

Gurukrupa Co-operative Housing Society Limited Vs Bangalore Development Authority

Court: Karnataka High Court

Date of Decision: Dec. 9, 2004

Acts Referred: Bangalore Development Authority Act, 1976 " Section 38 C, 38 C (a)

Citation: (2005) ILR (Kar) 2808 : (2005) 3 KarLJ 569 : (2005) 2 KCCR 951

Hon'ble Judges: N. Kumar, J

Bench: Single Bench

Advocate: H.N. Shashidhara and R. Tharesha, for Kesvy and Company, for the Appellant; U. Abdul Khader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N. Kumar, J.

The land bearing Sy. No. 22, measuring 1 acre 30 guntas and Sy. No. 23, measuring 18 guntas situated at Agrahara

Dasarahalli, Yeshwanthpur Hobli, Bangalore North Taluk, originally belonged to one Sri Munikrishnappa. The erstwhile CITE notified the land for

acquisition along with other lands and a preliminary notification came to be issued on 6-4-1961. It was followed by a final notification dated 19-

12-1961. The owner of the land Munikrishnappa requested the BDA to denotify the said land and release the same to him for the purpose of

formation of industrial area. The said application was considered by the CITB and they did not proceed with the acquisition of the land. On the

contrary, they entered into an agreement with the said Munikrishnappa on 12-12-1961 whereunder he was permitted to convert the land and also

to form the industrial layout. He was called upon to pay the layout charges of Rs. 7,698/- which he paid on 11-12-1961. Munikrishnappa

continued in possession of the aforesaid land and thereafter the khatha of the said land was made out in his name by Bangalore City Corporation.

However, CITB again included the said land in the final notification. Munikrishnappa died on 20-12-1972. Thereafter, his children sold the

aforesaid land in favour of the petitioner-society under a registered sale deed dated 23-6-1980 for a consideration of Rs. 1.72 lakhs and the

society was put in possession of the land. Thus, the petitioner-society became the absolute owner in possession of the aforesaid land.

2. It appears that after including the aforesaid land in the final notification, an award came to be passed on 18-3-1964 and award amount was

deposited. Notwithstanding the passing of the said award and records showing that the possession is taken by the acquiring authority, possession

continued with Munikrishnappa, after his death with his children, after sale with the petitioner. The respondent-BDA passed a resolution dated 16-

1-1980 allotting a portion of the aforesaid land in favour of one Sangameswara Vidya Kendra High School. When the petitioner came to know

about the said resolution, they filed a suit in O.S. No. 391 of 1981 before the VII Additional City Civil Judge, Bangalore, and an interim order of

status quo came to be passed in the said suit. During the pendency of the said suit, the respondent-BDA passed a resolution dated 9-6-1982 in

subject No. 125, cancelling the allotment of the land measuring 150" x 200" in favour of Sangameswara Vidya Kendra High School in view of the

opinion furnished by the Law Officer. They approved the residential layout of the land in the question in favour of the petitioner subject to usual

conditions of approving the private layout and on condition that the society should not claim any compensation for the land and the road. On

coming to know of the said resolution, Sangameswara Vidya Kendra High School challenged the resolution before this Court in W.P. No. 23814

of 1982. After contest, the said writ petition was allowed and the resolution of the BDA was quashed. Being aggrieved by the order of the learned

Single Judge, the petitioner preferred a writ appeal in W.A. No. 1066 of 1991. After contest, the said appeal was allowed and the order of the

learned Single Judge was set aside and the resolution of the BDA was restored.

3. Thereafter, the Bangalore City Corporation made an attempt to take possession of the aforesaid land claiming ownership over the same.

Petitioner was constrained to file a suit in O.S. No. 7263 of 1995 for permanent injunction against the Corporation. The said suit came to be

decreed on 2-8-2003 restraining the Corporation from interfering with the petitioner's possession of the aforesaid land. During the pendency of the

aforesaid suit, Magadi Chord Road Welfare Association filed a public interest litigation before this Court in W.P. Nos. 10231 to 10233 of 1997

against the petitioner-Society, the Corporation and the BDA contending that the land in question is a play ground and that it should be protected as

such. As the records produced in the said proceedings disclosed that the property does not belong to the Corporation or to the BDA, the said writ

petition came to be dismissed. Thereafter, the BDA taking note of all these proceedings and to put an end to this controversy, passed a resolution

on 19-1-1999/22-1-1999 in subject No. 39 of 1999, treating the resolution passed by the BDA on 9-6-1982 in subject No. 125 as a

reconveyance and resolved to reconvey the said land in favour of the petitioner-Society subject to the conditions mentioned in the said resolution.

BDA passed one more resolution on 16-8-2001 in subject No. 113 of 2001 and annulled the aforesaid resolution on the ground that it is contrary

to the Rules and resolved to hand over the said land to Bangalore City Corporation for being used as play ground and they sought for the approval

of the Government for the said proposal. The Government on 16-8-2001 granted the approval sought for. On coming to know of the aforesaid

resolutions and the approval granted by the Government, the petitioner preferred a writ petition before this Court in W.P. No. 40322 of 2001

challenging the resolution and the Government Order and sought for an interim order of stay of implementation of those orders. An interim order

was granted. Thereafter the petitioner made a representation to the Government bringing to their notice that the resolution passed in their favour on

22-1-1999 by the BDA is in accordance with law, it is not contrary to the rules and therefore the resolution passed by the BDA on 16-8-2001 is

illegal and it was not proper for the Government to accord approval sought for by the BDA. The Government considered the entire matter afresh

in the light of the aforesaid facts, the various orders passed by the authorities and the orders passed by various Courts. On consideration of the

material on record, on being satisfied that the resolution of the BDA dated 22-1-1999 is in accordance with law and the resolution of the BDA to

treat the case as that of the reconveyance is valid and legal, the subsequent resolution was found to be incorrect and therefore the Government was

of the view that the resolution passed by the BDA on 16-8-2001 in subject No. 113 of 2001 has to be withdrawn. Therefore, the Government

passed an order on 2-8-2002 withdrawing the approval granted by the Government on 8-10-2001 approving the resolution of BDA dated 16-8-

2001 and affirmed and approved the resolution of BDA dated 22-1-1999, under which the BDA has treated that the land in question has been

reconveyed to the petitioner.

Thereafter, the BDA passed one more resolution dated 28-6-2003 in subject No. 199 of 2001 again reaffirming the resolution dated 22-1-1999

and resolved to issue possession certificate and the sale deed in favour of the petitioner in respect of the land in question. Thus, the dispute

regarding the ownership of the land was finally set at rest and the BDA agreed to execute the possession certificate and the sale deed in favour of

the petitioner.

4. The resolution dated 28-6-2003 resolved that the sale deed has to be executed after collecting the current allotment rate. The BDA issued

Annexure-E calling upon the petitioner to pay a sum of Rs. 1,15,20,600/- on the basis that a sum of Rs. 2,100/- per sq. mtr. of land is the

reconveying charges. It is dated 21-8-2003. On receipt of the same, the petitioner brought to the notice of the BDA that it is not proper for the

authority to levy and collect the allotment rate as on 28-6-2003 and they should collect only the prevailing rate as on 9-6-1982 where the BDA

resolved to approve the residential layout formed by the petitioner which they have treated it as reconveyance. On consideration of the said reply,

the BDA issued Annexure-G, dated 17-11-2003 rejecting their contention and reiterating the demand made earlier. Aggrieved by the same, the

petitioner has preferred this writ petition.

5. Subsequent to filing of the writ petition, the petitioner has also filed an application to bring the following additional facts to the notice of the

Court.

6. The land bearing Sy. No. 31 which had been notified by the erstwhile CITB along with the land in question was reconveyed to the owner of the

said land on 21-1-1970 and they have collected Rs. 15/- per sq. mtr. as reconveyance charges from Mr. M.S. Javarappa and Smt. Kempamma

and the said order came to be passed on 25-9-1997 as per Annexure-H and J. The petitioner also produced layout plan showing the exact

location of the petitioner's land as well as the lands of Javarappa and Smt. Kempamma which are situated very proximately and therefore the

reconveyance charges claimed from the petitioner are arbitrary, without any basis and discriminatory.

7. The respondent-BDA has filed its statement of objections. They do not dispute any of those facts stated by the petitioner in the writ petition and

in the additional facts. They contend that the contention of the petitioner that the BDA should apply the rate prevailing in the year 1982 in view of

the resolution No. 125 of 1982 is untenable. What was done then was to approve the residential layout subject to certain conditions and there was

no resolution to issue a sale deed in favour of the petitioner. It is only on 22-1-1999 in subject No. 39 of 1998 a decision was taken to reconvey

the land to the petitioner, which was however subjected to further modification. The petitioner cannot take advantage of the resolution passed in

the year 1982 as the BDA had no jurisdiction to reconvey the land at that point of time. The power to reconvey the land was conferred on the

authority only after the introduction of Section 38C to the Bangalore Development Authority Act (for short, hereinafter referred to as "the Act"),

by Amendment Act, 1994. Since a final decision has been taken only under the resolution dated 16-8-2003, the petitioner is bound to pay the

current allotment rate for reconveyance. There are no compelling circumstances to interfere with the impugned decision of the authority and

therefore, they pray for dismissal of the writ petition.

8. After hearing this matter for some time, when the Court expressed that the charges fixed by the BDA do not stand the test of reason and

whether the BDA would reconsider, the learned Counsel appearing for the BDA took time to consider the said suggestion. It appears that on

being communicated the suggestion of the Court, taking into consideration the Resolution No. 39, dated 7-11-1979 relating to Gokul Extension,

Resolution No. 378, dated 17-11-1982 and Resolution No. 506, dated 25-4-1987 and other resolutions passed by the authority from time to

time, the Committee constituted for fixing the reasonable rate for the land in question recommended that Rs. 323/- would be the reasonable price

per sq. mtr. to be collected from the petitioner for the land in question. The said proposal was placed before the Board for approval. The Board in

subject No. 125, dated 27-9-2004 rejected the said proposal and reiterated their stand that the petitioner has to pay Rs. 2,100/- per sq. mtr. and

the reason given is that if any concession is shown to the petitioner, there would be claims in future on that basis. The said resolution is placed on

record and it is marked as Annexure-N. The petitioner pointing out how the said resolution is discriminatory, has produced one more resolution of

the BDA which is produced at Annexure-B which is also dated 27-9-2004 bearing No. 201 of 2004, wherein, while fixing the reconveyance

charges in respect of the land situated in Byrasandra, measuring 7 acres 11 guntas in favour of Green Orchards Residence Association, they have

fixed Rs. 300/- per sq. mtr. as the charges for reconveyance. Therefore, they contend that the claim of the BDA is arbitrary, discriminatory and

without any basis. As such, the impugned demand is liable to be quashed.

9. Learned Counsel appearing for the BDA has made available to this Court the allotment rates for various periods. They are also taken on record.

10. Learned Counsel appearing for the petitioner, assailing the impugned demand, contends that the legal proceedings referred to supra show how

the petitioner has been harassed for more than two decades. How the authorities like BDA, Bangalore City Corporation have acted in high handed

manner in derogation of valuable legal rights of the citizens. When the original owner in the year 1961 has paid the charges demanded by the

erstwhile CITB and in the year 1982 when a resolution was passed in favour of the petitioner to form a residential layout surrendering the land

mentioned in the resolution free of cost to the Corporation, now it is not open to the authority to demand and collect as reconveyance charges the

allotment rate prevailing in 2003. As is clear from the subsequent resolution passed by the BDA reiterating their stand, where the reconveyance

charges claimed for over a period shows the present demand is arbitrary and without any basis. Lastly, it was contended that though the Board

declined to reconsider the fixing of reconveyance charges to the petitioner, on the same day they have fixed Rs. 300/- as reconveyance charges in

respect of others. Therefore, the contends that the action of the respondents is arbitrary, discriminatory and it is liable to be quashed.

11. Per contra, the learned Counsel appearing for the respondent-BDA, contends that if at all any rights were to flow to the petitioner, it is only

from the resolution of 1989 and the entire controversy between the parties was set at rest only in the year 2003, by taking a decision to execute

the sale deed and issue possession certificate and the authority is justified in insisting on the prevailing rate of 2003. He contends that the said

reconveyance is made u/s 38C of the Act, where the authorities have been empowered to levy any charges and therefore once that power has

been exercised by the authority, it is not subject to judicial scrutiny. In that view of the matter, he contends that no case for interference is made

out.

12. In view of the aforesaid facts and the rival contentions, the point that arises for my consideration is.--

Whether the words ""any charges"" in Section 38-C(a) of the Act would mean the ""allotment charges"" payable by an allottee of a site and in the

case of a reconveyance?

13. The BDA Act provides for the establishment of Developmental Authority for the development of the City of Bangalore and areas adjacent

thereto and for matters connected therewith. The sole purpose and object of this enactment is to provide mainly the residential sites to the needy

public who belong to the lowest strata of the society, who cannot purchase sites in open market. For that purpose the authority acquires lands,

forms, layouts and then allots sites formed in the layout in accordance with the rules framed under the Act. For the sites allotted to an allottee a

price is fixed by the BDA and this is always less than the prevailing market price in the locality. In addition to forming layouts by themselves, the

Act also provides for permitting formation of new extensions or layouts or making new private streets by private persons and agencies. Such

persons have to make the necessary applications with plans and the Authority is empowered to call upon such persons to pay sums necessary for

meeting the expenditure of making roads, side drains, underground drainage and water supply, lighting and charges for such other purposes,

provided, the said applicant also agrees to transfer the ownership of the roads, drains, water supply mains and open space left out by him to the

Authority permanently without claiming compensation therefore. They may also collect monies for execution of any scheme or work for augmenting

the water supply, drainage, roads, lights and such other amenities within the Bangalore Metropolitan Area. Without the prior permission of the

Authority no one is permitted to form layouts within the Bangalore Metropolitan Area.

The Act also provides for reconveying the land which is acquired by the BDA to the owner as contained in Section 38C of the Act. In addition,

the Act also empowers the authorities to make bulk allotment, to lease, sell or transfer its properties or to reserve certain areas for civic amenities,

etc.

14. In the case of an allotment of a site in the layout formed by the BDA, the allottee has no pre-existing title before such allotment is made. It is

only after an allotment is made and such allottee pays the price fixed for such allotment and after he complies with other legal requirements the site

allotted to him is conveyed, thus conferring title on such an allottee. On execution of a sale deed by the authority in favour of the allottee he

becomes the absolute owner of the site. He has to pay the price fixed by the authorities to acquire title to the property allotted to him.

15. The same principle cannot apply to a case of reconveyance. The word ""reconvey"" presupposes that the person to whom the land or site is

reconveyed was the owner of the land, which was acquired by the Authority. On such acquisition, he ceased to be the owner and title passes to

the authority. If the authority finds the land so acquired is not useful for the purpose for which it was acquired, then at the request of such owner of

the land/site Section 38C provides for reconveyance in favour of the original owner by passing of a resolution by the Board. Section 38-C(a)

provides, on such reallocation by way of reconveyance the allottee shall be liable to pay any charges as the authority may levy from time to time. In

the case of a reconveyance the allottee has a pre-existing right. When his land is acquired, if he has not been paid compensation for the same and

when the land is reconveyed to him, to expect him to pay the prevailing allotment rate which includes cost of the land would not stand to reason

because, he was not paid compensation for the land acquired. Therefore, in the case of reconveyance when the site or land is reconveyed to the

original owner, all that the BDA is entitled to is the developmental charges and the charges for the amenities which are given to such land. It cannot

be the prevailing rate as in the case of an allotment of a site. Therefore, any charges mentioned in Section 38-C(a) cannot be the allotment rate of a

site to an allottee for the first time. It is to be necessarily less than that and the cost of the land is to be excluded.

16. In cases of BDA granting permission for formation of a private layout, as is clear from Section 32, what it is entitled to is the sums necessary

for meeting the expenditure for making roads, side drains, culverts, underground drainage and water supply and lighting. They are also entitled to

amounts towards the execution of a scheme or work for augmenting electricity supply, transportation and such other amenities. In addition to the

aforesaid amount they are entitled to ownership of side drains, water supply mains and open spaces let out by such person to the authority

permanently without claiming any compensation therefore. Therefore, in such cases he is not liable to pay the cost of the land retained by him. In

the case of reconveyance it cannot be different. The authority is not entitled to the cost of the land. Any charges referred to in Section 38-C(a) can

be only in respect of the aforesaid charges in addition to ownership of the drains, roads and other civic amenities free of cost.

17. In that view of the matter, in the instant case, the original owner on 11-12-1961 paid Rs. 7,698/- to form an industrial layout. After the

petitioners acquired the title to the said property, in the Resolution dated 9-6-1982 passed by the BDA they were informed that the original layout

is approved in their favour subject to usual conditions of approving the private layout and on condition that the society should not claim any

compensation for the land and the road in this place. It is true, on the day this resolution was passed there was no provision in the Act for

reconveyance of the land or the site. The said provision was inserted by way of an amendment in the year 1984. It is also to be noticed that even in

the absence of the said provision the BDA was reconveying the lands. It is only when this Court struck down such a reconveyance on the ground

that the BDA has no authority to do it, the BDA promptly amended the Act by introducing Section 38C. After the introduction of Section 38C by

the Resolution dated 22-1-1989 the BDA has approved the resolution of 9-6-1982 and thus they have treated this resolution of 9-6-1982 as a

resolution passed in terms of Section 38C of the Act. Therefore, it is a case of reconveyance u/s 38C of the Act. As is clear from the resolution

dated 9-6-1982 what they are entitled to is what they are entitled to u/s 32 while granting sanction for a private layout and the petitioner should not

claim any compensation for the land and the road formed in the said layout. Therefore, the contention of the respondent that because they have

been vested with the power u/s 38-C(a) to claim any charges as the authority may levy from time to time they are justified in demanding from the

petitioner the charges prevailing in respect of an allotment of a site as on 28-6-2003 as per Annexure-D do not stand to reason. Therefore,

demanding a sum of Rs. 1,15,20,600/- as reconveyance charges by the authorities is without the authority of law.

18. The material produced on record also shows, in respect of reconveyance made in 1970 when it was finally allotted in 1987 a sum of Rs. 15/-

per sq. meter was claimed. On 27-9-2004 when the request of the petitioner for reconsideration was rejected by the Board they have fixed Rs.

300/- per sq. meter as the reconveyance charges u/s 38C in favour of the Green Orchards Residential Association for the land situated in

Byrasandra village which is in the heart of the city. In respect of the petitioner's land though the committee constituted for fixing the charges

recommended for Rs. 323/- per sq. meter, the same was rejected by the authority on the ground that, if accepted, in future there would be similar

claims from other parties on that basis. The question the authority ought to have considered was whether the price of Rs. 323/- per sq. meter as

proposed by the Committee after taking into consideration the rates fixed by the authority in the years 1979, 1982 and 1987 in similar situations,

was the reasonable price to be paid. If the aforesaid figure arrived at by the Committee is based on the earlier decisions of the authorities and that

is the price which the petitioner has to pay towards re-conveyance charges, on the ground that if accepted in future there would be similar claims

on that basis, is not a justification for refusing to review their earlier order. Even in future if claims are made on that basis, if the said claim is legal,

reasonable and in accordance with law, the authority is bound to entertain those claims and pass orders in accordance with law. It is unfortunate

that merely because the law gives power to the authority to levy any charges which they may levy from time to time, that does not mean that the

discretion which is vested with the authority can be exercised in an arbitrary and discriminatory manner between person to person. Even though it

is not a judicial discretion, even in administrative matters the authority is bound to exercise the discretion in a reasonable manner and in accordance

with law, and to see that their decisions do not suffer from vice of arbitrariness. In the instant case, the authority has not kept in its mind the said

legal principles and merely because they have the authority they have exercised the discretion and fixed Rs. 2,100/- per sq. meter as the rate

payable by the petitioner though the Committee constituted for the said purpose on the basis of the earlier resolution of the Board recommended

for fixing Rs. 323/- per sq. meter as the reasonable price payable by the petitioner. In that view of the matter, the impugned orders and demands

made by the respondents including their resolution dated 23-9-2004 in Item No. 177 of 2004 cannot be sustained and accordingly it is quashed.

19. The proposal put up by the Committee to claim Rs. 323/- per sq. meter from the petitioners is based on the resolution of the Board in Item

No. 39 on 7-11-1979, in Item No. 378 in Resolution dated 17-11-1982, in Item No. 506 in Resolution dated 25-4-1987, in Item No. 811 in

Resolution dated 5-9-1985, and the Committee was of the opinion that the aforesaid price is the reasonable rate. On the very same day the Board

has fixed Rs. 300/- per sq. meter u/s 38C of the Act as the reconveyance charges payable by the Green Orchards Residents Association. In the

light of this and in the light of the observations made above, the proposal put up by the Committee which consisted of Deputy Commissioner (Land

Acquisition), Finance Member, Town Planning Member, Engineer Member and the Commissioner is reasonable. Under these circumstances, in

the light of the aforesaid material on record, the rate fixed by the Committee is the reasonable rate to be paid by the petitioner. However, as it is

the authority which has to take a decision and pass a resolution to that effect it is proper that the matter is sent back to the authority for passing

appropriate resolutions. Hence, I pass the following order.--

(i) The writ petition is allowed;

(ii) Rule is made absolute. The impugned Reconveyance Deed No. 002261, dated 21-8-2003 vide Annexure-E, and the impugned demand order

dated 14-11-2003 vide Annexure-G, passed by the respondent are hereby quashed;

(iii) The matter is remanded back to the respondent-authority for passing appropriate resolution in the light of the observations made above;

(iv) The authority shall pass appropriate Resolution within three months from the date of communication of the order and communicate the same to

the petitioner and on payment of the amount so resolved the authority shall comply with other legal formalities of issuing Reconveyance Deed and

other documents expeditiously;

(v) No costs.