

(1998) 11 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No. 11732 of 1996

Krishnarao alias Kamalakar Rao

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Municipal Corporations Act, 1976 — Section 102, 321 (3)

Citation : (1999) 1 CivCC 607 : (1999) ILR (Kar) 314 : (1999) 1 KarLJ 676

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : Sri Vigneswara S. Shastry, for the Appellant; Sri M.N. Ramanjaneya Gowda, High Court Government Advocate and Sri G.S. Bhat, for the Respondent

Judgement

1. By proceedings dated 14-8-1981 of the Administrator of the second respondent-Corporation, an extent of 215.39 sq. yards of vacant land was granted in favour of the petitioner and the matter was submitted to the Government for sanction. The State Government by order dated 16-9-1983 accorded sanction to grant the site measuring 215.39 sq. yards in CTS Nos. 102, 104 and 105, MTS, Hubli, in favour of the petitioner. In pursuance of the aforesaid order and proceedings, the Commissioner of the second respondent-Corporation conveyed right, title and interest in favour of the petitioner in respect of the vacant site measuring 1958 sq. feet situated adjacent to CTS No. 103 of Ward-V under a registered sale deed dated 24-4-1984. The name of the petitioner was also mutated in the registers of the Corporation.

2. It appears that the committee of Bairnath Devasthanam, Arvindnagar, encroached upon a portion of the site granted to the petitioner and put up a construction thereon. The petitioner having failed to get the same removed by negotiation, instituted a suit on the file of the learned Principal Munsiff at Hubli, in O.S. No. 129 of 1986 against the Wahivatdar of Panch Committee of Bairnath Devasthanam for possession of the encroached area from the defendant and for

mandatory injunction to demolish the construction made thereon. The said suit was decreed by judgment and decree dated 1-8-1990. The regular appeal filed against the judgment and decree of the learned Munsiff was dismissed and the decree of the Trial Court was affirmed by the learned Additional Civil Judge, Hubli, by his judgment and decree dated 15-9-1992 in RA No. 116 of 1990. It is said that, the regular second appeal, RSA No. 1177 of 1992 filed by the said Devasthanam Committee was dismissed by this Court on 31-7-1998.

3. During the pendency of the aforesaid proceedings, the Commissioner, Hubli Dharwad Municipal Corporation, had served an order on the Committee of Bairnath Devasthanam [hereinafter to be referred as "the temple committee"] u/s 321(3) of the Karnataka Municipal Corporations Act, 1976, directing the temple committee to demolish a building constructed by the Nagapanth Samithi on the land in question. The said order was challenged in the appeal before the Standing Committee who by their resolution dated 19-12-1986 dismissed the appeal and affirmed the order of the Commissioner.

4. In the suit filed by the petitioner, the learned Munsiff raised as many as 9 issues out of which issue No. 7 was in relation to, whether the encroached area was part of CTS No. 103 belonging to Bairnath Trust. The said issue was answered in the negative. It is needless to state that the aforesaid issue came to be raised because of the denial of encroachment and assertion of construction by the Trust only in CTS No. 103.

5. After the dismissal of the appeal by the Standing Committee, the temple committee did not pursue the matter. However, respondents 3 and 4 filed a revision before the Government u/s 102 of the Act to take necessary action against the resolutions of the Corporation. The prayer in the revision reads as follows:

"Therefore, it is most humbly prayed that, your kind selves be pleased to enquire into the alleged sale transaction enquire into the alleged sale transaction by respondent 1 in favour of respondent 2 by virtue of sale deed dated 1984 and also in respect of impugned notice in No. HDC.BLD. [Shreni]Aa.Na. 8 Form No. 7 dated 24-6-1987 and the resolution passed by the Standing Committee in its Resolution No. 2227 dated 19-12-1986 and the administrator Resolution No. 3074 dated 14-8-1981 and necessary records may please be called for and necessary orders in this connection may please be passed for promoting the cause of justice, by allowing this revision petition, in the interest of justice and equity".

6. The Government by order dated 25-8-1992 allowed the revision and accorded sanction for the grant of the land in question in favour of the Temple Trust at market rate cancelling the sale deed made between the Corporation and the petitioner with a further direction to take action to allot an alternate site in favour of the petitioner as per Annexure-H.

7. The petitioner having been aggrieved by the said order filed this petition for

quashing the same by issuing a writ of certiorari.

8. Sri Vigneswara Shastry, learned Counsel appearing for the petitioner has contended as follows:

That the impugned order cancelling the sale deed is without authority of law as the revenue Court has no jurisdiction to set aside the sale deed; The revision petition was not maintainable as respondents 3 and 4 are not the parties aggrieved by the allotment; According sanction to grant the land in question in favour of the Temple Trust was without jurisdiction in the absence of any prayer for allotment of the said site by the Temple Trust; The impugned order is illegal and void for having accorded the sanction to grant the site in favour of the Temple Trust who is not a party to the proceedings; The sanction is further illegal without cancelling the earlier sanction accorded by the State Government, to grant the land in question in favour of the petitioner.

9. Sri G.S. Bhat, learned Counsel appearing for respondents 3 and 4 has contended that the petition is liable to be dismissed solely on the ground of delay and laches as an inordinate delay of four years which has not been explained and the explanation is false to the knowledge of the petitioner and the petitioner is not entitled for any discretionary relief for having made the statements which have been false to his knowledge; Even otherwise, the petitioner having not suffered any injury is not entitled for any relief under Article 226 of the Constitution of India as the Government has directed the Corporation to allot an alternate site in favour of the petitioner. Sri Bhat has further contended that the Government has considered all the material placed before it and passed an appropriate order and the impugned order does not warrant interference.

10. In support of his contention Sri Bhat placed reliance on the following decisions:

- (1) State of Madhya Pradesh and Others v Nandlal Jaiswal and Others ,
- (2) M/s. Rup Diamonds and Others v Union of India and Others,
- (3) 1985 (1) Kar. L.J. 361.

In Nandlal's case, supra, the Supreme Court considering the delay and laches has held that-

"The High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene, and grant relief in the exercise of its writ jurisdiction".

The Supreme Court has further observed that,

"Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait-jacket formula, for there may be cases where despite delay and creation of

third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the Court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it".

In M/s. Rup Diamonds case, *supra*, the Supreme Court has held that-

"Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where law had been declared unconstitutional and void by Court, so as to enable persons to recover monies paid under the compulsion of law later so declared void. There is also an unexplained, inordinate delay in preferring this writ petition which is brought after almost an year after the first rejection".

11. It is no doubt true that there is an inordinate delay of four years in filing this petition against the impugned order during which period the civil proceedings between the petitioner and the Temple Trust was pending adjudication before this Court. It is stated by the petitioner that he was not aware of the impugned order as it was not made in his presence. The revision was heard in the year 1991 and the order was made in the year 1992 and there is a note in the order for having sent the copies to the petitioner. The petitioner states that he did not receive the copy and after having come to know of the order having been made he applied for the copies to the Government but he did not receive any endorsement. No records are produced by the Government to show that the copies have infact been sent to the petitioner. In those circumstances, even though the cause shown by the petitioner may not be sufficient to explain the delay, in the facts and circumstances of this case the petition should not be dismissed solely on the ground of delay and laches. In this context it is material to note that the proceedings of the administrator dated 14-8-1981 received the sanction of the Government on 16-9-1983. The sale deed came to be made on 24-4- 1984. The Temple Trust did not question the grant made in favour of the petitioner. On the other hand, they put up unauthorised construction. The petitioner filed a original suit against the Temple Trust for mandatory injunction and possession. The suit was decreed and the appeal filed by the Temple Trust was dismissed. The 2nd appeal was also dismissed. During the pendency of these proceedings, the Corporation issued a provisional order u/s 321(1) of the Karnataka Municipal Corporations Act, 1976. The said order was confirmed u/s 321(3) of the Act. The appeal filed before the Standing Committee was dismissed. No further action was taken by the Temple Trust. Yet, the Government made the impugned order according sanction to grant this very land in favour of the Temple Trust in a revision filed by the 3rd parties who did not have any right, title and interest in

respect of the land in question nor have they claimed any right in the land in question. The objection filed by the Corporation that the petitioners have nothing to do with the Temple Trust is not considered by the Government. After the appeal was disposed of by the Standing Committee, respondents 3 and 4 filed the revision petition before the Government in the year 1988 in which the impugned order came to be made without considering any of the objections raised by either the Corporation or the petitioner. The first thing that should be considered by the Government is as to the maintainability of the revision petition by a person who did not claim any right, title and interest in the land in question. Even though there was no material as to the request of the Temple Trust for grant of the land the State Government accorded sanction to grant this land in favour of the Temple Trust, without cancelling the earlier sanction made in favour of the petitioner. The State Government has no authority of law to grant the land belonging to the Corporation. It is the Corporation which is competent to dispose of its property with the prior sanction of the Government. Unless there is a proposal by the Corporation to dispose of their land, the Government has no lawful authority to accord sanction. The impugned order is virtually a direction to the Corporation to dispose of its property and the same having been made without authority of law, is illegal and void, The State Government had no jurisdiction to set aside the sale which was made in accordance with law. It is, therefore, clear that the impugned order is without jurisdiction and resulted in miscarriage of justice. Under these circumstances, I do not think that it is just and proper to reject the petition on the sole ground of delay and laches.

12. Sri G.S, Bhat, learned Counsel appearing for the respondents 3 and 4 has further contended that in view of an alternate site is directed to be allotted to the petitioner, no prejudice was caused to him and therefore, this Court should refuse to interfere with the impugned order under Article 226. Till today, no material was placed as to the steps taken by the Corporation for allotting the site in favour of the petitioner pursuant to the impugned order. Even otherwise, such a direction is illegal and void for having been issued in gross violation of law without having lawful authority to do so, as the State Government had no authority of law to dispose of the property of the Corporation. Where the order was made by the Government without having authority of law to set aside the sale, any direction to allot an alternate site in favour of the petitioner in whose favour the site in question was allotted 8 years back is not sufficient to hold that no prejudice is caused to the petitioner. The impugned order was made against the petitioner in a proceeding initiated by a person unconnected with the property in question. The order is also not a speaking order as none of the contention raised by the parties is taken into account by the Government.

13. For the reasons aforesaid, this petition is allowed. Rule made absolute. The impugned order dated August 25, 1992 passed by the Government in No. HUD 27 AHD 88 as per Annexure-H is hereby quashed with no order as to costs.