

CASE NO.:
Appeal (civil) 4593 of 1999

PETITIONER:
The Printers (Mysore) Ltd.

RESPONDENT:
M.A. Rasheed & Ors.

DATE OF JUDGMENT: 05/04/2004

BENCH:
CJI, S.B. Sinha & S.H. Kapadia.

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

INTRODUCTION:

Validity of a sale deed dated 19.6.1985 executed by the Bangalore Development Authority (hereinafter referred to as 'the Authority') in favour of the appellant herein was questioned by the first respondent before the High Court by way of a public interest litigation which has been allowed by reason of the impugned judgment.

FACTUAL BACKGROUND:

The appellant is a company incorporated under the Companies Act engaged in printing and publishing of newspapers and periodicals. For grant of allotment of a suitable plot for establishing an industry, an application was filed by it before the said Authority and upon consideration thereof, a plot admeasuring 1 acre 20 guntas under the Byrasandra-Travaekere-Madivala (BTM) was allotted on a consideration of Rs.1,87,500/-. On the said amount having been deposited by the appellant, a deed of sale was executed in its favour by the authority on or about 29.6.1985. The appellant was also put in possession thereof. A licence for fencing the property was also obtained by the appellant.

In 1988, a public interest litigation was filed by the First Respondent herein, inter alia, on the ground that the impugned alienation was against public policy and, thus, illegal and void having regard to the fact neither any public auction was held therefor; nor any tender was called for; nor any public advertisement for sale of the said land was issued.

The contention of the appellant in the aforementioned writ petition, inter alia, was that the said writ petition in the nature of public interest litigation was in fact filed by the First Respondent at the instance of one S.A. Krishnappa who had been unsuccessful at earlier stages in his attempt to stall the acquisition proceedings. It was contended that one Mohd. Ibrahim had also filed a suit to achieve the same purpose but it was dismissed. In the said writ petition the locus of the writ petitioner was also questioned.

A learned Single Judge of the High Court allowed the said writ application by an order dated 29.1.1996 holding that the allotment in favour of the appellant herein by the Authority being a bulk one, the same was contrary to the provisions of the Bangalore Development Authority Act (for short 'the Act').

Aggrieved by and dissatisfied therewith, the appellant preferred a Letters Patent Appeal. A Division Bench of the High Court dismissed the same holding that establishment of an industry cannot be termed as a step towards development of the Bangalore Metropolitan Area. Noticing that under the the Act three different sets of rules had been framed and interpreting Section 38 thereof, it was held that the provisions of the rules would govern the transfer of land.

SUBMISSIONS:

Mr. Shanti Bhushan, learned Senior Counsel appearing on behalf of the appellant assailing the impugned judgment, would submit that the High Court committed a manifest error insofar as it failed to take into consideration that there was no legal impediment for allotment of the land by the Authority to the appellant for the purpose of setting up of an industry for printing and publishing of newspapers. The learned counsel would urge that the power to lease, sell or otherwise transfer an immovable property having been conferred on the Authority under the Act, no illegality can be said to have been committed in transferring the land in question in favour of the appellant. Establishment of an industry for printing and publishing newspapers, it was argued, comes within the purview of development of the metropolitan area. Mr. Shanti Bhushan would urge that Section 38 of the Act confers an unrestricted power to lease, sell or transfer movable or immovable property for the purpose of any development scheme.

Mr. S.N. Bhat, learned Senior Counsel appearing on behalf of the first respondent, on the other hand, would contend that the land in question having been earmarked for housing, the same could not have been allotted in favour of the appellant without any tender having been issued or without issuing any advertisement therefor. The High Court, Mr. Bhat would contend, has rightly set aside the allotment made by the Authority in favour of the appellant having regard to the provision contained in Section 38 of the Act. Bulk allotment, the learned counsel would argue, is covered by Section 38B of the Act which admittedly is not attracted in the instant case.

STATUTORY PROVISIONS :

The said Act was enacted for the establishment of a development of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith.

'Development' has been defined in Section 2(j) to mean :

""Development" with its grammatical variations means the carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any

building or land and includes redevelopment'"

Chapter III of the Act provides for development schemes. In terms of Section 15 of the Act, the Authority may draw up detailed schemes for the development of Bangalore Metropolitan Area and with the previous approval of the Government undertake from time to time any works for the Bangalore Metropolitan Area and incur expenditure therefor and also for framing and execution of development schemes. It is also entitled to take up any new or additional scheme from time to time.

Sections 38 of the Act reads thus :

"38. Power of Authority to lease, sell or transfer property.-Subject to such restrictions, conditions and limitations as may be prescribed, the authority shall have power to lease, sell or otherwise transfer any movable or immovable property which belongs to it, and to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme."

Section 38-B of the Act provides as under :

"38-B. Power of Authority to make bulk allotment. \026 Notwithstanding anything contained in this Act or Development Scheme sanctioned under this Act, the authority may, subject to any restriction, condition and limitation as may be prescribed, make bulk allotment by way of sale, lease or otherwise of any land which belongs to it or is vested in it or acquired by it for the purpose of any development scheme. \026

- (i) to the State Government; or
- (ii) to the Central Government, or
- (iii) to any Corporation, Body or Organisation owned or controlled by the Central Government or the State Government; or
- (iv) to any Housing Cooperative Society registered under the Karnataka Cooperative Societies Act, 1959 (Karnataka Act 11 of 1959); or
- (v) to any society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 7 of 1960); or
- (vi) to a trust created wholly for

charitable, educational or religious purpose:

Provided that prior approval of the Government shall be obtained for allotment of land to any category listed above."

FINDINGS:

The first respondent in paragraph 3 of the writ petition averred :

"...In the said Link Road, huge Industrial Estates have come up and potentiality of the acquired lands being increased by leaps and bounds..."

The alienation of the land in question in favour of the appellant herein, as noticed hereinbefore, was questioned only on the ground that no auction was held nor any tender therefor was called for and furthermore no public advertisement was issued prior to making of the impugned allotment. No contention had been raised in the writ petition to the effect that the land could not be alienated by the Authority for setting up of an industrial undertaking. In fact, as noticed hereinbefore, the first respondent in the writ petition accepted that huge industrial area had come up as a result whereof the potentiality of the acquired lands had been increased by leaps and bounds. The thrust of the writ petition was, thus, on legality of the acquisition of the land or amount of compensation payable therefor.

The Division Bench of the High Court, in our opinion, misconstrued and misinterpreted the provision of Section 38 of the Act. A bare perusal of the of the said provision would demonstrate that the Authority has power to lease, sell or otherwise transfer any movable or immovable property belonging to it, subject to such restrictions, conditions and limitations, as may be prescribed. The State of Karnataka has framed three rules under the Act, namely, (i) Bangalore Development Authority (Allotment of Sites) Rules, 1982; (ii) Bangalore Development Authority (Allotment of Buildings under Self Financing Housing Scheme) Rules, 1982; and (iii) Bangalore Development Authority (Disposal of Corner Sites and Commercial Sites) Rules, 1984.

It is beyond any cavil that the provisions of the aforementioned three sets of rules were not applicable to the allotment in question. If the provisions of the said rules are not applicable in the instant case, the question of power of the Authority being restricted, conditioned or limited in selling or otherwise transferring the property would not arise.

In Surinder Singh Vs. Central Government and Others [(1986) 4 SCC 667], it was held:

"6. The High Court has held that the disposal of property forming part of the compensation pool was "subject" to the

rules framed as contemplated by Sections 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in *Bishan Singh v. Central Government*. [(1961) 63 Punj LR 75]. The Division Bench in *Bishan* case [(1961) 63 Punj LR 75] took the view that since the disposal of the compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issue administrative directions providing for the transfer of the urban agricultural land by auction sale. In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute."

In *Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr.* [2004 (1) SCALE 224] this Court noticed:

"Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes.

This Court further noticed the dictionary meaning of "subject to" stating:

"Furthermore, the expression 'subject to' must be given effect to.

In Black's Law Dictionary, Fifth Edition at page 1278 the expression "Subject to" has been defined as under :

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for. Homan v. Employers Reinsurance Corp., 345 Mo. 650, 136 S.W. 2d 289, 302"

Reliance placed by Mr. Bhat in K.R.C.S. Balakrishna Chetty and Sons & Co. vs. The State of Madras [AIR 1961 SC 1152] is misplaced. In that case, an exemption provision contained in Section 5 of the Madras General Sales Tax Act was invoked which could be granted only subject to such restrictions and conditions, as may be prescribed and in that context it was held :

"...On a proper interpretation of the section it only means that the exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act whether in the rules or in the licence itself; that is, a licensee is exempt from assessment as long as he conforms to the conditions of the licence and not that he is entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. The use of the words "subject to" has reference to effectuating the intention of the law and the correct meaning, in our opinion, is "conditional upon.""

In the instant case, it would appear, that no restriction, condition or limitation has been prescribed and in that view of the matter, the High Court, in our opinion, committed a manifest error in holding that the provisions of the said rules would apply to any transfer made by the Authority in favour of any person. A similar question came up for consideration before this Court in Chairman & MD, BPL Ltd. vs. S.P. Gururaja and Others [(2003) 8 SCC 567]. This Court in that case examined in details the provisions of the said Act vis-à-vis the Karnataka Industrial Areas Development Act, 1966. Therein also allotment of a piece of land in favour of an industrial undertaking was in question. The Court referred to a large number of decisions including Guruvayoor Devaswom Managing Committee and Another vs. C.K. Rajan and Others [(2003) 7 SCC 546] and held :

"Mr. Subba Rao referred to N.M. Thomas (supra) for the proposition that court is also a 'State' within the meaning of Article 12 but that would not mean that in a given case the court shall assume the role of the Executive Government of the State. Statutory functions are assigned to the State by the Legislature and not by the Court. The Courts while

exercising its jurisdiction ordinarily must remind itself about the doctrine of separation of powers which, however, although does not mean that the Court shall not step-in in any circumstance whatsoever but the Court while exercising its power must also remind itself about the rule of self-restraint. The Courts, as indicated hereinbefore, ordinarily is reluctant to assume the functions of the statutory functionaries. It allows them to perform their duties at the first instance.

The court steps in by Mandamus when the State fails to perform its duty. It shall also step in when the discretion is exercised but the same has not been done legally and validly. It steps in by way of a judicial review over the orders passed. Existence of alternative remedy albeit is no bar to exercise jurisdiction under Article 226 of the Constitution of India but ordinarily it will not do so unless it is found that an order has been passed wholly without jurisdiction or contradictory to the constitutional or statutory provisions or where an order has been passed without complying with the principles of natural justice. (See Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others (1998) 8 SCC 1).

Exercise of self-restraint, thus, should be adhered to, subject of course to, just exceptions."

Dawn Oliver in Constitutional Reform in the UK under the heading 'The Courts and Theories of Democracy, Citizenship, and Good Governance' at page 105 states:

"However, this concept of democracy as rights-based with limited governmental power, and in particular of the role of the courts in a democracy, carries high risks for the judges - and for the public. Courts may interfere inadvisedly in public administration. The case of Bromley London Borough Council v. Greater London Council ([1983] 1 AC 768, HL) is a classic example. The House of Lords quashed the GLC cheap fares policy as being based on a misreading of the statutory provisions, but were accused of themselves misunderstanding transport policy in so doing. The courts are not experts in policy and public administration - hence Jowell's point

that the courts should not step beyond their institutional capacity (Jowell, 2000). Acceptance of this approach is reflected in the judgments of *Laws LJ in International Transport Roth GmbH Vs. Secretary of State for the Home Department* ([2002] EWCA Civ 158, [2002] 3 WLR 344) and of Lord Nimmo Smith in *Adams v. Lord Advocate* (Court of Session, Times, 8 August 2002) in which a distinction was drawn between areas where the subject matter lies within the expertise of the courts (for instance, criminal justice, including sentencing and detention of individuals) and those which were more appropriate for decision by democratically elected and accountable bodies. If the courts step outside the area of their institutional competence, government may react by getting Parliament to legislate to oust the jurisdiction of the courts altogether. Such a step would undermine the rule of law. Government and public opinion may come to question the legitimacy of the judges exercising judicial review against Ministers and thus undermine the authority of the courts and the rule of law."

The said decision squarely applies to the fact of the present case. Section 38-B which was inserted by Act No.17 of 1994 w.e.f. 20.12.1975 cannot have any application to the facts and circumstances of the instant case. The provisions of Section 38 and 38B operate in different fields. By reason of Section 38B of the Act, the legislature contemplated bulk transfer of land in favour of the Authorities mentioned therein which, may carry out the development scheme or deal with the matter in accordance with law. The High Court, in our opinion, has not correctly applied the principles of law governing the field inasmuch as it cannot be said that allotment of a plot measuring 1 acre 20 guntas is a bulk allotment. Whenever an allotment of land is made for industrial purpose, it cannot be restricted to a small piece of land. The extent of land sought to be allotted must be commensurate with the purpose for which the same is made.

Reliance placed by Mr. Bhat upon *Padma vs. Hiralal Motilal Desarda & Ors.* [2002 (6) SCALE 683] is again misplaced. In that case, it was categorically held that the sale of bulk land by an institution like CIDCO was an anathema to its objective and purpose or its establishment. Such alienation was held to be contrary to the law dealing with development planning. It was further found therein that the land in question was required as buffer for maintaining the ecology balance. Such is not the position herein.

Furthermore, the writ petition should not have been entertained keeping in view the fact that it was filed about three years after making of the allotment and execution of the deed of sale. The High Court should have dismissed the writ petition on the ground of delay and laches on the part

of the first respondent. The Division Bench of the High Court also does not appear to have considered the plea taken by the appellant herein to the effect that the first respondent had been set up by certain interested persons. In a public interest litigation, the Court should, when such a plea is raised, determine the same.

For the reasons aforementioned, the impugned judgment cannot be sustained. It is accordingly set aside. The appeal is allowed. The writ petition filed by the respondent stands dismissed. No costs.

JUDIS