

(2001) 02 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 12145 of 1999

Devaraj and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 72 (2)

Citation : AIR 2001 Kar 298 : (2001) ILR (Kar) 2646 : (2001) 2 KCCR 1321

Hon'ble Judges : N. Kumar, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Ravi B. Naik, for the Appellant; G.S. Visweswara, (for Nos. 6 and 7), Bychappa, A.G.A. (for Nos. 1, 2 and 4) and M. Papanna, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

Kumar, J.—The petitioners have filed this writ petition purporting to be in the public interest for quashing of the order dated 16-3-99 granting the site measuring 16 feet x 34 feet in front of house situated at Khata Nos. 2519 and 2519A at Bye-pass Road of Kalkuniki, Hunsur Town and K. R. Nagar in favour of Sri Ramesh and Sri Narsaiah, respondents 6 and 7 to this writ petition on the ground that sixth respondent Sri Ramesh being the President of the Town Municipal Council has misused his position in getting the said land in his favour and in favour of the seventh respondent, his brother.

2. The first petitioner is the Ex-Municipal Councillor whereas the second petitioner is a sitting Councillor of Town Municipal Council, Hunsur. Their case is that property bearing No. 1199/2519 measuring 23" x 34" and 1200/25/A measuring 23" x 34" belong to the Town Municipal Council. These two vacant sites are abutting the main road at Kalkunike, Hunsur, and each of these properties are worth more than 10 lakhs. The sixth respondent who is the President of the Town Municipal Council taking advantage of his position has got sanctioned one of the properties mentioned above in his favour and the other

property in favour of seventh respondent who is none other than his brother, falsely representing to the Secretary of the Urban Development Authority that the value of the property does not exceed Rs. 34.50 per square feet. The second respondent sanctioned the above mentioned two properties in favour of 6th and 7th respondents vide the order dated 16-1-1999. It is their specific case that when the property belong to the Town Municipal Council, the second respondent without authority of law has passed the impugned order based upon a resolution alleged to have been passed by the Town Municipal Council on 30-6-1980. After a lapse of 18 years the resolution dated 30-6-1980 is sought to be acted upon and the order of allotment is passed on 16-1-99. It is their case that on coming to know of that allotment they have made petitions to the fifth respondent the Divisional Commissioner and to other authorities who have failed to take any action. Based on the said allotment the khatas have now been entered in the name of respondents 6 and 7 and they without obtaining any plan and licence sanctioned have commenced constructions and they are hurrying through the construction with an intention to defeat the rights of the Town Municipal Council.

3. Respondents 1, 2 and 4 have filed a detailed statement of objections contending that the petitioners have not disclosed all the facts to prove the bona fides of the litigation and it is, a case of abuse of the process of the Court and they are vindicating their private rights for wrecking vengeance against respondents 6 and 7. The land granted by the State Government is a vacant site in front of the house of respondents 6 and 7 and it has been granted in accordance with law. Elaborating their contentions it is pointed out that the third respondent Town Municipal Council on receiving representations from respondents 6 and 7 passed a resolution in its meeting held on 30-6-1980 resolving to grant the vacant site in front of their respective houses. The Deputy Commissioner had sent the above said resolution recommending the grant. Thereafter, the State Government on perusal of the records and the recommendation of the Deputy Commissioner and the statistics regarding the rate to be charged by the Sub Registrar, Hunsur, has passed the order dated 16-1-99 according sanction of the said vacant sites in front of the house property of respondents 6 and 7 u/s 72(2) of the Karnataka Municipalities Act, 1964 which is valid, legal and in accordance with law. Thereafter, the khata has been transferred in their names. Respondents 6 and 7 have obtained the required licence from the third respondent for construction of the shopping complex and have paid the tax to get the licence. Therefore, there is no illegality committed by any of the authorities. All these facts are within the knowledge of the petitioners who have suppressed the same and have filed the present petition on false and baseless allegations and therefore they have prayed for dismissal of the writ petition.

4. Learned counsel for the petitioners submitted that respondent No. 6 has misused his official position in obtaining the land and consequently he submitted that the grant made by the Government is without the authority of law and therefore illegal and thirdly respondents 6 and 7 are putting up constructions

without getting sanction plan and licence and therefore the petitioners are entitled to get the grant and the khata endorsement made in favour of respondents 6 and 7 quashed.

5. We have heard the counsels appearing for the parties. The undisputed facts which emerge from the material on record is that the application for grant of the said land was made by respondents 6 and 7 in 1980 on the basis of which a resolution came to be passed on 30-6-1980. Respondent No. 6 was not the President of the Town Municipality nor he was even a Councillor at the time of the resolution. The prevailing rate is Rs. 34.50 per square feet. The land in question is situated in front of the respective properties of respondents 6 and 7 which are small bits which are not independent sites. Taking into consideration these aspects the Deputy Commissioner has recommended for allotment of grant of the said vacant land in favour of respondents 6 and 7. Incidentally it is during the presidentship of 6th respondent nearly 19 years after the resolution the Government has accorded sanction on 16-1-99 u/s 72(2) of the Karnataka Municipalities Act, 1964. Therefore, no illegality is committed by any of the authorities in grant of the said land. Though the resolution to grant the said land was passed by the municipality in the year 1980 the petitioners did not choose to challenge the said resolution for over a period of 19 years and they are challenging the Government Order after the resolution has been accepted by the Government. The Government has the power under the Act to grant such lands on the basis of the resolution of the Municipality and on recommendation by the Deputy Commissioner. The site in question is small bit of land which is situated in front of the properties of respondents 6 and 7 which will be of no use to others. Merely because the sixth respondent happens to be the President and the site in question happens to belong to Municipality and the Government has passed the order granting it during his tenure as President no motives could be attributed to such an action which is otherwise legal and valid. 6th and 7 respondents have obtained a valid licence, sanction plan and are putting up constructions in accordance with law and no fault could be found with regarding this action of theirs.

6. The facts narrated supra makes it clear that the above writ petition is filed under the garb of public interest litigation out of vengeance because of political rivalry and the petitioners are vindicating their private rights of wrecking vengeance against respondents 6 and 7. Therefore the petition lacks bona fides. As such the petitioners are not entitled to the reliefs prayed for. There is no merit in this writ petition. Accordingly it is dismissed.