

(1998) 01 KAR CK 0025
In the Karnataka High Court
Case No : Writ Petition No. 29400 of 1997

Dr. V. Lakshmid devi and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 20-01-1998

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 98

Citation : (1998) ILR (Kar) 1035 : (1998) 3 KarLJ 140

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Sri K.S. Ramadas, for the Appellant; Sri A. Nagarajappa, Government Advocate and Sri Ashok Harnahalli, for the Respondent

Judgement

1. This petition is by the legal representatives of one Sri S.G. Jayaram. The Corporation had passed a resolution to lease the property measuring 30 feet X 60 feet at the junction of Infantry Road and Cunningham road, Bangalore for a period of 35 years in favour of Sri S.G. Jayaram. Thereafter, after obtaining the approval from the State Government, the Corporation leased the said property in favour of the petitioner under the lease deed dated 10-11-1975 and put the said Sri S.G. Jayaram in possession of the property. After some years, the Corporation treating the possession of Sri S.G. Jayaram as unauthorised initiated the proceedings for eviction under the provisions of the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974. The Competent Authority ultimately had passed an order of eviction directing Sri S.G. Jayaram to vacate and handover possession of the property. This order was challenged by Sri S.G. Jayaram by way of an appeal in Miscellaneous Appeal No. 172 of 1990 before the 10th Additional City Civil "Court, Bangalore. The City Civil Court by its order dated 17-04-1993 allowed the appeal and set-aside the order of eviction passed by the Competent Authority.

2. At this stage, it is relevant to mention certain facts prior to the order passed by the District Judge in the appeal referred to above. Sri S.G. Jayaram,

immediately after the lease in his favour obtained the licence to put up a Commercial Complex on the said land. It is submitted that the efforts of the lessee to put up construction was prevented by the Corporation for one reason or the other. On 06-03-1986 the Corporation had passed the resolution resolving to cancel the licence and submitted the same to the State Government for approval. On the said resolution, the Government has passed an order dated 04-03-1997 cancelling the lease made in favour of Sri S.G. Jayaram in exercise of its power u/s 98 of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as "Act")- This order is under challenge in this writ petition.

3. Sri K.S. Ramadas, learned Counsel appearing for the petitioners submitted that the Government has no jurisdiction to cancel the lease executed by the Corporation in favour of Sri S.G. Jayaram u/s 98 of the Act. In reply to the said contention, the learned Government Advocate and Sri Ashok Harnahalli appearing for the Corporation submitted that the Government being the authority to accord approval for the purpose of granting lease, also have the power to cancel the lease if it is of the opinion that the said lease is likely to lead to a breach of peace or to cause injury or annoyance to the public or to any class or body of persons or is prejudicial to the interest of the Corporation. On these rival contentions the question that arises for consideration is whether the State Government has the power u/s 98 of the Act to cancel the lease entered into between the Corporation and Sri S.G. Jayaram. In order to consider this question, it is relevant to extract Section 98 of the Act.

Section 98 reads as follows.--

"98. Submission of copies of resolution to Government and Government's power to cancel resolution and orders.--

(1) The Commissioner shall submit to the Government copies of all resolutions of the Corporation.

(2) If the Government is of the opinion that the execution of any resolution or order of the Corporation or of any other authority or Officer subordinate thereto or the doing of any act which is about to be done or is being done by or on behalf of the Corporation is in contravention of or in excess of the powers conferred by this Act or of any other law for the time being in force or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons or is prejudicial to the interest of the corporation it may by order in writing, suspend the execution of such resolution or order, or prohibit the doing of any such act after issuing a notice to the corporation to show cause within a date to be specified which shall not to be less than fifteen days why.--

(a) the resolution or order may not be cancelled in whole or in part; or

(b) any bye-law or regulation concerned may not be repealed in whole or in part.

(3) Upon consideration of the reply, if any received from the Corporation and after such enquiry as it thinks fit, Government may pass orders cancelling the

resolution or order or repealing the bye-law or regulation and communicate the same to the Corporation.

(4) Government may at any time, on further representation by the Corporation or otherwise, revise, modify or revoke an order passed under sub-section (3)".

From the reading of Section 98, it is clear, if the Government is of the opinion that the execution of any resolution or order of the Corporation which is about to be done or is being done by or on behalf of the Corporation is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons may suspend the execution of such resolution or order or prohibit the doing of such act. Thereafter, after notice to the Corporation, the Government may cancel such resolution or order. If the resolution or order has already been executed, no power is available to the Government either to suspend or cancel the resolution or order. In the case on hand the resolution of the Corporation has already been executed by executing the lease deed in favour of Jayaram after obtaining the approval of the Government.

4. Under the scheme of the Act, no doubt the Government is conferred with a power to accord approval or sanction if the lease is for certain period. But, after according approval, no power is conferred on the Government to cancel the lease entered into between the parties after obtaining the approval or sanction. Therefore, for, all these reasons, I am of the view the order passed by the State Government cancelling the lease entered into between the parties is without any authority of law.

5. It is nextly contended by the learned Counsel for the Corporation that the Government order is on the basis of the resolution of the Corporation which according to him amounts to termination of lease. If at all there is any termination of lease, it must be in accordance with the provisions of the Transfer of Property Act or pursuant to any other clause in the contract. In the instant case, there is no such termination either under the provisions of the Transfer of Property Act or as per the terms of the Contract. Therefore, the resolution if any passed by the Corporation and submitted to the State Government for approval and according approval by the Government do not constitute a valid termination of lease. However, this order will not come in the way of Corporation taking any step or action either to terminate lease or otherwise. In the result, I pass the following order.--

The writ petition is allowed. The order of the State Government dated 04-03-1997 as per Annexure-H and communication dated 14-07-1997 as per Annexure-G are quashed.

Parties to bear their own costs.