

(2013) 07 KAR CK 0332

In the Karnataka High Court

Case No : Writ Petition No. 45875 of 2011 (LB-BMP)

M/s. Presidency Education Trust (Registered)

APPELLANT

Vs

Bruhat Bangalore Mahanagara Palike and Bangalore
Development Authority

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0332

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : S. Shaker Shetty, for the Appellant; Giridhar, for R-1, Sri. M.B. Prabhakar, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Nagamohan Das, J.—The subject matter of this writ petition is a civic amenity site bearing No. 11, J.P. Nagar VI Phase, Bangalore city. The respondent BDA allotted the site in question in favour of petitioner-Trust as per the allotment letter dated 8.3.2011. Subsequently on 26.11.2011 there came to be a lease cum sale agreement between the petitioner and the respondent. Further petitioner contend that they have paid a sum of Rs. 8,40,701/- as the first annual installment. Annexure-E is the possession certificate dated 29.11.2011. Thus the petitioner contends that they are in possession and enjoyment of the civic amenity site referred to above. The first respondent without any authority is preventing the petitioner from putting up construction and are illegally dumped certain playing equipments on the site in question. Therefore, the petitioner is before this court for a writ of mandamus restraining the respondents from entering into possession of the site in question and not to prevent the petitioner from putting up school building. After service of notice first respondent entered appearance and filed statement of objections inter alia contending that the Government vide notification dated 15.04.2011 notified the site in question as a park under the provisions of Karnataka Parks, Play-Fields and Open Spaces

(Preservation and Regulation) Act, 1985. It is contended that the site in question was handed over to the first respondent and they have established a play field for the children by investing a sum of Rs. 27 lakhs and they have installed play equipments valued @ Rs. 30 lakhs. The second respondent has no authority to allot the site in question in favour of the petitioner and to enter into lease agreement with them. The second respondent filed separate statement of objections inter alia contending that on 17.03.2012 the Engineer Member, Engineer Officer and Executive Engineer of the second respondent Authority inspected the site and noticed that the site in question has been developed as a park and the same cannot be allotted to any institution. In this regard, the second respondent is contemplating to take action to cancel the allotment in favour of the petitioner. In view of the interim order granted by this court, the second respondent is now prevented from proceeding to take further action in the matter. On these grounds, the respondents opposed the claim of the petitioner.

2. Heard arguments on both the side and perused the entire writ papers.

3. On one side petitioner contend that they are in possession and enjoyment of the site in question having acquired the same from the second respondent under letter of allotment dated 8.3.2011, registered lease cum sale agreement dated 26.11.2011 and the possession certificate dated 29.11.2011. On the other hand, first respondent contend that by virtue of the Government notification dated 15.04.2011 they are in possession of the site in question and they have developed the property by investing huge sum of money. These disputed facts cannot be gone into in this writ petition. Second respondent who has allotted the site in favour of the petitioner in its statement of objections specifically admitted that the first respondent has developed the site in question into a park and they have installed sport equipments by spending huge money. It is further contended that second respondent is contemplating to take action for cancellation of site in favour of petitioner. In the circumstances, I am of the considered opinion that no writ of mandamus can be issued as prayed for by the petitioner. Accordingly, the writ petition is hereby dismissed.