

[2013] 2 S.C.R. 453

J. SUNDRAMMA

v.

STATE OF KARNATAKA & ANR.
(Civil Appeal No. 2648 of 2013)

MARCH 21, 2013.

**[SURINDER SINGH NIJJAR AND
PINAKI CHANDRA GHOSE, JJ.]**

CONSTITUTION OF INDIA, 1950:

Art.142 - Allotment of plot cancelled for deficiency in payment - Stand of allottee that being an illiterate widow, she could not notice the amount that remained to be paid - Held: It may be that the Development Authority did not have any discretion either to extend the time for payment or to regularize the allotment which had been initially made in favour of husband of appellant - Therefore, decision rendered by Single Judge, as confirmed by Division Bench of High Court cannot be said to be legally erroneous - However, it also cannot be ignored that appellant is an illiterate widow and has two minor children - This apart, it has been pointed out that the site which was allotted to her is still available and can be given to her - In view of peculiar facts and circumstances of the case, and, purely in the interest of justice on humanitarian grounds, in exercise of jurisdiction under Art. 142 of the Constitution, it is directed that the site which was originally allotted to appellant's husband and subsequently allotted to her, be regularized and registered in her name - She will, however, make payment of balance amount along with 18% interest from due date.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2648 of 2013.

From the Judgment and order dated 17.01.2011 of the

A High Court of Karnataka at Bangalore in WA No. 901 of 2010.

P. Vishwanatha Shetty, M.C. Dhingra, D.L. Chidananda, Gaurav Dhingra, Anitha Shenoy, Sharan Thakur, Vijay Kumar Paradesi and Dr. Sushil Balwada for the appearing parties.

B The following order of the Court was delivered

O R D E R

1. Heard learned counsel for the parties.

C 2. Leave granted.

3. The appellant is the widow of the original applicant, S. Ramakrishna, who was allotted a site bearing No.7119 measuring 6 meters x 9 meters in Vijayanagar, 4th Stage, 2nd Phase, Mysore, by the Mysore Urban Development Authority, under general category. The allottee made part payment of the consideration amount, however, the payment was not made within the stipulated time. The husband, however, passed away on 25th May, 1994, as a result of which the appellant made an application for allotment of the plot in her name. This application was accepted on 5th March, 1998 and the plot was allotted in the name of the appellant. The total price of the site was fixed at Rs.10,000/-. The appellant deposited Rs.1157/- along with the application and Rs.1500/- within the stipulated fifteen days of receipt of the allotment letter. She was to pay Rs.7343/- within ninety days from the date of the issuance of the grant certificate. By mistake, being illiterate, she deposited only Rs.5000/-, leaving a sum of Rs.2343/- unpaid. The Mysore Urban Development Authority issued a notice on 19th January, 2005 indicating that the total price of the site is Rs.10,000/-, out of which the allottee had paid only Rs.7657/-, thus leaving a balance, to be paid, of Rs.2343/-. She was directed to give proof of payment within 15 days of the receipt of the show cause notice in case the entire consideration amount has been paid. It appears that the appellant made an application seeking

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extension of time through application dated 8th August, 2006. However, by order dated 7th November, 2006, the aforesaid request of the appellant was rejected and the allotment made in her name was cancelled. Whilst rejecting the claim of the appellant, the respondent - Mysore Urban Development Authority notices that after the death of the husband, the appellant was granted the site on 28th August, 1998. It was noticed that "the sale consideration of the said site is Rs.10,000/-, out of the sale consideration, she paid total amount of Rs.7657/- (Rupees seven thousand six hundred and fifty seven only) but she has not paid the remaining sale consideration of Rs.2343/- (Rupees two thousand three hundred and forty three only) till this day, therefore, now there is no provision to receive the sale consideration of the granted site". On the basis of the above, the site allotted to the appellant was cancelled.

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4. The appellant challenged the aforesaid order dated 7th November, 2006 by filing Writ Petition No.4995 of 2010 (LB-RES). The Writ Petition was, however, dismissed on the ground that the appellant had not shown due diligence in making the payments, as required under the allotment order. It was also noticed that eleven years had elapsed since the allotment was made and, therefore, the appellant could not claim any equity in her favour also. The appellant challenged the aforesaid order of dismissal of the writ petition by filing a Writ Appeal No.901 of 2010 (LB-RES) which has also been dismissed by the impugned order dated 17th January, 2011. While dismissing the writ appeal, the High Court observed that since the appellant was guilty of laches inasmuch as the order of cancellation dated 7th November, 2006 was challenged in the writ petition in the year 2010, she is not entitled to any relief. The claim made by the appellant that she belongs to backward community, was also rejected. It was noticed that the original allotment had been made in favour of her husband as a general category applicant and not as a person belonging to backward community. The aforesaid order is challenged by the appellant by filing Special

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A Leave to Appeal (Civil) No.18231 of 2011 giving rise to the present Civil Appeal.

B 5. Mr. M.C.Dhingra, learned counsel appearing for the appellant submitted that the appellant is an illiterate widow with two minor children and, therefore, the High Court erred in not granting her relief in exercise of its discretionary jurisdiction under Article 226/227 of the Constitution of India.

C 6. Mr. P.Vishwanatha Shetty, learned senior counsel appearing for respondent No.2-Mysore Urban Development Authority that in matters of allotment of plots, the relief cannot be granted on compassionate grounds, as the allotment is governed by the strict rules and procedures and, therefore, no relief could have been granted to the appellant.

D 7. According to the strict letter of the law, Mr. Shetty would be right in his submission that respondent No.2 did not have any discretion either to extend the time for payment or to regularize the allotment which had been initially made in favour of the husband of the appellant. Therefore, the decision rendered by the learned Single Judge, as confirmed by the Division Bench, cannot be said to be legally erroneous. We, however, also cannot ignore the submission of Mr. Dhingra that the appellant is an illiterate widow and has two minor children. This apart, Mr. Dhingra pointed out that the site which was allotted to her is still available and can be given to the appellant.

F 8. In view of the peculiar facts and circumstances of this case and, purely in the interest of justice on humanitarian grounds, in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct that the site bearing No.7119 measuring 6 meters x 9 meters in Vijayanagar, 4th Stage, 2nd Phase, Mysore, which was originally allotted to the husband of the appellant and subsequently allotted to her, be regularized and registered in the name of the appellant. She will, however, make payment of the balance amount along with 18% interest from the due date. Let the amount be paid within a period of

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three months from today. The possession of the site will be handed over to her on payment of the entire amount. A

9. It is made clear that since this order has been passed purely on humanitarian grounds, it shall not be treated as a precedent in any other similar matter which may have been decided or is pending before respondent No.2. B

10. The appeal is, accordingly, disposed of.

R.P.

Appeal disposed of.