

S. Narasimhaiah Vs. Commissioner, Bangalore Development Authority

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Court : Karnataka

Decided On : Nov-13-1990

Reported in : ILR1991KAR868; 1990(3)KarLJ391

Judge : Rama Jois and ;Mirdhe, JJ.

Acts : Bangalore Development Authority Act, 1976 - Sections 16, 19 and 32

Appeal No. : W.A. No. 413 of 1987

Appellant : S. Narasimhaiah

Respondent : Commissioner, Bangalore Development Authority

Advocate for Def. : K. Gopal Hegde, Adv. for R-1, ;T.S. Ramachandra, Adv. for R-2 and ;N.S. Krishnan, Adv. for R-3, 5 and 6

Advocate for Pet/Ap. : V. Gopala Gowda, Adv.

Disposition : Appeal dismissed

Judgement :

Rama Jois, J.

1. This Writ Appeal has been presented against the order of the learned single Judge in Writ Petition No. 7440 of 1985 dismissing the Writ Petition presented by the appellant in which he had challenged the legality of the order of the Bangalore

Development Authority permitting the second respondent-Society to form 10 additional sites in an area which had been reserved for civic amenities in a private layout.

2. The facts of the case, in brief, are these: The second respondent is a House Building Co-operative Society. For the purpose of formation of a layout and distributing sites among its members, the society had purchased 25 acres of land in Kempapura Agrahara. The Society had sought the approval of the Bangalore Development Authority to the layout. It was approved by the B.D.A. in its order dated 7-1-1976. An agreement has also been entered into between the Society and the Bangalore Development Authority under which the Society was required to pay lay out charges to the Board. In the layout so approved by the B.D.A., a few areas were reserved for civic amenities, one of them, was marked as site No. 19. The Society desired to modify the lay out by forming 10 small house sites, out of site No. 19 reserved for civic amenity so as to enable the Society to realise the money which it required for paying the balance of the lay out charges to the B.D.A. As in view of Section 32 of the Act, the Society could do so only with the previous approval of the B.D.A. the Society made an application to the B.D.A. seeking permission for modifying the lay out by way of forming 10 sites out of the area marked as site No. 19. After the application was processed, as directed by the Commissioner of the B.D.A. a note was put up, which reads:

'As per orders of the Commissioner in para 282 the Deputy Director (West) has worked out 10 additional sites (6 Nos. 40' x 60') and (4 Nos. 30' x 40') in the narrow bit of C.A. site No. 19 on the west of 4th cross road in REMCO H.B.C.S. within the R.P.C. layout as shown in the draft layout at flag 'X'.

It is possible for the society to realise Rs. 3,88,756/- which is the balance amount due to the B.D.A.

If approved, fair copy of the layout plan along with letter will be put up for kind approval.

Sd/- Town Planner,

Member.'

The above note was approved and the permission was granted. Questioning the legality of the said permission, the appellant had presented the Writ Petition.

3. In the Writ Petition, it was contended by the appellant that the conversion of the site reserved for civic amenity into house sites was illegal. It was contended by the B.D.A. and the second respondent - Society that it was competent for the B.D.A. to accord permission for modifying the scheme and to allow conversion of a civic amenity site into house sites for good reasons and in the present case it had been done so as it was considered expedient and it was done in accordance with law. It was also contended that the Writ Petition presented by the appellant was not bona fide as it had been filed only for the reason that he had personal grouse against the Management of the Society. Both the contentions were accepted by the learned Judge and the Writ Petition was dismissed. Aggrieved by the said order, the appellant has presented this appeal.

4. The learned Counsel for the appellant contended that in view of Section 16 of the Act, it was obligatory to reserve certain open spaces for better ventilation of the area comprised in the scheme and once such a provision had been made in a scheme and approved under Section 18 of the Act, the area reserved for civic amenity cannot be converted into sites and disposed of. He submitted that as held by this Court in HOLY SAINT EDUCATION SOCIETY v. VENKATARAMAN, ILR (Karnataka) 1982(1) 1 any diversion of a site reserved for civic amenity for a different purpose was illegal. He also relied on a few other decisions of this Court. In this context, it should be pointed out that Sections 16 and 19 of the Bangalore Development Authority Act, 1976 ('the Act' for short) apply to the schemes prepared by the B.D.A. Those provisions have no application to a private layout. It is Section 32 of the Act which applies to private layouts. Sub-section (1) of Section 32 of the Act provides that no person shall form a layout or an extension for the purpose of construction of a building without the express sanction in writing to the B.D.A. and in accordance with the conditions specified by the B.D.A. Sub-section (2) of Section 32 of the Act requires that any person intending to form an extension or a layout should send a written application to the Commissioner with plans

showing the following particulars:

'32(2). Any person intending to form an extension layout or to make a new private street shall send to the Commissioner a written application with plans and Sections showing the following particulars:-

(a) the laying out of the sites of the area upon streets, lands or open spaces;

(b) the intended level, direction and width of the street;

(c) the street alignment and the building line and the proposed sites abutting the streets;

(d) the arrangement to be made for levelling, paving, metalling, flagging, channelling, sewerage, draining, conserving and lighting the streets and for adequate drinking water supply.'

Sub-section (4) of Section 32 empowers the B.D.A. to reject or accord sanction to a private lay out so applied for. There is no dispute that the layout had been sanctioned and in the Layout a few sites were earmarked for civic amenity and that out of them one was site No. 19. Subsequently, the said site was permitted to be converted into 10 house sites as requested by the 2nd respondent-society. The learned Counsel for the B.D.A. submitted that the permission was granted having due regard to the necessity of the society for augmenting the funds for paying the layout charges without which the Society was not in a position to pay the layout charges and also having due regard to the fact that it was a small strip of land lying by the side of a drain and such diversion did not in any way adversely affect the lay out. If the Society had proceeded to convert the civic amenity site into house sites without the permission of the BDA to modify the layout, the contention of the appellant that such conversion was without the authority of law would have been unexceptionable. But in the present case, the Society applied to the BDA seeking its approval for modification of the layout plan by way of converting site No. 19 marked as C.A. in the approved plan into 10 house sites and the BDA having been convinced of the genuineness of the request had granted the permission, by such conversion no illegality has been committed, no individual

interest of the petitioner has been violated. Therefore, we are in respectful agreement with the view taken by the learned Judge that there is no merit in the challenge made by the appellant to the sanction accorded by the B.D.A. for the modification of the layout plan. As seen from the Judgment of the learned Judge, he also held that the petitioner's personal grouse against the Managing Committee of the society, was the cause for presenting the petition.

5. We shall now refer to the decisions of this Court on which the learned Counsel for the appellant relied.

(1) In the case of Holy Saint Education Society, ILR (Karnataka) 1982(1) 1 a site reserved for Children's playground in a scheme prepared and approved by the then Trust Board and which had been handed over by the B.D.A. to the Bangalore City Corporation to be maintained as such, was granted to a private education society, even though no modification of the scheme had been approved by the Trust Board. The, Court held that it was a case of diversion of use, without any legal authority and contrary to the approved scheme and the condition subject to which the land was entrusted and vested in the Corporation.

(2) The decision in R. NARAYANASWAMY AND ORS. v. STATE OF KARNATAKA AND ORS., W.P.No. 7113 of 1978 DD 29-5-1981 is similar to Holy Saint Education Society, ILR (Karnataka) 1982(1) 1 in that an area reserved for park in an approved private lay out formed by CITB and handed over to the Corporation was granted to private individuals. Applying the ratio of the decision in Holy Saint Education Society's case, the grant was set aside.

(3) The decision in W.A. No. 208 of 1986 DD 3-12-1986 - Dattaguru Sadananda Spiritual Meditation Centre v. State of Karnataka and Ors. was a case in which a land expressly reserved for civic amenity in a private lay out formed by a Society with the approval of the B.D.A. and handed over to the B.D.A. was disposed of by the B.D.A. in favour of a private trust for construction of a prayer and meditation hall contrary to the condition subject to which the site had been handed over to the B.D.A. The grant of the site to a private trust was held to be not a civic amenity and not a public purpose and therefore illegal.

6. This case is clearly distinguishable for the reason, the land earmarked as a civic amenity site, was neither disposed of by the B.D.A. nor by the Corporation for a different purpose. This is a case in which the very society which had formed the lay out sought modification of the lay out by the B.D.A. by way of altering the use of site No. 19 marked for civic amenity, for formation of ten residential sites in order to enable it to collect money required to pay the balance of layout charges. The B.D.A. accorded approval to the modification. Thereafter, it is the Society which formed ten sites and disposed them of in favour of its members and not to any third party. Thus, it is clear that this case is not similar to the three cases in which the B.D.A. or the Corporation had disposed of civic amenity site entrusted to it, for a different purpose. Further, the more distinguishing feature is in the three cases on which the learned Counsel relied, there was no modification of the scheme, whereas in this case the modification of the scheme was approved by the B.D.A. Therefore, those decisions are of no assistance to the applicant.

7. At the fag end of the argument, the learned Counsel for the appellant raised a contention to the effect that actually there was no resolution of the B.D.A. to the modification sought for by the Society. No such contention was raised in the Writ Petition and no such ground is raised in the appeal also. In fact, the very challenge made in the Petition is that the B.D.A. acted illegally in according permission to the second respondent, which we have rejected. Therefore, we find no substance in this contention urged for the appellant.

8. In the result, we make the following order:

The Writ Appeal is dismissed.