

S. Ravindra Vs. Bangalore Development Authority and anr.

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Court : Karnataka

Decided On : Feb-28-2005

Reported in : 2005(3)KarLJ595

Judge : R. Gururajan, J.

Acts : Bangalore Development Authority (Allotment of Sites) Rules, 1984 - Rule 14 and 14(2)

Appeal No. : Writ Petition No. 36862 of 2004

Appellant : S. Ravindra

Respondent : Bangalore Development Authority and anr.

Advocate for Def. : K. Krishna, Adv. for Respondents-1 and 2

Advocate for Pet/Ap. : T.N. Raghupathy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R. Gururajan, J.

1. Petitioner is the owner in possession of property bearing No. 1114/D, 9th Cross, Ashoknagar, Banashankari I Stage, Bangalore measuring 30 x 46 + 49/2. He has

built a house therein. The said site was initially allotted in favour of Smt. Rajamma in the year 1983 who in turn sold the same to one Smt. Pushpa who in turn sold the same in favour of Smt. Nandakishan. She constructed a house thereon and thereafter sold the same to the petitioner herein. In terms of the sale deed dated 7-7-1999. The period of non-alienation i.e., 10 years has expired in 1993. Petitioner after purchasing the property filed an application on 2-3-2003 with the first respondent for execution of an absolute sale deed in his favour. The BDA issued an endorsement dated 18-3-2003 asking the petitioner to pay a sum of Rs. 3,00,000/- as fine, representing 25% of the sale consideration. This endorsement is challenged by the petitioner in this petition.

2. Notice was issued and respondents have entered appearance. They say that as per the terms and conditions Smt. Rajamma occupied the property in question as a tenant for a period of ten years from the date of taking possession. Clause 5 deals with the said situation. According to respondents, the same was made during the non-alienation period and therefore fine is leviable in terms of Rule 14(2)(a)(iii) of the Bangalore Development Authority (Allotment of Sites) Rules, 1984. Respondents have also annexed a circular dated 23-6- 1999 in the matter of levy in such circumstances.

3. Learned Counsel for the petitioner would argue that initially BDA has no power at all to levy the fine. Even otherwise, learned Counsel would say that levy of 25% is referable to the first sale and not to the sale effected in favour of his client.

4. Per contra, Sri K. Krishna, learned Counsel for the BDA opposes the said plea and he relies on Commissioner, Bangalore Development Authority v. S. Vasudeva and Ors., : [2000]1SCR275 in support of his submission.

5. After hearing, I have carefully perused the material on record. Admittedly, BDA is demanding a sum of Rs. 3,00,000/- for the purpose of regularisation of the transfer of site in favour of the petitioner. Admitted facts would reveal that the petitioner is the fourth purchaser. Admitted facts also would reveal that alienation has taken place during the non-alienation period. When request for regularisation was made BDA demanded Rs. 3,00,000/-. Let me see as to whether the said claim is justifiable or not. The Supreme Court in S. Vasudeva's case has

considered the same on similar matter. The Supreme Court in para 13 has referred to Rule 14 of the Rules and thereafter the Supreme Court ruled in para 13 as under:

'As a result of the Rules as they now stand where there has been alienation of site in contravention of Sub-rule (2), then on an application being made by the purchaser the said sale or alienation in his favour can be regularised on the purchaser paying an amount equal to 25% of the sital value determined at the rates specified by the State Government from time to time'.

The Supreme Court has approved Rule 14 as I see from the material on record. The present demand is admittedly made in terms of Rule 14(2)(a)(iii). The Government has chosen to issue a notification dated 26-3-1999. The said notification provides for levy of fine of an amount equal to 25% of the sital value determined at the rates specified by the State Government from time to time. The argument of the petitioner that sital value is referable to the first sale by BDA in favour of Rajamma does not appeal to me. In fact the regularisation is only in the interest of petitioner. In these circumstances, it is not possible to accept the submission of Sri Raghupathy, learned Counsel for the petitioner. Annexure-E is accepted.

6. Petition stands rejected.

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