

**R. Siddappa Vs. the Commissioner, Bangalore Development Authority, Bangalore**

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**Court :** Karnataka

**Decided On :** Mar-01-2012

**Judge :** Mohan ShantanaGoudar, J.

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

**Appeal No. :** Writ Petition No. 33249 of 2011 (BDA)

**Appellant :** R. Siddappa

**Respondent :** The Commissioner, Bangalore Development Authority, Bangalore

**Advocate for Def. :** Shankar Narayan Rao, Adv.

**Advocate for Pet/Ap. :** Shashidhar Parlathaya, Adv.

**Judgement :**

1. Sri B.V. Shankar Narayan Rao, learned Counsel takes notice for respondent.

The petitioner has sought for quashing the order Annexure-A, dated 11-10-2006 issued by the respondent, by which, the allotment of site made in favour of the petitioner came to be cancelled.

2. The records reveal that the petitioner submitted application along with necessary particulars pursuant to the notification issued by BDA calling for applications for allotment of sites. The application for allotment of site was filed by the petitioner on 23-10-2003. He sought for allotment of site under weaker section category. In the said application, the petitioner has clearly mentioned his date of birth as 8-10-1945 and that his age is 48 years. He has also mentioned that his annual income is Rs. 9,600/-. Considering the application filed by the petitioner, the BDA has allotted site bearing No. 410 measuring 6 mt. x 9 mt. (20 ft. x 30 ft.) under Economically Weaker Section in Sir M. Visveshwaraiah Layout, VII Block, Bangalore, as per the allotment letter vide Annexure-B, dated 6-2-2004. On 4-2-2004, the respondent-BDA issued no objection certificate for mortgaging the said site of the petitioner for the purpose of meeting the cost of the site, as per Annexure-C. However, the petitioner after arranging the funds, paid the entire site value on 23-8-2004 as is clear from the documents at Annexures-D and E. Since there was litigation with respect of site No. 410, the BDA allotted alternative site in favour of the petitioner bearing No. 251/7 on 16-6-2005 as per Annexure-F instead of site No. 410. When facts stood thus, respondent-authority cancelled the allotment of site viz., site No. 410 made in favour of the petitioner by issuing endorsement Annexure-A, dated 11-10-2006, on the ground that he had not completed age of 59 years, 10 months and 3 days at the time of original allotment and he was only 48 years. According to the petitioner, said order/endorsement of cancellation was not communicated to him. The petitioner after coming to know of the said cancellation order on 2-7-2008, addressed representations repeatedly. Since the said representations are not considered, this writ petition is filed for the following reliefs:

“Therefore, it is prayed that this Hon’ble Court be pleased to order to issue writ of certiorari calling for the records from the respondent-Bangalore Development Authority in its proceedings No. BDA/UKA-1:06-07 and quash its Order No. BDA/UKA-1:06-07, dated 11-10-2006, as per Annexure-A and in the alternative direct the respondent to allot a suitable site and grant such other reliefs as this Hon’ble Court may deem fit to grant in the circumstances of the case in the interest of justice and equity and justice”.

3. Copy of the application filed by the petitioner seeking allotment of site is produced by learned Counsel for the petitioner along with memo dated 1-3-2012. The same is taken on record. The same reveals that the petitioner has not suppressed anything. He has not only clarified that his date of birth as on the date of the application was 48 years, but also clarified that his annual income is Rs. 9,6000/-. He has also mentioned his date of birth as 8-10-1945. Neither the notification calling for the application nor the application form supplied to the petitioner prescribe any age limit for the purpose of applying for site. However, application to be filed by the applicants reveals that the applicant shall abide by the terms and conditions specified in the Bangalore Development Authority (Allotment of Sites) Rules, 1984 (hereinafter referred to as 'Rules' for the sake on brevity). Thus, it is clear that the allotment to be made by the respondent would be subject to the provisions of the Rules and the petitioner is also bound by such rules.

4. Sri. Shankar Narayan Rao, learned Counsel appearing on behalf of BDA draws the attention of the Court to Rule 11(2)(iii) of Rules, 1984 to contend 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. According to him, number of elderly persons had applied and therefore such elderly persons who are having equal number of attempts would have to be allotted sites in preference to the petitioner.

5. There cannot be any dispute that the allotment will have to be made in accordance with Rules. Once the allotment of site is made by the respondent-authority, it is deemed that the respondent is satisfied that the allotment is being made as per Rules. Thus the respondent-authority will have to verify all the records and the applications to find out as to whether particular person is eligible for allotment or not. Only if the applicant is eligible for allotment of site, then only the allotment of site is to be made. In the matter on hand, allotment was made as back as on 6-4-2004. Thus it is deemed that the respondent had satisfied itself about the fulfillment of the requirement of Rules by the petitioner. Since site No.410 which was allotted initially on 6-4-2004 was under litigation, the petitioner was allotted alteration site bearing No. 251/7 in the very layout on 16-6-2005.

Such allotment of alternative site is also made without any objection by the respondent. Strangely, after one year, the order of cancellation is made on the aforesaid ground. The BDA itself had permitted the petitioner to mortgage the allotted site for the purpose of raising loan. In this view of the matter, it is not open for the respondent to cancel the allotment of site made in favour of the petitioner. Accordingly, impugned endorsement Annexure-A, dated 11-10-2006 stands quashed.

6. Accordingly, writ petition is allowed.

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