
(2016) 06 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No. 78468 of 2013 (LB-RES)

Devappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-06-2016

Acts Referred:

Citation : (2016) 3 AirKarR 430

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Sri Sachin S. Magadum, Advocate, for the Appellant; Sri Ravi V. Hosamani, AGA, Sri Bahubali N. Kanabargi, Advocate, Sri Jagadish Patil, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 22nd February, 2013 passed by the 1st respondent as at Annexure "K" to the petition.

2. The petitioner was elected as a Chairman of respondent No. 3/Gram Panchayat. The Panchayat owned the properties bearing VPC Nos. 2418 and 2299. The said properties were sought to be exchanged in lieu of certain properties belonging to Sri. Dundappa Shrimantappa Naik and Sri. Vinod Muttappa Jyotigond. During the term of the petitioner as a Chairman of the Panchayat, since the said exchange was to be affected, the subject was placed before the meeting of the Gram Panchayat and the same was approved by Resolution Nos. 3 and 5 respectively. Pursuant to the same, the petitioner being the Chairman of the Panchayat has executed the exchange deeds and parted with the properties belonging to respondent No. 3/Panchayat. On a complaint made against the petitioner that he had parted with the properties belonging to respondent No. 3/Panchayat without following the due process by seeking approval as per law, action was initiated and after holding the enquiry under the provisions of Karnataka Panchayat Raj Act, 1993 (for short "the Act"),

respondent No. 1 in exercise of the power under Section 43A of the Act has disqualified the petitioner from continuing as a member of the Panchayat. As a result of the same, Criminal proceedings have also been launched. The petitioner claiming to be aggrieved by the same is before this Court.

3. Having heard the learned counsel for the parties, I have perused the petition papers.

4. The learned counsel for the petitioner while assailing the impugned order would contend that the exchange as made was pursuant to the Resolution passed in the Panchayat and as such, holding die petitioner alone responsible for such act would not be justified. It is his further contention that the requirement of the provision has been complied by passing the Resolution and therefore, when the Resolution has been passed, if at all any action was to be taken, all persons who have participated in passing of resolution should have also been proceeded against. In that light, it is contended that action initiated against the petitioner and the order impugned dated 22nd February, 2013 is not Sustainable. Consequent action of initiating criminal proceedings is also attacked on the same ground.

5. Learned AGA appearing for respondent No. 1 would however seek to sustain the order. It is contended that the order impugned would clearly indicate that the authority, on taking note of the provision contained in Section 209 of the Act, on finding that the same has been violated and in that light, the property belonging to the Panchayat has been parted without following the due process of law, has arrived at the conclusion that the petitioner being responsible for the same, cannot continue as a member of the Panchayat.

6. In the light of the contention, I have perused the petition papers, including the order impugned at Annexure "K" to the petition.

7. The order dated 22nd February, 2013 is an exhaustive one. Respondent No. 1 has taken into consideration the entire consequences and prior to passing of the order, notice has been issued to the petitioner and after providing an opportunity to put forth the contentions on 21st February, 2012, the contentions as put forth has been adverted and thereafter, the order has been passed. The contention, essentially, even before the authority was that the Panchayat had considered this aspect of the matter and a Resolution had been passed and pursuant to such resolution, exchange has been made. By adverting to that aspect of the matter, though respondent No. 1 has found that such Resolution had been passed, what is noticed by the respondents is that the procedure as contemplated under Section 209 of the Act had not been followed. Section 209 of the Act provides the procedure to be followed when the Gram Panchayat acquires, holds or disposes off the property. In addition to passing the Resolution, the Gram Panchayat was therefore required to seek the approval of the Taluk Panchayat and only thereafter, the property could be disposed off or be parted with in any other manner.

8. In the instant case, though it is contended on behalf of the petitioner that Resolution Nos. 3 and 5 have been passed in respect of two items of the properties, there is absolutely no material on record to indicate that pursuant to such Resolution, the approval of the Taluk Panchayat as contemplated under Section 209 of the Act has been sought. On the other hand, immediately after the Resolution was passed, the petitioner as a Chairman of the Panchayat has taken steps to execute the exchange deed and part with the properties to the private persons. Therefore, when the approval from the Taluk Panchayat has not been taken and when there is violation of the provisions, the action as initiated by the respondent No. 1 against the petitioner would be justified. The contention that the action has not been initiated against the other members of the Panchayat though they are parties to the Resolution is raised, such contention cannot advance the case of the petitioner to nullify the action taken against the petitioner. At best, all of them could have been proceeded against but not having been proceeded would not be available as contention to exonerate the petitioner on parity. Therefore, insofar as the order dated 22nd February, 2013, I see no error committed by the respondent No. 1 so as to call for interference.

9. With regard to the consequential criminal proceedings which has been launched against the petitioner, certainly the petitioner would have his defences available to be put-forth in the criminal proceedings and in that regard all contentions of the petitioner are left open to be urged in the said proceedings.

10. In terms of the above, the petition stands disposed of.