

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 27th DAY OF SEPTEMBER, 2019

PRESENT

THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

WRIT PETITION No.5865 OF 2008 (BDA-PIL)

Canara Bank Colony Residents, Welfare Association
v/s.

The Commissioner, Bangalore Development Authority,
Chowdaiah Road, Bangalore.

ORDER

This Public Interest Litigation is filed by the petitioner-Association under Article 226 of the Constitution of India, seeking quashing of the order of the Bangalore Development Authority (for short, 'the BDA') deleting 16,000 sq.ft. of the land in civic amenity site of the Canara Bank Colony by approving the amended layout plan as per the proceedings dated 23rd September 2003 vide Annexure-J.

2. The case of the petitioner is that the Canara Bank Employees Co-operative Housing Society Limited (for short, 'the said Society') purchased 28 acres 7 guntas of land in Sy.Nos.68/1-2-3-4, 69/1-2-3 and 122 (Old No.46) of

Nagarabhavi Village through various registered sale deeds for a valuable consideration from its owners for formation of residential layout. The Assistant Commissioner, by order dated 30th March 1997 forfeited the said land to the Government on the ground that the said Society had acquired the agricultural property contrary to the provisions of the Karnataka Land Reforms Act, 1961. The Government, by order dated 9th May 1977 declared that the said forfeited lands be reserved for public purpose and for non-agricultural use. Pursuant to that, the said Society has requested the Government for grant of the above-said land. The Government by order dated 28th December 1977 accorded sanction for transfer of the above said land in favour of the said Society. Pursuant to the Government Order dated 28th December 1977, the Deputy Commissioner, by Official Memorandum dated 2nd February 1978 granted the land under Rule 20 of the Karnataka Land Grant Rules, 1969 in favour of the said Society. Pursuant to the order of the Deputy Commissioner vide Annexure-C, the Tahasildar has issued a Grant Certificate vide Annexure-D. On the basis of the abovesaid grant, the Revenue Inspector handed-over the possession of total extent of 28 acres 7 guntas of land in favour of the Society on 6th March 1978. The said society filed an application under Section 32 of the Bangalore Development Authority Act, 1976 (for short, 'the BDA Act') for sanction of layout plan. Pursuant

to the request made by the said Society, the BDA has sanctioned the plan for construction of layout on 14th July 1978. As per the provisions of the Act, the Society has executed an agreement dated 24th July 1979. Condition No.11 in the Agreement is that the first party has agreed to handover civic amenity site to the BDA after formation of layout. After obtaining the plan, the Society has formed the residential layout and allotted sites to its members.

3. In the meantime, the fifth respondent herein, claiming a right over an extent of 3 acres of land in Sy.No.46/3, of Nagarabhavi Village, filed a civil suit for declaration and possession in O.S.No.1213/1986 against the Society. After summons was served, the said Society filed written statement denying the right and title of the fifth respondent over the extent of land claimed by him and sought for dismissal of the suit.

4. Subsequently, the Society entered into a compromise with the fifth respondent, who is the plaintiff in O.S.No.1213/1986 and the Society has conceded the ownership of the fifth respondent to an extent of 16,000 sq.ft. of the land. Accordingly, the said suit was decreed in terms of the compromise petition. Pursuant to that decree, fifth and sixth respondents filed an application before the BDA for deletion of the said extent of 16,000 sq.ft. from the civic amenity area. On the basis of the request of said Society and the fifth and sixth

respondents, the BDA deleted an extent of 16,000 sq.ft. from the civic amenity area in the said Layout and approved the modified plan. Immediately after the same came to the notice of the petitioner, the petitioner has filed this writ petition challenging the same.

5. Sri N.Shankaranarayana Bhat, the learned counsel appearing for the petitioner submitted that the said Society has applied for sanction of the plan under Section 32 of the BDA Act and obtained the layout plan approval and the Society executed an agreement in favour of the BDA that the Society will relinquish the civic amenity area in favour of the BDA for the benefit of the residents of the layout. He further contended that the fifth respondent has filed a suit before the Civil Judge, Bangalore City. In the suit, neither the petitioner nor the BDA were made as parties. The said Society in collusion with the fifth respondent entered into a compromise with the plaintiff and conceded the ownership of the fifth respondent to the extent of 16,000 sq.ft. of the land. Secondly, he contended that the BDA, without the authority of law and even-though the decree passed in the civil suit is not binding on it, on the request of the said Society, has passed a resolution deleting 16,000 sq.ft. of civic amenity area from the layout plan with a condition that for compensating the same, the Society, fifth and sixty respondents have to relinquish site Nos. 26, 27, 28, 228 and 332 and two RFD areas as CA site

Nos. 5 and 9 in favour of the BDA. This action of the BDA is contrary to the provisions of the BDA Act and Rules. Thirdly, he contended that even the alternative sites which are agreed to be handed over to the BDA are also under litigation. Hence, he sought for allowing the writ petition.

6. Per contra, Sri Nanjunda Reddy, the learned Senior Counsel appearing for the first respondent submitted that the Civil Court, in O.S.No.1213/1986, by a judgment and decree dated 29th October, 1998 has decreed the suit in terms of the compromise petition in which it has been declared that the fifth respondent is the owner to an extent of 16,000 sq.ft. of the land in Sy.No.46/3. On the basis of the decree, on the request made by the said Society, fifth and sixth respondents, a resolution has been passed for modifying the layout plan and the Society has been directed to compensate that area by executing a relinquishment deed in respect of site Nos. 26, 27, 28, 228 and 332, and 2 RFD areas as CA site Nos. 5 and 9 in favour of the BDA. Subsequently, the BDA has also issued a number of notices to the said Society to execute the relinquishment deed in respect of the above site numbers in favour of the BDA for civic amenity sites.

7. Sri N.S.Sanjay Gowda, the learned counsel appearing for the respondent-Society has submitted that the fifth

respondent has filed a suit against the said Society for declaration in respect of Sy.No.46/3. In the said suit, there is a compromise petition filed and the suit has been decreed in terms of the compromise petition declaring that the fifth respondent is the owner to an extent of 16,000 sq.ft. in Sy.No.46/3. In view of the decree, the said Society has sought for modification of the plan and agreed to give an alternative land for civic amenity. Since the alternative land which is agreed to be given by the said Society is in dispute, immediately after the matter would be concluded in the civil court, the same will be handed-over to the BDA.

8. Sri M.S.Raghavendra Prasad, the learned counsel appearing for the sixth respondent submits that the civil court by its judgment and decree dated 29th October 1998 has accepted the compromise petition and decreed the suit declaring that the fifth respondent is the owner of the property to an extent of 16,000 sq.ft. in Sy.No.46/3. Since that compromise decree has not been challenged, the same has attained finality. In view of the above, the BDA has rightly passed a resolution for deleting 16,000 sq.ft. from the civic amenity site. Hence, he sought for dismissal of the writ petition.

9. Heard the learned counsel appearing for the parties and we have perused the writ papers.

10. It is not in dispute that the land bearing Sy.Nos.68/1-2-3-4, 69/1-2-3-4 and Sy.No.122 (Old No.46) measuring 28 acres 7 guntas was purchased by the said Society by a registered sale deed from the original owners. The abovesaid purchase was contrary to the provisions of the Karnataka Land Reforms Act. The Assistant Commissioner initiated the proceedings under the Land Reforms Act and passed an order on 30th March 1977 forfeiting the abovesaid land in favour of the State Government. The Government, by order dated 9th May 1977 reserved the abovesaid land for public purpose for non-agricultural use. The said Society requested the Government for grant of the abovesaid land for formation of a layout. The Government by the order dated 28th December 1977 accorded the permission for grant of the land in favour of the said Society. Pursuant to that Government Order, the Deputy Commissioner by order dated 2nd February 1978 granted the abovesaid land in favour of the said Society. The Tahasildar, Bangalore Noth Taluk has issued a certificate to that effect on 1st March 1979. Subsequently, the Revenue Inspector has handed-over the abovesaid land in favour of the said Society. The said Society prepared a plan for formation of the layout and filed an application under Section 32 of the

BDA Act. The said Section is extracted hereinbelow:

"32. Forming of new extensions or layouts or making new streets.-

(1)

(2) Any person intending to form an extension or layout or to make a new private street, shall send to the [Commissioner] a written application with plans and sections showing the following particulars:-

(a) the laying out of the sites of the area upon streets, lands or open spaces;

(b) the intended level, direction and width of the street;

(c) the street alignment and the building line and the proposed sites abutting the streets;

(d) the arrangement to be made for levelling, paving, metalling, flagging, channelling, sewerage, draining, conserving and lighting the streets and for adequate drinking water supply.

(3) The provisions of this Act and any rules or bye-laws made under it as to the level and width of streets and the height of buildings abutting thereon shall apply also in the case of streets referred to in sub-section(2) and all the particulars referred to in that sub-section shall be subject to the approval of the authority.

(4) Within six months after the receipt of any application under sub-section (2), the authority shall either sanction the forming of the extension or layout or making of street on such conditions as it may think fit or disallow it or ask for further information with respect to it.

(5) The authority may require the applicant to deposit, before sanctioning the application, the sums necessary for meeting the expenditure for making roads, side-drains, culverts, underground drainage and water supply and lighting and the charge for such other purposes as such applicant may be called upon by the authority provided the applicant also agrees to transfer the ownership of the roads, drains water supply mains and open spaces laid out by him to the authority permanently without claiming any compensation therefor."

11. In terms of the above provision, the BDA has approved the plan on 14th July 1978. Pursuant to the abovesaid provision, the said Society executed an agreement in favour of the BDA on 24th July 1979. Condition Nos.11 and 14 of the said agreement is extracted hereinbelow:

"11) That the First Party agrees to handover Civic Amenity Site on completion of the private layout works to the Bangalore Development

Authority and areas reserved for Parks and Open Spaces and roads to the Bangalore Development Authority, Bangalore free of cost through a deed for being handed over to the concerned Local Body.

12) XXXX

13) XXXX

14) That in case of violation of any of the conditions mentioned above, the Second Party is at liberty to withdraw the sanctions accorded to the layout and to acquire the whole or part of the property belonging to the First party and to dispose of the same according to the Rule and conditions existing at the consequences of the First party."

"Open Space" means and includes the land/site earmarked/set apart for civic amenities purpose. This issue has been considered by this Court in the case of *M/s. Bhavani Housing Co-operative Society Limited vs. Bangalore Development Authority and Another-* ILR 2006 KAR 1352

.Paragraph 10 of the said decision reads thus:

"10. As, the word 'Open Space' is defined in the statute which is applicable to all the cities including Bangalore City, there is no embargo for the Courts to import/apply the same to the present case, as the aforesaid Act is enacted for the purposes of preservation and regulation of parks, play fields and open space. Thus, in the absence of definition of 'open space in BDA 'Act', it is just and necessary to import the said meaning of 'open space' into BDA Act particularly when the provisions of the Karnataka Parks Act 1985 don't conflict with provisions of BDA

Act, particularly in so far as they relate to regulation of open spaces are concerned. The provisions of two enactment's viz., BDA Act and Karnataka Parks, Play Fields and open spaces (Preservation and Regulation) Act 1985 will have to be read conjointly and harmoniously. If the definition of "Civic Amenity " found in BDA Act and the definition of 'Open Space' found in the Karnataka Parks, Play-Fields and Open Spaces (Preservation and Regulation) Act 1985 are read harmoniously, it would be clear that the 'open space' means and includes the land/site earmarked/set apart for civic amenities purposes.

Even otherwise, the word 'Open Space' contained in Section 32(5) of the 'BDA Act' cannot be construed in the literal sense of term 'open space', looking to the entire scheme of the 'BDA-Act'. In this context, it is relevant to note the provisions of Section 30(2) of the 'BDA Act' which reads as under:

30(2): Any open space including such parks and playgrounds as may be notified by the Government reserved for ventilation in any part of the area under the jurisdiction of the authority as part of any development scheme sanctioned by the Government shall be transferred on completion to the Corporation for maintenance at the expense of the Corporation and shall thereupon vest in the Corporation."

12. On the completion of the layout, the said Society allotted the sites in favour of its members and as per the

provisions of Section 32 of the said Act and as per the agreement executed by the said Society, they have not handed over the civic amenity sites in favour of the BDA by executing the relinquishment deed.

13. In the suit filed by the fifth respondent for declaration in respect of 3 acres of land in Sy.No.46/3, the said Society was made as a party. Even though in the first instance the said Society filed the written statement and denied the title of the fifth respondent herein, finally it entered into a compromise. The said Society conceded the ownership of the fifth respondent to an extent of 16,000 sq.ft. of the land. In the said suit the BDA is not a party. It is not binding on them. In spite of that, on the request made by the said Society and sixth respondent, the BDA has passed a resolution vide Annexure-J deleting 16,000 sq.ft. civic amenity area in the approved layout plan and alternative area was marked for civic amenity site to bring it under the provisions to the zonal regulation. This action of the BDA is contrary to the provisions of Section 32 of the said Act and Rules. As the plan has been sanctioned and as the said Society has executed an agreement containing condition No.11 specifying that after formation of the layout, the area reserved for the park and open space and roads has to be relinquished in

favour of BDA. Instead of insisting for relinquishment deed, the BDA has passed an impugned order as at Annexure-J. In view of the above, in our opinion, the action of the first respondent is contrary to the provisions of the said Act and BDA Zonal Regulations. Hence, the same is unsustainable.

14. While passing the impugned order as at Annexure-J, the BDA has put a condition that the said Society has to handover alternate area for civic amenity, which was agreed by the said Society. But the alternate area earmarked by the Society for civic amenity is also under dispute and cannot be used as a civic amenity area. In the case on hand, before executing the relinquishment deed in favour of the BDA, the BDA has permitted the Society to allot the sites to its members. Now that the petitioner-Association members have already taken possession of the sites and in the deleted portion of the property, the sixth respondent has constructed a building and sold it in favour of other person. Therefore, it is difficult to restore possession of the civic amenity site. Under these circumstances, we are of the view that in the interest of justice, after quashing Annexure-J, the matter will have to be remanded to the BDA for fresh consideration. It is the duty of the BDA to ensure that the Society hands over a clear civic amenity site. Hence we pass the following order:

(i) The impugned order at Annexure-J dated 23rd September 2003 is quashed;

(ii) The amended plan of the Canara Bank Colony is cancelled;

(iii) The matter is remanded back to the first respondent BDA to hear the petitioner and the Society before considering the application of the Society for modification of the layout plan and pass appropriate order in accordance with law within a period of six months from the date of receipt of copy of this order. The BDA shall ensure that a clear civic amenity area of 16,000 sq.ft. is made available by the Society.

With the above observations, the writ petition stands disposed of.