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Court : Karnataka

Decided On : Nov-02-2010

Judge : RAM MOHAN REDDY J.

Appeal No. : WRIT PETITION No. 10186 OF 2010 (BDA)

Appellant : Sri. D Venkatesh Guptha

Respondent : The Commissioner Bangalore Development Authority and anr

Advocate for Def. : Sri. K N PUTTEGOWDA, ADV

Advocate for Pet/Ap. : Sri. N R NAGARAJ ADV

Judgement :

ORDER

1. Petitioner's vendor in title by name B.Srinivasamurthy was allotted site No.21 Old No. 1539, 39th 'E' Cross, 24th Main. 4th T Block, Jayanagar, measuring East West 36 feet and North South 58 feet, by communication dt. 30/31. 1.1968 followed by execution of lease cum-sale agreement dt. 10.2.1969 by the erstwhile City Improvement Trust Board (CITB) and delivery of possession under possession memo dated 17.4.1969. The Bangalore Development Authority, for short BDA, the successor of CITB executed an absolute sale deed dt. 4.3.2002 conveying the said property in favour of the petitioner's vendor, registered in the office of the jurisdictional Sub-Registrar and katha made out in his name by the Bangalore Mahanagara Palike. The petitioner purchased the immovable property for a valuable consideration under a sale deed dt. 4.12.2008 Annexure-A executed by the petitioner's vendor in title and thereafter has been in peaceful possession and enjoyment of the said property. The petitioner on receipt of the letter dt 18.11.2009 Annexure-D of the respondent-BDA, addressed to the petitioner's vendor in title, informing that the allotment of site in question was cancelled since wife of the petitioners vendor in title was also allotted yet another site No.317, Koramangala and hence disentitled to the allotment of the site, has presented this writ petition.

2. Petition is opposed by filing statement of objections dt. 26.10.2010 inter alia contending that B.Srinivasamurthy was allotted a site by CITB and a sale deed was executed in his name and when the BDA came to know that the allottee's wife was also allotted a site at Koramangala layout and conveyed under a sale deed executed on 15.2.2002, in violation of the Bangalore Development Authority (Allotment of sites) Rules, 1984. For short 'BDA Rules' when brought to the notice of the Authority, the Board by its order dt. 18.11.2009 resolved to cancel the site allotted in favour of B.Srinivasamurthy. According to the BDA. Allotted having furnished false information, in terms of Rule 13(10) of the 'BDA Rules', the authority is empowered to cancel the allotment as and when it comes to its knowledge about the suppression of facts. The BDA asserts that the title of the vendor of the petitioner was shaky and the petitioner's vendor having secured the allotment by misleading the authorities, the petitioner cannot claim a valid title.

4. Heard the learned counsel for the parties, perused the pleadings and examined the order impugned. The

indisputable facts are that the petitioner's vendor in title by name B.Srinivasamurthy was allotted site No. 1539. 39 'E' Cross. 24th Main, 4th T Block, Jayanagar, subject matter of this petition, under letter of allotment dt. 30/31.1.1968 by the erstwhile CITB, followed by execution of an absolute sale deed Dt. 4.3.2002 by the respondent-BDA. successor in interest of the CITB; according to the BDA Srinivasamurthy's wife by name Shanta was allotted site No.317, I Block, Koramangala, Bangalore, much after the allotment of the site in favour of B.Srinivasamurthy. If that is so. BDA cannot be heard to contend that B.Srinivasamurthy had misled the CITB by suppressing the material fact of allotment of another site in favour of his wife. In that view of the matter BDA would have no grievance in respect of allotment of the site in question in favour of B.Srinivasamurthy. Sub-rule (10) of Rule 13 of the BDA Rules' does not apply, since it provides for resumption by the authority of a site when allotted based upon particulars furnished by the applicant in the prescribed application format found to be incorrect or false. Even otherwise it is not known as how the said rule is applicable to the site allotted by the CITB in 1968 since the rules are of the year 1984. Yet again B.Srinivasamurthy is reported to have died on 11.11.2009 as certified in the death certificate Dt. 7.12.2009 Annexure-G. On that score too the order 1A impugned is unsustainable as against a dead person. So also the order impugned is unsustainable since there is no material forthcoming in the matter of compliance with the audi alterem partem rule i.e. opportunity of hearing. In the circumstance the Initiation of proceedings is brought with illegalities and hence unsustainable.

In the result, the writ petition is allowed. The order Dt. 18.11.2009 Annexure-D of the respondent-BDA cancelling the allotment of the petition schedule property is quashed. It is needless to state that if the wife of the petitioner's vendor in title suppressed material facts in the application for allotment of site followed by allotment of site No.317 of Koaramangala. it is open for the BDA to take action as is permissible in law.

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