SUPREME COURT OF INDIA

Purushotham

Vs.

State of Karnataka

C.A.No.10747of 2013

(Surinder Singh Nijjar and A.K.Sikri, JJ.)

29.11.2013

ORDER

Surinder Singh Nijjar, J.

1. Leave granted.

2. Hon'ble Mr. Justice Surinder Singh Nijjar pronounced the Judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice A.K. Sikri.

For the reasons recorded in the signed Reportable Judgment, the Appeals are dismissed.

(Vishal Anand)	(Indu Bala Kapur)
Court Master	Court Master

(Signed Reportable Judgment is placed on the file) REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.10747 OF 2013 (Arising out of SLP (C) No. 31690 of 2011) Purushottam …Appellant VERSUS State of Karnataka & Ors. ...Respondents With Civil Appeal No.10748 of 2013 (Arising out of SLP (C) No. 31695 of 2011) Mrs. Ramadevi …Appellant VERSUS Bangalore Development Authority & Ors. ...Respondents With Civil Appeal No.10749 of 2013 (Arising out of SLP (C) No. 33184 of 2011) Bharat Petroleum Corporation Limited …Appellant VERSUS

Subramanya & Ors. ...Respondents With Civil Appeal No.10750 of 2013 (Arising out of SLP (C) No. 33319 of 2011) Bharat Petroleum Corporation Limited …Appellant VERSUS Dr. Harish V. Iyer & Ors. ...Respondents J U D G M E N T SURINDER SINGH NIJJAR, J.

1. Leave granted.

2. These four appeals arising out of SLP (C) No.31690 of 2011, SLP (C) No.31695 of 2011, SLP (C) No.33184 of 2011 and SLP (C) No.33319 of 2011, impugn the judgment of a Division Bench of Karnataka High Court rendered in Writ Petition No. 5428 of 2006 (BDA-PIL), and Writ Petition No. 5173 of 2006 (GM-RES/PIL), whereby the High Court has declared the allotment of civic amenity site no. 2 to Bharat Petroleum Corporation (respondent No. 3) for establishment of a petrol pump, null and void. The writ petitions have been allowed. The allotment dated 4th August, 2005 made in favour of respondent No. 3 has been set aside.

3. The facts as narrated in C.A. No. 10747 of 2013 arising out of SLP (C) No. 31690 of 2011 are as under:-

• On 29th August, 1990 a Notification was issued by the State of Karnataka Government under Section 2bb(vi) of the Bangalore Development Authority Act, 1976 (hereinafter referred to as "BDA Act, 1976") to the effect that the amenities such as liquefied petroleum gas god owns, retail domestic fuel depots, petrol retail outlets are the "civic amenities" for the purposes of the aforesaid Act.

• Thereafter, the State Government issued another Notification on 29th April, 1994, inviting objections or suggestions to the Revised Comprehensive Development Plan of Bangalore City Planning Area, prepared under Karnataka Town and Country Planning Act, 1961, (Karnataka Act 11 of 1963), which had been provisionally approved by the Government.

• On 5th January, 1995, Site No.2 is reserved for civic amenities (hereinafter referred to as "CA Site No.2") • On 31st January, 2000, Bangalore Development Authority (hereinafter referred to as "BDA") passed Resolution No. 28 of 2000 empowering the Chairman or the Commissioner to allot Civil Amenity Site to any Government Body, State or Central Government undertaking.

• On 1st January, 2001, BDA allotted CA Site No.2 and 3 in HRBR Layout III Block each measuring 2195.35 sq. mtrs. and 629.18 sq. mtrs. in favour of Bangalore Water Supply and Sewerage Board (hereinafter referred to as "BWSSB") on lease for a period of 30 years for the purpose of service station and pump house.

• On 28th March, 2002, a detailed representation was submitted by one Mr. Padmanabha Reddy on the subject : Requisition for Allotment of Civic Amenity Site No.2 & 3 in HRBR UI Block, Bangalore – 43 as park. It was pointed out in

this representation that the III Block of the HRBR Layout is a residential layout, with homes situated, chock-a-block, with absolutely no ventilation space. It was pointed out that in these circumstances; the provision for a park/ventilation space is a crying-need of the locality. The representation also mentions that the objectors had an opportunity to go through the Revised Comprehensive Development Plan – 2011 (RCDP) pertaining to District No.7, which clearly showed that, a squarish block of land, situated on the western side of Civic Amenity site wherein the BWSSB has already housed the Twin Ground Level reservoirs had been earmarked for a park. The other surprise in store in the RCDP was the earmarking of CA Site No.2, which was the bone of contention, as Commercial Area/Zone. It is pointed out that in reality, much before 1995, when the RCDP had allegedly been finalized, the BDA had already accomplished the task of converting this squarish block of land into residential sites and either allotted or auctioned such sites. The land had been clearly shown as earmarked for a park or a playground. Another similar block of land, which was also earmarked to be developed as a park has continued to be used as a burial ground. The representationist also brought to the notice of the BDA sentiments expressed by this Court in the case of *Bangalore Medical Trust vs. B.S. Muddappa & Ors*[1]. Particular attention of the authorities was drawn to Paragraphs 18, 19, 24, 25, 27, 37 and 48 with the comment that the observations made in the aforesaid paragraphs reflect the aspirations of the respondent Nos. 4 to 14 (petitioners in the High Court). Legally it was stated that the action of the BDA is contrary to Section 38A (2) of the BDA Act, 1976. It was ultimately stated that the land on which, now, reservoirs had been developed was beyond "redemption and resumption". The other area earmarked for the park cannot be used as a park since it has already been used as a graveyard. Their only intention was to save the remaining part which has now been allotted for the use as the petrol pump.

• On 9th February, 2005, the State Government passed an order for continuation of revised CDP 1995 till 2015.

• On 30th June, 2005, Bharat Petroleum Corporation (respondent No.3) requested BDA to allot land for development of a retail outlet.

• On 4th August, 2005, BDA allotted CA Site No.2 in favour of respondent No.3.

• Thereafter, on 7th October, 2005, the lease deed was duly executed between BDA and respondent No.3 for a period of 30 years. Dealership licence was granted in favour of wife of the appellant by respondent No.3 on 4th February, 2006.

• Thereafter on 21st February, 2006, BDA has approved the plan for establishment of petrol pump in favour of respondent No.3. Aggrieved by the aforesaid action, Writ Petition No. 5428 of 2006 and others were filed in public interest to challenge the decision of BDA dated 21st February, 2006 with a prayer to quash the allotment of CA Site No.2 in favour of respondent No.3 for establishing a petrol pump and to convert the same to a park for the elderly and a playground for the young.

4. By the impugned judgment, the Division Bench of Karnataka High Court on interpretation of Section 38A concluded that the allotment was in violation of Section 38A sub-section (2). The High Court has concluded that CA Site No.2 at the time of its allotment to respondent No.3 was expressly earmarked for use as "bank". Therefore, in terms of Section 38A of the BDA Act, 1976 could not have been leased, sold or otherwise transferred for a purpose other than the one for which such area is reserved. Since the site in question was earmarked/reserved for "bank", it could not have been allotted for use as a petrol pump. The High Court also held that the allotment of the site was null and void as it was not in consonance of Section 38A sub-section (2). The High Court further observed that even though both "bank" and "petrol pump" are civic amenities within the meaning of Section 2(bb) of the BDA Act, 1976, yet the mandate of Section 38A is clear and unambiguous. It is for the very civic amenity, for which the area is reserved, for which it has to be put to use.

5. We have heard the learned counsel for the parties.

6. It is submitted by the learned counsel that the High Court has erred in holding that any area of particular civic amenity cannot be subsequently changed to another user which also falls within the definition of a civic amenity. It is submitted by the learned senior counsel appearing for all the appellants that the High Court has failed to appreciate that the sites still remain allotted to a civic amenity. Merely, because the user has been changed from Public Park to bank and now to petrol pump would not violate the provisions contained in Section 38A (1) and (2). It is submitted that since the Notification was duly issued that petrol pump would be a civic amenity as provided under Section 2(bb)(vi) of the Act, there was no violation of Section 38A(2).

7. Learned counsel for the appellants have submitted that in fact there is no resolution passed by the BDA to show that the site in question has been earmarked for a bank. It is further submitted that the change of purpose or user for a particular piece of land as a civic amenity is permissible under Rule 3(1) of the Bangalore Development Authority (Civic Amenity Site) Allotment Rules, 1989 (hereinafter referred to as "BDAA Rules, 1989") as amended. According to the learned senior counsel, once the land is reserved as a civic amenity and allotted in favour of a Government department or statutory authority of the Central Government, the BDA Rules, 1989 has no application. It was further submitted that the Division Bench has erred in distinguishing the earlier judgment of the Division Bench of the same Court *Aicoboo Nagar Residents Welfare Association & Anr. Vs. Bangalore Development Authority, Bangalore & Anr*[2], in which it has been, clearly laid down that "the use of site as a civic amenity for the distribution of petroleum products also would come within the scope of civic amenity".

8. Learned counsel appearing for the BDA and the State of Karnataka have supported the case pleaded by the appellants. Learned counsel appearing for respondent Nos. 4 to 14,

however, submitted that the High Court has correctly interpreted Section 38A(1) and (2) that any area reserved for a particular civic amenity cannot be diverted to any other civic amenity on the ground that civic amenity is a general term. According to the learned counsel, the judgment of the High Court is in consonance with the law laid down by this Court in the case of

B.S. Muddappa (supra). The aforesaid judgment has been subsequently followed by this Court in *R.K. Mittal & Ors. vs. State of Uttar Pradesh & Ors*[3]. It has been submitted that in view of the law declared by this Court, the impugned judgment of the High Court does not call for any interference.

9. We have considered the submissions made by the learned counsel for the parties.

10. In our opinion, it is no longer necessary for us to consider the issues raised by the appellants on first principle, as the issue is no longer res integra. In the case of B.S. Muddappa (supra), this Court examined the entire issue wherein, it has been held "that the legislative intent of the Bangalore Development Authority (Amendment) Act, 1991 (hereinafter referred to as "BDA (Amendment) Act, 1991"), which came into force w.e.f. 16th January, 1991 is to prevent the diversion of the user of an area reserved for a public park or playground or civic amenity to another user.

11. Original Section 38A of the BDA Act, 1976 has been substituted with the present Section 38A w.e.f. 21st April, 1984, which reads as under:-

> "'38-A. 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 purpose 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 allottee."

12. Interpreting the aforesaid provision, this Court has held as under:-

> "This new Section 38-A, as clarified in the Statement of Objects and Reasons and in the Explanatory Statement attached to L.A. Bill 6 of 1991, removed the prohibition against lease or sale or any other transfer of any area reserved for a civic amenity, provided the transfer is for the same purpose for which the area has been reserved. This means that once an area has been stamped with the character

of a particular civic amenity by reservation of that area for purpose, it cannot be diverted to any other use even when it is transferred to another party. The rationale of this restriction is that the scheme once sanctioned by the government must operate universally and the areas allocated for particular objects must not be diverted to other objects. This means that a site for a school or hospital or any other civic amenity must remain reserved for that purpose, although the site itself may change hands. This is the purpose of sub-section (1) of Section 38-A as now substituted. Sub-section (2) of Section 38-A, on the other hand, emphasizes the conceptual distinction between 'public parks and playgrounds' forming one category of 'space' and 'civic amenities' forming another category of sites. While public parks and playgrounds cannot be parted with by the BDA for transfer to private hands by reason of their statutory dedication to the general public, other areas reserved for civic amenities may be transferred to private parties for the specific purposes for which those areas are reserved. There is no prohibition, as such, against transfer of open spaces reserved for public parks or playgrounds, whether or not for consideration, but the transfer is limited to public authorities and their user is limited to the purposes for which they are reserved under the scheme. The distinction is that while public parks and playgrounds are dedicated to the public at large for common use, and must therefore remain with the State or its instrumentalities, such as the BDA or a Municipal Corporation or any other authority, the civic amenities are not so dedicated, but only reserved for particular or special purposes……

24. Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

25. Reservation of open spaces for parks and playgrounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation.

27. The statutes in force in India and abroad reserving open spaces for parks and playgrounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanization. Crowded urban areas tend to spread disease, crime and immorality. As stated by the U.S. Supreme Court in Samuel Berman v. Andrew Parker: (L Ed pp. 37-38 : US pp. 32-33) "… They may also suffocate the spirit by reducing the people who live there to the status of cattle.

> They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.
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> … The concept of the public welfare is broad and inclusive …. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values ….” (Per Douglas, J.).”

13. In our opinion, the aforesaid observations are a complete answer to all the submissions made by the learned counsel for the appellants.

14. This apart on the interpretation of Section 38A(1) and (2), the inescapable conclusion is that under Section 38A (1), BDA would have the authority to lease, sell or otherwise transfer any area reserved for the purpose for which such area is reserved, and no other. This clearly means that the Government can pass on the responsibility to another concern, be it individual, company or corporation for the purposes of carrying on the activity for which the plot has been reserved as a civic amenity. It does not give a licence to the BDA to convert the area reserved for civic amenities for activities which do not fall within the definition of civic amenities. Sub-section (2) of Section 38 is an embargo that evens such sale or disposal otherwise of an area reserved for public parks, playground would not be permitted to private parties. Though such spaces, playgrounds and parks can be transferred to public authorities, but their user would be limited to the purposes for which they are reserved under the scheme. In case, a disposition is made for a purpose other than the one for which it is reserved, the Act has declared that, it shall be null and void. In our opinion, Rule 3 of which the support is sought by the appellants cannot be permitted to override the statutory provision contained in Section 38A (1) and (2). Even otherwise, the rule only reiterates the statutory provision in Section 38A (1) and (2). We also do not find any substance in the submission that the site was never allotted as a bank, and, therefore, it could be allotted as a petrol pump. The High Court upon perusal of the pleadings as well as annexure ‘c’ appended to the writ petition has recorded the following facts:

> “In so far as the factual matrix is concerned, it is necessary to record that the site in question was originally earmarked as park/playground in 1984. This factual position stands acknowledged at the hands of the Bangalore Development Authority in paragraph 5 of its counter affidavit. Subsequently, three civic amenity sites came to be carved out, in the area earlier earmarked for park/play ground. The first of these is presently being used by the Bangalore Water supply and Sewerage Board. The second site, which is the one in question, was earmarked for use as a “bank”. So far as the instant aspect of the matter is concerned, our attention has been invited to Annexure-C appended to the writ petition, wherein

civic amenity site no.2 has been shown as earmarked for "bank". The aforesaid Annexure-C came to be executed on 06.01.1996. Civil amenity site no.2 is indicted therein, as measuring 2195.35 sq. meters. In the column titled "purpose for which earmarked", Annexure-C specifies "bank". It is the contention of the petitioners that, civic amenity site no.2 which was earmarked exclusively for use as "bank" has never undergone any change at the hands of the Bangalore Development Authority. Civic amenity site no. 3 is not relevant for the instant case, and as such we refrain, for reasons of brevity, from recording any details in connection therewith."

15. Upon consideration of the submissions of the learned counsel for the parties, the High Court has concluded –

"We are satisfied that civil amenity site no. 2, at the time of its allotment to respondent no.3 was expressly earmarked for use as "bank". The aforesaid position has remained unaltered to this day. In terms of the mandate contained in Section 38-A of the Bangalore Development Authority Act, 19776 it could not have been leased, sold or otherwise, transferred for purpose other than the one "….for which such area is reserved". Since the civil amenity site in question was earmarked/reserved for "bank", we are satisfied that it could not have been allotted for use as a "petrol station".

16. From the above, it is evident that in fact, the site had been originally earmarked to be developed as a public park/playground in 1984. However, since the same has been converted to a residential area, respondents Nos. 4 to 14 have very fairly stated that it could not at this stage be restored to its original purpose without causing havoc in the lives of the residents. They have, therefore, not insisted that the site be restored to its original purpose.

17. We also do not find any merit in the submission that the term civic amenities would permit BDA to change the reservation from one particular user to another without the necessary amendment in the development plan. This would be contrary to the law laid down by this Court in the case *of B.S. Muddappa* (supra).

18. We also do not find any substance in the submissions that the High Court has wrongly distinguished the judgment of the earlier Division Bench of the High Court in Aicoboo Nagar Residents Welfare Association (supra). A perusal of the paragraph 10 of the aforesaid judgment clearly shows that in that case, the High Court considered the legality of allotment of civic amenity site no.3. There was, in fact, no change in the activity/purpose, as the site had not been reserved for any specific purpose. The other question was whether the lease in favour of the government company for opening of petrol and diesel outlet would fall within the definition of civic amenity. In the present case, it was not the case of the respondent nos. 4 to 14 that petrol pump is not a civic

amenity, therefore, the site could not have been allotted to open a petrol pump. The grievance of the respondents (writ petitioners in the High Court) was that civic amenity site no.2 had been earmarked for a bank and could not be allotted for a petrol pump without making necessary amendment in the site. Therefore, the High Court has rightly distinguished the aforesaid judgment and not relied upon the same.

19. We, therefore, find no merit in the appeals and the same are hereby dismissed.

Judgment referred

[1] *1991 (4) SCC 0054*

[2] *ILR 2002 Kar. 4705*

[3] *2012 (2) SCC 0232*