

(1986) 12 KAR CK 0015
Karnataka High Court
Case No: Writ Petition No. 14739 of 1980

E. Krishna Narayana

APPELLANT

Vs

The Bangalore
Development
Authority and Others

RESPONDENT

Date of Decision: Dec. 12, 1986

Acts Referred:

- City of Bangalore Improvement (Disposal of Corner Sites and Commercial Sites) Rules, 1972 - Rule 3, 4, 5

Citation: AIR 1988 Kar 95 : (1987) ILR (Kar) 950

Hon'ble Judges: Murlidher Rao, J

Bench: Single Bench

Advocate: M. Raghavendrachar, for the Appellant; A.J. Sadashiva, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Petitioner had been allotted a site bearing No. 102 of Gangenahalli Lay Out, Bangalore measuring 60" X 48". Thereafter in lieu of the original site he was allotted site bearing No. 34/13 measuring 60 X40 +47/2 in Austin Town Lay Out. It is the case petitioner that adjacent to this site there exists site No. 34/A which measures 30"X47". The said site is a corner site. The contention of the petitioner is, after providing for roads etc., as per the B.D.A., Rules, the corner site will come to half of his own site referred to above and if it is so cut to the size he will be entitled to the allotment as per R. 5 of the City of Bangalore Improvement (Disposal of Corner Sites and Commercial Sites) Rules, 1972. The said rule reads thus :

"5. Allotment of site to individuals or body of persons or institutions in special cases :

Notwithstanding anything in R. 3. the Chairman may allot any corner site. which has not been notified under R. 3 or reserved under, R. 4 and which cannot on account of

its size be treated as an independent site, to the owner of the adjacent site;

Provided that where the width of such site is (a) one third the width of the adjacent site or less, the sale shall be at such rate as the Board may fix; (b) more than one-third but equal to one half of the width of the adjacent site or less, the sale shall be for the average auction rate, the said rate being determined on the basis of the rates at which sites have been sold at three previous auctions in the locality in which such site is situated; (c) more than one-half of the width of the adjacent site the sale shall be by auction in accordance with R. 6 as if such site were an independent site."

2. An analysis of the above rule makes it clear that under the said rule the Chairman is given a discretion to allot a corner site which has not been notified under R. 3 or reserved under R. 4 and further the said site cannot on account of its size be treated as an independent site. In such an event it can be⁷ allotted to the owner of the adjacent site. As on today the site measures 30"X47", it is more than half of the petitioner's site, and is treated as independent site.

3. The case put forward by the petitioner is if a road is laid by the B:D.A. after construction, of the road what would be left for corner site, would be half of his site. There is no evidence that the B.D.A., has planned to lay a road so as to cut the dimension of corner site No. 34/A. Moreover the allotment under R. 5 is a discretionary power given to the Chairman to be exercised in the circumstances mentioned therein. The petitioner has not produced any evidence that such a circumstance existed, as on the date he filed the writ petition, and therefore he is not entitled for the allotment of the site.

4. It is contended by the petitioner that in similar circumstances B.D.A. has allotted corner site No. 33 to one Sri Tukaram on the ground that the said site was adjacent. to the site already allotted to Tukaram. In matters like this, what is to be seen is that the authorities should comply with the rules frames under the Act and act within the four corners of Law. It may be that Sri Tukaram had been granted a site. That may be a mistake on the part of the authority. A mandamus cannot be issued to commit the same mistake again. In case Tukaram had been allotted by mistake, it needs to be rectified, but that cannot be a binding precedent so. as to create a right in the petitioner to have the site allotted. Corner site has to be disposed on only in accordance with the rule mentioned, above. Therefore this petition is misconceived. It is liable to be dismissed.

5. It is seen that the corner site was to be auctioned on 10-8-1980. The petitioner has obtained an interim order on 7-8-1980. Prima facie I have found that the petitioner has no right to get the corner site allotted on the facts as it existed on the date of writ petition. By obtaining an interim order the petitioner has arrested the auction scheduled to be held on 10-8-1980. In the last 6 years the- prices have gone up. It is to the detriment of the other auction purchasers who could have purchased it on a lesser price, on the said date and if the auction was conducted as scheduled it was

open to the petitioner to take part in it. In the circumstances the petitioner without any right has obtained the interim order and has deprived others who could have purchased the site. In the circumstances the petitioner has to pay the costs.

6. For the aforesaid reasons the Rule is discharged. Writ petition is dismissed with costs. Advocate's fee Rs. 500/--

7. Petition dismissed.