Corporation of the City of Bangalore

Vs

Fuel Lorry Owner & Merchants Association and others

Civil Appeal No. 2334 of 1992

(S. Ranganathan, V. Ramaswami-II, Yogeshwar Dayal JJ)

05.05.1992

JUDGMENT

1. Leave granted. We have heard both counsel and proceed to dispose of the appeal itself.

2. The respondent, an association of fuel lorry owners and merchants, were parking their lorries on a piece of land in Siddaiah Road, Bangalore-27. The land belonged to the Bangalore City Corporation and the respondents were parking their lorries on the above site often for long periods until they were able to dispose of all the loads of firewood that they brought into the city from time to time. The Corporation was collecting a fee of Rs. 2/- per day per lorry whenever such lorries were parked. It appears some time in 1984, the Corporation directed the respondents to find some other place for parking the vehicles and declined to permit them to continue parking on the impugned site.

3. The respondents filed a writ petition which was dismissed by a learned single Judge of the High Court Before the learned single Judge, the respondents had placed reliance on the provisions of S.348 of the Karnataka Municipal Corporation Act, 1976 and contended that this provision created an obligation on the part of the Corporation to provide parking places for vehicles as and when required to do so. This argument was rejected by the learned single Judge who held that the provision in question was an enabling provision and that the Corporation was under no obligation to continue to place the site in dispute at the disposal of the respondents, particularly when the Corporation needed the land for other public purposes.

4. The respondents filed an appeal. This appeal was allowed. Before the Division Bench it was suggested on behalf of the respondents that certain other sites were available in the city and that the City Corporation may be directed to make one of those sites available to the respondents for parking their lorries in lieu of the site presently in dispute. The Division Bench considered them and gave a direction that the respondents should be permitted to park their lorries on one of these sites located in Wilson garden after filling up a public drain and after suitably levelling the ground to make it fit for parking the lorries without affecting the open drain. Subsequently, the Division Bench also passed another order when it was pointed out that it was not possible to allot the site containing the public drain to the respondents, and that the site in question belonged to the Karnataka State Road Transport Corporation and not to the City Corporation. In view of this development, the Court directed that, since the Corporation was unable to provide an alternative site, the respondents should be allowed to use the present site for the purpose of parking their vehicles till such time as the Corporation is in a position to provide a suitable alternative site. It also directed that, in case the possession of the plot in dispute had already been taken by the Corporation, the plot should be returned to the respondents so that they could continue to park their vehicles thereon until an alternative suitable site is allotted to them.

5. After hearing both counsel, we are of 'the opinion that this appeal has to be allowed. The respondents are a group of businessmen and if land is needed for them to carry on their business, it is for them to acquire the land needed for the said purpose out of their own resources. They cannot be allowed to treat the land belonging to the Corporation virtually as a firewood mandi. Section 348 of the Corporation Act is an enabling provision which empowers the Corporation to construct or provide public halting places for vehicles and charge and levy such fees for use of the same as a standing committee may fix from time to time. It is true that this power is coupled with a duty and the Corporation consistent with the availability of sites belonging to it and in public interest should take steps to meet the real requirements of cross-sections of the public for suitable parking places inside or outside the city limits as public interest may require. But this is a matter on which the Corporation will have to take a decision on a consideration of all relevant factors, such as congestion of traffic, law and order situation, pollution problems, sanitary and other requirements and so on. The provision cannot be construed as creating an unqualified right on the part of any and every group of persons to insist that the Corporation should provide a parking place for its vehicles. The statute will become unworkable if the section is construed as obliging the Corporation to allot a parking place to any and every association such as that of the respondents to park their vehicles. We do not think that the High Court was correct in directing the Corporation to continue to provide the site in dispute to the respondents for an indefinite period of time. At best, there can only be a direction to them to consider the needs of the respondents, in the context of the requirements of public interest, examine if they can be accommodated elsewhere inside or outside the city limits and, if it is possible to permit the respondents to park their vehicles on such site on such terms and conditions as may be decided upon. We direct accordingly.

6. We, therefore, set aside the orders of the Division Bench of the High Court. However, on the request made on behalf of the respondents, we direct that the Corporation may permit them to continue to occupy the present place for some more time. The respondents should, however, vacate the site in question on or before 30-6-1992. With these observations, this appeal is allowed but we make no order regarding costs. Appeal allowed.

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