
(2017) 02 KAR CK 0199
In the Karnataka High Court
Case No : 4861-4862 of 2015

A. N. Nataraj and another

APPELLANT

Vs

Mysore City Corporation and others

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Citation : (2017) 02 KAR CK 0199

Hon'ble Judges : Jayant Patel, A. N. Venugopala Gowda

Bench : DIVISION BENCH

Advocate : Nanajunda Swamy N, H.C. Shivaramu, M. Krishnappa

Judgement

1. The present appeals are directed against the order, dated 14.10.2015, passed by the learned single Judge, whereby, the learned single Judge for the reasons recorded in the order has dismissed both the petitions.

2. The short facts of the case appears to be that the appellants are the persons who have purchased the land vide sale deed, dated 18.04.2011 having description Old No. 697, New No. F-42 and the said land was purchased from the 4th respondent. As per the appellants, thereafter khata was also transferred on 12.05.2011 by respondent Nos. 1 and 2 herein. On 16.10.2011, the 3rd respondent gave representation to respondent Nos. 1 and 2 for clarification about the measurement. On 13.12.2012, the 2nd respondent issued notice to call upon certain documents for the property held by the appellants. The appellants submitted reply. Thereafter, it appears that on 23.07.2013, the plan of the appellants was sanctioned by the 2nd respondent for permitting the construction. On 20.09.2013, 3rd respondent filed a civil suit being O.S.No.1185/2013 before the Civil Judge, Mysore and sought for declaration against the appellants and other respondents. On 05.10.2013, the Civil Court declined to grant temporary injunction restraining the appellants from making construction. Thereafter on 19.10.2013, respondent No. 3 again gave the representation to respondent Nos. 1 and 2 requesting to stop the construction. On 22.10.2013, the 2nd respondent issued notice to stop the construction. Again

on 20.12.2013, another notice was issued by 2nd respondent intimating for removal of construction. As per the appellants, the reply was submitted and ultimately by order dated 16.06.2014, the respondent Nos. 1 and 2 suspended the sanction granted to the appellants with immediate effect until final disposal. It appears that thereafter by the impugned order dated 23.01.2015, the Khata transferred on the name of the appellants has been cancelled by respondent No. 2 and they have further restored the Khata on the name of the earlier owner until the production of rectified sale deed to the extent of 55.5" x 36" ft. (undisputed area) is produced.

3. Under the circumstances, the petitioners preferred the writ petitions challenging the suspension of the sanction granted vide order, dated 16.06.2014 and the cancellation of Khata vide order, dated 23.01.2015. The learned single Judge after hearing both the sides found that it was a fraud and limitation cannot save the fraud and he further found that the civil suit is pending and unless and until Civil Court decides the matter, Corporation could not pass any order and the learned single Judge also observed that since the civil suit is pending between the parties, the question of interference in these petitions does not arise. The learned single Judge further observed that the respondents have acted in accordance with law and therefore, they cannot be faulted with and ultimately the learned single Judge dismissed the petitions. Under the circumstances, the present appeals before this Court.

4. We have heard Mr.Nanjunda Swamy N., learned Counsel appearing for the appellants and Mr. H. C. Shivaramu, learned Counsel appearing for respondent Nos. 1 and 2. Respondent No. 3 is served but none appears on his behalf.

5. The principal question which may arise for consideration is two-fold. One is for the observance of the principles of natural justice before cancellation/suspension of the sanction already granted for construction and the another is for cancellation of Khata in favour of the petitioners and restoring the Khata in the name of the earlier owner with the observation that the same shall be continued until the rectified deed is produced.

6. The learned Counsel appearing for the respondent Nos. 1 and 2, Mr. H. C. Shivaramu, is not in a position to show that whether any show-cause notice was given by the respondent-Corporation before cancellation of Khata or for cancellation/suspension of the sanctioned plan already granted. There are correspondence calling upon the documents, but the fact remains that no specific show-cause notice has been issued as to why the sanction already granted for construction should not be cancelled or as to why the Khata standing on the name of the appellants should not be cancelled. As such, the aforesaid aspects was the root of the matter, since observance of principles of natural justice before passing any adverse order against the party is a basic requirement under the law. As there is no dispute on the aspects that the show-cause notice has not been issued before passing both the orders, one for suspending the sanction already granted for construction and the another, cancellation of Khata, and

there is breach of non-observance of the principles of natural justice, both the impugned orders cannot be sustained in the eye of law.

7. In view of the above, as such, the other observations made by the learned single Judge even otherwise also would not survive, since the matter will have to be relegated to the competent authority for giving opportunity of hearing to the appellants and a fresh order will have to be passed. So far as pendency of the civil suit is concerned, we do not propose to make any observation, since the suit is pending before the Civil Court, but we find it appropriate to only observe that any observations made by the learned single Judge in the impugned order should not be interpreted to prejudice the rights of either party in the proceedings of O.S.No.1185/2013 and the Civil Court should be at the liberty to pass independent order on the basis of the material available before it.

8. We may also record that apart from the question of breach of principles of natural justice, the matter may also be required to be examined about the jurisdiction to restore the Khata and/or for rectification of the sale deed. But we do not propose to make any observations, since the authority is yet to consider the matter in accordance with law after the show-cause notice is given and the appellants are heard afresh.

9. In view of the above, the impugned order passed by the learned single Judge is set aside. The impugned order dated 16.06.2014 Annexure "AF" and the order, dated 23.01.2015 Annexure "AK" of the main petitions, both are set aside on the ground of breach of principles of natural justice. It is observed that it would be open to respondent Nos. 1 and 2 to issue a show-cause notice, which the appellants may reply in accordance with law. Thereafter, a fresh order may be passed preferably within a period of three months from the date of receipt of a certified copy of this order.

10. The learned Counsel appearing for the appellants has declared that until the fresh order is passed by respondent Nos. 1 and 2, the present status of the construction shall be maintained and no further construction shall be made. Hence, we also direct the appellants to abide by the declaration made before this Court. The appeals are allowed. Accordingly, no order as to costs.

Appeals allowed.