petitioners. The counsel would also point out that the said letter has not been questioned and only KHB has to act in terms of Government Order dated 06.12.1990 and the same cannot be the subject matter of judicial review as held by the Apex Court in TATA Cellulars case. It is important to note that in terms of Annexure-A, some of the land losers have also entered into an agreement and also respondents have given an opportunity to opt for the intermediate sites. It is the grievance of the petitioners that no opportunity was given before allotting the sites to the general public and in that regard earlier direction was - 23 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 sought in the earlier Writ Petition. However, in the case on hand also the petitioners an opportunity was given to the petitioners to opt for sites in the layout plan particularly in the developed sites before allotment to the general public.

23. Admittedly, in the present case also first petitioner withdrawn the writ petition accepting the proposal and opted for allotment of intermediate site. When such being the case, law does not permit and also the letter of the Government is very clear that corner site has to be auctioned. It is the contention of the petitioners that the only reason for the auctioning corner site is to get more fund in favour of the KHB and no doubt, there is a force in the contention of the petitioners counsel that the KHB is not meant for making profit and to allot the sites to the general public, but KHB has to develop the sites and incur expenses for development. Hence, the decision is taken to allot sites in the ratio of 60:40 and the same has not been objected by the petitioners and even they themselves have approached the Court to include - 24 - NC:

2024. KHC-D:11376 WP No.107883 of 2016 themselves in 60:40 and after including in the scheme of 60:40, they are claiming commercial and corner sites, the same is not permissible.

24. This Court cannot make any judicial review as held by the Apex Court as well as by this Court in the judgment referred supra. When such being the case, I do not find any merit in the petition to quash Annexure-D insofar as condition No.2 is concerned and to issue writ in the nature of mandamus directing the respondents to allot 40% share in the commercial and corner sites to the petitioners. Hence, the point No.1 is answered in the negative.

25. In view of the discussions made above, I pass the following:

ORDER

Writ Petition is dismissed. Sd/- (H.P. SANDESH) JUDGE Naa List No.:

3. SI No.: 2

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