

(2016) 10 KAR CK 0090

In the Karnataka High Court

Case No : W.P. No. 53032/2016 and W.P. No. 54225/2016 (LB-RES)

M/s. Baba Developers Pvt. Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2017) ILRKarnataka 474

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : Sri Nataraja H.J., Advocate, for the Petitioner; T.K. Vedamurthy, AGA, for the Respondent Nos. 1 to 4

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—The petitioner-Company has approached this Court by way of present writ petition with the following prayers:-

"(i) Issue a Writ of Certiorari or any other Writ quashing the demand notice under the heading of Immediate Action Dated 21.9.2016 passed by the 7th respondent vide Annexure "P" and the order dated 08.09.2016 vide Letter No.C.R/216/17/555 15.09.2016 passed by the 3rd respondent vide Annexure- "Q".

(ii) Issue a Writ or any other nature of Writ or order or direction as deem fit to meet the ends of justice.

(iii) Pass such other order or orders and grant such other relief in favour of the Petitioner as deem fit in the circumstances of the case in the ends of justice and equity

2. The Learned Counsel for the petitioner has vehemently argued that against the construction of the Gated Colony raised by the petitioner on the site situated at Sy.No. 2.85/1 measuring 10 acres and Sy.No.285/2 measuring 9 acres 28

guntas in Sugutur Village, Jangamakote Hobli, Chickballapur District., the respondent-Zilla Panchayath. Chickballapur, has quite illegally and unauthorisedly and without any notice and an opportunity of hearing to the petitioner, not only framed a Committee, but on the basis of the alleged survey of the sites in question, conducted by them, they have threatened that the action against the petitioner-Company including filing of the criminal case against it for alleged illegal layout of the colony, violating the orders/sanctions given in favour of them for the said layout.

The Learned Counsel for the petitioner has also submitted that in O.S.No. 178/15 filed by the petitioner in the Court of Prl. Civil Judge & JM FC at Sidlaghatta, the petitioner was granted an ex-parte temporary injunction on 17.04.2015 and status-quo order was also granted in M.A.No. 16/15 on 29.08.2015 by the Court of Sr.Civil Judge & JMFC, Chintamani, which was duly communicated to the concerned Tahsildar of Sidlaghatta, Chickballapur District, but still the respondent-Zilla Panchayath has undertaken the exercise at the behest of the complainant-respondent No.8 197 (Mr. Manjunath s/o Sri. Doddappa) and even on the committee members of the alleged committee framed by the said Zilla Panchayath, the kith and kin of the persons of the said complainant were included and on the basis of their report, the petitioner-Developer has been threatened with severe action including the cancelling of the khata entries in their favour and criminal prosecution and hence, the present writ petition has been filed by it.

3. The said respondent-Zilla Panchayath in the impugned Communication Annexure-Q dated 08.09.2016 has interalia recorded the following reasons for initiating the said action against the petitioner-Company. The relevant part of the said communication/report of the Zilla Panchayath, Chickballapur, is quoted below for ready reference:-

"Prior to formation of Residential sites, company has to execute a Relinquishment deed at free of cost with respect to Park, Civic Amenity sites, & Road in favour of Local authorities. It is seen that as per the Provision made at reference No. (2), the Baha Developers, who formed a layout, has formed a CA sites, Park, but they have not formed a road as per the sanctioned plan. It is seen that unofficially, additional 3 commercial purpose sites were formed in CA sites, as per physical verification of the layout, prima-facie, it is seen that the layout 198 was not developed as per sanctioned plan in related to this it is necessary that Re-survey has to be conducted from the Revenue Department.

It is seen from the spot inspection that CA sites, park place was reserved as per official memorandum which is at reference No. 2, and also using of said reserved land for agricultural purpose unauthorisedly instead of using it for purpose which is reserved and Sri.Baba developers Pvt. Ltd., company created situation to use the reserve land for unauthorized purpose instead of using it for authorised purpose ".

4. Having heard the Learned Counsel for the petitioner, this Court is of the clear opinion that the present case does not call for any interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. It cannot be said that the respondent-Zilla Panchayath had no jurisdiction to initiate any action against the Developer, even if certain illegal constructions were found to have been raised by it. From the report, it prima-facie appears that not only excessive number of sites were formed by the petitioner-Company but the part of the land which was required to be surrendered and to be reserved for developing civic amenities like Park etc., in the said layout were also not yet surrendered and developed for that purpose.

5. A perusal of one of the Communication of the petitioner addressed to the President and Panchayath Development Officer of the said Zilla Panchayath, J. Venkatapura Gram Panchayath, Sidlaghatta Taluk, Annexure-M dated 28.11.2015 and the relevant extract which is quoted below, would reflect the conduct of the petitioner-Company itself in the said communication, while on the one hand, the petitioner-Company has stated that we are ready to register the existing area which we left for roads, park area and common area in Sy. No. 285/1 and Sy. No. 285/2, but since there is a status-quo order as obtained by the petitioner-Company itself from the Appellate Court in the aforesaid civil suit, they are waiting for the legal clearance.

"This is to confirm that personal talk we had with you, we are ready to register existing area which we left for Roads, Park area and common area in Sy.No.285/1, 285/2, old Sy.No.59 at Sugutur village, Jangama Kote Hobli, Siddlaghatta taluk to J. Venkatapura Grampanchayath. Since there is a status-quo order on this Sy.Nos.we are waiting for legal clearance

While on the one hand, what is the petitioner-Company was expected to do, is sought to be delayed by him under the garb of the same status-quo order and taking shelter of the same, the petitioner-Company wants to stall even if a legal action is sought to be taken against the party for the alleged illegal construction raised by him. The petitioner cannot be permitted to have a cake and eat it too.

6. The case of this nature, obviously, involves the investigation into complex and multiple facts. Whether the Developer has illegally and unauthorisedly developed the layout in question or not and whether he has encroached the public land also or not, whether the civic amenities required to be developed for the residents of the said area, have been properly utilised or not, are all questions of facts.

7. If the concerned public authority like the Zilla Panchayath in the present case, even though on the complaint of the private persons, has held certain investigation into the said development of layout by the petitioner-company and prima-facie found certain illegal construction raised and interalia, also initiated action against the concerned officials of the Gram Panchayath, who had favoured the petitioner-Company at the relevant point of time in granting such sanctions like in the present case, Mr.B.C.Shankarappa, the then Secretary of the Gram

Panchayath, it cannot be said or presumed that whatever the petitioner-Company says now should be assumed as a gospel truth that no illegal construction or encroachment was done by him. These kind of enquiries and investigation even ex-post facto the construction having already been raised, is not ruled out and it cannot be said that they are actions without jurisdiction so as to require the interference by this Court under Article 226 of the Constitution of India.

8. The petitioner has admittedly, already filed a civil suit which is pending trial and at the stage of temporary injunction, the petitioner has already invoked the appellate jurisdiction of the First Appellate Court which has granted the status-quo order in its favour on 29.08.2015, the petitioner-Developer cannot be permitted to stall all Government action against him under the garb of said status-quo order.

9. The Courts below should also take into account all relevant aspects of the matter before granting such blanket orders in the nature of a status-quo, because there may be contingencies and developments arising subsequently, requiring the application of mind by the concerned Courts below, which requires a modification or suitable direction to the concerned authorities in a pending Us before them. This Court is constrained to find the trend of spreading and scattering the litigation in various forums in these types of cases including this Court in the extraordinary jurisdiction, even though the parties concerned ought to have raised their respective grievance in the concerned competent Civil Court, where alone in these kinds of cases, the relevant evidence which is proved in accordance with law before the concerned Civil Court, they could weigh such evidence and grant appropriate directions. Even if such case requires impleadment of new parties, including the Government bodies and Public Bodies, the Courts below should try to decide the entire controversy in a single Us pending before it and for that purpose, can permit the parties to amend the cause title and the pleadings while the main lis remains of the same nature, between the same parties essentially of the same nature.

10. Filing of such petitions and appeals at different forums in different Courts is obviously likely to result in conflicting orders which would confuse the Public Bodies concerned to implement such orders. Therefore, this Court is not inclined to entertain this writ petition at this stage.

11. Coming to the principle ground of attack of the petitioner viz., the breach of principles of natural justice and giving of no notice by the concerned Zilla Panchayath before constituting the said committee and giving the impugned Report Annexure-Q, this Court is of the opinion that Annexure-Q Communication is nothing but a report of a preliminary investigation made by the committee constituted by the concerned Zilla Panchayath and certain actions have been sought to be initiated on the basis of the said report which was purportedly given after the spot inspection.

12. It cannot be believed that the petitioner-Company which has developed a huge chunk of land and has constructed a Gated Colony, would not be aware of such spot developments and inspection carried out by the members of the constituted committee. Even otherwise for merely carrying out the inspection by the constituted committee, there is no statutory provision necessitating giving of a prior notice to the Developer before giving these kind of report. The findings given in the said Report are required to be met by the Developer and Builder and if any appropriate legal action is initiated against it to defend the same in accordance with the provisions of law. It would be premature to say that such report itself is without jurisdiction and no action even can be initiated against the Developer, even if something illegal is found against the builder. The Court cannot act on the basis of such Report or mere apprehension of the petitioner as it is not an order passed by any quasi-judicial authority or a public authority referring certain findings.

13. Apparently, since the writ petition not only premature, but involves multiple and complex question of facts, this Court is not inclined to invoke its extraordinary jurisdiction at this stage. The petitioner is of-course free to avail its remedy in the pending civil suit filed by it and which is pending trial in the competent Civil Court or pursue the public authority who may initiate appropriate action in accordance with law on the basis of the said report.

14. The writ petition thus found to be premature and is liable to be dismissed and accordingly, dismissed. No costs.

15. A copy of this order be sent to the Respondents forthwith.