

(2008) 09 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No. 16738 of 2005

Jayamma Reddy

APPELLANT

Vs

The Assistant Revenue Officer, Hombegowda Nagar Range,
The Deputy Commissioner (South) Corporation of City of
Bangalore, R. Babu Reddy and Corporation of City of
Bangalore

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 111, 114, 114 (1), 114 A

Citation : (2009) ILR (Kar) 458 : (2009) 3 KarLJ 630

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : V.S. Srinivas Raghavan and Poonam Patil, for Indus Law A/S, for the Appellant; Veena Jadav, for R1, 2 and 4 and G.L. Viswanath, for R3, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The residential property bearing No. 30/1 formerly bearing No. 17/6-30, Bannerghatta Road, 36th Division (Chinnaianapalya), Bangalore, was conveyed in favour of the petitioner under a Deed of sale dated 6-2-1974 Annexure-"A" and a Rectification Deed dated 18-07-1974 Annexure-"B", consequent upon which, a katha certificate Annexure-"C", was issued by the respondent - Corporation of the City of Bangalore recording the name of the petitioner in its records as being primarily responsible to pay the taxes. The petitioner having paid Corporation taxes for the years 2000-01 and 2001-02, when offered to pay taxes for the year 2003-04 and 2004-05, the 4th respondent City Corporation refused to receive the tax on the premise that the katha of the property was not in her name, which prompted the petitioner to address a petition dated 20-08-2004 Annexure-"E" to the 2nd respondent - Deputy Commissioner (South), Corporation of City of Bangalore, to investigate into the matter and to furnish copies of the order relating to the change of katha

from her name. The 2nd respondent, responded by furnishing a copy of the endorsement Annexure-"F" issued to the 3rd respondent, none other than the petitioner's son and a copy of the 3rd respondent's application for change of katha together with its enclosure being an unregistered Partition Deed, Annexures "G" and "H" respectively. The petitioner filed a representation, Annexure-J, to the 2nd respondent-Deputy Commissioner, objecting to the change of katha, alleging that she did not consent to the change of katha in favour of her son - the 3rd respondent, and that the 1st respondent - Assistant Revenue Officer did not extend an opportunity of hearing before effecting a change of katha. The 2nd respondent - Deputy Commissioner is said to have issued notice to both the 3rd respondent, and the petitioner, whence the petitioner filed written arguments, Annexure-"K", while the 3rd respondent filed objections, Annexure-"L", contending that the petitioner had executed a Partition Deed, wherein, the property in question fell to his share. The 2nd respondent, by order dated 29-04-2005 Annexure-"M", held that it was not within his jurisdiction to determine the validity or otherwise of the execution of the Partition Deed and directed the parties to the Civil Court to have their rights over the property in question adjudicated upon. Hence, this writ petition.

2. The petition is opposed by filing statement of objection dated 06.09.2005 of Respondents 1, 2 and 4, interalia contending that the 3rd respondent made an application dated 17.09.03 for change of katha of the property in question, into his name, enclosing the Memorandum of Family arrangement dated 27.09.2001 and a memorandum of partition dated 26.09.2003, the basis for the change of katha by endorsement dated 30.09.2003. According to the said respondents as the application was in accordance with Section 114 of the Karnataka Municipal Corporation Act, 1976, for short "Act", the change of katha cannot be found fault with and that the petitioner having questioned the validity of the partition deed and Memorandum of family arrangement, the respondents having no jurisdiction to decide the said dispute, justifiably rejected the petitioner's objections to the change of katha by order dated 29.04.2005. In addition it is contended that in the enquiry before the 2nd respondent, on the petitioner's complaint, it was noticed that the petitioner had acted upon the aforesaid two documents of title and the 3rd respondent's sisters had sworn to affidavits, confirming the execution of the said documents.

3. The petition is also opposed by filing statement of objections dated 19.06.2008 of respondent No. 3, contending that the writ petition is not maintainable due to suppression of material fact of the petitioner executing a deed of Gift dated 29.06.2004, of the property in question in favour of her husband Ramaiah Reddy, and was not entitled to have the katha changed to her name as on 20.08.2004, the date of complaint to the 2nd respondent. It is further contended that the property fallen to the share of his father by name Ramaiah Reddy, when acquired by CFTB, the compensation paid was consideration for purchase of the property in question and over which the building was erected on taking a loan, which when not repaid was subject matter of O.S. 10337/80. The

respondent claims to have discharged the loan leading to the Memorandum of family arrangement styled as "Settlement Deed", voluntarily executed by the petitioner Ramaiah Reddy, the 3rd respondent and his two sisters, followed by the "Pallu Patti" dated 26.09.2003, the basis for the application for change of katha. According to the respondent the family arrangement was given effect to and each of the parties exercised their right title and interest over the properties fallen to their respective shares. The additional Statement of Objections dtd. 24.09.2008, discloses that the said respondent has instituted a suit to declare his title to the said property and to declare the Gift deed as well and void and has obtained an Interim injunction restraining the petitioner from encumbering or alienating the said property.

4. Before proceeding to consider the contentions of the parties, it is expedient to advert to Section 114 of Karnataka Municipal Corporations Act, 1976, which reads thus:

114. Obligation of transferor and transferee to give notice of transfer-(1) Whenever the title of any person primarily liable to the payment of the property tax on any premises to or over such premises is transferred, the person whose title is transferred and the person to whom the same is transferred shall, within three months after the execution of the instrument of transfer or after its registration if it be registered or after the transfer is effected, if no instrument be executed, give notice of such transfer to the Commissioner.

(2) In the event of the death of any person primarily liable as aforesaid, the person to whom the title of the deceased shall be transferred as heir or otherwise shall give notice of such transfer to the Commissioner within one year from the death of the deceased.

(3) Whenever such transfer comes to the knowledge of the Commissioner or authorised officer through such notice the name of the transferee shall be entered in the property tax register.

(4) Every person who makes a transfer as aforesaid without giving such notice to the Commissioner, shall, in addition to any other liability which he may incur through such neglect, continue to be liable for the payment of the property tax assessed on the premises transferred until he gives notice or until the transfer shall have been recorded in the Corporation registers, but nothing in this section shall be held to affect:

(a) the liability of the transferee for the payment of the said tax; or

(b) the prior charge of the Corporation u/s 111.

(5) Notwithstanding anything contained in this Act, in respect of any building or vacant land belonging to the City of Mysore Improvement Trust Board, the Bangalore Development Authority or the Karnataka Housing Board or any local authority the possession of which has been delivered to any person in pursuance of any grant, allotment or lease by the Board or local authority concerned, the

transfer of title of any person primarily liable to the payment of property tax shall not be recorded in the Corporation registers without consulting the Board or local authority concerned.

5. For the purpose of this case, suffice it to notice that Sub-section (1) of Section 114 requires the transferor and the transferee to give a notice in writing to the Commissioner of the City Corporation over the change in right title and interest in the property, failing within the territorial limits of the Corporation. Section 114A empowers the Commissioner to review the order u/s 114, within a period of three years therefrom, if satisfied that the transfer of title was got recorded in the corporation register by fraud, misrepresentation or suppression of facts or by furnishing false, incorrect or incomplete material.

6. The word "katha" is not found in the Act, but in common parlance, over the years, is synonymous with the certificate issued by the Corporation in exercise of jurisdiction u/s 114 of the Act, recording the name of the owner/occupier of the immovable property, primarily responsible to pay the Corporation taxes. It is also true that this "katha", is important on account of its relevancy for variety of purposes, be it securing a gas connection, telephone line, driving licence, ration card, mortgage by deposit of title deeds, conveyance of immovable property, licence to erect a building, so on and so forth, though does not confer right title or interest in the immovable property.

7. The ownership of the property in question, in view of the registered conveyance deed dated 06.02.1974 Annexure-"A" and the rectification deed dated 18.07.1974 Annexure-"B", followed by the transfer of title in the registers of the City Corporation, in the name of the petitioner is not in dispute. The transfer of title of the property in question, in the records of the Corporation ought to precede the issue of notice by the transferor and the transferee, addressed to the Commissioner of the Corporation- The respondents have placed no material to establish notice in writing by the petitioner for transfer of title in favour of the 3rd respondent over the property in question in the registers of the Corporation.

8. The Learned Counsel for the petitioner contends that the (change of katha) transfer of title into the name of the 3rd respondent, in the records of the Corporation, not preceded by a notice in writing by the petitioner, is unsustainable and illegal being in violation of the mandate of Section 114 of the Act. This contention is sought to be countered by the learned Counsel for the respondents, by pointing out to Annexure-F form of notice of transfer of title to contend that the said form prescribed by the Commissioner does not contain the requirement of notice of the transferor. In addition it is contended that the Memorandum of Family settlement Annexure-G and the unregistered partition deed Annexure-H, executed by the petitioner indisputably transferred title to the immovable property in question in favour of the 3rd respondent, constituting substantial legal evidence of the said fact.

9. The contention that the unregistered documents Annexures "G" & "H" are substantial legal evidence of the transfer of title of the immovable property in question, is unacceptable in view of the petitioner's denial of their execution. That dispute being a pure question of fact is impermissible of an adjudication in a writ proceeding, and hence the contention must necessarily fail.

10. It is no doubt true that a perusal of Annexure-"F", the form for change of katha, does not provide for notice by the transferor but is an application by the transferee alone. This form according to the counsel for the Corporation was devised under a "Saral Katha Scheme", propounded by the then Commissioner of Corporation by name Ashok Dalwai during the year 2001. Having noticed the lacuna in the said form Annexure-"F", more appropriately not being Section 114 compliant, the present Commissioner for the (Corporation) Bruhat Bangalore Mahanagar Palike (BBMP) on 23.09.2008 filed a statement of compliance enclosing a copy of the explanation dated 26.08.2008 of Ashok Dalwai admitting the mistake, having crept in inadvertently, of omission to provide for notice by the transferor under the simplified scheme of transfer of katha. In addition the learned Counsel filed a memo enclosing the newspapers "New Indian Express" and "Vijaya Karnataka", dated 25.09.2008 causing public notice calling upon aggrieved transferors, whose katha stood transferred into the names of transferees, without notice of the transferor, and on the unilateral application of the transferee under the katha scheme.

11. In the circumstances, the petitioner did make out. a case for review of the order transferring the katha of the property in question in favour of the 3rd respondent, which the 3rd respondent, fell in serious error in declining to adjudicate upon. The transfer of katha in violation of Section 114 of the Act and the principles of natural justice, is illegal, and as a consequence the order of the 3rd respondent declining to review the order of transfer of katha, is unsustainable.

12. Although the Learned Counsel for the 3rd respondent seeks to persuade the Court to accept that the petitioner had, in the Partition Deed (unregistered), acceded to the fact that the 3rd could maintain an application for transfer of katha and have the same transferred, I am afraid, in the circumstances is unacceptable. I say so because of the mandate of Section 114 of the Act requiring both the parties to give notice of transfer.

13. Learned Counsel further points out to the Statement of objections to contend that the petitioner executed a Gift Deed on 29.06.2004 in terms of Annexure-F1, much prior to the application Annexure-J for redoing the katha into her name and therefore, no useful purpose would be served by restoring the katha into the name of the petitioner. In addition, the learned Counsel submits that the parties are presently before the Civil Court in O.S. No. 4455/1998 instituted by the 3rd respondent for a declaration of right, title and interest over the property in question and for cancellation of the Gift Deed. According to the learned Counsel, even assuming that the transfer of katha was not proper, nevertheless, in the

light of the pendency of the civil litigation, restoring the katha into the name of the petitioner would not be conducive as the probability of the petitioner doing away with the property is imminent.

14. From the nature of objections put forth by the 3rd respondent, what is discernable is that the 3rd respondent alleges that the petitioner executed a Gift Deed Annexure-"R1", in favour of her husband, preceded by an unregistered Partition Deed Annexure-"H" under which the property fell to the share of the 3rd respondent. The fact as to whether the petitioner did execute the Gift Deed or the Partition Deed are matters which cannot be conveniently adjudicated in this writ petition. Moreover it is not the case of the 3rd respondent that the petitioner has issued notice u/s 114 of the Act for transfer of katha in favour of the Donee under the Gift Deed. Even according to the learned Counsel for the 3rd respondent, the matter is at large before the Civil Court where the petitioner has instituted a suit to declare title of the immovable property pursuant to the Partition Deed, and for cancellation of the Gift Deed. Once the Civil Court adjudicates upon such a dispute, it is needless to state that the truth or otherwise of the execution of the documents by the petitioner would come to fore. In my opinion, the alleged execution of the documents by the petitioner, cannot disentitle the petitioner in law to a restoration of the katha of the said property, as the transfer of katha without notice to the petitioner is nonest.

15. The 3rd respondent having instituted the suit to declare title to the said property, obtained an interim injunction Annexure "R-6" restraining the petitioner from alienating and encumbering the suit schedule property and therefore, it cannot but be said that the 3rd respondent's apprehension that the petitioner is likely to do away with the property immediately after the katha is restored to her name, is neither reasonable nor tenable.

16. The action of the Commissioner of the Corporation of the City of Bangalore, by propounding a simplified scheme for transfer of katha in the name of a "Sarala Katha Scheme" prescribing an application contrary to the requirement of Section 114 of the Act, exhibits a callous disregard of the normal requirements of rule of law, apart from what is legitimately and reasonably expected from a State functioning in a Society governed by the constitution which guarantees its citizens against arbitrary invasion by the executive of peaceful possession and enjoyment of immovable properties. Suffice it to state that the BBMP is a creature of a statute and cannot perpetuate a wrong by not making available a form for transfer of katha in consonance with the provisions of Section 114 of the Act.

17. Before parting with this case, it is appropriate to notice the French declaration of Human and Civil Rights of 1789 and the scope of Article 17 of the Universal declaration of Human Rights 1948 adopted in the United Nations General Assembly, which provides that the right to property hitherto considered as a constitutional right is now accepted as a human right.

18. In other words, no person can be deprived of his property save in accordance with law. The observations of the Apex Court in S.R. Ejaz Vs. The Tamil Nadu Handloom Weavers Co-operative Society Ltd., in the circumstances is apposite:

If such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe nor can the citizens protect their properties. Law frowns upon such conduct. The Court accords legitimacy and legality only to possession taken in due course of law. If such actions are condoned, the fundamental rights guaranteed under the Constitution of India or the legal rights would be given a go-by either by the authority or by rich and influential persons or by musclemen. Law of jungle will prevail and might would be right" instead of right being might".

19. In the result, this writ petition is allowed. The endorsement dated 30-09-2003 Annexure-"F" and the order dated 29-04-2005 Annexure-"M" are quashed and as a concomitant, the katha of the property in question stands restored to the name of the petitioner. It is needless to state that the parties shall be bound by the decision of the Civil Court in respect of their rights over the property in question.