
(2005) 07 KAR CK 0052
In the Karnataka High Court
Case No : Writ Petition No. 21030 of 2002

Kalpatharu Hotels and Others

APPELLANT

Vs

Mysore Mahanagara Palike

RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Municipal Corporations Act, 1976 — Section 305

Citation : (2005) ILR (Kar) 3547 : (2005) 5 KarLJ 103 : (2005) 3 KCCR 218 SN

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : A.N. Venugopala Gowda, for the Appellant; M.P. Geetha Devi, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Briefly stated the factual matrix is:

The property in question was conveyed to an organisation known as Mysore Musical Association, under a sale deed of the year 1977, by the Mysore City Corporation. The said organisation, without of course using the property for any of the purposes for which it was constituted, however, being the absolute owner of the property, conveyed the same in favour of the petitioners under a registered deed of sale of the year 2001. The respondent corporation on the premise that the vendor of the petitioner did not utilize the property for the purpose for which it was conveyed, sought to recover possession by cancelling the sale deed of the year 1977, as is evident from the resolution Annexure "H". It transpires that the State Government by order dated 20.9.2001, Annexure "J", on a detailed examination of the matter with reference to the resolution Annexure "H", held that the sale was legal, valid and conclusive while granting permission for change of land use sought for by the petitioner. By another order Dt. 9.10.2001, Annexure "K", the State Government, permitted the change of the land use, of the property in question, from public/semi-public to commercial

use.

2. Some of the residents of Mysore questioned the sale of the immovable property in favour of the petitioners in W.P. No. 29237/ 2000 by way of a public interest litigation, which was dismissed by order dated 12.9.2000 Annexure "L", on the grounds of delay and laches as also involving disputed questions of fact.

3. The corporation of the city of Mysore, by certificate dated 6.3.2002, Annexure "E", certifies that the Katha of the property in question stands in the name of the petitioners purchasers. Collection of taxes is evident from Annexure "P", the tax paid receipt. The extract of the property assessment register for the years 1999 to 2000, Annexure "G" discloses that the property in question is assessed to tax and that the petitioners are the owners. The petitioners having applied for sanction of building plan, the respondent corporation accorded sanction and licence by orders Annexures "M" and "N" respectively. However by the resolution dated 11.4.2002, Annexure B, the respondent corporation resolved to cancel the sanction of plan and the licence granted in favour of the petitioner. As a consequence, the Commissioner of the respondent corporation by the order dated 9.5.2002 Annexure "A" impugned herein, cancelled the sanction of building plan and the licence. Hence this writ petition.

4. Having heard the Learned Counsel for the parties and perused the pleadings, two questions that arise for decision-making in this writ petition are:

(i) Whether the Order Annexure-A of the respondent-Mahanagara Palike canceling the sanctioned plan, Annexure-M, and the licence Annexure-N to construct a commercial building on the property in question, in favour of the petitioners, is arbitrary and is vitiated on account of violation of principle of natural justice?

(ii) Whether the resolution dt. 11.4.2002 Annexure "B" in so far as it relates to cancelling the sanctioned plan and licence granted in favour of the petitioner is just and sustainable?

5. In the admitted facts of the present case, the respondent-authority having accepted the ownership rights of the petitioners, collected the taxes and permitted the construction of the commercial building upon the property in question, strange is the method adopted by the respondent while cancelling the sanction of plan, Annexure-M and licence Annexure-N. It is patent from the factual matrix, that the respondent-authority having failed in its resolve Annexure "H", to repossess the property by cancelling the sale in favour of the vendor of the petitioners, devised the method of passing the resolution Annexure "B" dt. 11.4.2002, to acquire the property in question and to obstruct the petitioners from exercising their lawful rights over the said property, more particularly in the matter of construction of a building. Such is not the object behind which the statute was framed and the respondent-authority constituted. The Act is a beneficial legislation in favour of the public good, to ensure that no one breaks the building bye laws and planning law and indicates the obligation of

the respondent corporation to ensure strict compliance with the building and planning laws and in any event not to cancel or annul the sanction and licence for construction without notice to the affected persons.

6. There is yet another twist to the action of the respondent. The respondent was party respondent No. 4 in W.P. 29237/2000(GM-RES PIL) wherein some of the residents of Mysore City had questioned the sale of the immovable property in question in favour of the petitioners by the Mysore Music Association. The Division bench of this Court by order dt. 12.9.2000 Annexure-L held that the petition was filed to take out vendetta against the respondents and dismissed the petition on the ground of delay and laches and that it involves disputed questions of fact. Although Smt. Geetha Devi, Learned Standing Counsel for the respondent corporation would maintain that the corporation arraigned as party respondent No. 4 in the said PIL was not heard in the matter, as it was disposed off at the stage of preliminary hearing, it is not the case of the respondent corporation that it had no knowledge of the order Annexure "L" of the Division Bench.

7. The Order, Annexure-A is a direct consequence of the resolution, Annexure-B of the respondent to acquire the property in question but to cancel the sanction of building plan Annexure "M" and the licence Annexure N, while there is no dispute that both the order and resolution impugned were not preceded by notice to the petitioners.

8. Smt. M.P. Geethadevi does not oppose the submission of the Learned Counsel for the petitioners that the order Annexure "A" is arbitrary and smacks of violation of principles of natural justice, but, maintains that the resolution, Annexure-B is well within the authority of the respondent under the provisions of Karnataka Municipal Corporations Act, 1976, for short "Act". The Learned Counsel was not able to point out with reference to any provision under the Act which authorised the Corporation to pass a resolution to cancel the licence and sanction of building plan, on the ground of their intention to acquire the property in question.

9. Annexure-B, resolution of the respondent is the harbinger for the ails of the petitioners, followed by the order Annexure "A" of the Commissioner cancelling the sanction of building plan, Annexure-M and the licence Annexure-N. The respondent-authority having resolved to cancel the said permission and sanction in favour of the petitioners without notice and affording an opportunity of hearing, the resolution Annexure "B", too cannot stand the test of law.

10. "Affected must be appraised", is the constitutional mandate flowing from postulates of Article 14 of the Constitution. It is elsewhere stated that

"Natural justice is alternative form for common sense justice. Natural justice are not codified cannons but are principles ingrained into the conscience of man."

11. The following observations of their lordships of the Supreme Court in the

case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , in the circumstances are opposite:

"Indeed natural justice is a persuasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life"

"A Civil right being adversely affected is a sine quo non for the invocation of the audi alteram partem rule"

"The philosophy behind natural justice is one sense participatory justice in the process of democratic rule of law"

12. In yet another judgment of the Supreme Court in the case of Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, their Lordships observed thus:

"The fact that our laws of procedure are grounded on a principle of natural justice which required that men should not be condemned unheard: that decisions should not be reached behind their backs; that proceedings that affect their lives and property should not be continued in their absence."

13. The authority is represented by well educated, elected representatives who are bound by "rule of law", "Ignorance of law is no excuse". The action of the respondent in deference to the rule of law, deserves to be deprecated. The resolution Annexure "B" in so far as it relates to cancelling the licence and sanction sans notice to the petitioners, and without even considering whether the authority has the jurisdiction under the Act, to pass such a resolution, tantamounts to denial of justice.

14. There is every need to prevent the respondent corporation, a public body from overstepping its limitation and that it does not contribute to the contravention of "Rule of Law", or statutory obligations, which are evolved for public good. This Court has a duty to enforce rule of law and protect the interest preserved under the Act, apart from the right of the tax payers like the petitioners.

15. Sri Venugopala Gowda, Learned Counsel for the petitioners would implore this Court to examine the provisions of Section 305 of the Act to hold that the Corporation has no authority to cancel the orders of sanction and permission Annexure "M" and "N". There being no dispute that the order Annexure-A is arbitrary and vitiated on account of violation of principles of natural justice while the resolution Annexure "B" in so far as it relates to cancelling the licence and sanction of building plan is unjust and without authority of law, the examination of the purport of Section 305 of the Act is deferred for consideration in an appropriate case.

For the foregoing reasons, the writ petition is allowed. Annexure-A, Order dated 9.5.2002 is quashed and the resolution Annexure-B insofar as it relates to cancelling the licence and sanction of plan, Annexure-M and N is also quashed.

The relief of a direction to the respondent not to interfere with the construction of the building in terms of the sanction and licence, is refused since the order impugned the impediment in the exercise of the lawful rights of the petitioners is quashed.