T. Vijayalakshmi and Others Vs Town Planning Member and Another

Court: Supreme Court of India

Date of Decision: Oct. 19, 2006

Acts Referred: Karnataka Town and Country Planning Act, 1961 â€" Section 2(7), 3AE

Citation: AIR 2007 SC 25 : (2006) 9 JT 297 : (2007) 1 KarLJ 70 : (2006) 10 SCALE 455 : (2006) 8 SCC 502 : (2006) 8 SCR 534 Supp

Hon'ble Judges: S. B. Sinha, J; Dalveer Bhandari, J

Bench: Division Bench

Advocate: Soli J. Sorabjee, Varun Thakur, A.S. Bhasme, Indu Malhotra, Vikram Mehta, Malika Chaudhari and Vikas Mehta, for the Appellant; S. K. Kulkarni, Vijay Kumar and Sanjay R. Hegde, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, J.
Leave granted.

2. These two appeals involving similar questions of law and fact were taken up for hearing together and are being disposed of by this common

judgment.

3. We would, however, take note of the factual matrix of the matter from Civil Appeal arising out of SLP (Civil) No. 4719 of 2006. Appellants

herein were owners of agricultural lands. They were permitted to use the said lands for non-agricultural purposes in 2004. The lands are within the

residential area and are put to use for residential purposes. An application for approval of building plans was filed before the Bangalore

Development Authority (for short, "the Authority") on 29.11.2004. Some queries in regard thereto were raised by the Authority to which replies

were also furnished.

4. Indisputably, the Authority is the Planning Authority within the meaning of Section 2(7) of the Karnataka Town and Country Planning Act (for

short, "the Act"). They have prepared a comprehensive development plan in the year 1995. In terms of the provisions of the said Act, a

development plan remains valid for a period of ten years. The development plan sanctioned by the State of Karnataka was, thus, valid till the year

2005. The plan, however, has since been extended for a period of another ten years i.e. till the year 2015. Before the Authority, Appellants, inter

alia, raised a contention that as their applications had not been disposed of within the period specified therefore, commencement certificate, within

the meaning of the Act, must be held to have been granted. The officers of the Authority, allegedly obstructed the construction activities carried out

by Appellants. In the aforementioned premise, Appellants filed a writ petition before the Karnataka High Court.

5. During the pendency of the said writ petition, the application for grant of sanction of plan was rejected by the Authority in terms of its order

contained in a letter dated 15.06.2005 on the premise that property in question fall within the ""Valley Zone in the proposed comprehensive plan"".

The said order dated 15.06.2005 was also questioned by Appellants before the High Court. By a judgment and order dated 26.07.2005, a

learned Single Judge allowed the said writ petition, opining:

I do see some force in the argument advanced by the learned Counsel appearing for the petitioners. The Bangalore Development Authority cannot

reject the application filed by a party seeking permission to construct a residential building in accordance with law. When such an application is

filed, it is the duty of the BDA to consider such application considering the relevant Rules of BDA in granting such permission. The application of

the petitioners cold not have been rejected by the BDA.

6. An intra-court appeal was filed by the Bangalore Development Authority. Before the Division Bench of the High Court, it was contended that

although the new comprehensive development plan was yet to be notified, but as the proposed construction of Appellants falls within the ''valley

zone'', the Authority was justified in rejecting the applications of Appellants herein. The Division Bench of the High Court opined that in view of the

fact that the Authority had already identified the valley, no construction should be permitted to be raised in an area which falls within the purview

thereof, observing:

Ã¯Â¿Â½It is no doubt true that every executive action, if it is to operate to the prejudice of any person must be supported by some legislative authority.

But it is equally true that the private interest would always yield place to the public interest and the Court cannot issue any such directions, which

will compel the authorities to violate the environmental law....

Appellants are, thus, before us.

7. Keeping in view the fact that the question as to whether the revised comprehensive development plan proposed by the Bangalore Development

Authority would be accepted by the State or not, the State of Karnataka was directed to be impleaded as a party in these appeals.

Mr. Sanjay R. Hegde, the learned Counsel appearing on behalf of the State of Karnataka stated that notices have been issued by the State calling

for objections to the said comprehensive development plan and a final decision therein is still awaited.Mr. Soli J. Sorabjee, the learned Senior

Counsel appearing on behalf of Appellants, submitted that as no new plan has yet been brought into force, and thus there being no impediment and

prohibition in the matter of construction of building on the lands in question, which is situated within a residential area, the impugned judgment

cannot be sustained.

Mr. S.K. Kulkarni, the learned Counsel appearing on behalf of the Authority, on the other hand, submitted that as the matter relating to revision of

the comprehensive development plan is pending consideration before the State Government, the impugned judgment should not be interfered with.

8. Town Planning Legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right,

however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a

comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development

plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a

development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens.

Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this

behalf, but ecological aspects, it is trite, is ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the

field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame

therefore. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the

parties cannot be intermeddled so long as an appropriate amendment in the legislation is not brought into force.

Nobody questioned the validity of the existing law. The High Court has not held that the existing laws are ultra vires. It merely proceeded on the

assumption that the law which may be brought into the state book would be more eco-friendly. The law in this behalf is explicit. Right of a person

to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but

unless there exists a clear provision the same cannot be taken away. It is also a trite law that the building plans are required to be dealt with in

terms of the existing law. Determination of such a question cannot be postponed far less taken away. Doctrine of Legitimate Expectation in a case

of this nature would have a role to play.

9. In Director of Public Works and Anr. v. HO PO Sang and Ors. (1961) AC 901, interpreting the provisions of the Landlord and Tenant

Ordinance, 1947, it was held:

In summary, the application of the second appellant for a rebuilding certificate conferred no right on him which was preserved after the repeal of

Sections 3AE, but merely conferred hope or expectation that the Governor in Council would exercise his executive or ministerial discretion in his

favour and the first appellant would thereafter issue a certificate. Similarly, the issue by the first appellant of notice of intention to grant a rebuilding

certificate conferred no right on the second appellant which was preserved after the repeal, but merely instituted a procedure whereby the matter

could be referred to the Governor in Council. The repeal disentitled the first appellant from thereafter issuing any rebuilding certificate where the

matter had been referred by petition to the Governor in Council but had not been determined by the Governor.

10. The question came up directly for consideration in Howrah Municipal Corporation and Others v. Ganges Rope Co. Ltd. and Others [(2004) 1

SCC 663] wherein it was held:

Ã¯Â¿Â½The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the

High Court, is not a right in relation to ""ownership or possession of any property"" for which the expression ""vest"" is generally used. What we can

understand from the claim of a ""vested right"" set up by the respondent Company is that on the basis of the Building Rules, as applicable to their

case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a ""legitimate"" or

settled expectation"" to obtain the sanction. In our considered opinion, such ""settled expectation"", if any, did not create any vested right to obtain

sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the

Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule-making

power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such ""settled expectation

has been rendered impossible of fulfilment due to change in law. The claim based on the alleged ""vested right"" or ""settled expectation"" cannot be

set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the

Corporation against whom such ""vested right"" or ""settled expectation"" is being sought to be enforced. The ""vested right"" or ""settled expectation

has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a ""settled expectation"" or

the so-called ""vested right"" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the

Building Rules and the resolution of the Corporation issued thereupon.

It is, thus, now well-settled law that an application for grant of permission for construction of a building is required to be decided in accordance

with law applicable on the day on which such permission is granted. However, a statutory authority must exercise its jurisdiction within a

reasonable time. [See Kuldeep Singh v. Govt. of NCT of Delhi 2006 (6) SCALE 588] .

11. For the views we have taken, the First Respondent is hereby directed to consider the application for grant of sanction or approval of the

building plans submitted before it at an early date but not later than eight weeks in accordance with law. For the reasons aforementioned, the

impugned judgment of the Division Bench cannot be sustained, which is set aside accordingly. The appeals are allowed. In the facts and

circumstances of the case, however, there would be no order as to costs.