

Jagadish Vs. Bangalore Development Authority

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Court : Karnataka

Decided On : Oct-24-1990

Reported in : ILR1990KAR4110; 1991(1)KarLJ26

Judge : Balakrishna, J.

Acts : [Karnataka Town and Country Planning Act, 1961](#) - Sections 13 and 23

Appeal No. : W.P. No. 7710 of 1984

Appellant : Jagadish

Respondent : Bangalore Development Authority

Advocate for Def. : H. Thipperundrappa, Adv. for R-1; ;R.V. Vasantha Kumar, Adv. for R-2 and ;V.S. Gunjal, Adv. for R-3

Advocate for Pet/Ap. : L. Govindaraj, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Balakrishna, J.

1. The petitioners styling themselves as rate-payers and residents of V Block, Jayanagar, Bangalore, have brought this action for a declaration that the allotment

of civic amenity site No. 19, V Block, Jayanagar, Bangalore, in favour of the Corporation of the City of Bangalore by the Bangalore Development Authority as illegal and void and for prohibiting respondent-1 from altering the character of the said site and also for a declaration that the said site is a civic amenity site intended as a play-ground and a park.

2. The facts, briefly stated, are as follows:

Site No. 19 is situate between 10th and 11th Main Road, Jayanagar V Block, measuring 91 metres towards East to West and 298 metres towards North to South out of which the existing park area extending upto storm water drain is of an extent of 91 x 165 metres. The remaining portion measures 91 x 134 metres inclusive of storm water drain. It is in the latter portion that there is a proposal for construction of a Community Hall. In the Comprehensive Development Plan prepared by respondent-1, the land on the southern side is indicated by an abbreviation under letter 'P' which connotes that it is meant for a park and the southern portion of the site is earmarked for general purpose which is indicated by the letter 'G' implying both public purpose and semi public purpose. On a representation made by respondent-3, respondent-2 proposed to put up a Community Hall in a small portion of the area intended for public and semi public purpose in the site in question. The decision to construct a Community Hall at the cost of Rs. 9 lakhs was supported by a resolution of respondent-2. The petitioners on coming to know of the proposed construction, took an exception to it since it was their belief that the site in question is a civic amenity site intended to provide a large playground and a park to the local residents and also serve as a lung-space to the denizens. It is stated that, for over 20 years, the residents had been using the site in question as a play-ground and that some top ranking sportsmen had their initial grooming there. It was in April, 1984 that the petitioners are supposed to have learnt that the site in question to the extent of an area measuring 150' x 150' was allotted to respondent-2 for the purpose of building a Community Hall and a working women's hostel. On seeing that there was collection of materials for construction purpose brought on the site in question by respondent-2 despite the alleged protest of the residents and commencement of digging and other operations, the petitioners, in order to stall the construction, preferred this Writ

Petition.

3. Statement of objections has been filed on behalf of respondent-2 denying the violation of any rule or regulation in the matter of construction of a Community Hall in a portion of the site in question which has been reserved for a public and semi public purpose. According to the counter filed, Community Hall would sub-serve public purpose and public interest without offending any law and it would also meet the growing needs of the rate-payers of the locality who otherwise would have to incur enormous expenditure for purposes of marriage and similar needs in Community Halls or Kalya'n Man taps built and maintained by private persons. The proposed construction of a girls hostel is denied by respondent-2. The main thrust of the objection is that the utilisation of the space in the site in question for construction of a Community Hall is not inconsistent with the purpose indicated in the entries made in the Comprehensive Development Plan and that portion of the site in which the Community Hall is to be built is not reserved for either a park or a play-ground. Respondent-2 has also taken the stance that the petitioners have no locus standi to maintain the Writ Petition. On the other hand, it is maintained that it is at the instance and on the request of respondent-3 that respondent-2 intended to put up a Community Hall entirely for the benefit of the local residents and strangely enough the petitioners are opposing such a construction.

4. The contention of the petitioners is that the proposed construction of the Community Hall does not fall within the scope of civic amenity and that the change or alteration of the character of the site by building a Community Hall is without the authority of law. The second contention is that the allotment of the civic amenity site to respondent-2 is arbitrary since it is done without notice to the residents whose civic rights are affected.

5. It is brought to my notice by the learned Counsel appearing for respondents-1 and 3 that a notification dated 22-9-1962 came to be issued by the erstwhile Government of Mysore in exercise of the powers conferred by Clause (9) of Section 3 of the City of Bangalore Municipal Corporation Act, 1949 that with effect from 1st October 1962 the Government extends the existing limits of the area of the City of Bangalore by including within its limits the area more commonly known

as Jayanagar Extension, Blocks 1 (East), III, IV (including Block I), V, VI, VII and VIII which are more fully described in the schedule appended to the notification. By virtue of this notification, the site in question along with a huge area in the V Block Jayanagar and other Blocks found in the said notification were transferred by the erstwhile C.I.T.B. to the limits of City of Bangalore in 1962. It is submitted that it is incorrect to say that the site in question was allotted by respondent-1 to respondent-2.

6. The short point for consideration is whether the utilisation of a portion of the site in question which is earmarked for a public or semi public purpose by putting up a Community Hall is violative of any law and is liable to be prohibited.

7. Arguments were heard at length and the learned Counsel appearing for the petitioners strenuously contended that it is not open to respondent-2 to alter the character of the site in question and by such alteration the scheme on the basis of which the site in question was earmarked for a specific purpose would also suffer an alteration but without the authority of law. According to the learned Counsel, the site in question was reserved only for a park and a play-ground and nothing else. In support of his contention, an extract of Comprehensive Development Plan was furnished. On the other hand, the learned Counsel appearing for respondent-2 submitted that the contention that the entire area was earmarked for a park and a play-ground is misconceived, but the factual position is that the northern portion of the site in question was reserved for a park and the southern portion was reserved for a public or a semi public purpose which is also known as general purpose. The learned Counsel relied upon an extract of the Comprehensive Development Plan. Strangely enough the description found in the extract furnished by the learned Counsel appearing for the petitioners was in conflict with the description found in the extract produced by the learned Counsel appearing for respondent-2. Therefore, I was prompted to call for the original document in order to verify the nature of entry incorporated in the Comprehensive Development Plan. On examining the original Comprehensive Development Plan, I found that the northern portion of the site in question had been earmarked for a park and the remaining portion for a general purpose which is public or semi public purpose. Obviously the dispute arose on a wrong understanding of the factual situation on

the part of the petitioners. Had it been known to the petitioners that the area on which the Community Hall is proposed to be put up falls within the area reserved for public or semi public purpose and not for a playground or a park, perhaps this Writ Petition would not have been filed at all. Nevertheless it was vehemently contended by the learned Counsel appearing for the petitioners that, at the time of the formation of the layout by the erstwhile C.I.T.B., the site in question was meant for twin purpose, one for a park and the other for a play-ground and later on if a different entry is to be found in the Comprehensive Development Plan, it was argued that it is the original state of affairs which ought to be taken notice of by this Court and if the original intent is taken into account, respondent- 2 has no authority of law to interfere with a civic amenity site and deviate from the main purpose by constructing a Community Hall in however a small area considering the huge dimension of the site in question.

8. On facts, the dispute is set at rest. The undisputed fact is that the proposed Community . Hall is to be located in a portion of the area which is intended for a public or a semi public purpose also known as general purpose. It is, therefore, not possible to accept the contention that respondent-2 is acting beyond the authority of law for putting up a construction in the nature of a Community Hall in the site in question and that not only the nature of the site cannot be altered, but also the scheme itself I do not see any legal impediment for respondent-2 to put up a Community Hall as proposed.

9. As regards the contention that the original object of the scheme should be taken into account and not the subsequent entry found in the Comprehensive Development Plan the statutory provisions provide the answer. Chapter IV of the [Karnataka Town and Country Planning Act, 1961](#), deals with Comprehensive Development Plan, its preparation and enforcement. According to Section 19 of the Act, after the publication of the Outline Development Plan and the Regulations under Sub-section (4) of Section 13, within three years from such date, every Planning Authority should prepare in the prescribed manner a Comprehensive Development Plan and submit it through the Director together with a report containing the information prescribed, to the State Government for its approval. According to Sub-section (2) of Section 19 of the Act, for the preparation of the

Comprehensive Development Plan, the Planning Authority is required to carry out such surveys as may be necessary and as may be prescribed and according to Sub-section (3) of Section 19 of the Act, if the Comprehensive Development Plan and the report are not prepared and submitted to the State Government for approval by the Planning Authority within the specified period or the extended period, the State Government may directly authorise the Director to prepare such plan and report in the prescribed manner.

Under Section 23 of the Act, on the publication of the Comprehensive Development Plan and the report as finally approved by the State Government under Section 22, such Comprehensive Development Plan and the report shall take effect and govern all changes in the land-use and development for the area under the jurisdiction of the Planning Authority and the Outline Development Plan and regulations published under Section 13 shall be deemed to be superseded.

Section 24 of the Act deals with the enforcement of the Comprehensive Development Plan and, according to Sub-section (2) of Section 24, if, as a result of the Comprehensive Development Plan superseding the Outline Development Plan, a plot of land or property is favourably affected, a fee as prescribed in Section 18 is payable before permission is given to the change in use of land or building or development of the property.

10. Thus, it is seen that ultimately it is the Comprehensive Development Plan which supersede the Outline Development Plan and even the regulations published under Section 13 shall be deemed to be superseded. On account of these statutory provisions, it is not open to the petitioners to contend that whatever purpose actuated the C.I.T.B. to reserve the site in question should be adhered to even after the coming into force of the Comprehensive Development Plan. The correct legal position is that the nature of user indicated in the entries under the Comprehensive Development Plan would prevail and if in the instant case the construction of the Community Hall is not inconsistent with the nature of user specified under the Comprehensive Development Plan, this Court would not interfere. In the instant case, I am of the opinion that there is no inconsistency between the nature of user as indicated in the Comprehensive Development Plan

and the use to which respondent-2 intends to put the area in question for the construction of a Community Hall.

11. It is not necessary to go into the question whether a Community Hall falls within the definition of a civic amenity. All that could be said is that there is no illegality or irregularity in respondent-2 proposing to construct a Community Hall in the site in question in the portion which is clearly shown under the Comprehensive Development Plan as an area meant for public or semi public purpose.

12. Some authorities were cited before me by the learned Counsel appearing for the petitioners. But these authorities are of no avail because they have been cited on the assumption that the entire area in the site in question was exclusively reserved for a park and a play-ground which of course is contrary to facts. The propositions of law advanced by the learned Counsel appearing for the petitioners are of no relevance to the facts of the instant case since the facts themselves are at wide variance.

13. For the reasons stated above, the Writ Petition fails and is, therefore, dismissed.