

(2009) 04 KAR CK 0029
In the Karnataka High Court
Case No : Writ Appeal No. 1295 of 2009

NEC Realestate Pvt. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Citation : (2009) 5 KarLJ 665

Hon'ble Judges : P.D. Dinakaran, C.J;V.G. Sabhahit, J

Bench : Division Bench

Advocate : K.G. Raghavan, for Dua Associates, for the Appellant; B. Veerappa, GA, for the Respondent

Judgement

1. This appeal is filed by the petitioner in W.P. No. 15348/2008 being aggrieved by the order dated 13.2.2009 wherein the learned Single Judge has declined to quash the order dated 26.11.2008 passed by the 2nd respondent and treated the impugned order as a show cause notice and directed the petitioner to file a reply to the said show cause notice and issued a direction to the respondents to consider the cause shown by the petitioner and allowed the writ petition in part keeping open all the contentions to be decided by the appropriate authorities.

2. The appellant herein filed W.P. No. 15348/2008 seeking for quashing of the order passed by the second respondent dated 26.11.2008, wherein the approval accorded by proceedings dated 18.11.2008 after following the due procedure by the State High Level Clearance Committee for the project of petitioner to set up a Tourist Complex, Commercial Space, Financial Hub, R & D facilities with Residential Condominium, Service Apartment and Medical City in Chalamakunte village, Chikkajala Hobli, Bangalore North Taluk, has been withdrawn from the date of issue on 26.11.2008.

3. According to the appellant-writ petitioner, the approval granted to it by proceedings dated 18.11.2008 conferred a right on the appellant-writ petitioner and the same cannot be withdrawn without affording an opportunity and

therefore the impugned proceedings dated 26.11.2008 withdrawing the approval granted on 18.11.2008, is arbitrary, unreasonable and violative of principles of natural justice and therefore the same is liable to be set aside.

4. But the respondents resisted the same on the ground that the earlier approval of the project by the State High Level Clearance Committee on 18.11.2008 and the consequential proceedings dated 18.11.2008 by the Government of Karnataka approving the project of the appellant-writ petitioner, would not, by themselves, confer any right on the appellant-writ petitioner and therefore the question of complying with the principles of natural justice does not arise.

5. The owners of the lands proposed to be acquired by the appellant-writ petitioner have also moved an application to implead themselves as party respondents and they accordingly got impleaded by order dated 13.02.2009.

6.1. The learned Single Judge, by order dated 13.2.2009 under appeal, after considering the submissions of the learned Counsel appearing for the parties, came to the conclusion that once the State High Level Clearance Committee duly approved the project under the provisions of Karnataka Industries (Facilitation) Act, 2002 and the Rules framed thereunder, such approval of the competent authority, having been made in accordance with law, would confer a substantial right on the appellant-writ petitioner and such a right accrued cannot be withdrawn without affording an opportunity to the appellant-writ petitioner, as It would otherwise have serious civil consequences.

6.2. The learned Single Judge therefore, held that the appellant-writ petitioner is entitled for an opportunity of being heard.

6.3. The learned single judge rejected the contention of the State that the appellant-writ petitioner has no right to seek an opportunity of being heard before passing the impugned order dated 26.11.2008 withdrawing the approval accorded to the appellant-writ petitioner vide proceedings dated 18.11.2008.

6.4. The learned single judge thus held that all the orders passed by the Government or by the State High Level Clearance Committee has no value in the eye of law and are unenforceable.

6.5. However, the learned Single Judge came to the conclusion that the impugned order need not be quashed and disposed of the writ petition as hereunder:

(1) Writ petition is allowed in part.

(2) Annexure-A shall be treated only as a show cause notice issued by the State High Level Clearance Committee to the petitioner asking him to show cause why the approval of his project accorded on 18.11.2008 should not be recalled or withdrawn.

(3) It is open to the petitioner to contend and raise all such defences which are available to him in law.

(4) The authorities shall after hearing the petitioner pass appropriate orders in accordance with law.

(5) It is submitted that the owners of the lands have already objected to the grant of land and are before the authorities and therefore, it would be appropriate for the authorities also to hear the owners of the land, if, the said land is meant to be given to the petitioner.

(6) All contentions urged in this petition by all the parties are kept open to be decided by the appropriate authorities.

(7) Consequent to Annexure-A, all the orders passed by the Government or by the High Level Committee has no value in the eye of law and are unenforceable.

(8) IA for impleading is ordered to be filed.

(9) No costs.

7. Aggrieved by the decision of the learned Single Judge that the proceedings dated 26.11.2008 (viz. Annexure-A) shall be treated only as a show cause notice issued by the State High Level Clearance Committee to the petitioner asking him to show cause why the approval of his project accorded on 18.11.2008 should not be recalled or withdrawn and the consequential directions therein, the petitioner has preferred the above writ appeal.

8. We have heard the learned Senior Counsel, Mr. K.G. Raghavan appearing for the appellant-writ petitioner and the learned Government Advocate appearing for the respondents reiterating their submissions made before the learned Single Judge.

9. Sri K.G. Raghavan, contends that the learned Single Judge, having observed that there is an apparent violation of principles of natural justice and also held that by approval of the project by the State High Level Clearance Committee dt. 21.8.2008 and consequential proceedings dated 18.11.2008 a right has accrued to the appellant-writ petitioner, ought not to have rejected the relief to quash the impugned order. However, the learned Single Judge rejected the relief sought for by the petitioner quashing the order, and therefore, the learned Senior Counsel submits that the impugned order, having been passed without giving an opportunity of being heard to the petitioner, lacks jurisdiction.

10. The learned Government Advocate is not disputing the fact that the State High Level Clearance Committee met on 28.8.2007, 13.3.2008 and 21.8.2008 and passed the order approving the project of the appellant-writ petitioner by order dated 18.11.2008. Pursuant to that, the proceedings, according approval to the project of the appellant-writ petitioner, also came to be passed on 18.11.2008. However, the learned Government Advocate reiterates the stand that the petitioner has no vested right based on the approval of the project by the State High Level Committee on 18.11.2008.

11. We also had the benefit of perusing the records relating to the impugned

proceedings produced by the learned Government Advocate.

12. We have given our careful consideration to the submissions of both sides.

13.1. The respondents are not disputing the fact that the State High Level Clearance Committee met on 28.8.2007, 13.3.2008 and 21.8.2008 and finally approved the project of the appellant-writ petitioner on 18.11.2008 and the proceedings also came to be passed on 18.11.2008.

13.2. Appreciating the same, the learned Single Judge came to the conclusion that the appellant-writ petitioner had an accrued right based on the approval of the project by the State High Level Clearance Committee by proceedings dated 18.11.2008. Since the approval dated 18.11.2008 was subsequently withdrawn by the impugned proceedings dated 26.11.2008 without providing an opportunity to the petitioner, the learned Single Judge held that all the orders passed by the Government or by the State High Level Clearance Committee has no value in the eye of law and therefore they are unenforceable, as the same violates the principles of natural justice.

13.3. The learned Single Judge having held that the impugned proceedings dated 26.11.2008 withdrawing the approval granted to the appellant-writ petitioner on 18.11.2008 in the State High Level Clearance Committee, has no value in the eye of law and the same are unenforceable, in our considered opinion, the same ought to have been quashed for violation of principles of natural justice. Consequently, the question of treating the impugned proceedings dated 26.11.2008 as show-cause notice does not arise, as contended by the appellant-writ petitioner herein.

13.4. The only reason that weighed with the Government while passing the impugned proceedings dated 26.11.2008 for withdrawing the approval granted by the Government on 18.11.2008, is stated as follows:

Since there is some legal hurdles in acquisition of 500 acres of land by KIADB and there is a case pending before the Land Tribunal on grant of occupancy rights, Hon"ble Chief Minister of Government of Karnataka, has ordered to withdraw the Government order issued on 18.11.2008 in favour of the company.

13.5. The original file discloses that the State High Level Clearance Committee, only in its 17th meeting held on 28.1.2009 ratified the decision taken by the Government on 26.11.2008 withdrawing the approval to the project on 18.11.2008. It is pertinent to note that when the proceedings dated 26.11.2008 was challenged in Writ Petition No. 15348 of 2008 and the matter was pending, the State High Level Clearance Committee by resolution dated 28.1.2009 ratified the decision of the Government dated 26.11.2008. Even in the said resolution dated 28.1.2009, the State High Level Clearance Committee observed as follows:

After detailed discussions and in view of the facts cited above, the Committee approved the proposal of the company to establish "Tourism Complex, Commercial Space, Financial Hub, R & D Facilities with Residential Condominium,

Service Apartment and Medical City in 500 acres of land in the above village subject to approval from Urban Development Department/BIAAPA to further process the request of the company and accord necessary approvals as per law.

The State High Level Clearance Committee by resolution dated 28.1.2009 further observed:

Subsequently, the Government vide order cited above at ref (3), has withdrawn the approval given for the project, since, there is some legal hurdles for acquisition of 500 acres of land by KIADB. There is a case pending before Land Tribunal for grant of occupancy rights of the land proposed for the project.

Further, Government vide letter cited above at ref (4) has informed to place the above subject before the SHLCC for ratification of the decision taken to withdraw the project approval vide G.O. dated 26.11.2008.

Decision of SHLCC:

The Committee noted the approval accorded by SHLCC held on 21.8.2008 and the order of the Government withdrawing the said approval on account of legal hurdles. The occupancy rights in respect of lands involved in this project are yet to be confirmed. This is jodi inam. land and a case is pending before the land tribunal. The Committee noted that the project proponents have also filed a writ petition questioning the withdrawal of approval. After detailed discussions and considering all relevant facts of the case, the Committee ratified the action taken by the Government in withdrawing approval for the project.

13.6. These legal hurdles for acquisition of the lands, which were cited in the impugned proceedings dated 26.11.2008, as well as the reason of pendency of the case before the land tribunal were already duly considered by the State High Level Clearance Committee while approving the project on 18.11.2008 itself, observed as hereunder:

The Principal Secretary to Government, Revenue Department, vide letter dated 28.4.2008 has informed that, the lands in Sy. No. 1 to 104 of Chalamanakunte village is Jodi Inam and there is a case pending before Land Tribunal on grant of occupancy rights. In this regard, the Committee felt that if the occupancy rights are confirmed, the occupants will get the compensation. Otherwise, the cost of lands to be determined by SLAO have to be remitted to the Government, as such there is no hindrance for acquisition, however it was felt that the consent of the revenue department is necessary in this regard.

Government has examined the recommendations made by the State High Level Clearance Committee in its 15th meeting held on 21.8.2008 In all aspects. Hence the following order.

GOVERNMENT ORDER NO: CI.334.SPI.BANGALORE DATED: 18(tm) NOVEMBER. 2008

In the circumstances explained above, Government is pleased to accord approval

to the proposal of NEC Real Estate Private Limited to set up a "Tourist Complex, Commercial Space, Financial Hub, R & D Facilities with the Residential Condominium, Service Apartment and Medical City" in Chalamanakute Village, Chikkajala Hobli, Bangalore North Taluk with an investment of Rs. 3,660.00 crores with the following infrastructural facilities incentives and concessions as approved in the 10th SHLCC meeting held on 28.8.2007.

INFRASTRUCTURE FACILITIES:

LAND:

KIADB to acquire and allot 500 acres of land on consent basis at different Sy. Nos. of Chalamanakunte Village. Chikkajala Hobli, Bangalore North Taluk. The company bring consent from the lawful and (sic) owners for minimum 75% of the proposed area of the project before commencement of acquisition by KIADB.

KIADB to initiate the acquisition process and may settle the compensation to the legal owners in accordance with the law. As mentioned above if the rights are not passed on to the holders of inamland, KIADB may remit the amount to be determined by Revenue Department to Government.

In the 15th SHLCC held on 21.8.2008, the decision of the Committee is as follows:

To establish the project in 500 acres of Chalamakunte village, Chikkajala Hobli, Bangalore North Taluk subject to approval from Urban Development Department/BIAAPA. Urban Development Department/BIAAPA to further process the request of the company and accord necessary approvals as per law. KIADB to approve plans, etc. only after clearance from the planning authority. Thereafter the project proponent will take all development activities.

WATER:

30 MLD of water to be met out by rain water harvesting and 20 MLD by recycling.

POWER:

50 MW power to be serviced from BESCO.

INCENTIVES AND CONCESSIONS:

As per Karnataka Tourism policy 2002-07.

ENVIRONMENT:

Company shall obtain CFE from KSPCB and ECC from Gol. No civil work shall commence prior to obtaining ECC.

EMPLOYMENT:

Project proponents shall play a pro-active role in enhancing the employability of local job seekers including the land losers. Further, the company shall prepare a

plan for development or human resources required for the project, train local people and provide employment to these trained local youth and comply with government policy of employment to local people, i.e. Dr. Sarojini Mahishi Report. A copy of Human Resources plan shall be sent to the Commissioner for J.D. and Director of Industries and Commerce for Monitoring.

VENDOR DEVELOPMENT:

Wherever there is scope for vendor development for the project, the company shall prepare a vendor development plan develop local vendors and procure the required inputs, components and sub-assemblies from these local vendor units. A copy of the vendor development plan shall be sent to the Commissioner for I.D. and Director of Industries and Commerce for Monitoring.

SOCIAL INFRASTRUCTURE DEVELOPMENT:

The Company is advised to take up social infrastructure development projects in the vicinity of the proposed location of the unit. A copy of such projects shall be sent to the Government.

OTHERS:

The promoter shall take all statutory and necessary clearances and shall submit milestones/progress in implementation of the project regularly, which will be monitored by the Departments Concerned and KIADB in particular.

This approval is valid for a period of two years from the date of issue.

By Order and in the name of the Governor of Karnataka Sd/- [Aparna Pavate]
Desk Officer (Technical Cell) Commerce and Industries Department.

13.7. It is therefore evident that the reasons stated in impugned proceedings dated 26.11.2008 for withdrawing the approval dated 18.11.2008 have already been considered by the State High Level Clearance Committee as well as by the Government and based on which a final decision was taken. In the absence of any new reasons for withdrawal, in our considered opinion, the withdrawal is perverse, mala fide and arbitrary. Hence, the withdrawal order dated 26.11.2008 is liable to be quashed. That apart, having approved the project with due consideration by the State High Level Clearance Committee as well as the Government, even assuming that if there is any fresh reason, the State High Level Clearance Committee only ought to have initiated action for such withdrawal and in any event the Government cannot take a decision in this regard and thrust the decision for ratification on the State High Level Clearance Committee, because it is settled law that when a statute prescribes a particular manner for doing a particular act, that act must be done in that manner alone [Taylor v. Taylor (1876) 1 CH.D. 426].

13.8. We, therefore, do not see any new reason either for the Government or for the State High Level Clearance Committee for issuing show cause notice for cancelling the approval of the project of the appellant-writ petitioner granted on

18.11.2008, as these reasons, which are cited in the impugned proceedings dated 26.11.2008 as well as the ratification proceedings dated 28.1.2009 have already been considered, weighed and a decision was taken by the Government as well as State High Level Clearance Committee before the approving of the project by proceedings dated 18.11.2008. Hence, treating the present final order as a show cause notice, in our considered opinion, does not arise at all.

13.9. It is also relevant to mention that the decision of the learned Single Judge that all the orders passed by the Government and by the State High Level Clearance Committee has no value in the eye of law and are unenforceable, is not challenged by the respondents at all, and therefore the said finding of the learned Single Judge in the order dated 13.2.2009, is binding on the respondents.

13.10. In that view of the matter, the impugned proceedings dated 26.11.2008 withdrawing the approval granted to the appellant-writ petitioner vide proceedings dated 18.11.2008 and the ratification proceedings dated 28.1.2009 are liable to be quashed, for the reason that weighed the learned Single Judge that all the orders passed by the Government or by the High Level Committee has no value in the eye of law and are unenforceable.

13.11. As the learned Single Judge has already impleaded the land owners as party respondents, it is needless to say that the approval of the project by proceedings dated 18.11.2008 is without prejudice to the right of the land owners and also subject to the finality of the case relating to occupancy rights that are pending before the Land Tribunal.

14. In the result, we pass the following:

ORDER

(i) That portion of the order of the learned Single Judge dated 13.2.2009 in Writ Petition No. 15348 of 2008 to treat the impugned proceedings dated 26.11.2008 of the first respondent withdrawing the approval granted by proceedings dated 18.11.2008 to the appellant-writ petitioner as show-cause notice and the consequential direction therein are set aside;

(ii) the impugned order dated 26.11.2008 withdrawing the approval of the project of the appellant-writ petitioner granted on 18.11.2008 and the consequential proceedings of the State High Level Clearance Committee dated 28.1.2009, ratifying the proceedings dated 26.11.2008 are quashed;

(iii) the Government is directed to proceed on the basis of the approval granted on 18.11.2008 as per terms and conditions mentioned thereunder, of course without prejudice to the rights of the land-owners and subject to the result of the cases pending before the Land Tribunal with regard to the occupancy rights of the land owners;

15. The writ appeal is disposed of with the above directions. No costs.