

(2001) 02 KAR CK 0096

In the Karnataka High Court

Case No : Writ Petition No's. 12424 of 1989 and 21944 of 1998

K.T. Sons

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-02-2001

Acts Referred:

Citation : (2001) 2 KCCR 1339

Hon'ble Judges : N. Kumar, J;Ashok Bhan, J

Bench : Division Bench

Advocate : B.R. Satenahalli, in Writ Petition No. 21944 of 1998 and B.G. Sridharan, in Writ Petition No. 12424 of 1989, for the Appellant; V. Bychappa, Government Pleader in Writ Petition No. 21944 of 1998 for Respondent 1 and in Writ Petition No. 12424 of 1989 for Respondents 1 and 3, B.G. Sridharan in Writ Petition No. 21944 of 1998 for Respondent 2, Vishnu D. Bhat in Writ Petition No. 21944 of 1998 for Respondent 3, C.V. Nagesh in Writ Petition No. 21944 of 1998 and K.Suman in Writ Petition No. 21944 of 1998 for Respondent 4 and in Writ Petition No. 12424 of 1989 for Respondent 4 and K.V. Narasimhan Advocate and H. Thipperudrappa in Writ Petition No. 12424 of 1989 for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The Petitioner in Writ Petition No. 12424 of 1989, the Agricultural Produce Market Committee, Yeshwanthapur, has sought for a writ of certiorari to quash the order dated 15.4.1988 passed by the State of Karnataka under which it directed the Bangalore Development Authority to make further bulk allotment of land measuring 20 acres to Vyalikaval House Building Co-operative Society and the resolution dated 28.6.1988 by the BDA in pursuance of the aforesaid order and the order dated 13.3.1989 issued by the second Respondent-BDA handing over three acres of land in Sy.No. 1 of Jarakabandekaval to the fourth Respondent-House Building Society.

2. The land in question is situated in Sy.No. 1 of Jarakabandekaval measuring 3 acres 30 guntas which originally belonged to Kannamma and Sri Anand which is

hereinafter referred to as the "schedule land". The schedule land came to be notified for acquisition by the BDA by its notification dated 3.8.1979. Ignoring the said notification the Government issued another notification to acquire the schedule land for the benefit of the Petitioner herein and proceedings continued in that regard and in the course of the said proceedings the Petitioner came to know that the schedule land has already been acquired by the second Respondent for expansion of Mahalakshmi Layout. On coming to know of the same the Petitioner made a representation to the second Respondent on 7.11.1988 requesting them not to hand over the possession of the schedule land to the fourth Respondent and to allot the schedule land to them. When the Petitioner received a communication from the second Respondent dated 13.3.1989 to the effect that the schedule land has been handed over to the fourth Respondent on 29.11.1988 itself and that their request cannot be considered they have filed this petition challenging the allotment of the schedule land in favour of the fourth Respondent and all proceedings connected therewith.

3. The fourth Respondent who is contesting the above Writ Petition has filed a detailed statement of objections setting out under what circumstances the schedule land came to be allotted to them, possession was handed over and contending that the Petitioner has no right to challenge the said allotment.

4. From the records it is clear that during the pendency of this Writ Petition an attempt was made to sort out the differences between the parties. In fact in this regard a memo came to be filed on 17.6.1997. It is stated in the said memo that the Petitioner decided to provide alternate land to the fourth Respondent in place of the schedule land provided the schedule land is made available to them for its purposes. It appears when the said proposal did not fructify on 27.5.1998 the Government issued an order according sanction of the sale of the land in dispute to APMC. The fourth Respondent was demanding Rs. 1,000.00 per square feet which was not acceptable to the Petitioner and the matter was referred to the Deputy Commissioner for fixing the rate and the Deputy Commissioner has fixed the rate at Rs. 800.00 which was again not acceptable to the Petitioner.

5 It is at that stage Writ Petition No. 21944 of 1998 was filed by the Petitioner in the said petition purporting to be in the public interest challenging the order of the Government according sanction for sale of the schedule land to APMC and the order of the Government dated 15.4.1988 making bulk allotment of the schedule land in favour of the fourth Respondent as null and void. The fourth Respondent in the said Writ Petition also has filed a detailed objection inter alia contending that this Writ Petition is filed by the Petitioner who appears to be a person set up by the Karnataka Agricultural Produce Market Committee, the Petitioner in the connected Writ Petition, with malafides and collusions between them as is clear from the prayers made in this Writ Petition. Again they have narrated the sequences of events under which the land in question came to be allotted to them and the fact that they have paid the monies due to the BDA nearly 20 years back and also asserting that even now they would be willing to transfer the

said land in favour of the APMC provided they are willing to pay the price fixed by the Deputy Commissioner.

6. In these two Writ Petitions in so far as the prayer challenging the order of the Government making bulk allotment of the schedule land in favour of the fourth Respondent-Housing Society is common. In order to avoid any conflict of decisions they were taken up together for consideration.

7. Sri B.G. Sridharan, learned Counsel appearing for the Petitioner in Writ Petition No. 12424 of 1989 contended before us that the schedule land is situated in the midst of the land acquired by the APMC for the formation of the market yard and therefore the aforesaid land would be very useful for them and in fact at their instance proceedings were initiated by the Government to acquire the said land and to transfer the same and resolutions have been passed to that effect but only when it was noticed that in 1979 itself the said land had been acquired by the BDA and same had been transferred to the fourth Respondent the said proceedings were dropped. The APMC being a statutory authority and which has established a market yard, there is an acute shortage of space to regulate the wholesale trade in notified agricultural produces is entitled to the land in question in preference to the fourth Respondent and therefore the State Government without properly considering all the aspects of the matter committed an error in not considering the request of the Petitioner and therefore according to him the order of bulk allotment made in favour of the society, the resolution passed in that regard and the order handing over possession in their favour are liable to be set aside and the Petitioner is entitled to a writ of mandamus directing Respondents 1 to 3 to allot and hand over possession of the said land in favour of the APMC.

8. Per contra, Sri Suman, the learned Counsel for the Society contends that the Society was allotted an area of 40 acres of land for the purpose of formation of a residential layout and they have paid the entire amount being the cost of acquisition of land for the 40 acres and subsequently 20 acres out of that 40 acres was allotted in favour of Bapuji Industrial Workers House Building Limited which led to the litigation between the parties and at the intervention of the Government the said litigation stood resolved under which the fourth Respondent was required to give up the claim for 20 acres of land and the Government undertook to make available the said 20 acres of land by allotting small portions in various areas and the land in question was allotted to them in view of the understanding reached and the fourth Respondent has paid a sum of Rs. 17,58,728.00 being the value of the said land calculated at the rate of Rs. 3,50,000 per acre. Therefore the Petitioner cannot have any preferential claim against the legitimate claim of the fourth Respondent-society.

9. Sri B.R. Satenahalli, learned Counsel appearing for the Petitioner in the public interest litigation, contends that the agreement reached between the parties which is followed by the Government Order according sanction to the fourth Respondent to transfer the land in question in favour of APMC at a consideration

of Rs. 800.00 per square feet is opposed to public interest in as much as virtually by such an order the Government has permitted the fourth Respondent to trade the acquired land and to gain profits out of the sale proceedings for illegal gratification and as according to him fourth Respondent has paid a sum of Rs. 3,50,000.00 per acre in all amounting to Rs. 10,50,000.00 and now they are permitted to sell the land at the rate of Rs. 1,000.00 per square feet which would amount to Rs. 13,06,80,000.00 and therefore the said order of the Government is illegal and opposed to public policy and therefore such an order should not be allowed to stand and is liable to be set aside.

10. Per contra, Sri Suman, learned Counsel for the fourth Respondent in the public interest litigation, contends the said Writ Petition is filed at the instigation of the APMC who having agreed to purchase the property and on whose request the Government accorded sanction and when the Deputy Commissioner has fixed the rate at Rs. 800.00 per square feet wants to wriggle out of the said understanding and therefore they have instigated the Petitioner to challenge the said order in the Writ Petition. Therefore, it lacks bonafides and it is actuated with angular motives, no public interest is involved in this Writ Petition and therefore he prays for dismissal of the Writ Petition.

11. We have heard the learned Counsels for the parties and we have perused the pleadings and documents produced before us. What emerges from the material on record is the fourth Respondent was allotted an extent of 40 acres in Kempapura Agrahara by the Government for formation of a residential layout for which the society has paid. Subsequently, out of the 40 acres 20 acres was allotted by the Government in favour of Bapuji Industrial Workers House Building Limited denying the fourth Respondent of 20 acres of valuable land. When the litigations commenced between the parties in that regard the matter was sorted out by an assurance to the fourth Respondent that they would be provided 20 acres of land lost by them in Kempapura Agrahara would be allotted small portions in various areas. It is in pursuance of such understanding and agreement the fourth Respondent was allotted the schedule land after acquiring the same and the fourth Respondent has paid a sum of Rs. 17,58,728.00 being the cost of the said land. Not knowing this background at the instance of the APMC proceedings were initiated to acquire the schedule land for APMC. Ultimately when it was noticed that the said land is already acquired and handed over to the fourth Respondent in the year 1988 the acquisition proceedings was dropped. It is at that juncture APMC has filed the Writ Petition in the year 1989 challenging the bulk allotment made by the Government in favour of the fourth Respondent-society. During the pendency of the proceedings the parties entered into mutual agreement under which the Society agreed to transfer the said land to the APMC. Government accorded permission for such transfer and the rate at which it is to be transferred was referred to the Deputy Commissioner who has submitted a report stating that the market price is Rs. 800.00 per square feet. APMC is not willing to purchase the said property at that rate. It is at that juncture Writ Petition No. 21944 of 1998 purporting to be in the public interest

has been filed challenging the order of the Government according permission to transfer the land in question by the fourth Respondent to the APMC on the ground that the said permission amounts to and results in trading of valuable Government lands.

12. APMC has not been able to point out before us what is their right to seek preferential allotment in their favour of a land which is already allotted in favour of the fourth Respondent. They are also not able to point out violation of any rule, law or regulation by the Government in allotting the land in question to the fourth Respondent. Merely because the land in question would be more useful for the APMC to form an additional layout in that area for the expansion of the market yard and that fourth Respondent will not be able to form a residential layout in that area is no ground to set aside the allotment in favour of the fourth Respondent. In the absence of infringement of any right of the Petitioner or infringement of the rule or regulation by the Government in allotting the land in question in favour of the fourth Respondent, a case for quashing of the said allotment is not made out by the Petitioner and therefore we do not find any merit in the said Writ Petition.

13. Coming to the public interest litigation the Petitioner has not pointed out to us how the action of the Government is violative of any of the rights enshrined in Part III of the Constitution of India and the relief is sought for its enforcement. Further, it is not pointed out that the action complained of is palpably illegal or malafide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance. On the contrary, the APMC which is a statutory authority has taken steps to challenge the order of allotment of the Government in favour of the fourth Respondent in the year 1989 itself which is the party which is really affected by such allotment. Therefore, the Petitioner has no locus standi to challenge the very same allotment after a gap of eleven years. The very fact that the said public interest litigation came to be filed after the Government accorded permission to the society to sell the land to APMC at the rate to be specified by the D.C. and though the society is willing to sell, APMC is not willing to purchase at that rate, this public interest litigation is filed for quashing of not only the Government Order of 1988 making bulk allotment in favour of the society but also the order according permission to the society to sell the schedule land to APMC. Therefore, we are inclined to accept the submission of the society that this public interest litigation is filed at the instance of APMC and it lacks bonafides. The very fact that the Petitioner in the public interest litigation did not move his little finger to challenge the bulk allotment of the year 1988 in favour of the society shows its true colours. Therefore, we are of the view the said Writ Petition is filed under the garb of public interest litigation to enable the APMC to wriggle out of the situation in which they are placed by virtue of the Government Order which in turn came to be passed by agreement of the parties. Therefore, it is a clear case of abuse of the process of the Court and therefore it lacks bonafides as well as merits.

14. Therefore, we pass the following order:

(a) Writ Petition No. 12424 of 1989 is dismissed.

(b) Writ Petition No. 21944 of 1998 is also dismissed with costs of Rs. 5,000.00 to be paid by the Petitioner to the fourth Respondent-society.