

**Bharathkumar and Others Vs. State of Karnataka and Others**

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**Court :** Karnataka

**Decided On :** Jul-11-2014

**Judge :** Ram Mohan Reddy

**Appeal No. :** Writ Petition Nos. 30185-192 of 2014 (EXCISE)

**Appellant :** Bharathkumar and Others

**Respondent :** State of Karnataka and Others

**Judgement :**

(Prayer: These Writ Petitions Are Filed Under Articles 226 and 227 Of The Constitution Of India Praying To Issue A Writ Of Mandamus To Thee Respondents 2 To 4 To Consider The Representations Given By Petitioners vide Annexures-K, K1, K2 And K3 Dated 18.06.2014 And Annexures-L and Li Dated 24.06.2014, Etc.)

1. The averments in the memorandum of writ petition are in the direction of establishing that petitioners being rate payers and residents of Vijayanagar, to which the CL-2 licence of the 7th respondent when permitted to be transferred by the order, Annexure-E, was seriously opposed on the premise that both the previous place i.e., Basaveswaranagar and the present Vijayanagar, are residential layouts and the locals of Basaveswaranagar too opposed the grant of CL-2 licence. The written representations annexed to the petitions are not only from the petitioners but also from a member of the legislative assembly and the

ward corporator of the Bruhath Bangalore Mahanagara Palike (for short 'BBMP).

2. Another fact asserted by the petitioners is that the Deputy Commissioner (Excise) (west) / 4th respondent on 05.05.2014 received the application filed by the 7th respondent for shifting the location in the CL-2 licence, whence on 07.05.2014 and 8.05.2014 a "spot inspection" was conducted and on 08.05.2014 passed the order, Annexure-E, in great haste. According to the petitioners, their opposition to the renewal of the CL-2 licence on and after 30.06,2015 was also not considered.

3. Petition is opposed by filing statement of objections of the 7th respondent licensee, denying the assertions and allegations, while, admitting the fact of permission to shift and the renewal of CL-2 licence by the 4th respondent. It is asserted that the landlord of the premises did not disclose that the premises was a residential building, while the building in the vicinity are put to use for commercial purposes.

4. Petition is not opposed by the State and its authorities, the respondents, by filing statement of objections.

5. Heard the learned counsel for the parties and perused the pleadings. Learned counsel for the petitioner reiterates the averments in the memorandum of writ petition.

6. Learned HCGP making reference to records submits that the order dated 08.05.2014, Annexure-E permitting the shifting of CL-2 licence issued to the 7th respondent, from Basaveswaranagar to the present location was not preceded by an enquiry into whether the premises was permitted to be put to use for commercial purpose, but the authorities presumed it to be so in view of the lease agreement placed by the 7th respondent.

7. Learned HCGP further submits that later on the authority obtained from the landlord a copy of the approved building plan of the premises, disclosing that sanction was accorded on 16.11.1996 by the authorities of the Corporation of City of Bangalore to put up a residential building, in accordance with the bye-laws framed

under the Karnataka Municipal Corporation Act, 1976, for short 'KMC Act'. According to the learned counsel, the 7th respondent did not place, for the consideration of the authority, either, the building plan, or permission for change of user of the building nor permission for change of use of the land from residential to non-residential commercial purpose.

8. Learned counsel for the 7th respondent seeks to sustain the order Annexure-E and the renewal of CL-2 licence, as being well merited, fully justified and not calling for interference.

9. Having heard the learned counsel, the indisputable facts are:

(a) the premises to which shifting of CL-2 licence is permitted is a residential building as indicated in the order dated 16.11.1996 according sanction for the building plan by the BBMP, while the portion of the premises where the 7th respondent has taken on lease, to carry on liquor business, is earmarked as "Hall and Room" in the building plan, which the learned HCGP and counsel for 7th respondent point to.

(b) the revised master plan, Annexure-N issued under the Karnataka Town and Country Planning Act, 1961 (Karnataka Act No. 11 of 1963), for short 'KTCP Act' declares the 1st Main Road of B. Krishnappa Layout, RPC Layout, Vijayanagar, Bangalore, as 'commercial access' i.e., access to East of Chord Road and the Commercial hub.

(c) the sanction of building plan by the BBMP is in terms of the building bye-laws governing residential buildings, framed under the KMC Act.

(d) the site (land) upon which the residential building is constructed is not permitted to be changed to commercial use under Section 14A of the KTCP Act.

(e) the residential building is not changed to use as a commercial building by making it compliant with the building bye-laws applicable for commercial buildings nor permission to do so.

10. Rule 5(4)(a) of the Karnataka Excise Licences (General Conditions) Rules, 1967, in the matter of shifting location of any shop reads thus:

"5. Restriction in respect of location of shops:

xxxx

xxxx

(4) The Deputy Commissioner may, by order after giving the licence an opportunity of being heard, direct such licence to shift the location of any shop,-

(a) With a view to secure the convenience, morality, tranquility, decency or safety of the public or compliance of the provisions of these rules, or

(b) xxxx

to any other suitable place, within such period, not exceeding three months as he may specify."

11. A reading of the aforesaid statutory provision makes it abundantly clear that the Deputy Commissioner (Excise) (West) was required to be circumspect having regard to securing the convenience, morality, tranquility, decency or safety of the public, or compliance with the provisions of the rules, before permitting the shifting of the location of the shop, In other words the 4th respondent is required to ensure Rule of Law.

12. Regard being had to the facts admitted and the statutory provisions, the 4th respondent, indeed, with undue haste, within a span of four days, without application of mind or an enquiry over material particulars and in violation of statutory provisions as well as abject disregard to 'Rule of Law' passed the order Annexure-E permitting the shifting of the location of the shop under the CL-2 licence issued to the 7th respondent. The order Annexure-E is illegal, arbitrary and reflects colourable exercise of power.

13. It is elsewhere said that BBMP being a trustee of public interest ought to strictly observe the norms and conditions of development plan, since it owes a

duty to the rate payer to protect public interest while administering planning laws and cannot afford to ignore the social responsibility underlining the planning laws. The fact that it has allowed the lessor of the 7th respondent, a favour, to convert the usage of residential building to commercial purpose, at the cost of public and to the detriment of their interest, are liable to answer.

14. A Division Bench of this Court in *Shanta vs. Commissioner, Corporation of the City of Bangalore* (ILR 1986 (2) KAR 1037), while pointing to the responsibility of the authorities in the State and their accountability to the public when they act against the interest of public, observed that, there is no right to construct a building contrary to the planning law, nor the planning authority could permit construction of the building to the prejudice of public and impairing their civil rights. It was further observed that it is the duty of the Court in exercise of Article 226 of the Constitution of India to protect the rights of rate payers under the planning laws and that there is no question of acquiescence when authorities act in excess of powers conferred.

15. If regard is had to the aforesaid observations, it is needless to state that there is every need to prevent public bodies from over stepping their limitation. There is also a need to see that action of the Government or authorities or local bodies do not contribute to the contravention of any statutory schemes which are evolved for public good, apart from rights of tax payers including the duty of this Court to enforce rule of law, protect interest preserved under the planning laws, as noticed by this Court in the case of *Leena Fernandes vs. Planning Authority* (ILR 1992 KAR 3068).

16. While dictating the order, having noticed a person disturbing the court proceeding by trying to make conversation with the learned counsel for the 7th respondent, licensee, and thereafter walking over to the learned HCGP and taking the records from him, enquiries with the HCGP reveals that the person is one Parameshwarappa, S/o Hanumaiah, Inspector of Excise attached to the 4th respondent. To a question of the Court to the said person as to what was the conversation with the learned counsel for the licensee, 7th respondent, since, at best could instruct the learned HCGP, states that he did not seek to converse with

the learned counsel, which learned Counsel submits that he told the Inspector that there was no need to speak with him. The blatant lie by the Inspector tantamounts to contempt in the face of the Court, which when put across to the Inspector, very meekly tenders an oral unconditional apology for the mistake. Hence he is directed to be in the Court Hall until rising of the Court.

17. In the result, the order dated 8.5.2014 Annexure-E permitting the shifting of the location under CL-2 licence issued to the 7th respondent from Basaveshwaranagar to the present premises is quashed, reserving liberty to the 7th respondent to seek shifting of the CL-2 licence to another premises built for commercial use elsewhere after obtaining orders of the Deputy Commissioner (Excise).

18. Petitions are ordered accordingly.

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