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Court : Karnataka

Decided On : Feb-05-2013

Judge : Ram Mohan Reddy

Appeal No. : Writ Petition No. 4398 of 2012 (BDA)

Appellant : Smt. Nirmala

Respondent : Bengalooru Development Authority, Rep. by Its Commissioner and Others

Judgement :

(This Writ Petition is filed under Articles 226 and 227 of the Constitution of India Praying to quash the impugned endorsement/order issued by the Second Respondent dated 12.10.2011 to the Petitioner, Vide Annexure T.)

Petitioner's vendor-in-title by name Sri O.J. Varghese, a successful bidder in an auction of a corner site bearing No.5DM 302 on 12.11.1991 held by the Bangalore Development Authority, led to issue of a Possession Certificate Annexure 'B' followed by the execution and registration of a Conveyance Deed dated 15.9.1995 Annexure 'C'. Petitioner's vendor made a representation dated 28.8.1998 to allot marginal land measuring 360 sq. ft. located adjacent and on the eastern side of the said site. According to the petitioner, in identical circumstances, when a writ

petition was filed by one L Anantharamaiah, owner of site bearing No. 5DM 308, the BDA allotted marginal land on 02.05.2003. So also, it is said, in the case of Sri B Ramesh, owner of site bearing No.5DM 306 was also a beneficiary of such allotment by the BDA on 8.10.2004. Petitioner is said to have made a representation dated 24.11.2004 to allot the marginal land measuring 360 sq. ft. which was responded to by endorsement dated 12.10.2011 Annexure 'T' stating that the marginal land is allotted to the 3rd respondent on 2.2.2011. Petitioner having instituted CCC No.1861/2011 (civil), the Division Bench by order dated 14.10.2011 reserved liberty to the petitioner to challenge the endorsement dated 12.10.2011, and disposed of the said petition. Hence, this petition.

2. Petition is opposed by filing statement of objections dated 29.1.2013 of the respondent- Bangalore Development Authority interalia contending that the petitioner has no legal right to seek allotment of an independent site, in the guise of claiming it as a marginal land, since that property is not a marginal land but an independent site, which is allotted to the 3rd respondent. In addition, it is stated that the site allotted to the 3rd respondent is an intermediary site situated between site No. 6M 301 and 5DM 302 and numbered as site No.3C 501. The formation of the intermediary site, it is stated, is incorporated in the original layout plan and also in the guideline survey sketch during the year 2007. It is lastly stated that there is no law relating to allotment of marginal land. It is alleged that petitioner an encroacher of BDA land having approached the Court with unclean hands, is not entitled to the extraordinary reliefs.

3. Respondent-BDA has filed additional statement of objections dated 1.2.2013 interalia reiterating the averments in the statement of objections and in addition that the 3rd respondent was allotted site No.429 measuring 30 x 40 ft. at J.P.Nagar, 9th stage, II Block on 19.1.1995, which was withdrawn as the dimension of the said site was bigger and was allotted site No.299 at J B Kaval on 7.8.1996 which was under litigation and therefore, an alternate site bearing No.164, J.P.Nagar, 9th stage, II Block was allotted on 24.10.2002 and a Sale Deed executed on 13.11.2006, which too was cancelled due to pendency of litigation and thereafter, site No.4M-513/A in HRBR layout, II block was allotted as an alternate site on 14.8.2007, which too was cancelled as it was carved from out of a

corner site and therefore, the 3rd respondent was allotted the site in question at HRBR Layout, II Block. A photocopy of a page, out of some unknown register, is enclosed to the additional statement of objections, which states that in HRBR, II Block layout, a stray site is assigned No.3C-501 on the basis of somebody's decision dated 26.9.2007 and is incorporated in the guideline survey map No.13. In addition, a portion of the guideline survey map of the Bangalore Development Authority is also enclosed and site No.3C-501 is shown to lie in between site No.5DM 302 and 6M 301.

4. The 3rd respondent though served is absent and unrepresented.

5. The submission of the learned counsel for the petitioner that the land adjacent and on the eastern boundary of the site No.5DM 302 belonging to the petitioner is "marginal land" is unacceptable. Neither the Bangalore Development Authority Act, 1976 nor the rules framed there under defines the term marginal land much less, allotment of marginal land.

6. Sri M B Prabhakar, learned counsel for the BDA points to the definition of the term stray site in Rule 2 (j) of the Bangalore Development Authority (allotment of sites) Rules, 1984 (for short 'Rules') to mean that, a site which was once allotted, but subsequently, allotment was either cancelled by the authority or surrendered by the party or a site which has been formed on account of re-adjustment and subsequent to the issue of the notification inviting applications for allotment of sites, to submit that the site in question bearing No.3C-501 is one of those sites, which is formed on a re-adjustment and subsequent to the issue of the notification inviting applications for allotment of sites.

7. If that is so, then the site in question being a stray site falling within the definition of the said term under Rule 2(j) of the Rules, its allotment must comply with Rule 5 relating to the allotment of stray sites in accordance with guidelines issued by the Government. There is no dispute that the Circular No.UDD 129 MNJ 97 Bangalore dated 06.08.1997 provides for revised guidelines for allotment of stray sites by the BDA where under, the 7 categories of persons to whom the stray site could be allotted does not disclose an allotment by way of an alternate site in favour of the 3rd respondent.

8. Keeping in mind, the fact that there is neither a site called as marginal land nor a law relating to allotment of marginal land and the fact that the site in question is a stray site, to be allotted only in terms of the guidelines as provided in the circular, the petitioner is dis-entitled to a direction to the BDA to consider allotting the alleged marginal land on the eastern boundary of the petitioner's property. The relief to quash the endorsement Annexure 'T' indicating site No.3C-501 is an alternative allotment in favour of 3rd respondent, cannot be sustained and calls for interference.

In the result, this Petition is allowed in part. The allotment of site No.3C-501 in favour of 3rd respondent is quashed.

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