

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[SPARKLE ONE MALL DEVELOPERS LTD VS. THE STATE OF
KARNATAKA AND OTHERS]

MGSKJ

31.12.2023

(VIDEO CONFERENCING / PHYSICAL HEARING)

ORDER

Claiming extreme urgency in the wake of Order dated 30.12.2023 at Annexure-A passed by the respondent No.2-Commissioner and Additional District Magistrate, Bengaluru in exercise of powers under Section 144 of Code of Criminal Procedure, by which the petitioner has been directed to "restrict public access" to the Phoenix Mall of Asia, Byatarayanapura, Yelahanka Hobli, Bellary Road, Bengaluru between 31.12.2023 to 15.01.2024, the petitioner is before this Court. Considering the urgency pleaded the matter is listed today.

2. Heard Sri. Dhyan Chinnappa, learned senior counsel appearing for the counsel for the petitioner and Sri. Shashikiran Shetty, learned Advocate General along with Sri.Vikram Huilgol, learned Additional Advocate General for the respondents.

3. The facts in brief are that the petitioner-company having constructed a premium mall is operating the same in the name and style of PHOENIX MALL OF ASIA at

Byatarayanapura, Yelahanka Hobli, Bellary Road, Bengaluru and the said mall has been put into operation on and from 27.10.2023. It appears certain causes/concerns were expressed by the respondent-State more particularly by the respondent-Police resulting in issuance of a notice dated 11.10.2023-Annexure-D seeking information on the precautionary steps taken by the petitioner-company. The important informations sought therein amongst others are with respect to parking facilities and regulations of traffics. A response dated 20.10.2023 was issued by the petitioner-company as per Annexure-E providing the information with regard to facilities provided at its end to handle and take care of the situation.

4. Thereafter, it appears the respondent-Police on gathering information available in the public domain and through its intelligence sources, thought it is appropriate to pass the impugned order in purported exercise of its power under Section 144 of the Code of Criminal Procedure produced at Annexure-A.

5. Perusal of the said order would reveal that on and from the date of operation of the mall there has been certain grave concern of inconvenience in the nature of traffic congestion, noise

pollution etc., to the daily lives of the population situated in the surrounding location. It is also pointed out that the mall in question is situated on a highway which is connecting to the various public amenities and also resulting in undue congestion of the public area. It is also reads that the situation got worse on 24.12.2023 on the eve of Christmas further resulting in certain disorder. The order further reads that the respondent No.2 taking stock of the situation was also apprehensive of the fact that, left unattended the situation might result in giving way to possibilities of commission of cognizable offence in the near future. These amongst other reasons mentioned in the Order have apparently prompted the respondent No.2 to pass the impugned order directing the petitioner to "restrict the public access" to enter into the mall.

6. Sri. Dhyan Chinnappa, learned senior counsel appearing for the petitioner taking through the contents of the impugned order submits that the impugned order in the first place is unsustainable as the same does not meet the requirement and parameters of ingredients of Section 144 of the Cr.P.C. He also submits that the Order is as ambiguous as it could be in that it directs the petitioner to "restrict the public access" to the mall which would only have the effect of closing

down the mall for a period between 31.12.2023 to 15.01.2024 which is unsustainable. He submits that reasons assigned in the impugned order are not of such grave nature requiring an action of such a nature. Hence, seeks for indulgence of this Court.

7. In response, Sri. Shashikiran Shetty, learned AG for the respondent submits that the Order impugned has been passed taking into consideration of all the relevant factors not only the road traffic congestion and pollution and other inconvenience being caused to the public at large but also keeping in view of the law and order situation which might go out of hand and that the respondent-Police is the best judge in accessing the situation which was done in the interest of public and has passed the impugned order. He further clarifies that the order in no terms would indicate closing down the business in its entirety. He also submits that it only directs the petitioner to "restrict the public access" which cannot be read under any circumstances to mean 'prohibit'. He submits that it is for the petitioner to find its ways and means to implement the order. Hence, submits that no interference of this court is warranted.

8. After hearing learned counsel initially this Court was at the view that the matter could be resolved with the joint deliberations of the petitioner as well as the respondent-Police authorities as both are the stake holders of the matter and their decision would impact the public at large.

9. In that light of the matter, learned senior counsel appearing for the petitioner submits that discussion and deliberation in this regard would be undertaken between the petitioner and the respondent-authorities. In the meanwhile since the Order in the nature of prohibiting the petitioner from using the mall between 31.12.2023 to 15.01.2024, the same requires clarification at the hands of this Court to avoid any eventuality. In furtherance learned senior counsel appearing for the petitioner submits that to show the bonafides on the part of the petitioner in deference to the reasons and apprehension expressed by the respondent-Police in the impugned order, the petitioner would voluntarily close the mall for a day i.e., on 31.12.2023 and the petitioner be permitted to use the same thereafter until a mutual resolution of the issue was arrived at between the petitioner and the respondents for the benefit of the public keeping in view of all the concerns

expressed by the respondent-Police or until the matter is heard in detail.

10. In response, learned AG fairly submits that the offer made on behalf of the petitioner deserves consideration since the petitioner itself has voluntarily come forward to close down the mall for a day, the respondent-Police would extend all necessary cooperation in arriving at amicable resolution of the matter.

11. Submissions are taken on record.

12. In that view of the matter what is required to be clarified at this juncture is that the impugned order which reads "restrict the public access to the Phoenix Mall of Asia" shall not be read as an Order completely prohibiting or preventing the petitioner from using the mall for its business purposes and shall also not be read as completely prohibiting and preventing the public from having access thereto.

13. Needless to note that any Order passed by the executive should be capable of its effective implementation in its letter and spirit. If it carries any ambiguity or is incapable of implementation such order per se becomes unsustainable.

14. Without expressing anything on the merits or otherwise of the matter, since the learned senior counsel for

the petitioner and learned AG have assured this Court that they would undertake exercise of deliberation of this matter in their earnest endeavour to arrive at an amicable resolution of the matter, they may do so and place such resolution, if any, before this Court on the next date of hearing. Till such time the undertaking given by the petitioner not opening the mall for a day i.e., on 31.12.2023 is taken as token of its bonafide intent in resolving the matter.

15. Having noted the submissions as above, it may be appropriate that the parties be directed to explore the possibilities at the earliest and they may meet at the Office of respondent No.2-Police Commissioner at 3.00 p.m., today and may submit the outcome of their meeting, if any, before this Court on 02.01.2024.

16. It is further clarified that no precipitative action be taken by the respondent-Police till matter is resolved amicably or further orders passed by this Court till the next date of hearing.

List this matter on 02.01.2024.

Sd/-
(M.G.S. KAMAL)
JUDGE