

**(2013) 08 KAR CK 0033**

**In the Karnataka High Court**

**Case No : Writ Petition No. 20145 of 2011 (LB-RES)**

Vidya Vikas Educational Trust

APPELLANT

Vs

State of Karnataka

RESPONDENT

**Date of Decision : 12-08-2013**

**Acts Referred:**

Karnataka Town and Country Planning Act, 1961 — Section 12, 69

**Citation : (2013) 4 AKR 23 : (2013) 5 KarLJ 218**

**Hon'ble Judges : H.N. Nagamohan Das, J**

**Bench : Single Bench**

**Advocate : B.M. Arun, for the Appellant; N.B. Vishwanath, AGA for R1-R2, Sri. T.P. Vivekananda, for Sri P.S. Manjunath, for R3-R4, for the Respondent**

**Final Decision : Partly Allowed**

## **Judgement**

H.N. Nagamohan Das, J.—In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash the endorsement dated 7.5.2011 issued by respondent No. 4 as per Annexure-A and for a writ of mandamus directing the third respondent to incorporate necessary modifications in the comprehensive development plan, Annexure-K and to rectify the modified plan, Annexure-M1 and for other reliefs. Petitioner is an educational trust. Petitioner Trust was owning certain lands in Alanahalli and Nadanahalli villages of Kasaba Hobli, Mysore Taluk. The lands of petitioner Trust and other lands came to be notified for acquisition for the benefit of third respondent. Petitioner being aggrieved by the acquisition proceedings challenged the same before this court in W.P. No. 206/2001 and connected matters. During the pendency of the writ petition there came to be a settlement between the parties and consequently a joint memo was filed before this court. In terms of the joint memo the writ petition came to be disposed of. In terms of the joint memo, sy. No. 15 measuring 04 acres situated at Nadanahalli village came to be transferred to the petitioner. Accordingly, the khata also came to be transferred to the name of the petitioner and the same is the subject matter of this writ petition. In the land in question in sy. No. 15 and

the adjacent land in sy. No. 16, the petitioner Trust intended to develop the same as educational complex. Accordingly, the petitioner applied for a sanctioned plan to the third respondent on 23.01.2006. The third respondent issued an endorsement on 22.02.2006 as per Annexure-F directing the petitioner to leave 80 feet road as specified in the comprehensive development plan and to resubmit the plan. Petitioner being not happy with the endorsement, Annexure-F submitted a reply on 15.03.2006 stating that there is no need to leave 80 feet road in their plan and requested to sanction the plan without insisting on leaving 80 feet road. The respondents by considering the reply submitted by the petitioner passed a resolution on 15.04.2006, Annexure-H approving the plan submitted by the petitioner. Subsequently on 31.05.2006 the sanctioned plan and commencement certificate was issued in favour of the petitioner as per Annexure-H1 and H2. Further the petitioner applied to the first respondent for change of land use from residential zone to educational purpose. The first respondent vide order dated 27.05.2008 gave approval for change of land use as per Annexure-J subject to certain conditions and payment of certain charges etc. Accordingly, the petitioner paid the necessary charges. As per the approved plan, petitioner started construction. During the course of construction the petitioner found the need for slight modification of the construction. Accordingly petitioner gave a letter on 22.07.2009 with modified plan as per Annexure-M and M1 requesting the third respondent to approve the modified plan. Since there was delay on the part of the third respondent in considering the request of petitioner for approval of modified plan, petitioner addressed a reminder on 20.11.2009, Annexure-Q. On 13.3.2010 the third respondent issued an endorsement to incorporate 80 feet road in the modified plan in terms of comprehensive development plan and also to comply certain other requirements. Accordingly the petitioner complied all other requirements and requested the respondents to approve the modified plan without insisting on incorporating 80 feet road. Again the fourth respondent issued the impugned endorsement on 07.05.2011 as per Annexure-A rejecting the request of petitioner and insisting to incorporate 80 feet road in the modified plan. Hence this writ petition.

2. Heard arguments on both the side and perused the entire writ papers.

3. The contention of the learned counsel for the petitioner is that in the compromise in W.P No. 206/2001 and connected matters no condition is imposed to reserve 80 feet road in the lands in question and therefore the respondents are now not entitled to insist to leave 80 feet road in the lands in question. This contention is unacceptable to me. The compromise between the parties in W.P. No. 206/2001 and connected matters is always subject to Law, Rules and Regulations and the same cannot be altered by consent of the parties. Therefore even in the absence of any such clause in the compromise between the parties in W.P. No. 206/2001 and connected matters it is always open for the respondents to insist upon implementation of legal requirement as per Regulation.

4. Secondly it is contended that the property in question is a residential zone and

without seeking change of land use they can put to use the same for educational purpose. But by mistake the petitioners have applied and obtained the change of land use from the Government as per Annexure J and the conditions imposed therein are not binding on the petitioner institution. I decline to accept this contention of the learned/counsel for the petitioner. Admittedly the land in question is situated in residential zone in the comprehensive development plan. Further the petitioner is intending to develop the land in question as educational complex and the same is evident from earlier plan and modified plan submitted by the petitioner. What is permitted in the residential zone is school offering general education up to secondary education. But in the instant case the petitioner is developing the lands in question as educational complex inclusive of colleges. Therefore conditions imposed by the Government in Annexure J dated 27.05.2008 permitting the change of land use is binding on the petitioner. Condition No. 5 in Annexure J specifies that change of land use is always subject to the roads designated in the master plan. Therefore the petitioner is bound by the conditions in the order dated 27.05.2008 Annexure-J.

5. Thirdly it is contended that the respondents in their resolution dated 15.04.2006 - Annexure H approved the plan submitted by the petitioner and no condition is imposed in it directing the petitioner to leave 80 feet road and therefore now they cannot insist on the same. I decline to accept this contention. A perusal of Annexure H specifies that the resolution and the commencement certificate issued in favour of the petitioner are subject to zonal regulations. The zonal regulations specifies that 80 feet road is to be reserved by the petitioner in the land in question. Therefore the impugned endorsement issued by the respondents are in accordance with law.

6. Section 12 of the Karnataka Town and Country Planning Act, 1961 (for short "the Act") specifies the contents of master plan and the same reads as under:

12. Contents of Master Plan: (1) The Master Plan shall consist of a series of maps and documents indicating the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated, such plan shall include proposals for the following namely,-

- a. Zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other purposes together with Zoning Regulations;
- b. A complete street pattern, indicating major and minor roads, national highways, and state highways, and traffic circulation pattern, for meeting immediate and future requirements with proposals for improvements;
- c. areas reserved for parks, playgrounds, and other recreational uses, public open spaces, public buildings and institutions and area reserved for such other purposes as may be expedient for new civic developments;
- d. areas earmarked for future development and expansion;

e. xxx

f. XXX

g. xxx

By Act No. 1 of 2005 Section 69 came to be substituted with effect from 14.02.2005 by new Section as under:

69. Acquisition of land designated for certain purposes in a Master Plan : (1) The Planning Authority may acquire any land designated in a Master Plan for specified purpose in clause (b), (c) or (d) of sub-section (1) of section 12, or for any public purpose out of those specified land in clause (a) of sub-section (1) of section 12 by agreement or under the Land Acquisition Act, 1894, (Central Act I of 1894) as in force in the State. If the land is acquired under the Land Acquisition Act, 1894, the provisions of said Act as amended by section 72 of the Act shall apply to the determination of compensation for the acquisition of such land.

(2). If the designated land, except land specified for the purpose in clause (b) of sub-section (1) of section 12, is not acquired by agreement within five years from the date, the Master Plan is published in the gazette under sub-section (4) of section 13 or if the proceedings under the Land Acquisition Act are not commenced within such period the designation shall be deemed to have been lapsed.

7. A reading of the above Section specifies that the lands designated for the purpose of major and minor roads, national high ways, state high ways etc., shall not be lapsed even if they are not acquired within the stipulated time of 5 years from the date of publication of master plan. In the instant case in the master plan the lands in question are designated for the purpose of roads. Therefore even if the lands in question are not acquired, the designation of lands as roads will not lapse. Therefore the respondents are well within their power insisting on the petitioner to leave the road under the impugned endorsement.

8. Petitioner contends that it has given a representation on 15.12.2008 as per Annexure L to third respondent requesting to make necessary changes in the comprehensive development plan and to delete the designated road in the property of the petitioner. Again on 04.02.2009 the petitioner gave a reminder as per Annexure L-1. Even to this day third respondent has not considered the request of the petitioner as per Annexure L and L1. It is obligatory on the part of third respondent to consider the request of the petitioner. For the reasons stated above, the following;

ORDER

i. Petition is partly allowed.

ii. Third respondent is hereby directed to consider the representation of the petitioner dated 15.12.2008 - Annexure L and the reminder dated 04.02.2009 - Annexure L1 in accordance with law as expeditiously as possible.

iii. The writ petition insofar as it relates to quashing of Annexure A - endorsement dated 07.05.2011 is hereby dismissed.