

(1992) 07 KAR CK 0017
In the Karnataka High Court
Case No : W.P. No. 16348 of 1984

Sri Krishnapur Mutt, Udupi

APPELLANT

Vs

N. Vijayendra Shetty and Another

RESPONDENT

Date of Decision : 15-07-1992

Acts Referred:

Karnataka Town and Country Planning Act, 1961 — Section 14

Citation : (1992) 3 KarLJ 326

Hon'ble Judges : S. Rajendra Babu, J

Judgement

1. Respondent No. 1 has a site measuring about 5 cents and bearing survey number 113/15 of Shivalli in Udupi Town while the petitioner owns an adjacent site in survey number 113/14. The first respondent has obtained a Commencement Certificate under Section 15 of the Karnataka Town and Country Planning Act, 1961 (hereinafter referred to as the Act) for the construction of a shop building with a plinth area of 127.78 square metres with two floors of identical measurements and permission was granted under Section 15(1) of the Act for construction of a shop building and it was made clear that the premises shall be used for the specific purpose of shop (commercial). It was made clear that grant of permission will not constitute sanction of construction of a building and other statutory formalities will have to be complied with before doing so. Thereafter, the 1st respondent has sought for revision. This permission was granted on 19-9-1979 and a municipal licence was obtained on 10-10-1979. Thereafter a revised plan was filed on 13-12-1982 and sanction was accorded on 18-1-1983. Again one more revised plan was submitted to the Municipal Council on 1-4-1984 for extension of commercial building. The same was sanctioned by majority of the members present in the meeting of the second respondent-authority inasmuch as when the subject was put to vote a consensus opinion emerged with all the members except for the chairman, favouring grant of commencement certificate of imposing penalty of Rs. 3,000/- for the deviations from the approved plan. However, the chairman recorded his dissent subsequently.

2. Challenging the said resolution of the Town Planning Authority it is contended before this Court now that the ground floor in the said building for which approval had been given earlier is to be a shop which is now converted into a restaurant and two floors were put with two halls for commercial use for office accommodation and the third floor now constructed is without prior permission of the Planning Authority and the deviations have been accomplished first and thereafter ex-post facto sanction was obtained. It is urged that the use of the ground floor for a restaurant and the use of the other floors constructed thereon would necessarily lead to certain number of vehicles being parked in the roadside in front of the building as there is no other parking space provided for the same at the building, the authority would have certainly insisted upon provision for parking space and also would give rise to severe problems of sanitation and drainage and contended that the resolution of the Planning Authority is therefore invalid.

3. It is urged on behalf of the first respondent that the bar under Section 14(2) of the Act is only to prevent change of land-user or a building from one use to another contrary to the outline development plan and in the present case although the area had been originally noted as residential many commercial buildings in the area have come up; that the Planning Authority authorised the construction of a commercial building by its permission dated 19-9-1979 communicated to the first respondent Consequently that bar stood lifted. Once the bar is lifted it is submitted that putting the building to any other use which is within the commercial use or development plan which does not materially or substantially alter the nature of the use does not call for a fresh commencement certificate at all. Even though the first respondent has applied for such a certificate or permission it is only by way of abundant caution and not by way of a legal obligation. Consequently it is submitted that it is wholly unnecessary for the first respondent to obtain further permission from the authority concerned. All that he needs to comply with was when he wanted to deviate from the original plan, to comply with the municipal bye-laws which in the present case has been complied with and the same is not in challenge before the Court. It is therefore submitted that this petition filed long after the permission was granted on 19-9-1979 itself is belated and particularly after the construction had been completed equities should be adjusted in favour of the first respondent thereby rejecting this petition without examining the matter any further in detail.

4. In answer, the learned counsel for the petitioner contended that Section 14 of the Act contemplates that every land-use, every change in the land-use and every development in the area should conform to the provisions of the Act and should be in compliance with the outline development plan and that any change in the land-use or development thereof should be with the permission of the Planning Authority. Therefore, it is submitted that each time there is a change in the user of land or there is any development altering the nature of the building or use thereof requires a fresh commencement certificate and therefore the contention advanced on behalf of the first respondent in the present case is not

at all tenable.

5. The contentions advanced on either side in the present case reduce themselves to one aspect of the matter, namely, whether Section 14 of the Act requires every time a building is put to an altered use or development thereof, commencement certificate or not.

6. In order to correctly comprehend the contentions advanced on either side it is necessary to examine the scheme of the Act. Section 2(1b) defines "commerce" and "commercial" which mean carrying on any trade, business or profession sale or exchange of goods of any type whatsoever, the running of, with a view to make profit, hospitals, nursing homes, infirmaries, sarais, educational institutions hotels restaurants, boarding houses not attached to educational institutions. Section 2(1c) defines development" as carrying out of building, engineering, mining, or other operations in, or, over or under land or the making of any material change in any building or land, or in the use of any building or land and includes sub-division of any land Under sub-section (3) of Section 2 "land-use" is defined to mean the major use to which a plot of land is being used on any specified date. Under Section 10 of the Act the Planning Authority is required to publish a declaration in the Official Gazette of its intention to prepare an outline development plan of an area and in the present case such a plan has been published and the land in question has been shown to be a residential one. Section 12 sets out, inter alia, that such plan shall include a general land-use plan and zoning of land-use for residential, commercial industrial agricultural, recreational, educational and other public purposes. Thus, the outline development plan will only set out the nature of the use to which the land is put viz., residential, commercial or industrial or any other purpose. In the present case the same had been shown to be residential although on 19-9-1979 the nature of the land-use was allowed to be changed to commercial for construction of a shop section 14(2) requires that change in the land-use or development referred to in sub-section (1) thereof shall be made only with the permission of the Planning Authority. The expression "development" in this context means the same as defined in Section 2(1c) of the Act referred to earlier. Inasmuch as in the present case there is no dispute as to the change of land-use permitted on 19-9-1979 the question to be considered now is whether the first respondent could have utilised the land for the purpose of construction of a restaurant and a lodging house by altering the building from a shop and an office premises and by putting up additional floors. The concept of development provided in the explanation to sub-section (2) of Section 14 does not refer to every change but refers only to building activity carried on or any material change in the use of building and other land. Therefore, attention will have to be revetted and confined to the concept of material change in the present case.

7. When the first respondent had obtained permission or commencement certificate for the construction of a commercial building the nature of the building remained the same, namely, "commercial" as contemplated under Section 12 of

the Act and it continued to be so even when the 1st respondent wanted to run a restaurant or a boarding and lodging house. The concept of commercial use of a building includes not only activities where a shop premises is located, it also covers a restaurant or a lodging house and the classification of the important or main purposes of land-use under Section 12 is commercial, residential, industrial and so on and not each sub-purposes have been entered in the definition. Each one of the purposes mentioned while defining the expression commercial cannot be stated to be a different purpose. It falls within the same genus and each purpose will only indicate the specie of the same genus. When a building is utilised for different purposes within the same genus of purpose it cannot be said that there has been a material change in the use of building or the land. Therefore, in the present case just because the Planning Authority had earlier given a commencement certificate for construction of a commercial building on the land in question, the further requirement of another commencement certificate being granted to the first respondent to put up a boarding and lodging house in the upper floors does not result in any material change and the resolution passed by the Town Planning Authority in this regard, called in question in this proceeding, becomes superfluous or irrelevant.

8. The restrictions imposed in the planning law though in public interest should be strictly interpreted because they make an inroad into the rights of a private person to carry on his business by construction of a suitable building for the purpose and incidentally may affect his fundamental right if too widely interpreted. The building bye-laws while sanctioning a plan will take care of what parking space should be provided in the area and whether the building itself would have such facility. But under the planning laws what we are required to see is whether there is any change in the use of land or building from the one which was originally granted and whether such change is a material change or not for the purposes of the Act. As stated by me earlier, a material change occurs only when there is alteration of building from one major head to another major head not in other circumstances. The purpose of the enactment is only the orderly growth of a city and it regulates each area of the city with regard to the nature of buildings that could be put up, namely, commercial, industrial or residential. When that aspect is taken care of, rest of the matters should be left to the municipal authorities and other licensing authorities who regulate the trade or other activities. Consequently, I do not think the contention advanced on behalf of the petitioner will have any bearing on the interpretation of the provisions of the Act.

9. The upshot of this discussion is that when once a building is permitted to be constructed either in the category of residential, commercial or industrial, that purpose cannot be altered whatever may be the other purposes for which it is utilised in any of the groups brought under the major heads referred to by me. Consequently, this petition fails and is dismissed. Rule discharged.