
(2014) 11 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 47962 of 2012 (LB-BMP)

B.M. Subramani

APPELLANT

Vs

The Commissioner

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 114, 299, 300, 308, 321[1]

Citation : (2014) 11 KAR CK 0008

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Ragupathy K., Advocate for the Appellant; B.V. Shankarnarayan Rao and Prabha R. Girimaji, Advocate for the Respondent

Judgement

Ram Mohan Reddy, J.—Petitioner purchased the immovable property in question being a vacant site, under a sale deed dated 25.3.2011 Annexure-D for a valuable consideration, from his vendor in title, by name, Shyamala, who on an application to the Bruhat Bangalore Mahanagara Palike, for short "BBMP", had her name recorded in the property register declaring the property in question to be a vacant site without a building thereon, the extract of which is Annexure-E as on 24.3.2011 i.e., immediately preceding the sale deed Annexure-D. Petitioner did not apply for change of entry in the property register, to record his name and therefore "BBMP" was not aware of the purchase of the property by the petitioner. However, since the name of the petitioner's vendor was found in the property register and having noticed a massive unauthorized construction put up on the site in question, issued notices u/s. 321[1], [2] and [3], 300 and 308 of the Karnataka Municipal Corporations Act, 1976, for short "Act", Annexures-A, B, C & J, alleging that said Shyamala had put up construction of ground plus four floors on the vacant site without prior permission or sanction of building plans. Hence this petition.

2. Heard learned Counsel for the petitioner who submits that petitioner is a law abiding citizen and that he utilized the building plan Annexure-G said to be

approved by the City Municipal Council, K.R. Puram, on 22.7.2004, in the name of the petitioner's vendor in title.

3. The Submission of the learned Counsel for petitioner deserves to be rejected at the threshold. Section 361 of the Karnataka Municipalities Act, 1964, provides for conversion of Town Municipal areas into City Municipal Areas. The building plan allegedly was sanctioned by the then existing City Municipal Council of K.R. Puram. If that is so, u/s. 361[3], licences issued shall continue to be in force and deemed to have been issued under the provisions of the Karnataka Municipalities Act, 1964. Section 187 of the Karnataka Municipalities Act, 1964 provides for issue of notice of new building while sub-section [2] states that no construction or reconstruction referred to in sub-section [1] can be taken unless and until permission for execution of the work is granted under that section, while sub-section [3] provides for permission to construct a building. Sub-section [6] states that no person who becomes entitled u/s. sub-section [3] or [5], provided that any intended work of which notice is required under sub-section [1] shall commence work after expiry of one year from the date on which he is entitled, so as to proceed therewith, unless a fresh application is made under sub-section [1], fresh permission is granted under sub-section [3] or deemed to have been granted under sub-section[5].

4. In the light of the aforesaid statutory provisions, the sanction/permission accorded to the building plan on 22.7.2004 by the City Municipal Council, could not have been put into force for construction of the building during the year 2012 without prior permission on a fresh application. Even otherwise, by 25.3.2011, the construction was not put up on the site in question and as on that day too, sanction/permission Dt. 22.7.04 had come to an end on the expiry of one year there from.. Yet again, the immovable property in question having fallen within the territorial jurisdiction of "BBMP" the name of petitioner's vendor in title was registered in the assessment register for payment of tax over vacant site.

5. The execution of the sale deed of the site in question, on 25.03.11 required the petitioner to file an application under section 299 of the "Act" read with "BBMP" building bye-laws 2003 and the zoning regulations 2007 under the Karnataka Town & Country Planning Act, 1961 and having not done so the BBMP was justified in issuing the notices impugned, through in the name of petitioner's vendor in title. Had the petitioner informed the BBMP of the acquisition of right title and interest in the said property and requested for change of entry in the assessment register as required by Sec. 114 of the "Act" perhaps BBMP would have issued the notices in the name of the petitioner.

6. In the circumstances, it is too far fetched for the petitioner to contend that the sanction/permission of the building plan obtained by his vendor in title during the year 2004 was valid to put up construction of the building during the year 2011. In other words, the building erected by the petitioner on the site in question is not only unauthorized, but illegal.

7. In the circumstances, petitioner is not entitled to any relief much less quashing orders Annexures- A, B & C as well as Notice Annexure-J. No writ of mandamus lies directing the 3rd respondent to issue fresh notice to the petitioner.

8. Petition is dismissed with cost quantified at Rs. 10,000/- to be deposited with the Registrar General of this Court by 22.11.2014, failing which the Registrar General is directed to execute this order as a decree.