**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**(ORIGINAL JURISDICTION)**

**W.P. No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_/2016**

**BETWEEN**

 Karnataka Rajya Vikalachethanara Rakshana Samithi (r)

A Registered Society,

Having its registered office at:
No. 36, Mudaliar Compound

2nd Main Road, Chamrajpet,

Bangalore - 560018
Represented by its President, Mr. S. Rafeeq Ahamed **...PETITIONER**

**AND**

1. The Bangalore Development Authority
Kumara Park (West)

Bangalore-560 020.
Represented by its Chairman

1. The State Government of Karnataka
Department of Women and Child &

 Senior Citizens and Disabled Welfare

MS Building, Dr. Ambedkar Veedhi

Bangalore-560001

Represented by its Principal Secretary

1. Department of Urban Development

Vikas Soudha,

 Bangalore-560001
Represented by its Principal Secretary **...RESPONDENTS**

**MEMORANDUM OF WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA**

The Petitioner above named most respectfully submits as follows:

1. The petition is filed in public interest by the Petitioner on behalf of all persons with disabilities in the State of Karnataka to protect their rights for 3% preferential allotment of land at concessional rates, as provided for under the

Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) [Karnataka] Rules, 2003 amended in 2006, made under Section 43 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act 1995 (hereinafter referred to as the “PWD Act”). The 1st Respondent BDA in its Notification dated 14-10-2015 bearing No. BDA/Admin/Allot/Secy/197/2015-16 is making allotment of 5000 residential sites in Kempegowda Layout, Bangalore and has reserved only 1% of these sites for persons with disability, in complete violation of Rule 28A (iii) of the above Rules which mandate that all Urban Development Authorities should ensure that when allotment of house/sites are made, atleast 3% are reserved for persons with disabilities, and should be offered at concessional rates. The above mentioned notification, in violation of this mandate, prescribes only 1% of the sites to be reserved in favour of persons with disability and makes no provision for allotment to them at concessional rates. Thus aggrieved by the actions of the 1st Respondent in not affording minimum reservation of 3% of the sites for persons with disabilities, the Petitioner has filed this petition in public interest.

**ARRAY OF PARTIES:**

1. The Petitioner is a charitable society registered under the Karnataka Societies Registration Act 1960. It works for the rights of persons with disabilities in Karnataka and takes up issues of employment, welfare schemes, allotment of sites, benefits to be provided and implementation of the law for perosns with disabilities. It is represented by its President.
2. The 1st Respondent is the Bangalore Development Authority, which has passed the impugned Notification dated 14-10-2015 and performs planning and development functions to facilitate urban development in Bangalore Metropolitan Area. This involves preparation and implementation of schemes and plans to provide for sites.
3. The 2nd Respondent is the Department which deals with rights of persons with disabilities and has framed and notified the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) [Karnataka] Rules, 2003 amended in 2006 which mandates reservation of 3% of sites at concessional rates for perosns with disabilities. The 3rd Respondent is the Urban Development Department, which is also manmdated to ensure that all allotment of residential sites provide for reservation of 3% of sites at concessional rates for perosns with disabilities.

**BRIEF FACTS:**

1. It is submitted that the Respondent No. 1 issued a notification dated 14-10-2015 bearing No. BDA/Admin/Allot/Secy/197/2015-16 calling for applications from eligible persons to allot 5000 residential sites in Kempegowda Layout, Bangalore. The said notification, inter alia, provided reservation for different categories, amongst which persons with disabilities were given 1% reservation, with no concession as to rate of allotment.

(A copy of the Notification No. BDA/Admin/Allot/Secy/197/2015-16 dated 14-10-2015 issued by the 1st Respondent is annexed herein and marked as **ANNEXURE- A**)

1. The impugned notification provided for reservation of sites for various categories as follows:

|  |  |  |
| --- | --- | --- |
|  | Reservation Category | Percentage of Sites reserved |
| a) | Category – I | 2% |
| b) | Scheduled Tribes (ST) | 3% |
| c) | Scheduled Castes (SC) | 15% |
| d) | Backward Classes – Category IIA, IIB | 10% |
| e) | Ex-Servicemen and family members  | 5% |
| f) | State Government employees  | 10% |
| g)  | Central Government employees | 2% |
| h) | Persons with Disability | 1% |
| i) | General Public | 50% |
| j) | Persons who have outstanding achievements in the field of Arts, Science and Sports, etc. | 2% |
|  | Total | 100% |

1. It is submitted that the impugned Notification nowehere mentions that the sites reserved for persons with disability would be offered to them at concessional rates.

1. This Notification dated 14-10-2015 failed to adhere to the requirement of minimum 3% reservation under Rule 28A of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) [Karnataka] Rules 2003 amended vide Notification dated 9.11.2006. Rule 28A states as follows:

***“Rule 28A. Benefit of Persons With Disabilities: All the State Government Departments, Boards, Corporations, Zilla Panchayats, Taluk Panchayats, Town Panchayats, Gram Panchayats, Municipal Corporations, Local Bodies, Urban development authorities and other Establishments of the State govenrments and other aided institutions shall, :-***

***[i]….***

***[ii] ……***

***[iii] ensure that when allotment of land is made for the following purposes:***

***a. House/Site***

***b. Setting up of business***

***c. Setting up of special recreation centres***

***d. Establishment of special schools***

***e. Establishment of research centres***

***f. Establishment of factories by entrepreneurs with disabilities***

***[i] not less than 3% of the allottees are persons with disabilities***

***[ii] the rate charged to such persons is made concessional”***

(A copy of the Notification dated 9.11.2006 amending the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) [Karnataka] Rules 2003 is annexed herein and is marked as **ANNEXURE – B**)

1. It is submitted that Rule 28A given above, was inserted to provide for the requirement of preferential allotment of sites under Section 43 of the PWD Act. Section 43 of the PWD Act provides for schemes for allotment of land at concessional rates. Section 43 of the PWD Act states as follows:

***“Section 43. Schemes for preferential allotment of land for certain purposes.—The appropriate Governments and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates of—***

[***(a)***](https://indiankanoon.org/doc/1509332/)***house;***

[***(b)***](https://indiankanoon.org/doc/783979/)***setting up business;***

[***(c)***](https://indiankanoon.org/doc/252428/)***setting up of special recreation centres;***

[***(d)***](https://indiankanoon.org/doc/1575410/)***establishment of special schools;***

[***(e)***](https://indiankanoon.org/doc/524363/)***establishment of research centres;***

[***(f)***](https://indiankanoon.org/doc/242303/)***establishment of factories by entrepreneurs with disabilities.”***

1. Further, Section 43 of the PWD Act and Rule 28 A as mentioned above, requires that when allotment of land is made for ‘House/site’, the rate charged to persons with disabilities should also be on concessional basis. The notification issued however, provides no such concession, although it does provide concessions for persons from Category – I and for Scheduled Castes and Scheduled Tribes.

1. Aggrieved by the impugned Notification, the Petitioner approached the State Commissioner for Disabilities, and the Commissioner for Disabilities sent a letter to the 1st Respondent, BDA dated 29.2.2016 directing the 2st Respondent BDA to reserve 3% of sites allotted and the need to allot sites at concessional rates as per the Section 43 of the PWD Act and Rules 28A of the Karnataka Rules. It requested the 1st Respondent to stop the allotment of sites as per the notification and provide for 3% reservation as prescribed, for persons with disability. When no response was received from the 1st respondent BDA, the Commisisoner for Disabilities sent another letter dated 30.05.2016 re-iterating the need for 3% reservation and concession requirements mandated under the PWD Rules and the PWD Act.

(A copy of the letter dated 29.2.2016 is annexed herein and is marked as **ANNEXURE – C**)

(A copy of the letter dated 30.05.2016 is annexed herein and is marked as **ANNEXURE – D**)

1. Despite these two letters from the State Commissioner for Disabilities, the1st Respondent BDA did not issue any corrigendum amending the impugned Ntification to bring it in conformity with Rules 28A o the Karnataka Rules and section 43 of the PWD Act. In fact the 1st Respondent BDA is planning to complete the process of allotting 5,000 sites in Kempegowda Layout, Bangalore and male the allotments on June 15. This has been reported in the publication of the Hindu newspaper dated 01.06.2016.

(A copy of the article titled, “A Time when Failure is Better than Success” dated 1.6.2016 published in the Hindu newspaper, Bangalore edition, is annexed herein and is marked as **ANNEXURE – E**)

1. Therefore, the Petitioner made a representation dated 07.06.2016 to the 1st respondent BDA and requested to adhere to the provisions of the PWD Act and Rules in the matter of allotment of sites for perosns with disabilities and provide 3% reservation and concessional rates and to re-announce the allotment scheme. However, the Peititoner has not received any response to this representation.

 (A copy of the letter dated 07.06.2016 along with the acknowledgement of receipt is annexed herein and is marked as **ANNEXURE – F collectively**)

1. Thus, being aggrieved by the inaction of the Respondent No.1 and having no other alternative and equally efficacious remedy, the Petitioner has filed this petition before this Honourable High Court. The Petitioner has not filed any other petition on the same cause of action before this court or any other court. The petiiton is filed on the following among other grounds:

**GROUNDS:**

1. **THAT** the impugned Notification in reserving only 1% of the 5000 sites for perosns with disabilities and not providing them at concessional rates is in direct violation of Rule 28A of the Karnataka Rules which mandates that all urban development authorities shall when alloting sites, reserve not less than 3% of the sites for persons with disabilities and provide them at concessional rates. Unless 3% of the 5000 sites being atleast 150 sites are not reserved for persons with disabilities, and not provided at concessional rates, persons with disabilities will not be able to afford them and will have no other method to get residential sites and be secure with respect to housing, and deserves the intervention of this Hon’ble Court.
2. **THAT** the action of the 1st Respondent in not providing the sites reserved for perosns with disabilities at concessioanl rates to persons is in direct contravention of Section 43 of the PWD Act and the statutory rights of persons with disabilities which specifically mandates that in matters of allotments of house / site, the same shall be provided at concessional rates. Despite this being brought to the knowledge of the 1st Respondent BDA by the Petitioner and th State Commisisoner for Disabilities, no actionw as taken by the 1st respondent BDA to amend the impugned notificationa nd the same deserves the intervention of this Honble Court.

1. **THAT** the 1st Respondent BDA has failed to provide reservation for persons with disability without any reasons. THE PWD Act and the Karnataka Rules do not give the 1st Respondent the power to tamper with the percentage of reservation for persons with disability. Once these percentages have been earmarked, 3% of ‘persons with disability’ cannot be excluded from the benefits of such reservation.
2. **THAT** the 1st Respondent BDA has failed to implement the mandate of the PWD Act and the Karnataka Rules which provide for minimum 3% reservation of sites in favour of persons with disability and allotment of sites at concessional rates. In ***Union of India v. National Federation of the Blind & Ors***, Civil Appeal No. 9096 of 2013, the Hon’ble Supreme Court stated that the PWD Act is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfil its objective. The Court states that it is a settled rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the said statutory provision. Hence it is submitted that the Respondent has not adhered to the plain and unambiguous mandate of the PWD Act. Thus the failure of the BDA to reserve minimum allotment for persons with disability is arbitrary and unfair.
3. In **E.V. Chinnaiah v. State of A.P**, AIR 2005 SC 162, a Constitution Bench of the Hon’ble Supreme Court of India has held that the State Government lacks competence to tamper with the list of Scheduled Castes and Scheduled Tribes and provide for differential percentage of reservation for the different castes falling within the same category. By providing for only 1% reservation for persons with disability, the impugned notification does not confer adequate reservation to persons with disability as defined and provided for under the PWD Act and the Karnataka Rules.
4. **THAT** the 1st Resondent BDA while failing to implement 3% reservation mandated by the Karnataka Rules, has failed to even comply with its own rules laid down under Rule 11 of the BDA (Allotment of Sites) Rules, 1984 which mandates that 2% of sites should be reserevd for persons with disabilites. Though these rules are superseded by the mandate of the PWD Act and the Karnataka Rules, the impugned Notification has failed to provide for even the 2% requirement of reservation to be made in favour of persons with disabilities as given under Rule 11(g) of the BDA Rules.
5. **THAT** the impugned Notification of the 1st Respondent BDA in providing only 1% reservation of sites and not providing 3% as mandated under the Karnataka Rules is arbitrary and unreasonable and in violation of Article 14 of the Constitution. There is no reasoning provided as to why only 1% of the 5000 sites are reserved when the Rules clearly mandate 3% reservation and the PWD Act prescribed granting of sites at concessional rates and hence deserves the intervention of this Hon’ble Court.
6. THAT the impugned Notification in not providing for reserved sites for perosns with disabilities at concessional rates would be in complete ciolation of Article 14 of the constititon. Persons with disabilities are as a category economically weaker and would not be able to afford even sites which are reserved for them unless they are offered at concessional rates. Without providing for concessional rates as mandated uder Section 43 of the PWD Act, even if 3% sites are reserved, the said reservation would be meaningless. Hence, the non inclusion of concessional rates is discriminatiory under Article 14 of the constitution.
7. **THAT** when other categories of reservation such as SC/ST categories are offered sites at concenssinal rates, the non-provision of sites for persons with disabilties at concessioanl rates despite the statutory right guaranteed under Acetion 43 of the PWD Act amounts to discrimination under Article 14 and deserves the intervention of this Hon’ble Court.
8. **THAT** the non-provision of sites at concessional rates for perosns with disabilities would amutn to a denial of their right to life guaranteed under Article 21 of the constitution. The Hon’ble Supreme Court has interpreted the right to life under Article 21 to include the right to housing and shelter, and for persons with disabiltiies unless residential sites are offered at concessional rates, they would not be able to afford them at all. Without making affordable housing available to persons with disabilities, they would be left without any means for housing and shelter and would thus be deprived of an imprtant facet of the means to live a life with dignity and amounts to a violation of Article 21 of the constitution.

**GROUNDS FOR INTERIM RELIEF:**

1. The Petitioner submits that the impugned Notification dated 14-10-2015 disregards the obligations under the PWD Act, the Karnataka Rules and the Constitution and if the allotment process is completed pursuant to this Notification, grave injustice will be caused to persons with disability. It is submitted that since adequate and prescribed level of 3% reservation of sites has not been provided for the purpose of allotment, candidates who come under the categories of persons with disability under the PWD Act will not be provided adequte sites. Furtehr, many persons with disabilities would not even have applied for allotement of sites since concessional rates have not been provided, as they would not be able to afford the regular rates.

1. Therefore, if allotements are made without the releifs sought in the present petition being considered, it would cause irreparable harm and injustice to the candidates who come within defined and identifiable categories of persons with disability in obtaining allotment under the said notification. It is submitted that if selections are made without providing for adequate reservation, and concession, deserving allottees will be left out and deprived of their rights to get sites at concessional rates. It is submitted that if this opportunity is missed by candidates that come within the category of persons with disability, they would indeed be prevented from taking the benefit of the reservations provided under the PWD Act. If all the allotments that are to be reserved for the persons with disabilities are made to other allottees, then this petition would be rendered infructuous. Therefore it is imperative that the allotment process should be stayed till the pendency of proceedings under this petition. In the light of these facts, it is prayed that the interim relief sought for to be granted and the candidates coming under the category of persons with disabilities be allowed to submit their applications and be considered for the selection for the sale of houses in Kempegowda in accordance with the scheme as provided for under the impugned notification dated 14-10-2015.

**PRAYER**

WHEREFORE, in light of the above facts and circumstances, the Petitioner most respectfully prays that this Hon’ble Court be pleased to:

1. Issue an order directing the 1st Respondent BDA to set aside the Notification dated 14-10-2015 bearing No. BDA/Admin/Allot/Secy/197/2015-16 produced herein as **ANNEXURE- A,** to the extent that it does not provide 3% reservation in allotment of sites to persons with disabilities;
2. Direct the 1st Respondent BDA to issue a Corrigendum to amend the impugned Notification dated 14-10-2015 bearing No. BDA/Admin/Allot/Secy/197/2015-16 produced herein as **ANNEXURE- A**, to provide for reservation of 3% of sites for persons with disabilities and to offer them the reserved sites at a 50% concessional rate;
3. Direct the 1st Respondent BDA to accept the applications of persons with disability under the Notification dated 14.10.2015 and give them an opportunity to be considered for the allotment of sites under the said Notification;
4. Grant any other relief, which the Hon’ble Court deems fit under the circumstances of the case in the interests of justice and equity.

**INTERIM PRAYER**

Pending final disposal of the above petition, it is most respectfully prayed that the Hon’ble Court may be pleased to direct the 1st Respondent BDA to stay the process of allotment of sites under the Notification dated 14-10-2015 bearing no. BDA/Admin/Allot/Secy/197/2015-16, produced herein as **ANNEXURE- A,** in the interest of justice and equity.

Place: Bangalore Counsel for the Petitioner

Date:

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