Virendra Gaur And Ors vs State Of Haryana And Ors on 24 November, 1994

Bench: K. Ramaswamy, N. Venkatachala

CASE NO.:
Appeal (civil) 9151 of 1994

PETITIONER:
VIRENDRA GAUR AND ORS.

RESPONDENT:
STATE OF HARYANA AND ORS.

DATE OF JUDGMENT: 24/11/1994

BENCH:
K. RAMASWAMY & N. VENKATACHALA

JUDGMENT:

JUDGMENT 1994 SUPPL. (6) SCR 78 The following Order of the Court was delivered:

Leave granted.

The undisputed facts are that the Municipal Committee, Thanesar, District Kurukshetra in Haryana State, framed Town Planning Scheme No. 5. The Government of Haryana had sanctioned that Scheme on October 30, 1975. It would appear that one of the appellants, namely, the first appellant was the owner of a parcel of land in the Scheme. She surrendered 25% of her land to the Municipality which was a condition for sanction to construct her building. By operation of section 61 of the Haryana Municipal Act, 1973 (for short 'the Act'), the land stood vested in the Municipality. The construction of the buildings had to be in accordance with section 203 while section 205 prohibited construction in contravention of the Scheme. Admittedly, in the Scheme, the land, the subject-matter of the lease for 99 years made in favour of the Punjab Samaj Sabha (for short 'the PSS'), was earmarked for open spaces. The Government, on April 3, 1991, sanctioned for the allotment of the land to PSS on payment of the price at the rates specified therein. It would also appear that PSS had paid the price on April 18, 1991 and had obtained sanction on December 18, 1992 for construction of Dharamshala. It is the case of the appellants that PSS started construction in the month of July, 1992 and immediately on becoming aware of it, they filed the writ petition on July 18, 1993 and sought for ad-interim injunction. But the High Court declined to grant an injunction. By the order dated January 7, 1994, the High Court dismissed the Writ Petition No. 9019/93. Thus this appeal by special leave.

It is contended by Shri Jitendra Sharma, the learned senior counsel for the appellants, that the purpose of the Scheme was to reserve the land in question for open spaces for the better sanitation, environment and the recreational purposes of the residents in the locality. The government had no power to lease out the land to PSS. Though the construction of Dharamshala may be a public purpose, the government cannot give any direction to the Municipality to permit the use of land, defeating the Scheme which provided for keeping open land, namely, to deprive the residents in the locality of the public amenity of using the land as an open land for environmental and recreational purposes. Hence the government have acted in excess of its power under section 250 of the Act. It was contended by Shri D.V. Sehgal, learned senior counsel for the Municipality that the government have formulated general guidelines as to the manner in which the land belonging to the Municipality could be put to public purpose and one of the public purposes is grant of the lease for the charitable purposes. The PSS intends to construct Dharamshala for charitable purpose, the assignment of the land by tease of 99 years is in accordance with me provisions of the Act. The High Court, therefore, was right in dismissing the writ petition. Shri V.C. Mahajan, learned senior counsel for the PSS contended that the government's power to assign the land for any public purposes envisaged in their policy, to keep open land in the Scheme is not a permanent one. Since more than two decades had elapsed, after the Scheme had come into force, and the open land was not put to any public use and it being an open land vested in the Municipality, and the government had power under section 250 to give directions to use the land for a charitable purpose. Therefore, the action of the government and sequel sanction was perfectly in accordance with law. Even otherwise, it is not a fit case for our interference since the PSS has already expended more than seven lakhs in constructing the building. Therefore, any order passed by this Court may be made prospective.

Having given our anxious consideration to the respective contentions, we are of the view that the action taken by the government is wholly without authority of law and jurisdiction and the sanction of land by Municipality for different use defeats the purpose and is in violation of law and the constitution.

Environment is poly-centric and multi-facet problem affecting the human existence. Environmental pollution causes bodily disabilities, leading to non-functioning of the vital organs of the body. Noise and pollution are two of the greatest offenders, the latter affects air, water, natural growth and health of the people. Environmental pollution affects, thereby, the health of general public. The Stockhoim Declaration of United Nations on Human Environment, 1972, reads its Principle No. 1, inter alia, thus:

"Man has the fundamental right to freedom, equality and adequate conditions of life. In an environment of equality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present

and future generations."

The Declaration, therefore, affirms both aspects of environment, the natural and the man-made and the protection is essential to his well-being and to the enjoyment of basic human rights, i.e. the right to life itself. The right to have living atmosphere congenial to human existence is a right to life. The Declaration, therefore, says that "in the developing countries, most of the environmental problems are caused by under developments." The Declaration suggests recourse to safe actions with prudent care for ecological balance. "It is necessary to avoid massive and irreversible harm to the earthly environment and strive for achieving a better life for the present generation and posterity in an environment more in keeping with their needs and hopes. The affirmative declaration in Principle No. 1 (supra) enjoins the Municipal States to solve environmental problems in the broadest human context and not as mere problems to conserve the nature for its own sake.

Article 48-A in Part IV (Directive Principles) brought by the Constitution 42nd Amendment Act, 1976, enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests lakes, rivers and wild life and to have compassion for living creatures." The word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance." It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence, Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment Therefore, there is a constitutional imperative on me State Government and the municipalities, not injure to ensure and safe-guard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.

Section 203 of the Act enjoins the Municipality to frame the Scheme providing environmental and sanitary amenities and obtain sanction from the competent authority to provide, preserve and protect parks, open lands, sanitation, roads, sewage, etc. to maintain ecological balance with hygienic atmosphere not only to the present residents in the locality but also to the future generation. The lands vested in section 61 (c) of the Act should be used for the purposes envisaged therein. We do not agree with the appellants for non-user of open land by the Municipality for more than two decades, the land stood divested from the Municipality and vested in them. Yet the

Municipality has to use the land for the purposes envisaged in the Scheme read with those found in section 61 unless unavoidable compelling public purpose require change of user. Take a case where in the zonal plan certain land is marked out and reserved for park or recreational purpose. It cannot be acquired or allotted for building purpose though housing is public purpose.

Section 66 gives power to the Municipality to transfer any of the lands vested in it to the government in accordance with the provisions of the Act but they will be subject to section 64 thereof and other related purposes. Section 250 of the Act reserves general power in the government and it provides that the State Government may issue directions to any Committee for carrying out the purposes of the Act and, in particular, (a) with regard to various uses to which any land within municipal area may be put;.....(e) adoption of development measures and measures for promotion of public safety, health, convenience and welfare; and (f) sanitation and cleanliness etc. Therefore, the government, though, have power to give directions, that power should be used only to effectuate and further goals of the approved Scheme, zonal plans etc. and the land vested under the Scheme or reserved under the plan would not be directed to be used for any other public purposes within the area envisaged thereunder unless grave compelling purpose of general public demands/requires issuance of such directions.

The question is whether the government can lease the land to the private trust like PSS-4th respondent in the appeal. It is seen that the land is vested in the municipalities and the government have no right and title or interest therein. They have no power to give either by lease to PSS or deal with the property as if the land vested in it therefore, the grant of lease by the government in favour of PSS is clearly without authority of law and jurisdiction. This Court has considered the power of the government to grant lease or issue directions to the Corporation to lease out open land reserved for public use to private trust to establish hospital and explained the context in which the power could be exercised when the land was reserved for town scheme or city scheme in Bangalore Medical Trust v. B.S. Muddappa, [1991] 4 SCC 54. The facts therein were that a site near the Sankey's Tank in Rajamahal Vilas Extension in the City of Bangalore was reserved as an open space in an improvement scheme adopted under the City of Bangalore Improvement Act, 1945. Pursuant to the orders of the State Government dated May 27, 1976 and June 11, 1976 and by its resolution dated July 14, 1976, the Bangalore Development Authority allotted the open space in favour of the appellant, a Medical Trust, for the purpose of constructing a hospital. That allotment was challenged by the respondent in the locality. This Court considered the power of the Government for granting assignment or directions to lease out in favour of the private trust and consequential effect emanating from the user of the land reserved for public purpose or to any other purpose. In para 23 of the judgment, this Court held that the Scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the city of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and playgrounds with a view to protecting the residents from ill-effects of urbanisation. It meant for the development of the city in a way that maximum space is provided for the benefit of me public at large for recreation, enjoyment, ventilation and fresh air. The statutory object is to promote the healthy growth and development of the city of Bangalore and the areas adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or attention of

the original legislative intent but only an elucidation or affirmation of the same. In paragraph 25 of the judgment, this Court further held that the reservation of open spaces for parks and playgrounds are universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation. The residents of the locality are the persons intimately, vitally and adversely affected by any action of the BDA and the government which is destructive of the environment and which deprives them of facilities reserved for the enjoyment and protection of the health of the public at large. The residents of the locality, such as the writ petitioners, are naturally aggrieved by the impugned orders and they have, therefore, the necessary locos standi. The action of (be government and the BDA was held to be inconsistent with and contrary to the legislative intent to safeguard the health, safety and general welfare of the people of the locality. These orders evidence a colourable exercise of power and are opposed to the statutory scheme. The ratio therein squarely applies to the facts in this case.

It is seen that the open lands, vested in the municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreational, play ground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment, adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the government and the action taken pursuant thereto by the municipality would clearly defeat the purpose of the scheme, Shri D.V. Sehgal, learned senior counsel, again contended that two decades have passed by and that, therefore, the municipality is entitled to use the land for any purpose. We are unable to accept the self destructive argument to put a premium on inaction. The land having been taken from the citizens for a public purpose, the municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose. Equally acceptance of the argument of Shri V.C. Mahajan encourages pre-emption action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fiat accompli. We are unable to accept the argument of flat accompli on the touch stone of prospective operation of our order.

The ratio to Yogendra Pal v. Municipality, Bhatinda, [1994] 5 SCC 709, relied on by Shri V.C. Mahajan renders little assistance to the respondents. In that case, this Court, while declaring section 203 of the Haryana Municipality Act, 1973, as violative of Article 14 of the Constitution, has given effect to the judgment prospectively. The reasons given in the judgment are eloquent. The Municipalities in Punjab and Haryana States have acquired vast extents of land under different schemes and the lands stood vested in the municipality and used the land for diverse purposes. The declaration would be rendered illegal unless the prospective operation was given. A chaos would ensue. To obviate such a catastrophe, this Court had made the operation of the declaration prospective. That is not the situation in this case.

It is seen that as soon as the appellants have become aware of the grant made in favour of PSS, they filed the writ petition. Instead of awaiting the decision on merits, PSS proceeded with the construction in post-haste and expended the money on the construction. They have deliberately chosen to take a risk. Therefore, we do not think that it would be a case to validate the actions deliberately chosen, as a premium, in not granting the necessary relief. It was open to the PSS to await the decision and then proceed with the construction. Since the writ petition was pending, it

was not open to them to proceed with the construction and then to plead equity in their favour. Under these circumstances, we will not be justified in upholding the action of the State Government or the municipality in allotting the land to PSS to the detriment of the people in the locality and in gross violation of the requirements of the Scheme. Any construction made by PSS should be pulled down and it must be brought back to the condition in which it existed prior to allotment. The Municipality is directed to pull down the construction within four weeks from today. They should place the report on the file of the Registry of the action taken in the matter.

Accordingly, the appeal is allowed. The writ petition is ordered as prayed for. The law as to preservation of open spaces, buildings, lay-out schemes of public bodies, has since found elucidation in this judgment, we make no order as to costs.