RAJATHA ENTERPRISES

v.

S.K. SHARMA & ORS.

FEBRUARY 3, 1989

[MURARI MOHON DUTT AND T.K. THOMMEN, JJ.]

Karnataka Municipal Corporations Act, 1976: ss. 342 & 505/Karnataka Town and Country Planning Act, 1961: s. 14—Construction of building in violation of statutory provisions—Compounding of deviation—Validity of—Demolition—Whether called for.

Constitution of India: Articles 226, 32 & 14—Public Interest Litigation—Construction of building in violation of statutory provisions—Petitioner neither a resident in the neighbourhood nor a person affected by construction—Building not a source of danger either to inmates or public—Quality of construction not under challenge—Held, public interest not prejudiced.

The Government of Karnataka by a tender notification dated 17 August, 1979 offered for lease Government land measuring 6000 sq. ft. in the city of Bangalore for construction of a shopping complex-cum-school building on the basis of a plan approved by the Government. The lessee had to construct 15 class rooms each measuring 20' × 15 ' on the second floor of the building and they had to be handed over to the Government free of rent immediately upon construction. After the expiry of the lease period of 26 years, the building with all its structures and fixtures was to vest in the Government free of all encumbrances. By a corrigendum issued pursuant to the tender notification, the area which was to be leased out was corrected as 12166 sq. ft.

The appellant was granted lease of the said plot of land the boundaries of which were described in the schedule to the lease deed. On subsequent measurement the land within the said boundaries was found to be 15517 sq.ft.

The appellant undertook to construct the said shopping complex-cum-school on the basis of the licence granted by the Municipal Corporation. While the construction was in progress the respondent No. 1 questioned the legality of the said licence in a public interest litigation by writ petition alleging violation of the Karnataka Municipal Corporations Act, 1976. Later, the Municipal Commissioner also issued show

A cause notice to the appellant stating that the plan obtained by them had violated the Zonal Regulations made under the Karnataka Town and Country Planning Act, 1961. But after going through their reply, the Commissioner by his letter dated June 30, 1983 permitted them to proceed with the construction. The High Court by its order dated July 18, 1986 partly allowed the writ petition and quashed the order of the Commissioner, directing him to record findings on the objections raised in the show cause notice.

The Commissioner in his order dated August 17, 1987 found that the appellant had not been guilty of any mis-representation in his endeavour to obtain the permission of the authorities. He further observed that it has been the practice in the City Corporation not to insist upon a commencement certificate from the planning authority for the purpose of development and held that the absence of such a certificate in the instant case did not violate the grant of licence. However, he took measurements of the building and by his order dated November 3, 1987 directed the appellant to reduce the height of the building to 35'0" having a total area of 30415 sq.ft. within thirty days failing which he threatened to demolish the three upper floors of the building at the cost of the appellant. The building as it stood then had six floors.

In an interlocutory application filed by the appellant in the disposed of writ petition the High Court set aside the Commissioner's order requiring the appellant to demolish the 4th floor. It also set aside the order of the Commissioner to demolish the 5th floor but the Commissioner was given liberty to take action for compounding the deviation and till then restrained the appellant from occupying the 5th floor. The Commissioner's order directing the appellant to demolish the 6th floor was, however, confirmed.

In the special leave petition preferred by the petitioner-respondent against that part of the order of the High Court that went in favour of the appellant, it was contended for him that the public interest was prejudiced in so far as the building had been constructed contrary to the applicable provisions of the Corporations Act and the Planning Act, that the leasehold comprised 12166 sq. ft. while the appellant was in possession of 15517 sq. ft. which was clear evidence of encroachment on the part of the appellant over an area of 3351 sq. ft., that if the area of the site, i.e. 12166 sq. ft., is multiplied by 2.5, the permissible floor area of the building comes to 30415 sq. ft., that the constructed area being 45974 sq. ft. there was an excess of 15559 sq. ft. which was far too great a deviation to be allowed for compounding.

In the appeal by special leave assailing the order of the High Court authorising demolition of the sixth floor, it was contended for the appellant that the respondent was neither a resident in the neighbourhood of the building nor was a person affected by the construction of the building; that no member of the public had come forward to say that his privacy had been affected by the construction of the building or the safety of the neighbourhood or of the inmates of the building had been in any manner endangered, the respondent therefore had neither any personal grievance to vindicate nor any public cause to espouse in challenging the validity of the licence granted; that the actual area demised to them was the total extent of the land comprised within the specified boundaries, that is, 15517 sq. ft. and that was the area utilised for construction, that in calculating the floor area ratio in respect of floors 3 to 6 the Corporation failed to exclude the floor area meant for common use, that when the floor area is so computed the total floor area would not be 45974 sq. ft., as alleged but only 41014 sq. ft., that the appellant derived no right under the lease in respect of an area of 4500 sq. ft. on the second floor utilised exclusively for the Government Girls' School, the possession and enjoyment of which had vested in the Government immediately upon the completion of construction of that space, and that the Commissioner having held that the absence of a commencement certificate did not violate the grant of licence for the purpose intended, it could not be said that the construction of the building was in violation of the licence granted.

Allowing the appeal and dismissing the special leave petition,

HELD: 1. There is no material whatsoever on the record to suggest that the appellant has at any time acted fraudulently or dishonestly, or that the building has in any manner become a source of danger either to its inmates or to the neighbouring public. The quality of the construction of the building was also not under any challenge. It could not, therefore, be said that the public interest was prejudiced in any manner whatsoever. [463B-D]

2. The tender notification mentioned an area of 6000 sq.ft., whereas the corrigendum issued by the Commissioner stated that the extent of the land under lease was 12166 sq.ft. On subsequent measurement the land within the boundaries mentioned in the schedule to the lease-deed was found to be 15517 sq.ft. in extent. [465C]

This shows that the appellant was put into possession of an area of 15517 sq.ft. by the State Government in terms of the lease deed. It could

A not, therefore, be said that there was any encroachment on the part of the appellant. [465D]

3. The total site area being 15517 sq.ft., and the permissible FAR in relation to the site area being 38792 sq. ft., as against the determined area of 45974 odd sq. ft., the excess FAR is only 7182 sq.ft. When an B area of 4500 sq. ft. occupied by the school is excluded from the excess area by reason of the school having vested in the Government upon the completion of the building, the actual excess area in the possession and enjoyment of the appellant is only 2682 sq.ft. The permissible limit of compounding being 5 per cent of the permissible FAR, which works out to 1940 sq.ft., the actual area of deviation outside the permissible compounding limit is not larger than 742 sq.ft. [467H; 468A-C]

C

4. On the facts found and, in the light of what the Commissioner says about the practice of the Corporation in regard to the commencement certificate there was neither justice nor equity in the High Court authorising the demolition of the sixth floor. [468C; 467H]

D

5. In the absence of any evidence of public safety being in any manner endangered or the public or a section of the public being in any manner inconvenienced by reason of the construction of the building, whatever may be the grievance of the Ist respondent, the High Court was not justified, at the instance of the Ist respondent claiming himself E to be the champion of the public cause, in ordering the demolishing of any part of the building, particularly when there is no evidence whatsoever of dishonesty or fraud or negligence on the part of the builder. [468C-D]

Ramsharan Autyanuprasi & Anr. v. *Union of India,* [1988] 2 SCALE 1399 and *Sachidanand Pandey & Anr.* v. *State of West Bengal* F *& Ors.*, [1987] 2 SCC 295, relied on.

The impugned order of the High Court in so far as it permits or directs the demolition of the sixth floor is, therefore, set aside. The rest of the order of the High Court is affirmed. [468E]

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 634 of 1989 Etc.

From the Judgment and Order dated 25.3.1988 of the Karnataka High Court in W.P. No. 15996 of 1981 and I.A. No. XIII.

H T.S. Krishnamurthy Iyer, Dr. Y.S. Chitale, A.K. Sen, H.B.

Datar, R. Ramachandran, R.B. Datar, Ranjit Kumar, N.D.B. Raju, N. Nettar, M. Veerappa, and S.S. Javali for the appearing parties. A

The Judgment of the Court was delivered by

THOMMEN, J. Special leave is granted in Special Leave Petition (Civil) No. 5275 of 1988 and we now proceed to dispose of the appeal. B

This appeal arises from the judgment and order dated 25th March, 1988 of the Karnataka High Court in Writ Petition No. 15996 of 1981 filed by the 1st respondent who claims to espouse a public cause in what is styled as a public interest litigation. C

The appellant, Rajatha Enterprises represented by K.V. Shivakumar is a contractor in whose favour, pursuant to tender notification dated 17.8.1979, a lease was granted by the Karnataka Government in terms of lease deed dated 22.12.1979 whereby the appellant undertook to construct at 812/1, Old Taluk Kutchery Road, Chickpet, Bangalore City a shopping complex-cum-school on the basis of a licence granted by the Corporation of the City of Bangalore (the 'Corporation'). The appellant commenced the construction of the building. The legality of the licence was questioned by the 1st respondent, S.K. Sharma in the Karnataka High Court in Writ Petition No. 15996 of 1981 alleging that the licence was granted in violation of the provisions of the Karnataka Municipal Corporations Act, 1976 (the 'Corporations Act'). On 1.3.1983 the Commissioner of the Corporation issued a show cause notice stating that the plan obtained by the appellant violated the Zonal Regulations made under the Karnataka Town and Country Planning Act, 1961 (the 'Planning Act'). The appellant denied the allegations by his reply dated 24.3.1983. On receipt of that reply, the Commissioner made the following order dated 30.6.1983: D E F

> "After going through your reply cited at Sl. No. 2 above, you are permitted to proceed with the construction directly in accordance with the sanctioned plan." G

The High Court by its order dated 18.7.1986 partly allowed the writ petition of S.K. Sharma and quashed the order of the Commissioner of the Corporation dated 30.6.1983. The Court further directed the Commissioner to record his findings on the objections raised in the show cause notice dated 1.3.1983. H

A Thereafter, Special Leave Petition (C) No. 1122 of 1986 was filed in this Court by the appellant challenging the judgment of the High Court. During the pendency of that petition the Commissioner took measurements of the building and made orders dated 17.8.1987, 21.8.1987 and 3.11.1987. The appellant was directed to reduce that height of the building to 35'0" having a total floor area of 30,415 B sq. ft. within 30 days from the date of receipt of the order dated 3.11.1987, failing which the Corporation threatened to demolish the three upper floors of the building at the cost of the appellant. The appellant was also directed to provide space for car parking. In the light of the orders of the Commissioner, this Court left open the questions raised by the appellant in the special leave petition and disposed of the same with freedom to it to file a writ petition or interlocutory C application in the High Court to question the correctness of the order of the Commissioner.

The appellant accordingly approached the High Court by filing IA No. XIII in the disposed of Writ Petition No. 15996 of 1981. That D petition was disposed of by the High Court by its impugned order dated 25.3.1988. The High Court accepted some of the contentions of the appellant and rejected certain other contentions. The High Court set aside the Commissioner's order requiring the appellant to demolish the 4th floor of the building. The High Court also set aside the order of the Commissioner to demolish the 5th floor of the appellant's building E but the Commissioner was given liberty to take action for compounding the deviation indicated by the Court. Until the deviation was so compounded, the appellant was restrained from occupying the 5th floor of the building. The Commissioner's order directing the appellant to demolish the 6th floor was, however, confirmed by the High Court and it held that the Corporation should proceed to demolish the F 6th floor and recover the cost of demolition from the appellant if the appellant failed to demolish that floor as directed by the Commissioner. The appellant was further directed to reserve the basement floor of the building exclusively for car parking.

Aggrieved by the order of the High Court authorising and direct- G ing the demolition of the 6th floor, the appellant has approached this Court by special leave in the present proceedings under Article 136 of the Constitution. The 1st respondent in this appeal, S.K. Sharma who was the petitioner before the High Court, has sought leave of this Court in Special Leave Petition (Civil) No. 5562 of 1988 to challenge the order of the High Court dated 25.3.1988 insofar as it has set aside H the order of the Commissioner ordering the demolition of the 4th and

5th floors of the building and given liberty to the Commissioner to compound the deviation in respect of the 5th floor. A

S.K. Sharma challenges the permission granted to the appellant to construct the building. He contends that the public interest is prejudiced insofar as the building has been constructed contrary to the applicable provisions of the Corporations Act and the Planning Act. It B may, however, be stated at this stage that no contention has been urged before us as regards the safety of the building consequent upon the alleged violation of the statutory provisions. It is not suggested that the appellant has acted fraudulently or dishonestly. In fact, the Commissioner categorically finds in his order dated 17.8.1987 that the appellant has not been guilty of any misrepresentation in his C endeavour to obtain the permission of the authorities. There is no material whatsoever to suggest that the appellant has at any time acted dishonestly or that the building has in any manner become a source of danger either to its inmates or to the neighbouring public. The quality of the construction of the building is not under any challenge whatsoever. D

We shall now refer to certain facts relating to the construction of the building.

Offers were invited by the Deputy Commissioner, Bangalore District for lease of Government land measuring 6000 sq. ft. within the E boundaries specified in the tender notice. The object of the lease was construction of a shopping complex-cum-school building on the basis of a plan approved by the Government. On the 2nd floor of the building the lessee had to construct 15 class rooms each measuring 20 f. × 15 f. and they had to be handed over to the Government free of rent immediately upon construction. These class rooms were meant for F running a Government Girls' School. After the expiry of the lease period, the building with all its structures and fixtures would vest in the Government free of all encumberances. The lessee had to construct the building on the land in question within a period of two years or within a further period of one year as extended by the Government. By a corrigendum issued pursuant to the tender notification, the area G which was to be leased out was corrected as 12166 sq. ft. instead of the notified area of 6000 sq. ft. .The boundaries were specified in the tender notification as well as in the corrigendum. On the North of the land in question runs the D.K. Lane and on the South the O.T.C. Road. On the West of the land is Vidyavathi's Kapurchand Building. On the East runs the D.K. Lane. The boundaries are thus clear and H

well-specified. The lease deed was executed on the 22nd day of December, 1979 describing the boundaries in the Schedule to the deed and stating the demised area as comprising 12166 sq. ft. The appellant, the lessee, was permitted by the Government, the lessor, to erect the building and structures in accordance with the plan submitted by the appellant along with the tender. The lease was for a period of 26 years.

The lease deed reads:

> "Clause 24—The Lessee should construct in the 2nd floor, fifteen class rooms, each measuring 20 feet × 15 feet, with necessary sanitary arrangements, which should be handed over to Government, free of rent immediately on construction, for running Girls' School."

> "Clause 25—After expiry of the lease period fixed, all structures, including electrical, water and sanitary fittings in the building so constructed and all other structures and fixtures pertaining thereto shall vest in State Government, free from all encumberances."

However, the explanatory statement filed by the Commissioner in the High Court shows that, on actual measurement, the area within the boundaries described in the lease deed was found to comprise 15517 sq.ft.

The building as it now stands has 6 floors, apart from the basement comprising 4570 sq.ft. which is reserved for car parking. In paragraph 5 of the impugned order of the High Court, the total area, excluding the basement, is stated as follows:

(i)	Ground floor	8779.52 sq. ft.
(ii)	First Floor	8285.95 sq. ft.
(iii)	Second floor	8800.03 sq. ft.
(iv)	Third floor	5027.15 sq. ft.
(v)	Fourth floor	5027.15 sq. ft.
(vi)	Fifth floor	5027.15 sq. ft.
(vii)	Sixth floor	5027.15 sq. ft.
	Total:	45974. 10 sq. ft.

The 2nd floor having an area of 8800.03 sq. ft. houses the school in an area of 4500 sq. ft. This school, as stipulated in the lease, became

vested in the Government immediately upon its construction. The rest of the building remains in the possession and enjoyment of the appellant for the period of the lease, which is 26 years, upon the expiry of which it would vest in the Government. The appellant has thus possession and enjoyment of the building only in respect of the total area excluding 4500 sq. ft.

Counsel for the first respondent contends that the leasehold comprises 12166 sq. ft. while the appellant is in possession of 15517 sq. ft. This, Counsel points out, is clear evidence of encroachment on the part of the appellant over an area of 3351 sq. ft. We see no merit in this contention. As stated above, the tender notification mentioned an area of 6000 sq. ft., whereas the corrigendum issued by the Commissioner stated that the extent of the land under lease was 12166 sq. ft. On subsequent measurement, the land within the boundaries mentioned in the Schedule to the lease deed was found to be 15517 sq. ft. in extent. This shows that the appellant was put into possession of an area of 15517 sq. ft. by the Government of Karnataka in terms of the lease deed. The entire property together with the structures standing thereon will have to be duly handed over by the appellant to the Government in terms of the lease upon its expiry.

The 1st respondent's Counsel, however, points out that, as found by the High Court, the total floor area of the building is 45974 sq. ft. while the permissible area should not exceed 2.5 times the total area of the site. The area of the site, as mentioned in the lease deed, is only 12166 sq. ft. That, if multiplied by 2.5, comes to 30415 sq. ft. The constructed area being 45974 sq. ft., there is an excess of 15559 sq.ft. It is far too great a deviation for compounding and the High Court was wrong in ordering the compounding of such a major deviation.

The appellant's Counsel, Shri T.S. Krishnamurthy Iyer, on the other hand, submits that the actual area demised to the appellant is the total extent of the land comprised within the specified boundaries. Although the area, as mentioned in the lease deed, is 12166 sq. ft. the actual area, as determined on further verification, is not less than 15517 sq. ft., and that is the area that is utilised by the appellant for the construction of the building. The approved plan on the basis of which construction was completed by the appellant must be understood as a plan for the utilisation of the total area of 15517 sq. ft. This is clear from the explanatory statement filed by the Commissioner in the High Court. With reference to this area, the constructed area, according to the Commissioner, Counsel points out, is 10198 sq. ft. which works out to 65.72 per cent coverage.

Shri Iyer further points out that in calculating the Floor Area Ratio (FAR) in respect of floors 3 to 6, the Corporation failed to exclude the common passages comprising 1260 sq. ft. in each floor. Zonal Regulations of 1972 provide that in calculating the floor areas, the areas covered by the staircase, lift rooms and water tanks etc. should be excluded. This means, Counsel says, the floor areas meant for common use or for providing services to the occupants of the building and not meant for habitation or commercial purpose should be left out of the computation of the Floor Area Ratio. When the floor area is so computed, Counsel submits, the total floor area would not be 45974.10 sq. ft., as determined by the authorities, but only 41014 sq. ft. So computed, the excess floor area would be negligible and is, therefore, compoundable.

Assuming the total area of all the seven floors, including the ground floor, is 45974.10 sq. ft., as found by the authorities, the FAR permissible with reference to the site area of 15517 sq. ft., according to Shri Iyer, works out to 38792 sq. ft. There can be no doubt about the site area as on measurement it is found to be 15517 sq. ft. comprised in the specified boundaries. This being the position, the excess area is 7182 sq. ft. It is on this basis that the High Court prohibited the demolition of any floor other than the 6th floor, but the High Court failed to notice, Counsel points out, that 4500 sq. ft. on the 2nd floor is utilised exclusively for the Government Girls' School the possession and enjoyment of which vested in the Government immediately upon the completion of construction of that space. The appellant thus derived no right under the lease in respect of an area of 4500 sq. ft. Neither possession nor enjoyment which are the attributes of a lease vested in the appellant at any material time and at all material times they vested in the Government. The High Court failed to take note of the fact that what is constructed is a shopping complex-cum-school building and what is demised to the appellant is only the shopping complex and not the school area. Furthermore, Counsel says, Section 342 of the Corporations Act grants exemption from the requirement of any licence or permission in respect of any place in the occupation or under the control of the Central Government or State Government or in respect of any property of the Central Government or State Government. That the land in question is the property of the State Government Counsel says, is not in doubt. That 4500 sq. ft. of the area on the 2nd floor is a place in the occupation and control of the State Government is also absolutely clear from the terms of the lease. Accordingly, Counsel says, Section 342 exempts the area covered by the School from the requirements of any licence.

Referring to the criticism of the 1st respondent's Counsel as regards the failure on the part of the appellant to obtain the written permission of the Planning Authority in terms of Section 14 of the Planning Act, 1961 read with Section 505 of the Corporation Act, Shri Iyer refers to the order of the Commissioner dated 17.8.1987 stating:

> "It has been the practice in the Bangalore City Corporation that no such commencement certificate is insisted upon from the planning authority for the purpose of "development" only ..... As permission for running a school in the proposed building was already accorded by Government and as the land is located in the commercial zone, it was not necessary to obtain clearance from the planning authority for change of land use.
>
> Considering these facts, I hold that the absence of a Commencement Certificate from the B.D.A. does not violate the grant of licence for the purpose intended and it will not amount to contravention of the provisions of Section 505 of the KMC Act, 1976."

Considering these aspects, Shri Iyer submits that there is no merit in the contention that the construction of the building by the appellant was in violation of the licence granted or that the licence under which construction was undertaken was contrary to statutory provisions or other orders. The public is in no manner aggrieved by the construction of the building. No member of the public has come forward to say that his privacy has been affected by the construction of the building or the safety of the neighbourhood or of the inmates of the building has been in any manner endangered. The 1st respondent, Counsel says, is neither a resident in the neighbourhood of the building nor is he a person affected by the construction of the building. He has neither any personal grievance to vindicate nor any public cause to espouse in challenging the validity of the licence granted to the appellant.

We have perused the records and considered the arguments on both sides. We are not satisfied that, on the facts and in the circumstances of this case, the learned Judges of the Division Bench of the High Court were justified in permitting and much less directing the demolition of the 6th floor. On the facts found, there is neither justice nor equity in authorising the demolition. The total site area being

A 15517 sq. ft., as found by the High Court, and the permissible FAR in relation to the site area being 38792 sq. ft., as against the determined area of 45974 odd sq. ft., the excess FAR is only 7182 sq. ft. When an area of 4500 sq. ft. occupied by the school is excluded from the excess area of 7182 sq. ft. by reason of the school having vested in the Gov-
B ernment upon the completion of the building, the actual excess area in the possession and enjoyment of the appellant is only 2682 sq. ft. The permissible limit of compounding being 5 per cent of the permissible FAR, which works out to 1940 sq. ft., the actual area of deviation outside the permissible compounding limit seems to be not larger than 742 sq. ft. In the circumstances, in the light of what the Commissioner says about the practice of the Corporation in regard to the commence-
C ment certificate and in the absence of any evidence of public safety being in any manner endangered or the public or a section of the public being in any manner inconvenienced by reason of the construction of the building, whatever may be the personal grievance of the 1st respondent, the High Court was not justified, at the instance of the 1st
D respondent claiming himself to be a champion of the public cause, in ordering the demolition of any part of the building, particularly when there is no evidence whatsoever of dishonesty or fraud or negligence on the part of the builder. See the principle stated by Sabyasachi Mukharji, J. in *Ramsharan Autyanuprasi & Anr.* v. *Union of India,* [1988] 2 SCALE 1399 and by Khalid J. in *Sachidanand Pandey & Anr.*
E v. *State of West Bengal & Ors.,* [1987] 2 SCC 295. Accordingly, we set aside the impugned order of the High Court insofar as it permits or directs the demolition of the 6th floor and affirm the rest of the order. The appeal is allowed in the above terms. We make no order as to costs.

F *SLP (C) No. 5562 of 1988*

For the reasons aforesaid, the Special Leave Petition (Civil) No. 5562 of 1988 filed by S.K. Sharma is dismissed.

P.S.S. Appeal allowed & Petition dismissed.