

(2014) 09 KAR CK 0167

In the Karnataka High Court

Case No : Writ Petition No. 25053 of 2012 (LB-BMP-PIL)

J.P. Nagar Fourth Phase, Dollars Layout, Residents Welfare
Association (R)

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 288(1)(c)

Citation : (2014) 6 KarLJ 481

Hon'ble Judges : D.H. Waghela, C.J.; Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : Manmohan P.N, Advocate for the Appellant; Sriyuths R. Devdas, Principal Government Advocate, S.S. Naganand, Senior Advocate, K.N. Puttegowda, K. Suman, M. Karunakaran and S. Sriranga, Advocates for Just Law, Advocate for the Respondent

Judgement

D.H. Waghela, C.J.—The petition is filed by a Residents' Welfare Association who is stated to be represented by its Secretary and it is filed as public interest litigation. The prayers made in the petition read as under:

"(i) Issue a writ of certiorari and quash the sanctioned plan dated 25-11-2011 bearing No. BBMP/Addl.d.r/JD(S)/106/2010-11 issued by the 2nd respondent in favour of the 3rd respondent insofar as allowing the 3rd respondent to construct on the Raja Kaluve situated in J.P. Nagar 4th Phase, Bangalore (produced as Annexure-H); and

(ii) Issue a writ of mandamus directing the respondents 2 and 4 to ensure that the sewage, garbage, industrial water effluents, carcass of dead animals, etc. are not allowed into the storm water drain which runs through J.P. Nagar towards B.T.M. Layout; and

(iii) Issue a writ of mandamus directing the 2nd respondent to take steps to prevent construction over storm water drains situated in J.P. Nagar 4th Phase, Bangalore; and

(iv) Issue a writ of certiorari and quash the order dated 25-1-2012 bearing No. MU.A.Bru.Ni.Ga/PR/225/11-12 issued by the 5th respondent (produced as Annexure-G); and

(v) Pass such order and further orders as deemed fit in the facts and circumstances of the case in the interest of justice and equity".

2. Upon grant of an interim injunction and issuance of notice to the respondents, they have appeared and filed their respective statements of objections, in which most of the material averments about the facts are denied. Learned Counsel for the petitioner contended that the alleged issue of sanctions and permissions by respondents 2, 5, and 4 and resultant encroachment upon a Raja Kaluve in J.P. Nagar 4th Phase has caused clogging of the storm water drain resulting in flooding of roads and low lying areas and blockage of waste inter alia due to garbage dumping, animal carcass, etc. thereby causing inconvenience to the residents.

3. Main allegations of the petitioner are two fold. Firstly, as regards land bearing Sy. No. 179/180 in erstwhile Bilekahalli Village, now known as J.P. Nagar, petitioner alleged that a major Raja Kaluve cuts through this land upon which respondent 3 intends to construct a high rise building and has obtained from the Bruhat Bengaluru Mahanagara Palike (BBMP), respondents 2 and 5 herein, an illegal sanction for that purpose. Petitioner has further alleged that respondent 3 has closed the Raja Kaluve and diverted the same to suit its convenience. Per contra, in their statements of objections, BBMP, Bangalore Water Supply and Sewerage Board (BWSSB) respondent 4 herein, as well as respondent 3 have categorically denied these allegations, as the existing storm water drain in Sy. No. 179/180 is, according to them, left untouched by any construction or proposed construction. In fact, it was pointed out for respondent 4 that it has issued N.O.C. to respondent 3 only after imposing several conditions which include maintaining a buffer distance of 15 meters between the storm water drain and the proposed construction.

It is explained in the statement of objections filed by respondents 2 and 5 that respondent 3 is not entitled to put up construction attached to the drain because it has to leave sufficient set back as per the building bye-laws and zoning regulations, adherence to which has been confirmed by respondent 3 stating that a buffer area of at least 15 meters has been left between the storm water drain and the proposed construction in land bearing Sy. No. 179/180, in accordance with the consent issued by the Karnataka State Pollution Control Board. It is stated by respondent 3 in its additional statement of objections that the petitioner has, subsequent to filing the present PIL, made a complaint with identical grievances, to the Bangalore Metropolitan Task Force (BMTF) which conducted an enquiry, surveyed the lands and has issued an endorsement dated 12-6-2013 stating that respondent 3 has left a distance of 18 meters to the north and 13.85 meters to the south of the Kaluve/storm water drain, and no deviation was noticed at that stage.

4. The second allegation of the petitioner is in respect of land bearing Sy. Nos. 166/18 and 166/2 of the same area, where respondent 5-Commissioner of BBMP has granted illegal permission to respondent 6 for construction of a road on the Raja Kaluve, which allegation is also denied by respondents 2, 5 and 6. Petitioner's allegations of covering the storm water drain with concrete slabs has been met by stating that the only possible access to the property of respondent 6 from the road has been created by putting up a construction using 12 feet RCC slab over the said drain, albeit with requisite permission from respondent 2 under Section 288(1)(c) of the Karnataka Municipal Corporations Act, 1976, and under strict supervision and guidance of the authorities. It is stated that there has been no encroachment whatsoever and that creation of such an access was necessary and permissible within the law in order for respondent 6 to gain access to its property.

Respondents 2 and 5 have also affirmed that respondent 6 had no access to its property because of existence of private layouts on all three sides and due permission to cover a portion of the storm water drain was granted after inspection and verification of records and the same does not amount to encroachment, and rest of the drain was not covered.

5. Copies of the layout sketch and survey map showing the existing road and storm water drain are produced along with the permissions given to respondent 3 to put up construction and to respondent 6 to cover a portion of the storm water drain. The respondents have also questioned the locus standi of the petitioner insofar as no documentary evidence regarding intention and authority of the petitioner, is placed on record.

6. In the above facts and circumstances, learned Counsel Mr. P.N. Manmohan appearing for the petitioner submitted that the petitioner having been mainly concerned with flooding of the surrounding areas, because of blockages in passing of the storm water, they would make an appropriate application/representation or complaint in that regard, regardless of legality or otherwise of the constructions which are coming up in the aforesaid area. He further conceded that if any approval of plans for licence to build is suspected to be illegal, the petitioner or any other interested person will have to move separate proceeding in appropriate forum, and such enquiry into legality of approval of any plan for issue of licence could not be gone into in the present PIL.

7. Having heard learned Counsel appearing on both sides, it was seen that the construction in question is in any case allowed with a margin of at least 18 and 13 meters to the north and south, between the proposed construction and the Raja Kaluve, and therefore, such proposed construction was not required to be called into question in the present proceeding styled as public interest litigation. Learned Counsel Mr. K.N. Puttegowda appearing for Bruhat Bangalore Mahanagara Palike (BBMP), respondents 2 and 5, fairly submitted that in case the residents of the area are really facing any problem of flooding during the rainy season or due to any blockage in the storm water drain or Raja Kaluve, the

BBMP would take appropriate steps if an application/representation with necessary details is submitted to the department concerned of the BBMP. Accordingly, and learned Counsel for the respondents having no objection, the petition is disposed as not pressed for the aforesaid reliefs at this stage, with liberty to the petitioner to take up the issues, if any, in respect of the construction in question or the bridge in question, in the appropriate forum. The petition stands disposed accordingly with no order as to cost.

The interim relief granted herein stands vacated and the I.As. do not survive for consideration in view of final disposal of the petition.