(2009) 08 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition No. 23216 of 2009

Vatal Nagaraj, Ex Member of Legislative Assembly, Chamarajanagar Constituency and Others — APPELLANT

Vs

The State of Karnataka and Others — RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:
Karnataka Municipal Corporations Act, 1976 — Section 174, 175, 176, 177

Citation : (2009) 4 KCCR 3113

Hon'ble Judges : P.D. Dinakaran, C.J;V.G. Sabhahit, J

Bench : Division Bench

Advocate : S. Basavaraju, for the Appellant; Ashok Haranahalli, General and Niloufer Akbar, AGA, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—The above public interest litigation has been preferred seeking the following reliefs:

(i) for a declaration that the ongoing acts of respondent No. 7 in erecting & unveiling Thiruvallvur Statue near Ulsoor lake, Bangalore without permission/ sanction from the Planning Authorities under the Karnataka Town and Country Planning Act, 1961 is illegal and cannot be permitted to be carried out; and

(ii) for a direction to respondents-1 to 4 to forthwith take suitable actions under the Karnataka Town and Country Planning Act, 1961 against the 7th respondent by preventing it from erecting & unveiling the Thiruvallavur Statue near Ulsoor lake, Bangalore.

2. Even though the petitioners, in the affidavit filed in support of the above PIL, have referred to some of the issues such as Cauvery water issue, Hoganekal falls and Classical status to Kannada language issues as the basis for objecting the erecting and unveiling of Statue of Great Divine Poet Thiruvallavur near Ulsoor lake, Bangalore, Mr. S. Basavaraju, learned Counsel for the petitioners has not

chosen to make any submissions on those issues, but seeks the above reliefs only on the ground that the proposed erection and unveiling of Thiruvallavur Statue near Ulsoor Lake is contrary to Sections 174, 175, 176, 177 and 178 of the Karnataka Municipal Corporation Act, 1976 and therefore, we do not propose to traverse those issues, as we are also satisfied that those issues are not relevant for the disposal of the present writ petition.

3. With regard to the contentions raised by the learned Counsel for the petitioners, it is apt to refer to Sections 174, 175, 176, 177 and 178 of the Karnataka Municipal Corporation Act, 1976, which read as follows:

174. Corporation property.- (1) All property of the nature herein specified, and not being specially reserved by Government, shall be vested in and belong to the Corporation and shall, together with all other property of whatsoever nature or kind not being specially reserved by Government, which may become vested in the Corporation, be under its direction, management and control and shall be held and applied by it as trustee, subject to the provisions and for the purposes of this Act, that is to say.-

(a) all public parks, playgrounds, and open spaces reserved for ventilation;

(b) all public lamps, lamp posts and apparatus connected therewith or appertaining thereto;

(c) all gates, markets, slaughterhouse, manure and refuse depots and public buildings of every description,

(2) The Corporation may accept trusts relating exclusively to the furtherance of purposes to which the Corporation funds may be applied.

175. Acquisition of property and interest therein.- Subject to the provisions of Section 174, the Commissioner may, for the purposes of this Act, acquire on behalf of the Corporation movable or immovable property within or without the city or any interest in such property:

Provided that.-

(a) the Commissioner shall be bound by any resolution of the Standing Committee fixing terms, rates or maximum prices for a particular case or for any class of cases;

(b) the sanction of the Standing Committee shall be required for the exchange of any immovable property, for the taking of any property on lease for a term exceeding twelve months, or for the acceptance of any gifts or bequest of property burdened by an obligation; and

(c) the sanction of the Corporation and the Government shall be required.

(2) for the acceptance or acquisition of any immovable property if the value of the property which it is proposed to accept, acquire or give in exchange exceeds one thousand rupees;

(ii) or the taking of any property on lease for a term exceeding three years; or

(iii) for the acceptance of any gift or bequest of property burdened by an obligation if the value of such property exceeds one thousand rupees.

176. Disposal of property and interest therein.- (1) Subject to the provisions of Section 132, the Commissioner may dispose of by sale or exchange of any Corporation movable property or grant for any term not exceeding two years a lease of any Corporation immovable property or a lease or concession of any right of fishing or grazing or of gathering and taking fruit and the like:

Provided that such lease or concession shall be subject to the condition that the grantee shall not erect any permanent structure on the demised premises:

Provided further that every such disposal, lease or concession made or granted by the Commissioner shall be reported to the Standing Committee within fifteen days.

(2) With the sanction of the Standing Committee the Commissioner may dispose of by sale or exchange any Corporation movable property, or grant, for any term not exceeding three years a lea3e of any Corporation immovable property or a lease or concession of any such right as aforesaid.

(3) With the sanction of the Corporation the Commissioner may lease, sell or otherwise dispose of any Corporation movable property.

(4) The sanction of the Standing Committee under Sub-section (2) or that of the Corporation under Sub-section (3) may be given either generally or for any class of cases or specially for any particular case.

(5) The Commissioner may lend or let out on hire any Corporation movable property on such conditions and for such periods as may be specified in the regulations.

(6) Notwithstanding anything contained in this Act.-

(a) no movable property exceeding such sum in value as may be prescribed shall be sold otherwise than by public auction;

(b) (i) no property whether movable or immovable of whatever value shall be transferred free of cost or for any upset price;

(2) no lease of any immovable property exceeding five years shall be granted;

(2) no immovable property shall be disposed of by sale or by other transfer,

except with the previous sanction of the Government.

177. Procedure for acquisition of immovable property under the Land Acquisition Act, 1894.- Any immovable property which any municipal authority is uthorized by this act to acquire may be acquired under the provisions of the Land Acquisition Act, 1894, and on payment of the compensation awarded under the

said Act in respect of such property and of any other charges incurred in acquiring it, the said property shall vest in the Corporation.

178. Provision relating to land and other properties.- (1) Any land or other property transferred to the Corporation by the Government shall not, unless otherwise expressly provided in the instrument of transfer belong by right of ownership to the Corporation, but shall best in it subject to the terms and conditions of the transfer and on the contravention of any of the said terms and conditions, the land or other property with all things attached thereto, including all fixtures and structures thereon, shall vest in the Government and it shall be lawful for the Government by order to resume possession thereof.

(2) The Government may, by notification and after consultation with the Corporation, take over for a public purpose any land or other property, movable or immovable, belonging to or vesting in the Corporation on such terms as it may determine.

(emphasis supplied)

4.1. The harmonious construction of these provisions would make it clear that vesting of properties in the Corporation shall be subject to the right of the Government over such properties of the Corporation.

4.2. If that be so, we are convinced, based on the records produced before us, that the decisions to erect and unveil the Statues of Great Divine Poet Thiruvallavur near Ulsoor Lake, Bangalore and Great Poet Sarvajna at Chennai have been taken at the highest level between both the Governments, viz., Government of Karnataka and Government of Tamil Nadu, of Course, with the due approval of the respective Corporations, viz., Corporation of Bangalore and Corporation of Chennai, particularly, in view of the due approval of the Corporation of Bangalore for erecting and unveiling of Statue of Great Divins Poet Thiruvallavur near Ulsoor Lake, Bangalore, and that, functions are also being organised by both the Government of Karnataka and the Government of Tamil Nadu jointly for erecting Statue of Great Divine Poet Thiruvallavur near Ulooor Lake, Bangalore on 9th August 2009 and Statue of Great Poet Sarvajna at Chennai on 13th August 2009, we do net see any irregularity or illegality in the same.

5. Undoubtedly, both the great poets have contributed much to the society to uphold the ethics, morality and above all, human dignity, cutting across caste, creed, language, religion and whatsoever. That apart, the proposal of erecting and unveiling of Statues of Great Poets Thiruvallavur and Sarvajna at Bangalore and Chennai, respectively, would, as satisfied by both the Corporations, enhance the brotherhood of neighbouring States.

6. In the absence of any violation of rules or provision of law, much less irregularity or illegality, we do not find any reason to entertain the above writ petition. Hence, the writ petition fails and therefore, dismissed.

7. Even though, we are satisfied that this is a fit case for imposing exemplary cost, we do not propose to do so hoping that such exploitation of judicial time in the nature of public interest litigation will not be repeated in future.

8.1. At this point of time, the learned Advocate General submits that in view of the dismissal of the writ petition, the petitioners should not make any attempt to indulge in any agitation in public place.

8.2. But, Mr. S. Basavaraju, learned Counsel for the petitioners, on instructions from the petitioners, very fairly submits that none of the petitioners nor their followers propose to involve in any such agitation much less any bandh. The submission of the learned Counsel for the petitioners made on behalf of the petitioners is placed on record. We further add that, if any third party resort to any agitation or bandh or whatsoever, the State shall have free-hand to deal with the matter strictly in accordance with law.

9. The writ petition is dismissed with the above observations.

