(1986) 11 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No''s. 7912 to 7914 of 1986

Vishwa Bharathi House Building Co-operative Society Ltd. APPELLANT

Vs

Bangalore Development Authority RESPONDENT

Date of Decision : 14-11-1986

Acts Referred:

Citation : (1987) ILR (Kar) 767

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; Shivraj Patil, for the Respondent

Final Decision : Allowed

Judgement

Chandrakantaraj Urs, J.—In these matters rule nisi was issued by me on 29-5-1986. Statement of objections was directed to be filed in one week, on 23-6-1986. Thereafter time was extended. Statement of objections was filed. Matter was heard on 18-8-1986. It was recorded in the order sheet that there was no prima facie evidence in favour of holding that the respondent - Bangalore Development Authority (in short the B.D.A.) had the authority to levy fee or tax on transfer of sites. Reliance placed on Section 29 of the Bangalore Development Authority Act (in short the B.D.A. Act) was also of no assistance as there was no Notification by the Government either past or current and valid on the date which would enable the B.D.A. to levy fee on transfers. In that circumstance, the matter thereafter-wards was called on request on subsequent dates of hearing. On 30-9-1986 on the prayer made by the counsel for B.D.A. the case was adjourned on payment of costs fixing the Advocate''s fee at Rs. 100/-. It was again called on 24-10-1986 though I was sitting on a Division Bench. To-day Mr. Shivaraj Patil is absent but his proxy sought for an adjournment. Adjournment is refused. Matter is disposed of by the following order placing the respondent - B.D.A. ex parte.

2. Petitioner in the first petition is a House Building Co-operative Society Limited,

registered under the Karnataka Co-operative Societies Act, 1959. Petitioner in the second petition is a member of the aforesaid petitioner-Society. So also petitioner in the third petition. An application has also been made in these batch of Writ Petitions seeking to implead any person interested in terms of Order 1 Rule 8 of C.P.C. as respondents as the question raised is of considerable importance. This Court did not accede to the suggestion in the light of the arguments heard earlier after the Statement of objections was filed. The position, therefore, continues. These matters should be disposed of as they are.

3. Petitioners are aggrieved by the demand of the B.D.A, It has demanded two sums to be paid at Rs. 198-75 and Rs. 1,328-15. The demand at Annexure-C relates to site No. 7/E, 3rd Stage, Banashankari Layout, Bangalore. Similarly Annexure-D is another demand notice and relates to Site No. 199 in the same layout. There are also two items which are levied at Rs. 125-65 and Rs. 1136-60 paise. The details are indicated in the demand notices. They relate to General Tax, Education Cess, Health Cess, Library Cess, Beggary Cess and Property Tax, property tax on Education Cess, property tax on Health Cess, property tax on Library Cess, property tax on Beggary Cess and Miscellaneous (Katha fee).

4. The contention of the petitioners is that the B.D.A. does not have the power to levy tax. No provision is made in the B.D.A. Act, 1976. Article 265 of the Constitution mandates, no tax may be levied without the authority of law. In M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, , the Supreme Court analysing the scheme of the lists in Schedule VII to the Constitution indicated that entries relating to taxation are to be found in the lists at the end clearly demarcating the distribution or conferment of power on the Union and the State Legislatures to regulate and to levy tax or fee. Any tax or fee levied without the authority of law would be illegal and, therefore, not enforceable.

5. The object of B.D.A. in enacting the B.D.A. Act is to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith. u/s 15 of the B.D.A.Act, power or authority to undertake works and incur expenditure for development etc., are provided in the provisions so made, but there is no power to levy any tax or fee.

6. Even, as contended, in the statement of objections filed, the only source of authority is u/s 29 of the Act which provides for the B.D.A. and the Commissioner of B.D.A. to exercise the powers and functions exercised under the Karnataka State Municipal Corporations Act by the Corporation and the Commissioner respectively. But that power can be exercised only when the Government by notification declares that from such and such a date and for such period as may be specified therein and subject to such restrictions and modifications, if any, as may be specified in the notification - (i) the powers and functions of the Corporation or a Standing Committee thereof under the Karnataka Municipal Corporations Act shall be exercised and discharged by the

Authority; and (ii) the powers and functions of the Commissioner of the Corporation under the said Act, shall be exercised and discharged by the Commissioner under the B.D.A. Act.

7. As I have earlier re-counted, no such notification which may be said to be current and valid authorising the B.D.A. to exercise the powers of the Corporation in the concerned area namely, Banashankari III Stage, Bangalore is brought to my notice. It may, however, be stated, in another case, reliance was placed on the notification issued by the Government u/s 29 of the B.D.A. Act. But that notification had expired by lapse of the period specified and no notification had been subsequently issued either renewing the same or extending the period.

8. That the Corporation of the City of Bangalore may levy taxes and fees, is apparent from the provisions of the Karnataka State Municipal Corporations Act, 1976 (See Chapter X thereof read with Rules as per Schedule III which forms part of the Act). It is only by getting that power conferred in the manner provided u/s 29 of the B.D.A.Act, the respondent - B.D.A. may acquire the power to levy tax or fee subject to such restriction, as may be prescribed in the notification issued by the Government. In the absence of such notification there is no power.

9. It would be yet another matter if there is a notification to examine whether a sum of Rs. 500/- may be levied by way of fee on transfer, as contended by Sri T.S.Ramachandra, learned Counsel appearing for the petitioners. This Court will examine that question when there is a levy duly authorised. Quantum of levy of fee with reference to service rendered will require separate examination in an appropriate case that shall be dealt with accordingly.

10. For the present, it suffices to say that the impugned demand notice in these Writ Petitions (Annexure-C and D) are issued without the authority of law and, therefore, they are liable to be quashed, and they are accordingly quashed.

In the result, for the reasons stated above, these petitions are allowed and the impugned notices are quashed with costs. Advocate''s fee is fixed at Rs. 100/- in each of the petitions.

It is asserted by the petitioners that they have paid the demands made under Annexure-C and D. Those demands which are already paid are liable to be refunded by the respondent-B.D.A. within 30 days from to-day, if an application is made by the concerned petitioners to the concerned authority.

Rule issued is made absolute in terms above.

