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PURUSHOTHAM

v.

STATE OF KARNATAKA

(Civil Appeal No. 10747 of 2013 etc.)

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DECEMBER 02, 2015

[KURIAN JOSEPH AND ROHINTON FALI NARIMAN, JJ.]

Bangalore Development Authority Act, 1976 – ss.2(bb)(vi) and 38A – Allotment of a particular site by the Development Authority for the use of petrol retail outlet – Allotment challenged – High Court set aside the allotment on the ground that the site was not allotted for the purpose for which it was earmarked viz. for a 'Bank' and hence was in violation of s.38A – On appeal, Supreme Court by judgment dated 29.11.2013 upheld the order of High Court – In review petition it was brought to the notice of the Court that the site was not earmarked for a 'Bank' but for 'civil amenities', the Court recalled its order dated 29.11.2013 – Held: From the Layout Plan it is evident that the plot in question was not earmarked for any specific purpose – Therefore it was well within the jurisdiction of the Development Authority to allot that plot for the purpose of any civic amenity and the 'petrol pump' is a civil amenity u/s.2(bb)(vi) r/w. Notification dated 29.08.1990

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10747 of 2013

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From the Judgment and Order dated 05.09.2011 of the Division Bench of the High Court of Karnataka at Bangalore in Writ Petition No. 5428 of 2006 (BDA-PIL)

C. A. Nos. 10748, 10749 and 10750 of 2013

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Mukul Rohatgi, AG, Mohan Prasaran, Sr. Adv., Ranjeet Singh, Dr. Sushil Balwada, K. Raghvacharyulu, Kailash Pandey, Arindam Dey, Rajeev Mishra, Sanand Ramakrishnan, Advs. with him, for the Appellant.

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S. K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shanth Kumar V. Mahale, Amith J., Rajesh Mahale, Rajeev Mishra, Sanand Ramakrishnan, Ms. Anitha Shenoy, Advs., for

the Respondents.

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The Judgment of the Court was delivered by

KURIAN, J. 1. The appellants are aggrieved by the common judgment dated 05.09.2011 in Writ Petition No. 5428 of 2006 and Writ Petition No. 5173 of 2006 on the file of High Court of Karnataka at Bangalore. The High Court took the view that Civic Amenity Site No. 2 has to be utilised only for the purpose for which it was earmarked, viz., for a Bank and, hence, the allotment of the same by the Bangalore Development Authority (hereinafter referred to as 'BDA') to be used as a petrol retail outlet was set aside being in violation of Section 38A of the Bangalore Development Authority Act, 1976 (hereinafter referred to as 'Act'). The respondents in the writ petitions, aggrieved, pursued the matter before this Court.

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2. The appeals were initially dismissed by judgment in 'Purushottam v. State of Karnataka' dated 29.11.2013 reported in 2014(3)SCC 721. Having noticed that there were factual mistakes in the judgment of the High Court which was upheld by this Court, by a detailed order dated 10.09.2015, the review petitions were allowed and the judgment referred to above was recalled.

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For the purpose of ready reference we shall reproduce the order passed by this Court on 10.09.2015 as such:

Delay in filing Review Petition No. 532 of 2014 is condoned.

These review petitions are preferred seeking review of our judgment dated 29.11.2013 passed in Civil Appeal No. 10747 of 2013, Civil Appeal No. 10748 of 2013, Civil Appeal No. 10749 and Civil Appeal No. 10750 of 2013.

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The aforesaid appeals were filed impugning the judgment of Karnataka High Court rendered in Writ Petition No. 5428 of 2006 and Writ Petition No. 5173 of 2006. Those writ petitions were filed by way of Public Interest Litigation under Article 226 of the Constitution of India challenging the allotment of civic amenity site No. 2 to Bharat Petroleum Corporation for establishment of a

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A petrol pump and seeking a declaration that the said allotment be declared null and void.

B During the course of hearing, on the basis of a document, it was noticed that though this site was initially earmarked for a 'Park', thereafter, the user was changed to that for a 'Bank'. On the aforesaid premise that the site was earmarked for a 'Bank', the Court proceeded to decide as to whether it could be allotted for a petrol pump and answered the said question in the negative. On that basis, writ petitions were allowed and the allotment made in favour of Bharat Petroleum Corporation Limited was set aside.

C We may notice here that, in the meantime, Bharat Petroleum Corporation Limited had allotted this site to Smt. Ramadevi for establishment of petrol pump. Smt. Ramadevi and her husband Shri Purushottam were, accordingly, also arrayed as respondents in those writ petitions. Two Appeals were filed by Bharat Petroleum Corporation Limited and appeals were also filed by Smt. Ramadevi and Shri Purushottam.

D These appeals, as mentioned above, were decided by the impugned judgment dated 29.11.2013 (which is under review) accepting the reasons given by the High Court resulting into the dismissal of the said appeals. In these three review petitions, which are again preferred by Bharat Petroleum Corporation, Smt. Ramadevi and Shri Purushottam, it is sought to be argued that the High Court was misled and the site in question was not earmarked for 'Bank' at all. Certain documents are produced in support of this submission that the site was, in fact, earmarked for civic amenities and it is sought to be shown that civic amenities include petrol pump. The documents which are produced have been obtained from the Bangalore Development Authority under the Right to Information Act.

E Since these are official documents, their genuineness, prima facie, cannot be doubted. Further, it would be in the interest of justice that implication/effect of these documents is considered. For these reasons, the

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judgment dated 29.11.2013 requires to be recalled and the matter needs to be examined afresh in the light of these documents. These review petitions are, accordingly, allowed recalling the judgment dated 29.11.2013 and the appeals are restored to their original numbers, viz., Civil Appeal No. 10747 of 2013, Civil Appeal Nos. 10749-10750 of 2013 and Civil Appeal No. 10748 of 2013.

We may mention that we had started hearing, with the consent of the learned counsel for the parties, the appeals afresh on merits as well. However, after some arguments, learned counsel appearing for Respondent Nos. 4 to 14 requests for some time in order to verify these documents.

At request, liberty is granted to Bharat Petroleum Corporation Limited to file additional affidavit within two weeks.

Reply thereto, shall be filed by Respondent Nos. 4 to 14 within two weeks thereafter.

The civil appeals shall be listed after four weeks.

Interim orders to continue, in the meantime.”

Today when the matter was taken up, learned counsel appearing for the respondents, apparently having gone through the documents, submits that the appellants have already submitted documents referred to in the Review Petitions before the High Court and have sought for a review before the High Court itself and, hence, the matter be remanded to the High Court.

Shri Mukul Rohatgi, learned Attorney General appearing for the Bharat Petroleum Corporation and learned senior counsel appearing for other appellants submit that since the errors are apparent on the face of the record and which have been noted from the records already available before this Court itself at the time of hearing of the review petition, the matter needs to be given a quietus before this Court particularly in view of the judgment rendered by this Court.

Be that as it may, grievance essentially pertains to the dispute as to whether the site No. 2 earmarked for civic

A amenity in a Modified Layout Plan of Scheme between Hennur Road and Bana Swadi Road, Bangalore, is for a Bank or any other civic amenity.

B The Modified Layout Plan was available before the High Court as produced by the BDA along with their statement and marked as Annexure R2. In any case, the learned counsel for BDA submits that the Layout Plan produced as Annexure R4 with a covering letter dated 21.12.2013 in the Review Petition is the authenticated copy of the Plan and it is not disputed also.

C Our attention has been invited to the Layout Plan and it is seen that in Plot No. 19 [CA2] there is no earmarked purpose whereas it is plot No. 20 that is earmarked to be used as Bank and plot No. 21 for P&T. Therefore, the whole basis of the contention of the writ petitioners before the High Court is totally shaken and the same is wholly misconceived on facts. The petrol outlet is in Plot No. 19.

D Once it is seen that against the disputed plot No. 19, no purpose as such is shown, the BDA is well within jurisdiction to allot it for any civic amenity. There is no dispute that petrol pump is a civic amenity coming under the definition of civic amenity in Section 2(bb)(vi) of the Act read with the Notification dated 29.08.1990. Under Section 38A of the Act, the only restriction cast upon the Authority is that it shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities, for any other purpose and if so made, such disposition would be null and void.

E Once it is seen from the Notification dated 29.08.1990 that petrol pump is a civic amenity duly notified in terms of Section 2(bb) of the Act, nothing prevents the Authority from allotting it for being used as a notified civic amenity. Therefore, it has become unnecessary to consider any other point.

F In that view of the matter, there is no merit in the writ petitions filed before the High Court. They are, accordingly, dismissed. The civil appeals are allowed as above.

G No costs.

H Kalpana K. Tripathy

Appeals allowed.