

Smt. Chandra Vs. the Commissioner, Bangalore Development Authority

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Court : Karnataka

Decided On : Jan-13-2010

Reported in : 2010(2)KarLJ170

Judge : S. Abdul Nazeer, J.

Acts : Bangalore Development Authority (Allotment of Sites) Rules, 1984 - Rule 11(2)

Appeal No. : Writ Petition No. 11583 of 2008

Appellant : Smt. Chandra

Respondent : The Commissioner, Bangalore Development Authority

Advocate for Def. : Rangaswamy, Adv.

Advocate for Pet/Ap. : Kasturi Associates, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S. Abdul Nazeer, J.

1. In this case, the petitioner has called in question the validity of the order passed by the respondent at Annexure-D, dated 25-7-2008 whereby the allotment of a site

bearing No. 671 of Arkavathi Layout in her favour has been cancelled.

2. The respondent issued a notification as per Annexure-A, dated 22-2-2004 informing the general public the allotment of sites of different dimensions at Arkavathi Layout, Bangalore. The petitioner made an application for allotment of a site measuring 6 mts. x 9 mts. under the category reserved for economically weaker sections of the society. She was allotted a site on 24-6-2006 as per the allotment letter at Annexure-C. The petitioner has deposited the entire sital value with the respondent. However, the respondent issued notices dated 5-5-2007 and 27-5-2007 calling upon the petitioner as to why the allotment of the site in question should not be cancelled as she was born subsequent to 10-12-1959. Thereafter, the respondent has passed the order at Annexure-D, dated 25-7-2008 cancelling the allotment of the said site. The respondent has filed statement of objections.

3. Learned Counsel for the petitioner would contend that the petitioner belongs to economically weaker section of the society. Pursuant to the notification at Annexure-A, petitioner has applied for allotment of a site measuring 6 mts. x 9 mts. The notification does not stipulate the condition that the applicants who were born prior to 10-12-1959 are alone eligible for allotment of a site. She was allotted a site after due verification of her application. It is further contended that in the application, the petitioner has disclosed her age as 38 years. She has not suppressed any material facts. She has deposited the entire sital value with great difficulty. It is further argued that the respondent has cancelled the allotment of the site without issuing a show-cause notice.

4. On the other hand, learned Counsel appearing for the respondent sought to justify the impugned order. It is argued that in the application form at Annexure-B, the petitioner has not disclosed her date of birth. Had she disclosed the date of birth, the respondent would not have allotted the site in question because she was admittedly born after 10-12-1959. It is further argued that the respondent has received large number of applications for allotment of the sites under the aforesaid category. Therefore, it has taken a decision to allot the sites to the persons who are senior in age. It is further argued that the respondent is entitled to fix the age limit for allotment as per the proviso to Rule 11(2) of the Bangalore Development

Authority (Allotment of Sites) Rules, 1984. He prays for dismissal of the writ petition.

5. Material facts are not in dispute. The notification issued by the respondent does not state that in order to apply for allotment of the sites reserved for economically weaker section of the society, the applicant should have been born prior to 10-12-1959. It is common knowledge that whenever the respondent issues the notification for allotment of sites, it receives large number of applications. Therefore, the respondent may be justified in fixing the age of the applicants for allotment of the sites. It is not disputed that the application filed by the petitioner is her 3rd attempt. The reasons assigned by the respondent for cancellation of the site is that she was born subsequent to 10-12-1959. At column (6) of the application at Annexure-B, the petitioner has disclosed the year in which she was born. In column (7), she has stated her age as 38 years. Thus, it cannot be said that she has not disclosed her age in the application. It is not in dispute that the petitioner belongs to economically weaker section of the society. It is only after verification of the application, the respondent has allotted the aforesaid site. It is also not in dispute that the petitioner has deposited the entire sital value as per the allotment letter. It is her case that she has deposited the said amount with great difficulty so that she can have a roof over her head. The site in question measures 20' x 30'. The respondent has cancelled the allotment of the site after a passage of about two years. The respondent has not produced any material to show that the order impugned has been passed after issuing a show-cause notice. It is obvious that the order impugned is opposed to the principles of natural justice. This Court in *R. Muthuraj v. Bangalore Development Authority* W.P. No. 18606 of 2007, DD: 14-12-2007, has allowed a writ petition seeking a similar relief by the petitioner therein. Having regard to the facts and circumstances of the case, I am of the view that the respondent was not justified in cancelling the allotment of the site.

6. In the result, writ petition succeeds and it is accordingly allowed. The order at Annexure-D, dated 25-7-2008 is hereby quashed. The respondent is directed to execute and register the lease-cum-sale deed in respect of the site in question in favour of the petitioner as expeditiously as possible. No costs.

