
(2002) 09 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 4871 and 38039 of 2001

Aicoboo Nagar Residents Welfare Association

APPELLANT

Vs

Bangalore Development Authority and Another

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 2 (bb)
Constitution of India, 1950 — Article 226

Citation : (2002) ILR (Kar) 4705 : (2002) 6 KarLJ 260 : (2002) 4 KCCR 327 SN

Hon'ble Judges : N.K. Jain, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : M.I. Arun, in W.P. No. 38039 of 2001 and P.S. Rajagopal, in W.P. No. 4871 of 2001, for the Appellant; S.A. Nazeer, for Respondent-1 and Ram Mohan Reddy, for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, C.J.—These two writ petitions under Article 226 of the Constitution of India, as public interest litigation petitions challenge the lease granted by first respondent-Bangalore Development Authority in favour of M/s. Bharath Petroleum Corporation, the second respondent, in respect of Civic Amenity Site No. 3 (Part), BTM I Stage, I Phase Layout, Bangalore. Both petitions involve common questions of law and fact and are disposed off by this common order.

2. It is averred in the petition that lease of civic amenity site in favour of second respondent is illegal as opening of petrol outlet is not a civic amenity, and the second respondent is not entitled to allotment of civic amenity site. It is stated that rules of allotment have not been followed while leasing the site as no public auction was held and second respondent is putting up construction in violation of agreement of lease and sanctioned plan and hence lease is liable to be quashed.

3. The first respondent has filed objection statement denying averment made in the petition and has stated that on application filed by second respondent which is a Government company lease is granted for 30 years and lease deed for 30

years has been executed on 13-10-2000 by receiving lump sum amount of Rs. 35,45,573/- subject to terms and conditions mentioned therein and allotment has been made in accordance with law as civic amenity includes opening of petrol outlet and as per plan modified on 13-2-1998 site was not reserved for any specified civic amenity and hence petitions filed in the garb of public interest litigation are liable to be dismissed.

4. The second respondent has filed statement of objections denying averments made in the writ petitions regarding illegality of lease deed and it is stated that second respondent is a Government of India company and lease has been granted in accordance with law and it is putting up construction in accordance with sanctioned plan and petitions are liable to be dismissed.

5. Heard the learned Counsels appearing for the petitioners in both the petitions and the learned Counsels for the respondents.

6. No doubt in an appropriate case, this Court can issue directions if there is gross violation of fundamental rights or if the issue touches the conscience of the Court but not for personal gain or publicity or political gain.

7. The learned Counsels appearing for the petitioners submitted that, opening of petrol and diesel outlet is not a civic amenity within the definition of civic amenity in Section 2(bb) of the Bangalore Development Authority Act, 1976 (for short "the BDA Act") and even assuming that there is notification, only opening of petrol outlet would be civic amenity and not petrol and diesel outlet. Further argument of the learned Counsel is that, lease could not be granted to second respondent which is not an institution and that too without public auction and that the second respondent is putting up a commercial complex by violating conditions of lease and hence lease is liable to be quashed.

8. The learned Counsel appearing for the first respondent submitted that notification has been issued in exercise of power under Sub-clause (vi) of Clause (bb) of Section 2 of the BDA Act. The second respondent is not an institution but is a Government company and lease is made in accordance with law and any violation of conditions of lease is not brought to the notice of the first respondent.

9. The learned Counsel for the second respondent submitted that second respondent is a Government company and lease has been granted in accordance with law and that second respondent is putting up construction in accordance with sanctioned plan. He has further submitted that while providing for supply and sale of petroleum products it has also envisaged providing of conveniences to customers and facilities like ATM Centre, Browsing Centre, grocery store, canteen, rest room are provided to motoring public and that since petitioners have failed to prove that lease is invalid, they are not entitled to any reliefs in these petitions.

10. We have considered the arguments of the learned Counsels for the parties and perused the materials on record which show that second respondent which is

a Government of India company had made an application for grant of civic amenity site on lease for opening petrol and diesel outlet on 9-12-1999. In view of plan as modified on 13-12-1998, Civic Amenity Site 3 had not been reserved for any specific purpose and since second respondent is a Government company, first respondent passed a resolution on 31-1-2000 to lease said site measuring East to West 60.96 metres and North to South 36.58 metres and in all 2,229.92 square metres to the second respondent for opening petrol and diesel outlet and lease deed was executed on 13-10-2000 granting lease for 30 years by receiving lump sum amount of Rs. 35,45,573/- subject to terms and conditions mentioned in the deed and second respondent after obtaining sanctioned plan is putting up constructions. The contention of the learned Counsels for petitioners cannot be accepted as Section 2(bb)(vi) enables Government to issue notification specifying civic amenity and in exercise of said power notification was issued on 29-8-1990. Mere fact that diesel is not specifically mentioned would not vitiate grant of lease for opening outlet as the term "petroleum outlet" is used in common parlance. In view of modification of plan on 13-2-1998 the contention that Civil Amenity Site 3 was reserved for public purpose cannot be accepted. Since second respondent is a Government company, in view of Civic Amenity Site Allotment Rules question of auction would not arise. In view of the above, it is clear that petitioners have failed to prove that impugned action of lease of site to second respondent violates fundamental rights or any legal right of the public. Since we are issuing no direction in these public interest litigations, it is not necessary to go into the question whether these public interest litigations are maintainable by a Secretary without any resolution that the Secretary is duly authorised to file these public interest litigations.

11. The contention as to whether there is a violation of conditions of lease or sanctioned plan, is a disputed question of fact which cannot be gone into in these petitions that too in the absence of relevant material in that behalf and these facts can be considered by a competent fact-finding Authority and accordingly, we hold that petitioners are not entitled to any relief in these public interest litigation petitions and accordingly, these public interest litigation petitions are dismissed. Costs made easy. However the dismissal of these petitions will not preclude the first respondent from considering as to whether there is any violation of condition of lease or sanctioned plan and it is free to take action in accordance with law.