

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S).3628-3960 OF 2004

BANGALORE DEVELOPMENT AUTHORITY

Appellant(s)

VERSUS

R.JAYAKUMAR & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO(S). 3250 OF 2005

THE BANGALORE DEVELOPMENT AUTHORITY

Appellant(s)

VERSUS

B. S. VIJAYADEVARAJ

Respondent(s)

J U D G M E N T

Having heard the learned counsel for the parties, we are of the opinion that the Division Bench of the High Court of Karnataka has erred by relying upon their earlier decision in the case of *E.R. Manjaiah and others v. Bangalore Development Authority and others*¹ as the factual matrix in the present case is different.

2. The respondents in the present case had exercised their option to be governed by the terms of the notification dated 15.10.1988. Therefore, the respondents by choice gave up their right to be governed by the earlier notification dated

10.03.1988. There were good-reasons why the respondents had given up their right to be allotted sites in terms of the notification dated 10.03.1988 as the Bangalore Development Authority² was not in a position to make allotments to all the applicants registered under the notification dated 10.03.1988. In any case, once the respondents had by consent agreed to the terms and conditions mentioned in the notification dated 15.10.1988, they cannot fall back on the notification dated 10.03.1988.

3. The notification dated 15.10.1988 had referred to the sites 'proposed' at three different locations/layout plans. Further, Clause 16 of the notification stated thus:

"16. The B.D.A. reserves its right to allot sites in any layout other than the ones preferred by the applicant. Owing to unforeseen Court litigations and impediments, if any, the B.D.A. also reserves its right to allot sites in any one of its future layouts i.e., in the layouts not advertised at present."

4. The Authority was again unable to allot the sites mentioned in the notification dated 15.10.1988 for various reasons, including litigation. In any case, the sites specified in the 15.10.1988 Notification were only 'proposed' sites. In 1997-1998 the Authority issued allotment letters to the respondents for sites in the layout plan which they had subsequently developed. These sites were not mentioned in the notification dated 15.10.1988. The allotments were to the

²For short, 'the Authority'.

advantage and for the benefit of the respondents as allotment at the sites mentioned in the notification dated 15.10.1988 was not possible. The respondents had the choice to withdraw their initial deposit and not accept the allotment. Apparently, the respondents were interested and wanted the sites offered, *albeit* at the price applicable and paid by allottees under the 10.03.1988 Notification.

5. Rule 12 of the Bangalore Development Authority (Allotment of Sites) Rules, 1984³ stipulates as under:

"12. Value of the site.- The value of a site notified while inviting applications may be altered by the authority and an allottee may accept the site at the altered price or decline allotment."

Interpreting the said Rule, the Division Bench in the case of *E.R. Manjaiah* (supra), referring to several decisions of this Court and Karnataka High Court, held that the Authority was entitled to charge the price prevailing on the date of allotment.

6. Once this legal position and facts as accepted, we do not think that the respondents were entitled to any relief on the plea of parity relying upon the decision in the case of *E.R. Manjaiah* (supra). The facts in *E.R. Manjaiah* (supra) were different as the allottees had already been issued allotment letters for the sites under the notification dated 10.03.1988. Subsequently, the Authority could not allot the allotted sites to some of the allottees. Fresh allotment at

³For short, 'the Rules'.

new sites were made at a higher price. In *E.R. Manjaiah* (supra) it was held that while there was no vice of illegality or unconstitutionality in the power of the Authority to enhance the prices under Rule 12 of the Rules, the Authority had no right to alter the sital value according to its convenience or whims without furnishing any explanation. As Rule 12 is equally applicable to all persons similarly situated, the allottees given plots at the new sites could not be discriminated against other allottee given old sites on lower price on arbitrary grounds. Despite being similarly positioned with other allottees to the notification dated 10.03.1988, the allottees of the new sites had to pay a higher price.

7. We have already noticed the facts of the present case and find that the respondents had exercised their choice to be governed by the notification dated 15.10.1988, which means that they also agreed to the condition stipulated in Clause 16 under which the Authority had reserved its right to allot sites in any layout other than the one preferred by the applicants. All allottees under the 15.10.1988 Notification have been treated alike and similar price is payable. No allottee has been discriminated. Unlike *E.R. Manjaiah* (supra), the dispute herein arises concerning the Notification dated 15.10.1988, and not 10.03.1988 Notification, the terms of which were different. The notification dated 15.10.1988, unlike 10.03.1988, made only a

provisional allotment to the applicants.⁴ Further, the scope of Clause 16 under the Notification dated 15.10.1988 is broader than the scope of Clause 14⁵ under the Notification dated 10.03.1988.

8. Out of about 1571 applicants, who had exercised their choice to be governed by the notification dated 15.10.1988, about 168 applicants had objected and preferred the writ petitions before the High Court. The writ petitions were dismissed by a detailed order dated 14.12.1998 passed by the Single Judge in the case of *R. Jayakumar & Others v. The Bangalore Development Authority & Others*,⁶ rightly distinguishing *E.R. Manjaiah* (supra) in view of the difference in the facts. However, the respondents on appeal had succeeded before the Division Bench, which had in a short order dated 30.08.2001, impugned in these appeals, simply referred to the decision in the case of *E.R. Manjaiah* (supra) to allow the appeals. The review petition filed by the Authority before the High Court was dismissed *vide* the second impugned order dated 12.04.2002.
9. On the filing of the Special Leave Petitions, *vide* order dated 15.07.2002, notice was issued, and it was directed that

⁴Title of the Notification dated 15.10.1988 reads as "Applications are invited from the General Public for allotment of residential sites in the Bangalore Development Authority area. The details of the sites proposed to be allotted are as under:

XX XX XX
"

(Emphasis Supplied)

⁵"14. The B.D.A. reserves the right of allotting sites in a layout other than the one indicated by the applicant."

⁶ILR 1999 KAR 1905

till further orders, refund of the amounts would be stayed.
This was followed by the order dated 10.03.2003, which reads:

"Delay condoned.

Substitution applications are allowed.

I.A.No.172 IN SLP(C)No.13422/2002

By order dated 15th July, 2002, it was directed that till further orders the refund of the amount is stayed. This application has been filed seeking clarification of that order to the extent that only the refund of the amount has been stayed and the said order will not come in the way of the respondent-applicant in getting possession of the site on completion of all other formalities including execution of the sale deed. It is evident that the order dated 15th July, 2002 stays every kind of refund by Bangalore Development Authority to the respondent and it is not restricted only to prayer (iv) in the Writ Petition. In short, Bangalore Development Authority will not be required to make any payment to the respondent in terms of the impugned judgment till the decision of the petitions by this Court. Insofar as the delivery of possession and execution of the sale deed is concerned, Secretary of Bangalore Development Authority in his affidavit dated 21st February, 2003 has explained the difficulty in the matter. According to the affidavit, after the amendment of Site Rules in 1998 now an absolute sale deed is executed on allotment of sites and there is no lease-cum-sale deed. He says that in this eventuality of Bangalore Development Authority executing sale deed, it may not be able to recover the balance price payable on the site in the event of success of the authority in these Special Leave Petitions.

In view of the above though we direct Bangalore Development Authority to execute the sale deed and deliver possession, but at the same time we also direct, the respondents will not, in any manner, part with possession, transfer or encumber the site till final decision by this Court. Further in case, any payment becomes due to the authority as a result of decision of this Court, the respondents will give an undertaking to the authority before the execution of sale deed that the same will be made within four

weeks of the demand and the amount would be a charge on the site.

I.A. is disposed of accordingly."

10. During the pendency of the present appeals, 119 out of about 168 of the writ petitioners had made applications or made payment to the Authority and have accordingly been deleted from the array of parties as respondents.
11. Our attention has been drawn to the order dated 09.09.2021 passed on an application moved by one such respondent. The order reads:

" XX XX XX
 Having heard learned counsel for the respective
 parties, IA No.16698/2021 is allowed with a
 direction to the Bangalore Development Authority to
 accept the enhanced amount of the sital value as
 well as the interest payable in terms of Rule 13 of
 the Bangalore Development Authority (Allotment of
 Site) Rules, 1984.
 XX XX XX "

12. As we are allowing the present appeals, it would be just and fair if the remaining 49 respondents are given an opportunity to make payment of the enhanced amount of the sital value along with interest payable in terms of Rule 13 of the Rules. The said payment on self-computation by the respondents would be made within eight weeks. In case there is a dispute with regard to the quantum of interest payable, the Authority would notify the respondent with calculation, who would then either make payment of the interest or file response/objection. If the dispute cannot be resolved, the

parties would be entitled to take recourse to appropriate remedies as available.

13. Accordingly, we allow the appeals and set aside the impugned orders dated 30.08.2001 and 12.04.2002. As a consequence, the Writ Appeals preferred by the respondents would be treated as dismissed. However, directions given in paragraph 12 above would apply.

....., J.
[SANJIV KHANNA]

....., J.
[BELA M. TRIVEDI]

New Delhi,
9th March, 2022