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Court : Karnataka

Decided On : Jul-31-2007

Reported in : 2007(6)KarLJ504; 2007(4)KCCR2391; 2007(5)AIRKarR527

Judge : N. Kumar, J.

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

Appeal No. : Writ Petition No. 21133 of 2005

Appellant : Arjun Baljee

Respondent : Bangalore Development Authority

Advocate for Def. : N.D. Mala and; B.V. Shankaranarayana Rao, Adv.

Advocate for Pet/Ap. : Basavaprabhu S. Patil, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

N. Kumar, J.

1. Petitioner has challenged in this writ petition the order dated 3-8-2005 as per Annexure-H by which the Bangalore Development Authority has cancelled the

allotment of site.

2. In pursuance of the notification dated 17-9-2003 issued by the respondent-authority in Kannada daily 'Vijaya Karnataka' inviting applications for allotment of residential sites in BSK 6th Stage Layout, the petitioner filed an application seeking for allotment of a site measuring 15x 24 mtrs. Annexure-R1 produced by the respondent is the copy of the application filed by the petitioner. A sum of Rs. 94,500/- was deposited along with the aforesaid application. The total value of the site was Rs. 7,56,000/-. On the basis of the aforesaid application, site bearing No. 1180 was allotted to the petitioner as per Annexure-B, dated 1-2-2004. As per Annexure-C, no objection was issued by the Bangalore Development Authority permitting him to offer the property allotted as a security for raising the loan to meet the cost of site allotted to him. As the said balance amount was not paid within the stipulated period, as per Annexure-D a show-cause notice was issued to the petitioner calling upon him to show cause why cancellation should not be made. It appears in the meanwhile as per Annexure-E, petitioner deposited the balance amount. Thereafter they issued Annexure-F, dated 17-6-2005, another show-cause notice to the petitioner informing him why his allotment should not be cancelled as he is not eligible in terms of age. On 8-7-2005, he sent a reply to the show-cause notice seeking for extension of time to submit his reply. Subsequently, as per Annexure-H, by the impugned endorsement the allotment was cancelled on the ground that he was not eligible to be granted site and he was granted site because of his non-mentioning of his date of birth in the application. Aggrieved by the same, the petitioner has preferred this writ petition.

3. After service of notice, the respondents have entered appearance and they have filed their statement of objections. They Contend as per the principles of selection, applications for allotment of sites, and reservation of sites contained in Rule 11 of the Bangalore Development Authority (Allotment of Sites) Rules, 1984 (for short hereinafter referred to as 'the Rules'), the respondent is duty-bound to give regard to the number of times the applicant had applied for allotment of a site as well as his age. Two attempts coupled with the age of the petitioner were, the relevant criterion for deciding the allotment. The petitioner cannot find fault with the said approach of the respondent who applied the right principles for deciding the

eligibility of the applicants. Though the applicant was a person who was not eligible, by mistake allotment was made. It was open to the authority to rectify the mistake as the petitioner had no right to get the allotment. They did not dispute other facts stated in the writ petition.

4. I have heard the learned Counsel appearing for the parties.

5. Learned Counsel for the petitioner assailing the impugned action contends, from the information furnished in the application at Ex. R. 1, it is clear that the petitioner was a major on the date of the application. He had applied earlier twice and he was not successful, the present application was a third attempt. After the allotment was made, he has paid the entire money due and payable to the respondents. In fact the respondents have given no objection for raising the loan on the security of the site. When they wanted the date of birth, petitioner has given the date of birth. Under those circumstances, the respondents were not justified in cancelling the allotment made in favour of the petitioner when petitioner is not at fault at all. Therefore, she submits the impugned action is liable to be quashed. She also contends Rule 13(1) which is invoked only provides for 'cancellation of an allotment of a site if the amount is not paid within the stipulated time'. When once the amount is received by the Bangalore Development Authority, the cancellation of allotment under the aforesaid provision is *ex facie* illegal and liable to be quashed. Therefore, she prays for quashing of the impugned letter.

6. Learned Counsel for the petitioner also submitted that this Court in W.P. No. 24100 of 2005 filed by the brother of the petitioner in identical circumstances has allowed the writ petition and directed the Bangalore Development Authority to execute the sale deed and therefore in this writ petition the order cannot be different.

7. Per contra, learned Counsel appearing for the Bangalore Development Authority contends as per the cutoff chart maintained by the Bangalore Development Authority, 50 ft. x 80 ft. dimension sites are allotted to those persons who have made three attempts and to persons who are aged 66 years 11 months and 12 days. Admittedly, the date of birth of the petitioner is 13-4-1980 and on the date of the application, he had completed 20 years only. Therefore, he was not

eligible for allotment. That is the ground on which the cancellation is made. As the endorsement is in accordance with law, no ground for setting aside the endorsement is made.

8. In the instant case, facts are not in dispute. In Annexure-R1 - the application filed by the petitioner for allotment of the site by the Bangalore Development Authority, there is a specific column i.e., column (9) for date of birth. Petitioner as a student has deliberately not filled up the said column mentioning the date of birth. Except the said column, all other columns have been meticulously filled up by the petitioner. As it is from the said form, the petitioner has applied for a site on two occasions as per the particulars given in column (21). The present attempt is a third attempt. Without the information regarding the age of the petitioner, the Bangalore Development Authority has selected the petitioner for allotment. The Bangalore Development Authority has ignored the mandatory provisions. They have turned their blind eyes to this material omissions in the application which do not contain the date of birth of the petitioner. Without knowing the date of birth of the petitioner, consequently the age of the petitioner, they have selected the petitioner and allotted a site measuring 50 ft. x 80 ft. to the petitioner, a student who is aged 23 years, who had no independent income.

9. After realising the blunder they have committed, a show-cause notice was issued as per Annexure-F calling upon the petitioner to show cause why the allotment should not be cancelled because of his age and his failure to give date of birth in the application form.

10. The reply to the said show-cause notice is very interesting. It reads as under:

I am in receipt of your letter under reference and noted the contents thereof. As I have been travelling, the time granted for replying is not sufficient. I request you to extend the time for the reply. Besides, I am not aware of any condition regarding the age limit for being eligible for allotment. Hence, I request you to furnish the necessary details/documents so as to enable me to effectively reply to your notice under reference.

Because the applicant did not mention his date of birth, the Bangalore Development Authority wanted the date of birth from him. But the applicant wanted the Bangalore Development Authority to furnish documents and details for him to furnish his date of birth.

11. He is a student and according to the reply he is a person who has been widely travelling and who has no time to reply to the show-cause notice but still he refuses to give the date of birth which is within his knowledge. Therefore, failure to mention the date of birth in the application is not a mistake, it is a deliberate omission. His contention that he is not aware of any condition regarding the age limit for being eligible for allotment shows, not only he was conscious of the significance of the age as a criteria in selection, he deliberately has not filled up the column meant for date of birth, to facilitate the allotment of the site by the officials of the Bangalore Development Authority in his favour. The relevant rules which deals with eligibility of the applicants is as under:

Rule 11. Principles of selection of applicants for allotment of sites and reservation of sites.-(1)...

(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 the following principles in making section.-

(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)

12. The petitioner is born on 13-4-1980. He applied for allotment first on 31-2-2002, second time on 13-12-2002 and the present third time on 10-10-2003, on which day he was aged about 23 years. He is a student. He has no income as per the particulars furnished in the application. He paid Rs. 94,500/- as initial deposit. Therefore, as is clear from the material on record, as per the cutoff chart by the Bangalore Development Authority, 50 x 80 feet sites were allotted to those who had applied for third attempt and also who have completed 66 years 11 months and 12 days. The sites were allotted to persons who had made third attempt. The petitioner satisfies the said criteria. However, when the number of applicants are more than the number of sites notified for allotment in respect of any particular category, the law mandates that the applicant elder in age shall be considered. No discretion is given to the authority in this regard as the expression used is 'shall' be considered. Therefore, the age of the applicant is also a decisive criteria to be taken into consideration in making the allotment. Similarly, the marital status of the applicant is yet another criteria apart from the capacity to purchase the site and build house.

13. The officials who selected the petitioner cannot plead that, by mistake the petitioner was allotted the site. It is clear from the aforesaid material contained in the application, the officials have clearly favoured the petitioner by throwing to winds the law governing allotment of site, obviously for some extraneous consideration. It is a clear case of breach of trust. A great injustice is done to persons who were standing in the queue and who were eligible to get the allotment of the site. This conclusion, I have reached is without any reason.

14. The petitioner's younger brother Sri Kesha Balajee, was born on 16-12-1983, as is clear from the order dated 22-9-2006 in W.P. No. 24100 of 2005, a copy of which was made available to me by the learned Counsel for the petitioner. Even the records of the said writ petition is also put up along with this writ petition. He is

younger to the petitioner by three years. He is a student studying in Doon School at Dehradun. He is also allotted a 50 x 80 feet site in his third attempt at the age of 20. Again it is pleaded therein that it was a mistake because in the application, date of birth was not mentioned. The worst part of it is, in the writ petition filed by him challenging the similar cancellation order, the defence taken in this proceeding is not taken. On the contrary, what was contended is that he was a minor and therefore he was not eligible. The Court found from the birth certificate he was a major and directed the Bangalore Development Authority to execute a sale deed in his favour. The lapse on the part of the authority is not pardonable. They are not only playing with the public but also with the Court. Thus, they are polluting the stream of justice by withholding the vital and material information and misleading the Courts, and making a mockery of justice. This instance may be a tip of the iceberg. It only shows the erosion of moral values and the irreparable damage, the power of money, positions and political clout has wrecked on the working of these public authorities and also shows the moral fibre of which these educated officials of the authority are made up of. It also shows how the rule of law is trampled upon and in practice how much it is respected. It also gives an indication as to whom the authority is serving. Both the brothers are residents of Defence Colony at Indiranagar - a posh locality in the City of Bangalore. It appears the petitioner's younger brother has passed out from Doon School, Dehradun. Probably, that explains the reason, why Bangalore Development Authority has gone out of the way to allot 50 x 80 ft. sites to boys who are aged 23 and 20 years in preference to those who are standing in the queue and who are at the fag end of their life, is a mystery. It is for the persons who are at helm of the affairs at the authority to have some introspection and take appropriate remedial measures to restore the confidence of the public in these institutions. However, it is heartening to note that there are some people still left in the institution who have not succumbed to these manipulations and took bold steps to cancel the allotment.

15. The mistake on the part of the Bangalore Development Authority in allotting a site is because of a deliberate omission on the part of the applicant in not mentioning the date of birth and therefore it cannot be said that the applicant is not at fault. It is because of this deliberate omission on the part of the petitioner, the Bangalore Development Authority was enabled on the pretext of being misled, in

allotting the site and therefore that action of the Bangalore Development Authority, even, if it is held that it is a mistake, is directly attributable to the petitioner and therefore he is not entitled to the benefit of the said mistake. Authorities were fully justified in issuing a show-cause notice and after hearing the petitioner as he had no tenable defence to put forth and his date of birth was not in dispute, were justified in cancelling the allotment.

16. Insofar as this Court passing an order directing the Bangalore Development Authority to execute a sale deed in identical manner which is filed by his younger brother is concerned, a reading of the said order shows what was contended before the Court in the case was that applicant was a minor. After looking into his date of birth, he was found that he was a major and therefore thinking that the cancellation is made on the ground that the applicant is a minor, that order came to be set aside. It was found that even in the case, the applicant was making a third attempt and therefore it was found he was eligible for allotment of a site. The question whether among the persons who had made three attempts, who was elder in age was not gone into. If, only it had been gone into, as the cut-off criteria is 66 years 11 months and 12 days, he also had no eligibility. Therefore, merely because that writ petition is allowed, as the question involved in this writ petition was never urged or decided in the said case, the judgment in the said case neither would operate as res judicata nor would operate as a binding precedent.

17. In that view of the matter, the impugned order passed is just, legal and do not call for interference. Petition is dismissed with exemplary costs of Rs. 10,000/-. The office is directed to send a copy of this order to the Commissioner, Bangalore Development Authority for taking appropriate action.

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