

(2014) 04 KAR CK 0168

In the Karnataka High Court

Case No : Writ Petition No. 39419 of 2012 (GM-SLUM-PIL)

R.V. Sridhar

APPELLANT

Vs

Bruhat Bangalore Mahanagara Palike

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Karnataka Slum Areas (Improvement and Clearance) Act, 1973 — Section 11, 3, 33, 6, 9

Citation : (2014) 3 KarLJ 654

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

Bench : Division Bench

Advocate : B.M. Hala Swamy, Advocate for the Appellant; Niloufer Akbar, Additional Government Advocate, K.N. Puttegowda, B. Ramaswamy Iyengar and Nagaraj N. Naidu, Advocate for the Respondent

Judgement

B.V. Nagarathna, J.—This writ petition is stated to be filed in public interest by certain residents of Malleshwaram, Bangalore, questioning Final Notification dated 29-9-2011 (Annexure-M), issued by the fifth respondent-Deputy Commissioner, Bangalore District, Bangalore, declaring land bearing CTS No. 1700, measuring 1,864.70 sq. mtrs., at 13th Cross, Malleshwaram, more fully described in the schedule (hereinafter, referred to scheduled land as Slum Area), u/s 3 of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 (hereinafter referred to as "the Act" for the sake of brevity). They have also, sought a direction against fourth respondent restraining it from putting up construction on the scheduled land and instead, to maintain it as a parking area. The petitioners have stated that respondents 1 to 3-Bruhat Bangalore Mahanagara Palike and its officers ("BBMP" for the sake of convenience) had devised a plan under the scheme called JNNURM - in abbreviation, to provide basic amenities to the urban poor. The said scheme is a Central Government. Scheme, which provides grant to an extent of 50% and the remaining expenditure has to be borne by the State Government to an extent of 37.5% and remaining 12.5% has to be borne by the beneficiaries under the Scheme. BBMP

identified five slum areas within the Corporation limits so as to provide basic service and amenities and invited tenders by Newspaper publication dated 22-2-2007. Sixth respondent was one of the bidders shortlisted by BBMP and he was awarded a work order on 30-4-2007. According to the petitioners, BBMP had identified an area near 13th Cross, Malleshwaram off Sampige Road, for the purpose of putting up residential quarters. As BBMP commenced construction of a multistoried dwelling complex on the identified land, the petitioners herein had filed W.P. No. 4804 of 2009, contending that there was no slum in the area and the employees of the BBMP had constructed houses, but BBMP had intended to get the area declared as a slum. That a four floored building complex consisting of forty-two flats was to be built on that area. According to the petitioners, the area identified by BBMP as a slum to provide basic amenities was neither a slum nor was it so declared under the Act and that the beneficiaries were to be the employees of the BBMP or its retired employees. In that writ petition filed by the petitioners herein, interim order was granted directing respondents 1 to 4 not to put up construction on the site reserved for public purpose. It is contended that the scheduled land is surrounded by ancient and historical temples, offices, schools and the space is being used for parking of vehicles.

2. It is further averred by the petitioners that respondents 1 to 3 had filed statement of objections in the aforesaid writ petition inter alia contending that opposite Malleshwaram Market, there was an office complex belonging to BBMP as well as residential quarters meant for BBMP employees, which is "B" portion. To the North West of "B" portion of the area (now declared as, Slum Area i.e., scheduled land) which is "A" portion, there were 42 hutment dwellers. There was a proposal to utilise the "A" portion area for the purpose of construction of a commercial complex along with flower market on Sampige Road, by providing alternative accommodation to the employees of BBMP residing in "A" portion. As the interim order continued to be in force in W.P. No. 4804 of 2009, no construction was proceeded with. As the fourth respondent had entered into a contract with seventh respondent with regard to various slums in Bangalore City on 18-11-2009, including the scheduled land, the latter was permitted to commence work in respect of various slums including Netaji Slum at Malleshwaram, by putting up dwelling units (ground plus three floors) therein. It is further averred by the petitioners that subsequently, the fourth respondent changed the project location by including the scheduled land on 3-6-2011. That as a result, the scheduled land, which is owned by the BBMP was also handed over to the seventh respondent in order to construct houses for the benefit of the employees of the BBMP. The construction was only to benefit the employees of the respondent-BBMP. Consequently, Preliminary Notification dated 27-6-2011 was issued declaring the scheduled land as a slum area and the Final Notification was issued on 29-9-2011 under the provisions of the Act.

3. It is the case of the petitioners that the construction proposed to be put up on the scheduled land which is now declared to be a slum area, is neither a slum nor has any features of a slum area. That the construction of residential apartment

on scheduled land is politically motivated and at the instance of the local Corporator or MLA. That the proposed construction has worsened the situation in the locality as there is no parking place in the vicinity and the scheduled land could be utilised to construct multilevel parking by the BBMP, as Malleshwaram is a congested area, particularly in and around Sampige Road. That the scheduled land is not suitable for construction of a ground plus three floor building as proposed by fourth respondent. That the fourth respondent cannot proceed to construct the building without obtaining approval of the plan. Under these circumstances, the petitioners have sought quashing of the Final Notification dated 29-9-2011 (Annexure-M), declaring the scheduled land as a slum area, u/s 3 of the Act.

4. Statement of objections have been filed by fourth respondent-Karnataka Slum Clearance Board ["KSCB", for short] to this writ petition, stating that the scheduled land is part of what is "Netaji Subhashchandra Bose Slum". That the present writ petition is identical to the earlier W.P. No. 4804 of 2009 filed by the petitioners with minor changes. That the object of KSCB is to provide housing for slum dwellers including Netaji Subhashchandra Bose Slum, which has been so declared under the Act and BBMP has given its approval for the project. The petitioners can have no grievance about the project to be undertaken as all procedural formalities have been complied with. That between the Preliminary and Final Notifications, time was granted to file objections but there was no objection filed by anybody including the petitioners herein. That under JNNURM Scheme, KSCB was entrusted with housing and other developmental work in Bangalore City and 1,910 houses have to be constructed under Package - III. Due to technical reasons, the project had to be revised by Communication dated 9-2-2012 issued to seventh respondent. That the proposed construction is for the benefit of the slum dwellers in the scheduled land and not for the employees of BBMP or their relatives. That if the proposed project is executed, then the people who are living in the slum would be provided accommodation and consequently, the slum would be removed. It is in this context that the scheduled land was declared to be a slum area for the purpose of amelioration of the condition of the residents therein. The petitioners cannot insist that the scheduled land must be maintained as a parking area for putting up multilevel car parking facility.

5. Respondents 1 to 3 have also filed statement of objections contending that the writ petition is misconceived and is not filed in public interest. It is admitted that respondent-BBMP had entrusted construction of a multistoried residential building to accommodate slum dwellers, who were living in the slum area in question for decades. That the scheduled land is called "Netaji Subhashchandra Bose Slum" and it has been declared so, by Notification dated 29-9-2011. That there are two parcels of land, which can be conveniently called as "A" and "B" portion, which belongs to BBMP. "A" portion is situated on Sampige Road on 13th Cross, Malleshwaram, Bangalore, which is scheduled land. That in "B" portion, BBMP had called for tender by Notification dated 22-2-2007 for providing basic amenities and services to the urban poor in an identified area. The work order

was issued on 30-4-2007 to respondent 7 for construction of a residential building in "B" portion of the land but W.P. No. 4804 of 2009 was filed by the petitioners herein, seeking a direction not to put up construction on that portion. As there was an interim order in that writ petition, in respect of "B" portion, no development was made and instead, Preliminary Notification was issued on 27-6-2011, declaring "A" portion as a Slum Area i.e., the scheduled land. As there was no objection, Final Notification dated 29-9-2011 was issued. Subsequently, fourth respondent-KSCB called tenders for construction of a multistoried residential building. That in fact, "B" portion of the scheduled land was also to be utilised for a public purpose. But pursuant to the interim order in W.P. No. 4804 of 2009, no construction activity on "B" portion was commenced. That the scheduled land has been handed over to the KSCB for construction of multistoried building for slum dwellers. The beneficiaries would be the slum dwellers and not the employees of BBMP as alleged by the petitioners. The project in the scheduled land is under JNNURM Scheme. That it is at the instance of the petitioners that construction was stopped by the BBMP in the "B" portion and now the petitioners are also obstructing development of the "A" portion i.e., the scheduled land. It is also contended that the project has almost reached completion in the scheduled property. Respondents therefore sought dismissal of the writ petition.

6. We have heard the learned Counsel for the parties and perused their pleadings as well as their written arguments.

7. On perusal of the record in Writ Petition No. 4804 of 2009, secured from the Registry, we note that W.P. No. 4804 of 2009 was disposed of by order dated 7-8-2013 passed by a Division Bench of this Court, as having become infructuous, in view of subsequent development. The subsequent development being the declaration of the scheduled land as slum area u/s 3 of the Act and the present writ petition being filed assailing the Final Notification.

8. The object of the Act is improvement and clearance of slums in the State. The State Government realised that though local bodies had been effecting improvement of slums, the progress had been tardy and the increase in the growth of slums had become unmanageable. Number of schemes for improvement of slums had been initiated by Government of India and therefore, to implement the same, it was necessary to pass the Act. The main object of the Act is to effectively check the increase in the growth of slums, to eliminate congestion and to provide for basic needs such as streets, water supply and drainage and to clear the slums which are unfit for human habitation. In order to obviate unhygienic and insanitary conditions prevailing in the slums and to promote public health, better accommodation and improve living conditions which are envisaged under the Act, acquisition of land is also contemplated.

9. Section 3 of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 provides for declaration of slum areas and it reads as under:

3. Declaration of slum areas.--(1) Where the Government is satisfied that--

(a) any area is or is likely to be a source of danger to health, safety or convenience of the public of that area or of its neighborhood, by reason of the area being low-lying insanitary, squalid, over-crowded or otherwise; or

(b) the buildings in any area, used or intended to be used for human habitation are.--

(i) in any respect, unfit for human habitation; or

(ii) by reason of dilapidation, over crowding faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, detrimental to safety, health or morals,

it may, by notification, declare such area to be a slum area.

(2) In determining whether a building is unfit for human habitation, for the purposes of this Act regard shall be had to its condition in respect of the following matters that is to say.--

(i) repair;

(ii) stability;

(iii) freedom from damp;

(iv) natural light and air;

(v) water supply;

(vi) drainage and sanitary conveniences;

(vii) facilities for storage, preparation and cooking of food and for the disposal of waste water,

and the building shall be deemed to be unfit as aforesaid, if it is so defective in one or more of the said matters that it is not reasonably suitable for occupation.

10. Section 6 prescribes execution of works for improvement in a slum area. Section 9 envisages demolition of building, unfit for human habitation in a slum area. Section 11 deals with the power to declare any slum area to be slum clearance area. For that purpose, Section 33 envisages establishment of the Karnataka Slum Clearance Board.

11. In the instant case, by Notifications dated 27-6-2011 (Preliminary Notification) and 29-9-2011 (Final Notification), the scheduled land has been declared to be a slum area. That in W.P. No. 4804 of 2009, the grievance of the petitioner was with regard to "B" portion in which, there was an interim order not to proceed with any construction thereon. It is noted that the present writ petition is with regard to declaration of the scheduled land as a Slum Area. No

illegality with/regard to declaration of that portion as a Slum Area, has been pointed out.. The contention that in order to circumvent the interim order granted in W.P. No. 4804 of 2009, Notification u/s 3 of the Act has been issued by the fifth respondent, is not correct, as the portion of the land which was the subject-matter of W.P. No. 4804 of 2009 is different from the notified land in the instant case. The apprehension of the petitioner that the multistoried building proposed to be put up on the scheduled land would be for the benefit of the employees of first respondent-BBMP is also misplaced. It is needless to observe that when the building is put up, allotment to the beneficiaries would have to be in accordance with law. It appears that the main reason for filing these writ petitions by the petitioners is to ensure that the petitioners and others living in the vicinity have space for vehicle parking and therefore, they insist that status quo be maintained in the scheduled land. But the object and intention of the respondent-authorities is to remove the existing slum in the schedule land by putting up a multistoried building. This would not only be for the benefit of the residents in the locality but also implementation of the object of the Act. The petitioners cannot dictate as to how the land belonging to the BBMP has to be utilised so long as it is being utilized for a public purpose and in accordance with law. In fact, the construction to be put up in the "B" portion of the land was stalled by the petitioners by filing W.P. No. 4804 of 2009 in which, there was an interim order which continued till the disposal of the writ petition on 7-8-2013. In view of no construction being permitted by this Court in "B" portion, the respondent-authorities thought fit to put up construction in the "A" portion i.e., the scheduled land in order to clear the existing slum. The petitioners are also objecting to the scheduled land being developed. We do not find any legally sustainable challenge made to the action of the respondent-authorities. It appears that the petitioners have nursed a private object in mind in filing these writ petitions, in order to stall the actions of the respondent-authorities i.e., to make use of scheduled land for parking of vehicles by driving away the slum dwellers, which is contrary to the object and intention of the Act. The writ petition lacks bona fides and is not in public interest. The writ petition is hence dismissed with costs quantified at Rs. 7,000/- (Rupees seven thousand only), to be paid by the petitioners equally to each of the respondents.