
(2004) 04 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 27049 of 2002

S.N. Chandrashekar and Another	Vs	APPELLANT
The State of Karnataka and Others		RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Karnataka Town and Country Planning Act, 1961 — Section 14 A

Citation : (2004) ILR (Kar) 2434 : (2004) 3 KCCR 1441

Hon'ble Judges : N.K. Jain, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : H.N. Narayan, for B.W. Nanjunda and Shiva Prakash, for the Appellant; M.N. Sheshadri, GA for R1, K. Krishna, for R2, Subramanya, for Ashok Harnahalli, for R3-R5 and S.S. Ramdas, for M.J. Alwa, for R6, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : S.N. Chandrashekar and Another Vs. State of Karnataka and Others, AIR 2006 SC 1204 : (2006) 2 JT 202 : (2006) 2 SCALE 248 : (2006) 3 SCC 208 : (2006) 1 SCR 1039 : (2006) AIRSCW 800 : (2006) 2 Supreme 48

N.K. Jain, C.J.—One S.N. Chandrashekar and another claiming to be residents of 10th Main, V Block of Jayanagar, Bangalore have filed this public interest litigation. It is stated that the Karnataka Housing Board formed V Block, Jayanagar sometime in 1962 and after formation, houses were constructed and allotted to general public of middle income group for residential purpose. The entire V Block of Jayanagar is shown as a residential Zone in the Comprehensive Development Plan prepared by the Bangalore Development Authority (for short "the BDA"). The petitioners were allotted houses bearing No. 282D and 281D respectively. The premises bearing No. 585 was allotted in favour of one K.V.Ramachandra and a lease-cum-sale agreement was executed on 19.10.1968. After the expiry of the 25 years lease period, a sale deed was executed in favour of K.V.Ramachandra on 10.12.1994 on the condition that the premises should be

exclusively used for residential purpose only. The 6th respondent purchased the said premises from K.V.Ramachandra under a registered Sale Deed dated 24.8.1998 and made an application to the BDA for conversion of the land use from residential to commercial. On the recommendation made by the BDA, the Government in exercise of its power u/s 14A of the Karnataka Town and Country Planning Act, 1961 (shortly called "the Act") accorded sanction for change of land use vide order dated 7.10.1999. The BDA, pursuant to the sanction of the Government issued confirmatory letter dated 10.12.1999 subject to conditions of obtaining necessary building plan approved by the Corporation and providing for parking of vehicles in the building. The 6th respondent without obtaining the licence from the Corporation started his restaurant. Some of the residents of the locality made a representation dated 4.1.2000 to the Medical Health Officer. The 6th respondent submitted an application dated 17.1.2000 for grant of licence and the Corporation by its endorsement dated 22.2.2000 informed him that his application would be considered after the construction of the building in accordance with the conditions laid down by the BDA in its order dated 10.12.1999. So also, the Medical Officer issued an endorsement dated 20.03.2000 to one of the residents of the locality informing that issue of licence to the 6th respondent will be considered only if he fulfils the conditions laid down by the BDA. The 6th respondent without fulfilling the conditions, made one more application on 25.2.2000 for grant of licence and thereafter had filed W.P.No. 11139/2000 wherein the Corporation was directed to consider his application for grant of licence within six weeks. The 6th respondent obtained building licence on 12.5.2000 and modified plan on 19.8.2000. However, the 6th respondent was granted licence to run the restaurant till 31.3.2002. Aggrieved by the notification dated 4.8.1999 some of the residents of the locality filed public interest litigation in W.P.No. 9078/2001 which is pending. In the meanwhile, the Corporation by its notice dated 20. 12.2001 called upon the 6th respondent to show cause as to why the deviation made from the sanctioned plan should not be removed. As the 6th respondent failed to remove the deviated portions, the corporation by its notice dated 6.1.2002 authorized the Executive Engineer to give effect to the confirmatory order by removing the deviated portions. Aggrieved by this, the 6th respondent approached the Standing committee for Appeals. The standing Committee for Appeals renewed the Hotel licence. As running of the hotel caused nuisance, a representation dated 12.1.2002 was made by the Ladies Association of the locality and another representation dated 19.1.2002 was made by the general public of that locality. Since these aspects were not considered in earlier PIL petitions, this petition has been filed.

2. In reply to the notice, the 6th respondent has filed a detailed statement of objections denying allegations made in the petition. It is stated that no public interest is involved rather the petition being filed in personal interest, is not maintainable and liable to be dismissed. On merits it is stated that association had given its consent vide letter dated 13.4.1999 for change of user of the property and for establishing a vegetarian restaurant at his property bearing No.

585. It is also stated that some of the members who were inimically disposed towards the respondents formed an Association in the name of Jayanagar V Block, 10th Main Residents Welfare Association and nothing has been shown whether the association is duly registered or not and as such the petition is not maintainable. It is also stated that earlier PILs on the same cause of action have been dismissed by this Court.

3. The main contention of Sri Narayan, learned Senior Counsel for the petitioners is that change of land use is not permissible; that the proceedings of the Standing Committee for Appeals to the extent of renewing the licence is without jurisdiction and the purchase of premises, which is exclusively for residential purpose; and thereafter seeking conversion of it for a commercial purpose is not permissible. He also submits that the 6th respondent cannot have better right and title than the original allottee K.V. Ramachandra and the principle enunciated in *Shanta and Another Vs. Commissioner, Corporation of City of Bangalore and Another*, is fully applicable. He further submits that the dismissal of earlier PILs will not come in the way to entertain this PIL, and prayed to set aside the order dated 7.10.1999 Annexure-D and the order dated 10.12.1999 Annexure-E. He relied on the decisions in *K. RAMADAS SHENOY v. THE CHIEF OFFICERS, TOWN MUNICIPAL COUNCIL, UDUPI AND ORS.* AIR 1914 SC 2177; *Pee Kay Constructions Vs. Chandrasekhar Hegde, ;* and *U. Nithyananda Vs. Member Secretary, TPA and Others*,

4. On the other hand, learned Senior Counsel Sri S.S. Ramdas for MJ. Alwa, for the 6th respondent submits that the Section 14-A has been inserted by Act No. 17 of 1991 w.e.f. 19.4.1991 and the change of land use from the Outline Development Plan can be permitted on certain condition in the public interest. He also submits that considering fact- situation, public notice was issued inviting objections; that petitioners had not made any objections but taking note that the Association had no objection, the change of land use has been permitted, and therefore, the petitioners, who are the neighbours, cannot challenge the same in the garb of PIL. He further submits that even otherwise, for the same cause of action, PIL petitions filed have not been entertained by this Court observing that no second PIL is maintainable, and therefore, the petitioners cannot reagitate the issue challenging the Government order dated 7.10.1999 and the confirmatory letter dated 10.12.1999, at this stage, by this PIL filed on 15.7.2002. It is also stated that the BDA, exercising its power u/s 14-A of the Act, has granted permission in number of cases for change of land use and to run restaurant. He submits that the decisions relied on by the learned Counsel for the petitioners are not applicable to the facts of the present case, as the said decisions have been rendered prior to insertion of Section 14A in the Act. He has relied on the decision in *SRI KRISHNAPUR MUTT, UDUPI v. N. VIJAYENDRA SHETTY AND ANR.* 1992(3) Kar.L.J 326

5. Sri K. Krishna, learned Counsel for the 2nd respondent-BDA submits that after insertion of Section 14A, the BDA is competent to permit the change of use of

land. He submits that objections were invited for change of land use of the premises in question, by paper publication on 13.3.1999 and 14.3. 1999, no individual objections were received, however, the Jayanagar 5th Block Residence Welfare Association filed its objection on 27.3.1999 and thereafter on 13.4.1999 withdrawn the said objection; thereafter, considering the report dated 1.6.1999, in the meeting held on 29.6.1999 considering the fact that the site being a corner one and opposite to 10th Main road having open space, recommended for change of land use along with the relevant documents to the Government. The Government vide order dated 7.10.1999 permitted the change of land use with certain conditions and thereafter a letter of commencement dated 10.12.1999 has been issued and under the circumstances, the petitioner, in the garb of PIL, cannot challenge the order permitting the change of land use, which is in accordance with Section 14-A of the Act.

6. We have heard the learned Counsel for the parties, perused the material on record and the case laws.

7. No doubt, this Court, in an appropriate case can issue directions if there is gross violation of fundamental rights or if the issue touches the conscience of the Court but not for personal gain, publicity or political motive. Easy access to justice should not be misused as a licence to file baseless and misconceived petition one after the other. It is also settled that a right cannot be enlarged to a vendee than that of vendor.

8. No doubt, change of use of land was not permissible under the Act before the insertion of Section 14-A in the Act; What is to be seen, in the instant case, is whether Section 14-A of the Act has been complied with or not. As per the facts culled out, on an application made by the 6th respondent for change of land use, the BDA issued public notice inviting objections, no specific objections were filed, however, the Jayanagar 5th Block Residents Welfare Association by its letter dated 13.4.1999 did not object to starting of vegetarian restaurant. The BDA considering the said letter of the Association recommended for change of use of land and the Government by its order dated 7.10.1999 granted the same. Therefore, it cannot be said that invoking of Section 14A of the Act is bad. The decisions relied on by the learned Counsel for the petitioners are not applicable and helpful as they were rendered prior to the date of insertion of Section 14-A in the Act w.e.f., 19.4.1991, and therefore, it is not necessary to deal with the individual case.

9. So far as the decision relied on by the learned Counsel for the petitioners in *U. NITHYANANDA v. MEMBER SECRETARY, TPA* which has been rendered after insertion of Section 14-A, is concerned, the same is not applicable to the facts of this case for the reason that in that case the application for change of land use u/s 14-A has been rejected by the Planning Authority, but, the Government granted permission. Under that circumstance, this Court has held that BDA was the Planning Authority and the State has no original or appellate jurisdiction to grant permission, whereas, in the present case, as stated, the BDA has passed a

resolution on 29.6.1999 to grant change of use of the land u/s 14A of the Act and sought approval from the Government and approval has been granted by the Government by order dated 7.10.1999. This PIL has been filed on 15.7.2002.

10. As stated, this Court can issue directions, in an appropriate case, if there is gross violation of fundamental rights or if the issue touches the conscience of the Court, but in the instant case, the petitioners, who are the neighbours, are personally aggrieved and as discussed no direction can be issued.

11. We have also perused the original records placed before us by the learned Counsel for the BDA. It is seen that notification under proviso (c) to Section 14-A(1) was issued calling for objections, if any, for conversion of the dwelling house to Commercial purpose (Restaurant) as sought for by the 6th respondent. The publication was given on 13.3.1999 in Udayavani daily newspaper and on 14.3.1999 in Kannada Prabha as also Hindu and Indian Express newspapers. The objections were called for within fifteen days. The Only objection that was received was from the Jayanagar V Block Residents Welfare Association wherein also they only objected for starting any commercial complex or any bar and restaurant or non-vegetarian hotel and specifically stated that they have no objection for starting vegetarian restaurant. It is seen from the records that having considered the said objections, the BDA in its meeting on 29.6.1999 after discussion held that the conversion was in public interest and necessary proposal should be made to the Government for conversion of use from dwelling to restaurant and on the basis of the letter of the BDA dated 4.8.1999 the Government by order dated 7.10.1999 in exercise of the power u/s 14-A permitted the conversion of use from dwelling to commercial (restaurant) subject to the conditions mentioned in the order. Under the circumstances, in the absence of any objections filed by the petitioners, no direction, as prayed for, can be issued. Learned Counsel for the petitioners has not been able to satisfy us that there is contravention of the provisions of the Act regarding granting change of use of land within the local area, are therefore, the petitioners are not entitled for any relief.

12. Number of permissions have been accorded for change of land use by invoking Section 14-A of the Act. Learned Counsel has stated that the 6th respondent has demolished the unauthorised structures. Be that as it may. The change of land use has been granted with certain conditions. On an overall consideration, the petitioners are not entitled for any direction as prayed for. In the facts and circumstances of the given case, as discussed above, it cannot be said that this is a case for interference in the garb of PIL.

This Writ Petition PIL is dismissed. However, costs made easy.