

(1994) 08 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 3945 of 1994

Jayanagar 4th T Block Residents Association

APPELLANT

Vs

Gnyana Mandir Trust

RESPONDENT

Date of Decision : 31-08-1994

Acts Referred:

Karnataka Town and Country Planning Act, 1961 — Section 12, 15, 15 (1)

Citation : (1995) ILR (Kar) 461

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : C. Lakshminarayana Rao, for the Appellant; K.S. Desai, for R1 and R2, H.J. Sunder Kumar, for R3 and R4 and Shobha Patil, for R5, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—On 31.8.1994, I have heard the learned Counsel for the parties i.e., Sri C. Lakshminarayana Rao for the petitioner as well as Sri K.S. Desai, Sri H.J. Sunder Kumar and Smt Shobha Patil, Counsel for respondents and thereafter passed the order that:

"Having heard the learned Counsel for the petitioner as well as for the opposite parties, I intend to dismiss the Writ Petition for the detailed reasons to be given later on. Therefore, Writ Petition is hereby dismissed for reasons to be given later on."

2. I proceed to give my reasons along with the facts of the case.

3. By this Petition, the petitioner has sought the relief of issuance of appropriate Writ or order or direction declaring the sanctioned plan as per orders of the third respondent dated 21.10.1993 and issued by the 4th respondent under L.P.No. 322/92-93, dated 27.10.1993 valid up to 26.10.1993, as per Annexure-C to the Writ Petition to be illegal and inoperative and contrary to law, as well as prayed for quashing of the same. The petitioner has further prayed for issuance of

orders or directions, directing respondents 3 to 5 to take action to demolish the building standing on B.D.A. Site Nos. 1163 to 1166, 26th "A" Cross, 4th "T" Block, Jayanagar, Bangalore, which has been stated to be in possession and enjoyment of respondents 1 and 2.

4. The facts of the case as per allegations in the Writ Petition are to the effect that the petitioner claims itself to be a registered Association of the people of the area. According to the petitioner, 2nd respondent is running the School - from Nursery to High School in the building constructed on B.D.A., allotted house sites bearing Nos. 1163, 1164, 1165 and 1166. The petitioner's case is that the first respondent Trust had purchased these sites with building thereon in the name of individual Trustees and to their individual names. These were meant for being put to residential use as residential building, subject to the conditions imposed on original Trustees by 5th respondent i.e., B.D.A. Petitioner's claim is that second respondent is running the School in which more than 5,000 students study and there is no adequate place to accommodate the students population and on account of insufficient accommodation with no proper hygienic conditions. There is a nuisance being caused by the children studying in School to the immediate neighbours and residents of the locality and the acts and actions the students and children are rendering, entire area surrounded by this Institution polluted and unhygienic. Petitioner's case is that the Secretary of the petitioner's Association had purchased B.D.A., site by allotment and has built up residential unit on the said site. Likewise other respondents of the locality who are members of the petitioner's Association have also got dwelling sites allotted by the B.D.A., and have constructed their houses and they are living therein and they are also subjected to the same nuisance by the students of the School on account of the running of the School by the respondents. The petitioner has further taken the plea that according to him respondents have violated the conditions imposed on original allottees of plots or sites bearing Nos. 1163 to 1166, by putting up apartments and using it for purpose other than that of human habitation. He has further asserted that apart from Nursery School, the Trust is planning to construct a school building on site No. 1163, 26th A Main, 4th T Block, Jayanagar, at the cost of Rs. 25 lakhs. According to the petitioner respondents 1 and 2 have also obtained the sanctioned plan for putting up construction of flats on the said four sites under the orders of respondent No. 3." Petitioner's case is that the petitioner and people of locality have complained to the Commissioner of Police, about the disturbance of peace and creation of nuisance on 18.6.1984. A representation, according to the petitioner has also been made on 13.2.1992 to the Minister for Education. The petitioner has asserted that the sanctioned plan for putting up of multistoreyed flats etc., granted by respondents 3 and 4 is illegal and bad. The main thrust of the Petition is that the lay-out formed in 4th T Block, Jayanagar by the 5th respondent- B.D.A., is essentially and wholly a residential area and it is not permissible to put multistoreyed constructions on B.D.A. sites nor the respondents are entitled to run the educational institution, as the same has got tendency of defeating the very object and purpose of forming

the lay-outs by the B.D.A., and running of such institutions only leads to perpetual nuisance posing problem of maintenance of traffic and the likewise. As per petitioner's case, in the Writ Petition, the grant of sanctioned plan or licence as per Annexure-C, as such is in violation of the provisions of law.

5. Counter affidavit has been filed on behalf of respondents 1 and 2. According to respondents 1 and 2, the respondent No. 1 is registered Society, dedicated to social welfare, cultural, literary, education and sports activities and that Sudarshan Vidhya Mandir, i.e., respondent No. 2 is an educational wing of the Trust. This Sudarshan Vidhya Mandir came into being on July 15, 1967 and has co-education and is permanently recognised by Government of Karnataka and receiving aid from the Government. This Sudarshana Vidhya Mandir consist of Nursery, Primary and High School classes. It is situate on Plot Nos. 1163, 1164, 1165 and 1166 on 26th A Main Road, 4th T Block, Jayanagar, Bangalore and construction of the school building on the above sites has been done in 1986-87 as per sanctioned plan. It is the further case of the opposite parties that there was no objection from any quarter and that due to paucity of accommodation he is intending to dismantle the existing building on site No. 1163 and to construct a new building making use of the place in front, in order to provide required accommodation for educational activities of Sudarshan Vidhya Mandir, The case of respondents is that respondents 1 and 2 made request for the change of land use and development in respect of site No. 1163 and to construct a new building, making use of the place in front, in order to provide required accommodation for educational activities of Sudarshan Vidhya Mandir. The case of the respondents is that respondents 1 and 2 made request for change of land use and development in respect of site No. 1163 in terms of Town and Country Planning Act after having obtained Commencement Certificate dated 13.4.93 as required u/s 15 of the Act read with Rule 35 of the Karnataka Planning Authority Rules, 1965, and the same has been issued in the name of Smt. Hema Narayana, Managing Trustee and Principal, Gnyana Mandira Trust. The respondents have deposited the betterment fee etc., to the tune of Rs. 33,750/- as well as ground rent amounting to Rs. 4,062/- and development charges to the tune of Rs. 7,546/-.According to respondents the Deputy Director, Town Planning, Corporation of the City of Bangalore, granted sanction to the plan etc., as per Commissioner's order dated 21.10.1993. The plan has been annexed as R-2 to the Writ Petition. The Commencement Certificate has been annexed as R-3 to the Writ Petition. According to the case of respondents the constructions have been made for the purpose of the School and the change of land use has also been obtained and its Commencement Certificate has been received.

6. I have heard the petitioner's Counsel Shri Lakshminarayana Rao as well as Sri K.S. Desai, Senior Advocate for respondents 1 and 2 and Sri H.J. Sunder Kumar and Smt Shobha Patil for respondents 3 to 5.

7. Shri Lakshminarayana Rao, Counsel for the petitioner has contended before me that the site in question has been reserved for residential area and therefore,

as per terms of the deed, the building constructed had to be used solely and wholly as a dwelling unit or as a unit for human habitation and it cannot include nor can it consist of any shop or school or educational institution. He submitted that the site which has been purchased by the respondents from its previous allottees, the respondents cannot get nor can it claim better rights than that of their predecessors-in-interest. He submitted that the area is essentially and wholly residential area and the intention of the respondents is to run the School. Permitting the running of the School by the respondents 1 and 2 or educational institution on the property in dispute in the nature of things tantamounts to change of user from residential user to educational institution or commercial user and this cannot be done ordinarily. He made reference to the provisions of Section 14 of the Act. In this connection he made reference to the Single Judge Decision of this Court in the case of K. Chandrashekar Hegde Vs. Bangalore City Corporation,

8. The learned Counsel for the petitioner invited my attention to provisions of Section 12 of the Karnataka Town and Country Planning Act, 1961 and submitted that there is classification and categorisation of use of land and assigning of the land for the purposes mentioned therein, namely for the land to be used for residential purpose, land to be used for commercial purpose, industrial purpose, agricultural purpose, educational purpose and the like and so he submitted that educational institutions cannot be put and cannot be allowed to run in the residential area where people do reside and had dwelling houses.

9. The contention of the petitioner was refuted by the Counsel for the respondents. Learned Counsel for the respondents submitted that education is part of life. Living does not mean bare animal life, but it includes life with dignity, knowledge, learning and honour. Education is always eye opener and it brings new ideas and fresh thoughts and it cultivates the better understanding and like. Learned Counsel for the respondents further submitted that in the residential area an educational institution can be provided and particularly the educational institutions relating to general education. He invited my attention to Section 14(2) of the Karnataka Town and Country Planning Act and submitted that when the permission has been granted under Sub-section (2) of Section 14 of the Act, by the Planning Authority namely, by the Bangalore Development Authority, in the present case, petitioner no doubt could run the school i.e., Nursery, Primary or High School. Learned Counsel for the petitioner submitted that once the permission is granted, the rigour of the bar if any created by the Clause (1) is removed. He invited my attention to Annexure-R-3 i.e., Commencement Certificate dated 13th April, 1993 and he submitted that under this Certificate the respondents have been permitted to construct the school building on premises No. 1163, 26th A Main, 4th T Block, Jayanagar, Bangalore, subject to the conditions mentioned therein. He further submitted that Mahanagar Palika has sanctioned the Development Plan vide, Annexure R-7 and once the permission for change of user has been granted as well as permission to construct the school building has been granted the petitioner is not entitled to

any relief as the constructions are being made in consonance with the Municipal Laws and Byelaws. The learned Counsel also invited my attention to certain Regulations known as B.D.A., Zonal Regulations and contended that residential zones can be permitted to be used as Dwellings, Hostels of working men or women, Dharmashala, Schools offering general education, Libraries and the like including Doctors' consultation rooms, Offices of Advocate and other professions. On the basis of Regulation 1.2.1, it is permissible to make educational institutions in residential area and particularly as in the present case map has been sanctioned, permission has also been granted for change of user or user of the property as educational institutions.

10. The learned Counsel for the respondent further submitted that the building has been constructed as well as is being constructed in accordance with the permissions and sanctions granted vide, Annexures - R-3 and R-7 and it is not in breach of any provision of law. So the petitioner is not entitled to the reliefs claimed. If the petitioner has got any personal grievance or special injury at all, then the proper remedy is not the Writ Petition but a regular Civil Suit. On this basis, learned Counsel for the respondents submitted that Writ Petition is liable to be dismissed.

I have applied my mind to the contentions of the learned Counsel for the parties. Education is a very important element and aspect of life, as fresh air, fresh water and food is necessary for existence or for maintenance of life. Education is an important and essential element for the betterment of life, particularly for the improvement or development of mental capacity and to make human life living with contents of humanity. There is a Sanskrit proverb which reads as under :-

"Sahithya Sangeetha Kala viheena Sakshath pashu puchhavishana Heenaha; Thrunanna khadannapi jeevamanam; Tadbhagadheyam paramam pashunam."

It means, a man who is devoid of knowledge of literature, music and art is just like a cattle or an animal, which has got no horns, no tail and which does not take grass and even though is really a cattle, but by the grace of God he is in the form of a man. This is the importance of education i.e., one who suffers from want of education is just like a creature other than the human beings.

There is another Sanskrit Shloka from Uttar Geetha and Lord Krishna says;-

Aahar Nidra Bhaya Maithhunancha Samaanmethat Pashubhinaraanamm Gyaanam Naraanamadhike Visheshh Gyanainheenha Pashubhissamaanaha;

Means - food, sleep, fear and sex are common to animals, birds and to man. There is no difference in the enjoyment of pleasures. What is special to man is Gyaan i.e., learning and knowledge that directed towards attaining the supreme being. One who is devoid of learning and knowledge (Gyaan) is at par or is equivalent to an animal.

12. Such is the role of education in the building and dignity of human character. Therefore the need of the time is no doubt to expand the sphere of education

and learning in the proper sense, which may inculcate in one the traits of humanity, the character and a sense of honour, apart from training the one for worldly life. It has the great effect in the building up of the character. So it is beyond doubt the need of educational institutions and establishments thereof in the areas which are inhabited by human beings or near the areas of human habitation where children, including those belonging to the down trodden classes or the poor men also may be able to attend schooling.

13. Thus considering this aspect of the matter, in my opinion, ordinarily at least educational institutions imparting general education cannot be required to be established at places far off distances and beyond the place of human habitation. A look to the provisions of Section 12 of the Karnataka Town and Country Planning Act, indicates the manner in which the development and improvement work of entire Planning Area is to be carried out and regulated, is to be indicated by the Outline Development Plan and that the illustrations are given. Clause (a) provides for a general land-use plan and zoning of the land-use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes. It further provides that along with the Outline Development Plan, certain other particulars have also got to be published and Clause (iii) of Section 12(2) provides that Regulations in respect of each land use zone to enforce the provisions of such Plan and explains the manner in which necessary permission for developing any land can be obtained from the Planning Authority. Appendix-1 to B.D.A. Zonal Regulations and in particular Annexure-1 to Regulations dealing with zonal boundaries provides under head "Residential Zones", under Head -1.2.1,- which reads as under-

"1.2.1.- Residential Zones.- Uses that may be permitted:-Dwellings, hostels including working women and gents hostels, dharmashala, places of public worship, schools offering general educational courses, Libraries, post and telegraph offices, KEB counters, BWSSB counters, non-profit clubs and semi-public recreational uses, milk booth and doctors consulting rooms, offices of advocate and other professions."

14. A reading of this Regulation per se shows that in the Residential Zone user can be permitted for the purpose of establishing places of public worship or schools, of general education. A reading of this Regulation per se shows that as regard the schools or running of the schools, where general education is imparted can be established. It means schools running educational classes commencing from Nursery to High School classes may be permissible in every case. In the present case the Institution that is being run consist of a School with Nursery, Primary and thereafter up to High School are being run. In this case I also find that the requisite permission of the Planning Authority u/s 14(2) read with Section 15 of the Karnataka Town and Country Planning Act, has also been granted. Annexure-R-3 dated April 13, 1993 is a photostat copy of that Commencement Certificate, which says permission is hereby granted under Sub-section (1) of Section 15 of the Karnataka Town & Country Planning Act, 1961

read with Rule 35 of the Karnataka Planning Authority Rules, 1965 to Smt. Hema Narayan, Managing Trustee and Principal, Gnyana Mandir Trust (Regd)., No. 163/D, 6th Main Road, 2nd Cross, J.P. Nagar III Phase, Bangalore-78, for construction of school building at premises No. 1163, 26th A Main, 4th T Block, Jayanagar, Bangalore measuring 4050 Sq.ft., subject to the conditions mentioned in the Annexure. That being the position, the user of the building or the land for the purpose of running the school by the respondents cannot be said to be a change in user, under the provisions of law. Instead, it stands in conformity with the provisions of law, when such changes have been made after obtaining the permission of the concerned authority.

15. When I so hold, I find support for my above view from the Decision of this Court in the case of S. VIJAYA SHANKAR v. THE CORPORATION OF THE CITY OF BANGALORE, W.P. No. 12285 of 1985 DD 7.8.1986. Learned Single Judge, after having quoted Section 14(2) of the Act, has been pleased to observe as under :-

"From the very expression used and the reference made to subsection (1) of Section 14 of the Act, the meaning of Sub-section (2) of Section 14 of the Act becomes clear. The Planning Authority may permit change in land use or development provided such permission is in writing and in a Commencement Certificate that shall be in the prescribed form, the prescription necessarily being by the Rules framed under the Act."

After making reference to Sub-section (1) of Section 15 of the Act, His Lordship further observed as under :-

"Strangely enough, Sub-section (2) of Section 15 of the Act, which has been extracted above, is in conformity with the normal practice of the draftsman that if such permission prayed for in an application is not granted nor refused within three months from the date of such application, it shall be deemed to have been granted. That itself points to the extent of relaxation that is possible in the scheme of the Act to reduce the rigour of the prohibition imposed under Sub-section (1) of Section 14 of the Act."

16. Thus, once the permission has been granted, the rigour of the bar to Section 14(1) has been reduced and as such it can be said that allottee or transferee from him i.e., the present respondents when they did construct the School or when they are constructing the School building, by the act of constructing the building for running the School to impart general education, they have not committed any illegality or breach of Municipal Law and as such the present Petition, the reliefs claimed therein cannot be granted nor can respondents 3 to 5 be directed to demolish the building standing on B.D.A., sites 1163 to 1166, 26th A Main, 4th T Block, Jayanagar, Bangalore which is in possession and enjoyment of respondents 1 and 2. Children are the future of the Nation. None should have any grudge with the education and with educational institutions establishments, which really impart education to them to make them perfect citizens, full of character and knowledge. If the petitioners have any other grievance of the

personal nature, it is open to them to have recourse to the remedies in the Civil Court, for suitable directions to minimise rigour of their trouble or of interference if any, with their peaceful living form of some injunction order.

17. With there observations and findings, I do hereby dismiss the Writ Petitions as without substance.