Syead Mohsina Mohammedi - Appellant @HASH Mysore Urban Development Authority, Mysore

Court: KARNATAKA HIGH COURT

Date of Decision: Feb. 8, 2016

Acts Referred: Karnataka High Court Act, 1961 - Section 4

Citation: (2016) 4 KantLJ 227

Hon'ble Judges: N. Kumar and G. Narendar, JJ.

Bench: Division Bench

Advocate: Sri K.R. Lingaraju, Advocate, for the Appellant; Sri I.G. Gachchinamath, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Mr. N. Kumar, J. - This writ appeal is preferred by the petitioner challenging the order passed by the learned Single Judge in the case of Syead

Mohsina Mohammedi v. Mysore Urban Development Authority, Mysore, 2015 (3) Kar. L.J. 186, who dismissed the writ petition on the

ground of delay and laches.

2. The appellant is a resident of Mysore. She registered her name before the Mysore Urban Development Authority on 14-9-1988 by depositing

Rs. 500/- for allotment of the site measuring 40 X 60 feet. The authority issued a notification dated 23-1-1989, calling applications for allotment of

sites to homeless and site-less persons. The petitioner/appellant submitted her application on 14-3-1989 depositing Rs. 4,538/- as initial deposit

for allotment of a site measuring 40 X 60 feet. The appellant belongs to Muslim community. In the application she has declared her community as

Muslim, which was certified by the Gazetted Officer. In Column 10 of the application, she mentioned that she falls under the Category "7". After

considering the application of the appellant, the authority allotted the site bearing No. 10061 measuring 40 X 60 feet in the layout known as

Vijayanagar 4th Stage, 2nd Phase, on 29-8-2000 on her 5th attempt. The site was allotted under Scheduled Caste Category with a condition to

produce the Scheduled Caste Certificate. The appellant was directed to produce the Caste Certificate within 15 days from the date of receipt of

the notice dated 16-11-2000. The grievance of the appellant is in the notice dated 16-11-2000, the authority has not mentioned clearly the

category, under which the site was allotted in favour of the appellant. The appellant replied by a letter dated 8-12-2000 stating that she has

furnished the Caste Certificate along with the main application. Thereafter, when she did not hear from the authority, she personally visited the

authority and requested the authority for issuance of the allotment letter. Then she came to know that the authority wanted her to produce a

Scheduled Caste Certificate from the concerned authority. Therefore, on 29-12-2000 she brought to the notice of the authorities that she belongs

to Muslim category and she has not applied under the category of Scheduled Caste and therefore, she requested the authority to allot site under

the General Category. When her request was not considered, she made several representations, copies of which are enclosed along with the writ

petition. She did not receive any reply. However, on the ground that she has not complied with the terms of the notice, the allotment in her favour

was cancelled on 8-6-2005. But, the said fact was not intimated to the appellant. It is only after securing the requisite information under the Right

to Information Act, 2005, she became aware of the said fact and she preferred the writ petition challenging the letter of cancellation Annexure-A,

dated 8-6-2005 and for other consequential reliefs.

3. After due service of notice on the authority, though they were represented by a Counsel, no counter was filed to the writ petition. The learned

Single Judge after hearing both the parties was of the view that in the application form, in the column, which is meant for category under which the

application is being submitted, figure "2" had been written. The petitioner/appellant had written it as "7", but it is construed as Category No. 2. But

without further going into the said question, the writ petition came to be dismissed on the ground that when the allotment was cancelled on 8-6-

2005, the appellant has kept quiet for nearly ten long years and therefore, relying on several judgments which are set out in the order, the writ

petition came to be dismissed on the ground of delay and laches.

4. Aggrieved by the said order the present appeal is filed.

5. The learned Counsel for the appellant assailing the impugned order contends that though the allotment was cancelled by an order dated 8-6-

2005, it was not communicated to the appellant. It is only when they secured information through RTI, they became aware of the same and that is

the reason why there is a delay in preferring the writ petition. This aspect has not been properly considered by the learned Single Judge and

therefore, the impugned order requires to be set aside.

6. Per contra, the learned Counsel appearing for the authority submitted that after cancellation of the allotment on 8-6-2005, the same was duly

communicated to the petitioner/appellant. The appellant has slept over the matter. The writ petition is filed 10 years thereafter. No proper

explanation is offered for the delay. As rightly held by the learned Single Judge and also the various judgments of the Apex Court as set out in the

order, the learned Single Judge was justified in dismissing the writ petition on the ground of delay and laches. Therefore, no case for interference is

made out.

7. In the light of the aforesaid facts and rival contentions, the point that arises for our consideration in this appeal is:

Whether the learned Single Judge was justified in dismissing the writ petition on the ground of delay and laches?

8. The facts are not in dispute. The appellant filed an application for allotment of a site in the prescribed form within time. In Column No. 10, which

deals with the category under which the application is being submitted according to the appellant, she mentioned it as 7'' whereas according to the

authority, it is mentioned as ''2''. Category ''2'' means persons belonging to Scheduled Caste/Scheduled Tribe. Along with the application she has

also furnished a Caste Certificate showing that she belongs to Muslim Community (BCM). It is also not in dispute that she was allotted a site as

per the allotment letter dated 29-8-2000 acknowledging the amount of Rs. 4,538/-amount paid with the application and showing that Rs. 21,750/-

is the amount to be paid immediately and a sum of Rs. 18,212/- to be paid within 90 days. Again, a communication was sent to the petitioner

calling upon her to produce the caste certificate showing that she belongs to Scheduled Caste. She has replied by saying that she does not belong

to Scheduled Caste but she belongs to Muslim community. Now it transpires that as she did not produce the Scheduled Caste Certificate and she

had been allotted a site on the ground that she belongs to Scheduled Caste, the allotment came to be cancelled on 8-6-2005 and the advance paid

had been forfeited. The grievance of the complainant is that cancellation letter was not served on her. In order to find out whether the said

cancellation letter was duly served on the complainant, we called for the original records. The original records do not contain any

acknowledgement showing that the said cancellation letter had been duly served on the appellant. If the letter of cancellation had been duly served

on her on 8-6-2005, she is challenging the same in 2015 i.e., ten years thereafter, certainly delay and laches would stare at her face and the writ

petition would not be maintainable. In this regard, it is re levant to refer to a judgment of the Apex Court in the case of Shankara Co-operative

Housing Society Limited v. M. Prabhakar and others, AIR 2011 SC 2161 : (2011) 5 SCC 607 : 2011 AIR SCW 3033, where the Apex

Court has laid down the guidelines and has set out the relevant considerations to be taken into consideration by the Courts where the writ petition

is liable to be dismissed on the ground of delay and laches. In para 53 of the judgment, it is held as under:

53. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the Writ Court under

Article 226 of the Constitution of India is now well-settled. They are: (1) there is no inviolable rule of law that whenever there is a delay, the Court

must necessarily refuse to entertain the petition; it is a rule of practise based on sound and proper exercise of discretion, and each case must be

dealt with on its owns facts. (2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others

by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm

innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an

application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a

remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the

petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be

decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay.

9. All the other judgments on which reliance is placed by the learned Single Judge were cases, where preliminary and final notifications issued

under the Land Acquisition Act, 1894 were challenged, which have no application to the facts of this case. On what basis the Supreme Court has

laid down the law, has to be decided by the fact in the particular case. There cannot be a hard and fast rule laid down in this regard and there is no

inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the writ petition.

10. In this background, when we look into the facts of this case, the appellant has registered herself with the authority by depositing Rs. 500/- for

allotment of site. It is during her fifth at tempt, on an application made by her, allotment had been made. We have seen the original application

form. In the application form, at Column No. 10 now the figure "2" is found which is overwritten. The appellant submits that she had mentioned it

as "7", which had been made into "2". Of course that is the matter to be investigated by the Appropriate Authority. But suffice it to say that her

name shows that she is a Muslim. Along with the application, she has given a certificate showing that she belongs to BCM (Muslim). She never

claimed as person belonging to Scheduled Caste. Even on the face of it, a Muslim cannot claim as a Scheduled Caste. Even when a notice was

issued calling upon her to produce the Caste Certificate, she not only had furnished the Caste Certificate along with the application, she also

furnished one more application showing that she belongs to Muslim community. When she did not get any reply she went to the office and made

enquiry and then found out that the authorities wanted to show that she belongs to Scheduled Caste. Immediately, she said that she does not

belong to Schedule Caste and that she belongs to Muslim community. It is thereafter, she did not receive any correspondences. Now the allotment

letter is cancelled on the ground that she has failed to produce the Scheduled Caste Certificate. The records do not disclose that such a

communication canceling the earlier allotment was served on the appellant. Therefore, she was completely kept in dark. It is only when she secured

information through RTI, she became aware of the said change and she has taken steps to challenge the said cancellation. These facts are not

properly appreciated by the learned Single Judge. Tire learned Single Judge did not go into the question whether the letter of cancellation was duly

served on the appellant or not. She proceeded on the assumption that it had been served on her, which had been found to be factually incorrect.

On that factual incorrect premise, the order is vitiated. If an allotment had been made to the appellant under a Scheduled Caste Category and if the

authorities wanted to cancel the allotment on the ground that she did not produce the Scheduled Caste Certificate, the principles of natural just ice

requires that she should be heard in the matter. By an allotment letter, a valuable civil right had accrued to the appellant. If that right is to be taken

away, she had to be heard in the matter. In the facts of this case, the petitioner/appellant has not been heard before cancellation and therefore, the

order of cancellation is vitiated and liable to be set aside. There is no delay or laches on the part of the appellant in approaching the Court. In that

view of the matter, the order passed by the learned Single Judge requires to be interfered with. Hence, we pass the following order:

(a) Appeal is allowed.

(b) The impugned order passed by the learned Single Judge is hereby set aside.

(c) The impugned order dated 8-6-2005 canceling the letter of allotment, at Annexure-A to the writ petition is hereby quashed.

(d) The authorities shall issue appropriate notice to the appellant, hear the appellant and then pass appropriate orders in accordance with law.

(e) Parties to bear their own costs.