

SUPREME COURT OF INDIA

Commissioner Bangalore Development Authority

Versus

S. Vasudeva

(B.N. Kirpal, M.B. Shah, JJ.)

Civil Appeal Nos. 456-458 of 2000.

18.01.2000

JUDGMENT

B.N. Kirpal, J. -

Civil Appeal Nos. 456-458 of 2000 (arising out of Special Leave Petitions Nos. 197f42-44\1999]

Special leave granted.

Aggrieved by allotment of land to 34 persons by the Bangalore Development Authority (hereinafter referred to as the "BDA"), respondent No. 1 filed a writ petition in the Karnataka High Court challenging not only the said allotment but also some of the transfers of land which had been effected by some of the said allottees. These 34 respondents were stated to be ex-Legislators, Ex-Ministers, etc., who were members of the Legislature Housing Co-operative Society Ltd. (for short "the respondent-Society"). In the writ petition, it was averred that out of turn allotment had been given to these 34 persons and in violation of the Rules some of them had transferred the land and, therefore, that land should be resumed by the Government.

2. The aforesaid writ petition was filed in the High Court by an Advocate who stated that he had no personal interest in the matter but was aggrieved by the breach of the rule of law stated to have been committed by the Government of Karnataka and the BDA. The appellant (BDA) herein as well as the State of Karnataka represented before the High Court that the allotments had been made in accordance with the provisions of the Bangalore Development Authority Act, 1976 (hereinafter referred to as "the Act") and the Rules framed thereunder. It was stated that the respondent-Society had been registered in the year 1981 and bulk allotment had been made to the Society which, in turn, allotted plots of land to its members. The details with regard to allotment of land by the BDA to the said Society are as under :-

Authority Resolution No. & Date	Government Order and No. & Date	No. of sites approved for allotment	Name of the Layout
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272\2.4.81	HUD 225 MNX 81 Dt. 10\14.7.81	100	Further Extn. of Mattadahalli
139\17.7.86	HUD 339 MNX 86 Dt. 24.10.86	56	Koramangala, 4th `B' Block
251\23.10.86	HUD 339 MNX 86 Dt. 30.1.87	99	Koramangala, Gangenhalli9 & Sarakki
587\3.7.87	HUD 339 MNX 86 Dt. 30.9.87	100	Rajmhal Vilas (Lottergollahalli)
379\16.1.87	HUD 337 MNX 88 Dt. 14.12.88	249	Rajmahal Vilas II Stage (Bhoopasandra) and Hosur Sarjapur Road
	Total	604	

It was also contended by the respondents that the writ petition should be dismissed on the ground of laches, inasmuch as allotment of land had taken place between 1981 and 1987 whereas the writ petition itself was filed in 1996. It was also contended that third party interest had arisen and it would be unfair and unjust that allotment of land should be cancelled especially when some, it not most, of the allottees had already spent considerable amount of money and raised construction on the plots so allotted. Defending the allotment made to the respondent-Society, the BDA relied upon the provisions of Section 38-B which was introduced in the Act with effect from December, 1975 which in term permitted bulk allotment of land to Housing Co-operative Societies for allotment to its members.

3. The High Court came to the conclusion that allotment of land was not validly made to the respondent-Society. It also held that at this belated stage the violations which had been committed should not render the allotment invalid but nevertheless it observed that the said allotment required reconsideration of the cases. The High Court then issued the following directions :

"Under the circumstances of the case and keeping in view the position of law as noticed herein above, these petitions are allowed by issuance of the following declarations and directions :

(1) Respondent No. 3 is directed to constitute a high power Committee for the purpose of examining all the allotments made so far to the Members of Respondent No. 39-Society keeping in view the provisions of the Act, the Rules, the Regulations, the Orders issued in that behalf and the observations and findings recorded in th is

judgment. Such Committee should comprise of experts in the fields and may be headed by a person of judicial background preferably a former Judge of this Court. Such a Committee shall be constituted within a period of one month from today with direction to submit its Report to the Authority within a period of four months from the date of its constitution. It is needless to say that such a Committee shall examine all individual cases after notice to the concerned allottees.

(II) Consequent upon the submission of the Report by the Committee, Respondent No. 3 shall initiate legal process for cancellation of the allotments wherever needed, obviously in accordance with the provisions of the Act, Rules, Regulations and after compliance of the principles of natural justice.

(III) To facilitate an early Report, Respondent No. 3 shall notify the constitution of the Committee, its functions and the place of sitting by means of publication of a notice in three daily newspapers published from Bangalore having wide circulation in the State of Karnataka. Out of these three newspapers one shall be in Kannada language. Such publication shall be deemed sufficient notice to all concerned. The Committee shall, however, in its discretion be entitled to issue personal notice to the concerned.

(IV) Respondent No. 27, who was allotted a site measuring 50' x 80' at HSR Layout is proved to have violated the terms of the lease-cum-sale agreement and the provisions of law, thus incurring a liability of cancellation of the site. The allotment of a site No. L-1118 of Hosur Sarjapur L.H. Colony made in favour of Respondent No. 27 is hereby cancelled with direction to Respondent No. 3 to resume the site and take its immediate possession. Respondent No. 27 is held entitled to the payment of such amount as is permissible to him under Rule 14 of the Allotment Rules notwithstanding the amounts spent by him on the construction of a Hotel in violation of the provisions of law.

(V) All permission granted to the Respondents for alienation of land are held to be in violation of Rule 13 of the Allotment Rules and the conditions of lease-cum-sale agreement executed between the parties. Such permissions in so far as the concerned Respondents are concerned are declared to be nullity, void and inoperative not affecting the rights of the Respondent No. 3-Authority. Consequent upon the setting aside of the permissions granted for alienation, Respondent No. 3 is directed to take immediate consequential action under the provisions of the Act, Rules issued thereunder and the agreement executed between the parties. So far as the other allottees of the sites, who have been granted permission of alienation, but are not parties before us, a direction is issued to Respondents 1 and 3 to immediately initiate process for cancellation of such permission after notice to the concerned and compliance of the principles of natural justice. Appropriate action shall be initiated within one month and effective

orders be passed with respect to all concerned within a period of three months.

(VI) The alienations made by the allottees in favour of the third parties would not come in the way of Respondents 1 to 3 to implement the directions of this Court. It is, however, directed that in all such cases where the name of the transferees are notified, the Respondents 1 to 3 shall pass effective orders after notice to the concerned transferees also.

(VII) That pending amendment of the Rules, no further permission shall be granted to any allottee for transfer of the site to any person under any circumstances.

(VIII) Even after the Rules are amended as recommended by Respondent No. 3-Authority, the allottees of the sites from the B.D.A. are held not eligible to transfer the vacant site to any person for any reason. Allottees of such sites shall however upon proof of the conditions specified under Rule 14(3) of the Allotment Rules be eligible to surrender the sites in favour of the Authority on receipt of the amount as provided under the aforesaid Rule.

(IX) The allottees of the sites who have put up buildings shall be permitted to sell the sites only upon declaration of their status regarding insolvency or impecuniosity by a competent Court of jurisdiction and in the light of the findings returned by us in this judgment.

(X) Such of the allottees of the sites who are unable to reside in the city of Bangalore shall be required to surrender the site whether any construction is raised or not in favour of Respondent No. 3-Authority on receipt of the amounts calculated as per terms of Rule 14(3) of the Allotment Rules.

(XI) Respondent No. 3 is further directed to immediately appoint an officer to ascertain within one week regarding the position of the sites so far as the construction of the building in terms of lease-cum-sale agreement is concerned. Such officer shall submit his Report positively within a period of two weeks.

(XII) Pending Report of the Committee appointed in terms of direction No. 1, no allottee of any site, which is in dispute and allotted at the instance of Respondent No. 39 shall be permitted to commence or carry on any construction on the site.

(XIII) The directions issued and law laid down in this case shall mutatis mutandis apply to all the allottees of the sites made under the B.D.A. Act and Rules whether directly or through Housing Societies."

4. The aforesaid judgment of the High Court and the directions issued by it have

been challenged in this appeal and the connected petitions which have been filed.

5. At the outset, we are of the opinion that the High Court travelled way beyond the scope of the writ petition which was before it. The prayer in the writ petition was for quashing the out of turn allotments in favour of MLAs, MPs and others who were impleaded as respondents Nos. 4 to 38 before the High Court. The further prayer was that permission which had been granted to some of these MLAs, MPs and others to transfer plots of land which had been allotted to them should also be quashed. It is pertinent to note that in this writ petition there was no challenge either to the registration of the respondent-Society with the BDA or to the allotment of land to the Society as such. As already noted, the challenge was to the allotment to the 34 persons who were stated to be members of the said Society. The High Court, on the other hand, not only came to the conclusion that bulk allotment of land was not permissible but also directed the constitution of a Committee to go into all allotments made by the BDA. The effect of this would be that the Committee which was sought to be constituted was empowered to carry out a moving and fishing inquiry with regard to allotments of land made by the BDA since the time it was constituted in the year 1976. There was neither any prayer in the writ petition to this effect nor do we find any affidavit having been filed by the respondents before the High Court in relation to such allotments of land to the Society and others. The writ petitioner had not chosen to enlarge the scope of the writ petition by amending his petition and, therefore, the High Court, in our opinion, was not justified in issuing the type of directions which it did.

6. Coming to the merits of the case and without going into the question of laches we find that during the pendency of the hearing of the writ petition, two of the respondents, namely, Jagannatha Rao Chandraki and K.G. Ramaswamy had expired. The High Court ordered their deletion from the array of respondents. In addition thereto, it was found that some of the persons who were originally impleaded as respondents were not Legislators and on a memo being filed by the writ petitioner 13 such respondents were deleted from the array of respondents vide Court's order dated 27th August, 1998. We are thus concerned with the remaining ex-Legislators and Ministers to whom allotment had been made by virtue of their being members of the respondent-Society.

7. In justification of allotment of land, the appellant BDA has placed strong reliance on Section 38B of the Act which reads as under :

"38B. Power of Authority to make bulk allotment. - Notwithstanding anything contained in this Act or Development Scheme sanctioned under this Act, the Authority may, subject to any restriction, condition and limitation as may be prescribed, make bulk of allotment by way of sale, lease or otherwise of any land which belongs to it or is vested in it or acquired by it for the purpose of any development scheme, -

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(i) to the State Government; or

(ii) to the Central Government; or

(iii) to any Corporation, Body or Organisation owned or controlled by the Central Government or the State Government; or

(iv) to any Housing Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959); or

(v) to any society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960); or

(vi) to a trust created wholly for charitable, educational or religious purpose;

Provided that prior approval of the Government shall be obtained for allotment of land to any category listed above.

It may here be noticed that Section 38 of the Act gives power to the Authority to lease, sell or transfer property, *inter alia*, for building purposes or for the purposes of any development scheme. It appears that the Karnataka High Court had in an earlier decision interpreted this Act to mean that the BDA could not make bulk allotment. This resulted in the passing of the Bangalore Development Authority (Third Amendment) Act, 1993. By Section 5 of the said Amending Act, Section 38B was inserted in the principal Act with effect from 20th December, 1975. A plain reading of this Section shows that bulk allotment of land by way of sale, lease or otherwise can be made, *inter alia*, to any Housing Co-operative Society. This being so, the allotment of land made in favour of the respondent-Society between 1981 and 1987 would come within the ambit of Section 38B. There is no material on record to indicate that there was any society or organisation or anybody else who had been registered with the BDA prior to the date of registration of the respondent-Society and who had not been allotted land. In the absence of any averment in this behalf or any specific finding in regard thereto, the allotment of land which consisted of 604 sites in favour of the respondent-Society cannot be held to be invalid. It is not in dispute that the respondents whose allotment was challenged were members of the respondent-Society and if this being so they would be entitled to allotment of sites from out of the land which had been allotted to the said Society.

8. We now come to the question of transfer of sites by the allottees. there were 11 persons who were not members of the respondent-Society, who had applied to the BDA for permission to sell the land allotted to them. the BDA had recommended to the Government that approval was granted and there is no challenge to the same in the present proceedings. The challenge, however, is to the approval which was granted to 13 others members of the Society, who were impleaded as respondents in the writ petition, and who were permitted to sell the sites which had been allotted to them.

9. Rule 14 of the Bangalore Development Authority (Allotment of Sites) Rules, 1984 provides for restrictions and conditions on sales of sites. The said Rule which was in existence in 1994-95, when permission was granted to the ex-Legislators to transfer the land, reads as follows :

14. Restrictions, conditions on sales of sites -

(1) Notwithstanding anything contained in these rules, the Commissioner may at the request of the allottee of a site execute a deed of conveyance subject to the restrictions, conditions and limitations specified in sub-rule (2).

(2) The conveyance of site by the Commissioner in favour of an allottee (hereinafter referred to as the purchaser) shall be subject to the following restrictions, conditions and limitations namely :-

(a) in the case of a site on which a building had not been constructed :

(i) the purchaser shall construct a building on the site within such period as may be specified by the Authority as per plans, designs, and conditions to be approved by the Authority or in conformity with the provisions of the Karnataka Municipal Corporations Act, 1976 and the Bye-laws made thereunder.

(ii) the purchaser shall not without the approval of the Authority construction on the site any building other than a building for the construction of which the sites was allotted, granted or sold.

(iii) the purchaser shall not alienate the site within a period of ten years from the date of the conveyance except by mortgage in favour of the Government of India or the Government of Karnataka, the Life Insurance Corporation of India or the Karnataka Housing Board or any Company or Co-operative Society approved by the Authority or any Corporation set up owned or controlled by the State Government or the Central Government to secure money advanced by such Government, Corporation, Company, Board, Society or Corporation, as the case may be for the construction of the building on the site.

(b) in the case of a site on which a building has been constructed, the purchaser shall not alienate the site and the building constructed thereon within a period of ten years from the date of agreement, except by mortgage in favour of the Government of India, the Government of Karnataka, the Life Insurance Corporation of India, or the Karnataka Housing Board or any Company or Co-operative Society approved by the Authority to secure moneys advanced by such Government, Corporation, Board or Society or Company for the construction of the building on the site.

(c) in the event of the purchaser committing breach of any of the conditions in clause (a) or clause (b) the Authority may at any time, after giving the purchaser reasonable notice, resume the site free from all encumbrances. The purchaser may remove all things which he has attached to the earth.

Provided that if he has left the site in the state in which he received it, all transactions entered into in contravention of the conditions specified in clause (a) and (b) shall be null and void ab-initio.

Explanation :- In this rule, references to the authority shall be deemed to include the references to the commissioner when authorised by the Authority by the general resolution to exercise any power vested in the authority.

(3) Notwithstanding anything contained in sub-rule (2) but without prejudice to the provisions of rule 13 where the lessee applies that for reasons beyond his control he is unable to reside in the City of Bangalore or by reasons of his insolvency or impecuniosity it is necessary for him to sell the site and the building, if any, he may have put up thereon the Bangalore Development Authority may, with the previous approval of the State Government, either :-

(a) require him to surrender the site, where there is no building in its favour; or

(b) where there is a building put up permit him to seal the vacant site and building :

Provided that -

(i) in case covered by clause (a) the Authority shall pay to the lessee the allotted value of the site and an additional sum equal to the amount of interest at twelve per cent per annum thereon; and

(ii) in case covered by clause (b) the lessee shall pay to the authority a sum equal to the amount of interest at twelve per cent per annum on the allotted value of the site."

The said Rule did not permit transfer of site on which building had not been erected. According to sub-rule (3), under certain conditions an allottee could only surrender the site in which case he was entitled to receive the favor of the site plus 12 per cent interest thereon. It is only if a building was erected that permission could be given to sell the vacant site and building subject to payment of interest at the rate of 12 per cent on the allotted value of the site. It is represented before us that the BDA permitted the allottees to sell the sites, inasmuch as under Section 65 of the Act the Government of Karnataka had issued a direction requiring the BDA to permit the said transfers. Section 65 of the Act gives power to the Government to issue directions to the Authority and reads thus :

65. Government's power to give directions to the Authority - The Government may give such directions to the Authority as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Authority to comply with such directions.

10. As we read the above Section, the Government has no power to issue any directions which are in conflict with the provisions of the Act and, by necessary implication, in conflict with the Rules framed under the said Act. The directions which can be given under Section 65 are such which are necessary or expedient for the carrying out of the purposes of the Act. When Rule 14, as it stood in the year 1994-95, did not permit sale of vacant sites by an allottee to anybody else, even after getting permission from the BDA, the Government could not have permitted or directed the said land to be sold or transferred. This being the position, the transfer of land by 13 such ex-Legislature and ex-Ministers who were members of the respondent-Society, and whose names are included in the BDA's letter dated 27th\28th October, 1995 written to the Principal Secretary to Government, Housing & Urban Development Department, Bangalore, was clearly illegal and the permission so granted and the consequent transfer of land would become liable to be

set aside.

11. Rule 14 has now been amended by Notification dated 6th February, 1998. Rule 5 of the Bangalore Development Authority (Allotment of Sites) (Amendment) Rules, 1997 which makes the amendment in Rule 14 reads thus :

5. *Amendment of Rule 14* :- In rule-14 of the said rules. -

(1) after sub-rule (2), the following shall be inserted namely :-

"2A. Notwithstanding anything contained in sub-rule (2), where a lessee has alienated the site in contravention of sub-clause (iii) of clause (a) sub-rule (2), the authority may on application of the purchaser of such site and subject to payment by the purchaser an amount equal to twenty-five per cent of the sital value determined at the rates specified by the State Government from time to time for the purpose of registration, order for regularisation of such alienation and may also convey title to such purchaser."

(2) in sub-rule (3),

(i) after clause (a), the following clause shall be inserted namely :-

"(aa) permit the allottee to sell the site during the lease period of ten years."

(ii) in the proviso, after clause (i), the following clause shall be inserted namely :-

("ia) in case covered by clause (aa), mentioned above, the lessee shall pay to the Authority an amount equivalent to fifteen per cent of the sital value determined at the rates specified by the State Government from time to time for the purpose of registration."

12. As a result of the Rules as they now stand where there has been alienation of site in contravention of sub-rule (2), then on an application being made by the purchaser the said sale or alienation in his favour can be regularised on the purchaser paying an amount equal to 25 per cent of the sital value determined at the rates specified by the State Government from time to time. Inasmuch as the permission which was granted in 1994 and 1995 for transferring the land was illegal, the effect would be that the original allottees had transferred the land in violation of the provisions of sub-rule (2) of Rule 14 and now after the amendment of the said Rule regularisation of the said alienation can take place by the purchaser paying the amount referred to in sub-rule (2A). If this payment is not made, the result obviously would be that the alienation will not be validated and the allotment of land itself would stand cancelled. It is obvious that under Rule 14 permission to transfer can be granted under the circumstances provided by sub-rule (3). The said sub-rule provides that an application for transfer can be made by an allottee on the grounds that (a) for reasons beyond his control he is unable to resident in the city of Bangalore; or (b) by reasons of his insolvency or impecuniosity, it is necessary for him to sell the site and the

building. The High Court has interpreted this Rule to mean that it is only for reason of insolvency that permission under sub-rule (3) can be granted. This does not appear to be correct because on the ground that the allottee is unable to reside in the city of Bangalore and also on the ground of impecuniosity, permission can be granted to sell the land or the land and the building constructed thereof, after the amendment of the Rule in 1998.

13. For the aforesaid reasons, these appeals are allowed and the judgment of the High Court is set aside. We, however, direct that the BDA will give an opportunity to the purchasers of land referred to in its letter dated 27\28th October, 1995 who had purchased the same from the members of the respondent-society to get the transfer regularised on payment of 25 per cent of the sital value determined at the rates specified by the Government. Notice to this effect should be issued within eight weeks from today and the notice would indicate that if the amount of so determined is not deposited, the land in question will stand resumed by the BDA. No other directions are called for.

No costs.

Civil Appeal Nos. 459-461, 462-463, 464 and 465 of 2000.

(arising out of Special Leave Petition (Civil) Nos. 1419-1421, 3418-3419, 3444 and 7820 of 1999)

Special leave granted.

For the reasons stated above, these appeals are disposed of in terms of the directions given above.

No costs.