
(1993) 09 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No's. 23195 and 34180 of 1992 and 2636 of 1993

Maj. Gen. M.K. Paul

APPELLANT

Vs

Bangalore City Corporation

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 69

City of Bangalore Improvement Act, 1945 — Section 29 (ii), 43 (i) (f)

Citation : (1993) ILR (Kar) 2792 : (1994) 2 KarLJ 158

Hon'ble Judges : Shivaprakash, J

Bench : Single Bench

Advocate : P. Vishwanatha Shetty, for the Appellant; B.K. Manjunath, K. Sreedhar and N. Kumar for Kumar and Kumar, P.G. Gowri Kuranga, Ravi Prakash and H.S. Dwarakaanath, for the Respondent

Final Decision : Dismissed

Judgement

Shivaprakash, J.—The Supreme Court in B.K. Srinivasan and Others Vs. State of Karnataka and Others, bemoans the fate that has overtaken this once beautiful City in the opening paragraph of its Judgment in the following words;

"Bangalore was a beautiful city once. It was a city with magic and charm, with elegant avenues, gorgeous flowers, lovely gardens and plentiful spaces. Not now. That was before the invasion of concrete and steel, of soot and smoke, of high-rise and the fast buck. Gone are the flowers, gone are the trees, gone are the avenues, gone are the spaces. We are now greeted with tall puffing chimneys and monstrous high-rise buildings, both designed to hurt the eye, the environment and the man. But they are thought by many as symbols of progress and modernity. They have come to stay. Perhaps they are necessary. Nostalgic sentiments, we suppose, must yield to modern societal requirements. Smoking Chimneys produce much needed goods. High-rise buildings save much-scarce space. They have a place in the scheme of things. But where, how, to what extent, at what cost, are the questions raised by some aggrieved citizens of

Bangalore. They want congestion to be prevented, population density to be controlled, lung spaces to be provided where people can breathe, existing recreational facilities to be preserved and improved, pollution and health hazards to be removed, civil and social amenities to be provided etc. All these require a balanced use of available land. It is with that object that the Mysore Town and Country Planning Act was enacted in 1961 and it is with the interpretation of some of the provisions of that Act that we are concerned in these appeals."

2. In these three Petitions also, the petitioners lament the unbridled growth of the City in a haphazard manner affecting the lives of the citizens of Bangalore. The petitioners who are all residents of a well planned layout called "INDIRANAGAR", formed by the erstwhile City Improvement Trust Board (CITB for short), whose successor is the second respondent, question the validity and legality of sanction of plans and issue of licences by the first respondent, in favour of the owners/builders for construction of multi-storey, multi-dwelling apartment buildings on sites, particulars of which are given hereunder:

(1) W.P. 34180/92: Construction on Site No. 125, 3rd Main, Defence Colony, H.A.L. II Stage, Indiranagar, Bangalore, under L.P.No. 97/91-92 dt. 13.6.1991 issued by the first respondent;

(2) W.P. 23195/92: Construction on Site No. 162, 5th Main, Defence Colony, HAL II Stage, Indiranagar, Bangalore; under L.P.No. 304/91-92, dt. 19th September, 1991, issued by the first respondent;

(3) W.P. 2636/93: Construction on Site No.235, 4th Main, Defence Colony, HAL II Stage, Indiranagar, Bangalore; under LP.No.148/92-93 dt 23.7.1992, issued by the first respondent.

3. Since the pleadings and the grounds taken in all these Petitions are identical, I choose to refer to the pleadings in W.P.No. 34180/92.

4. The main contention of the petitioners in these Writ Petitions is that the entire "Indiranagar" including the Defence Colony being an integral part of Indiranagar, was formed by the erstwhile CITB to be an exclusive residential area. According to the petitioners in the sites formed in the layout only "one dwelling house" could be constructed thereon and no multi-storey, multi-family dwelling apartments are permissible to be put up on the said sites.

5. Sri P.Vishwanath Shetty, learned Counsel appearing for the petitioners vehemently contended that the essential utility services -road width, water connections, sanitary connections, electric supply etc., are provided to meet the requirements of "one dwelling house" on each site in the layout: so much so if multi-storey, multi-dwelling apartment buildings were to be permitted to be constructed on each site in the said layout, it would seriously jeopardise the living standards of the people living in the area as it would certainly affect the basic utility services and the civil amenities provided for the area at the time of formation of the layout. He submitted that the essential utility services cannot

take extra load consequent upon increased number of families residing in the apartments and the inevitable increase in the vehicular traffic.

6. The petitioners have given certain particulars regarding the layout to emphasise that only "one dwelling house" should be permitted to be constructed on each and every site comprised in the Indiranagar Extension. It is submitted on behalf of the petitioners by the learned Counsel that the petitioners having come to know that multi-storey, multi-dwelling apartment buildings are being put up on certain sites in Indiranagar have given representations to the Chief Minister and also the Minister for Urban Development, copies of which are produced as Annexures. They have also given representations to the Commissioners of the first respondent-Corporation and the second respondent Bangalore Development Authority (B.D.A. for short) protesting against permissions granted for construction of multi-storey, multi-dwelling apartment buildings. The petitioners assert that such permissions are illegal and contrary to the law laid down by this Court in K. Chandrashekar Hegde Vs. Bangalore City Corporation, and affirmed in Pee Kay Constructions Vs. Chandrasekhar Hegde, . The petitioners aver that they have also approached the Commissioners of the first respondent Corporation and the second respondent Development Authority and other officers requesting them to stop construction of the impugned buildings.

The petitioners state that the authorities assured them that steps would be taken to withdraw the plans already sanctioned and therefore, they did not immediately approach this Court challenging the validity and legality of the plans and licences issued to the respondents-owners/builders.

7. The petitioners state that as a last resort in view of the fact that their representations to the various authorities have not evoked any response preventing the owners/builders from proceedings with the impugned constructions, they have presented these Writ Petitions seeking the following reliefs :

- i) To declare that the plans sanctioned and licences issued by the first respondent permitting the owners/builders to put up buildings with apartments on the sites aforesaid in Indiranagar Extension as illegal and void in law;
- ii) For issue of direction in the nature of mandamus requiring the first respondent to demolish the constructions already put up in the aforesaid sites;
- iii) For issue of a further direction to the first respondent not to sanction any more plans to any one to put up "any building for more than one dwelling house" in sites allotted by the Defence Colony Co-operative Housing Society," Indiranagar, Bangalore, which is one of the respondents in these Writ Petitions.

8. The learned Counsel for the petitioners urged that in view of the Decision in K.Chandrashekar Hegde v. Bangalore City Corporation, affirmed in Pee Kay Constructions v. Chandrashekar Hegde, cited above, the first respondent-

Corporation could not have granted the impugned licences to the owners/builders to put up multi-storey, multi-dwelling units. He submitted that the first respondent-Corporation has issued the impugned licences in contumacious disregard of the aforesaid Decisions of this Court.

9. In the aforesaid cases, the question that arose for consideration was whether in view of the restrictive covenant, contained in the statutory agreements between the CITB and the allottees of the sites and their transferees, constructions of multi dwelling units in the sites allotted by the CITB, were illegal. The learned single Judge in *K. Chandrashekhar Hegde v. B.C.C.* after elaborate discussion of the various provisions of the Karnataka Town and Country Planning Act, 1961, The City of Bangalore Improvement Act, 1945, The Bangalore Development Authority Act, 1976 and the Karnataka Municipal Corporations Act, 1976 and the Rules and Regulations framed thereunder concluded thus:

"i) The Corporation is not empowered to grant licences to the owners of the sites in the area in question to put up multi storey multi family dwelling units;

ii) The scheme and both the CITB Act and the B.D.A. Act provide for the construction of residential houses by owners of the sites in question and not for exploitation of those sites for construction of multi-storey and multi-family apartments for commercial purpose, residential or non-residential;

iii) The scheme envisages that persons who are not allotted sites and who could not have been allotted sites would not be entitled in law to own apartments by taking advantage of the building licences which are not valid for construction of multi-family dwelling units on the sites in questions."

10. Against the said Judgment dt. 14/15/16th December, 1987 of the learned single Judge, one of the builders preferred Writ Appeal in W.A.No.306/88. In the said Appeal, *Pee Kay Constructions v. Chandrashekhar Hegde* the Division Bench of this Court while affirming the Judgment, referring to the successive allotment of Sites Rules framed under the CITB Act and the B.D.A. Act has observed thus:

"Concept of "a dwelling house" has to be understood in the background of these Rules. Sites are allotted or sold in auction only to eligible persons: alienation of the site to a third party is prohibited, unless the conditions are strictly complied with. Sites are allotted in compliance with a scheme formed to develop the City. In these circumstances, it is not possible to hold that "a dwelling house" would mean a building comprising several units or apartments wherein several families may reside independently of each other. A building having several residential apartments is quite different from "a dwelling house." The distinction is clearly brought out when a building with several apartment houses is referred as "multiple dwelling houses." These Rules do not permit the construction of a building having multiple dwelling apartment houses, on any of the sites governed by the Rules referred by us."

At para 25 of the Judgment, the Division Bench has observed thus:

"The sites were formed and owned by the Board. The nature of the sites are imbedded in the statutory Rules governing their allotment or sale. The nature of the use of the sites cannot get altered by any mode other than the mode prescribed by law. The restrictions and limitations as to the uses are statutory. If the area should have multiple dwelling houses, the TCP Act and the BDA Act provide for changing the permitted "land use". These sites were not meant to be used as articles of commerce. They were to house the genuine, eligible residents of Bangalore. The construction of apartments for sale by the appellants, is an illegal device, to circumvent the provisions of the Statutory Rules. The Board would not (and could not) have ventured to acquire the lands, form the layouts and the sites and then allot or sell the sites as per the provisions of law, to enable the speculators to use the sites for their commercial adventure. Those individuals, who invested in individual sites and put up dwelling houses for their respective residence in the hope of living in a calm and uncontested locality, could not now be asked to change their life-style or outlook and be satisfied to live in a congestion of concrete structures. The scheme framed by the Board and the Rules governing the sale or allotment of the sites should have a reasonably long stability and sanctity so that the statutory objectives are properly achieved."

11. The covenant regarding construction of "one dwelling house" on the sites allotted under the provisions of the several Allotment of Sites Rules framed under the CITB Act and the BDA Act from the beginning imposes the restriction on the allottees requiring them to construct only "one dwelling house on each site". The successive Rules provide that the site allotted should not be sub-divided and not more than "one dwelling house should be constructed thereon". This restriction is found even in the Bye-laws dated 8.1.1954 framed by the CITB under Clause (f) of Sub-section (i) of Section 43 read with Clause (ii) of Section 29 of the City of Bangalore Improvement Act, 1945. It is so even as on today in the Allotment of Sites Rules framed u/s 69 of the BDA Act.

12. The question in these cases is whether the restrictive covenant found in the Statutory Agreements between the CITB/BDA on the one hand and the allottees on the other are equally applicable to the owners of the sites formed by the Defence Colony Co-operative Housing Society. This Society which is one of the respondents in all the Writ Petitions and the fifth respondent in W.P.No. 34180/92 is a Co-operative Housing Society registered under the Karnataka Co-operative Societies Act, 1959. This Society formed the layout known as "Defence Colony" and sold the sites in the layout formed by it to its members. The majority of the petitioners in these Writ Petitions are also, members of the said Society and they have also purchased their respective sites from the said Society. There is no such restrictive covenant in the Sale Deed between the Society and its members who have purchased the sites requiring them to put up one dwelling house only on the sites purchased by them. A copy of the Sale Deed dated 23.1.1968 executed by the Society in favour of the fourth respondent is produced as Annexure-R.6 in

W.P. 34180/92.

13. The covenants as between the Society and the purchasers are contained in Clause 4 of the Sale Deed which is extracted below;

"4. To the intent that these covenants shall run with the land the Purchaser hereby covenants which the Vendors as follows:-

(a) for himself and his successors-in-title that the said Site shall be used exclusively for residential purposes, and

(b) that within FIVE years from the date hereof he will not sell, transfer, assign or in any otherwise part with the said Site without giving to the Vendors or their nominee or nominees the first option to purchase or take over the same together with all buildings, structures or constructions thereon and for such purchase or taking over the Vendors or their nominee or nominees shall make payment to the Purchaser as follows:-

(i) in the case of the Site, the cost price thereof and simple interest thereon at 5% per annum calculated from the date of its purchase by the Purchaser, and

(ii) in the case of any building, the cost of the Site plus the cost of construction of the building thereon together with simple interest at 5% per annum calculated on the price of the Site as in Sub-clause (i) hereof and on the cost of construction of the building from the date of completion of the construction.

(c) Notwithstanding anything to the contrary herein contained, the Purchaser shall be at liberty with the consent in writing of the Vendors first had and obtained to raise a loan BONAFIDE for the purpose of construction of a residential building on the Site from any Bank, Co-operative or House Building Society or other like institution."

14. Relying on Clause 4(c) therein where the expression "construction of a residential building" is used while permitting the purchaser to raise loans, the learned Counsel urged that by itself is a restrictive covenant which enjoins that every purchaser should put up "one dwelling house on each site."

(underlining mine)

15. On the contrary, Sri N. Kumar teamed Counsel appearing for the respondents-builders submitted that the concept of a "one dwelling house on each site" imposed under the Allotment of Sites Rules by the CITB/BDA is applicable only to such sites allotted by the CITB/BDA under the aforesaid Rules. He submitted that the term "construction of a residential building" cannot be equated with the term "one dwelling house on each site," He referred to Clause 4(b) in the Sale Deed, Armexure-R6, which in contrast provides that in the event of the purchaser desiring to "sell, transfer, assign or in any otherwise part with the said site" within five years from the date of sale, he will have to give the first option to "the Society to purchase or take over the same "with all buildings, structures or constructions thereon." (underlining mine). Therefore, the learned Counsel

contended that there is no restrictive covenant as between the Society and the purchaser regarding the number of dwelling units that could be constructed on each site. He submitted that the impugned licences and the plans are strictly in conformity with the Zonal Regulations framed under the Comprehensive Development Plan prepared by the BDA under the provisions of the Karnataka Town and Country Planning Act, 1961, and the Building Bye-laws of the City Corporation framed under the Karnataka Municipal Corporation Act, 1976.

16. From the Judgment in Writ Petition No. 6766 of 1988, DD. 1-12-1992 - Defence Colony Co-operative Housing Society Ltd. v. Corporation of the City of Bangalore copy of which is marked as Annexure-R2 in W.P.No. 34180/92, it appears that the Defence Colony Co-operative Housing Society which purchased 57 acres of land from the erstwhile CITB, formed the layout in which the sites in question are situated. The layout was not formed by CITB. It was formed by the Society for the benefit of its members. No doubt, the said layout was approved by the CITB.

17. In the Sale Deed dated 15.7.1966, a copy of which is marked as Annexure-B in WP.No. 34180/92, there is no restriction regarding the number of "dwelling units" that could be constructed on the sites in the layout to be formed by the Society. The only conditions imposed as could be seen from the Sale Deed are the following:

"1. The land hereby granted shall be used by the Purchaser wholly for the formation of the Defence Officers" Housing Colony;

2. That the Purchaser shall transfer the ownership of the roads, drains, water supply mains and open spaces and civil amenity sites in the layout to the Vendor permanently without claiming any compensation therefore; and

3. That the Purchaser shall follow all rules, bye-laws and standing orders relating to obtaining all licences and construction of buildings on the sites to be formed in the layout prescribed by the Corporation of the City of Bangalore or the City Improvement Trust Board, as the case may be."

18. The learned Counsel for the petitioners contended that since the purchaser was required to follow "all Rules, Bye-laws and Standing Orders relating to obtaining all licences and construction of buildings on the sites to be formed in the layout prescribed by the Corporation of the City of Bangalore or the City Improvement Trust Board, as the case may be." (underlining mine), as per condition No. 3, it should be construed that "one single dwelling unit" could only be construed in terms of the Allotment of Sites Rules under the CITB/BDA Act.

19. It is not possible to attribute such far-fetched meaning to this condition. The condition merely requires that the building to be constructed should be in accordance with the Building Rules/Bye-laws. No restrictive covenant could be read into this condition. My view accords with the view taken by this Court in W.P.No. 6766 of 1988.

20. Sri N. Kumar, learned Counsel for the respondents-builders submitted that apart from the question of legality and validity of the licences and sanctioned plans, these three Petitions are liable to be dismissed on the ground of delay and laches on the part of the petitioners in approaching this Court. He submitted that as on the respective dates when these three Petitions were presented the building involved in Writ Petition No. 34180/92 was under construction for over eight months. The basement, the ground floor, the first floor, the second floor and the third floor had been completed. The buildings in W.P. 23195/92 and W.P.2636/93 were almost complete when the petitioners approached this Court challenging the validity of the impugned licences and sanctioned plans. He further submitted that in buildings. The respondents have given in their statement of objections the list of such buildings that have been constructed in Defence Colony Layout.

21. The fact that several multi-storey, multi-dwelling buildings have already been built is no ground for rejecting these Writ Petitions because if certain buildings have been constructed contrary to the Zonal Regulations/Municipal Building Bye-laws/Restrictive Covenants, that by itself cannot justify construction of further buildings of similar nature. After all the respondents are professional builders and they ought to know the Building Bye-laws/Zonal Regulations and the Restrictive Covenants regarding construction of buildings.

22. The learned Counsel for the respondents contended that the respondents-builders cannot be found fault with even on this count in view of the fact that they had taken all precautions to ensure that the licenses/sanctioned plans obtained by them are in conformity with the Zonal Regulations/Building Bye-laws. The learned Counsel pointed out the letter dt. 5.12.1988, marked as Annexure-R1 in W.P.34180/92, written by the Bangalore Development Authority to one S.K. Bakshi stating that the Judgment of this Court in Pee Kay Constructions case did not apply to constructions on sites not allotted by the BDA/CITB. BDA has further stated in the said letter that in respect of the sites allotted by the "Defence Colony Co-operative Society which is a private concern and no lease-cum-sale has been executed by the allottee in favour of the Bangalore Development Authority" the aforesaid Decision of the High Court did not apply. The learned Counsel further referred me to another letter dt.2.3.1989 addressed to the said Bakshi by the Commissioner of the Corporation of the City of Bangalore, copy of which is extracted in the Judgment of this Court in W.P.No. 6766 of 1988, adverted to above wherein the Commissioner while issuing permission to occupy the building completed by the said S.K. Bakshi has referred to the letter of the Bangalore Development Authority and has stated thus:

"The B.D.A. authorities vide letter No.BDA.TPV.DD(E):824:88-89 dated 5.12.1988 have clarified that the High Court orders in Writ Petition No.7599/87 and 8892/87 do not apply to constructions on sites/land not allotted by the BDA/CITB, and hence the high "The B.D.A. authorities vide letter No.BDATPV.DD(E):824:88-89 dated 5.12.1988 have clarified that the High Court

orders in Writ Petition No. 7599/87 and 8892/87 do not apply to constructions on sites/land not allotted by the BDA/CITB, and hence the high court orders referred to above does not apply to the site No. 123, Defence Colony, HAL II Stage."

23. The aforesaid facts are not in dispute. The stage of construction of the three buildings in the three Petitions, as pleaded by the respondents builders when the petitioners approached this Court, are also not disputed by the petitioners. In the circumstances, the respondents-builders are justified in pleading delay and laches on the part of the petitioners in approaching this Court seeking the reliefs sought.

24. "Bangalore was a beautiful city once. It was a city with magic and charm..... Gone are the flowers, gone are the trees, gone are the avenues, gone are the spaces", intoned the Supreme Court in sorrow. While doing so "the problem and pain" expressed by the then Chairman of the Bangalore Urban Arts Commission in response to an editorial in a local newspaper, was extracted by the Supreme Court in its Judgment, wherein he gave vent to his anguish thus: "When we speak of saving Bangalore's skyline and its cherished character, we are apt to be misunderstood even by some well meaning citizens. Vested interests and busybodies with an easy conscience would in any case rubber wall any consideration of argument because the present time, with the skyrocketing property value, is a great opportunity for them to "make hay". They would rather sell the city than dwell on its future"....." "Such growth which is bound to obliterate what we have still left of this beautiful city and put further strains on its traffic, water supply and drainage is certainly not going to help the proletarian office goer or house seeker. It will serve only the big time builder, the high spending rich and - last but not least -the fast-buck chasing wheeler-dealers and busy-bodies....."

25. It all started in the beginning of 1980s when the City Corporation sanctioned more than 180 high-rise buildings to be constructed in the core of the City in violation of the then prevailing Zonal Regulations. Most of the Builders were from Bombay - a City of High-rise buildings--who could not understand the living ways of the Bangalore an and his resentment to high-rise buildings which would destroy the cherished character of the City. Ultimately, money power prevailed and the high-rise buildings, a stranger to this City, became part of it.

26. Way back in the year 1854, a "Savage", Chief Seattle, a Red Indian in reply to a letter from the President of the United States of America offering to buy a large area of Indian land said:

"We know that the white man does not understand our ways. One portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his mother, but his enemy, and when he has conquered it, he moves on. He treats his mother, the earth, arid his brother, the sky, as things to be bought, plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a

desert. Where is the thicket? Gone. Where is the great eagle? Gone. The end of living and the beginning of survival."

27. The freshness of the air, the sparkle of water, the green pastures, the flowers in full bloom and its fragrance, the clear azure sky are all things of the past for old Bangalore. They were gifts of nature carefully nurtured, preserved and protected by our city builders and planners of yesteryears who had the vision and a sense of belonging to this once beautiful city. They gave to posterity the Lalbagh Gardens and the now forlorn Cubbon Park.

28. The foul smelling air, the muddy water, the murky sky, heaps of garbage, men easing themselves by road-sides and other public places, keeping company with stray dogs aplenty, are things of the present. These are the gifts of our present day city-planners and city-keepers to the citizens of Bangalore. These are the "Experts" who keep chanting "keep the city clean", "keep the city beautiful" but do the very opposite whenever an opportunity comes.

29. The problem and the pain of the residents of Defence Colony in Indiranagar are not something peculiar to them. Every resident of Bangalore shares their misfortune in equal measure.

30. But as long as the builder operates within the framework of the law, this Court within its realm, can do nothing about it.

31. These Petitions fail. Firstly, on the ground that under the respective Sale Deeds executed by the Defence Colony Co-operative Housing Society in favour of its members/builders, or under the Sale Deed between the erstwhile CITB and Defence Colony Co-operative Housing Society, no restrictions were imposed against putting up more than one dwelling house; and Secondly, on the ground of laches and delay on the part of the petitioners in approaching this Court for the reliefs sought.

Petitions dismissed. No costs.