

(2009) 12 KAR CK 0106
In the Karnataka High Court
Case No : Writ Petition No. 29902 of 2001

Shivabasayya

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Citation : (2010) 1 KarLJ 273

Hon'ble Judges : P.D. Dinakaran, C.J.;Anand Byrareddy, J

Bench : Division Bench

Advocate : Ashok R. Kalyanashetty, for the Appellant; B. Veerappa, A.G.A. for Respondents-1 and 5, A.S. Karmadi, for Respondent-3 and Basavaprabhu S. Patil Associates for Respondent-4, for the Respondent

Judgement

P.D. Dinakaran, C.J.—The petitioner, who is a public-spirited person, has filed this public interest litigation seeking a writ of mandamus or direction to the respondents to preserve Revenue Survey No. 183 of Hanuman Nagar, Belgaum i.e., CTS Nos. 5056/1, 5057/1 and 5058/1 of Belgaum as open space/lung space park and playground; and to declare the action of the 4th respondent in leasing out the said land in favour of respondents 5 and 6 as null and void.

2. Sri Ashok R. Kalyanashetty, the learned Counsel appearing for the petitioner submits that though as per the approved layout plan Sy. No. 183, in an extent of 13 acres, was earmarked for lung space/open space, children park, the said area is not used for the conceived purpose and the same came to be leased out to the fifth and sixth respondents for putting up buildings. It is his submission that the provisions of Karnataka Town and Country Planning Act, 1961 as well as the Urban Development Authorities require that the land reserved for lung space and park cannot be allowed to be flouted and therefore the authorities have failed to adhere to the provisions of the Act which is against the approved layout plan. He also contends that by putting up the building and school by the fifth and sixth respondents respectively, the area reserved for the said purpose will be lessened and also will deprive the residents of securing public health, tranquility and peace.

3. The learned Counsel further contends that the fourth respondent-Corporation, being the custodian of the area reserved for civic amenities as per the Karnataka Municipal Corporations Act, 1976 cannot deviate the user of the same. Therefore, he seeks a writ of mandamus to the respondent-Corporation to preserve Revenue Survey No. 183 of Hanuman Nagar, Belgaum i.e., CTS Nos. 5056/1, 5057/1 and 5058/1 of Belgaum, as open space/lung space park and playground.
4. Heard the learned Counsel for the parties and perused the material available on record.
5. In the facts and circumstances of the case, since the fourth respondent-Corporation being the custodian of the area in question, and that it had reserved an area of 13 acres for lung space/open space and children park in Sy. No. 183, CTS Nos. 5056/1, 5057/1 and 5058/1 of Hanuman Nagar, Belgaum and the same was also approved in the layout plan of the 3rd respondent-Society, suffice it to direct the fourth respondent-Corporation to maintain the impugned land as lung space/open space for park and other greeneries as contemplated under the Karnataka Municipal Corporations Act.
6. Writ petition is ordered accordingly.