
(2000) 09 KAR CK 0085
In the Karnataka High Court
Case No : Writ Petition No. 22193 of 1999

T.S. Vidya Shanker and Others	Vs	APPELLANT
The State of Karnataka and Another		RESPONDENT

Date of Decision : 11-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Urban Development Authorities Act, 1987 — Section 19

Citation : (2000) 4 KCCR 2425

Hon'ble Judges : Ashok Bhan, C.J;R. Gururajan, J

Bench : Division Bench

Advocate : Lawyers Incorporated, for the Appellant; P.S. Manjunath, for Respondent 2 and M.H. Motigi, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—This petition is filed by way of public interest by the residents of Mysore seeking for a writ of certiorari to quash Annexure-A notification dated 8.3.1999 published in the Andolana Newspaper dated 18.3.1999 inviting applications from the public for allotment of site in certain extensions in Mysore and for a mandamus directing the Respondents not to proceed with Annexure-A. The facts in brief are as under:

2. Petitioners are citizens of Mysore and are aggrieved by Annexure-A a notification issued by the Respondent. Petitioners say that for planned development and improvement of urban area the Karnataka Urban Development Authority Act was enacted (for short "the act"). For carrying out the objects of the Act various provisions have been made including the provisions for acquisition of land for planned development. Detailed procedure is prescribed in the Act providing for publication of the notification in two local newspaper with wide circulation in the area. Objections are received against the execution of the scheme. A sanctioned scheme is also provided u/s 19 of the Act. The area acquired is required to be converted into sites to render suitable for construction

of dwelling units with all infrastructure facilities including roads, sewerage, drainage etc., Rule 3 provide for offer of site for allotment.

3. Petitioners say that second Respondent-Mysore Development Authority (for short the "MUDA") issued a notification dated 8.3.1999 published in Andolana Newspaper on 18.3.1999 calling for applications from the Public for allotment of 13,000 sites of various dimensions. Petitioners contend that the said notification is unsustainable in law. According to the Petitioners without forming a layout with all amenities no publication can be done. Any application issued in the circumstances, according to the Petitioners is illegal and an act of abuse of power. They further contend that large sums of money are collected in terms of the notification by way of payment along with the application. The said collection according to the Petitioner is unsustainable. The sum and substance of the argument is that without a proper layout in all respects the second Respondent has invited the public for allotment of sites and the same according to Petitioners requires to be set aside with a direction not to act on the same in this petition.

4. Notice was issued pursuant to which a detailed counter statement is filed by MUDA. In the statement the MUDA has given the details of acquisition proceedings. They have explained in detail the action taken by them in the counter statement. They justify their action.

5. We have heard Sir Amarnath learned Counsel appearing for the Petitioners and Sri Manjunath, Sri Motigi learned Counsels appearing for the Respondents.

6. The only question that requires to be considered in this petition is as to whether the Respondents are justified in issuing Annexure-A Notification on the given set of facts of this case. The Petitioners state that no layout as such is formed and therefore the same is unsustainable in law. In reply to this allegation the Respondent No. 2 has filed a detailed counter statement. Respondents state that the lands were acquired for formation of layout in Allanahalli II Stage, a layout plan was drawn and approved by the concerned authorities. A development scheme was drawn up and submitted to the Government for approval. The Government has granted its approval in GO No. HUD 634 MIG 92, dated 18.8.1992 for Rajeevnagar III stage in GO No. HUD 651 MIG dated 18.8.1992 and for Sathagally second stage in GO No. HUD 605 MIB 92, dated 18.8.1992 and for Sathagalli II stage in GO No. HUD 605 MIB 92, dated 18.8.1992. After approval of the project by the Government final notification was approved and awards were passed by the appropriate authorities. Compensation have been paid and possession of the lands have been obtained from the land owners. The Engineering Section of the MUDA has taken up for the formation of the layout in all these layouts. MUDA further states that tenders were called for formation of Roads and work orders have been issued. They further say that the formation of roads and drains are nearing completion and action has been taken to provide all the required basic amenities subsequently. In the light of this averment we are of the view that it cannot be said that no layout is formed as sought to be made out by the Petitioners. In our opinion the Respondent MUDA

has complied with all the formality of approval of the project and calling of the tender etc., in developing the area for allotment of sites to the needy citizens. In the circumstances, we are of the view that the Petitioners have not made out a case for quashing of the notification on the facts of this case. Moreover, this petition is filed by way Public Interest by residents of Mysore. The applicants in terms of the notification are not before this Court and they have no grievance as such with regard to the formation of layout. In these circumstances we are of the view that the notification cannot be struck down on the sole basis of want of layout as contended by the Petitioners.

7. Learned Counsel for the Petitioners however relies on a judgment of this Court in the case of Y. Mahesh Vs. Mysore Urban Development Authority, to contend that the execution of the present scheme is unsustainable. The said judgment is clearly distinguishable on facts. From the narration of facts in that case, it can be seen that the MUDA had not acquired the land in Vijayanagar IV stage 2nd Phase (Basavanahalli), Vijayanagar 4th Stage 3rd Phase (Hinkal) Sri S. Bangarappa Nagar 1st phase (Dattagalli 3rd stage); and Nanjangud Extension. The procedure for development was not followed. No notification as such u/s 19 was issued. No layout is formed; no layout could have been formed because the lands were not vested in MUDA. The MUDA without proper acquisition and without possession sought to collect fees towards allotment and on these facts in that case the Court ruled that the layout was not completed in all respects in terms of the Act. On those set of facts again this Court set aside the notification holding that the Respondent failed to carryout development as required in law.

8. In the case on hand we have already stated in the earlier paragraph that lands are acquired, possession has been taken, plans have been approved, roads have been formed, money has been sanctioned and the layout is in the final stage of completion. In the given set of facts of the case we are clearly of the view that it cannot be said that the layout is formed in all its entirety. In the circumstances the said judgment is of no assistance to the Petitioners. In fact this Court noticed in the very case of Y. Mahesh v. MUDA ILR 1993 Kar 1761 in para 26 that MUDA without acquisition and without even the land vesting in them have called for applications. Such is not the case in the present case. Therefore we are unable to accept the argument of the Petitioners in this case placing reliance on Y. Mahesh's case. Courts can interfere in a public interest litigation on the basis of necessary material facts placed before the Court for directions. In the case on hand, the Respondents have provided sufficient material to show that the action of the Respondent cannot said to be an act without justification. Moreover as mentioned earlier, the allottees/applicants have no grievance whatsoever. When the persons who have responded to the notification have no grievance it cannot strictly be said that the Petitioners are espousing their cause by way of Public Interest. It is not the case of the Petitioners that those allottees or the applicants are incapable of raising any dispute with the MUDA. In the circumstance, we are not inclined to exercise our jurisdiction under Article 226 particularly in a Public Interest Litigation on the facts of the case. Therefore we reject this petition but

without any order as to cost.