

(2006) 02 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 4441 of 2001

J.R. Raghunath (Deceased) by L.Rs.	APPELLANT
Vs	
The Deputy Commissioner and Others	RESPONDENT

Date of Decision : 16-02-2006

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 306

Citation : (2006) 2 KarLJ 367

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

Bench : Single Bench

Advocate : P. Dhananjaya, for the Appellant; B. Manohar, A.G.A. for Respondent-1 and Kaleemulla Shariff, for Respondents-3 and 4, for the Respondent

Judgement

N.K. Patil, J.—The petitioner, represented by his legal representatives, questioning the impugned order dated 8th January, 2001 bearing No, Pursuable (1) CR 143, 161/99-2000 on the file of the first respondent vide Annexure-J, only insofar as it relates to cancellation of resolution No. 13(4), dated 26th March, 1998 passed by second respondent-Town Panchayat, have presented the instant writ petition.

2. The grievance of the petitioner, now represented by his legal representatives is that, he was the senior and law abiding citizen and was in lawful possession and enjoyment of the house property bearing Municipal Assessment No. 1187/1301/1366 of Halesanthe Maidhan, Molakalmuru Town, Chitradurga District, having purchased the same from Molakalmuru Municipality in the years 1974 and 1978, wherein he has constructed a house measuring an extent of 82 ft. East to West and 19 ft. North to South, leaving 3 ft. x 84 ft. vacant, towards the northern side of the property for the purpose of ventilation and passing of rain water etc. The said house has been constructed after obtaining necessary licence from the municipality and he has paid the necessary kandaya in respect of the said property and all the records stand in the name of petitioner. When

things stood thus, towards the eastern side of the property of the deceased petitioner, there is a vacant site belonging to the Municipality. The petitioner for the purpose of construction of a compound wall around his house applied to the Municipality in respect of an extent of 15 ft. North to South and 5 1/2 ft. East to West towards the eastern side of the house. The second respondent, after considering his genuine request, has placed the matter before the Committee of the Town Panchayat. The Committee in its meeting held on 26th March, 1998 passed a resolution unanimously deciding to grant the said bit of land, after collecting necessary cost towards the said bit of land. The second respondent has issued the possession certificate on 15th June, 1998 vide Annexure-B. Thereafter, again, he has filed another application for grant of 4 ft. towards East to West and 10 ft. towards North to South which is situate at East-South side of the house property. The Municipality in its meeting held on 9th July, 1999 decided to grant the said bit of land also through a sale certificate dated 3rd June, 2000 in respect of only 9 ft. x 4 ft. vide Annexures-C and D respectively. When petitioner has taken up the construction of compound wall around his house, respondents 3 and 4 being owners of site bearing assessment No. 1186/1300/A and No. 1186/1300 respectively situate adjacent to the property belonging to the petitioner towards the northern side, filed two appeals before the first respondent in Appeal Nos. 143 of 1999 and 161 of 1999, being aggrieved by the two resolutions passed by second respondent dated 26th March, 1998 and dated 9th July, 1999 vide Annexures-A and C respectively. The first respondent, without conducting proper enquiry and without going through the contents of the resolutions, the ground reality and without giving sufficient opportunity to the petitioner, has proceeded to pass the order as if it is the Appellate Authority, cancelling the resolution passed by second respondent. Being aggrieved by the impugned order dated 8th January, 2001 vide Annexure-J insofar as it relate to cancellation of resolution No. 13(4), dated 26th March, 1998 passed by second respondent, deceased petitioner felt necessitated to present the instant writ petition.

3. I have heard learned Counsel appearing for petitioner, now represented by his legal representatives and learned Counsel appearing for respondents.

4. The principal ground urged by petitioners in the instant writ petition is that, the impugned order passed by first respondent vide. Annexure-J, insofar as it relates to cancellation of resolution dated 26th March, 1998, referred above, is illegal, arbitrary, without authority of law and without proper application of mind. Further, petitioners have specifically taken a ground that, the Deputy Commissioner has power u/s 306 of the Karnataka Municipalities Act, 1964 only to suspend the execution of order of the Municipal Council, but does not have any power to straightaway cancel the order/resolution passed by the Municipality. But, in the instant case, the first respondent has straightaway cancelled the resolution dated 26th March, 1998 passed by second respondent without there being no delegatory power or authority under the Act. Therefore, at the threshold, the impugned order passed by first respondent, is liable to be

set aside on this ground alone.

5. Per contra, learned Counsel appearing for respondents 3 and 4, inter alia, contended and substantiated the order passed by first respondent and have filed the detailed objections stating that, the order passed by first respondent is in accordance with law and interference by this Court is not justifiable.

6. After hearing the learned Counsels appearing for the parties and after careful perusal of the material available on record including the order passed by first respondent, referred to above, it emerges on the face of the said order that, the first respondent has committed an error of law, much less material irregularity and the said order passed is in exercise of the power u/s 306 of the Karnataka Municipalities Act which is one without jurisdiction. From a perusal of the said provision, it can be seen that, the first respondent does not have any power to set aside/cancel the resolution passed by second respondent but has got power only to suspend the execution of the order of the Municipal Council and the said authority cannot sit in judgment as an Appellate Authority, and take final decision, as rightly pointed out by learned Counsel for petitioner under the grounds urged by him. After careful perusal of the relevant provision of the Karnataka Municipalities Act, and having regard to the facts and circumstances of the case, by no stretch of imagination, the impugned order passed by first respondent can be sustained, for the reason that, the said authority has no power or jurisdiction to pass an order, cancelling the resolution. Hence, on this ground alone, the writ petition filed by petitioner is liable to succeed and the impugned order passed by first respondent is liable to vitiate.

7. Having regard to the facts and circumstances of the case, as stated above, the impugned order passed by first respondent dated 8th January, 2001 bearing No. Pursuable (1) CR 143, 161/99-2000 is hereby set aside and the matter stands remitted back to first respondent for reconsideration afresh in accordance with law, after affording an opportunity to the legal representatives of the deceased petitioner and respondents 3 and 4 since now the power has been delegated to the first respondent as per the notification issued by the Government on 15th October, 2003 and dispose of the same, as expeditiously as possible, within an outer limit of six months from the date of receipt of a copy of this order.

8. With these observations, the writ petition filed by deceased petitioner stands disposed of.