

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)

W.P. No. 9693/2017

BETWEEN

Radhakrishna Shastry C.
S/o Mr. Narasimha Shastry. C,
Residing at: 64, 20th Main, 14th Cross
2nd Phase, JP Nagar,
Bangalore-560078

...PETITIONER

AND

1. The Bangalore Development Authority
Kumara Park (West)
Bangalore-560 020.
Represented by its Chairman

 2. 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

 3. Department of Urban Development
Vikas Soudha,
Bangalore-560001
Represented by its Principal Secretary...**RESPONDENTS**
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MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

The Petitioner submits as follows:

1. The present petition has been by the Petitioner for the protection of his rights 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 ("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 3% of these sites for persons with disability but not granted them at concessional rates in complete violation of Section 43 of the PWD Act and Rule 28A (iii) of the above Rules which mandate that all Urban Development Authorities should ensure that when allotment of house/sites are made, they should be offered at concessional rates for persons with disabilities. The above mentioned notification, makes no provision for allotment to them at concessional rates. The Petitioner is a person with disability and has been allotted a site in the said Kempegowda layout and is required to make payment of the entire amount by 22.2.2017, without any concessions. Thus aggrieved by the actions of the 1st Respondent the Petitioner has filed this petition

Brief Facts:

2. The Petitioner is a person with disability having 55% permanent hearing disability and is thus a person with disability under Section 2 (t) of the PWD Act.

(A copy of the Petitioner's medical certificate is annexed herein and is marked as **ANNEXURE – A**)

3. 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 instead of the mandatory 3%, with no concession as to rate of allotment or concessions in the manner of making payment. The impugned Notification nowhere mentions that the sites reserved for persons with disability would be offered to them at concessional rates.

(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- B)

(A copy of the terms and conditions for the allotment as published by the 1st Respondent BDA are annexed herein and is marked as **ANNEXURE – C)**

4. The Petitioner herein had applied for a 15 mtrs X 24 mts. (360 sq. mtrs) site in the impugned Notification in Kempegowda layout.

5. Thereafter, when a public interest petition was filed before this Hon'ble Court in W.P. No. 33085 / 2016, the 1st Respondent BDA provided 3% reservation of sites from among the 5000 sites for persons with disabilities. This 3% reservation was not provided earlier when the impugned notification was initially issued but when the allotments were made, the 1st Respondent BDA reserved 3% out of the 5000 sites for persons with disabilities and this information was put up online on the website of the 1st Respondent BDA.

(A copy of the Details of the Allotment of 5000 sites Category Wise as announced by the BDA is annexed herein and is marked as **ANNEXURE – D)**

6. The Petitioner, due to this 3% reservation in favour of persons with disabilities, was allotted a site of 15 mtrs X 24 mts. measurement by the 1st Respondent BDA on 7.12.2016 The Site Allotment List released by the 1st Respondent BDA on its website shows that the Petitioner is entitled to allotment of site no. B5-SH-2944 in the 15 mtrs X 24 mts. site dimension.

(A copy of the final Allotment List of the 15 mtrs X 24 mts. site category is annexed herein and is marked as **ANNEXURE – D)**

(A copy of the Petitioner's Allotment letter issued by the 1st Respondent BDA dated 07.12.2016 is annexed herein and is marked as **ANNEXURE – E)**

7. It is submitted that even though the Petitioner is entitled to reservation in allotment of sites and pursuant to the same, he has been allotted the above-mentioned site, as a person with disability he is not provided any concessions in the cost of the site or any concession in payment terms as given to other categories of persons and as mandated under Section 43 of the PWD Act read with Rule 28A of the 2006 Karnataka Rules.

8. 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) house;

(b) setting up 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.”

9. Following Section 43 given above, Rule 28A was inserted in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) [Karnataka] Rules 2003 which was 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 governments 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 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) [Karnataka] Rules 2003 amended vide Notification dated 9.11.2006 is annexed herein and is marked as **ANNEXURE – F**)

10. However, despite the mandates of Section 43 and Rule 28A, the 1st Respondent BDA have not provided any concessions in the rate to persons with disabilities. The site that is allotted to the Petitioner herein costs Rs. 96,87,510/- (Rupees Ninety Six Lakhs Eighty Seven Thousand Five Hundred and Ten only) and this is a very large sum for the Petitioner to pay. Out of this amount, he has paid Rs. 12,11,000/- towards the initial deposit, and has to make the balance payment of Rs. 84,76,510/- (Rupees Eighty Four Lakhs Seventy Six Thousand Five Hundred and Ten only) within 60 days of the receipt of the allotment letter, which was thereafter extended by a further period of a few weeks. This is a huge amount for him to pay without any concessions. If he does not make payment within the extended period, he will be levied an interest of 18% and would be given 30 days more time and a further 30 days time with 21% interest.

(A copy of the newspaper article in Deccan Herald dated 29.12.2016, titled, "Allotment Letters sent to KG layout Site Applicants" is annexed hereina nd is marked as **ANNEXURE – G**)

11. The 1st Respondent BDA itself makes provision for allotment of sites at concessional terms to other categories of disadvantaged persons. The concessions that are being offered by the 1st Respondent BDA to other categories are as follows:

- (i) Persons from Economically Weaker Sections (EWS) are provided the sites at 50% concessional rate and nearly 1000 of the 6 X 9 mtrs sites (54 square mtrs) are reserved for perosns from Economically Weaker Sections (EWS).

- (ii) For persons from SC, ST, Cat-1, family of defence personnel, they are required to pay only 5 % of the site value or the initial deposit with application, instead of the full deposit amount being 12.5 % of the site value.
- (iii) For persons from EWS, SC, ST, Cat-1, family of defence personnel categories, they are given an extended time period of 3 years without interest, to pay the entire sale price of the site.
- (iv) Reservations in site allotment are also made for other categories.

12. The list of Frequently Asked Questions, as seen on the 1st Respondent BDA's website, state that persons belonging to the scheduled castes, scheduled tribes, backward castes or to a family of a defence personnel killed or disabled during hostilities, or belonging to the EWS category, can pay for the value of the site within a period of three years and without interest, in equal installments.

(A copy of the Frequently asked questions published by the 1st Respondent BDA is annexed herein and is marked as **ANNEXURE -H**)

13. Despite the 1st Respondent BDA giving the above concessions to other categories of persons, the Petitioner being a person with disability, has not been given any concessions in the cost of the site. Persons from EWS categories are given a 50% concession, which is not provided to the Petitioner, nor is he given any concessional terms of payment like the relaxed repayment conditions given to SC/ST and other categories where they are permitted to make payment over 3 years without interest and reduced allotment amounts. The Petitioner has to make payment of the entire sum within the time period of 60 days. The petitioner even sent a representation to the 1st Respondent BDA vide letter dated 14.2.2017 seeking concessional rates and concessional terms of payment, but to no avail.

(A copy of the representation dated 14.2.2017 is annexed herein and is marked as **ANNEXURE - J**)

14. The Petitioner herein had initially made an Application for Impleadment in the above PIL being W.P. No. 33085 / 2016 but however had not sought any relief. The Peititoner filed a Memo to withdraw the said application and said application was withdrawn.

(A copy of the Memo dated 16.2.2017 is annexed herein and is marked as **ANNEXURE – K**)

15. Being aggrieved by the action of the 1st Respondent in not providing any concessions to the Petitioner, 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:

GROUND:

16. **THAT** the action of the 1st Respondent in not providing the sites reserved for persons with disabilities at concessional rates to the Petitioner, is in direct contravention of Section 43 of the PWD Act and the statutory right of the Peititoner, 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 State Commisisoner for Disabilities, no action was taken by the 1st Respondent BDA to amend the impugned notification and the same deserves the intervention of this Honble Court.

17. **THAT** the 1st Respondent BDA has failed to implement the mandate of the PWD Act and the Karnataka Rules which provide for concessional rates for 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 provide sites at concessional rates for persons with disability is arbitrary and unfair.

18. **THAT** the impugned Notification in not providing for reserved sites for persons with disabilities at concessional rates would be in complete violation of Article 14 of the constitution. 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 under Section 43 of the PWD Act, even if 3% sites are reserved, the said reservation would be meaningless. The new Rights of Persons with Disabilities Act 2016, which has yet to be notified, mandates reservation 4% of sites at concessional rates for persons with disabilities. Hence, the non inclusion of concessional rates is discriminatory under Article 14 of the constitution.

19. **THAT** when other categories of reservation such as SC/ST categories are offered sites at concessional rates such as providing sites at 50% of the rates and giving upto 3 years time to make payment of the site value without interest, the non-provision of such concessions for the Petitioner who is a person with disabilities, despite the statutory right guaranteed under Section 43 of the PWD Act amounts to discrimination under Article 14 and deserves the intervention of this Hon'ble Court.

20. **THAT** the non-provision of sites at concessional rates to the Petitioner, being a person with disability would amount to a denial of his 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 disabilities 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 important facet of the means to live a life with dignity and amounts to a violation of Article 21 of the constitution.

GROUND FOR INTERIM RELIEF:

21. The Petitioner submits that the impugned Notification dated 14-10-2015 disregards the obligations under the PWD Act, the Karnataka Rules and the Constitution as no concessional rates and terms of payment are provided to the Petitioner, being a person with disability. If the last date for payment being 22.2.2017 is not extended, and the Petitioner is required to make the entire balance payment by this date, then this entire petition would be rendered infructuous. This petition is filed seeking concessional terms of payment and concessional rates and if the Petitioner would be making the full payment, he would suffer immeasurable harm as he cannot arrange for such large amounts within such a short span of time, and even if he did make such payment and this petition is allowed, it would be impossible for him to get the said amount back from the BDA. Therefore it is imperative that the time for making payment of the balance amount by the Petitioner to the 1st respondent BDA is extended till the pendency of proceedings under this petition.

PRAYER

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

- A. Issue a writ in the nature of mandamus directing the 1st Respondent BDA that the site No. B5-SH-2944 measuring 15 mtrs X 24 mts. that has been allotted to the Petitioner in Kempegowda Layout, be allotted at 50% concessional rate and other concessional terms of payment of extended time without interest, as he is a person with disability in view of Section 43 of the Persons with Disabilities Act 1995 and Rules 28A of the Karnataka Rules;
- B. Direct the 1st Respondent BDA not to charge any penal interest or take adverse action of cancellation of the site allotted to the Petitioner for any delay in payment;
- C. 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 extend the time for payment of the amounts without penal interest by the Petitioner towards Site No. B5-SH-2944 measuring 15 mtrs X 24 mts. that has been allotted to the Petitioner in Kempegowda Layout under Notification dated 14-10-2015, without taking any adverse action against him, in the interest of justice and equity.

Place: Bangalore

Counsel for the Petitioner

Date:

Address for Service:

Ashira Law

D6, Dona Cynthia Apartments

35 Primrose Road

Bangalore-560025