

(2014) 09 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No. 23017 of 2005 (LB-BMP-PIL)

Kalyana Nagara Residents Welfare Association

APPELLANT

Vs

The Commissioner

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : (2014) 4 AKR 756

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

Bench : Division Bench

Advocate : S. Vivekananda, Advocate for VGB Associates, Advocate for the Appellant; R. Subramanya, Advocate for Ashok Harnahalli Associates, K. Krishna, Advocate, R. Devdas, PGA and C. Jagadish, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—The petitioners are seeking a direction to Bangalore City Corporation, Bangalore Development Authority and Government of Karnataka to declare that the public park (C.A. site No. 7 in the 1st block of HRBR Layout, now known as Kalyana Nagar) shall not be used or utilised for any purpose other than as a park. Subsequently they have amended their petition and incorporated the prayer for quashing the notification, dated 15.04.2011 showing the C.A. site No. 7 as burial ground.

2. Sri S. Vivekananda, learned counsel for the petitioners submits that the use of the area in question as a burial ground runs contrary to the various provisions of law. He submits that the area in question was never used as a burial ground in the past.

3. He submits that the impugned notification, dated 15.04.2011 (Annexure-R4) is bad, as the same is issued during the pendency of this writ petition. He submits that once an area is earmarked for the purpose of park, it cannot be used for any other purpose. He submits that it is not in dispute that the area in question was shown as park in the official records right from the beginning.

4. Sri C. Jagadish, learned counsel for the respondent Nos. 4 and 5 submits that the land is used as a burial ground from the time immemorial by the Scheduled Caste people of the neighbouring villages. The said usage continued uninterruptedly even after the formation of the layout by the B.D.A. It is the only burial ground in that locality for the Scheduled Caste people. It is the allegation of respondent Nos. 4 and 5 that some vested interests, who want to perpetuate untouchability and intolerant attitude towards the graves and tombs of the Scheduled Caste people, have filed this petition.

5. Sri R. Subramanya, learned counsel for the respondent No. 1 submits that even before handing over of the area in question by the B.D.A. to the B.B.M.P., it was being used as a burial ground. Therefore it is not developed as a park.

6. Sri K. Krishna, learned counsel appearing for the respondent No. 2 submits that as per the mahazar drawn by the concerned officers at the time of taking possession of the lands pursuant to the acquisition notifications, the land at Sy. No. 317 was being used as a burial ground.

7. Sri R. Devadas, learned P.G.A. submits that as per the report submitted by the Tahasildar to the jurisdictional Inspector, the land in question is being used as a burial ground for the last 50 years.

8. In the course of rejoinder, learned counsel for the petitioners emphatically submits that the lands at Sy. Nos. 315 to 318 are not what the respondents' learned advocates are referring to.

9. Sri Jagadish, learned counsel for the respondent Nos. 4 and 5 quickly joins the issue with the petitioners' learned advocate, Sri Vivekananda by bringing to our notice the sketch produced as Annexure-R5 which shows that for the last 30-40 years, parts of the land at Sy. Nos. 315, 316, 317 and 318 are being used as the burial ground.

10. Sri Devadas, learned P.G.A. appearing for the respondent No. 3 submits that for the first time a notification was issued under the provisions of the Karnataka Parks, Play-fields and Open Spaces (Preservation and Regulations) Act, 1985 (hereinafter called "1985 Act") on 15.04.2011. The said notification shows that area as both park and Harijans' graveyard. He also submits that before the issuance of the said notification, the draft notification was issued calling for objections from the members of the public. Neither the petitioners nor anybody else have filed objections to the draft notifications.

11. The submissions of the learned counsel have received our thoughtful consideration. The questions that fall for our consideration are whether the impugned notification under 1985 Act showing the civic amenities in question partly as park and partly as burial ground are sustainable? And whether the petitioners are entitled to the direction to the concerned authorities to declare that C.A. site No. 7 shall not be used for any purposes other than as park?

12. It is not in dispute that the area in question was not being used as a park.

The petitioners themselves have stated as follows in para 3 of the memorandum of the writ petition:

"Although it is earmarked as a "park", no portion of this area is developed into a "park". Almost 20 years now, no part of this public property is developed as per the Approved Layout Plan in a Layout developed by B.D.A. itself."

13. The photographs in Annexure R-2 series (filed with the statement of objections of the respondent Nos. 4 and 5) also show a large number of graves and tombstones on the land in question. The petitioners have not produced any notification to show that the entire area in question was earmarked for a public park.

14. That the impugned notification is issued during the pendency of this petition is also no good ground for invalidating it. Because there has been no legal impediment in issuing the impugned notification, as this petition has been pending without there being any interim order of stay, status-quo or temporary injunction. On the other hand, this Court has passed the following order on 21.06.2011:

"An alternative remedy may be, that a high wall may be constructed atleast half of the park area, so that there is minimal effect of the burials on the society and the remaining half shall be preserved as park area."

15. The B.B.M.P. has already prepared the estimates for constructing wall for separating the burial ground from the park. At this juncture, Sri Subramanya submits that the bifurcating wall could not be constructed on account of the resistance by the residents of the area.

16. It is also not in dispute that the bodies of the dead persons belonging to Harijans were/are being buried in the area in question. On the ipse-dixit of the petitioners, it is not advisable to undo what has been taking place. The subsequent development of dividing the area in question for the two public purposes in question is indicative of BBMP's effort to balance the two conflicting interests. It is trite that the courts do not interfere with the choice of location for the stated public purpose/s.

17. Thus both the questions are liable to be answered against the petitioners. Answering accordingly, we dismiss this petition. No order as to costs.