**BEFORE THE NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONE, CHENNAI**

**Application No.53 of 2016 (SZ)**

**&**

**M.A. No. 55 of 2016**

**IN THE MATTER OF:**

1. Ananth Bhat
2. Ramasubban Sankaran Ramanathan
3. Neena Ramanathan
4. Baptist D'souza
5. Tara Ollapally

All are residing at 10th Main,
Koramangala 3rd Block , Bangalore ... Applicants

**AND**

1. Bangalore Development Authority
   Rep. by its Commissioner, Bangalore

2. Ananda Social & Educational Trust
   Rep. by its Chairman/Managing Trustee
   Bangalore

3. Bruhat Bengaluru Mahanagara Palike
   Rep. by its Commissioner, Bangalore

4. Karnataka State Pollution Control Board
   Rep. by its Chairman, Bangalore ... Respondents

**Counsel appearing for the applicants:**

M/s. Yogeshwaran.A & Neha Miriam Kurian

**Counsel appearing for the respondents:**

Ms. J. Anandhavalli for Respondent No.1; Mr.P. Bala Murugan for Respondent No.2; Mr. T.V. Sekar for Respondent No.3; M/s. R. Thirunavukkarasu & M. Swarnalatha for Respondent No.4

## O R D E R

**QUORUM**: Hon'be Justice Dr.P. Jyothimani, Judicial Member

Hon'ble Shri P.S. Rao, Expert Member

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**Delivered by Justice Dr. P. Jyothimani, Judicial Member dated 5th July, 2016**

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Whether the judgment is allowed to be published on the internet ~~Yes~~/No

Whether the judgment is to be published in the All India NGT Reporter ~~Yes~~/No

1. The original application is filed by the applicants who are the residents of Koramangala, Bangalore and stated to have been affected by conversion of a public playground after more than 45 years of use, encroachment and destruction of the same at Site No.39-A and 42 located between 10th Main Road and 12th Main Road, Koramangala.

2. The applicants have prayed for a direction against the first respondent – Bangalore Development Authority not to allot Site No.39-A and 42 situated in 3rd Block, Koramangala and preserve the same as per the Revised Master Plan, 2015 (RMP 2015) and for a direction to restore the playground, apart from stopping all construction activities in the Green Belt Area in violation of RMP 2015 in force.

3. The grievance of the applicants is that there is a playground situated between 10th Main Road and 12th Main Road, Koramangala, 3rd Block in Site Nos.41, 42, 39-A, 39-B and 39-C which is used as a composite park –cum-playground ever since 1970. The RMP 2015 shows Site No.39-A and 42 allotted to the second respondent Trust by showing the same as green, which according to the applicants

indicates playground and park. The green area shown in RMP 2015 is slowly made commercial or otherwise, since some portion has been allotted for the purpose of post office, temple and residential plots and it is in that deviation, Site No.42 and part of Site No.39-A have been allotted to the 2nd respondent Trust, who is attempting to convert the playground area into a school. According to the applicants, the first respondent has a duty to maintain 15% of the total area for parks and playgrounds as lung space and the Tribunal has already held in *Gulmohar Parks*' case that the park area shall not be converted for any other purpose. According to the applicants, the park in Site No.39-C has been voted as the best park in Bengaluru continuously for three years viz., 2014, 2015 and 2016.

4. The applicants state that the first respondent Authority entered into an agreement of lease with the second respondent Trust for allotment of a portion for Civic Amenity Site (hereinafter called CA Site) Nos.39-A and 42 for establishing a Kannada Medium School and pursuant to the same the first respondent Authority has issued Possession Certificate to the second respondent Trust who has taken possession of the site on 19.07.2005 and inspite of taking possession, the area has been left as playground in which football matches are being played, apart from conducting cricket matches. The applicants have shown various violations of RMP, 2015 and as per Section 38-A of the Bangalore Development Authority Act, 1976 (BDA Act) there is a bar against the first respondent Authority from alienating the land allocated for the purpose of parks and play grounds and inspite of the same, the allocation has been made to the second respondent Trust which is in violation of law. The applicants further referred to Section 16 of the BDA Act which prescribes maintenance of 15% total park area as per RMP 2015.

5. It is also the case of the applicants that the plan for construction of school building should not be granted as per the Zoning Regulation of the third respondent

Bruhat Bengaluru Mahanagra Palike viz., Municipal Corporation, Bengaluru. There can be no plan sanctioned by the first respondent Authority for any school purpose. It is also stated that there is already a school situated on 18 feet Carriageway Road and therefore the place for the present school cannot be approved. The applicants have also raised various grounds against the plan as per the BDA Act. It is also stated that the first respondent Authority, third respondent Corporation and the fourth respondent viz., Karnataka State Pollution Control Board should have considered the views of the local residents and by virtue of the development of the school in the area, there will be traffic congestion due to heavy movement of vehicles which would cause much inconvenience to the residents and others who would be deprived of their easementary right in respect of the playground. It is also stated that even the second respondent Trust, in course of construction has not followed the sanctioned plan and in as much it is in violation of Air (Prevention and Control of Pollution) Act, 1981, the Tribunal has jurisdiction to prevent the allotment of the site made to the second respondent Trust and also conversion of the park and playground area into that of a school. With the above averments and raising the ground that as the right to life of the residents under Article 21 of the Constitution of India is affected and that as per RMP 2015 the classification of CA Site Nos.39-A and 42 marked as green space, the conduct of the first respondent Authority in handing over possession of the site to the second respondent for the purpose of establishing Kannada Medium School is opposed to various judgements and hence illegal.

6. This Tribunal, while admitting the application, in the order dated 10.3.2016 has passed an order of *status quo*. Complaining that the said order of *status quo* has been violated by the second respondent Trust and also abetted by the other respondents, the applicants have filed M.A.No.55 of 2016 for taking appropriate

action against the second respondent for disobeyance of the order of *status quo* under Section 26 of the National Green Tribunal Act, 2010.

7. It is the case of the applicants that inspite of the order of *status quo*, the second respondent Trust has been putting up construction of school building in the park area against which a complaint was filed by the applicants with the fourth respondent Board which has made a spot inspection and according to the applicants there has been a total defiance of the *status quo* order of the Tribunal and therefore the second respondent Trust is liable to be dealt with under Section 26 of the National Green Tribunal Act, 2010.

8. The second respondent Trust in the reply, while denying all the allegations raised by the applicants, has stated that the applicants have misrepresented the facts and the filing of the application is an abuse of process of law. That apart, it is stated that the application is not maintainable and barred by limitation. It is stated that when once the applicants themselves have stated that the conversion of the public playground which was used for more than 45 years and the second respondent Trust has encroached upon the playground in CA Site Nos.42 and 39-A the present application before this Tribunal is not maintainable. The second respondent Trust would further state that they are concerned about the CA Sites 39-A and 42. It is also denied that Site No.39-A is earmarked as playground. In the notification issued by the first respondent Authority dated 2.2.1990 the site has been clearly earmarked for the purpose of school. The Koramangala Layout was formed prior to the enactment of Bangalore Development Authority Act, 1976, when the City Improvement Trust Act, 1945 was prevalent and in fact the site was earmarked as "College". The site which was originally earmarked as "College" has been subsequently converted as "school" and it was never earmarked as "playground" at any point of time.

9. It is also the case of the second respondent Trust that a similar issue has been raised before the Hon'ble High Court of Karnataka in 1992 which is in the knowledge of the applicants and ultimately in Writ Appeal No.5252 of 1997 etc. Batch, the Division Bench of the Hon'ble High Court of Karnataka has decided the entire issue which has been raised now by the present applicants in its judgment dated 04.10.2001. The second respondent Trust states that by deliberate suppression of the material fact by the applicants especially the judgment of the Division Bench dated 04.10.2001 which has become final, the above application is filed which is liable to be dismissed. The Hon'ble Karnataka High Court has dealt with said Site Nos.39-A, 39-B, 39-C and 42 while dealing with a Writ Appeal against the dismissal of the writ petition. The allotment made in favour of the second respondent Trust for the purpose of starting a Kananada Medium School was cancelled in the writ petition filed by the residents on the ground that it is earmarked as "College". It was in the Writ Appeal that all the points that have been raised by the present applicants have already been raised by the parties. The Division Bench has held that civic amenity site No.39 has been divided into three parts viz., 39-A, 39-B and 39-C. 39-A has been allotted to the second respondent to establish Kannada Medium School, 39-C was allotted to M/s. Yeshomurthy Trust for establishing an eye hospital and Site No.42 which is adjacent to Site No.39-A and which was earlier earmarked for construction of petty shops, has been allotted in favour of Deepayan Society for cultural activities. The High Court has held that in respect of the layout formed prior to enactment of Bangalore Development Authority Act, 1976 there was no necessity to provide 15% of the total area as park and playground. It was ultimately held that if Site No.42 along with portion in Site No.39 is allotted to the second respondent Trust it will serve the purpose of establishing Kannada Medium School and the residents will be benefitted by using the remaining larger extent in Site No.39.

10. Therefore, according to the second respondent Trust, when the issue has been finally settled by the Hon'ble High Court of Karnataka, the filing of the present application is an abuse of process of law. It is reiterated that neither Site No.39-A nor Site No.42 was earmarked as playground and therefore it is prayed that the application is liable to be dismissed on the ground of maintainability and on merit.

11. The fourth respondent Board has also reiterated that the issue has already been settled by the High Court in the writ appeal and therefore the relief as prayed for is not maintainable.

12. Mr. A. Yogeshwaran, learned counsel appearing for the applicants would vehemently submit that it is the Revised Master Plan, 2015 which will prevail and the same is after the order of the Karnataka High Court and therefore, there is no suppression of any material fact and the first respondent Authority cannot act against the Revised Master Plan, 2015. He would also take us to various judgments wherein the courts have held that park being a lung space for the people residing in the area, no other activity shall be permitted and in fact Bangalore Development Authority Act, 1976, particularly Section 38-A prohibits such conversion. He has also submitted that the applicants are not challenging the findings of the Division Bench except to the extent that the judgment of the Hon'ble Supreme Court cannot be violated with respect to Section 38-A by relying upon various judgments'

13. *Per contra,* it is the contention of Ms. Anandhavalli, learned counsel appearing for the first respondent that even before the first respondent Bangalore Development Authority came into existence, allotment has been made and in fact the validity of the said allotment was upheld by the Division Bench and that the

said judgment has become final therefore according to her filing of the application is an abuse of process of law and amounts to relitigation on the same point.

14. Likewise, it is the contention of Mr. Balamurugan, learned counsel appearing for the second respondent that the settled decisions cannot be reopened on the basis of any observation made by courts on subsequent occasion. That was also the contention of Mr. Thirunavukkarasu, the learned counsel appearing for the fourth respondent Board as well as Mr.T.V. Sekar, learned counsel appearing for the third respondent.

15. After hearing the arguments of both the counsel and referring to pleadings as well as documents filed, the issue to be decided in this case is as to whether the applicants are entitled for the relief claimed.

16. It is not in dispute that Site No.39 has been sub-divided into 39-A, 39-B and 39-C. Further, Site No.42 is adjacent to Site No.39-A. The first respondent Authority in the meeting held on 24.5.1990 has resolved to allot Site No.39-A in favour of the second respondent Trust for establishing a Kannada Medium School on thirty years lease basis. The first respondent Authority in its order date 25.7.2005 while issuing Site Possession Certificate has stated that Site No.39-A and 42 in Koramangala III Block Lay Out, measuring 4071.37 sqm have been handed over to M/s. Ananda Social and Educational Trust for the purpose of Kannada Medium School. In the light of the said allotment having been made as early as in the year 2005 by the first respondent Authority, the reliefs claimed by the applicants herein for a direction against the first respondent Authority not to allot Site No.39-A and 42 is not maintainable not only because of the reason that possession has already been handed over as early as in the year 2005 but in respect of such possession, the present application filed under Section 14 of the NGT Act, 2010 cannot be maintained for the simple reason that the same is filed beyond the

period of limitation as contemplated under Section 14(3) of the NGT Act. That apart in respect of possession and allotment of site this Tribunal has no jurisdiction to decide about its validity.

17. It is not in dispute that the Division Bench judgment of the High Court of Karnataka dated 4.10.2001 passed in Writ Appeal No.5252 of 1997 etc., batch has become final. A reference to the said judgment shows that even before the first respondent Authority came into existence, The City Improvement Trust Board, created under a Statute was in existence and it is by the said Board a layout was formed earmarking Site No.39 for the purpose of establishing a college and Site No.42 for setting up of petty shops. After the first respondent Authority has come into existence in supersession of the City Improvement Trust Board, the first respondent Authority has resolved that the Civil Amenity Site No.42 to be given for carrying out social and cultural activities instead of petty shops. Further, original Site No.39 was sub-divided under which Site No.39-A was earmarked for college and Site No.39-C for hospital, while Site No.39-B was not earmarked for any specific purpose.

18. It appears that the second respondent Trust has filed an application for allotment of Site No.39-A to establish Kannada Medium School and accordingly allotment was made in favour of the second respondent Trust by the first respondent. The said allotment along with allotments made in respect of other sites were challenged in the High Court of Karantaka by filing writ petitions. According to the writ petitioner, Site No.39-A was earmarked for the purpose of college and therefore it cannot be given to the second respondent Trust for starting a school. In fact, it was the specific contention of the residents of the area that the entire area in Site No.39 is being used as playground by general public and the same has to be maintained as such and that the first respondent Authority, without

following the procedure and contrary to the provisions of the Bangalore Development Authority Act, 1976 diverted Site No.39 in favour of the second respondent Trust. Likewise, even the allotment of Site No.42 in favour of Deepayan Society was challenged on the ground that it was earmarked for some other purpose. It was also the specific case of the residents of the area that it is the duty of the first respondent Authority to maintain 15% of the total area for the purpose of park and playground as lung space, exactly the same issue that has been raised by the applicants in this case.-

19. It was the contention of the first respondent Authority before the High Court of Karnataka in the Writ Appeal that the allotment was made much before the creation of first respondent Authority and the layout of the scheme was approved by the Government and as per the City Improvement Trust Board Act, it has to maintain 9.8% of the total area as play ground/park.

20. The learned Single Judge held that the allotment made to the second respondent Trust is not valid on the ground that the site in question was earmarked for the purpose of "college" and not for "school". In so far as it relates to Site No.42 the allotment made in favour of Deepayan Society was held valid, as the same was not seriously questioned by the residents. It was as against the orders passed in the batch of writ petitions, the above said batch of Writ Appeals came to be filed. It was specifically contended that under the Bangalore Development Authority Act, 1976 there is a duty to maintain 15% of the total area as lung space in the form of parks or playgrounds and there was no power to reduce the extent.

21. After hearing the counsel, the Division Bench of the High Court of Karnataka framed the following points for consideration:

> *"Whether he BDA is required to maintain 15% of the total area as park and playground in respect of the layout formed prior to the enactment of BDA Act?*

*Whether the court has to direct the BDA to cancel the allotment made in respect of various civil amenity sites and to convert the same into playground and park as per the lay out plan prepared by the then City Improvement Trust Board in respect of the Koramangala layout?*

*Whether the allotment made in favour of Deepayan is required to be confirmed or cancelled?*

*Whether a site reserved for college can be allotted to establish a college and that the allotment of civil amenity site No.39/A in favour of Ananda Social & Educational Society to establish a Kannada Medium School is required to be confirmed or not?"*

The Division Bench has taken note of the fact that it is not in dispute that Site No.39 was earmarked to establish a college and Site No.42 was originally earmarked for construction of petty shops and subsequently re-allotted for different purpose.

22. Considering the first issue the Division Bench held that in respect of layout formed prior to enactment of Bangalore Development Authority Act, 1976 there was no necessity for the first respondent to provide 15% of the total area as park and play ground. However, it was held that the places earmarked as park and play ground shall be strictly adhered to. Regarding Site No.42 which was allotted to Deepayan Society, by consent it was held by the Division Bench that an alternate site can be allotted to the said Society and accordingly direction was issued to that extent. Ultimately, while considering the last issue as to whether the allotment made in Site No.39-A in favour of the second respondent Trust is required to be set aside, the Division Bench has not only held that the allotment in respect of Site No.39-A to the second respondent Trust is valid, but also having found that Site No.42 is adjacent to Site No.39-A, has directed that along with Site No.39-A, Site No.42 should also be given to the second respondent Trust for the purpose of establishing Kannada Medium School by which the residents will be benefited. The observation of the Division Bench in this regard is as follows:

*"Though we have confirmed the allotment of site No.39-A as valid in view of the fact that site No.39 is bigger in size and only a portion of the said site is allotted in favour of Ananda Social and Educational Trust, as site No.39/A and 42 are situated side by side and that site No.42 is smaller in dimension than site No.39-A and in order to maintain large area as park or playground on civil amenity site No.39, we are of the opinion that if site No.42 along with a portion of site No.39 is allotted to Ananda Social & Educational Trust will serve the purpose of establishing a Kannada medium school and the residents will also be benefited in using the remaining larger extent of site No.39. If site No.39/A is allotted to Ananda Social & Educational Trust, said area will be in between site No.42 and the remaining area of civil amenity site No.39. So, in the larger interest of the residents and also in allowing the BDA to make use of the remaining area of the civil amenity site No.39 for better purpose. This suggestion is also agreeable to all the parties including the appellant Ananda Social Educational Trust to take site No.42 along with a portion of civil amenity site No.39-A in lieu of site No.39. In view of the submissions of the learned counsel for all the parties, we are inclined to direct the BDA to allot site No.42 and a portion of site No.39/A to establish a Kannada medium school by the appellant in W.A.No.5252/1997."*

Ultimately, the Division Bench has disposed of the writ appeal with the following directions:

*"i) BDA is directed not to allot civil amenity sites in Koramangala layout and all the remaining un-allotted civic amenity sites hereafter shall be maintained by the BDA either as Park or playground. The BDA is directed to file an undertaking to maintain the lung space of 6.70% in Koramangala layout within two weeks from today.*

*ii) BDA is directed to allot an alternate site approximately of the same area of civic amenity site No.42 at the present market value to Deepayan Trust at HSR layout within three months from today.*

*iii) Allotment made in favour of Ananda soial & Educational Trust to establish a Kannada Medium School is upheld. However, BDA is directed to allot site No.42 and a portion of site No.39/A to M/s. Ananda Social & Educational Trust to make good the allotment of the same dimension of site No.39/A and the said allotment shall be made and a newly allotted site shall be handed over to the appellant in W.A.No.5252/1997 within three months from today subject to the condition that the appellant Ananda Social & Educational Trust shall deposit or pay the entire amount that may be demanded at the old rate before taking possession of the same."*

Admittedly, the said decision has become final and based on that the first respondent Authority has made allotment

23. In the light of the specific finding by the Division Bench that the layout having been developed before the firsttv respondent Authority has come into existence , it was not necessary to maintain 15% of the total area as lung space by way of playground or park and specifically upholding the allotment of Site No.39-A in favour of the second respondent Trust and also subsequent to the direction of the Division Bench, when the first respondent Authority has allotted Site No.42 also to the second respondent Trust, it is certainly not open to the applicants to attempt to reopen the entire settled issue which will amount to abuse of process of court and re-litigation on the same issue.

24. The other contentions of the learned counsel appearing for the applicants based on RMP, 2015 are not sustainable and in our considered view such a plan cannot superseded the final decision of the Division Bench of the High Court of Karnataka. and the interim order of status quo passed by this Tribunal dated 10.3.2016 stands vacated.

25. In view of the above said legal position, we are of the considered view that the Original Application No.53 of 2016 is not maintainable and liable to be dismissed and accordingly the same is dismissed and the interim order of status quo passed by this Tribunal dated 10.3.2016 stands vacated.

26. In view of the above said finding and also having taken note of the fact that subsequent to the *status quo* order passed by this Tribunal, the public authorities have clearly stated that no further activity has been carried on, we see no reason to invoke Section 26 of the NGT Act, 2010.

Accordingly, M.A.No.55 of 2016 also stands dismissed.

No cost.

Justice Dr. P. Jyothimani

(Judicial Member)

Shri. P.S.Rao
(Expert Member)

Chennai
Date: 05.07.2016