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H. KASHINATH AND ORS.

v.

STATE OF KARNATAKA AND ORS.

AUGUST 21, 1995

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[M.M. PUNCHHI AND MRS. SUJATA V. MANOHAR, JJ.]

Bangalore Development Authority Act, 1976/Karnataka Town and Country Planning Act, 1961/Corporation of City of Bangalore Building Bye-laws, 1983 :

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Sections 2(bb)(iv), 38A/Section 23/Schedule-I, Paragraph 1.2.7— Corporation of City of Bangalore—Comprehensive Development Plan—Land use and occupancies—Classification—Public and semi-public uses—‘Civic amenity’—Land earmarked for public or semi public uses—Grant of lease to a society for building a theatre for purposes of development of drama and films and to impart training to film artists—Held, lease is in violation of purpose for which site has been earmarked—Activities aimed at imparting training and promoting welfare of film artists are not educational, social or cultural activities.

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Words and Phrases :

‘Civic amenity’—Section 2 (bb) of Bangalore Development Authority Act, 1976—Meaning of.

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‘Public or semi-public uses’—City Corporation of Bombay Building Bye-law , 1983, Schedule I, paragraph 1.2.7—Explained.

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Respondent No. 4, a Society registered under the Karnataka Societies Registration Act, 1960 and formed to promote the interests of Karnataka film artists, was allotted the land in dispute by the Corporation of the City of Bangalore, on a lease for the purpose of building a theatre for the development of drama and films and to impart training to artists. The Government of Karnataka approved the lease for a period of 50 years on an annual lease rent of Rs. 500. In the comprehensive Development Plan framed under Karnataka Town and Country Planning Act, 1961 and published under section 23 thereof, the land in dispute was earmarked for

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a public or semi-public purpose or for a civic amenity. The appellants filed

a public interest writ petition before the High Court challenging the allotment on the ground that granting of lease was not for the purpose for which the site was earmarked in the Plan. The High Court dismissed the writ petition. Aggrieved, the appellants filed the appeal by special leave.

Allowing the appeal, this Court

HELD : 1.1. The lease in favour of respondent No. 4 is in violation of the purpose for which the site has been earmarked, as the plot is reserved under the comprehensive Development Plan for a public or semi-public purpose. [837-D]

1.2. The allotment of the plot to respondent No. 4 cannot be said to be an allotment of kind for a public or semi-public use as described in paragraph 1.2.7 of Schedule I to the Building Bye-law, 1983 framed by the Corporation of the City of Bangalore. Respondent No. 4 is not an educational cultural or religious institution what is being constructed by it is a theatre to train artists and to stage plays or show films in the connection along with a school for training artists. It does not seem that the theatre would be open to the public at a nominal cost, or that respondent No. 4 will not make profits out of running the theatre of hiring it out to other organisations of individuals. In fact, one of the avowed aims of respondent No. 4 is to earn income which can be utilised for the objects of the Association, in the circumstances, it cannot be said that the allotment of this plot is for a public or semi-public purpose. It is purely for the benefit of respondent No. 4. [839-E-H; C]

1.3. Respondent No. 4 is essentially a society to promote the interests of its members who are film artists. The activities of respondent No. 4 would not fall under any of the categories of 'civic' amenity' mentioned in section 2(bb)(iv) of Bangalore Development Authority Act, 1976 which deals with a centre for educational, religious, social or cultural activities or for philanthropic service run, *inter alia* by a society registered under the Karnataka Societies Registration Act, 1960. On the other hand, under section 38-A of 1976 Act, there is a prohibition against selling or otherwise disposing of any area reserved for public parks and play grounds and civic amenities for any other purpose; and any disposition so made shall be null and void. [838-G; 840-E-F; 841-B]

A Lease in favour of the fourth respondent set aside. [842-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3367 of 1995.

B From the Judgment and Order dated 18.7.94 of the Karnataka High Court in W.P. No. 24250 of 1991.

S. Ravindra Bhatt and Ms. Kiran for the Appellants.

M.R. Janardhan and P. Mahale for the Respondents No.1.

C M. Veerappa for the Respondent No. 2.

S.K. Kulkarni, Ms. Sangeeta for the Respondents No. 3.

Subramanya Jois and T. Kanka Durga for the Respondents No. 4.

D The Judgment of the Court was delivered by

E MRS. SUJATA V. MANOHAR, J. This appeal pertains to a plot of land situated within C.A. No.19 in the Vth Block, Jayanagar, Bangalore City. The total measurement of the site which lies between 38th Cross Road and 42nd Cross Road is 298 mtrs. x 91 mtrs. The site is in two parts. The northern portion admeasures 91 mts. East to West and 165 mtrs. North to South. It lies between 38th Cross Road and the storm water drain. The southern portion lies beyond the storm water drain and stretches upto the 42nd Cross Road. The dispute relates to a piece of land admeasuring 91 mtrs. x 91 mtrs. in the southern portion of this site lying between 10th and 11th Main Road and facing 42nd Cross Road.

F In the Comprehensive Development Plan framed under the Karnataka Town and Country Planning Act, 1961, which has been published under section 23 of this Act, the northern portion of site No. 19 has been earmarked for a park and the southern portion is earmarked for a general purpose which is a public or semi-public purpose. We are concerned with the portion which is lying in the southern part of this site which is earmarked for a public or semi-public purpose.

G At the request of the fourth respondent, namely, Karnataka Chalana Chitra Kalavidara Sangha, the Corporation of the City of Bangalore second H respondent herein, passed a Resolution dated 30.12.1983 resolving to grant

the above plot admeasuring 91 mtrs. x 91 mtrs. to respondent No. 4 on a lease at an annual rent of Rs. 500. The Government of Karnataka accorded sanction for the same by its Order dated 10.5.1984 under which it granted approval for the lease for a period of 20 years on a annual lease rent of Rs. 750. This was, however, modified by Government Order dated 5.10.1984 enhancing the period of the lease to 50 years and reducing the annual lease rent to Rs. 500. Accordingly by a Deed of Lease dated 11th of May, 1986, the second respondent- Corporation granted to the fourth respondent a lease of the said plot for the purpose of building a theatre for the development of drama or films and in order to impart training to artists. The terms and conditions of the lease are set out in the deed of Lease. The appellants before us, on coming to know of the said lease, filed a public interest writ petition before the High Court of Karnataka challenging the allotment of this plot of land to the fourth respondent. They contended that the said plot which is situated in the southern portion of site No. 19 is reserved for a public or semi-public purpose or for a civic amenity; and that granting of lease to the fourth respondent is not for the purpose for which the said site is earmarked under the Comprehensive Development Plan. The High Court, however, has rejected the writ petition. Hence the present appeal has come before us for consideration.

Respondent No. 4 is a society registered under the Karnataka Societies Registration Act. The objects of the fourth respondent- Association as set out in clause (3) of the Memorandum of Association are as follows :

- "(a) to promote the interests of the KANNADA FILM ARTISTS (Actor and Actresses) in the State of Karnataka and to work in harmony with such similar societies elsewhere in India;
- (b) to promote and protect the rights and privileges of the Film Artists as against outsiders as well as between and among themselves;
- (c) to provide basic and other amenities to the Film Artists either in the course of their profession or otherwise;
- (d) to provide financial and other facilities to the family members of the Film Artists at time of distress due to death or any other disablement of such members;

- A (e) to provide financial and other benefits to the member of Film Artists to prosecute education of their children;
- (f) to build and acquire auditorium to display shows and concerts for the benefit of the SANGHA as well as to raise funds to be utilised for achieving the objects mentioned herein and without involving any activity for profit;
- B (g) to raise funds through regular subscriptions from members, donations from members and outsiders, to conduct benefit shows, stage shows and other concerts for the above purpose;
- C (h) to acquire moveable and immoveable properties, to acquire income bearing securities so as to raise regular incomes for the society;
- (i) to settle and compromise disputes, if any, among the members or between the outsiders and members;
- D (j) to borrow funds for the fulfilment of the above objects;
- (k) to establish or run any school for diffusing necessary technical knowledge for the benefit of the SANGHA".

E From the Statement of Objects and Reasons, it is clear that the fourth respondent-Association has been formed basically to promote the interests of the Kannada film artists and to protect and promote their rights and interests. One of the objects of the Association is to build or acquire an auditorium to stage shows and concerts for the benefit of the fourth respondent as well as to raise to achieve the objects of respondent No. 4.

F The objects also include establishment and running of a school for imparting the necessary technical skill and knowledge for the benefit of the members of the fourth respondent. These purposes can hardly be considered as either public or semi-public purposes. The fourth respondent-

G Society is essentially a society promote the interests of its members who are film artists. Undoubtedly, the objects are laudable but they cannot be considered as objects which fall under the category of a public or semi-public purpose.

H The grant of the lease is for the purpose of building a theatre for the purpose of giving training to film artists and for the purpose of develop-

ment of drama and films. It was stated before us by learned counsel for the fourth respondent that the fourth respondent proposed to start a training school for film artists in the structure which is to be constructed on the leased plot. It was also stated that the theatre to be constructed can be given to any other organisation or individual for use. We presume that this would be on payment of hire charges and it would not be a free use, since the fourth respondent is essentially an organisation for the benefit of film artists and its avowed object is to raise funds and utilise them for the benefit of film artists. The lease in question, therefore, is not for a public or semi-public purpose. It is purely for the benefit of the fourth respondent.

In this connection our attention has been drawn to the Building Bye-Laws of 1983 framed by the Corporation of the City of Bangalore, the second respondent. Schedule I of these Bye-Laws deals with land-use classifications and occupancies^a(or-uses) permitted. Paragraph 1.2.7 deals with public and semi-public uses. Paragraph 1.2.7.1 enumerates uses that are permitted under this category. These are : Government Administration Centres, Secretaries, District Officers, Law Courts, Jails, Police Stations, Governor's Residency and Institutional Offices, Educational, Cultural and Religious institutions including Library, Reading Rooms and Clubs. Among the uses which are permitted are "cultural institutions like community halls, opera houses etc. of a pre-dominantly non-commercial nature". It also includes among the uses permitted, parks and play grounds. Can we consider the allotment of this plot to respondent No. 4 as allotment for a public or semi-public use as described in the Bye-Laws? Although these Bye-laws do not appear to have been pointed out to the High Court, they have been pointed out to us. Unfortunately, even these Bye-Laws do not help respondent No. 4. First of all respondent No. 4 cannot be described as an educational, cultural or religious institution. It is essentially a society for the promotion of interests of film artists. Secondly, what is being constructed is not a community hall. What is being constructed is a theatre to train artists and stage plays or show films in that connection along with a school for training artists. It is nowhere stated that the theatre would be open to the public at a nominal cost, or that the fourth respondent will not make profits out of running the theatre, or hiring it out to other organisations or individuals. In fact, one of the avowed aims of respondent No. 4 is to earn income which can be utilised for the objects of the Association. In the circumstances, it is difficult to accept the contention of the respondents that the allotment of this plot is for a public or

A semi-public purpose.

The appellants also contended that the lease was not for the purpose of providing a civic amenity. They sought to draw support from the definition of "civic amenity" under Section 2(bb) of the Bangalore Development Authority Act of 1976. Section 2(bb) although it was introduced in 1988, is given effect from 21.4.1984 i.e. a date prior to the execution of the lease in favour of the fourth respondent. Under Section 2(bb) 'civic amenity' is defined as follows :

- C "Section 2(bb): Civic Amenity means: (i) a market, a Post Office, a Telephone Exchange, a Bank, a Fair Price Shop, a Milk Booth, 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;
- D (ii) A Recreation Centre run by the Government or the Corporation;
- E (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 State Government;
- F (iv) A centre for educational, religious, social or cultural activities or for philanthropic service run by a Cooperative Society registered under the Co-operative Societies Act, 1959 (Karnataka Act 11 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;
- G (v) A Police Station, an area office or a service station of the Corporation of the Bangalore Water Supply and Sewerage Board or the Karnataka Electricity Board; and
- (vi) such other amenity as the Government may by notification, specify".

The portion relevant for our purposes is sub-section (iv) which deals with a Centre for educational, religious, social or cultural activities or for philanthropic service run, *inter alia*, by a society registered under the

Karnataka Societies Registration Act, 1960. The activities of the fourth respondent, in our view would not fall under any of these categories. They are activities of a very specific nature aimed at imparting training and promoting the welfare of film artists. They are not activities which can be generally classified as educational, social or cultural activities. Under section 38-A of the Bangalore Development Authority Act, there is a prohibition against selling or otherwise disposing of any area reserved for public parks and play grounds and civic amenities for any other purpose; and any disposition so made shall be null and void. The appellants also drew our attention to Section 16(1) of the Bangalore Development Authority Act of 1976. Under Section 16(1), every development scheme shall provide for the reservation of not less than 15% of the total area of the lay out for public parks and play grounds and an additional area of 10% of the lay out for civic amenities. They contend that the area in question falls within this reservation and hence should not be used for any other purpose. In the absence, however, of any relevant data showing that this plot is within this minimum reservation we are not examining this contention of the appellants. In any view of the matter, since the plot is reserved under the Comprehensive Development Plan for a public or semi-public purpose, the lease in favour of respondent No. 4 cannot be upheld since it is in violation of the purpose for which the site has been earmarked.

It was contended before us by the respondents that in the case of *Jagdish v. Bangalore Development Authority* (judgment dated 7th of January, 1990 in Writ Appeal No. 2781 of 1990 before the High Court of Karnataka, the Division Bench consisting of Justice S. Mohan, Chief Justice, as he then was, and Justice Shivraj Patil) allotment of a plot of land in the same southern portion of this very site for the construction of a community hall by the Municipal Corporation of Bangalore City was upheld. This was also a public interest litigation challenging the allotment of the plot for the construction of a community hall. The challenge was negatived. That plot is not the same plot as the present plot. However this plot is also situated within the same southern portion of Survey No. 19 which has been reserved for a public or semi-public purpose under the Comprehensive Development Plan. In the case before the Karnataka High Court in the above appeal, However, the Corporation of the City of Bangalore proposed to construct a community hall in a portion of the said area at a cost of Rs. 9 lakhs for the benefit of the public. This was upheld as a public purpose and the construction of a community hall by the

- A Corporation of the City Bangalore was considered as a civic amenity. The present lease, however, is for a purpose which is altogether different. Therefore, the respondents cannot derive any support from the above case. On the contrary, it is clear that in the above case also the High Court has upheld the contention of the appellants that the site in question, namely, the southern portion of Survey No. 19 is reserved for a public or semi-public purpose under the Comprehensive Development Plan.

- B In view thereof, the present appeal is allowed. The said lease in favour of the fourth respondent is set aside. The respondents are restrained from carrying out any construction activity on the said open space allotted to the fourth respondent under the said lease deed. In the circumstances, however, there will be no order as to costs.

C R.P.

Appeal allowed.