

(2015) 06 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 14425 of 2011 (LB-RES) and Writ Petition Nos. 34125 of 2013, 10868 of 2012

Bhagwan Mahaveer Jain Educational Trust (Regd.)

APPELLANT

Vs

Mysore Urban Development Authority and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Urban Development Authorities Act, 1987 — Section 19(8)

Citation : (2015) 06 KAR CK 0009

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : K.A. Ariga, Advocate, for the Appellant; P.S. Manjunath, Advocate, for the Respondent

Judgement

Ashok B. Hinchigeri, J.—W.P. No. 14425/2011 is filed by Sri Bhagwan Mahaveer Jam Educational Trust (hereinafter called "Bhagwan Trust") questioning the order, dated 20.1.2011 at Annexure "A" cancelling the allotment of civic amenity site ("c.a. site" for short) No. 1 made in its favour on 23.3.1998.

2. W.P. No. 34125/2013 is filed by the said party challenging the endorsement, dated 22.6.2013 (Annexure "A") issued by the first respondent to the effect that the petitioner's request for sanctioning the building plan can be considered only after the disposal of W.P. No. 14425/2011 in which the said party has challenged the cancellation of allotment.

3. W.P. No. 10868/2012 is filed by the Vidya Vikas Educational Trust (hereinafter called "Vidya Trust") seeking a writ of mandamus to the Mysore Urban Development Authority ("MUDA" for short) to implement its resolution, dated 6.12.2008 (Annexure "C") in so far as it pertains to the allotment of c.a. site No. 1 in Siddhartha Nagar Layout. To avoid the confusion, the facts are narrated by referring to the names of the parties.

4. Sri K.A. Anga, learned counsel for the Bhagwan Trust submits that the Bhagwan Trust has paid the allotment consideration, taken the possession, got the building plan sanctioned, constructed the school building and has been running the school from First Standard to First P.U.C. He submits that though the resolution cancelling the allotment was passed on 6.12.2008, it had no notice of the passing of such a resolution. Nothing transpired between 2008 and 2011. Suddenly, the Bhagwan Trust received the impugned order on 20.1.2011.

5. Sri Ariga submits that the only reason stated for cancelling the allotment of the site is that Bhagwan Trust is not a registered Trust. He brings to my notice a copy of the Trust Deed, dated 3.10.1994 (Annexure-B in W.P. No. 14425/2011) to show that it is a registered Trust.

6. He read out para 20 of the statement of objections filed on behalf of MUDA wherein the MUDA has stated that Bhagwan Trust is entitled to the allotment of c.a. site No. 1. He submits that the impugned communication is issued in violation of the principles of natural justice. In support of his submissions, he relies on this Court's decision in the case of M/s. Jainaryan Gopikishan Loya Vs. The Karnataka Food and Civil Supply Corporation Ltd., . He has also relied on the Division Bench judgment of this Court in the case of LALBI v. MODINAMMA @ MODINBEE AND OTHERS reported in ILR 2012 KAR 4403 wherein it is held that natural justice is another name for common sense justice. Rules of natural justice are not codified canons. But they are the principles enshrined in the Constitution of India and ingrained into conscience of man.

7. The learned counsel submits that Vidya Trust having agreed to take the alternative c.a. site is estopped from raising the untenable and unreasonable contentions in these proceedings.

8. Sri P.S. Manjunath, learned counsel for the respondent MUDA submits that it had passed the resolution on 20.12.1997 to allot the site in question to Bhagwan Trust. Vidya Trust challenged the said resolution by filing Writ Petition No. 22278/1998, which was disposed of by this Court by order dated 30.8.2002, quashing the allotment of the site in question to Bhagwan Trust. He further submits that by its resolution, dated 24.1.2004, MUDA again allotted the site in question to Bhagwan Trust. He submits that Bhagwan Trust has constructed the school building. He submits that Vidya Trust had the knowledge of the said resolution, as is evident from its letter, dated 3.6.2005 (Annexure R5 in W.P. No. 14425/2011). At the persistent request of Vidya Trust, the allotment made in favour of the Bhagwan Trust was cancelled by MUDA by its resolution, dated 22.11.2008. On being asked as to why the passing of such a resolution was not communicated to Bhagwan Trust, he submits that the files do not disclose any reasons.

9. He submits that as Bhagwan Trust has already put up construction on the site in question, the resolution, dated 22.11.2008 has now become incapable of being implemented.

10. On being asked as to whether Bhagwan Trust has violated any condition of the grant order, he answers in the negative. He submits that MUDA has already allotted 3 c.a. sites to Vidya Trust. He submits that on none of them, the Vidya Trust has put up any construction; the sites are lying vacant. He submits that there are 214 sites available for allotment. If Vidya Trust agrees to take any of them, they would be designated for the educational purpose and be given to Vidya Trust. He submits that c.a. site No. 1 in Vijayanagara is available for allotment, though earlier it was earmarked for the purpose of market, the MUDA has now passed the resolution providing for the change of land use for the educational purpose.

11. Sri B.M. Arun, the learned counsel for Vidya Trust, on being asked as to why there is delay of nearly four years in approaching this Court, submits that Vidya Trust was sending one after the other strong letters demanding the compliance from MUDA with this Court's order, dated 30.8.2002 (Annexure-G in W.P. No. 14425/2011) passed in W.P. No. 22278/1998.

12. Sri Arun submits that out of three sites allotted by MUDA to Vidya Trust, one site is litigation-ridden; residents are objecting to the construction on one site demanding that it be used as a park only. He submits that it has already sought the allotment of alternative sites in lieu of the said two sites. He submits that the third site is allotted to it in 2011 and that it still has time to apply for the sanctioning of the building plans.

13. He submits that under Rule 7(2) of the Karnataka Urban Development Authorities (Allotment of Civic Amenity Sites) Rules, 1991 ("the said Rules" for short), a Committee is already constituted and that the said Committee is directed by this Court, by its order, dated 30.8.2002 passed in W.P. No. 22278/1998 to consider all the applications in respect of c.a. site No. 1.

14. He submits that the application of Bhagwan Trust was incomplete and was not accompanied by the supporting documents. He submits that Bhagwan Trust has not produced any registration certificate at the time of submitting the application for allotment to show that it is an institution as defined by Rule 2(d) of the said Rules. As it did not have the eligibility under Rule 6 of the said Rules, its application ought to have been rejected in limine. He submits that the application of Vidya Trust is earlier in point of time. Therefore, Vidya Trust should have been given preference over the application of Bhagwan Trust. He submits that the perusal of the proceedings held on 6.12.2008 shows that M/s. Bhagwan Trust did not have the eligibility to be allotted with the c.a. site.

15. Sri Arun submits that the steps contemplated in and prescribed by sub-rule 4, 5 and 7 of Rule 10 of the said Rules have not been taken. He submits that no lease agreement whatsoever is executed in favour of Bhagwan Trust after the fresh resolution came to be passed in 2004. He submits that the perusal of the statement of objections filed on behalf of MUDA and its accompanying annexures reveals that MUDA had indeed intimated the Bhagwan Trust of the passing of the

resolution in 2008 cancelling the allotment of the c.a. site No. 1.

16. He submits that Bhagwan Trust has violated the conditions of the allotment letter. He submits that the Bhagwan Trust has stated that the building is put up after getting the plan sanctioned by the Mysore Municipal Corporation. In support of its claim, Bhagwan Trust has also produced the sanction order issued by the said Corporation as Annexure-M. But the very sanctioning of the plans for civil construction by the Corporation is without the authority of law. He submits that the authority to sanction the plans is only MUDA, as the site in question is a c.a. site. He submits that it is not in dispute the Bhagwan Trust has not even made any application to MUDA for approving the building plans.

17. The learned counsel submits that the allotment in favour of Bhagwan Trust is bad, as the same is done without obtaining the approval of the Government. In support of his submissions, he read out the provisions contained in Section 19(8) of the Karnataka Urban Development Authority Act, 1987 which are extracted hereinbelow:

"19. Upon sanction, declaration to be published giving particulars of land to be acquired:.. -.....

(8) The authority shall not allot any land to any individual, organisation or authority the civic amenity area earmarked in the scheme without the orders of the Government."

18. He relies on the Apex Court's judgment in the case of Jalandhar Improvement Trust Vs. Sampuran Singh, wherein it is held that if the allotment of sites were made wrongly in favour of some persons, the same may become liable for cancellation. It is further held that the principle of promissory or equitable estoppel cannot be invoked to protect such illegal allotments.

19. He has also relied on the Apex Court's judgment in the case of Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, , wherein the necessity of fairness and equity in action are emphasized. The allotment of the land by State and its beneficiaries based on political considerations, favouritism and nepotism are held to be illegal. The exercise of discretion, if any, in the matter of allotment of land has to be used in larger public interest for the public good and without any discrimination. Unfettered discretion is totally incompatible with the doctrine of equality and is an antithesis to the concept of the rule of law.

20. Nextly, the learned counsel sought to draw support from the Apex Court's judgment in the case of Saroj Screens Pvt. Ltd. Vs. Ghanshyam and Others, wherein it is held that the transfer of public property is liable to be quashed for the non-compliance with the requirements of public law. In para 32 of the said decision, the Apex Court has this to say:

"32. Though, the exercise of power by the Corporation under the aforesaid section is not hedged with any particular condition except that in a case like the present one, the alienation could not have been made without the previous

sanction of the State Government, but in our constitutional scheme compliance of the doctrine of equality enshrined in Article 14 of the Constitution has to be read as a condition precedent for exercise of power by the State Government and the Corporation, more so, when it relates to alienation of public property or any right or interest therein. In this context, it is necessary to emphasise that the Corporation holds the property as a trustee of the public and any alienation of such property or any right or interest therein otherwise than by way of auction or by inviting bids would amount to breach of that trust."

21. He submits that the decision to alienate the public owned property cannot be taken without following the procedure consistent with the equality clause.

22. He has also relied on the Apex Court's judgment in the case of *Humanity and Another Vs. State of West Bengal and Others*, . Paras 23, 35, 38 and 43, read out by the learned counsel, are extracted hereinbelow:

"23. It has been repeatedly held by this Court that in the matter of granting largesse, the Government has to act fairly and without even any semblance of discrimination. Law on this subject has been very clearly laid down by this Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . A three-Judge Bench in the said decision has recognized that the Government, in a welfare State, is in a position of distributing largesse in a large measure and in doing so the Government cannot act at its pleasure. This Court perusing the new jurisprudential theory of Professor Reich in his article on the "The New Property" (1964) (73 Yale L.J. 733) accepted the following dictum contained therein:

"11.....The government action be based on standards that are not arbitrary and unauthorised."

.....

35. On the third ground of challenge about compliance with ICSE norms, we find that the ICSE norms were in place as early as 28.4.2006 and those norms have been disclosed by the counter-affidavit filed by the allottee before this Court in the SLP filed by C.A. Block Citizens' Association. Therefore, much before the application was made by the allottee on 17.11.2006, those norms were available on record. Even then he applied for a plot of 50 kathas of land in terms of the advertisement dated 5.11.2006 issued by the State Government.

.....

38. It is thus clear that the allottee is selectively seeking compliance of the ICSE norms only in asking for a bigger plot. In so far as other norms are concerned, they are clearly flouted as seen in the constitution of the Trust set up to run the school. Hence, the argument on behalf of the appellant that the plea of the allottee to ask for a bigger plot in the name of complying with the ICSE norms is not a bona fide plea is of some substance.

.....

43. This court is unable to accept the aforesaid contention. It is axiomatic that in order to achieve a bona fide end, the means must also justify the end. This Court is of the opinion that bona fide ends cannot be achieved by questionable means, specially when the State is involved. This Court has not been able to get any answer from the State why on a request by the allottee to the Hon"ble Minister for Urban Development, the Government granted the allotment with remarkable speed and without considering all aspects of the matter. This Court does not find any legitimacy in the action of the Government, which has to act within the discipline of the constitutional law, explained by this Court in a catena of cases. We are sorry to hold that in making the impugned allotment in favour of the allottee, in the facts and circumstances of the case, the State has failed to discharge its constitutional role."

23. Relying on the Apex Court's judgment in the case of Purushotham Vs. State of Karnataka and Others, he submits that no change of land-use can be granted by the MUDA without taking the approval of the Government. He also relies on the Apex Court's judgment in the case of M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, to advance the submission that the illegal allotments cannot be sustained showing misplaced sympathy. He brings to my notice this Court's order, dated 08.12.2009 passed in W.P. No. 3118/2003 to show that the similar allotment made in favour of one Sandesh Family Charitable Trust was held to be unsustainable and quashed.

24. The submissions of the learned counsel have received my thoughtful consideration.

25. The impugned order, dated 20.01.2011 (Annexure-A in W.P. No. 14425/2011) passed by the MUDA cancelling the allotment of c.a. site No. 1 is liable to be quashed on the short ground of the violation of the principles of natural justice. Admittedly, the said site was allotted to Bhagwan Trust in 2004. Bhagwan Trust has paid the allotment consideration, taken the possession of the site, got the building plan sanctioned by Mysore City Corporation, constructed the school building and has been running the school. The photographs of the school buildings housing the class rooms, where the children are receiving the instructions, are at Annexures N1 and N3.

26. What is involved is a party's precious right in the immovable property. It cannot be taken away unless the right reasons exists for the same, after affording the opportunity of hearing to the Bhagwan Trust. The cancellation of allotment is marked by unilateralism. Bhagwan Trust is not even put on notice before passing the impugned order.

27. Without expressing any opinion on the merits of the rival contentions of the parties, I quash the said order. However, the quashing of the impugned order does not mean the crystallization of rights in respect of the property in question in favour of the Bhagwan Trust. It is for the MUDA to afford an opportunity of

hearing to the petitioner and all other concerned parties and take fresh decision in the matter.

28. It is also relevant to notice that this Court by its order, dated 30.08.2002 (Annexure-G in W.P. No. 14425/2011) passed in W.P. No. 22278/1998 quashed the allotment of c.a. sites in favour of Sri Kagmele Maha Samsthana Kanaka Gurupeeta, Bhanavi Charitable Trust and Bhagwan Trust; it includes the site in question. This Court directed the MUDA to reconsider the applications filed in response to the notification, dated 07.09.1994 in accordance with law. In paras 5 and 6 of the said order a direction is given to the Sub-committee for allotment of c.a. sites to consider the said applications. This Court also directed the parties to file the additional the statements of objections and additional documents before the said Sub-committee. On being asked, the learned advocates appearing for the parties submit that the said order has attained the finality. If that be so, it is not known why the reconsideration exercise is not done by MUDA for the last 13 years.

29. The ends of justice would be met by my re-iterating the directions issued in W.P. No. 22278/1998. The MUDA is directed to redo the exercise of considering all the applications received in response to the notification, dated 07.09.1994 for the allotment of c.a. site No. 1 in Siddhartha Layout in the letter and spirit of this Court's order, dated 30.08.2012.

30. At this juncture, Sri P.S. Manjunath submits that many parties have withdrawn their applications. If that be so, the applications of all the parties, who have not withdrawn their applications, are to be considered.

31. Needless to observe that the Bhagwan Trust and Vidya Trust are at liberty to produce additional documents in support of their claims and urge all the tenable contentions. MUDA is directed to complete the exercise directed hereinabove in accordance with law and as expeditiously as possible and in any case within an outer limit of two months from the date of the issuance of the certified copy of today's order.

32. W.P. No. 14425/2011 is allowed but to the extent indicated hereinabove.

33. W.P. No. 34125/2013 is filed by the Bhagwan Trust challenging the endorsement, dated 22.6.2013 issued by the Mysore City Corporation deferring the consideration of the petitioner's request for sanctioning the building plans till the disposal of W.P. No. 14425/2011. The Mysore City Corporation cannot be held to be at fault for issuing the impugned endorsement. Unless the applicant for the approval of building plans produces the documents in support of his owning or being in lawful possession, the Mysore City Corporation cannot be directed to issue the approval for the building plans. In a case of this nature, the lawful possession invariably means non-litigious possession. Liberty is reserved to the Bhagwan Trust to approach the appropriate authority for getting the building plans sanctioned at appropriate time and depending upon the outcome of the reconsideration exercise by the MUDA. W.P. No. 34125/2013 is accordingly

disposed of.

34. It is not in dispute that the Bhagwan Trust has been in possession of the site in question for the last 11 years. I therefore deem it necessary to direct the MUDA not to disturb M/s. Bhagwan Trust's possession of c.a. site No. 1 until such time that it disposes of the remanded matter. Everything would hinge on the outcome of the remanded proceedings.

35. In view of the allowing of W.P. No. 14425/2011 remanding the matter to MUDA in the letter and spirit of this Court's order, dated 30.08.2002 passed in W.P. No. 22278/1998, nothing survives for the consideration of Vidya Trust's grievance in W.P. No. 10868/2012, where direction is sought to implement the resolution, dated 06.12.2008. W.P. No. 10868/2012 is therefore disposed of as having become unnecessary.

36. All the contentions are left open to the raised by the parties before the MUDA.

37. No order as to costs.