

(2010) 06 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No. 12337 of 2008 and Misc.W. 5428 of 2010

The Poornaprajna Education Centre

APPELLANT

Vs

The Bangalore Development Authority, The Town Planning
Authority and Bruhath Bangalore Mahanagara Palike

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 15, 16 (1) (d), 38 A (2)

Citation : (2010) ILR (Kar) 3801 : (2011) 1 KarLJ 451

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Pattige R. Ramesh and Lakshmi S. Holla, for the Appellant; I.G. Gachchinamath, for R. 1 and 2 and Vishwanath Associates for R. 3, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The petitioner, an educational institution, a unit of Udupi Sri Admar Mutt Education Council, aggrieved by the resolution dated 18.12.2007 in Subject No. 274/2007 Annexure-"J" and the communication dated 4.1.2008 Annexure-"K" of the respondent -Bangalore Development Authority (for short "BDA"), respondent, has presented this petition to quash the resolution and the communication or in the alternative, to direct the respondents to treat the Schedule property as reserved for "park and playground" instead of park only.

2. The petitioner established a school in 1984 to cater to children residing at Indiranagar, Bangalore. Abutting the school premises is said to be a "park and playground" the petition Schedule property (for short "PSP"). According to the petitioner, in the close vicinity of the school, there are four parks, sufficient in number, for the layout while the "PSP" was reserved for park and open space and hence, the petitioner approached the BDA with an offer to develop and maintain the "PSP" not only for the residents of the area and the children studying in the school managed by the petitioner but also for children studying in

other schools in the vicinity. Pursuant thereto, the BDA is said to have executed an agreement dated 18.07.1990 according permission to the petitioner to develop and maintain the "PSP" as park and playground which was regularly renewed until the year 2005 under the last of the agreement dated 17.03.2003. Petitioner claims to have invested several lakhs of rupees by engaging the services of professional contractors to maintain the "PSP". The BDA it is said, issued a notification dated 7.12.2006 Annexure-"D" inviting applications for allotment on lease basis several civic amenity sites including the "PSP" by describing it as "park and playground". The petitioner responded by filing an application and making an initial deposit of Rs. 14,20,165/- whence the committee for allotment of civic amenity sites having recommended the allotment in favour of the petitioner, the BDA by resolution dated 20.03.2007, as communicated to the petitioner under letter dated 17.05.2007 Annexure-"F" allotted the civic amenity site to the petitioner and directed the payment of the balance consideration of Rs. 85,94,010/-, which was complied with on 16.08.2007.

3. Petitioner asserts that W.P. No. 2852/2007 was filed as a public interest litigation whence a Division Bench of this Court having accepted the averments set out in the statement of objections of the BDA that the "PSP" would be used only for park and playground, safeguarding the interest of the public, dismissed the petition by order dated 23.07.2007 Annexure-"H".

4. It is the allegation of the petitioner that the BDA on 18.12.2007 Annexure-"J" resolved to recall the allotment and by letter dated 4.7.2008 Annexure-"K", communicated the cancellation of the allotment made on 17.05.2007. The further allegation of the petitioner is that the cancellation was preempted in view of reserving the "PSP" for a park under the revised master plan 2015 and to hand over the same to the Bangalore Mahanagara Palike ("BMP" for short).

5. Petition is opposed by filing Statement of objections dated 26.11.2008 of Respondents 1 and 2 inter alia contending that the petitioner has no locus standi to maintain the petition in view of the application dated 17.07.2008 for refund of the deposit, and the receipt of Rs. 1,00,14,175/- on 18.08.2008 and 13.11.2008 as well as Rs. 9,000/- towards registration fee. According to the respondent, the petitioner having withdrawn the deposits and registration fee, is estopped from claiming any relief much less the reliefs in the petition. In addition, it is stated that Bangalore, a growing city, requires number of parks, to maintain the greenery and good atmosphere, as it aids in preventing air pollution and therefore parks play a pivotal role. In the revised master plan, the petition Schedule property it is stated is earmarked for park. It is pointed out that u/s 38-A(2) of the Bangalore Development Authority Act, 1976 (for short "BDA Act"), the BDA has no authority to sell or otherwise dispose of public parks and playgrounds and sites for civic amenities, for any other purpose and any such disposition so made shall be null and void. It is lastly contended that the "PSP" was earmarked for a park in the original plan of the layout sanctioned by the

state.

6. The petitioner filed a rejoinder statement dated 16.12.2008 admitting the fact of a lapse in not placing on record the application for refund and the receipt of the deposit with registration fee. In addition, the petitioner filed a memo dated 21.01.2010 enclosing the opening page of the revised master plan 2015 and a copy of the letter dated 17.07.2008 of the petitioner, seeking refund.

7. The petitioner filed Misc. W. 5428/2010 for raising an additional ground, that the plan produced by BDA on 22.06.2010 discloses deviations in the layout plan in as much as a place reserved for playground is allotted to the BBMP for use as a park and hence the alteration of the reservation by the BDA being permissible, there is no justification in not permitting the use of the "PSP" for playground and park instead of only park.

8. Heard the learned Counsel for the parties and perused the pleadings. The learned Counsel for the petitioner points out to Section 16(1)(d) of the BDA Act which states that in every development scheme u/s 15, a reservation of not less than fifteen per cent of the total area of the layout is for public parks and playgrounds and an additional area of not less than ten per cent of the total area of the layout for civic amenities, to contend that the BDA, right from the year 1990, having put to use the "PSP" as park and playground, in the circumstances, there is no justification to treat the "PSP" as park only. Elaborating on the said contention, learned Counsel contends that ever since the year 1990, until 2003 and thereafter, the BDA permitted the petitioner to put to use the "PSP" both as a park and a playground for the use of the children studying in the petitioner - institution as well as children studying in other educational institutions in the vicinity, and hence the long usage has fructified into a right of the citizens to use the "PSP" both for park and playground. The learned Counsel for the respondent - BDA critically opposes the contention, by pointing to Section 38-A(2) of the BDA Act to contend that the "PSP" is reserved for public park while an open space is also earmarked for a playground as animated in the sanctioned plan of the layout and therefore disposition of the "PSP" for a playground is null and void. According to the learned Counsel, due to inadvertence a mistake had crept in by reason of not making a reference to the original layout plan, when permission was accorded to the petitioner to put to use the "PSP" as park and playground. So also, when the notification was issued in the year 2003 inviting applications to give on lease the "PSP", it was sheer inadvertence to describe the area as park and playground. It is further contended that on the coming into force of the revised master plan, with effect from 25.06.2007, the BDA having noticed that the PSP was reserved for park in the original layout plan as duly set out in the revised master plan, keeping with the provisions of Section 38-A(2), passed the resolution Annexure-"J" to cancel the allotment followed by the communication Annexure-"K". Learned Counsel places reliance upon the decision of the Apex Court in Bangalore Medical Trust Vs. B.S. Muddappa and others, and of this Court in S.G. Heble and Others Vs. Bangalore Development Authority and Others, .

9. In view of the assertion that the "PSP" is earmarked for a park in the sanctioned layout plan, the original plan when produced by the BDA disclosed that the PSP is earmarked for park and another open area in the very same layout is earmarked for playground distinctly demarcating the said area adjacent to a park. The "PSP" originally reserved for park, a change for any other use, is in clear violation of Section 38-A(2) of the BDA Act.

10. The BDA, without noticing the reservation for park, has, as rightly contended having inadvertently permitted the petitioner to put to use the "PSP" for park and playground, commencing from the year 1990 onwards and under the notification of the year 2003, and in my considered opinion are actions without jurisdiction and hence, null and void. I say so in the light of the authoritative pronouncement of the Apex Court in Bangalore Medical Trust's case *supra*, followed in S.G. Hebli's case *supra*. In that view of the matter, it is not possible to accede to the contention of the learned Counsel for the petitioner that long user for almost two decades of the "PSP" as park and playground, ought to continue as such. Merely because the BDA committed an error, due to inadvertence, though fatal in law, the error cannot be continued in perpetuity.

11. Before the Division Bench the BDA having not brought to its notice that the "PSP" was originally reserved for park in the sanctioned layout plan, accepted the statement of objections of the BDA to dismiss the public interest litigation. That order cannot be construed as a seal of authority to put to use the "PSP" for park and playground. It is elsewhere was that there can be no estoppel against statute and therefore, neither the order of the Division Bench, nor the long user of the PSP can come to the aid of the petitioner for the reliefs sought in this petition.

12. The contention of Sri P.R. Ramesh, learned Counsel that a civic amenity site reserved for playground in the very layout is put to use for a park by the BBMP, a clear case of violation of Sub-section (2) of Section 38-A of the BDA Act, and hence the "PSP" could be extended the same treatment, I am afraid, must fail. If the BBMP has committed violation of law as alleged, that action cannot be extended to the "PSP" on the touchstone of Article 14 of the Constitution of India. It is well settled law that benefits extended to some persons in an illegal or irregular manner cannot be claimed by others on the plea of equality as held in *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, ; *State of Uttaranchal Vs. Alok Sharma and Others*, . *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others*, . *State of Haryana and Others Vs. Ram Kumar Mann*, . Without going into the merit or demerit of such the allegation it is left open for consideration in an appropriate legal proceeding.

13. The contention that u/s 16(1)(d), 15% of the area in the layout should be earmarked for park and playground should be read as "park and playground" and cannot be dissected and earmarked separately for park and that of playground, in my considered opinion, is also without merit. All that the provision of law states is, an extent of 15% of the land in the layout to be earmarked for parks

and playgrounds, which can by no stretch of imagination, be read as if park or playground are to be earmarked together and can never be separated. In other words, there can be open sites in the layout earmarked only for park and others for playgrounds and not necessarily for both park and playground together. The requirement of law is that 15% of the area in the layout ought to be set apart for park and playground. In the present case, the sanctioned layout plan discloses that the "PSP", in its entirety, is earmarked for park and therefore, it cannot be said that such a reservation is contrary to Section 16(1)(d) of the BDA Act.

14. There is force in the contention of the learned Counsel for the respondent - BDA that the petitioner having voluntarily made an application dated 17.07.2008 enclosed to the memo dated 21.01.2010 seeking refund of Rs. 1,00,24,175/- and received the said sum, is estopped from questioning the validity of the resolution and the communication Annexures "J" and "K" respectively of the BDA. On that ground too, the petition must fail.

The grounds alleged in Misc.W. 5428/2010 are opposed orally by the BDA which is considered and rejected supra and hence there is no necessity to allow the application. Application rejected.

In the result, the writ petition being devoid of merit and is accordingly, rejected.