

B.S. Muddappa and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Sep-13-1989

Reported in : AIR1990Kant87; ILR1989KAR3027; 1989(2)KarLJ540

Judge : M.P. Chandrakantaraj Urs and ; M. Ramakrishna, JJ.

Acts : [Constitution of India](#) - Article 226; Bangalore Development Authority Act, 1976 - Sections 2 and 19(4); City of Bangalore Improvement Act, 1945 - Sections 23; Bangalore Corporation Act - Sections 3 and 71-A; Karnataka Town and Country Planning Act; Income-Tax Act, 1922 - Sections 10; Bangalore Development Authority (Amendment) Act, 1988; Karnataka Co-operative Societies Act, 1959; [Karnataka Societies Registration Act, 1960](#)

Appeal No. : Writ Appeal No. 162 of 1989

Appellant : B.S. Muddappa and Others

Respondent : State of Karnataka and Others

Advocate for Def. : G.V. Shantharaju, ;Shivaraj Patil and ;R.C. Castelino, Advs. and ;R.N. Narasimha Murthy, Advocate-General

Advocate for Pet/Ap. : V. Tarakaram, Adv.

Judgement :

ORDER

Chandrakantaraj Urs, J.

1. This appeal is directed against the Order dated 4th January, 1989 of a learned single Judge of this Court in W.P. No. 21344/1982. In the course of this order, we will refer to the parties by the ranks assigned to them in the writ petition.

2. The facts of the case as noticed by the learned single Judge are as follows : The City Improvement Trust Board of Bangalore (hereinafter referred to as C.I.T.B.) which had been constituted under the provisions of the City of Bangalore Improvement Act, 1945 (hereinafter referred to as the Improvement Act) prepared a development scheme to bring into existence one of the many extensions of the City of Bangalore. That came to be known, first as Palace Upper Orchards/Sadashivanagar and later came to be named as Rajamahal Vilas Extension. The writ petitioners, numbering 30, are all persons to whom sites are allotted by the C.I.T.B. and on which they have constructed their residential houses in the Rajamahal Vilas Extension. In the said extension, an area facing the Sankey Tank was earmarked for developing a low level Park. By resolution dated 14-7-1976 the said site was allotted in favour of the 4th respondent-Bangalore Medical Trust of No. 4, Residency Road, Bangalore-1. The allotment was for the purpose of constructing a nursing home and a hospital. The writ petitioners have questioned the validity of that allotment.

3. The site in question was reserved for a park is not in dispute. It is also not in dispute that by a notification dated 3-1-1973 issued by the State Government in purported exercise of its powers under Sec. 23 of the Improvement Act, (since repealed and replaced by Bangalore Development Authority Act, 1976 which came into force with retrospective effect from 20-12-1975 hereinafter referred to as the B.D. A. Act), the entire extension came under the control of the Corporation of the City of Bangalore and Corporation has since been collecting taxes from the resident owners of the properties in the extension. At the instance of the Bangalore Development Authority, the successor to the C.I.T.B., by an order made on 27-5-1976 the State Government permitted the conversion of the low level park earmarked in the original scheme to a civic amenity site. Subsequently, by another order dated 11-6-1976 the Government accorded sanction for the allotment of the

site in favour of the 4th respondent Bangalore Medical Trust which is said to be a registered public charitable trust with the laudable object of establishing a nursing home and a hospital providing medical benefits to the poor, the sick and the suffering. The above facts have been culled out from the pleadings of the writ petitioners and the statement of objections filed by the 2nd respondent Bangalore Development Authority (hereinafter referred to as the B.D.A.).

4. Before the learned single Judge the writ petitioners contended that the entire extension having vested in the Corporation together with all open spaces including the low level park area, the B.D.A. had neither the authority nor control over the park in order to have the same declared as a civic amenity site and thereafter allot the same to the 4th respondent Bangalore Medical Trust, for the purpose aforementioned. It was further contended that allotment of site was illegal and opposed to law as declared by this Court in several judicial pronouncements. As against these contentions, the B.D.A. contended that under the notification issued in exercise of its power under Sec. 23 of the Improvement Act, the Government had transferred only the streets formed by the Board levelled, paved, metalled, flagged, channelled, drained and severed in the manner provided for in the plans of the scheme sanctioned by the Government and that such lamps, lamp posts and other apparatus as were in the opinion of the Board were necessary for the lighting thereof and should be provided by the Board and having been so provided alone vested in the Corporation for the purpose of maintenance, upkeep repair, light and cleaning of such streets; and open spaces reserved for ventilation had not so vested in terms of the notification which specifically mentioned that it was confined to sub-sec. (1) of Sec. 23 of the Improvement Act and not one issued under sub-sees. (1) and (2) of the said section of the Improvement Act. The B.D.A. therefore asserted that it remained the owner of the low level park had all the rights to after the scheme for development and thus had the power and authority to obtain the sanction of the Government to convert the low level park area into a civic amenity site and allot the same with the approval of the Government to the 4th respondent-Bangalore Medical Trust.

5-10. In the light of the rival contentions, the learned single Judge formulated the following two questions for his consideration.

(1) Whether the land had become the of the Corporation and therefore the allotment of land by the B.D.A. in favour of the 4th respondent was illegal and invalid?

(2) Even assuming that the ownership of the land had not been transferred to the Corporation, whether the action of the B.D.A. in allotting the land originally earmarked for a park, for construction of a nursing home and a hospital, to the 4th respondent was illegal and invalid?

11. The learned single Judge after examining the language of Sec. 23 of the Improvement Act and the language of the notification issued on 3-1-1973 in purported exercise of its power under sub-sec. (1) of Sec. 23 of the Improvement Act, regard being had to the text and the contents of the said notification, came to the conclusion that vacant space etc. covered by sub-sec. (2) of Sec. 23 of the Improvement Act did not vest in the Corporation and therefore the C.I.T.B. and thereafter its successor B.D.A. remained the owners and in control of the low level park area.

12. Before us, Mr. V. Tarakaram, learned counsel appearing for the writ petitioners, did not challenge that finding and therefore we proceed to examine the conclusions reached by the learned single Judge in regard to the second question formulated by him and no more.

12-A. From the finding recorded on the first question, the B.D.A. which had come into being and was operative from 20-12-1975 had the competence to modify the scheme and convert the area reserved for low level park into a civic amenity site may not be doubted. In regard to the second contention, the learned counsel for the writ petitioners while advancing the arguments before the learned single Judge placed reliance on the decision of the Division Bench of this Court in the case of Holy Saint Education Society v. Venkata-ramana, P. ILR (1982) 1 Kant I. The Division Bench on the facts of that case, which are self-revealing in the passage extracted hereinafter, held as follows:

'Under the improvement scheme drawn up by the Board and approved by the Government, the said site had been reserved for children's playground. Unless the

scheme was modified in accordance with law, the site could not be utilised for any purpose. Even after the site came within the jurisdiction of corporation by virtue of the notification issued by the Government under clause (9) of Sec. 3 of the Bangalore Corporation Act, and the site vested in the Corporation under Sec. 71-A of the Act, the Corporation was under an obligation to retain that site as children's playground and could not divert it for any other purpose and much less grant it to a private person or organisation, whether by way of sale, gift or lease, unless the aforesaid scheme was modified according to law. The mere fact that the Bangalore Corporation could incur expenditure on education, would not be a justification for diverting a site which had been set apart for playground for children, for leasing it (the site) for construction of a school by a private organisation.

Nor can the grant of lease of the site to the Society be regarded as utilisation of the site for any public purpose.

The view taken by the learned single Judge that the Corporation which held the site as a trustee, could not lease it for a purpose different from the one for which it had been reserved, is upheld.'

13. The principle laid down in the aforementioned decision as extracted above, is clear. The only distinction between the facts of this case and the facts of the case of Holy Saint Education Society (ILR (1982) 1 Kant 1) is that the park in question had vested in the Corporation of the City of Bangalore and in this case, the park area converted by the B.D.A. into a civic amenity site with the sanction of the Government had not so vested. Therefore, the questions which really fall for our determination are :

(1) Whether the B.D.A. was competent to convert the area reserved for low level park into a civic amenity site?

(2) If it was competent, whether the B.D.A. had the power to grant to the 4th respondent-Bangalore Medical Trust the civic amenity area on the undisputed facts of the case on hand before us?

14. The learned single Judge undoubtedly and perhaps correctly distinguished the case of the Holy Saint Education Society *supra*. In that case the park had vested in the Corporation and the lease in question had been granted by the Corporation of the City of Bangalore in favour of a private body to construct an educational institution on the site which was entrusted to it as a park and to be maintained as such.

15. The learned single Judge placed reliance upon the decision of another Bench of this Court in the case of *Siddalingappa v. Bangalore Development Authority* (See ILR (1986) 2 Kant 3023). In *Siddalingappa's* case what fell for consideration were the provisions contained in B.D.A. Act with reference to amenity. Relying on the ruling therein the learned single Judge explained the scope of S. 19(4) of the B.D.A. Act which reads as follows:

'(4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme, the Authority may alter the scheme for the said purpose and shall subject to the provisions of sub-secs. (5) and (6) forthwith proceed to execute the scheme as altered.'

Thus it was claimed that the B.D.A. had the power to alter the scheme in order to bring about an improvement in the scheme at any time after the acquisition of the land for the purposes of promoting the objects of the Act.

16. The learned single Judge having regard to the scheme and purpose of S. 19 of the B.D.A. Act came to the conclusion that conversion of an area reserved for low level park in the extension in question into a civic amenity site was within the competence of the B.D.A. as it formed an improvement as held by this Court in the case of *Sri Vani Education Centre v. State of Mysore* (W.P. No. 1849/1970, D/-20-7-1970). In para 15 of the judgment of the learned single Judge, a portion of that judgment is extracted and it reads as follows :

'It appears to us that it cannot be stated as an absolute proposition that to keep an area as an open space is always an improvement and that to construct buildings in such area is never an improvement. In order to provide in a locality civic amenities like school, hospitals, places of worship and places of entertainment. It may be

necessary to provide for construction of buildings on vacant land. Whether construction of buildings on any vacant land instead of keeping it as open space, does or does not amount to an improvement depends upon the circumstances in each locality. Ordinarily it is for the Trust Board to decide whether a modification of scheme with the object of improvement should permit a vacant land as an open space for ventilation, play ground and the like."

17. Having regard to the date of disposal, there can be no doubt that the said decision was not rendered in connection with or with reference to S. 19 of the B.D.A. Act or any of its sub-sections. We must assume, that decision was rendered with reference to the corresponding provision in the earlier Act namely, Improvement Act. Undoubtedly, the Division Bench in Sri Vani Education Centre's case as noticed above expressly and clearly ruled that civic amenities like schools, hospitals, places of worship and places of entertainment in vacant space should definitely be construed as an improvement. In the very last sentence which we have extracted above, the Division Bench in Sri Vani Education Centre's case ruled, it was left to the Authority concerned to decide while modifying the scheme, the object of improvement i.e., whether to permit vacant land as an open space for ventilation, playground and the like or permit construction of buildings on the same, ordinarily the learned single Judge has placed reliance on that decision of this Court in the case of Vani Education Centre supra as well as Siddalingappa's case supra to come to the conclusion that the 4th respondent-Bangalore Medical Trust had for its laudable objects which have been extracted at the end of paragraph 15 of the judgment with emphasis on clause (f) under the heading Objects of the Trust. To our mind, it does not appear to have been well founded. It is impossible to say that the objects enumerated in Cls. (a) to (e) in paragraph II of the deed of trust under the heading Objects of the Trust are on no profit basis. In fact, the learned single Judge has taken pains to emphasise on Cl. (f) and what he has emphasised is the expression 'on no profit basis' and according to the learned Judge is imputable to all the clauses which precede Cl. (f). We are unable to read it as such. On no profit basis used as an expression in Cl. (f) has application only to the publication of literature on all aspects of health, medicine and other allied subjects and not to other Objects of Trust. We will make further reference to it later in the course of this order to this aspect of the case. In the case of Vani Education

Centre, the Division Bench of this Court did not concede to the concerned authority the right to decide what constitutes an improvement when a scheme is modified. This Court only stated that ordinarily such authority should be the judge of what constitutes an improvement. This Court did not thereby abdicate its power of judicial review under Art. 226 of the Constitution to question the judgment of the authority concerned in appropriate cases.

18. For instance, before the learned single Judge, neither the petitioners nor the B.D. A., one of the respondents, drew the attention of the Court to the provisions of the Karnataka Town and Country Planning Act, its rules, the Outline Development Plan and the Comprehensive Development Plan, the Regulations made thereunder, particularly the provisions relating to the ratio of open space, roads, drainage etc. required with reference to the area provided as sital area in any development plan. In the absence of pleadings and materials we do not propose to go into those questions and make out a new case for the petitioners. We have merely pointed this out to demonstrate that if the B.D. A., does anything which is violative of law, this Court will step in and set aside unlawful acts of B.D.A. or any other statutory authority in exercise of the powers of this Court under Art. 226 of the Constitution.

19. We propose to examine the correctness of the conclusions reached by the learned single Judge on the basis that the low level park area originally earmarked as such had assumed the character of a civic amenity area or site and whether the allotment in favour of 4th respondent-Bangalore Medical Trust is violative of any statutory rules or the fundamental rights guaranteed to the citizens as well as with reference to the law declared by this Court and the Supreme Court of India.

20. We have already noticed that the learned single Judge drew support for his conclusions from the decisions of this Court in the case of Vani Education Centre and the case of Siddalingappa ILR (1986) 2 Kant 3023) supra). In Vani Education Centre's case, a Division Bench of this Court did not more than state what may constitute an improvement in a scheme under the Improvement Act presumably and nothing more. Putting it in another way that decision laid down that if vacant space in a given scheme or lay-out is utilised for building upon, may, on the facts

and circumstances of that case be considered an improvement and the best judge in that behalf would be ordinarily the authority which has to take the decision. In Siddalingappa's case, the learned single Judge of this Court ruled as to what constitutes amenity in terms of S. 2(b) of the B.D.A. Act without really examining that provision but giving the dictionary meaning to amenity. We are of the view that the learned single Judge was not right in deriving support from the decision of this Court in Vani Education Centre's case. Hospitals, nursing homes and the like certainly are public conveniences. There cannot be any doubt. They do fall into the category of numerous things which may be called public amenities. Similarly, the learned single Judge in Siddalingappa's case while ruling on S.2(b) of the B.D.A. Act purportedly went by the definition of the word 'amenity' or 'civic amenity' in the B.D.A. Act as amended from time to time, without analysing the language. We find that it is difficult to agree with the learned single Judge's views having regard to the language of the relevant section which defines 'amenity' and 'civic amenity'.

21. Before us for the respondent-B.D.A. and the 4th respondent-Bangalore Medical Trust it has been contended by Shri R. N. Narasimha Murthy learned Senior Counsel and Shri G. V. Shantharaju respectively that hospital being an amenity a site earmarked for civic amenity if allotted to the Trust does not violate any of the provisions of the B.D.A. Act or the rights of the petitioners. It is significant to notice that the Improvement Act did not define the term 'amenity' or 'civic amenity'. The B.D.A. Act as originally enacted defined the word 'amenity' as follows :

'2(b) 'amenity' includes road, street, lighting, drainage, public works and such other conveniences as the Government may, by notification, specify to be an amenity for the purposes of this Act.'

At the relevant time namely, 11-6-1976 the above definition was holding the field. Mr. Narasimha Murthy and Mr. Shantharaju, the learned Counsel for the Bangalore Development Authority as well as the Bangalore Medical Trust strenuously contended before us that the term 'amenity' defined was an inclusive definition though hospital is not mentioned in the definition it must be construed to have been included. For that, reliance was placed on the decision of the Supreme

Court in the case of the Commr. of Income-tax, Andhra Pradesh v. M/s. Taj Mahal Hotel, Secunderabad, : [1971]82ITR44(SC) . That case was decided having regard to the definition of the expression 'plant' occurring in S. 10(2)(vi-b) and (5) of the Income-tax Act, 1922. That is what their Lordships of the Supreme Court observed in paragraph 6 and it is on that the learned Counsel have placed reliance:

'6. Now it is well settled that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of every day use. Popular sense means 'that sense which people conversant with the subject matter with which the statute is dealing would attribute to it'. In the present caase, S. 10(5) enlarges the definition of the word 'plant' by including in it the words which have already been mentioned before. The very fact that even books have been included shows that the meaning intended to be given to 'plant' is wide. The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the 'statute'. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The word 'include' is also susceptible of other constructions which it is unnecessary to go into.'

12. The learned Counsel wants this Court to understand inclusive definition, to mean, illustrative and therefore even if the expression 'hospital' or 'nursing home' was not one of the listed expressions in the definition, it should be construed liberally so that all public conveniences are included within the meaning of the defined term 'amenity'. We find it difficult to accept the argument. The legislative intent becomes obvious When an inclusive definition is resorted to by the legislature when something which is not normally embraced or connoted in the ordinary meaning of an expression is nevertheless brought within the meaning of that expression, as explained in the passage extricated from the case of Taj Mahal Hotel : [1971]82ITR44(SC) (supra). In other words, an inclusive definition may bring within it many species from different genus within one expression and no more. For instance, by an inclusive definition horses may be defined to include donkeys, mules and zeebras. That would be for the purpose of an artificial

definition which the legislature adopts to achieve the objects of the statute concerned. Thus, understood, while the definition of the word 'amenity' by enumeration includes road, street, lighting, drainage, public works and such other conveniences, the Government may by notification specify to be an 'amenity' for the purposes of the B.D.A. Act, other conveniences to the public by notification. This aspect has been clearly overlooked by this Court in the case of Siddalingappa (ILR (1986) 2 Kant 3023) (supra), Unless there is a Government notification specifying the other conveniences for the purpose of the B.D.A. Act, it shall not be an amenity for purpose of the B.D.A. Act. Any other view would render the portion emphasised by us in Cl. (b) of S. 2 of the B.D.A. Act otiose which is impermissible.

23. We derive support to the construction we have put on the word 'amenity' as defined in S. 2(b) of the B.D. Act, from the subsequent amendments made to it by the Amendment Act, 1984. S. 2 of the Amendment Act provides as follows:

'2. Amendment of S. 2, -- In S. 2 of the Bangalore Development Authority Act, 1976 (Karnataka Act 12 of 1976) (hereinafter referred to as the principal Act), after Cl. (b) the following clause shall be inserted, namely,

'(bb) 'civic amenity' means a market, a post office, a bank, a fair price shop, a milk booth, a school, a dispensary, a maternity home, a child care centre, a library, a gymnasium, a recreation centre run by the Government or the Corporation, a police station, an area office or a service station of the Corporation or the Bangalore Water Supply and Sewerage Board or the Karnataka Electricity Board and such other amenity as the Government may by notification specify.'

24. Again the definition as amended in Cl. (bb) of S. 2 of the B.D.A. Act was enumerative in character and nature and predominant feature is that all of the enumerated amenities should be provided by the government or the corporation or by statutory boards and the list of civic amenities may be enlarged by specifying such enlargement by adding other amenities under a notification issued by the Government. Again by Amendment Act, 1988 'civic amenity' redefined in the B.D.A. Act is as follows :

'(bb) civic amenity means,--

(i) a market, a post office, a telephone exchange, a bank, a fair price shop, a milk booth, a school, a dispensary, a hospital, a pathological laboratory, a maternity home, a child care centre, a library, a gymnasium, a bus stand or a bus depot;

(ii) a recreation centre run by the Government or the Corporation;

(iii) a centre for educational, social or cultural activities established by the Central Government or the State Government or by a body established by the Central Government or the State Government;

(iv) a centre for educational, religious, social or cultural activities or for philanthropic service run by a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act II of 1959) or a Society registered under the [Karnataka Societies Registration Act, 1960](#) (Karnataka Act 17 of 1960) or by a trust created wholly for charitable, educational or religious purposes;

(v) a police station, an area office or a service station of the Corporation or the Bangalore Water Supply and Sewerage Board or the Karnataka Electricity Board; and

(vi) such other amenity as the Government may, by notification, specify;'

25. The above clearly demonstrates that public amenity civic or otherwise to be a public convenience for purposes of the B.D.A. Act, the Government has to notify. If it does not specify whatever may otherwise be a public convenience will not be a civic amenity or amenity under Cls. (bb) and (b) of S. 2 respectively for purposes of the B.D.A. Act.

26. In fact the meaning found in any standard dictionary of the English language is that 'amenity' is a convenience for the welfare of the citizens of a locality. Thus any form of convenience to the public will be an 'amenity'. When the statute defines the term restrictedly as has been done in the B.D.A. Act for achieving the objects of that Act then the Courts are bound to ignore the dictionary meaning and give only that meaning which the statute gives a particular expression. If this rule of construction is ignored, then the words used more than once in the statute shall

tend to have different meanings in different contexts and therefore the legislature in its wisdom chooses to give wider or restricted meaning i.e., other than ordinary normal usage of that word permits.

27. At the relevant time i.e., in 1976 there was no notification specifying hospital or nursing home as a civic amenity. Even subsequent amendments provided for hospitals and maternity homes if they are run by the State Government or the Corporation and not by private bodies even though such body or bodies may be a public charitable trust. We derive support from the fact that 'amenity' in sub-sec. 2(b) of the B.D.A. Act was added to by Cl. (bb) 'civic amenity'. That itself provides a clue to the definition 'civic amenity' which in its normal meaning means and refers to amenity provided by civic authority and therefore excludes 'amenity' provided by person or persons other than a civic authority. This becomes doubly clear if one looks at the meaning of the word civic. Random House Dictionary of the English language (unabridged Edition) at page 270 column (3) gives the following meaning to the word ;

'Civic -- adj. 1 of or pertaining to a city; municipal; civic problems 2 of or pertaining to citizenship; civil, civic duties; 3.....

28. It is in this context, we have to again refer to Cl. (f) of the deed of trust on which the learned single Judge placed reliance. We have already pointed out that in Cl. (f) in which the expression 'on no profit basis' occurs only to qualify or govern the publications on health and not in regard to other activities enumerated in the preceding clauses. If 'on no profit basis' is attributable to all the clauses in the deed of trust under the heading Objects of the Trust, then the entire treatment of the sick and the injured has to be free. Therefore, we are satisfied that the learned single Judge was moved more by sympathy for the cause of the sick than by the real legal nature of the sanction of the civic amenity site in favour of the Trust.

29. When valuable land like the one in question is given away to locate a hospital or a nursing home run by persons other than civic authority which includes the State Government, then we cannot miss the fact, which remains undisputed, in allotting the site, the rules of allotment then in force were clearly violated as no application whatsoever from others interested in establishing charitable nursing

home or a hospital was ever invited. In other words, the 2nd respondent-B.D.A. chose to confer a largess in favour of the 4th respondent on a selective basis to favour the Trust notwithstanding its laudable objects and it was clearly violative of the rights guaranteed under Art. 14 of the Constitution to the citizens of India.

30. In this context, it will not be inappropriate to extract the following passage in the judgment of the Supreme Court in the case of *Ramana Dayaram Shetty v. The International Airport Authority of India*, : (1979)ILLJ217SC is as follows (at Pp. 1635-36 of AIR):

'It is well settled rule of administrative law that an executive authority must be rigorously held to be standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (1959) 359 US 535 : 3 Law Ed 2d 1012 where the learned Judge said:

'An executive agency must be rigorously held to the standards by which it professes its action to be judged..... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed..... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.' This Court accepted the rule as valid and applicable in India in *A. S. Ahluwalia v. State of Punjab* : (1975)ILLJ228SC and in subsequent decision given in *Sukhadev v. Bhagatram* : (1975)ILLJ399SC , Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanating from Art. 14, does not rest merely on that article. It has an independent existence apart from Art. 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power of the executive authority.'

31. Besides all these, no provision in the B.D.A. Act or the rules made thereunder, have been pointed out by the respondents, the source of authority to grant, gratis or for payment, sites reserved for civic amenities. We must at the cost of repetition point out that the learned single Judge erred in distinguishing the ruling of this

Court in the case of Holy Saint Education Society (ILR (1982) 1 Kant 1) was inapposite inasmuch as this Court had in that case pointed out that if an area was reserved for a specific purpose then the person holding that area in trust for the benefit of the public cannot divert its use different from the one for which it was reserved. Similarly, we are satisfied that Siddalingappa's case (ILR (1986) 2 Kant 3023) was wrongly decided without due regard to the definition of 'civic amenity' in S. 2(b) of the B.D.A. Act for the reasons we have already given. We, therefore, are not persuaded by those decisions.

32. In tracing the history of legislation in regard to the definition of 'civic amenity' we have earlier set out the 1988 Amendment. In Cl. (iv) of S. 2(bb) of the B.D.A. Act thereof provision is made for non-civic authorities to provide civic amenities if they qualify under the amended provision. But the 1988 amendment is prospective and not retrospective and therefore cannot rescue the 4th respondent.

33. Before parting with the case, we may usefully quote a passage from the judgment of the Supreme Court in the case of B. K. Srinivasan v. State of Karnataka, : [1987]1SCR1054 :

'20. Shri Cooper argued that neither the Municipal Corporation nor any other civic authority appeared to be aware of the Outline Development Plan and the Regulations as was evident from the circumstance that in the years that passed since the approval of the Plan by the Government and before the writ petitions were filed, as many as 57 building licences had admittedly been issued in contravention of the Regulations. It may be that notwithstanding the Regulations some building licences were granted in contravention of the Regulations but that only exposes the deplorable laxity of the concerned authorities and emphasises the need for greater public vigilance. The present writ petitions, we hope, are forerunners of such vigilance.'

34. The observations are not only binding on us even if it is obiter so far as this case is concerned, but apt and have abundant common sense in the matter of organised development of a city.

35. In the light of the above discussion we have no hesitation to hold that the allotment in favour of the 4th respondent impugned in the writ petition was not in accordance with law and was in violation of the provisions of the B.D.A. Act and the constitutional rights of the citizens. We therefore set aside the learned single Judge's order under appeal and allow the writ petition and direct that rule issued be made absolute cancelling the allotment by the B.D.A. of the civic amenity site in question to the 4th respondent-Bangalore Medical Trust. However, we make it clear that the 4th respondent will not be disentitled to the grant of a site for constructions of its nursing home in any other land belonging to the B.D.A. if the same is granted in accordance with law.

36. Appeal allowed.

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