

(2005) 11 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 7480 of 2005

B.H. Veerasha

APPELLANT

Vs

Government of Karnataka and Others

RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 91

Citation : (2006) ILR (Kar) 610 : (2006) 1 KarLJ 326 : (2006) 1 KCCR 483

Hon'ble Judges : N.K. Sodhi, C.J;N. Kumar, J

Bench : Division Bench

Advocate : P. Suresh Prabhu, for the Appellant; V.Y. Kumar, Government Advocate for Respondents-1, 2 and 8, Ashok Haranahalli, for Respondents-3 and 5, S. Vijayashankar, for B.L. Srikantaiah, for Respondent-4, K. Krishna, for Respondent-6 and N.K. Gupta, for Respondent-7, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This is the third writ petition filed challenging the construction of a multistoried commercial-cum-parking complex at the junction of KG. Road-B.V.K lyengar Road, Bangalore. This place is situated in the busy majestic area on the K.G. Road at the heart of Bangalore. There is no sufficient place to provide parking space on the road. With the fast growth of Bangalore City in recent years there has been tremendous demand for parking space in the City. In order to provide parking space on the roads the Bangalore Mahanagara Palike (for short, "the Corporation") has taken several projects providing for multistoried car parking facilities. After giving wide publicity in the Global Investors Meet held in 2000 the Corporation issued brochures to the general public and this is one such project offered for investors. The project envisaged construction of basement, ground and three upper floors, for providing parking space for more than 400 cars. Out of the total constituted area the Corporation would get 83% of the super built up area and 17% would belong to the developers. The State Government accorded approval to the project in question. M/s. Maharaja Buildtech the fourth respondent herein was the successful bidder. After obtaining

the change of land use, sanctioned plan and licence, they have put up the multistoried commercial-cum-parking complex. He has delivered 83% of the super built up area to the Corporation and 17% of which is his share he has put up shops.

2. The approval of the Government for this project was challenged in a public interest litigation in W.P. No. 25716 of 2002 which came to be dismissed. It is thereafter, the fourth respondent was granted the contract to put up the constructions by entering into a joint venture agreement dated 6-3-2002. The Government Order and this joint venture agreement was challenged in public interest by filing W.P. No. 34890 of 2001 which also came to be dismissed on 23-1-2002. The present writ petition is filed contending that, before awarding the contract there was no wide publicity. Tenders were not invited in terms of the Karnataka Transparency in Public Procurements Act, 1999. The construction made is contrary to the Karnataka Municipal Corporations Act, 1976 and Karnataka Town and Country Planning Act, 1961. An amount of Rs. 45 lakhs by way of stamp duty has been evaded. It is alleged that during the course of the construction the builder has encroached upon the footpath area, demolished public urinals and has installed transformer on the footpath.

3. The Corporation Commissioner was directed to inspect the site in question and find out whether there is any encroachment on the footpath. He visited the place in the presence of the petitioner and measurements were taken in his presence and he has filed an affidavit along with photographs stating that there is no encroachment of the footpath by the builder.

4. The material on record clearly discloses that one B. Krishna Bhat had filed Writ Petition No. 34890 of 2001 in public interest seeking quashing of the Government Order dated 19-12-2001 where a decision was taken to build a multistoried commercial-cum-parking complex in the place where Lady Wellington TB Centre was situated after demolishing the same. By an order dated 23-1-2002 on merits it came to be dismissed. It is after the said dismissal fourth respondent was given the contract to construct the complex. Again Sri B. Krishna Bhat preferred one more Writ Petition No. 25716 of 2002 in public interest challenging the Government Order and the contract awarded to the fourth respondent. The same also came to be dismissed on merits on 17-7-2003 holding there is no public interest involved. The present challenge is by a different petitioner for the very same reliefs.

5. The Supreme Court dealing with some what identical situation in the case of Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, , has held that, an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The words "public right" have been adduced in Explanation

VI in view of the new Section 91 of the CPC arid to prevent multiplicity of litigation in respect of public right. In view of Explanation VI it cannot be disputed that Section 11 applies to public interest litigation as well but it must be proved that the previous litigation was the public interest litigation, not by way of a private grievance. It has to be a bona fide litigation in respect of a right which is common and is agitated in common with others.

6. Following the aforesaid judgment of the Supreme Court, a Division Bench of this Court in the case of Manipur Vasant Kini Vs. Union of India and Others, , has held that, earlier litigation which had been filed for same relief by public spirited persons has already been concluded against the petitioners. The same would be a binding precedent and operate as resjudicata in subsequent proceedings challenging the same administrative action of the authorities. The arguments of the learned Counsel for the petitioner that certain pleas which have been raised in this petition had not been raised in the earlier writ petition and therefore the petitioner be permitted to challenge the action of the respondent on the new pleas raised cannot be accepted, entertained. The pleas which might and ought to have been raised but not raised would be deemed to have been waived.

7. In view of the aforesaid legal position when a public spirited person has challenged earlier the very same Government Order and the contract awarded to the fourth respondent on almost identical grounds and after contest when this Court dismissed those writ petitions holding that no public interest is involved merely because some of the grounds now urged were not urged earlier would make no difference. Such pleas are barred by the doctrine of constructive resjudicata. It is not the case of the petitioner that the earlier writ petitions were not bona fide litigations initiated by a public spirited person in respect of a right which is common and is agitated in common with others. No such plea is raised. Therefore, the present petition filed for the very same reliefs which were sought in the earlier writ petitions is barred both by the doctrine of resjudicata as well as constructive resjudicata.

8. Even otherwise we do not find any substance in this petition. ATB Hospital was situated in the land in question which is in the heart of city. It is not disputed that it is in the busy Kempegowda Road-BVK Iyengar Road junction which is the busiest road in Bangalore. There is heavy traffic on both these roads. The air is totally polluted and the continuation of a TB Hospital in such a congested place was detrimental to public interest and in particular to the TB patients. Therefore, the shifting of that hospital from that place to a thinly populated residential area was in public interest.

9. Secondly, there is absolutely no parking place in those two roads and by parking cars on the road side there used to be traffic jam. The areas surrounding the said place are totally over-crowded and the entire area has paucity of parking place. It is in that background the Corporation considered construction of a multistoried parking complex and it is in public interest. The grievance is the manner in which the contract was awarded to the fourth respondent. It is true

that the Corporation has not issued notice inviting tender from the public as is the usual practice. However, it cannot be said that the Corporation has handed over a Largesse to the fourth respondent in a clandestine manner. The material on record discloses that in the Global Investors Meet-2000 which was held on 5th and 6th June, 2000 this project was offered to the public inviting offers throughout the world. This event and the offer is widely published as a news item on June 7, 2000 in the Times of India as well as on 3rd July. Attractive brochures were printed and distributed. In pursuance of the said notices they received two tenders and as the fourth respondent's tender was more attractive the same was accepted. After obtaining change of land use, the sanctioned plan and the requisite licence he put up construction thereon. The report submitted by the Commissioner shows the falsity of the petitioner's claim that a portion of the footpath is encroached in constructing the said complex. The Corporation has not spent any money on the construction. After construction 83% of the constructed area of the parking space has been handed over to them within the stipulated time. In consideration of the same under the contract the fourth respondent is entitled to sell his 17% share where he has constructed shops. It is after the completion of the construction the petitioner who claims to be a regular visitor in the Kempegowda Road has preferred this writ petition in public interest.

10. The law on the point is well-settled. Before this Court can exercise its writ jurisdiction in public interest it is to be demonstrated that the impugned action is violative of any of the rights enshrined in Part III of the Constitution and relief is sought for its enforcement. The action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their interest on account of poverty, incapacity or ignorance. It should be for redressal of public injury arising from the breach of public duty or from violation of some provision of the constitutional law. If the act complained is not remedied or prevented it would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country. Every default on the part of the State or Public Authority being not justiciable in public interest litigation and the Court should be satisfied that the person approaching the Court is not a busybody or meddlesome interloper and that he has come with clean hands, clean heart and clean objectives.

11. Viewed from this angle, the aforesaid facts and the material on record, clearly demonstrate that this petition lacks bona fides. The entire project conceived and executed is in public interest. It is sought to be annulled under the garb of public interest. The petitioner is a busybody. The very fact that he has approached the Court after the completion of the project shows he has not come with clean hands, clean heart and clean objectives. Probably it is actuated by a desire to win notoriety or cheap popularity. Therefore, this petition deserves to be thrown out by rejection at the threshold, with exemplary costs to prevent repetition of such mischievous litigation in future. Hence, we pass the following order:-

Writ petition is dismissed with costs which are assessed at Rs. 25,000/-. The petitioner is directed to deposit this amount with the Karnataka Legal Services Authority, Bangalore, within four weeks from the date of receipt of a copy of this order failing which the Member Secretary will enforce this order in accordance with law. A copy of this order be sent to the Member Secretary, Karnataka State Legal Services Authority for necessary action.