

Case Note: Case concerning a writ petition filed by a resident of municipal area challenging the setting up of a sewage treatment plant by the municipality in an area marked for civic amenities as the same would cause health hazards to the near-by residents and that it did not fall within the definition of civic amenities under the Bangalore Development Authority Act, 1976. The Court dismissed the petition on the ground that a sewage treatment plant did fall under the definition of the term civic amenity and that it was part of the basic responsibility of the Bangalore Water Supply and Sewerage Board and that it actually served public interest by abating water pollution and preventing nuisance.

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ILR1990KAR390, 1990(3)KarLJ520

IN THE HIGH COURT OF KARNATAKA

Decided On: 21.09.1989

Capt. M.V. Subbarayappa

v.

Bharat Electronics Employees Co-operative House Building Society Ltd.

Hon'ble Judges:

K.A. Swami, J.

ORDER

K.A. Swami, J.

1. In this petition under Articles 226 and 227 of the Constitution the petitioner has sought for issuing a direction in the nature of Mandamus to the respondents to stop excavation of earth from the civic amenity area marked in red ink in Annexure-A to the petition.

2. Respondents 1 and 3 have filed separate statement of objections. Respondent No. 2 has made available the records of the case and also the sanctioned layout plan.

3. The case of the petitioner is that on the installation of the sewerage treatment plant in the civic amenity site which is opposite to the house of the petitioner facing 60' road running north to south will result in health hazard to the residents of the locality. He has specifically contended that he made a representation in this regard and his representation was not heeded to. According to his case the installation of a sewerage treatment plant results in chemical and biological hazards affecting the health of the people at large. The chemical effect of the plant is emission of sewer-gas. The atmosphere will be contaminated with hydrogen sulphide. It is also further contended by him that the other gases that will be emitted are carbon dioxide, carbon monoxide, ammonia and occasionally hydrogen cyanide, hydrogen chloride, chlorine, phosgene, and all these

being toxic to human beings living close to the proposed plant it will result in health hazard. It is also further contended that the installation of the sewerage treatment plant near to the sump from which potable water is supplied to the residents is likely to get contaminated as a result of seepage and will affect the drinking water and ultimately causes danger to the health of the residents and may result in dangerous epidemics like hepatitis (Jaundice), gastro-enteritis, etc. It is also further contended that possibility of rendering the whole locality as having epidemic-prone cannot be excluded. Petitioner has also further contended that the biological and chemical hazards will cause constant nuisance and will also offend the provisions of the Public Health Act. Therefore, the place chosen for installation of sewerage treatment plant is not at all suitable from the point of view of health of the residents of the locality and the public health. Therefore, the case of the petitioner is that the sewerage treatment plant may be directed to be installed not near the residential locality, but one or two Kms, away from that area.

4. On the contrary it is the case of the respondents that the sewerage water from all the three layouts namely B.E.L., H.M.T., and N.T.I, are discharged into the open tank abutting the civic amenity site in question wherein the sewerage treatment plant is proposed to be located and as a result thereof the tank water is contaminated; that from the tank the water flows further on and it is used for raising the vegetables by agriculturists. Therefore, the discharge of the sewerage water into the open tank has been causing great nuisance to the area because it emits unbearable smell and the whole area is stinking and if it is allowed to remain as such, it will affect the health of the residents of the entire area. Further the civic amenity site cannot at all be used as a result of the nuisance created by pollution of the water in the tank consequent to discharge of sewerage water into the open tank. It is also the case of the respondents that all the aforesaid Societies made a representation to the Bangalore Development Authority to make available the site for installing sewerage treatment plant, so that the constant and continuing nuisance can once for all be put to an end and the health of the residents on the locality can be protected and the civic amenity site also can be utilised for the purpose beneficial to the residents of the locality. That on the representation made by the residents of the aforesaid extensions, the B.D.A., in consultation with respondent No. 3 and on obtaining its opinion as per Annexure-R6 resolved to make available civic amenity site No. 9 of BEL HBCS, Vidyaranya, to an extent of 1 acre 20 guntas, which is at the lowest point for providing a comprehensive sewerage treatment plant and that the third respondent accorded approval on 3-10-1987 as per Annexure-R5. It is also the further case of the respondents that on the objection raised by some of the residents, the matter was re-examined by the third respondent on a further inspection of the site. That in the light of the news item that appeared in the 'Prajavani Daily' as per Annexure-D the third respondent requested Sri Lukose Vallatharai, incharge Additional Secretary, Department of Ecology and Environment to give a report after inspecting the site. Accordingly he inspected the site in the company of Capt. S. Raja Rao, S.O., Hydrology and Sri Jaiprakash, Regional Officer, State Pollution Control Board and also in the presence of Sri K.S.R. Murthy, Secretary, B.E.L. Welfare Association, Sri Sheshadri and Sri Murali, consultants who are providing effluent treatment plant for the colony and Sri Mudhakani, Administrative Officer of M/s Aqua Air Control and reported that the sewerage treatment plant can be installed as proposed by the Societies and approved by the B.D.A. and

suggested certain steps to be taken in that regard. In addition to this it is further contended that several residents of the locality made a representation as per Annexure-R12 that the sewerage treatment plant should be installed on the civic amenity site and the work should be completed as early as possible. In support of this statement Annexure-R12 a list consisting the signatures of about 166 residents of the locality is produced.

5. In the light of these contentions, the question that will arise for consideration is as to whether the relief sought for by the petitioner can be granted.

6. The petitioner has come forward with a plea that he is litigating in the interest of public and that individual right is not involved; that the location of the sewerage treatment plant in the civic amenity site is opposed to the provisions of the Bangalore Development Authority Act, 1976 (hereinafter referred to as the 'Act') and that civic amenity site cannot at all be used for the purpose for which it is now proposed to be used. In addition to this it is his case as referred to in the earlier portion of this order that the very installation of the sewerage treatment plant will be hazardous to the health of the residents of the locality.

7. As far as the contention of the petitioner that he is espousing the cause of the public is concerned, there is a great controversy in view of the fact that several members of the locality have come forward in support of the location of the sewerage treatment plant. However, in this petition it is not necessary to decide this question having regard to the fact that the pleadings are complete and the relief prayed for can be considered on its merits.

8. The contention of the petitioner that civic amenity site cannot at all be used for installation of sewerage treatment plant is based on the definition of the expression 'civic amenity' occurring in Section 2(bb) of the Act. According to the said definition 'civic amenity' means:-

(i) a market, a post office, a telephone exchange, a bank, a fair price shop, a milk booth, a school, a dispensary, a hospital, a pathological laboratory, a maternity home, a child care centre, a library, a gymnasium, a bus stand or a bus depot;

(ii) a recreation centre run by the Government or the Corporation;

(iii) a centre for educational, social or cultural activities established by the Central Government or the State Government or by a body established by the Central Government or the State Government;

(iv) a centre for educational, religious, social or cultural activities or for philanthropic service run by a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) or a Society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) or by a trust created wholly for charitable, educational or religious purposes;

(v) a police station, an area office or a service station of the Corporation or the Bangalore Water Supply and Sewerage Board or the Karnataka Electricity Board; and

(vi) such other amenity as the Government may, by notification, specify."

Thus it can be seen from the aforesaid definition of the expression 'civic amenity' that it is merely an illustrative definition and not an exhaustive one. Each one of the items mentioned therein relate to or intended to serve public interest or intended to be of some use to the public. If that be the underlining object and intendment of the expression 'civic amenity' used in the Act, mere fact that a sewerage treatment plant is not specifically mentioned in the definition of the expression 'civic amenity' can it be held that using of civic amenity site for the purpose of installation of sewerage treatment plant is opposed to the very intendment of the Act and the object underlying the definition of the expression 'civic amenity'? In addition to this, sewerage treatment plant has to be treated as part of the work of the Bangalore Water Supply and Sewerage Board (for short 'BWSSB'). It is the responsibility and it is one of the obligatory functions, of BWSSB not only to ensure water supply to Bangalore City but also to provide sewerage lines and to ensure that the sewerage is carried out through sewerage channel without affecting the health of the residents of Bangalore City and without causing nuisance to them and public in general. In order to discharge this obligation it becomes necessary to provide sewerage treatment plant. Thus sewerage treatment plant falls in Clause (vi) of the definition. I will separately consider the question as to whether the plant can be considered to be injurious to the public health, but while on this point, it is sufficient to observe that a sewerage treatment plant is intended to serve public interest in the same manner as the BWSSB is intended to serve public interest. Admittedly, the sewerage water from all the aforesaid extensions is collected through the storm water drain which runs into an open tank. From the layout plan it can be seen that the open tank appears to occupy a very large area. Consequently, the water accumulated in the tank gets contaminated and emits stinking smell thereby causing nuisance to the residents of the locality and making it impossible to lead a healthy life. If, for the purpose of removing such a nuisance and for abating pollution, a sewerage treatment plant is installed in a portion of the civic amenity site, It will facilitate the use of the civic amenity site, because in the absence of such plant, it is not possible to use the civic amenity site because of the pollution of water in the tank, there is emitting of bad smell making it impossible for the people to use the civic amenity site due to health hazard. Therefore, I am of the view that the expression 'civic amenity' should be construed with reference to the object for which the civic amenity site is used and if such use is to provide better civic facilities to the residents of the locality and to remove or abate the nuisance and put an end to the water pollution, it cannot be held that such use is opposed to the provisions of the Act and the definition of the expression 'civic amenity' as contained therein. Therefore, I am of the view that the use of a portion of civic amenity site in question for installation of sewerage treatment plant does not contravene, or, is not contrary to, the definition of the expression 'civic amenity' as provided in the Act.

9. The next question for consideration is whether the location of the sewerage treatment plant in the civic amenity site in question is hazardous to the public health.

10. On this question the third respondent on which the responsibility is placed under the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the 'Pollution Control Act') has examined all the aspects of the case and has accorded approval for location of the sewerage treatment plant. The order dated 3-10-1987 according approval reads thus:

"Adverting to the above it is to be informed that you may go ahead with the construction of effluent treatment plant as per your proposals provided the following suggestions are incorporated.

The concept of aerated lagoon is agreeable subjected to the condition that the total of 15 H.P. aerations provided are split into 5 Nos. of 3 H.P. each and the system designed on a twin tank basis with a final portion capable of tanking the effluents from both the aeration tanks with a 3 H.P. aeration in each section. The system should also be so designed that in course of time say in 3 to 5 years, when the aerated lagoons have to be emptied one position of the tank can be isolated for cleaning purposes. The aerated lagoon, taking into account the stronger B.O.D. entering; the system, should be followed by an oxidation ponds of 5 days capacity constructed in series further provision of grit tank and settling tank may not be necessary the fish culture may be provided in the oxidation pond. The final incorporating the above suggesting may be furnished at an early date."

In addition to this, when a news item appeared in a Kannada daily 'Prajavani' dated 28-2-1989 the third respondent got the matter re-examined through the incharge Additional Secretary, Department of Ecology and Environment, who on inspection of the site as pointed out earlier has submitted the Report dated 18-3-1989- It is necessary to reproduce the said Report as the same deals with all the aspects of the case and also suggests certain steps to be taken to make the civic amenity site more attractive and more useful. The said Report is as follows:

"Discussions were held with the House Building Co-operative Society, Vidyaranyapura, regarding the complaint effluent treatment plant proposed by the Society. The following persons participated in the discussions and field visits.

1. Shri K.S.R. Murthy, Secretary, BEL Welfare Association.
2. Shri Sheshadri and Shri Murali, the consultants who are providing effluent treatment plant for the colony.
3. Shri Mudhakani,

Administrative Officer of M/s Aqua Air Control.

Recently a news item appeared in Prajavani, regarding the domestic effluent treatment plant being put up for the BEL Employees' House Building Co-operative Society by M/s. Aqua Air Control. This treatment plant is under construction after obtaining the approval from the Pollution Control Board in an area released to the Society by the Bangalore

Development Authority. A complaint has been made by one of the residents in the name of 'Parisara Premi' indicating that by providing such an effluent treatment plant, the area will be polluted and will have mosquito nuisance. He had questioned the wisdom of the Pollution Control Board and the Bangalore Development Authority in allowing such a unit to come up around residential area.

The area where the treatment plant is under construction who was examined and discussions were held with the Vice-President of the Society and the Consultants, who had designed the treatment plant. It was learnt that treatment unit under construction is an aerobic treatment unit and that by providing the treatment plant, environmental conditions in the area will be improved compared to what it is now. The representative of the Pollution Control Board also endorsed this view. Generally this type of treatment unit are provided for group of residential colonies such as BEL, ITI, HMT, etc. Such units are located close to the residential area. Even the BWSSB treatment plant is closer to residential areas and their own staff are residing in the quarters within the premises. An aerobic treatment plant provided by this unit of maintained and operated continuously should not cause any problem. They have also provided as a polishing treatment, an oxidation pond. In order to improve the environment and reduce even the slightest imbalance, it was suggested to grow tall trees all around the treatment plant to serve as a divider and also to grow special types of fish, which will prevent mosquito larva and also to provide a stand by captive power to run an essential units of effluent treatment plant, so that the plant is always in operation.

It was assured by the Vice-President of the Housing Society that they will be running and maintaining the plant till they hand it over the entire premises to the Bangalore Development Authority. He has also confirmed that at present they are maintaining the water supply unit and they will also maintain the sewerage treatment plant also. He has also emphasised that in the interest of the residents on behalf of whom they are functioning, it will be their self-interest to see that both water supply and sewerage treatment plants are run as efficiently as possible.

In order to further improve the environment in this area it is also desirable that the treated effluent after it is discharged into tank, which is immediately below could be harnessed for developing greenary in the fore shore area of the tank either through Forest Department or Horticulture Department. This action would make the entire area a very pleasant and could also act as a picnic spot. The tank also could be developed for rearing fish through the Fisheries Department.

In the light of the facts mentioned above, the complaint made in the newspaper appears to be not genuine and may be with incorrect information. The Pollution Control Board has already been directed to issue suitable counter through the concerned paper. There is no need to be concerned about the news item and we may await the counter to be given by the Pollution Control Board".

Thus, from the aforesaid report it is clear that by reason of location of the sewerage treatment plant and implementation of the suggestions made therein will result in better

use of the civic amenity site and it will also remove the water pollution and prevent it for all time to come and consequently the residents of the locality will be free from water pollution and also the bad smell that is being now emitted by reason of pollution of water in the tank consequent to discharge of sewerage water from all the three extensions into it. In addition to this all the four House Building Cooperative Societies have also agreed to it. That being the position it is not possible to agree with the contention of the petitioner that location of sewerage treatment plant at the place at which now it is proposed to be located would result in the consequences as pleaded by him in paragraphs 6 to 8 of his petition. The petitioner apart from asserting as per paras 6 to 8 has not placed any opinion of an Expert nor he himself, claims to be an Expert in the matter. When the third respondent, which is placed incharge of the prevention and control of water pollution under the Pollution Control Act and has accorded approval and has also further got it examined through the Officer concerned with the Pollution Control Department, it is not possible to accept the averments made by the petitioner.

11. For the reasons stated above I am of the view that the relief sought for by the petitioner cannot be granted and if such a relief is granted it will only be hazardous to the health of the residents of the locality because the nuisance created by reason of discharge of sewerage water into the open tank will continue and consequently it continues to cause irritation to the public health.

12. The contention of the petitioner that sewerage plant should have been located 1 or 2 kms. away from the civic amenity site cannot also be accepted. The location of the sewerage treatment plant about 1 or 2 kms. away from the civic amenity site in question would not in any way help the residents of the locality because pollution of water in the tank into which the sewerage water is being now discharged from all the four extensions will continue. Therefore, this contention cannot at all be accepted.

13. For the reasons stated above Writ Petition fails and the same is dismissed.

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