

(1996) 06 KAR CK 0002
In the Karnataka High Court
Case No : WP. No. 26,957 of 1995

The Residents of MICO Layout II Stage	APPELLANT
Vs	
J.S.S. Mahavidyapeetha and Others	RESPONDENT

Date of Decision : 21-06-1996

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 32 (5)

Citation : (1997) ILR (Kar) 705 : (1997) 4 KarLJ 442

Hon'ble Judges : H.N. Narayan, J

Bench : Single Bench

Advocate : R.N. Narasimha Murthy, with J. Kanikaraj, for the Appellant; S. Vijay Shankar, Senior Advocate for Ashok B. Hinchigeri for R-1, C.B. Srinivasan, for R-2 and B.G. Suryakumar, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Narayan, J.—Petitioners are the residents of MICO Colony which was formed by the MICO Employees' House Building Co-operative Society Limited, Bangalore. The challenge in this Writ Petition is the allotment of CA2 site to the 1st respondent by the 2nd respondent. The 2nd respondent has sanctioned a layout plan viz., MICO layout, submitted by the society as per Annexure-B. The said society formed the layout as required under Bangalore Development Authority Act and Rules and Regulations and also according to Comprehensive Development Plan (CDP). It is their case that the society has earmarked 2 CA sites for play ground for the use of the resident of the layout which are identified as CA2 and CA3 in the sanction plan. These 2 CA sites constitute 166900 sq.ft. which is about 12.88% of the total land of 29 acres and 34 guntas or 1300266 sq.ft. It is their specific case that a major portion of CA2 is earmarked as play ground for the use of the residents of the layout and the portion abutting the 15th Main Road is for college as per the sanctioned plan. It is their further case that the 2nd respondent has allotted the entire CA2 site measuring 450" x 250" to the 1st respondent in gross violation of the provisions of the C.D.P. The 1st

respondent has now laid the foundation stone on CA2 site on 19.6.1995 and the 1st respondent has commenced civil construction activity and the work is in progress. It is also their case that the society has so far not relinquished the CA site to the 2nd respondent to allot the land to anybody of its choice. Therefore, the action of the 2nd respondent is not in accordance with law and is not sustainable. It is on its ground the writ petitioners pray this Court to declare the allotment of CA2 site in favour of the 1st respondent as illegal and without authority of law and to declare that the 1st respondent has no right to put up any construction on the CA site.

2. Respondents have filed statement of objections denying the claim of the writ petitioners. The 1st respondent in particular, has questioned the locus-standi of the petitioners in filing this petition in public interest as no public interest is involved. It is further contended that the site in question is CA site which is reserved for play ground and college and the site is now allotted to an institution to start an educational institution. It is also contended that the petition is liable to be rejected on account of delay and laches and the petitioners have approached this Court five years after the site is leased in favour of the 1st respondent. It is also contended that the BDA has leased all the sites in favour of the society and the 1st respondent has taken possession of CA sites. It is further contended that the 2nd respondent has issued notification on 14.6.1990 for allotment of CA site as in Annexure R1. The 1st respondent submitted an application on 20.7.1990 for allotment of CA site No. 4 in BTM II stage. The said site was allotted on lease basis as in Annexure R2. The 1st respondent has remitted a sum of Rs. 28,57,305/- towards lease consideration in addition to remittance of Rs. 3,32,715/- towards initial deposit. The 1st respondent has started construction and at this stage, these petitioners have approached this Court and stopped further construction.

3. Petitioners produced certain photographs marked at Annexure "D" series.

4. It is undisputed that the society in question has formed the layout called "BTM Layout II Stage" and the original layout plan is produced by the BDA for perusal of the Court. There is also no dispute that the CA site in question is reserved for a specific purpose of college and play ground. The writ petitioners have not disputed this aspect. The 2nd respondent - BDA has issued notification as in Annexure R1 for allotment of this CA site, detailed therein. The 1st respondent had applied for allotment of the said CA site by remitting the initial deposit of Rs. 3,32,715/-. The purpose for which the application is made by the 1st respondent was to start women's college. It is stated that the 1st respondent has applied to the concerned authority and obtained necessary licence to put up construction. Annexure-D series disclose that the 1st respondent has actually started construction.

5. Petitioners' Counsel vehemently submitted that the allotment of this site for the purpose of construction of a college would violate the norms laid down by the CDP as much vacant space is not available in the area. This submission has no

merit in the light of the fact that this CA site is formed in accordance with the approved plan and it was reserved for the college and the play ground. So the very purpose for which the CA site was reserved at the formation of the scheme itself is not in dispute. Therefore, petitioners cannot avail of that submission at this stage,

6. The Learned Counsel for the petitioners has produced a xerox copy of the changed nature of CA sites. This is not an authenticated document. Such a document is not available in the entire file maintained by the BDA which is produced for my perusal by Sri C.B. Srinivasan Learned Counsel appearing for the BDA. The Learned Counsel for the petitioners was directed by this Court to produce an authenticated copy to show that the site in question was in fact initially reserved only for play ground and not for the college. But the Learned Counsel has failed to produce any document in support of this contention. The Learned Counsel has also produced the copy of the layout plan and Sri C.B. Srinivasan has also produced the original of the layout plan. In both the layout plans, I find this CA site, is reserved for college and playground.

7. Learned Counsel for the petitioners also tried to bring to the notice of this Court that half of the CA site is reserved for the college and half of it is reserved for the play ground. This submission is on the premise that the site is divided into two parts. But in the original plan produced by the BDA, it does not disclose any such bifurcation. Therefore, allotment of this site in favour of the 1st respondent cannot be stated at this stage as in gross violation of CDP. It must be presumed that the layout plan is approved by the BDA in accordance with the CDP only having regard to the housing scheme.

8. One another contention which is urged for consideration by the petitioners' Counsel is that u/s 32(5) of the BDA Act, the CA site ought to have been transferred in favour of the authority permanently as per the agreement since there is no transfer of ownership of roads, side-drains, culverts, underground drainage and water supply mains and open space laid down by the society. The allotment of CA sites in favour of the third parties is not in accordance with law.

9. Sri R.N. Narasimha Murthy - Learned Senior Counsel intervening in this matter submits that Section 32(5) of the BDA Act refers to transfer of immovable property. Transfer can only be under the Transfer of Property Act under a registered deed. Sri S. Vijayashankar - Learned Senior Counsel appearing for respondent No. 3 submits that having regard to the object and the scheme of the Act, the transfer of ownership can only be in terms of Section 32(5) and not under the Transfer of Property Act.

10. Section 32(5) of the BDA Act reads as follows:

"The Authority may require the applicant to deposit, before sanctioning the application, the sums necessary for meeting the expenditure of making roads, side-drains, culverts, underground drainage and water supply and lighting and the charges for such other purposes as such applicant may be called upon by the

Authority, provided the applicant also agrees to transfer the ownership of the roads, drains, water supply mains and open spaces laid out by him to the Authority permanently without claiming any compensation therefor."

scheme as envisaged in Chapter III of BDA Act discloses that any person, body or authority who attempts to form any extension or layout for the purpose of constructing building thereon without the express sanction in writing of the Authority and except in accordance with such conditions as the authority may specify. Section 32 of the Act clearly provides the procedure to be followed in such a case. Such sanction for formation of layout may be refused by the Authority if the layout is not in conformity with the approved plan. It is in this contest that the transfer of ownership of roads, drains water supply mains and open spaces laid out by the society to the Authority has to be defined.

It is now submitted that the BDA has leased all the sites in favour of the society. The proto-type of agreements were submitted by the society to the Authority. Since there were some defects in the agreements furnished by the society, the agreements were not executed. This is not a case where the society could refuse to transfer the CA site, roads, drain water supply mains and open spaces to the authority concerned. There is no such power vested in the society to withdraw or to reserve to itself the CA sites as it is the duty of the Authority to maintain the said benefits to the public. Therefore, in my opinion the transfer contemplated u/s 32(5) need not be in terms of Transfer of Property Act, though the Authority exercises its right over those properties. Therefore, the contention canvassed on behalf of the petitioner in this regard is rejected.

12. Admittedly, site in question was notified for allotment in the year 1990. The allotment was made in the year 1994. There was no objection by the petitioners who are the residents of the locality for reserving the site for public amenities. The Authority had leased the property in accordance with the provisions of the Act. The petitioners have not questioned the notification issued by the B.D.A. for allotment. It is not shown as to how these petitioners are affected by the allotment of C.A. site, for the purpose for which it was reserved. There is no violation of the provisions of B.D.A. Act by allotment of C.A. site.

13. One another contention raised by Sri Vijaya Shankar -Learned Senior Counsel in this connection is regarding locus-standi of the petitioners. The petitioners who are the residents of the area are really interested in the utilisation of the C.A. site, whether their grievance is genuine or otherwise, is a matter for adjudication. Therefore, it cannot be stated that they have no locus-standi to approach this Court.

14. For the reasons stated supra, I find no merit in this Writ Petition. The Writ Petition is therefore dismissed, however without costs.

HNNJ: 21.6.1996

The Learned Counsel for the petitioners prays for stay of the order passed in this

Writ Petition. There is no executable order for this Court to stay. Hence, his prayer is rejected.