

(2016) 06 KAR CK 0113

In the Karnataka High Court

Case No : Writ Petition 31724 of 2016 (LB-BMP)

AD Lavanya Prasad

APPELLANT

Vs

Joint Commissioner, Bruhut Bangaluru Mahanagara Palike
(East)

RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Citation : (2016) 3 AirKarR 429

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Sri Shankarappa, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—Mr. Shankarappa, Adv. for petitioner.

The petitioner Ms. AD Lavanya Prasad d/o late A N Devaraj has filed the present writ petition against the Joint Commissioner of Bruhat Bangalore Mahanagara Palike, her brother - 2nd respondent Mr A D Suroop and the 3rd respondent - Assistant Revenue Officer, aggrieved by the Khatha Certificate issued by the 3rd respondent vide Annexure B on 9.6.2011 in the name of 2nd respondent, her brother in respect of the subject property situate at No. 73, Millers Road, Vasantha Nagar, Bangalore.

2. The petitioner claimed that the part of the property No. 73 was given to her by way of a partition deed dated 30.10.1954 between the various members of the family and her father late A.N. Devaraj who expired on 20.3.2012 also executed the Release Deed in her favour on 23.11.1991. She has also claimed that on the basis of these documents, she has already filed a civil suit viz., OS 62/2015 which is pending in the court of the City Civil Judge, CCH 2, Bangalore. The petitioner also is aggrieved by the order passed by the learned Joint Commissioner/1st respondent of BBMP in exercise of powers under Section 114 A of the Karnataka Municipal Corporations Act, 1976, which was passed upon the

revision petition filed by her against Annexure B, Khata Certificate.

3. Mr. Shankarappa, learned counsel for the petitioner urged that the representations made by the petitioner before the respondent authority have not been considered by the said authority and on the basis of certain forged documents, the katha certificate for property No. 73 has been issued in favour of private respondent 2, her brother, without considering the representations and evidences led by the revisionist petitioner and therefore, the said order deserves to be quashed by this Court.

4. I have heard the learned counsel at some length and perused the record.

5. The impugned order Annexure H dated 23.5.2016, the English translated copy of which is placed on record, gives the following reasons in the operative portion of the order which is quoted below for ready reference:

Sri. A.N. Devraj's daughter applicant, with regard to the rights over the property, it is found that she has filed an original suit in the court in OS 62/2015, it is observed that after the applicant has given the affidavit, khata is transferred to the name of the first respondent. In view of this between the parties it is found that with regard to property rights there are differences. In view of the above reasons, in this case after the court gives its verdict as per the orders, it is suitable with regard to khatha. further action is to be taken, with this opinion, I pass the following order.

Order

The application of the applicant is rejected. After the civil court verdict comes out, as per the order with regard to Khata, action will be taken till then it is hereby ordered that the Khata will be continued as is now.

6. Since admittedly the petitioner, sister and the 2nd respondent brother are already parties in the civil suit OS 62/2015, unless and until their respective rights about the said property No. 73 are determined by the Civil Court, on the basis of the relevant evidence led by them, no fault can be found in the impugned order dated 23.5.2016 passed by the learned Joint Commissioner.

7. As far as the apprehension of the petitioner, as contended by learned counsel for the petitioner, that 2nd respondent may deal with property No. 73 in his own manner and may even dispose of the same on the basis of the said Katha Certificate with the rejection of the revision petition filed by the present petitioner under Section 114 A of the Act, such apprehension or grievance can very well be raised before the competent Civil Court itself where the aforesaid suit is pending. The offshoot litigation, in the form of the present writ petition, for the same cause or even for an ancillary relief which could be claimed before the trial court in the civil suit itself, cannot be permitted to be brought before this Court by way of invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The impugned order Annexure H dated 23.5.2016 passed by the learned Joint Commissioner in exercise of powers under

Section 114 A of the Act cannot be said to be ex-facie without jurisdiction. No such patent lack of jurisdiction is found in the impugned order. Even though the words employed in Section 114 A of the Act is "Commissioner" and not the "Joint Commissioner" as such, but a perusal of the definition of the term "Commissioner" defined under Section 2(5) shows that it includes a person appointed to act as Commissioner under Section 16 of the Act which permits the Government to appoint any person to act as Commissioner in his absence and Section 67 of the Act further permits the delegation of power by the Commissioner himself by an order in writing in favour of any other Officer of the concerned Municipal Corporation. It is not the case of the petitioner that the Joint Commissioner, who passed the impugned order Annexure H dated 23.5.2016, was not so authorised or did not have appropriate jurisdiction to pass the said order. The only grievance made about the impugned order is that the evidence adduced by the petitioner was not properly considered by him.

8. As already observed above, this Court does not find any such lacunae in the order passed by the learned Commissioner and on the other hand, the reasons assigned by the said Joint Commissioner in the impugned order that it would be appropriate to await the decision of the competent court in OS 62/2015 between the same parties and thereafter only to initiate appropriate action for change of khata entries, cannot be said to be a wrong reason for passing the impugned order. In view of this, the present writ petition is found to be devoid of merit.

9. Writ petition is accordingly, dismissed. No order as to costs.