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Court : Karnataka

Decided On : Oct-29-2014

Judge : Huluvadi G. Ramesh

Appeal No. : Writ Petition No. 21436 of 2005 (BDA)

Appellant : C.N. Kumar

Respondent : Bangalore Development Authority, Rep.by its Commissioner and Others

Judgement :

(Prayer: This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to declare Section 14-A of the Karnataka Town and Country Planning Act, 1961 as unconstitutional, illegal and ultra vires and to restrain the State of Karnataka and its officers from enforcing the provisions of Section 14-A of the Karnataka Town and Country Planning Act, 1961.)

1. This Writ Petition is filed by the petitioner in public interest praying to declare Section 14-A of the Karnataka Town and Country Planning Act, 1961 as unconstitutional, illegal and ultra vires and also for issuance of writ of mandamus restraining the State and its officers from enforcing the provisions of said Section 14-A of the Act. It appears, some other persons have also sought to follow the

mandatory constitutional provisions under Article 243ZE of Constitution of India read with the provisions of Karnataka Municipal Corporation Act.

2. Petitioner claiming to be a person having concern for the public said to have redressed the haphazard and unplanned growth of Bangalore City particularly on account of arbitrary change of land use in residential areas that has directly affected the rights of the citizens and residents of Bangalore. In this regard, he has stated that the Karnataka Town and Country Planning Act, 1961 (hereinafter referred to as the Act for short) was enacted to regulate the planned growth of land use and development in the State of Karnataka and to create conditions favourable for planning and replanning of the urban and rural areas with a view to provide full civic and social amenities for the people in the State and to stop uncontrolled development of land due to land speculation and profiteering in land, to preserve and improve existing recreational facilities and other amenities contributing towards balanced use of land and to direct the future growth of populated areas in the State with a view to ensuring desirable standards of environmental health and hygiene and creating facilities for the orderly growth of industry and commerce, thereby promoting general standards of living in the State. It is further stated by the petitioner that Bangalore Development Authority is the planning authority within the meaning of Section 4A of the Act for the city of Bangalore. In order to provide for a controlled and scientific development in the city of Bangalore, the Act provides for the preparation of the Outline Development Plan (ODP) and Comprehensive Development Plan (CDP) along with the Zoning Regulations that expressly state the specific usage of areas notified as residential, commercial, industrial etc. As per Section 14 of the Act, every land use is required to be confirmed with the provisions of the Act. It is further stated that the above said fact has been judicially reiterated by the Apex Court in the case of R and M Trust vs Koramangala Residents Vigilance Group and others (2005 SCCL. COM 41) wherein it is held that, the Act primarily deals with the planned growth of land use and development and for the making and execution of Town Planning Scheme in the State of Karnataka. According to Section 14 of the Act, from the date when the Act come into force, every land use, every change in land use and every development in the area covered by the plan shall conform to the provisions of this Act, the Outline Development Plan and the regulations. It further stipulates that no

such change in land use or development shall be made except with the written permission of the Planning Authority. Therefore, the whole purpose of this Act is the planned development of the State.

3. Referring to the aforecited decision, it is submitted that an amendment was also brought in to Section 14 of the Act. The intention behind introducing this Section was that the existing provisions of the Karnataka Town and Country Planning Act, 1961 was not very specific about the circumstances under which the change in land use from one purpose to another purpose under the Outline Development Plan could be permitted. Therefore, Section 14-A was introduced in order to specify various circumstances under which such change of land use could be permitted. This new Section also prescribes the modalities of bringing a change in the land use. Subsequently for better administration of the Act, a new Section has been added as Section 76, n and o to provide power to the State Government to cancel certain resolutions of the Planning Authority and to provide power to the Planning Authority to suspend and revoke licences and permission etc. According to the petitioner, the change in land use is not permissible except in case of public interest and often conversions are permitted in case of land already reserved for public use, which entirely defeats the very purpose of the Act. It is also submitted that Court has to take judicial notice of the violation of the rights of the citizens of Bangalore, including the right to live in a healthy and well planned environment, resulting from gross omissions and commissions of the BDA and the State Government. Accordingly, petitioner has sought for declaration of the provisions of Section 14-A of the Act as unconstitutional, illegal and ultra vires as the same suffers from the vice of unbridled power and discretion vested in the BDA and it suffers from excessive delegation of power and Section 14-A bears no nexus with the objects sought to be achieved by the Act or the Amendment Act of 1991 and hence it is illegal and BDA has given a go by to the circumstances in which change in land use could be permitted and has failed to consider the public interest element involved and the process mandated by law and also it has failed to take into consideration the environmental impact. Accordingly, he has sought a declaration to declare Section 14-A of the Act as unconstitutional, ultra vires and illegal. He has also sought for writ of mandamus directing the respondents to constitute a Technical Committee comprising such persons as this Court deems fit

and in terms of the decision reported in (2004) 6 SCC 588 as may be applicable, to aid and advise the Bangalore Development Authority in exercise of its powers under Section 14-A of the Act.

4. 1st respondent BDA has filed its statement of objections stating that petition is not maintainable. Section 14-A of the Act is not arbitrary, unconstitutional or opposed to Article 14 of the Constitution of India. Section 14 of the Act states that on and from the date on which a declaration of intention to prepare an outline is published, every land use, every change in land use and every development in the area covered by the plan shall be subject to Section 14-A and shall be made with the written permission of the Planning Authority. Section 14-A was introduced with effect from 19.4.1991 and petitioner questions the validity in the year 2005 i.e., after lapse of nearly 15 years. As such, questioning of validity of Section 14-A of the Act has to be dismissed. It is also stated that Section 14-A does not confer any unbridled power on the BDA. The change of land use is only after issuance of notice calling upon the applicant to deposit the amount towards publication. It is submitted that application for change of land use is considered as per the provisions of the Act and under Zoning of Land use and Regulations, the lands are classified into various use Zones i.e., residential zone, commercial zone, industrial zone etc., Accordingly, they sought dismissal of the writ petition.

5. The 2nd respondent-Government has filed statement of objection stating that change of land use is done as per the provisions of Section 14-A of the Act. The amendment to Section 14 of the Act was introduced in the year 1991 and the same clearly indicates the circumstances under which the land use can be changed from approved Master Plan. It is also stated that, as per the approved master plan, after conducting spot inspection and getting report, the change of land use is granted. The Government after receiving proposal from the BDA, if required, obtains opinion from the Director of Town and Country Planning. It is further stated that the change of land use is recommended to Government through committee meeting. The committee consists of members not only from BDA, but several other members of different authorities, Boards and the Corporation. The change of land use is recommended based on the merits of the case, especially looking into the circumstances prevailing. Accordingly, they sought dismissal of the

writ petition.

6. In view of the facts and circumstances of the case, it is relevant to read the provisions Section 14-A of the Act which is as under:

Section 14-A : Change of land use from the Outline Development Plan

(1) At any time after the date on which the Outline Development Plan for an area comes into operation, the Planning Authority may, with the previous approval of the State Government, allow such changes in the land use or development from the Outline Development Plan as may be necessitated by topographical or cartographical or other errors and omission, or due to failure to fully indicate the details in the plan or changes arising out of the implementation of the proposals in Outline Development Plan or the circumstances prevailing at any particular time, by the enforcement of the plan;

Provided that.-

(a) all changes are in public interest;

(b) the changes proposed do not contravene any of the provisions of this Act or any other law governing planning, development or use of land within the local planning area; and

(c) the proposal for all such changes are published in one or more daily newspapers, having circulation in the area, inviting objections from the public within a period of not less than fifteen days from the date of publication as may be specified by the Planning Authority.

(2) The provisions of sub-sections (2) and (3) of Section 14 shall apply mutatis mutandis to the change in land use or development from the Outline Development Plan.

By order dated 10.11.2009, the matter was referred to Single Judge holding that petition cannot be treated as public interest litigation in view of the fact that petitioner had challenged the validity of S. 14 A of the Karnataka Town and Country Planning Act, 1961. Thereafter, matter has been dealt by the Single

Judge i.e., the Judge having the roster. During pendency of the matter before the Single Judge, on 19.3.2012, an order has been passed allowing the State to file its statement of objections as to challenge to S. 14 A of the Town and Country Planning Act. Thereafter, on 25.5.2012 the Single Judge has noted that the State Government has issued a notification calling upon the public to furnish proposal for drawing up a Master Plan for Bangalore city up to the year 2035. Again, by order dated 26.11.2012 there is an order by this Court to secure instructions as to finalization of the master plan and issue of a declaration under the Town and Country Planning Act. On 10.12.2012, the matter was posted to be listed on 9.1.2013 to secure instructions in the matter of establishment of a metropolitan planning committee which would pave way of address all suggestions put forth by the public pursuant to the notification issued by the BDA for preparation of Master Plan 2035 having regard to S. 503A and B of the Karnataka Municipal Corporations Act.

In the order dated 9.1.2013 this Court while granting interim stay, has observed thus:

The learned Additional Advocate General submits that the State has initiated the process of constitution of the Metropolitan Planning Committee and that on securing further instructions would make his submissions, if extended two weeks time.

Regard being had to Section 503(A) of the Karnataka Municipal Corporations Act, 1976, which provides for a preparation of the Development Plan every year, by every Corporation, to be submitted to the District Planning Committee constituted under Section 310 of the Karnataka Panchayat Raj Act, 1993 or the Metropolitan Planning Committee constituted under Section 503(B) of the Act, it is needless to state that any change of land use must be in tandem with the opinion of the Metropolitan Planning Committee, at least for the City of Bangalore. In that view of the matter, there shall be an interim order of stay of any further proceeding relating to change of land use under Section 14(A) of the Karnataka town and Country Planning Act, 1961, in relation to properties within the metropolitan area of Bangalore city from this day onwards until further orders.

7. The 2nd respondent-State Government filed an application dated 23.3.2013 seeking modification of the above said interim order on the ground that as per the directions of this Court, constitution of Metropolitan Planning Committee may take some time as it requires legislative changes and due to operation of interim stay of Section 14-A of the Act, the change of land use cannot be made in furtherance of any developmental activities of the general public as well as government institutions. It is also stated that several development projects are being delaying causing substantial loss to the public exchequer and accordingly sought, clarification.

8. In another application dated 28.2.2013 filed by one of the applicant to implead him as party-respondent No.3, while seeking clarification of the interim order dated 9.1.2013, it is submitted that interim order is not applicable in case of change of land use which are outside the metropolitan area.

Heard the learned counsel for respective parties.

9. It is submitted, so far, the power to change land use has been vested with Corporation and BDA and such powers were being exercised by the Corporation either at the official level or at the meeting of Council. This necessitated constitution of a body to examine the aspect of change of land use. So far no such body has been constituted by the Government according to Section 95 of the Karnataka Land Revenue Act as far as Corporation Act is concerned and especially in Bangalore Development Authority, there is no such committee to examine the things.

10. It is made abundantly clear as per the petitioner and also the learned Senior Counsel appearing for the petitioner in other connected matters before the Division Bench, i.e., in Writ Petition No.3676/2008 and connected matters disposed of on 19th February 2014 wherein it is observed that the BBMP shall not permit or grant any change of land use in the following areas i.e., Malleshwaram, Richmond town, Vasanthanagar Jayanagar, Vijayanagar, Vishweshwarapura, Rajajinagar and R.T.Nagar. In addition thereto, the residential areas mentioned and shown in CDP 1995, regardless of whether they are subsequently depicted as residential main or residential mixed are also included. It is further observed that the interim order

shall also apply to other residential areas regardless of the nomenclature used in the Revised Master Plan of 2015. Any building plans that have been sanctioned or trade licenses or change of land use that has been allowed subsequent to the order dated 25.1.2012 shall be recalled.

11. By and large, the decision of the Division Bench of this Court is to regulate the activities of the public at large who are residing in residential area or in the land falling within corporation limits and metropolitan area. While sanctioning the change of land use from residential to commercial either by the Corporation or by any local body, it was suggested to follow mandate of the Constitution. With that idea, a committee was sought to be constituted as is envisaged in Article 243ZE of the Constitution of India read with S.503 of the Karnataka Municipal Corporation Act. In furtherance thereon and at the instance of some of the interested public, an order has been passed to constitute a committee. Be that as it may, the very mandate of Article 243ZE of the Constitution of India has to be implemented in total spirit. So far, in the absence of such committee being constituted, the activities have been carried out at the official level or at the local body level as a matter of convenience. After one fine day, some people started raising their voice to protect the unhealthy growth of the city saying that due to illegal sanctioning of change of land use from residential to commercial purpose, nuisance is being caused affecting the peaceful living in the residential area. Might be for the reason of over population and requirement of need to be served at the doorsteps such changes should have been considered by the local bodies granting permission or otherwise for change of land use from residential to commercial use. As and when city grows, ultimately the local bodies or the persons in the bureaucracy or the officials of the concerned government department have to take a decision according to the mandate of Constitution and a separate body has to be constituted. Normally such power is being exercised in the usual course by framing rules from time to time, as per the convenience of the citizens. Of Course, this Court has directed for compliance of the mandatory provisions of Article 243ZE of the Constitution of India, in the sense, it is not as if no such permission is denied, but to enable and to regulate the activities, a direction was given by this Court to constitute a body either by election or by nomination. As such, there is no total ban on the activity of conversion/change of land use. What is being

envisaged by this Court is to regulate the activities and a decision to be taken at the higher/appropriate level. Of course, this is an undisputed fact and also Constitution of India mandates. Now it has become necessary to have a uniform law for the regulation of planned growth of land use and development and for the making and execution of town planning schemes in the State.

12. The Apex Court in the case of S N Chandrashekar and Anr Vs State of Karnataka and Ors (2006) 3 SCC 208 has dealt with the provisions of the Karnataka Town and Country Planning Act, 1961 especially S.14-A, 14, 15 and other sections with respect to CDP and role of the BDA regarding change of land use and also limitation on grant of permission. It is observed, as per the definition of land use it has to be read with zoning regulations. In the facts of that case wherein conversion had been granted from residential to that of commercial in the residential zone, it is opined, on the State and the Development Authority sanctioning change that the order passed by them did not disclose the purpose and grounds thereof and did not refer to any of the ingredients of S. 14 A. The allottee converted the residential plot into a commercial one i.e., a restaurant which is violative of zoning regulations as well as S. 14 A and held that decision is taken without proper application of mind to the requirement of law. It is also held that the grant of permission under S.14 A for change of use in the Master Plan must conform to the provisions thereof. The Apex Court in the said case has examined S.14 A of the Act and it has not been either read down or commented upon as to its validity with regard to zonal regulations.

13. So far as the clarification needed by the Government as to the applicability of the interim order is concerned, the submission of the learned Addl. Advocate General Sri A. S. Ponnanna is that long back they have made an application seeking for clarification on the ground that the interim order would block the consideration of all such applications filed for change of land use and related aspects.

14. Further, referring to Writ Petition Nos. 12948-58/2014 and 18600-18601/2014 which are also pending consideration, it is submitted by learned Addl. Government Advocate that to augment the income of Government, the properties were sold in

public auction for higher rates than the normal rates and for this specific purpose, a policy decision has been taken by the Government to bid the properties of the government with an assurance that the properties would be utilized for other than agricultural purposes. In that view of the matter, the Government is said to have taken a decision vide Annexure B to Writ Petition Nos.12948-58/2014, in the committee constituted for change of land use, in the presence of Chief Minister, to accord permission to change the land use from green belt as well as agricultural activity to be utilized either as residential or commercial purposes. The applications received in this regard were considered as per the policy decision and such persons were accommodated for utilization of the land in already developed area either as commercial or residential purposes.

15. S.14 A of the Act may have to be followed as per the CDP even while effecting changes. So far as lands which are sold in public auction are concerned, may be it is a matter of concern for change of land use in accordance with law.

16. The Division Bench of this Court in the case of S.S. Darshan vs State of Karnataka and others (1995 (6) Kar. L.J. 327), held that when an area is earmarked as coming under the green belt area, it may not be possible for utilization of such land for any industrial purpose. However, part of the land has been allowed to be converted for industrial purpose and therefore, it obviously shows that the authorities concerned were not averse to allowing coming up of industries in the area. Similarly, in the case on hand, when policy decision has been taken by the government to auction the properties in order to augment the income and also decision has been taken to change the land use, then necessarily it is for the government to accord permission in accordance with law following the mandate of S14-A of the Town and Country Planning Act on such application being filed by the petitioners before the BDA since BDA has forwarded the applications to the Government. It is for the BDA and the State Government to follow the mandate of S.14-A of the Act since this petition is being disposed to place such matters pending consideration before the High Level Committee constituted by notification dated 4.1.2014

17. So far as this writ petition is concerned which is filed by a member of public, there appears to be almost compliance by the government. It is not in the form of public interest. So far as other aspects which are pending consideration are concerned, the same has to be expedited in public interest.

18. The elected body constituted to deal with, as reported to this Court, should start functioning. Body constituted in its form gives wider representation and to deliberate and take reasoned decision thereby unbridled power conferred on any one of the person is scuttled. At least, meeting shall be fixed as and when necessary at regular intervals so as to enable the local body to take up all those applications pending and it should be cleared, in accordance with law. If there is any ambiguity in the application, for seeking clarification, it shall be kept in the subsequent meetings and after obtaining compliance, appropriate decision be taken, in accordance with law and in the interest of public at large. The properties which are sold by the government in public auction and/or the applications which are pending before the BDA and before the Government for clearance, for change of land use would be considered in accordance with law.

19. In view of the above, Writ Petition No. 21436/2005 is disposed of directing the respondent-authority to put up those applications pending before the committee and the Committee constituted as per notification dated 4.1.2014 is directed to take decision in accordance with law.

20. The grievance raised by the petitioners regarding constitutional validity of Section 14-A of the Act is concerned, the safeguards framed in the regulations as well as constitution of High Level Committee vide notification dated 4.1.2014, as per the directions of this Court, under Art.243ZE of the Constitution would take care of the situation and it acts as a watch dog and curtails unbridled powers on the executive authorities as the decision of the Committee would prevail in implementation. As such Section 14-A cannot be treated as conferring arbitrary power on the BDA and Government.

Certain of the applications filed for impleading seeking clarification of the interim order are hereby disposed of with the main petition.

Delink WP 18600-601/2014 c/w 12948-958/2014 from WP 21436/2005 and copy of the order in WP 21436/2005 be kept in these petitions.

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