
(2002) 01 SC CK 0118
In the Supreme Court Of India
Case No : Civil Appeal 785 of 1997

Vishwa Chetna Trust and Another

APPELLANT

Vs

R.P.C. Layout Residents Welfare Association and Others

RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 38A

Citation : (2002) 2 JT 182 : (2002) 9 SCC 384

Hon'ble Judges : V. N. Khare, J; Ashok Bhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant No. 1 herein is a public charitable trust established with the objects, inter alia, of running educational institutions. It is alleged that appellants have already running a Kannada medium high school and a junior college. There is a piece of land numbered as site No. 22 within the limits of Bangalore Municipal Corporation. The said land vests in the Bangalore Development Authority, hereinafter referred to as "the authority" constituted and established under the Bangalore Development Authority Act, hereinafter referred to as "the Act". The said site falls within the comprehensive development plan. Civic amenity is defined u/s 2(bb) of the Act. The definition of civic amenities as originally stood runs as under:

"2 (bb) Civic amenity means: -

(iv) A center for educational, religious, social or cultural activities or for philanthropic service run by a cooperative society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) or a society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) or by a trust created wholly for charitable, educational or religious purposes".

2. Subsequently, the said definition of civic amenity was amended by The

Bangalore Development Authority (Amendment) Act, 1988 which runs as under:

"Civic amenity means: -

(i) a market, a post office, a telephone exchange, a bank, a fair price shop, a milk booth, a school, a dispensary, a hospital, a pathological laboratory, a maternity home, a child care center, a library, a gymnasium, a bus stand or a bus depot;

(ii) a recreation center run by the government or the corporation.

(iii) a center for educational, social or cultural activities established by the central government or the state government or by a body established by the central government or the state government;

(iv) A center for educational, religious, social or cultural activities or for philanthropic service run by a cooperative society registered under the Karnataka Cooperative Societies Act, 1959 (Karnataka Act 11 of 1959) or a society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) or by a trust created wholly for charitable, educational or religious purposes;

(v) a police station, an area office or a service station of the corporation or the Bangalore water supply and sewerage board or the Karnataka electricity board; and

(vi) such other amenity as the government may, by notification, specify".

3. By the said amendment, the definition of civic amenity was enlarged and also included educational, social or cultural activities run by a trust which is wholly charitable, educational or religious purposes. In between time, the appellant herein applied to the authority for allotment of the aforesaid site in its favour for setting up a Kannada primary school and junior college. The authority, after having found that the requirement of the appellant is bona fide and is for educational purposes, it granted the lease of the said land in favour of the appellant for a period of 30 years. After the land was leased out to the appellants, respondent No. 1 -RPC layout residents welfare association filed a public interest litigation by means of a petition before the Karnataka High Court challenging the allotment of the aforesaid plot of land in favour of the appellant. While the said public interest litigation was pending, the Karnataka Legislature by amending Act 18 of 1991 amended the Act. By Clause 2 of the amending Act original Section 38A was substituted by new Section 38A and by Clause 3 of the said amending Act all allotments made or action taken by the authority were validated. Clauses 2 and 3 of the amending Act run as under:

"38A, Grant of area reserved for civic amenities etc. (1) The authority shall have the power to lease, sell or otherwise transfer any area reserved for civic amenities for the purpose for which such area is reserved.

(2) The authority shall not sell or otherwise dispose of any area reserved for

public parks and playgrounds and civic amenities, for any other purposes and any disposition so made shall be null and void.

Provided that where the allottee commits breach of any of the conditions of allotment, the authority shall have right to resume such site after affording an opportunity of being heard to such alienee".

"3) Validation of allotment of civic amenity sites:-

Notwithstanding anything contained in any law or judgment decree or order of any court or other authority, any allotment of civic amenity site by way of sale lease or otherwise made by the authority after the twenty first day of April 1984 and before the seventh day of May 1988 for the purposes specified in Clauses (bb) of Section 2 of the principal Act shall if such site has been made use of for the purpose for which it is allotted be deemed to have been validly made and shall, have effect for all purposes as if it had been made under the principal Act as amended by this Act and accordingly:-

(i) all acts or proceedings or things done or allotment made or action taken by the authority shall for all purposes be deemed to be and to have always been done or taken in accordance with law."

4. When the matter came up for hearing, the High Court without adverting to the effects of clause 3 of the amending Act allowed the writ petition filed by respondent No. 1 solely on the ground that applications were not invited from amongst the eligible applicants/public before allotting the land in favour of the appellants. In that view of the matter the order of allotment of land in favour of the appellants were set aside. It is against the said judgment, the appellant is in appeal before us by means of special leave petition.

5. Learned counsel appearing for the appellant urged that in view of Clause 3 of the amending Act, the allotment of land made in favour of the appellant stood validated, and the view taken by the High Court was erroneous. We find substance in the argument. It is not disputed that appellant is a trust and allotment of land was for educational purposes within the meaning of amended definition of civic amenity u/s 2(bb) of the Act. It is also not disputed that the order of allotment was made on 24.9.1985 and the said date falls within the period beginning from 21.4.1984 to 7.5. 1988. The amending Act was neither challenged before the High Court nor before us. Under such circumstances by virtue of Clause 3 of the amending Act, allotment of disputed land stood validated. We are, therefore, of the view that the High Court fell in error in omitting to consider the effect of Clause 3 of the amending Act while allowing the writ petition.

6. For the aforesaid reasons, the appeal deserves to be allowed. We, accordingly, set aside the judgment under challenge and allow the appeal. There shall be no order as to costs.