

ITEM NO.111

COURT NO.11

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5107 OF 2002

DEFENCE & GOVT.OFF.SITE OWNERS ASSO.

Appellant (s)

VERSUS

COMMNR. BANGALORE DEV. AUTHORITY & ORS.

Respondent(s)

(With office report)

Date: 07/10/2010

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s)

Mr. S.N. Bhat, Adv.

For Respondent(s)

For Respondent

No.1

Mr. Altaf Ahmad, Sr. Adv.

Mr. S.K. Kulkarni, Adv.

For Respondent

Nos.2 & 3

Mr. Ramesh C. Mishra, Adv.

For Mr. Sanjay R. Hegde, Adv.

For Respondent

No.4

Ms. Tulika Prakash, Adv.

UPON hearing counsel the Court made the following

O R D E R

This is an appeal for setting aside order dated 14.2.2001 passed by the Division Bench of the Karnataka

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High Court whereby the writ petition filed by the appellant for issue of a mandamus to respondent Nos.1 to 3 to remove encroachments and unauthorised constructions on the land earmarked for park in the layout sanctioned by the

Bangalore Development Authority (BDA) on the ground that the grievance made by the appellant was not in public interest and also on the ground that the persons who are said to have encroached upon the land earmarked for park have not been impleaded as parties to the writ petition.

We have heard learned counsel for the parties and carefully perused the record.

Learned counsel appearing for the BDA, Commissioner of Police, Bangalore City and Karnataka Board of Wakfs very candidly and fairly stated that encroachments have been

made on the land earmarked for park. Learned counsel for
the Commissioner of Police further stated that on
a complaint made by the BDA, Crime No.71 of 2000 w
as registered under Section 33 of the Bangalore Development
Authority Act, 1976 and Sections 426 and 447 IPC a
nd

chargesheet have been filed against Usman and 7 others.
According to the learned counsel adequate protection would
be provided to the authorities of the BDA in removing the
unauthorised encroachments from the park.

In our view, the High Court was clearly in error by
refusing to entertain the prayer made by the appellant
ignoring that it had come forward to seek protection of the
Court in larger public interest. It cannot be and has not
been denied that the site earmarked for park is meant for
the benefit of the public at large inasmuch as it is an
integral part of the civil amenities required to be provided
for the residents of the layout. That apart, the High Court
ought not to have overlooked that the public authorities are
duty bound to remove encroachments from public land and a
person, who seeks intervention of the Court in such matter

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cannot be non-suited on the specious ground that the
encroachers have not been impleaded as parties.
The affidavits filed by Sh. Peerya Naik Assistant
Executive Engineer, Bangalore Development Authority, Sh.
S.K. Venugopal, Deputy Commissioner, Police Northern
Division, Bangalore, Sh. Noor Mohamed Panali, Chief
Executive Officer, Karnataka State Board of Wakfs and
further affidavits filed by Sh. N.K. Narayana, Secretary,
Bangalore Development Authority and Sh. Pandurangarao,
Assistant Commissioner of Police, Yeshwanthapur, Sub-
Division, Bangalore City and photographs annexed with the
affidavit of Sh. N.K. Narayana clearly show that some
unscrupulous land grabbers have made encroachments on the
land earmarked for the park apparently by taking advantage
of the lack of fencing.

In his affidavit, Sh. Noor Mohamed Panali has
emphatically denied the allegations that the Wakfs Board has
encouraged any land grabber or any individual to indulge in
illegal activity by encroaching the land earmarked for park.
In paragraphs 3 and 4 of his affidavit, Shri Noor Mohamed
Panali has made the following statements:

"3. Before going to give the parawise reply to
it, it is most respectfully submitted at the out
set itself, that Respondent No. 4 is a statutory
authority constituted under the Wakf Act 1954,
and it has nothing to do with the land in
question. The Respondent Wakf Board has no
connection with the unruly elements and land
grabbers who have encroached upon the
petitioner's property. It is also necessary to
add that the Wakf Board has no interest
whatsoever in respect of the civic amenity site
or the land earmarked as Park in the approved lay
out of the Petitioners.

4. The Respondent No. 4 has never disputed the
fact that the petitioner is the owner of the land
in question and has every right to remove
encroachment and protect its property. The Wakf
Board had categorically stated in the affidavit

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filed before the High Court that neither it has
any interest nor it has ever encouraged any land

grabber or any individual to indulge in such illegal activities. A true copy of the statement of objections filed before the High Court in Writ Petition No. 17454 of 2000 is being annexed herewith and marked as Annexure R/1 to this affidavit."

Since the two public authorities and the Wakfs Board have supported the case of the appellant, we direct the Commissioner of Police and Commissioner, Bangalore Development Authority to take all measures necessary for removing encroachments from the site earmarked for park in the layout of the appellant-Society and submit a report to this Court in the second week of December, 2010.

The case may now be listed on 10.12.2010.

Since the matter is pending before this Court, we direct that neither the Karnataka High Court nor any Court subordinate to it shall entertain any suit or other proceedings and grant injunction to any person, who may have encroached upon or grabbed a portion of the site earmarked for park.

The Registry is directed to send a copy of this order to the Registrar General of the Karnataka High Court by fax, who shall place the same before the Hon'ble the Chief Justice of the High Court for appropriate orders.

(NEELAM GULATI)
Sr. P.A.

(PHOOLAN WATI ARORA)
COURT MASTER