

(2005) 09 KAR CK 0074
In the Karnataka High Court
Case No : Writ Petition No. 27590 of 2002

G.A. Wahid Khan

APPELLANT

Vs

Gruha Nirmana Sahakara Sangha, K.R. Nagara and Others

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Karnataka Co-operative Societies Act, 1959 — Section 118, 70

Citation : (2006) 1 KCCR 55 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Vagdevi Associates, for the Appellant; T.N. Raghupathy, Caveator-Respondent 1 and Shashidhar S. Karamadi, A.G.A. for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner in this petition, questioning the legality and validity of the award passed in Miscellaneous Dispute No. 4 of 1997-98 on the file of the second respondent-Assistant Registrar of Co-operative Societies, Hunsur Sub-Division, Hunsur, Mysore District and also the order passed by the Karnataka Appellate Tribunal, Bangalore in Appeal No. 509 of 1998, dated 2nd September, 1998 and 16th May, 2002 respectively vide Annexure-A and C, as illegal and unsustainable, has presented the instant writ petition.

2. The grievance of the petitioner in the instant writ petition is that, he was the former Director and former Honorary Secretary of the first respondent-Gruha Nirmana Sahakara Sangha (hereinafter called "Sangha"). The first respondent-Sangha has passed the resolution dated 8th February, 2004 authorising the petitioner to purchase the land referred to in the original proceedings as the suit schedule land. Further, an agreement to purchase the said land has been executed by petitioner on 11th August, 1994 in favour of the President of the Sangha and the agreement was for getting the land in question converted into

non-agricultural land and thereafter wards to transfer the same in the name of the Sangha. After the said land was converted into non-agricultural land, the petitioner purchased the said land in his own name and did not transfer the said property to the Sangha, first respondent. Therefore, the Sangha was constrained to raise a dispute u/s 70 of the Karnataka Co-operative Societies Act, 1959 (for short, "Act") and requested the Competent Authority to refer the matter for adjudication. The Competent Authority, in turn, has referred the matter to the Arbitrator, the second respondent herein and the said dispute has been numbered as Miscellaneous Dispute No. 4 of 1997-98. The second respondent, after careful evaluation of the oral and documentary evidence available on file, after affording an opportunity to both parties, has passed the award dated 2nd September, 1998 vide Annexure-A. Being aggrieved by the order passed by the second respondent, petitioner herein has filed the appeal on the file of the Karnataka Appellate Tribunal, Bangalore ("Tribunal" for brevity) in Appeal No. 509 of 1998. The appeal filed by the petitioner has been dismissed confirming the award passed by the Arbitrator. Assailing the correctness of the impugned orders passed by the respondents 2 and 3 vide Annexure-A and C respectively, referred above, petitioner felt necessitated to present the instant writ petition.

3. The principal submission canvassed by Sri Sridhar, learned Counsel appearing for petitioner is that, the dispute entertained u/s 70 of the Act by second respondent is one without jurisdiction for the reason that, petitioner has purchased the land in question in his own name and not on behalf of the Sangha and that, the same is nothing but a "benami" transaction. Further, he vehemently submitted that, the second respondent was in error in holding that, the land in question was purchased by the petitioner from out of the funds of the Sangha and the same is unsustainable for want of evidence in that regard. This aspect of the matter has not been considered by the Appellate Authority-Tribunal. Further, he submitted that, both the authorities have committed gross error in not considering" the specific ground and contention taken by petitioner that, the claim of the land in question by the Sangha is plainly hit by the provisions of the Benami Transactions (Prohibition) Act, 1988. Further, he submitted that, the contention as regards the invasion of the principles of natural justice has also not been properly considered and appreciated by Tribunal and thereby the Tribunal has committed an error in dismissing the appeal without considering the matter on merits of the case and the case made out by petitioner. He further, submitted that, the Tribunal has failed to consider the Apex Court judgment relied upon by petitioner in Gurucharan Singh Vs. Kamla Singh and Others, and the decision in Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), . Therefore, he submitted that, the impugned orders passed by both the authorities are liable to be set aside.

4. Per contra, learned Counsel appearing for first respondent-Sangha, inter alia, contended and substantiated the impugned orders passed by both the authorities stating that, the same are in strict compliance of the mandatory provisions of the Act and the Karnataka Co-operative Societies Rules, 1960 ("Rules" for short). To

substantiate the said submission, he submitted that, there was no other option for the first respondent-Sangha but to raise a dispute u/s 70 of the Act for the reason that, there is a total bar on the jurisdiction of the Civil Courts u/s 118 of the Act, He submitted that, both the authorities have, after critical evaluation of oral and documentary evidence available on file, have recorded specific finding that, in view of the agreement executed by the petitioner with first respondent-Sangha, the provisions of benami transaction are not all attracted and there was no violation of principles of natural justice by second respondent. Further, he submitted that, petitioner has availed the remedy of filing a statutory appeal before the Tribunal. Before the Tribunal, all the contentions raised by petitioner have been fully heard and therefore, the contention raised by learned Counsel for petitioner that, there is violation of principles of natural justice, is untenable and cannot be accepted. He submitted that, the petitioner has illegally and clandestinely sold about five sites during the pendency of the appeal, that too, when there was an order, restraining the petitioner from alienating any portion of the property in question. Therefore, equity does not lie in favour of petitioner. He submitted that, both the authorities have taken into consideration the aim and object of the first respondent-Sangha, which is for a public cause of distribution of sites to its members. The said purpose will be defeated if the petitioner's contentions were to be accepted that, he is not liable to transfer the property to the Sangha. To substantiate the said submission, he placed reliance on the judgment of this Court in the case of Narasegowda Vs. HMT Employees House Building Co-operative Society Ltd., and vehemently submitted that, in the judgment of the Division Bench of this Court, in case of Murugayya v. L.B. Pawar and Ors. 1969(3) Mys. L.J. 196. It is held that, if it is a dispute falling within Section 70 of the Act, it will suffice if it is observed that, the ratio laid down in the said case applies on all force to the facts of this case. The dispute in this case is between the members of the first respondent-Sangha and petitioner who was a former Director and former Honorary Secretary of the first respondent-Sangha. If once it can be held that, the purchase of the sites and the allotment of the same to its members is the business of the Sangha/Society, the dispute relating to cancellation of sites and allotment of the same to some other members will also come within the compass of, that expression "dispute touching the business of the society". This aspect of the matter has been rightly considered by both the authorities and they have passed the impugned orders recording concurrent finding of fact against the petitioner. Therefore, he submitted that, petitioner is not entitled to seek for any relief at the hands of this Court nor has he made out any good grounds under Article 227 of the Constitution of India. Hence, the writ petition filed by petitioner is liable to be dismissed.

5. Having heard learned Counsel for petitioner and learned Counsel for respondents for considerable length of time and after considering the rival contentions urged by both the Counsels, the only question that arise for consideration in the instant writ petition is as to:

Whether the impugned orders passed by both the authorities are sustainable in

law?

After careful perusal of the impugned orders passed by respondents 2 and 3, it emerges on the face of the said orders that, both the authorities have not committed any error much less irregularity as such in passing the same. It is not in dispute that, petitioner is the former Director and former Honorary Secretary of the first respondent-Sangha and it is also not in dispute that, the said Sangha has passed a resolution, authorising the petitioner to purchase the land by executing an agreement that, after conversion of the agricultural land into non-agricultural land, he shall transfer the said land to first respondent-Sangha. This aspect of the matter has been rightly considered and appreciated by both the authorities and given a specific finding with regard to the same. After critical evaluation of the oral and documentary evidence available on the file of both the authorities, it can be seen that, both the authorities have recorded concurrent finding of fact against the petitioner. Once the Competent Authority and the Appellate Authority have recorded concurrent finding of fact against the petitioner, interference by this Court is not justifiable in view of the well-settled law laid down by the Apex Court and this Court in catena of judgments. Therefore, I do not find any infirmity or illegality as such committed by respondents 2 and 3 in allowing the dispute raised by first respondent-Sangha and rejecting the contention taken by petitioner, by assigning reasons and by giving specific finding after considering all the grounds urged by petitioner. Therefore, interference by this Court at this stage, is not justifiable.

6. So far as the specific contention raised by Sri Sridhar, learned Counsel appearing for petitioner that, the dispute between the petitioner and first respondent-Sangha, is purely a dispute of civil nature and the order passed by the second respondent is one without jurisdiction is concerned, in my view, the said submission has no substance or force, as rightly pointed out by learned Counsel for first respondent-Sangha. With regard to the submission that, the nature of dispute touches the business of the Sangha and that there is a total bar on the Sangha to file a civil suit as envisaged u/s 118 of the Act, there was an occasion for this Court to consider as to whether the dispute is maintainable u/s 70 of the Act, in this case of C. Narasegowda, wherein, this Court has held that:

Under these circumstances, it is clear that, the suit is barred by law, that is to say, by reason of Section 118 read with Section 70 of the Act.

Further, learned Single Judge of this Court in Narasegowda's case, has followed the judgment of the Division Bench of this Court in case of Murugayya, wherein it is held that:

A complaint by two members of a Housing Society against the Society and another member that the houses which should have been allotted to them had been wrongly allotted to the other member, is a dispute falling within Section 70 of the Act. It will suffice if it is observed that the ratio laid down in the said case applies on all force to the facts of this case.

In the instant case, in pursuance of the resolution passed by first respondent-Sangha, petitioner has been authorised to purchase the agricultural land and after the same is converted to non-agricultural land, the said property shall be transferred in the name of the first respondent-Sangha for distribution of sites to its members. It is purely a dispute between the members of the Sangha and the first respondent and therefore, the dispute filed u/s 70 of the Act by first respondent-Sangha is highly maintainable and the judgment of the learned Single Judge in Narasegowda's case, is directly applicable to the facts and circumstances in the instant case. In the said case, the expression "dispute touches the business of the society has been considered in detail and held that, the dispute is maintainable as held by the Division Bench of this Court in Murugayya's case, referred above. Therefore, there is no substance or force in the submission made by learned Counsel for petitioner when he contends that, the dispute filed by the first respondent-Sangha u/s 70 of the Act is not maintainable.

7. So far as the contention of the petitioner regarding the "benami transaction", he placed reliance on the well-settled principles of law laid down in the judgments of the Supreme Court referred above. But, in the instant case, it has been rightly considered and held by Appellate Tribunal that, the burden of proof is on the person who asserts that it is a benami transaction. Therefore, the burden of proof squarely rested on the appellant, who took such contention, for the first time, in this appeal. But, the appellant did not take any steps to adduce evidence or to prove such question of fact. Mere contention, without evidence is of no avail. He did not even enter the box and open his mouth to support his contention of benami transaction, for the reasons best known to him. Had this appellant adduced evidence in support of his contention, the second respondent would have taken the responsibility of rebutting such contention. In the absence of trial on the question of "benami transaction", it appears, it would not be fair on our part to proceed to resort to conjectures and surmises. Hence, this ground of appeal is of no help to the appellant. In my considered view, the said reasoning given by the Tribunal, in the impugned order, is just and reasonable. As a matter of fact, the petitioner has not taken any objections in the earlier proceeding and for the first time, he has taken the said ground before the Tribunal and the Tribunal has rightly considered and rejected by giving specific finding. Therefore, I do not find any infirmity or illegality as such committed by the authorities nor the petitioner has made out any good grounds for interference in the writ petition.

8. Having regard to the facts and circumstances of the case, as stated above, the instant writ petition filed by petitioner is dismissed as devoid of any merits.