

K.S. Prabha Vs. State of Karnataka

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Court : Karnataka

Decided On : Dec-21-1990

Reported in : ILR1991KAR1276

Judge : Balakrishna, J.

Acts : Bangalore Development Authority Act, 1976 - Sections 63; Bangalore Development Authority (Allotment of Sites) Rules, 1982 - Rules 2(1), 5 and 10

Appeal No. : W.P. Nos. 13886, 15169, 15964 and 15979 of 1984

Appellant : K.S. Prabha

Respondent : State of Karnataka

Advocate for Def. : L.K. Srinivasa Murthy, HCGP for R-1 and ;H. Thipperudrappa, Adv. for R-2

Advocate for Pet/Ap. : G.S. Visweswara, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Balakrishna, J.

1. In all these cases, the petitioners have common pleadings. The Bangalore Development Authority allotted sites in favour of the petitioners in Rajamahal Vilas, I Stage, Bangalore. Thereafter, lease-cum-sale agreements were executed by the petitioners and the petitioners were put in possession by issue of possession certificates. The full amount of allotment price of the sites was paid by each of the petitioners to Bangalore Development Authority and there is no dispute about it.

2. When the petitioners were making preparations to put up constructions on the sites allotted to them, the State of Karnataka issued notices to the petitioners purporting to exercise its power under Section 63 of the Bangalore Development Authority Act, 1976 and calling upon the petitioners to show cause as to why the allotment of sites made in their favour should not be cancelled for two reasons; (1) that the allottees have not registered their names duly in accordance with Rule 8 of the Bangalore Development Authority Allotment of Sites Rules, 1982, and (2) that the sites allotted do not belong to the category of stray sites.

3. On receipt of the notices, the petitioners submitted replies. Subsequently there was no personal hearing and orders came to be passed by the State Government cancelling the allotments. Hence the petitioners became aggrieved and approached this Court invoking the Writ jurisdiction under Article 226 of the Constitution of India.

4. The petitioners have sought for a Writ of Certiorari for quashing the order cancelling the allotment of sites passed by Respondent No. 1.

5. The point for consideration is whether the impugned order of cancellations of allotment of sites are sustainable in law.

6. On behalf of the petitioner, the learned Counsel contended that since both Respondents 1 and 2 have acted in concert in granting sites in question in favour of the petitioners and 1st respondent is precluded from annulling allotment made in favour of the petitioners acting under Section 63 of the Bangalore Development Authority Act, 1976 and that the impugned orders are without jurisdiction.

7. The second contention is that there is no provision in Bangalore Development Authority Act which empowers the State Government to annul the allotment of sites once made. The other contention is that all the sites being stray sites, in the absence of the material to the contrary, the allotments are beyond question and the question of registration for the purpose of allotment of sites would not arise and even if any registration of names is done, it is redundant and superfluous.

8. On behalf of the State Government, (1st respondent) the learned Government Pleader contended that the Bangalore Development Authority itself in its communication to the State Government on an earlier occasion, had intimated that these sites are not stray sites and that they cannot be allotted as stray sites to persons whom the State Government had recommended on some earlier occasion.

9. Based on this intimation, it is contended that these sites cannot be stray sites and since they were not stray sites, the action of the 1st respondent in annulling the allotments is fully justified.

10. At the time of arguments, the learned Government Pleader appearing for the State Government made available the original records of the proceedings which ultimately led to the passing of the impugned orders by the State Government. I have looked into these original records of the relevant proceedings in order to satisfy myself as to whether the State Government before expressing its opinion that the sites in question are not stray sites had made proper investigation into the question, had gone into factual position had applied its mind and given its finding supported by reasons.

11. It is seen from the original records that were made available to me that the State Government after receipt of the Intelligence Reports did not make any significant progress in the investigation of the facts and information which would be a pointer to the question whether or not the sites allotted to the petitioners are stray sites. Notes were put up by the concerned Government officials with comments devoid of tangible evidence or basis to form an opinion that the sites allotted are not stray sites. The decision reached by the State Government in this regard amounts more to a mere surmise than a finding which requires probing into

facts, collection of particulars in order to satisfy itself as to whether the sites do not answer the description given in the definition of stray sites under the Act. The order which is in question deserves to be examined in order to find out whether the 1st respondent examined the question whether the sites allotted by Bangalore Development Authority are not stray sites independently of the earlier intimation given by the Bangalore Development Authority to the State Government in respect of same sites that they are not stray sites.

12. Order No. HUD 421 MNX 82(1) Bangalore dated 18-8-1982 is relevant for the purpose and it reads as follows:

'Government has considered the reply given by Smt. K.S. Prabha. The method of allotment of stray sites is different from the method of allotment of sites which are not stray sites. Stray sites are allotted under Rule 5 of the Bangalore Development Authority (Allotment of Sites) Rules, 1982, whereas regular sites are allotted under Rule 11 of the said Rules. Smt. K.S. Prabha claims that the site allotted to her does not come under the purview of Rule 11, but in fact the site is not a stray site. Hence the B.D.A. acted illegally in allotting site No. 94/G as a stray site.

Therefore, in exercise of the powers under Section 63 of the Bangalore Development Authority Act, 1976, Government hereby annuls the allotment of site No. 94/G in Rajamahal Vilas Extension, I Stage, Bangalore made by the Bangalore Development Authority to Smt. K.S. Prabha.'

It is thus clear that there is no foundation for the assumption that the sites do not belong to the category of stray sites. What is mentioned in the impugned order is merely a surmise or an opinion without basis. The State Government is supposed to have exercised its power of revision under Section 63(1) of the Bangalore Development Authority Act in reviewing or revising the orders of allotment made by the Bangalore Development Authority. The powers exercised by the State Government is a statutory power. Statutory power in its exercise entails the responsibility of exercise of statutory discretion and exercise of statutory discretion cannot be arbitrary or lackadaisical. There should be application of mind to relevant material having a bearing on the question and a finding based on the analysis of the material on record and a finding supported by reasons. In the order,

could be seen the conspicuous absence of all these characteristics of a decision making process consistent with administrative justice. The State Government has merely asserted that the petitioner claims that the site allotted to her does not come under the purview of Rule 11, but in fact the site is not a stray site and hence the Bangalore Development Authority acted illegally in allotting Site No. 94/G as a stray site. Beyond this expression of opinion, I am unable to discover any characteristic of a decision making process acceptable to fair administrative procedure. There can be no doubt that the power sought to be exercised and exercised by the 1st respondent is quasi judicial in nature. The 1st respondent by resorting to an order which is devoid of reason has virtually acted contrary to the requirements of both reason and fairness. It is significant to mention that the petitioners in all these cases have filed their objections and have taken a categorical stand that these sites are stray sites and therefore there is no room for cancellation of allotments. If according to the State Government, the sites are not stray sites, the onus is on the State Government to establish that these sites do not answer the definition of a stray site as given under the Rule. A mere assertion without verification of proof cannot be sustained.

13. According to Sub-rule 2(1) stray site means a site which was once allotted but subsequently allotment was either cancelled by the authorities or surrendered by the allottee or a site left over inadvertently while notifying the site for allotment or a site which has been found on account of re-assessment in the plan subsequent to the issue of notification inviting applications for allotment of sites.

14. It is therefore, discernible that if a site was once allotted and the allotment was subsequently either cancelled by the Authorities or surrendered by the allottee, it falls within the description of stray site. Secondly, if a site is left over inadvertently while notifying the sites for allotment, it also falls into the category of stray site. Thirdly, if a site has been found on account of re-assessment in the plan subsequent to the issue of notification inviting applications for allotment of sites, such a site also falls within the definition of stray site.

15. If the State Government wanted to take action to annul or cancel the allotments, it should have made sure that the sites in question do not belong to

any one of these description falling within the definition of stray site. There is no material on record either in the proceedings drawn up before the impugned orders were issued or within the orders themselves that these aspects were examined by the State Government and a finding was reached to the effect that none of the sites formed fell within the ambit of stray site as defined under Rule 2(1) of the Rules. The State Government has acted on assumptions and not on verified facts. If these sites fall within the category of stray sites, the question is whether it is necessary for the petitioners to have registered their names in accordance with Rule 8 of the Rules.

16. Rule 8 envisages:

'Every applicant for a site shall register his name on payment of registration fee as specified in the table below which amount is not refundable and not adjustable. The registration shall be done in Form No. 1.'

The Rule obviously refers to an applicant who desires to apply for a site and not for a stray site in the ordinary course and such an application is required to be submitted in Form No. 1. This procedure is not contemplated in so far as the allotment of stray site is concerned.'

17. The disposal of stray sites is dealt with by Rule 5 of the Rules, which provides:

'Notwithstanding anything contained in Rules 3 and 11, but subject to the provisions of Rule 10, the Bangalore Development Authority shall dispose of the stray sites in accordance with the directions issued by the Government from time to time.'

Allotment of stray sites is subject to the provisions of Rule 10 and further the Bangalore Development Authority is required to dispose of the stray sites in accordance with the directions issued by the Government from time to time.

18. Rule 10 lays down the eligibility for allotment of stray sites. No person (1) who is not a domicile (living independently or with the members of his family) in Karnataka for not less than 10 years, and (2) who has been allotted a site from Bangalore Development Authority or any other authority within Bangalore

Metropolitan area shall be eligible to apply for allotment of sites; provided that the Rules may be relaxed - (i) in case of persons domiciled in the State of Karnataka, but being in armed forces of the Nation and serving outside the State of Karnataka, (ii) in case of persons who are domicile of the State of Karnataka who have gone for employment, business, studies or training outside the State, with bonafide intention to reside in Bangalore Metropolitan area.

19. It is not the case of the State Government that these petitioners are not eligible for allotment of stray sites. Hence the question whether the petitioners satisfy the requirements of Rule 10 would not arise in the facts and circumstances of the case. It is also not the case of the State Government that these stray sites were disposed of contrary to the directions issued by the State Government. The provisions containing in Rules 3 and 11, if I may say so, are not attracted to the facts of these cases, because they are applicable only to allotment of regular sites and not stray sites.

20. It is thus seen that there is no legal warrant for the assumption of the State Government that the non-registration of the names by the petitioners render allotments void and also there is no legal warrant for the assumption of the State Government that the sites in question or any one of the sites in question do not belong to the category of stray sites.

21. I am unable to find any justification to the impugned orders of the State Government. What is deplorable is that these proceedings which relate to the year 1984 in respect of allotments made in December, 1982 have-been so casually dealt with and the bureaucracy has failed once again in not opening its eyes to what is familiarly known as the principle of accountability and the orders which are not based on proper consideration have been passed in all these cases in a routine manner and the petitioners who have paid the full consideration for allotment of stray sites have been deprived of the benefit of building houses or putting up constructions on these sites for quite a long time without any reasonable or satisfactory cause. It is no doubt true that after these Writ Petitions were filed in the Court in 1984, a time of six years has elapsed for the disposal of these cases. But the real point is that these cases would not have come up before

the Court at all if only bureaucracy has opened its eyes and acted diligently. There is considerable force in the submissions made on behalf of the petitioners that the prices have escalated alarmingly in the course of 6-7 years and the cost of construction has risen to dizzy heights and the petitioners are materially affected. Though the petitioners are justified in giving expression to their helplessness as well as harassment that has resulted from the impugned orders of the State Government, the relief that is sought in all these Writ Petitions is only for quashing of the impugned orders. I do not think, it would be necessary to go beyond the relief that the petitioners have sought in these petitions.

22. The learned Government Pleader submitted that the question whether or not the sites belonging to the category of stray sites being one of fact and therefore these could be remitted back to the State Government for fresh consideration. At this distance of time and especially when there is absolutely no material on record, as could be seen from the proceedings of the State Government that these sites are not stray sites and also having due regard to the delay, agony and frustration caused to the petitioners, I do not think it necessary to send these cases back to the State Government to be kept in cold storage. There is no justification for sending these cases back to the State Government for its consideration. It may also be pointed out that the petitioners themselves have made investigation and they have produced sufficient material to show that these sites are stray sites only and there is no reason for disbelieving the assertion of the petitioners.

23. For the reasons stated above, I pass the following:

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