

(2009) 03 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 11783 of 2007

K. Satish and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 176

Citation : (2010) ILR (Kar) 1237 : (2009) 5 KarLJ 296 : (2009) 3 KCCR 1613

Hon'ble Judges : P.D. Dinakaran, C.J.;A.S. Bopanna, J

Bench : Division Bench

Advocate : Anant Mandgi, for the Appellant; S.K.V. Chalapathy and S.V. Srinivas, for R5 and K. Vishwanath, for Vishwanath Associates for R2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bopanna, J.—The petitioners claiming to be residents of Malleshwaram, Ward No. 5. Bangalore city contend that they have formed an association in the name "Malleshwaram Nagarika Hitarakshana Vedike." The grievance in the present petition is with regard to the order dated 22.6.2007 whereunder the property bearing No. 48, Imain Rand, Malleshwaran measuring 150ft X 60ft is leased in favour of the 5th respondent for conducting its for 30 years. The petitioners contend that the property in question was earlier leased in favour of a trust named "Lahitha Kala Shala", which is a local organisation involved in the activities of teaching the local children in various arts like drawing, painting, dancing etc. The said trust is not carrying on any activity and as such the second respondent-Bruhat Bangalore Mahanagara Palike ("BBMP" for short) has taken possession of the said property. The property in question is said to be a large extent with a small dilapidated structure and is the only open space available to the residents of the locality. There is no other playground or park available to the residents for recreational activities and as such the said area is needed by residents and children as a playground for sports activities and also for walk, exercise etc.

In that circumstance, it is contended that if the said property is based to the 5th respondent and the construction is put up, it would prejudice the petitioners as well as the other residents of the area, as they would be deprived of the open space.

2. The respondents have filed separate objection statements justifying their stand. The common stand of the respondents is that the property was never reserved as a playground or as an open space. The very fact that the property was earlier leased in favour of "Lalitha Kala Shala" would indicate that the property in question was available to be leased. Accordingly, the property had been leased in favour of the Lalitha Kala Shala under an agreement dated 6.12.1949. Since the Trust had not carried on any activity, action was initiated for violation of terms and the competent Officer by order dated 3.2.2006 directed the Trust to vacate the premises. Thereafter proceedings had been initiated in accordance with the provisions of Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974 and possession has been taken in accordance with law. Subsequently respondent No. 2 has placed the matter for permission in accordance with the procedure and a resolution dated 3.5.2007 was passed approving the proposal to lease the same in favour of respondent No. 5. The State Government has also accorded sanction by Government Order dated 22.6.2007 and the modified order dated 11.7.2007 with regard to the matter of payment, of annual rent. The lease deed dated 20.7.2007 is also executed in favour of the 5th respondent. A document dated 15.9.2004 is also relied on to indicate that other major political party has been allotted land in a similar fashion. The manner of fixation of the lease rental is also stated. The contention of the petitioners that the same was being used as a playground is denied and it is contended that a playground belonging to RBMP is available within a distance of about 100 meters from the property in question. For the said reasons, the dismissal of the petition is sought.

3. Insofar as the fifth respondent, apart from denying the case of the petitioners and justifying the action of the respondents in allotting the land to the 5th respondent, they have also stated with regard to the nature of the activity and also the manner in which the land in question would be put to use. The said respondent has also explained with regard to the allegation that they possess other premises and has pointed out that the same belongs to another Trust and was being used by the 5th respondent and that the said premises is insufficient for their activities and hence the present premises is very much necessary.

4. The petitioners have filed their rejoinder as well as amended the petition to contend with regard to the manner in which the lease rental has been scaled down to a meager sum of Rs. 12,000/- per annum as against the sum which was proposed by the BBMP and this has been attributed to the influence of the 5th respondent which was one among the ruling party at that point.

5. Heard Sri Arant Mandgi, learned Counsel for the petitioners, Sri Udayn Holla, learned Advocate General for the first respondent, Sri Vishwanath, learned

Counsel for respondents 2 to 4 and Sri S.K.V. Chalapathy, learned senior Counsel for respondent No. 5 and perused the writ papers.

6. In the backdrop of the contentions urged, what is to be noticed at the outset is that the petitioners have contended that the property in question is an open space and is the only lung space available to the residents of the area for their sports and other recreational activities. Except contending that the said area is an open space, there is nothing to indicate that the property in question has been reserved either as an open space, park or playground. Even though the photographs, which are at Annexure-A series is pointed out, the same indicate that, there is an existing structure at one end of the property which is in a dilapidated condition and open area around it. That alone does not lead to the conclusion that the same was reserved as an open area and even assuming for a moment that some of the residents had used it for games etc, the same would not automatically designate the said area as an open space or playground as being reserved for that purpose. In fact, the photographs would indicate that, the property in question is also one of the sites in the area, since all around it, there are constructions and the property in question was earlier leased in favour of Lahitha Kala Shala and it is only after resuming the said land from them, the same has been allotted to the 5th respondent.

7. The decision relied on by the learned Counsel for the petitioner in the case of Masay and Others Vs. The Bangalore City Corporation and Others, to contend that an area which is used as a playground and retained as an open space would have to be continued to be retained so, would not be of assistance in the present case. Firstly, as already noticed, in the instant case, the said area is not designated as an open space or playground. Secondly, in the cited case, the property involved therein was a playground and an open space which was popularly known as Gymkhana ground had been leased out to the club for sports activity. The stipulation in the lease agreement entered with the club was that the land should be used for the purpose of sports and games and for no other purpose. It is in that context, the Division Bench of this Court, was of the view that the said land would have to be used as such, for the purpose of public and cannot be deviated in any manner. However, contrary to the said position, in the instant case, admittedly, the property in question had been leased in favour of Lalitha Kala Shala under an agreement dated 6.12.1949 and one of the conditions in the said agreement was that the lessee should construct a building within two years from the date of the Government order and put the same to use. Therefore, in the present case, neither the property was reserved as open space or playground nor was there any intention on the part of the then City Corporation that the Lessee should retain the same as an open space. The said position had continued so from the year 1949 and the said Lalitha Kala Shala were the lessees of the property in their own right and as such no other person can claim public usage of the same. Thereafter the lease was terminated by issue of notice dated 10.4.1987 and an eviction order was passed as contemplated under the provisions of the Karnataka Public Premises (Eviction of Unauthorized

Occupants) Act which culminated in the proceedings before the appellate authority in MA No. 16/2006 which was disposed of on 16.11.2006. The said order would indicate that the appellant therein viz., Lalitha Kala Shala, i.e., the lessee was granted six months time to vacate and as such when the right of the earlier lessee existed till then, neither the petitioners nor any other resident of the area can claim right to the said property. Hence insofar as the contention that the said property is a lung space since the same had been kept as an open space and playground, is liable to be rejected.

8. The next question that would arise for consideration is with regard to the procedural compliance regarding the allotment made to the 5th respondent. In this regard, in fact the petition averments itself would indicate that the matter was placed before the standing committee of Town Planning and standing committee of Taxation and Finance. Thereafter the Administrator of BBMP has passed a resolution vide subject No. 38/2007-08 on 03.05.2007 approving the proposal. Further the second respondent has stated with regard to its proposal to lease the property on monthly lease amount of Rs. 2,62,500/-. The Government had granted its approval on 22.06.2007. However, on rectification of the measurement and the extent of the property, the amount was reworked at Rs. 3,63,451/- and the second respondent sought for rectification of the Government Order and such rectification order dated 28.06.2007 was issued. Thereafter on 11.07.2007 the first respondent issued another amendment to the Government Order and fixed the annual rent Rs. 12,000/-. These aspects of the matter would indicate that the second respondent, has followed the procedure contemplated for leasing its property and the same has also been approved by the Government as required u/s 176 of the KMC Act and as such there is no procedural lapse so as to call for interference insofar as the grant of lease.

9. However, with regard to the fixation of the lease rent by the Government, we are of the view that, the same cannot be approved. Though a justification is attempted by stating that the BBMP had considered a similar request made by the Congress Party in respect of the lease granted on 15.09.2004, in our view, the same cannot be the basis. No provision or requirement is pointed out to us to indicate that there is an obligation on the BBMP to provide space to all political parties and that it should be done at a uniform rate. It is no doubt true that, there would be no commercial exploitation of the property by a political party in the same manner a private entrepreneur would do, but, at the same time, it cannot be a largesse and public property cannot be given at a throw away price in the manner done. Though we have disapproved the meagre lease rent fixed, we also refrain from suggesting or fixing any particular rate since it is appropriate to leave it open for the first and second respondents to take into consideration all aspects of the matter and re-fix the lease rent with appropriate provision for periodic revision without giving room for public dissatisfaction and further litigation in this regard. Only after fixation of such lease rental, the fifth respondent shall be permitted to make use of the property.

With the above observations and directions the petition stands dismissed with no order as to costs.