
(2014) 12 KAR CK 0166

In the Karnataka High Court

Case No : Writ Petition No. 14597/2006 (PIL) (LB-BMP)

M.C. Ravishankar

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Slum Areas (Improvement and Clearance) Act, 1973 — Section 3

Citation : (2014) 12 KAR CK 0166

Hon'ble Judges : D.H. Waghela, C.J.; Budihal R.B., J

Bench : Division Bench

Advocate : Ramesh Chandra, Advocate for the Appellant; Shweta Krishnappa, HCGP, Subramanya R. and Raju, Advocates for S. Raju and Associates, Advocate for the Respondent

Judgement

Budihal R.B., J.—The petitioners have filed this writ petition under Articles 226 and 227 of the Constitution of India as public interest litigation seeking writ in the nature of mandamus or any other writ or order directing the respondents to take immediate steps to clear all the unauthorized construction put up over the corporation park and road situated on the southern bank of the historical tank: Kempambhudikere, BMP Ward No. 49, Kempegowda Nagar, Bengaluru and to maintain the same in clean and proper condition. The petitioners have also sought to declare that transfer or handing over the corporation park and the road of the said area by respondent Nos. 1 and 2 to respondent No. 3 for construction of houses for rehabilitation of slum dwellers of Sanyasikunte and any other area as illegal and without jurisdiction and direct to restore the same to its original position.

2. The petitioners have contended that there is a tank constructed by Sri. Kempegowda, the founder of Bengaluru, and named the same after his family deity viz., Kempamma. The said tank is commonly known as Kempambhudikere. Respondent No. 2 had constructed corporation swimming pool with building in a portion of Kempambhudikere bank and formed a park known as corporation park

on the southern side of the above said tank. They have further contended that from the layout plan prepared by the BDA, it is clear that while handing over the area in which Ambabhavani layout was formed in Sy. Nos. 3 and 69 of Gavipuram village, on the northern side of said layout, there is a road and park and adjacent to the park, there is corporation tank. There are several illegal construction of huts over the corporation park and the inmates of the said huts have polluted the park, open space and tank by using the same as the place for answering nature's call, bathing, washing clothes and throwing unused waste materials polluting the entire atmosphere. Though many representations were submitted to respondent No. 2 to take action against such illegal construction and to maintain the park area in clean and proper condition, no action has been taken by respondent No. 2. Hence, the petition is filed seeking the aforesaid reliefs.

3. Respondent No. 2-Bengaluru Mahanagara Palike (BMP) filed statement of objections denying allegations made in the petition. BMP has contended that the area in which construction of houses was made for the slum dwellers would neither come within the Kempambudhi tank area nor on the road as contended by the petitioners. It is further contended that in between the tank and Ambabhavani layout, the slum dwellers were living in unhygienic condition without having any basic amenities or necessities. Therefore, on the request of the slum dwellers, in consultation with the Slum Clearance Board, it had taken up the task to improve their living conditions in the said area. Earlier, the municipal solid waste, human discharge and sewerage water was being lead into the nearby tank by the slum dwellers polluting the tank water. The authorities, with a view to avoid the same, decided to put up construction providing houses with proper sewerage and drainage system. The corporation council had also taken a decision on 26.10.2005 to hand over the said land to the Slum Clearance Board to enable them to construct houses for the slum dwellers. The State Government accorded approval on 24.6.2006 by accepting regulation of the BMP. The averments in the petition are specifically traversed and it is prayed to reject the petition.

4. Respondent No. 3-Slum Clearance Board has also filed separate statement of objections refuting the allegation that there is unauthorized construction over the park and road area as alleged by the petitioners. It is contended that an extent of 1 acre 32 guntas of land was occupied by 410 slum families and the same was in existence since about 40 years. Since the area was unhygienic and required to be developed and redeveloped, respondent No. 3 took action to declare the said area as slum area as per Section 3 of the Karnataka Slum Areas (Improvement and Clearance) Act 1973 and accordingly, on 23.12.1995, proposal was sent to Deputy Commissioner, who in turn issued preliminary notification under Section 3 of the said Act on 20.1.1996 calling for objections from the persons interested. Neither Karnataka Housing Board nor anybody filed objections against the proposed declaration of the said area as slum area and hence, the Deputy Commissioner issued final notification under Section 3 of the Act on 25.3.1996

declaring the area as Sanyasikunte Slum area. The area was reserved for residential purpose and the said area was not notified as a park. Hence, the provisions of Karnataka Park, Play Fields and Open Spaces (Perseveration and Regulation) Act, 1985 are not applicable to the case on hand. Respondent No. 3 requested BMP to transfer the said vacant land in its favour and accordingly, the BMP passed a resolution in the council meeting held on 23.6.2005 vide subject matter No. 20(105) to transfer the said vacant land in favour of R-3, free of cost. The said resolution was sent to the Government and after considering the said proposal, the Government accorded approval vide order No. UDD 320 MNG 2005 dated 24.6.2006. It is also stated by respondent No. 3 that the said extent of BMP vacant land was fully separated by permanent protective compound wall built by the BMP itself. The BMP sent a proposal to the Government of India for approval and the Central Government released grant for construction of 206 houses under its scheme called VAMBAY during year 2002-03. After getting such approval from Government of India and getting the land from BMP, construction of 206 houses was taken up. The constructed houses were allotted in favour of slum dwellers during the year 2009. The construction was not at all taken up in the Kempambudhi area or park and no trees were cut during the course of construction. It is stated that all such allegations raised by the petitioners in the petition are false and hence, sought dismissal of the petition with cost.

5. Heard arguments of learned counsel appearing for both sides.

6. Learned Counsel for respondent No. 2 relied upon decision of the Hon'ble Supreme Court in Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others, . Learned High Court Government pleader for respondent No. 1 has also relied upon the decision in case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, .

7. We have perused the pleading of the parties and the decisions relied upon by learned Counsel for the respondents which are referred above.

8. The material on record clearly shows that slum dwellers were residing in the area in question since 40 years. In order to make the area more hygienic and to provide houses for the slum dwellers with a drainage system for proper discharge of the waste without causing any damage to the park, respondent Nos. 2 and 3 made efforts to declare the said area as slum area and 1.32 acres of the area had been declared as slum area. These contentions of the respondents are supported by preliminary and final notifications issued by the BMP and also the proceedings of the Government of Karnataka granting approval to the aforesaid resolution passed by the BMP. The statement of objections filed by respondent Nos. 2 and 3 supported by affidavits of their responsible officers and officials points out that the proceedings for declaring the area in question as slum area had been sent to the Government of India and the same was approved by the Central Government and released grant for construction of 206 houses under the Central Government Scheme in the year 2002-03.

9. We have also perused the layout plan as per Annexure-R6. In the layout plan, it is clear that the houses were constructed neither in the tank area nor on the park area or the road. The layout plan as well as the photographs produced by the respondents go to show that BMP got constructed the permanent protection wall in between the constructions and the Kempambhudikere tank area. Therefore, the case of the respondents as pleaded in the objections statement is supported by the documentary evidence. The materials further make it clear that 206 houses were constructed and the families are residing in the said constructed houses.

10. For the contention of the petitioners that the houses are constructed on the park area and on the road, they have not produced any supporting material to prove their contentions, except the bare allegations in the petition. No documents have been produced by the petitioners to show that the area on which the construction is made for the slum dwellers was the notified park area. According to the objection statement of the respondents, the area in question was never notified as park area. Respondent No. 3 in the objection statement stated that the present writ petition is filed with an oblique motive to harass the slum dwellers. When the material on record clearly go to show that the slum dwellers are residing in the newly constructed houses and keeping the area clean and healthy, now it cannot be said that the slum dwellers have made any illegal construction as alleged by the petitioners. Looking to the averments and the material placed on record, the petitioners have utterly failed to show that any public interest was involved in filing such petition.

11. The area in question was declared as slum area by issuing notifications. Objections were called for from public by giving 15 days time and no objections were received as per the documents produced by the respondents. Ultimately, it was declared as slum area. If really the petitioners were having any apprehension, naturally, they would have filed their objections to the proposed declaration of the said area as a slum area. They have kept mum and filed the present petition before this Court. From the year 2006, unnecessarily the Government departments and the officers as well as officials of respondents were made to attend the proceedings at the cost of their valuable time which ought to have been devoted to the well being of the public at large. The petition is frivolous and filed with oblique motive to harass the respondents and more particularly, the slum dwellers staying in the said area.

12. The petition lacks merit and it is dismissed with cost of Rs. 30,000/-, which shall be paid by the petitioners to the respondents dividing it equally among the respondents and within one month.