

# SUPREME COURT OF INDIA

Keshav Baljee

Vs.

Bangalore Devt.Authority

C.A.No.6797 of 2010

(G.S.Singhvi and Asok Kumar Ganguly JJ.)

19.08.2010

## ORDER

Leave granted.

1. These appeals are directed against judgment dated 11.8.2008 of the Division Bench of the Karnataka High Court whereby it allowed the writ appeal preferred by the Bangalore Development Authority (for short, the B.D.A.) in the matter of cancellation of the allotment of residential site to appellant, Keshav Baljee and dismissed the one filed by the other appellant, Arjun Baljee against the dismissal of the writ petition filed by him for quashing the order of cancellation of allotment.

2. The appellants are real brothers. In 2002, they applied for allotment of residential sites under the *Bangalore Development Authority (Allotment of Sites) Rules, 1984* (for short, "the Rules"). Appellant, Keshav Baljee submitted two applications on 31.5.2002 and 13.12.2002. His brother, Arjun Baljee also submitted applications on 31.2.2002 and 13.12.2002.

3. However, neither of them was successful in getting the allotment. In 2003, they again applied for allotment of residential sites in different areas. Keshav Baljee applied for allotment of site in VIII Block, FE of SMV Nagar and Arjun Baljee applied for allotment of site in BSK IV Stage Layout.

4. Although, copies of the application forms submitted by the appellants in 2002 have not been produced by either party, xerox copies of the application forms submitted in 2003 have been placed on record along with I.A. No. 2/2010 filed in the appeal arising out of SLP(C) No. 29519/2008. A perusal of the same shows that both the applications were incomplete inasmuch as the appellants did not give the particulars of their date of birth, age and annual income in column Nos. 9, 10 and 14. The Allotment Committee constituted under Rule 11(3) of the Rules should have rejected the applications of the appellants only on the ground that the same were defective, but instead of doing that the concerned officers not only entertained

and processed the applications, but also allotted residential sites to both the appellants in 2004.

5. Although, at the time of submission of the applications the appellants were students and neither of them had any independent source of income, both of them deposited approximately Rs.13 lacs as cost of the sites. After about one year, Deputy Secretary of the B.D.A. initiated process for cancellation of the allotments made in favour of the appellants on the ground that neither of them were eligible to get the sites and finally the allotments were cancelled by the Commissioner, B.D.A. vide orders dated 3.8.2005 and 15.9.2005.

6. The appellants challenged the cancellation of allotments in Writ Petition Nos.24100 of 2005 - Keshav Baljee v. Bangalore Development Authority and 21133 of 2005 - Arjun Baljee v. Bangalore Development Authority. The first writ petition was allowed by the learned Single Judge by a rather cryptic order dated 22.9.2006 but the second writ petition was dismissed by another learned Single Judge vide his order dated 31.7.2007 by relying upon Rule 11 of the Rules. Paragraphs 8, 9, 14 and 15 of that order, perusal of which show how the appellants succeeded in getting allotment of residential sites in connivance with the officers of the B.D.A. are extracted below:

“8. In the instant case, facts are not in dispute. In Annexure-R.1 - the application filed by the petitioner for allotment of the site by the Bangalore Development Authority, there is a specific column i.e., col. No.9 for date of birth.

Petitioner as a student has deliberately not filled up the said column mentioning the date of birth.

Except the said column, all other columns have been meticulously filled up by the petitioner. As it is from the said form, the petitioner has applied for a site on two occasions as per the particulars given in col. no.21. The present attempt is a third attempt. Without the information regarding the age of the petitioner, the Bangalore Development Authority has selected the petitioner for allotment.

The Bangalore Development Authority has ignored the mandatory provisions. They have turned their blind eyes to this material omissions in the application which do not contain the date of birth of the petitioners. Without knowing the date of birth of the petitioner, consequently the age of the petitioner, they have selected the petitioner and allotted a site measuring 50 ft x 80 ft to the petitioner, a student who is aged 23 years, who had no independent income.

9. After realizing the blunder they have committed, a show cause notice was issued as per Annexure-F calling upon the petitioner to show cause why the allotment should not be cancelled because of his age and his failure to give date of birth in the application form.

14. The petitioner's younger brother Sri Keshav Balajee was born on 16.12.1983, as is clear from the order dated 22.9.2006 in W.P. No.24100/2005, a copy of which was made available to me by the learned counsel for the petitioner. Even the records of the said writ petition is also put up along with this writ petition. He is younger to the petitioner by three years. He is a student studying in Doon School at Dehradun. He is also allotted a 50 x 80 feet site in his third attempt at the age of

20. Again it is pleaded therein that it was a mistake because in the application, date of birth was not mentioned. The worst part of it is, in the writ petition filed by him challenging the similar cancellation order, the defence taken in this proceeding is not taken. On the contrary, what was contended is that he was a minor and therefore he was not eligible. The court found from the birth certificate he was a major and directed the Bangalore Development Authority to execute a sale deed in his favour. The lapse on the part of the Authority is not pardonable. They are not only playing with the public but also with the Court.”

7. Thus, they are polluting the stream of justice by withholding the vital and material information and misleading the Courts, and making a mockery of justice. This instance may be a tip of the iceberg.

8. It only shows the erosion of moral values and irreparable damage, the power of money, positions and political clout has wrecked on the working of these public authorities are made-up of. It also shows how the rule of law is trampled upon and in practice how much it is respected. It also gives an indication as to whom the authority is serving.

9. Both the brothers are residents of Defence Colony at Indiranagar - a posh locality in the City of Bangalore. It appears the petitioner's younger brother has passed out from Doon School, Dehradun.

10. Probably, that explains the reason, why Bangalore Development Authority has gone out of the way to allot 50 x 80 ft sites to boys who are aged 23 and 20 years in preference to those who are standing in the queue and who are at the fag end of their life, is a mystery. It is for the persons who are at helm of the affairs at the authority to have some introspection and take appropriate remedial measures to restore the confidence of the public in these institutions. However, it is heartening to note that there are some people still left in the institution who have not succumbed to these manipulations and took bold steps to cancel the allotment.

“15.The mistake on the part of the Bangalore Development Authority in allotting a site is because of a deliberate omission on the part of the applicant in not mentioning the date of birth and therefore it cannot be said that the applicant is not at fault. It is because of this deliberate omission on the part of the petitioner, the Bangalore Development Authority was enabled on the pretext of being misled, in allotting the site and therefore that action of Bangalore Development Authority, even if it is held

that it is a mistake, is directly attributable to the petitioner and therefore he is not entitled to the benefit of the said mistake. Authorities were fully justified in issuing a show cause notice and after hearing the petitioner as he had no tenable defense to put forth and his date of birth was in dispute, were justified in canceling the allotment.”

(emphasis supplied)

11. Initially, the B.D.A. did not challenge the order passed by the learned Single Judge in favour of Keshav Baljee but when the writ petition filed by his brother, Arjun Baljee was dismissed, the concerned officers woke up from slumber and filed Writ Appeal No.1435/2005 along with an application for condonation of 289 days' delay. Arjun Baljee also challenged the dismissal of his writ petition in Writ Appeal No.1797/2007.

12. By the impugned judgment, the Division Bench condoned the delay in filing of Writ Appeal No.1435/2005, finally allowed that appeal and dismissed the one filed by Arjun Baljee by recording the following reasons:

“6. After hearing the learned counsel for the parties and upon perusing the impugned orders, the affidavit filed by the BDA and the records made available to us, the points that arise for our consideration are:- i) Whether the allotment of sites made in favour of the allottees is valid? ii) Whether the cancellation of sites is justified?

7. Both the points are inter-related. Therefore, we have taken the same together and answered.”

13. Our answer to the first point is in the negative and the second point in the affirmative for the following reasons:- a) The undisputed facts are, both the allottees are brother, students and they are residing together in the same house. The residential address furnished in both of their applications is the same, as mentioned below:- No.124, III Main, Defense Colony, Indira Nagar, Bangalore - 560 038.

14. Their father's name is C.K. Baljee. Thus, both of them applied for allotment of site from the same residential address. It is also interesting to note that the site of the said address is allotted by the BDA, probably in the name of their father. That means, a member of this family has already been allotted a site by the BDA. That being the position, the allottees are not entitled to allotment of any site. Virtually, they are ineligible for allotment under the Rules referred to above. The above said reason ipso-facto sufficient to our answer to point No.(i). b) to d) xxx xxx xxx e) Admittedly, the two allottees are students. They have no income of their own. Column No.14 of the application form pertains to annual income and the same is unfilled. Such being the case, the consideration for the sites is definitely paid by their father, of course, in respect of one allottee by raising some loan. Independently they are unable to pay the site value. When their father himself has got allotted site in which they have constructed house and are residing, two more sites allotted for the same family is contrary to Allotment Rules. Under Rule 10(3) of allotment Rules the allottees were

ineligible to apply for allotment of site. That being so, the cancellation of sites made by the BDA is legal, valid and justified. f) It is not in dispute that the other eligible applicants have made more attempts and are older in age than the present allottees as provided under *proviso Clause (iii) of Rule-11(2) of the Rules*. The allottees being youngsters cannot overtake the elders and get the sites allotted making the elders to stand in Q. For this reason also the cancellation of sites is correct and there cannot be any grievance in this regard. g) *Rule 13(10) of BDA (Allotment of Sites) Rules, 1984* reads as under:

“13(10). If the particulars furnished by the applicant in the prescribed application form for allotment of site are found to be incorrect or false, the sital value deposited shall be forfeited and the site shall be resumed by the authority.”

15. As per the Rule not only the site to be resumed but the sital value has to be forfeited.

“8. In the light of what has been observed above, the reasons assigned by the learned Single Judge for allowing the writ petition of the allottee are wholly untenable in law.”

(emphasis added) We have heard Shri Basava Prabhu S. Patil, learned senior counsel appearing for the appellants and Shri S.S. Javali, learned senior counsel appearing for the B.D.A. and perused the record.”

16. Rules 10 and 11 of the 1984 Rules, which have bearing on the decision of these appeals read as under:

“10. Eligibility:- No person- (1) xxx xxx xxx (2) xxx xxx xxx (3) who or any dependent member of whose family, owns a site or a house or has been allotted a site or a house by the Bangalore Development Authority or a Co-operative Society registered under the *Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959)* or any such other Authority within the Bangalore Metropolitan Area or has been allotted a site or a house in any part in the State by any other Urban Development Authority or the Karnataka Housing Board or such other Agency of the Government, shall be eligible to apply for allotment of a site;

xxx xxx xxx

11. Principles of selection of applicants for allotment of sites and reservation of sites.--  
(1) The sites shall be allotted among the different categories as follows :- (a) Backward Tribes 2% (b) Scheduled Tribes 3% (c) Scheduled Castes 13% (d) Members of the Armed forces of the Union, Ex-servicemen and members of the families of deceased servicemen 10% (e) State Government employees 10% (f) Employees of the Central Government and Public Sector Undertakings and Statutory Bodies owned or controlled by the State Government or the Central Government 8% (g) Physically Handicapped 2% (h) General Public 50% (i) Persons who have

outstanding achievements in the field of Arts, Science or Sports 2% Explanation.-- (i) If at the time of making an allotment sufficient number of applications from persons belonging to category -(a) are not received then the remaining sites reserved for the category shall be transferred to category (b) and if sufficient number of applications from persons belonging to categories (a) and (b) are not received, then the remaining sites reserved for these categories shall be transferred to category (c) and if sufficient number of applications from persons belonging to categories (a), (b) and (c) are not received, then the remaining sites reserved for these categories shall be transferred to category (h).

(ii) If at the time of making an allotment, sufficient number of applications from persons belonging to any of the categories (d), (e), (f) (g) and (i) are not received, then the remaining sites reserved for the category concerned shall be transferred to category (h).

(iii) xxx xxx xxx (2) In respect of the categories (a) to (h), the Authority shall consider the case of each application on its merits and shall have regard to the following principles in making section.- (i) The marital status of the applicant, that is, whether he is married or single and has dependent children;

(ii) The income of the applicant and his capacity to purchase a site and build a house thereon for his residence:

Provided that this condition shall not be considered in the case of applicants belonging to Scheduled Castes, Scheduled Tribes and Backward Tribes.

(iii) The number of times the applicant had applied for allotment of a site and the fact that he did not secure a site earlier though he was eligible and had applied for a site:

Provided 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.

(iv) the fact that the land belonging to the applicant has been acquired by the authority for the formation of the layout for which he has applied;

(3) For the purpose of sub-rule (2) the authority shall constitute a committee called the 'Allotment Committee' consisting of three official members and three non-official members. The Chairman of the authority shall be the Chairman of the Allotment Committee.

(4) Subject to the approval of the authority the decision of the Allotment Committee shall be final.

(5)Subject to the provision of rules 8,9 and 10 the authority shall allot the sites under category(i).”

17. Shri Basava Prabhu S. Patil, learned senior counsel appearing for the appellants argued that the impugned judgment is liable to be set aside because the observation contained in para 7(a) thereof suggesting that the appellants' father, C.K. Baljee had already got a site from the B.D.A. is not supported by any cogent evidence. In the first blush, this argument appears convincing but on a closer scrutiny, we do not find any merit in it and we do not think that this can be made a ground for quashing the orders passed by the Commissioner, B.D.A. Neither in the list of dates nor in the grounds of appeal, the appellants have stated/urged that their father had not been allotted residential site by the B.D.A. in Defence Colony. They have also not pleaded that their father had purchased the site in Defense Colony by private negotiations.

18. The document evidencing acquisition of site by the appellants father has also not been produced before this Court. This silence/omission on the appellants' part shows that what the Division Bench of the High Court has observed in para 7(a) of the impugned judgment is factually correct. Therefore, we do not find any valid ground to interfere with the conclusion that the allotments made in favour of the appellants were contrary to Rule 10(3) of the Rules.

19. We may now advert to Rule 11(2). A reading thereof makes it clear that in respect of category (h) i.e., General Category, to which the appellants belong, the B.D.A. is required to consider each case on its own merit keeping in view the marital status of the applicant, his income and capacity to purchase a site and build a house for his residence. In their application forms, the appellants had mentioned that they were students.

20. They left the columns relating to date of birth, age and income blank. Therefore, their applications ought to have been rejected on the ground that neither of them had the capacity to purchase a site or build a house thereon for residential purpose. However, as is clearly discernible from the record of the case the Allotment Committee constituted under Rule 11(3) not only entertained the defective applications of the appellants but also allotted sites to them ignoring that neither of them had produced any evidence of his income and capacity to purchase a site and build a residence on it. It is beyond the comprehension of any person of reasonable prudence as to how the concerned officers could allot residential sites to the appellants, who were students at the relevant time and were residing with their father and neither of them had any independent source of income. The manner in which the concerned officers of the B.D.A. dealt with the applications of the appellants and allotted residential sites to them prima facie shows that they had favoured the appellants for extraneous reasons and, in the process, deprived two eligible applicants of their legitimate right to get residential sites.

21. We are in complete agreement with the Division Bench of the High Court that the appellants were not eligible to be allotted residential sites and the B.D.A. officers had

entertained and accepted their applications in complete disregard of the mandate of Rules 10(3) and 11(2) of the Rules.

22. As a corollary, we hold that there is no valid ground much less justification to nullify the orders passed by the Commissioner, B.D.A. for cancellation of the allotments made in favour of the appellants.

23. In the result, the appeals are dismissed with cost of Rs.1,00,000/-, which the appellants shall deposit with the State Legal Services Authority, Karnataka within a period of four weeks. The B.D.A. is also saddled with the cost of Rs.2,00,000/- for generating unwarranted litigation. This amount shall also be deposited with the State Legal Services Authority, Karnataka within a period of four weeks. The B.D.A. shall recover the amount from the officers who manipulated allotment of sites to the appellants.

24. We also direct the Commissioner of Bangalore Development Authority to take action in accordance with the directions given by the Division Bench and submit a report to the High Court within a period of eight weeks from today. The Registry of the High Court shall place the report before the Chief Justice, who may then order consideration thereof by the Division Bench of the High Court. We expect that the High Court will take serious view of the manipulations on the part of the officers of the B.D.A. and ordain appropriate proceedings against them.

“A copy of this order be sent to the Registrar General, Karnataka High Court, who shall place the same before the learned Chief Justice of the High Court.”