

(2014) 10 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No. 23330/2012 (LB-RES-PIL)

Basaveshwara Nagareeka

APPELLANT

Vs

M.A. Sethuram

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 2(h), 39

Citation : (2014) 10 KAR CK 0060

Hon'ble Judges : D.H. Waghela, C.J; Budihal R.B., J

Bench : Division Bench

Advocate : Basavaraj M. Mekki, Advocate for the Appellant; S.N.

Ashwathnarayan, R.S. Ravi, Advocates and Shweta Krishnappa, HCGP, Advocate for the Respondent

Judgement

1. The petitioners contend that they are the President and Treasurer respectively, of Sri Basaveshwara Nagareeka Kshemabyudaya Sangha, a Society registered under the Karnataka Co-operative Societies Registration Act, 1960. That society is registered in Chitradurga for the stated purpose of upliftment of parks, roads, civil amenities, cultural activities and other purposes.

2. Respondent Nos. 1 and 2 are alleged to have illegally got allotted civic amenity sites which were exclusively reserved for community hall and cultural centre. Respondent No. 1 being the President of Chitradurga Urban Development Authority (for short "CUDA"), is alleged to have illegally managed to publish notification in news papers which are not at all circulated in Chitradurga. The CUDA, without verifying all the records and without following the provisions of the Allotment of Civic Amenity Rules, 1991, is alleged to have mechanically passed a resolution on 4.2.2006 and allotted two civic amenity sites in favour of respondent No. 2-Society which were reserved for community hall and cultural centre. According to the petition, Respondent No. 2 did not deposit the lease amount within three months of allotment of the said sites. Even then, the CUDA kept mum and did not take any action for cancellation of sites. After three years,

the CUDA sent a notice dated 16.4.2008 to respondent No. 2 to deposit the lease amount within three months. Even on receipt of the said notice, respondent No. 2 did not deposit the lease amount. In view of that, the CUDA passed a resolution on 13.7.2009 and cancelled the allotment of civic amenity sites registered in favour respondent No. 2.

3. Surprisingly, again on 31.8.2009, the CUDA wrote a letter to respondent No. 2 asking to deposit the revised price of Rs. 26,50,833/- and Rs. 19,35,750/- within four months. It is alleged that the said letter was issued as per telephonic order of the Deputy Commissioner. Respondent No. 2 requested CUDA to register sites in its favour for construction of school "building in the civic amenity sites. The CUDA, without verifying the earlier order of cancellation of sites and without demanding the revised price, casually and mechanically registered the sites formed in Sy. No. 76 of Medehalli, Chitradurga town in favour of respondent No. 2 by collecting a meager amount, according to the petitioner. As per the provisions of Section 39 of the Karnataka Urban Development Authorities Act, 1987 (for short "the Act"), the Authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities for any other purpose, and any disposition made otherwise shall be null and void. It is the contention of the petitioner that respondent No. 2, without obtaining permission and licence from the concerned authorities, tried to construct school building in the civic amenity sites. The local persons and petitioner-society objected to such construction and submitted representation to CUDA "and the other authorities, to take action against respondent No. 2. Even after submission of the said representation, CUDA issued a commencement certificate to respondent No. 2 for construction of the school building, in the month of May, 2012. Respondent No. 2 is also stated to be trying to get licence for construction of the building in civic amenity sites. Hence, petitioners filed the present writ petition (PIL) for quashing the allotment of civic amenity sites and to take action against respondent Nos. 1 to 5.

4. Respondent Nos. 1 and 2 have filed objection statement, stating that petitioner-Sanga is trying to prosecute its private interest in the colour of public interest. Respondent No. 1 is a social worker and he has rendered service as President of the CUDA. Respondent No. 2 is a Society registered in the year 1973-74 and it has been carrying on its activities for the promotion of social, cultural and educational activities for the poor and weaker section of the society. In pursuance of the request made by respondent Nos. 1 and 2 to the Hon"ble Chief Minister and other ministers and also to the authorities, they have been allotted the sites. The Chairman of CUDA passed an order dated 31.8.2009 to allot civic amenity sites as per the rate fixed earlier by giving four month"s time to pay the amount. It is further stated in the objection statement that respondent Nos. 1 and 2 by letter dated 3.5.2011 as per Annexure-"K" to writ petition, requested respondent No. 3 to register civic amenity sites in their favour as they intend to construct a primary school building as they have obtained permission from the Deputy Director of Public Instruction, Chitradurga to run a

Kannada medium primary school. Accordingly, respondent No. 3 executed lease cum sale agreements in favour of respondent No. 2 by collecting Rs. 2,38,540/- and Rs. 1,74,192/- as per the old rates. The copies of the said agreements are produced as per Annexures-"L" and "M". Respondent No. 2 has obtained licence from respondent No. 3 and also obtained the sanctioned plan. It has also paid the licence fee on 4.5.2012 and obtained licence and sanctioned plan, copies of which are produced as per Annexures-"R5" and "R6". It is contended that respondent No. 1 has not violated provisions of Section 39 of the Act. As the President and office bearers of petitioner-Sangha and others tried to illegally interfere with the possession and enjoyment of sites allotted in favour of respondent No. 2 and also tried to dispossess it from peaceful possession and enjoyment of sites granted by 3rd respondent authority, respondent No. 2 filed a suit O.S. No. 414/2012 on the file of the Principal Civil Judge (Jr. Dn.) and JMFC, Chitradurga and an order of ex-parte temporary injunction is granted against the petitioners. Respondent Nos. 1 and 2 have denied all other allegations made by the petitioners in the petition.

5. Respondent No. 3 has filed objection statement contending that in the meeting held on 13.6.2005, the authorities of CUDU passed a resolution vide subject No. 8-1 to dispose of civic amenity sites on lease basis. Pursuant to the said decision, applications were invited giving due publicity in the daily newspapers of the day on 15.7.2005 as per Annexures-"C and "D" to the writ petition. Respondent No. 2 applied for two civic amenity sites within the time specified in the advertisement. Respondent No. 3, vide its resolution dated 4.2.2006 as per Annexure-"F", after going through all the details of the applications i.e., payment of registration fee, initial deposit and other relevant aspects, decided to allot three civic amenity sites as per the Karnataka Urban Development Authorities (Allotment of Civic Amenity Sites) Rules, 1991. Respondent No. 2 had not paid the lease amount till 2009. Respondent No. 3 passed a resolution on 13.7.2009 cancelling the allotment of civic amenity sites of the allottees who had not paid the lease amount and the same was communicated to respondent No. 2 as per notice dated 24.7.2009 as per Annexure-"H" to the writ petition. On receipt of the said notice, respondent No. 2 approached respondent No. 3 and submitted representation, stating that it is economically and socially backward community and it is working very hard to arrange the lease amount. Respondent No. 2 also requested respondent No. 3 not to cancel the allotment and agreed to make arrangement to pay the balance lease amount. The said request was placed before the authority of respondent No. 3. After going through the plea of respondent No. 2, the authority of respondent No. 3 decided to review the previous decision of cancelling the allotment and decided to continue the allotment of civic amenity sites in favour of respondent No. 2. Since respondent No. 3 reviewed its decision, there was no need for calling any fresh applications. After obtaining permission from the Education Department to start the Kannada Medium school, the respondent No. 2 approached respondent No. 3 on 3.5.2011 and on 17.6.2011, paid the lease amount of Rs. 3,41,592/- along with interest

vide office receipt No. 16850. Respondent No. 3, based on the resolution dated 31.7.2009, allotted two civic amenity sites in favour of Respondent No. 2 on lease for a period of thirty years. Respondent No. 2 also applied for permission to construct a building on the civic amenity sites and it is legally entitled to construct the building as per the norms. Hence, commencement certificate was given on 18.5.2007. Respondent No. 3 has denied all other allegations made by the petitioners in the petition.

6. The main contention of the petitioners herein is that respondent No. 3 allotted two civic amenity sites i.e., site Nos. 6 and 7 formed in Sy. No. 76 of Medehally village, Chitradurga, which were reserved exclusively for convention hall and cultural centre, in favour of respondent No. 2. It is also the contention of petitioners that the said allotment is in violation of Section 39 of the Act.

7. We have perused Section 39 of Karnataka Urban Development Authorities Act, which is as under:-

"Prohibition of the use of area reserved for parks, playgrounds and civic amenities for other purposes: The Authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities, for any other purpose and any disposition so made shall be null and void."

8. In the objection statement filed by respondent Nos. 1 and 2, they have stated that in the sites allotted, they are going to construct a school building to impart education to the students of weaker sections of the Society. Respondent Nos. 1 and 2 have further stated that they have paid licence fee and also obtained sanctioned plan for construction of the school building. The material on record goes to show that respondent No. 3 has executed a lease cum sale agreement in favour of respondent No. 2 by collecting Rs. 2,38,540/- and Rs. 1,74,192/- and copies of the said documents are produced at Annexures-"L" and "M" to writ petition. It is also the case of respondent Nos. 1 and 2 that when the petitioner-Sangha and others tried to illegally interfere with the possession and enjoyment of the sites allotted in favour of respondent No. 2 and tried to dispossess respondent No. 2 from the peaceful possession and enjoyment of the sites, respondent No. 2 filed a suit in O.S. No. 414/2012 on the file of the Principal Civil Judge (Jr. Dn.) and JMFC, Chitradurga and the said Court has granted an order of ex-parte temporary injunction against officers of the petitioner-Sangha. Copies of the plaint of the said suit and the interim order granted in favour of respondent No. 2 are produced as per Annexures-"R7" and "R8".

9. Looking to the definition of expression "civic amenity" in Section 2(h) of the Act, it also includes a school within its purview. Therefore, the contention of the petitioners that the allotment of sites in favour of respondent No. 2 is in violation of Section 39 of Act, cannot be accepted at all. Respondents Nos. 1 and 2 have also filed an affidavit verifying contents of the objection statement wherein it is clearly stated that the sites in question will be used for construction of the school building. Even respondent No. 3, in the objection statement, has stated that after

perusing all the materials, it has issued a commencement certificate for construction of the school building in favour of respondent No. 2.

10. Considering these materials on record, we are of the opinion that, there is no merit in the petition. Accordingly, we dismiss the petition with no order as to cost.