

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Arjun Baljee Vs. Bangalore Development Authority, Represented by Its Commissioner

Arjun Baljee Vs. Bangalore Development Authority, Represented by Its Commissioner

SooperKanoon Citation : sooperkanoon.com/382157

Court : Karnataka

Decided On : Aug-11-2008

Reported in : ILR2008KAR4690; 2008(4)KCCR2752(DB).

Judge : V. Gopala Gowda and ;Aralinagaraj, JJ.

Acts : Bangalore Development Authority (Allotment of Sites) Rules, 1984 - Rules 10(3), 11, 11(1), 11(2) and 13(10)

Appeal No. : Writ Appeal Nos. 1797 and 1435/2007

Appellant : Arjun Baljee

Respondent : Bangalore Development Authority, Represented by Its Commissioner

Advocate for Def. : B.V. Shankar Narayana Rao and ;K. Krishna, Advs. for Respondent in WA No. 1797/2007 and ;Basavaprabhu S. Patil, Sr. Adv. for ;Basavaprabhu S. Patil Associates, Adv. for Respondent in WA No. 1435/07

Advocate for Pet/Ap. : Basavaprabhu S. Patil, Sr. Adv. for ;Basavaprabhu S. Patil Associates and ;B.V. Shankaranarayana Rao, Adv.

Judgement :

V. Gopala Gowda, J.

1. Since the facts are similar and the matters pertain to cancellation of sites allotted to brothers of the same family and common question of law is involved, both these appeals are heard together and disposed of by this common judgment.

2. There is delay of 289 days in filing W.A. No. 1435/2007 and for condonation of the same, I.A.I/2007 is filed, In paragraph 3 of the application reasons are mentioned for the delay caused in filing this Appeal. It is stated that the BDA came to know about the site got allotted by the other brother also and the same was cancelled. Challenging the cancellation, the other allottee filed Writ Petition No. 2113/2005 which was dismissed on 31/7/2007 by imposing exemplary cost of Rs. 10,000/-. Aggrieved by the same the first appeal in W.A. No. 1797/2007 is filed. Therefore, a decision was taken to file appeal against order of the learned single Judge who quashed the cancellation of allotment, with a view to have consistency in the stand of the BDA.

3. Objection is filed opposing the application. Taking into consideration the circumstances under which the appeal is filed, the modus operandi used to get the sites allotted, the ineligibility of the allottees and the ratio laid down by the Apex Court in the decision reported in State of Bihar v. Kameshwar Prasad Singh : AIR 2000 SC2306 wherein the decision in the case of Collector, Land Acquisition v. Mst. Katiji : (1987)ILLJ500SC is referred to for condoning the delay by taking a liberal approach and the following sub-paras of paragraph 11 in that decision are extracted:

11(1). Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine

must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

We accept the reasons assigned by the appellant/BDA for the delay in filing the appeal. Accordingly, I.A.I/2007 is allowed and the delay in filing W.A. No. 1435/2007 is condoned.

3. The brief facts of the case are, Arjun Baljee, the appellant in WA 1797/2007 and Keshav Baljee, the appellant in WA 1435/2007 are brothers. They individually applied for allotment of site by the B.D.A. In their applications they have not mentioned their date of birth. Without verifying the same, Arun Baljee was allotted Site No. 1180 in IV 'B' Block, Banashankari IV Stage and Keshav Baljee was allotted site No. 598 in 8th Block of Sir M. Visveswaraiah Layout Further Extension. They have also paid the value of the sites. However, they were issued show cause notices by the BDA as to why their sites should not be cancelled as their age is less than the age of eligible persons/false. Ultimately, the allotted sites had been cancelled. Questioning the correctness of the cancellation order Arjun Baljee filed W.P. No. 21133/2005 and Keshav Baljee filed W.P. No. 24100/2005 before this Court seeking to quash the cancellation orders. By order dated 31/7/2007 W.P. No. 21133/2005 was dismissed imposing exemplary cost of Rs. 10,000/-. Aggrieved by the same, W.A. No. 1797/2007 is filed. By order dated 22/9/2006 the learned single Judge allowed W.P. No. 24100/2005, quashed the cancellation order and directed the BDA to execute sale deed in favour of the writ

petitioner, the respondent in W.A. No. 1435/2007. Aggrieved by the same, the BDA has filed the above numbered Appeal.

4. Learned Sr. Counsel Mr. Basava Prabhu Patil counsel for the allottees has justified the allotment of sites and seriously contested the cancellation by the BDA placing reliance upon the decision in the case of Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. : [1978]2SCR272 for the proposition that the cancellation order must be justified on the ground it was passed. Citing another decision in the case of B.L. Sreedhar and Ors. v. K.M. Munireddy (Dead) and Ors. : AIR 2003 SC578 the learned Counsel pleaded promissory estoppel against the BDA. Relying upon the decision reported in : AIR 1996 SC432 , he has submitted that since fraud is alleged against the allottees, it would not. be just and proper to punish them only but the other officers of BDA must also be punished as they are also parties to the alleged fraud. The learned Counsel has further submitted that when the BDA called upon the allottees to furnish the date of birth, the same had been furnished with documents in proof of the same. Being satisfied with the same the value of the sites had been collected in respect of the sites allotted in their favour. Ignoring these factors, the cancellation is made and the same cannot be sustained in law.

5. Learned Counsel for the BDA Mr. Shankar Narayan has justified the cancellation of sites in their favour placing reliance upon Rule 11 of the B.D.A Allotment Rules. He further submitted that since the allotment was made by mistake, the mistake has been subsequently rectified by the BDA cancelling the allotment. The cancellation was made considering the age, number of attempts and the eligibility of the allottees is in conformity with the above relevant Rule and prayed to dismiss the Appeal of the allottee.

6. After hearing the learned Counsel for the parties and upon perusing the impugned orders, the affidavit filed by the BDA and the records made available to us, the points that arise for our consideration are:

- i) Whether the allotment of sites made in favour of the allottees is valid?
- i) Whether the cancellation of sites is justified?

7. Both the points are inter-related. Therefore we have taken the same together and answered.

Our answer to the first point is in the negative and the second point in the affirmative for the following reasons:

a) The undisputed facts are, both the allottees are brothers, students and they are residing together in the same house. The residential address furnished in both of their applications is the same, as mentioned below:

No. 124, III Main, Defence Colony Indira Nagar, Bangalore-560038 Their father's name is C.K. Baljee. Thus, both of them applied for allotment of site from the same residential address. It is also interesting to note that the site of the said address is allotted by the BDA, probably in the name of their father. That means, a member of this family has already been allotted a site by the BDA. That being the position, the allottees are not entitled to allotment of any site. Virtually, they are ineligible for allotment under the Rules referred to above. The above said reason ipso-facto sufficient to our answer to point No. (i).

b) Secondly, in the application form for allotment of site, Column No. 9 pertains to date of birth and Column No. 10 pertains to age. Both these columns are left blank by both the allottees/brothers. The applications ought to have been rejected for not furnishing complete information. Without examining the above relevant particulars regarding their age, allotment made is bad in law. When the applications itself was defective for want of relevant and requisite information, the applicants are not entitled to allotment of site.

c) Thirdly, both the applications are for allotment of site under general category under Rule 11(1)(h) of Bangalore Development Authority (Allotment of Sites) Rules, 1984 (hereinafter referred to as 'Allotment Rules'). Rule 11(2) thereof enumerates the principles to be followed as under:

11(2). In respect of the categories (a) to (h) the Authority shall consider the case of each application on its merits and shall have regard to following principles in making selection:

(i) The marital status of the applicant, that is, whether he is married or single and has dependent children;

(ii) The income of the applicant and his capacity to purchase a site and build a house thereon for his residence;

Provided that this condition shall not be considered in the case of applicants belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes.

(iii) The number of times the applicant had applied for allotment of a site and the fact that he did not secure a site earlier though he was eligible and had applied for a site;

Provided that if number of eligible applicants with equal number of attempts is more than the number of sites notified for allotment in respect of any particular category the applicant elder in age shall be considered.

(Emphasis supplied)

(iv) The fact that the land belonging to the applicant has been acquired by the Authority for the formation of the layout for which he has applied;

Sub-Clause (iii), which stipulates the number of times applied for allotment of site, and the proviso thereto which prescribes that if, number of eligible applicants with equal number of attempts are more, the applicant elder in age shall be considered, are relevant. Even though the date of birth and age were furnished with documentary proof subsequently by the allottees, it was a wrong date of birth in respect of Keshav Baljee (Appellant in W.A. No. 1435/2007). The same is clear from Annexure-H, for which the reply submitted by him as per Annexure-J is not satisfactory. In so far as the proviso to Rule 11(2)(iii) of Allotment Rules is concerned, at paragraph 6 of the objections statement filed by the BDA to the writ petition it is stated as under:

6. It is submitted that thereafter on verification of all the documents it was found that the petitioner was made only three attempts including the present one. As per the Rule 11 of the BDA (Allotment of Sites) Rules, 1984, but in the said allotment

Notification, the sites measuring 50' x 80' were allotted to the person who made four attempts and who are at the age group of 66 years 11 months 12 days, but the petitioner has made only three attempts and is of 20 years of age. Therefore he is not eligible for allotment of 50' x 80' site in the allotment made as per allotment Notification of September 2003. The said allotment is contrary to the Rule 11 of the BDA (Allotment of site) Rule 1984. Rule 11(2)(iii) of the BDA (Allotment of Sites) Rules 1984 read as follows:

The number of times the applicant had applied for allotment for a site and the fact that he did not secure a site earlier though he was eligible and had applied for a site. Provided that if number of eligible applicants with equal number of attempts is more than the number of sites notified for allotment in respect of any particular category the applicant elder in age shall be considered.

From the above it is clear that the number of attempts made by the allottees is less than other eligible persons who are elder in age. Therefore, the allotment of sites in their favour is contrary to the said Rule. Under these circumstances, rightly the allotted sites had been cancelled and no fault can be found with the BDA.

d) As regards cancellation of allotments, Column 20 of the application for allotment of site reads thus:

20. Do you or your wife/husband or your dependent children or your dependent parents or your dependent brothers or sisters own site or a house in Bangalore Metropolitan area or have been allotted a site or a house in the Bangalore Metropolitan Area by the erstwhile C.I.T.B, B.D.A, K.H.B, H.B.C.S., or any other Authority. Indicate Yes/No. (If 'yes' attach relevant certificates) Against this column, both the allottees marked 'No'. This is a false information furnished in the application and on this ground alone the cancellation of sites can be justified.

e) Admittedly, the two allottees are students. They have no income of their own. Column No. 14 of the application form pertains to annual income and the same is unfilled. Such being the case, the consideration for the sites is definitely paid by their father, of course, in respect of one allottee by raising some loan. Independently they are unable to pay the site value. When their father himself has

got allotted site in which they have constructed house and are residing, two more sites allotted for the same family is contrary to Allotment Rules. Under Rule 10(3) of allotment Rules the allottees were ineligible to apply for allotment of site. That being so, the cancellation of sites made by the BDA is legal, valid and justified.

f) It is not in dispute that the other eligible applicants have made more attempts and are older in age than the present allottees as provided under proviso Clause (iii) of Rule-11(2) of the Rules. The allottees being youngsters cannot over-take the elders and get the sites allotted making the elders to stand in Q. For this reason also the cancellation of sites is correct and there cannot be any grievance in this regard.

(g) Rule 13(10) of BDA (Allotment of Sites) Rules, 1984 reads asunder:13(10). If the particulars furnished by the applicant in the prescribed application form for allotment of site are found to be incorrect or false, the sital value deposited shall be forfeited and the site shall be resumed by the authority.

As per this Rule not only the site to be resumed but the sital value has to be forfeited.

8. In the light of what has been observed above, the reasons assigned by the learned single Judge for allowing the writ petition of the allottee are wholly untenable in law.

9. For the aforementioned reasons, allotment of sites in question is bad in law and cancellation of the same is justified.

10. One of the submissions made by the learned Counsel for the allottees placing reliance upon the decision Anil Baipadithaya and Ors. v. State of Karnataka and Ors. : AIR 1996 SC432 is that since there is mistake on the part of the BDA officials also, punishing only the allottees is not justifiable and the other party also must be punished. From the discussion made above, it is clear that the defective applications of the allottees are not rejected by the BDA but two sites are allotted in respect of the members of same family despite the address furnished by them is same. It appears that there is hand-in-glove with the family of the allottees and the

officials. Keeping all these factors in mind, we direct the Commissioner, BDA, to initiate disciplinary proceedings against the officers and officials responsible for such serious lapse and submit a report to this Court within six months from the date of receipt of a copy of this order as to the action taken.

11. For the reasons stated above, W.A. No. 1797/2007 filed by the allottee is dismissed.

12. The oral request made for waiver of cost imposed by the learned single Judge is rejected.

13. W.A. No. 1435/2007 filed by the BDA is allowed and the order of the learned single Judge is set aside.

14. Consequently W.P. No. 24100/2005 is dismissed.

15. Office shall communicate this order to the Commissioner, B.D.A to comply with the direction at para 10 and to submit report within stipulated period.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com