
(2012) 04 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 1514 OF 2012 (BDA)

M/s. Pentadyne and M/s. Prestige Estate Projects Ltd.

APPELLANT

Vs

The Commissioner Bangalore Development Authority (BDA)
T. Chowdaiah Road K.P. West Bangalore-560020 and The
Town Planning Member Bangalore Development Authority
(BDA) T. Chowdaiah Road K.P. West Bangalore-560020

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 17 (3), 32, 32 (6) (iv)

Citation : (2012) 04 KAR CK 0070

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

**Advocate : Priscilla John, for M/s Tomy Sebastian Associates, for the Appellant;
K. Krishna, for the Respondent**

Judgement

Mohan Shantanagoudar

1. The properties bearing Sy. No. 133 (old Sy. No. 123), measuring 4 acres 38 guntas, including 10 guntas of Kharab, Sy. No. 134/2 (old Sy. No. 123) measuring 3 acres, Sy. No. 135 (old Sy. No. 123) measuring 2 acres 10 guntas including 10 guntas of kharab, Sy. No. 137 (old Sy. No. 122) measuring 2 acres 18 guntas, including 22 guntas of kharab, sy. No. 18 (old Sy. No. 123/P1) measuring 14 acres 27 guntas, in all measuring 14 acres 27 guntas situated at Nagondanahalli Village, Krishnarajapuram Hobii, Bangalore East Taluk are stated to have been owned and possessed by M/s. Pentadyne, a partnership firm. M/s. Prestige Estates Projects Limited is the developer. It has the Power of Attorney from M/s. Pentadyne. The petitioner, with a view to develop the said properties, filed application u/s 32 of Bangalore Development Act, (for short hereinafter referred to as the BDA Act) seeking sanction to carry out the development. The BDA has rejected the application filed by the petitioner by issuing endorsement at Annexure-Z, dated 2.11.2011 on the ground that the land is proposed to be acquired for formation of late D. Devaraj Urs Layout. Sri K. Krishna, learned

advocate appearing on behalf of the respondent-BDA submits that the property in question is identified by the BDA for formation of D. Devaraj Urs Layout. Since the layout is to be formed in the near future by acquiring the property in question along with other properties, the application filed by the petitioners for grant of sanctioned plan is postponed.

2. The questioned involved in this writ petition is already decided by this Court in number of judgments such as in WP. Nos. 33709-33712/2011, disposed of on 16.11.2011, WP. Nos. 1917-1918/2012, disposed of on 20.3.2012 and WP. No. 2856/2012, disposed of on 21.3.2012, etc.

3. It is not in dispute that the notification u/s 17(3) of the BDA Act (preliminary notification) is not issued as yet. If it is so, the impugned endorsement at Annexure-Z, dated 2.11.2011, runs contrary to Sections 32(6)(iii-a) and 32(6)(iv) of the BDA Act.

Sub-clause (iii-a) of Sub-section (6) of Section 32 of the BDA Act specifies that the sanction to proceed with the developmental activity may be refused by the BDA if the proposed extension or layout is on the land which is proposed to be acquired for the purpose of developmental scheme of BDA and in respect of which, a notification under sub-section (3) of Section 17 has already been published. In the matter on hand, admittedly such a notification is not published. Hence the BDA cannot refuse sanction to the petitioner.

Clause (iv) of Sub-Section (6) of Section 32 discloses that the sanction may be refused if the lay-cut in the opinion of the Authority cannot be fitted with any existing or proposed expansion or development schemes of the Authority. In the matter on hand, there is nothing on record to show that the layout to be formed by the petitioner cannot be fitted with any existing or proposed expansion or development schemes of the BDA. It is also not in dispute that there is no existing development scheme and consequently there is no question of expanding the development scheme arises. There is no development scheme as such of the BDA which is finalized involving the petitioner's property, till today.

Section 32(6)(iv) of the BDA Act cannot be pressed into against the petitioner, inasmuch as the proposed expansion or development Scheme is not formed in the area in question till this day, by the BDA. It is not in dispute that the properties in question are yet to be acquired. Not even a preliminary notification is issued u/s 17(1) of the BDA Act. The development Scheme in respect of the proposed D. Devaraju Urs Layout is also not prepared and finalized as contemplated under Sections 15, 16 and 17 of the BDA Act till this day. The document at Annexure-E, dated 20.12.2011, produced along with the affidavit, by the BDA is a resolution passed in Subject No. 403/2011. The same clearly reveals that the preliminary notification is not issued proposing to acquire the lands in question along with the various adjoining lands for formation of D. Devraj Urs Layout. The same also mentions the understanding by the BDA of the provisions of BDA Act to the effect that unless the preliminary notification is

issued, the developmental activities by the land owners cannot be stopped. Said observations of the BDA in the aforementioned resolution are in accordance with law. Where, however a scheme comes into force although it may cause hardship to the individual owners as they may be prevented from making the most profitable use of their rights over property, having regard to the drastic consequences envisaged there under, the statute should be considered in such a manner as a result whereof greater hardship is not caused to the citizens than actually contemplated thereby. The Courts cannot also be oblivious of the fact that the owners who are subject to the embargos placed under the statute are deprived of their valuable rightful use of the property for a long time. In the matter on hand, as aforementioned, not even a preliminary notification is issued so also the scheme is not finalized as per the statute. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or statutory rules.

4. In view of the above, the impugned endorsement is liable to quashed. Accordingly, the following order is made:-

The impugned order at Annexure-Z, dated 2.11.2011, stands quashed. Respondent-BDA is directed to consider the application of the petitioner in respect of the aforementioned properties in accordance with law and on merits, as early as possible, but not later than the outer limit four months from the date of receipt of this order.

Writ petition is disposed of accordingly.

It is made clear that the application of the petitioner for grant of sanction shall be considered in respect of the other points on merits, except the point which is already decided by this Court