

(1989) 06 KAR CK 0028
In the Karnataka High Court
Case No : W.P. No. 16722/1981

Gopalakrishna Nelli

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-06-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provision) Rules, 1966 — Rule 39

Citation : (1989) 3 KarLJ 312

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-In this writ petition, the petitioner has challenged the alienation made by the Municipality of Site No. 23A as it is referred to in the impugned order at Annexure-D to the petition.

2. Annexure-D is the order of the government dated 5th June 1983 according sanction to the alienation referred to therein.

3. The facts leading to this writ petition may be stated and they are as follows:

The area in question in Shimoga Town came under the control of Church of South India. The area which came under Church control was known as Mission Compound. With the permission of the Municipality, a lay out was formed and sites were formed. The petitioner purchased one such site among others. He purchased site No. 23. He has alleged that thereafter the Municipal Council took a decision as per resolution dated 31-7-1958 by which it was decided to sell the space lying between the main road and the sites purchased by some of the purchasers in the layout, so that they may have direct access to their sites from the main road. It is stated by the petitioner that some of the neighbouring site owners have been granted sites measuring 40 X 50 lying between the main road and their sites and they are enjoying the same. Petitioner made an application to the City Municipal Council, Shimoga, for the grant of site No. 23/A. The Municipal council decided to exchange for certain area belonging to one Panchakshariah

and another for the formation of a road the said site 23A adjoining the site purchased by the petitioner. In accordance with the requirement of Section 72(2) of the Karnataka Municipalities Act, permission was accorded by the government by its order dated 5th June 1981 to such an exchange. True copy of that order is at Annexure-D. The petitioner is thereby aggrieved and as such he has approached this court under Article 226 of the Constitution with the following prayer in the writ petition:

That Annexure-D may be quashed by issue of a writ of certiorari and further a writ of mandamus be issued to respondents 1 and 2, the State of Karnataka and the Commissioner of the City Municipal Council, Shimoga, respectively to grant site No. 23/A measuring 47 X 60 in Mission Compound area to the petitioner at the price mentioned in the resolution of the Municipality dated 18-8-1977.

4. The facts above stated are not in dispute.

5. On behalf of the second respondent, statement of objections have been filed wherein they have admitted substantially the facts stated earlier.

6. The third respondent has also filed his objection in that he has disputed the facts narrated. He has stated that the Municipality required site measuring 100" x 30" in Hosmane Extension for formation of road and that he and his father were the owners of that site. Instead of claiming compensation, they offered to the municipality the entire area measuring 100 x 57 ft in exchange for site No. 23-A and the municipality accepted that offer and thereafter conveyed the same by a deed of exchange on 5-8-1981 and as such the title of the Municipality to the site in question was transferred in accordance with law and therefore the petitioner is not entitled to any relief in this Court.

7. Some additional information was called for by the Court and the written objection was filed by the second respondent. The resolution is of the year 1958. But in the additional statement of objection, it is stated that there is no evidence of the same in the books of the Municipal Council.

8. Sri T.S. Ramachandra, learned counsel for the petitioner, however, contended that he has a certified copy of that resolution which was shown to the court and he further contended that the certified copy evidences that there was a resolution. On these facts and the relief asked for, what falls for consideration is, whether this Court can grant relief prayed for i.e., quashing Annexure-D and set aside the deed of exchange, which has been executed by the Shimoga Town Municipality in favour of the third respondent.

9. The argument of the learned counsel for the petitioner is that the government ought not to have accorded sanction as per Annexure-D without verifying that the Municipal Council was alienating the land contrary to the express mandate contained in Rule 39 of the Karnataka Municipalities (Guidance of Officers, grant of copies and Miscellaneous Provisions) Rules, 1966. That specific rule came up for consideration before this Court in *Jaichand v Town Municipality, Robertsonpet*.

Venkataramaiah, J., (as his Lordship then was) held that Rule 39 of the Rules directing giving of publicity to the proposal to dispose of lease-hold rights in respect of property belonging to a local authority, before it is so disposed of, cannot be overlooked and the rule is mandatory. He relied upon the earlier ruling of this Court in the case of Gurumurthappa v Corporation of the City of Bangalore, (1962 Mysore Law Journal, Supp., 162) and also a decision of the Supreme Court in the case of Guruswamy v State of Mysore, (AIR 1954 Supreme Court 592).

10. Mr. Ramachandra, learned counsel for the petitioner relying on the aforementioned decisions, states that the municipality has alienated the land in question viz., 23-A not only contrary to the earlier resolution sanctioning the same in his favour for sale at the fixed price, but also in contravention of Rule 39 of the aforementioned Rules.

11. The town Municipal Council which has been represented by counsel, has not placed any material before this Court nor denied the averments made in the petition that the said rule has been contravened or to show that there has been compliance of the mandate of the said rule. Therefore this Court must hold that the alienation made of immovable property contrary to Rule 39 of the rules to be void. If the government cannot apply its mind it is obvious that the order which is impugned in this writ petition (Annexure-D) which is contrary to the Rules must be quashed as being illegal and without authority of law. The rule is as follows:

"39. Procedure in respect of lease, sale or auction.-Save as otherwise provided in the Act or rules, when the municipal council proposes to lease, sell or auction any moveable or immoveable property, it shall give notice of such lease, sale or auction by- i) affixing copies thereof on the notice board of the offices of the municipal council;

ii) exhibiting copies thereof in all municipal reading rooms and places considered by the municipal council to be conspicuous within the municipality, iii) publication in a daily newspaper having wide circulation within the municipality, iv) by beat of drum or circulation of notice in the locality."

12. However, Sri Rudregowda, learned counsel for the third respondent-allottee of site No. 23-A urged two grounds to sustain the alienation in favour of respondent-3. The first ground was that Rule 39 was not attracted in the instant case. The property was alienated by a deed of exchange and not by sale or lease. He contended that the Transfer of Property Act itself makes distinction between the sale and exchange. The terms are used in Section 54 and 118 respectively, and what is not sale or lease mentioned in Rule 39 is not hit by that provision. Learned counsel has relied upon the decision of the Supreme Court in the case of Commissioner of Income Tax A.P. v M & G Stores, (AIR 1968 Supreme Court 200). In the said case, considering Sections 54 and 118 of the Transfer of Property Act, as well as Section 2(1) of Sale of Goods Act, the Supreme Court

held that in the absence of any definition in the Transfer of Property Act the word "price" used in Section 54, Transfer of Property Act must be construed in the same sense in which it is used in Section 4 read with Section 2(1) of the Sale of Goods Act. It is further held that in the presence of money consideration is therefore an essential element in a transaction of sale. If the consideration is not money but some other valuable consideration, it may be an exchange or barter but not a sale.

12. Undoubtedly, the decision rendered by the Supreme Court is binding on this Court and this Court must maintain the distinction between a sale and an exchange. But the question is whether the said ruling has any application for the interpretation of Rule 39 of the Rules with which we are concerned. I have extracted Rule 39 of the Rules earlier. It is seen from the language employed in the Rules, the expressions used are lease, sale or auction of any movable or immovable property. All forms of alienations are not listed to wit, exchange, gift or settlement or licence. In other words, the expressions lease, sale or auction must be liberally construed in order to give effect to the intention of the legislature in framing the rule so that the expressions are taken as illustrative and what is prohibited by the rule is alienation of the movable or immovable property belonging to the Municipality. The Rule provides for disposal of movable as well as immovable properties. If the expressions used to denote alienations are read limitedly, it will have the effect of permitting the town municipal council to exchange or gift away movable or immovable properties as not being hit by the Rule without giving due publicity to the sale as required by the Rule in the manner indicated therein.

13. Therefore, the ruling relied upon by the learned counsel for the third respondent has no relevance in its application to the interpretation or construction of the meaning and intent of Rule 39 of the Rules. If a narrow construction is put on the expression "sale" occurring in Rule 39 of the Rules, the effect will be giving licence to the Municipalities of the State to dispose of properties by modes other than sale or lease without observing the procedure prescribed therefor. Such construction would lead to an absurdity and will not give effect to the legislative intent and therefore should be avoided.

14. It was next contended by Mr. B. Rudregowda for the third respondent that this Court must take a sympathetic view because the petitioner has lost a very valuable piece of land measuring 100" x 57" much more than the area of site No. 23-A now exchanged under the deed of 1981. If there is a breach of mandatory rule or utter disregard by the Municipal Council or any of the officers and also the government, then the Court cannot allow its sympathy to rule and ignore the precedents of this Court and the Supreme Court. Whatever may be the circumstances under which alienation of the immovable properties of the municipality took place, non-observance of the mandatory Rule 39 of the Rules goes to the very root of the alienation and therefore the sanction accorded to such alienation by the government must be struck down by this Court.

15. This leads us to another aspect of the case i.e., with reference to the prayer asking this Court for a mandamus to the second respondent to implement its resolution of 1976. Now that sanction as at Annexure-D is quashed, a decision must be taken by the Administrator (the town municipal council has ceased to be in existence) as to what should be done.

16. When the Resolution of 1977 was not implemented, the petitioner at the relevant time should have brought it to the notice of the Administrator or the town municipal council which succeeded at that point of time. Nearly four years after the event he cannot ask this Court to issue a mandamus. If he has acquired any legal right, that must be asserted independently by a procedure known to law and in the appropriate forum.

17. As a limb of this aspect of the case, the next question that crops up before the Court is whether the deed of exchange as at Annexure-R1 to the statement of objection of the third respondent may be quashed or declared void by this Court exercising its jurisdiction under Article 226 of the Constitution. In terms of the provisions contained in Section 118 of the Transfer of Property Act, title from the municipal council, Shimoga, to the third respondent has passed on the document being registered. That instrument of conveyance may be set aside only by a procedure known to law and cannot be quashed by this Court under Article 226 of the Constitution. Therefore, the only relief which this Court may give the petitioner is to quash Annexure-D the government order sanctioning the alienation by way of exchange of plot No. 23-A which apparently was carved out for purpose of transferring the sale as the same is not found in the formation of the original lay-out. As a consequence of the government sanction being quashed on account of its patent illegality the town municipal council is bound to retrace its steps in conveying the property belonging to it contrary to law.

18. It was further argued by Mr. T.S. Ramachandra, learned counsel for the petitioner, that his access to the site has been impeded by the grant now made in favour of the third respondent. It may be so. If that access is shut-out, he has to have recourse to law of easements, to ensure that he has clear access to his property.

19. With these observations, leaving the parties to agitate their rights in the appropriate forums, this Court can only direct that Annexure-D be quashed and all other questions settled elsewhere in accordance with law.

20. But in the circumstances of the case, there will be no order as to costs.