

M. Shivakumar Vs. Bangalore Development Authority, Bangalore and Others

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Court : Karnataka

Decided On : Sep-10-1998

Reported in : 1999(1)KarLJ434

Judge : V. Gopala Gowda, J.

Acts : Bangalore Development Authority (Allotment of Sites) Rules, 1984 - Rules 8, 9, 13 and 14; [Specific Relief Act, 1963](#) - Sections 31; [Constitution of India](#) - Article 226; Karnataka Municipal Corporations Act

Appeal No. : Writ Petition No. 29367 of 1997

Appellant : M. Shivakumar

Respondent : Bangalore Development Authority, Bangalore and Others

Advocate for Def. : Sri Sampath Anand Shetty, Adv. and ;Smt. Bharathi Nagesh, Additional Govt. Adv.

Advocate for Pet/Ap. : G.R. Lakshmipathi Reddy, Adv.

Judgement :

ORDER

1. The petitioner claims that Site No. 388, situated at 6th Block, Koramangala, Bangalore, was allotted by the first respondent Bangalore Development Authority to him. Petitioner has produced the lease-cum-sale agreement at Annexure-B,

dated 16-9-1992, possession certificate at Annexure-C dated 3-10-1992 and katha entered in his name vide Annexure-D, dated nil during October 1992, receipt as per Annexure-E, dated 1-4-1992 for having paid the tax, conditional sale deed as per Annexure-F dated 30-10-1992, certificate as per Annexure-G, dated 11-11-1992 to show that the property in question stands in his name, Annexure-H series for having paid the tax, sanction of plan vide Annexure-J dated 'nil' and the Special Notice issued under Section 147 of the Karnataka Municipal Corporations Act for revision of tax. Annexure-N, dated 15-10-1997 is produced to show that loan is raised by mortgaging the property in question for constructing the house. The petitioner asserts that he has constructed a house and has been residing therein and two photographs are produced vide Annexure-M and MI showing the existence of building. However, the petitioner has not produced the letter of allotment of site.

2. When the things stood thus, a show-cause notice was issued by the Revenue Officer of the BDA as per Annexure-O, dated 21-4-1997 calling upon the petitioner to produce the relevant documents in respect of the site in question. The petitioner submitted a detailed reply as per Annexure-P dated 23-4-1997. However, the BDA has cancelled the lease-cum-sale agreement and the conditional sale deed under Annexure-Q dated 1-8-1997 on the ground that the said documents were got executed by the petitioner fraudulently. The petitioner is seeking to quash the said cancellation deed at Annexure-Q.

3. Mr. Lakshmipathy Reddy, learned Counsel for the petitioner submits that the impugned action of the BDA is in contravention of the various Acts and Rules of the BDA without hearing the petitioner and without following the procedure contemplated under Section 31 of the Specific Relief Act. According to him, the cancellation of the original document is bad in law. He has placed reliance on several decisions of the Supreme Court and of this Court in support of his contentions.

4. A detailed counter is filed on behalf of the BDA justifying the cancellation of the documents in favour of the petitioner. In paragraph 1, it is specifically stated thus.-

'All the documents/Annexure relied upon by the petitioner in the petition are secured illegally and by fraudulent means.... In fact, the site in question was allotted by this respondent to one Balasubramanyam as per allotment intimation letter dated 18-6-1975. Copy of the said allotment letter dated 18-6-1975 is herewith produced and is marked as Annexure-R1. After payment of the site value and submission of necessary affidavit and forms, the lease-cum-sale agreement was executed and registered on 3-5-1982 and pursuant to such agreement the aforesaid Balasubramanyam was put in possession vide possession certificate dated 26-5-1982, copy of which is produced herewith and is marked as Annexure-R2..... The aforesaid allottee also applied on 13-4-1994 for issue of absolute sale deed from this respondent. During the process the aforesaid allottee reported that there was an unauthorised structure on the site in question allotted to him. Accordingly, after inspection the jurisdictional Revenue Officer reported the existing unauthorised construction with a pucca RCC structures'.

In paragraph 2 of the counter it is stated that the entire process of allotment, execution and registration of lease-cum-sale agreement, issue of possession certificate, registration of katha as well as registration of sale deed etc., claimed by the petitioner are purported to have been executed within a period of less than 60 days of the alleged allotment and that itself shows the fictitious nature of entire transaction relied upon by the petitioner. In paragraph 4 it is stated that the sanction/approval said to have been obtained by the petitioner based on illegal, fraudulent and got-up documents cannot exist in the eye of law and the same are liable to be declared as void ab initio.

5. Petitioner has filed rejoinder to the counter denying what is stated in the counter. It is alleged that the first respondent-BDA has played a fraud on the petitioner.

6. As already observed, the petitioner has not produced the allotment letter. When the site in question was notified for allotment, when the petitioner applied for allotment of site and when it was allotted to him are not forthcoming. Petitioner claims that the site in question was allotted to him in the year 1992. All the documents in respect of the site in question were obtained in his favour within a

short span of six months. The lease-cum-sale agreement at Annexure-B is dated 16-9-1992. Clause 12 of the said agreement stipulated that at the end of 10 years the sale deed shall be executed by the BDA in favour of the petitioner. However, the recitals in the conditional deed of sale at Annexure-F would show that the petitioner applied for execution of the sale deed and accordingly the conditional sale deed at Annexure-F was executed on 30-10-1992. This document came into existence in a short period of less than two months from the date of the lease-cum-sale agreement at Annexure-B. This is contrary to Bangalore Development Authority (Allotment of Sites) Rules. The documents produced by the petitioner in proof of his title clearly proves that they are obtained fraudulently and contrary to the rules. The documents which came into existence within such a short period cannot be believed and no reliance can be placed on them. Prima facie they are fictitious, concocted and bogus documents.

7. Petitioner has denied the allotment of site in question in favour of Balasubramanyam. I have summoned the original files and perused them. The files contain the allotment particulars in favour of the said Balasubramanyam and there are no documents for having allotted the site in favour of the petitioner, in the original file. In these circumstances, the relief sought for by the petitioner cannot be granted.

8. The respondent-BDA seriously disputes the documents produced and relied upon by the petitioner. This Court cannot venture upon to find out the genuineness or otherwise of those documents under Article 226 of the [Constitution of India](#). Disputed questions of fact cannot be embarked and decided in exercise of the powers under Article 226 of the [Constitution of India](#).

9. Having regard to the fact that this Court prima facie found that the documents produced by the petitioner are not genuine and no reliance can be placed upon them, the decisions relied upon by the learned Counsel for the petitioner need not be considered in detail as they have no application to the facts of the present case. At this state it is to be observed once again that even while finding the rejoinder to the counter the petitioner has not produced the allotment letter. Since the petitioner claims allotment of site in question and the BDA seriously disputes

the same, the petitioner has to prove his title to the site in question and the burden of discharging the said onus is upon the petitioner.

10. The writ petition fails and the same stands dismissed subject to the above observations.

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