

(2013) 07 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 40770 of 2012 (LB-RES-PIL)

Nagaraja Rao and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Constitution of India, 1950 — Article 21

Karnataka Urban Development Authorities Act, 1987 — Section 39

Citation : (2013) 6 KarLJ 133

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Ashok Haranahalli, for M/s. Ashok Haranahalli Associates, for the Appellant; Sriyuths R. Devdas, Additional Government Advocate, G.S. Balagangadhar and A.V. Gangadharappa for M/s. AVG Associates, for the Respondent

Judgement

B.V. Nagarathna, J.—The petitioners who are stated to be the residents of Gopala Layout and Vivekananda Layout of Shimoga City, have filed this writ petition seeking a declaration that the action of the respondents in diverting parks in the said layouts for sports and commercial complex is illegal and without authority of law. The resolution of respondent 4-Shimoga Urban Development Authority ("Authority" for short), which is at Annexure-A is also assailed. The petitioners claim to have filed this writ petition in public interest. According to them, Gopala Layout is formed by the Authority within which an area of 2 acres has been reserved for a park. Vivekananda Layout is an approved layout and 30 guntas has been reserved as a park. These areas are adjacent to each other. The parks are maintained by the Authority and provide lung space to the residents of the two localities as well as children of the schools in the vicinity of the parks. The State Government has decided to construct a sports and commercial complex in Shimoga City in an area of six and a half acres having swimming pool, skating rink, indoor sports complex and twenty-five shops. Annexure-D is the project plan. Accordingly, the Authority passed a resolution to handover the parks to the

5th respondent-Department of Sports and Youth Services without calling for any objections from the public. On coming to know of this project and the intended diversion of public parks for a sports and commercial complex, the residents of Shimoga including the petitioners made several representations to the respondent-authorities as well as the Minister in-charge of Shimoga District. Despite opposition from the residents of the area, the respondent-authorities have proceeded to implement the project and cut down several trees without obtaining any permission from the Tree Authority. Therefore, the residents are, thereby deprived of open spaces meant for recreation. According to the petitioners, the proposed project is illegal and impermissible as the area reserved for parks and open spaces cannot be diverted for any other purpose. Being aggrieved by the action of the respondents in diverting the area reserved for parks and open spaces for construction of sports and commercial complex, the petitioners have assailed the same.

2. Statement of objections has been filed on behalf of the State Government contending that the petition styled as a public interest litigation is an abuse of the process of Court as it is in order to benefit certain vested interests and is not in public interest. The petitioners have tried to protect the interest of those who are running a school by name "Ramakrishna Vidhyaniketan School" adjacent to the park in question. The school administration has encroached upon a portion of the park by putting up temporary structures and also using the same for parking vehicles belonging to the school authorities and visitors of the school. In fact, the authority has issued notice to the school under the provisions of Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974. These facts have been suppressed by the petitioners, who, through this petition are seeking to legitimise their unauthorised occupation. It is also contended that the first petitioner has leased buses to the school and has been using the park area for stationing the buses and the second petitioner is closely associated with the school and a relative of a teacher in the school. Denying other allegations made in the writ petition, it has been contended that the Comprehensive Development Plan (Revised) of Shimoga-Bhadravathi Local Planning Area read with Zoning Regulation provides that parks, playground and open spaces can be used for recreational purposes and also used as cemeteries, crematoria etc. In the instant case, the area in question is sought to be used for sports purpose, which is a permissible user under law. Therefore, the State has sought dismissal of the writ petition.

3. Objections have also been filed by the 4th respondent-authority stating that 2 acres of land has been reserved as a civic amenity site in Vivekananda Layout of Shimoga City, which is presently being used as a park. An adjacent area of 30 guntas is also converted as a park. That Gopala Layout and Vivekananda Layout have eight to ten other parks. It is true that the respondent-authorities intend to construct a stadium for indoor and outdoor games and other sporting activities on the areas in question. The Authority by its resolution dated 17-8-2009 resolved to handover 2 acres 35 guntas of land to the 5th respondent. As per the

Zoning Regulations, in parks, playgrounds and open spaces, stadium and other recreational uses are permitted. Under certain circumstances, certain amenities which are ancillary to the permitted user is also allowed to an extent of 5% of the total area. The decision taken by the Authority is in conformity with the Zoning Regulations which permit the user for a sports complex and ancillary user. The allegation that a commercial complex is being put up on the park is false. There is no diversion in the land use. Substantial investment is made by the State Government for construction of a sports complex. The writ petition does not espouse any public interest and therefore, should be dismissed.

4. A rejoinder has been filed by the petitioners denying the averments made by the State and the 4th respondent contending that if the park area has been encroached by the school, then action would have to be initiated for removal of encroachment. The encroachment on the park by the school authorities is not within the knowledge of the petitioners and neither they are espousing any individual cause through this petition. Section 39 of the Karnataka Urban Development Authorities Act, 1987 (hereinafter referred to as "the Act") prohibits the use of the areas reserved for parks, playgrounds and civic amenities for other purposes by way of sale or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities, for any other purpose and any disposition so made is null and void. Therefore, action of the respondent-authorities is contrary to Section 39 of the Act. Further, unless the approved plan of the layout and the extension is modified or diverted in accordance with law, the authorities cannot be permitted to convert the area reserved for park or for any other purpose.

5. Learned Senior Counsel, Sri. Ashok Haranahalli, appearing for the appellants contended that an extent of 2 acres 35 guntas has been reserved for a park and 1 acre 26 guntas for a playground. But the respondent-authorities have intended to divert the said area for the construction of a sports complex as well as a commercial complex. This is in total violation of the approved layout plan as well as the Zonal Regulations. On account of the impending construction, the residents of the two localities and the public in general would be deprived of lung space and open area and in particular the children would be deprived of an area which is being utilised as a playground. This diversion of park and playground for construction of a sports and commercial complex is in violation of the Act as well as the Zoning Regulations. Relying on two decisions of the Apex Court, he contended that the action of the respondent authorities be quashed and the area be reserved for parks and playground.

6. Countering the said arguments, learned Additional Government Advocate appearing for respondents 1, 2 and 5 contended that this writ petition is a motivated one, filed only to ensure that the encroachment made by Ramakrishna Vidhyaniketan School is perpetuated and legalised and that the petitioners have a private interest in filing this writ petition. They are not espousing any public cause or public interest. The utilization of the area reserved for park and

playground for setting up of a sports complex is permissible under the Zoning Regulations. The area in question is not utilised for a commercial purpose as such. Certain amenities which are ancillary for a sports stadium would be put up, such as food stalls etc. There is no diversion for any contrary purpose. Hence, there is no merit in this writ petition and the same has to be dismissed with exemplary cost.

7. Learned Counsel appearing for Urban Development Authority has stated that the State Government has taken a decision to put up a sports complex of international standards in Shimoga City, both for indoor as well as outdoor games. In order to achieve this purpose, the area in question has been sought to be utilized in putting up of a sports complex. Accordingly, a resolution was passed on 17-8-2009 by the Authority. This resolution has been approved by the State Government and is in accordance with the Zoning Regulations with regard to land use made by the Comprehensive Development Plan (Revised) of Shimoga-Bhadravathi Local Planning Area which has provided permission for user under special circumstances vis-a-vis park, playground, open spaces and recreational areas. There is no illegality in utilising the area for the said purpose. There are other parks available in nearby areas of the city. Thus, there is no merit in the writ petition which deserves to be dismissed.

8. From the material on record, it is established that certain areas reserved for park and play ground in Gopala Layout and Vivekananda Layout are sought to be utilised for the purpose of construction of a sports stadium along with all ancillary facilities. As per the resolution of the Authority (Annexure A), 2 acre 35 guntas situated adjacent to Ramakrishna School in Swamy Vivekananda Layout is transferred for the construction of a club house and a swimming pool and an extent of 1 acre 26 guntas is proposed to be utilised for construction of a Tennis Court complex as per the decision taken by the Department of Youth Service and Sports. Under the circumstances, a decision to transfer those parcels of lands to the State Government has been taken by the Authority vide Resolution dated 17-8-2009. Thereafter steps have been taken for putting up the proposed construction of sports complex and other ancillary services and a ceremony for the District sports complex project was held on 15-8-2012. It is also not in dispute that the said two parcels of lands had been reserved for parks, playground or open spaces and were being utilised for the said purposes.

9. It has also been brought to our notice by the Authority's Counsel that in respect of Park in Gopala Layout, there has been encroachment by Sri Ramakrishna Vidhyaniketan School and in that regard, a notice dated 18-8-2007 was issued under the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 by the Authority to the Managing Trustee of Sri Ramakrishna Vidyashrama Trust, which is running the school, by stating that the area, adjacent to the school had to be maintained as a park, but a part of it had been encroached by the school and therefore, the school had to be evicted from the said area. A copy of the order passed by learned Single Judge in W.P. No.

32293 of 2009, dated 22-2-2010 has been submitted by learned Counsel for respondent 4. A perusal of the said order would make it apparent that the school had assailed the notice dated 6-10-2007 issued under the said Act, in M.A. No. 65 of 2007 and the order of dismissal of the appeal passed on 23-10-2007 by the District Court, Shimoga, was challenged in the writ petition filed by the school. In the writ petition, there was an order of remand, by directing the Authority to issue fresh show-cause notice with regard to the alleged encroachment made by the school and to pass orders in accordance with law.

10. The facts of this case have to be firstly considered in the light of the averments made in the statement of objections filed on behalf of the State. It has been averred that the first petitioner has leased his busses to the school and has been using the park area in question for stationing his buses and that the second petitioner is a relative of a teacher working in the school. On the basis of the said facts, the State has contended that this petition is motivated wholly by private interest and, therefore, deserves to be dismissed. By way of a rejoinder, all that the petitioners have stated is that if there is encroachment upon the park by school by putting up construction, action has to be initiated against the school to remove the encroachment. There is no denial of the averments made by the State Government with regard to the private interest of the petitioners in filing this writ petition. If the allegations made by the State in their objections were really false or untrue, then the same could have been countered by the petitioners.. In the absence of any denial of the specific allegations made against the petitioners, we have to inevitably infer that the allegations are true and that this writ petition has been filed keeping in mind the private interest of the petitioners. Therefore, the petition being motivated, cannot at all be styled as a public interest litigation. On this short ground alone it was liable to be dismissed with costs.

11. However, we propose to consider the case also on merits. Counsel for the Authority has filed Comprehensive Development Plan (Revised) of Shimoga-Bhadravathi Local Planning Area comprising of the zoning of land use and regulations. As far as parks, playgrounds, open spaces and recreational activities are concerned, the Zoning Regulations prescribe as follows:

Uses permitted:

Sports grounds, stadium, playgrounds, parks, swimming pools, other recreational uses, cemeteries, Garden land, crematoria, etc.

Uses permitted under Special Circumstances:

Open air theatres, indoor recreational uses, dwelling for watch and ward, nursery schools, clubs, canteens, libraries, dispensaries, milk booths and public use ancillary to park and open spaces, the area of such ancillary use not exceeding 5% of the total area.

12. Even according to Zoning Regulations, a sports stadium, swimming pool and

other recreational uses are permitted in a park, playground open spaces and recreational areas. Under special circumstances, certain users such as indoor recreational clubs, open air theatres as well as ancillary user such as canteen not exceeding 5% of the total area are also permitted. In the instant case, the State Government has decided to construct a stadium both for indoor and outdoor games and sports, including swimming pool and Tennis Court. Construction for sports and games is permissible under the Zoning Regulations as well as ancillary use not exceeding 5% is also permissible in the form of a club house, food court, or for any ancillary public use stated therein. It is in the light of the Zoning Regulations, that decision of the State Government to construct a sports complex is sought to be given effect to, by transferring the land in question to the State Government pursuant to the Resolution passed by the Authority. We are of the view that the action of the respondent-authorities is in accordance with law and unassailable, as no illegality has been made out by the petitioners. Moreover, the resolution was passed in the year 2009, but the writ petition has been filed only in the year 2012 assailing the action of the respondents.

13. In *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others*, , Hon"ble Supreme Court has held that where there is a development plan prepared for an area for a specified number of years, no one can use the land falling within the area for a purpose other than for which it is earmarked. This decision does not assist the petitioner in any way, as in the instant case, the proposed construction of a sports complex is permitted user under the Zoning Regulations extracted above.

14. In *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , while advertng to the public trust doctrine, the Hon"ble Supreme Court held that permission granted by the Municipal Corporation to build an underground shopping in a park was violative of the obligatory duty of the Municipal Corporation and also Public Trust Doctrine. According to the Hon"ble Supreme Court, when the State holds a resource which is available for the free use of the general public, the Court will look with considerable skepticism on any governmental conduct which is calculated either to reallocate the resource to more restricted uses or to subject public uses to the self-interest of private parties. This public trust doctrine is an off-shoot from Article 21 of the Constitution of India. Having regard to the facts in the present case, we do not think that either Article 21 or Public Trust Doctrine has been violated.

15. We infer that the only intention of the petitioners is to ensure that the park adjacent to the school is not utilised for any other purpose, so that the school as well as the petitioner 1 could continue their use and encroachment. This only makes apparent the oblique motive of the petitioners in trying to stall the project which is in public interest. This petition, in fact does not espouse any public interest, but it is intended to serve private interest against the public interest. Under such circumstances, it is the duty of this Court to dismiss the petition with costs. The costs are quantified at Rs. 20,000/- payable to each of the

respondents 4 and 5 herein, within a period of two months from the date of receipt of a certified copy of this order, failing which the respondents are at liberty to seek recovery of the same in accordance with law.

16. Before parting with this case, we add that in recent times this Court has noticed that several petitions styled as "Public Interest Litigation" are filed, which are lacking in bona fides and ventilate purely private interests. It has to be ensured that the public interest litigant approaches the Court with a clean objective and clean hands, which has to be demonstrated at the threshold. The person trying to serve private interest would lack the locus standi to pursue a PIL. In *Dr. B. Singh Vs. Union of India (UOI) and Others*, , the Hon"ble Supreme Court has observed thus:

Busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except private profit either for themselves or as a proxy for others or for any other extraneous motivation or for glare of publicity cannot secure the aid of the Court.

Therefore, bona fide intention of the litigant is an essential requirement for treating a writ petition as Public Interest Litigation. Any personal purpose direct or indirect near or remote will not qualify as bona fide representation. According to the Supreme Court, if a litigant were to act for his personal gain or private profit or for some political mileage, cheap publicity and media attention, the same would have to be found out on the threshold, vide *Kushum Lata v. Union of India and Others* AIR 2011 SC 1834: (2011)5 SCC 29: 2011 AIR SCW 2346. The litigant is not supposed to come to the Court to settle personal or political scores or to malign somebody or with any other ulterior motive (*Raunaq International Limited v. I.V.R. Construction Limited and Others* AIR 1999 SC 2468 : (1999)6 SCC 464). The petition is accordingly dismissed with cost as aforesaid in para 16.