

(2011) 12 KAR CK 0298

In the Karnataka High Court

Case No : Writ Petition No. 4663 of 2008 (LB-RES-PIL)

Krishnegowda and Others

APPELLANT

Vs

The Deputy Commissioner Ramanagara District Mini Vidhana
Soudha Ramanagara Town-571511 and Others

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 306, 322

Citation : (2011) 12 KAR CK 0298

Hon'ble Judges : Vikramajit Sen, Acting C.J.; A.S. Bopanna, J

Bench : Division Bench

Advocate : S.R. Hegde Hudlamane, for the Appellant; R. Vasudeva, AGA. for R1, Sri A.V. Gangadharappa and Sri G. Ravi Shankar Advs. for A.V.G. Associates for R2 Sri T Sheshagiri Rao, for R4-6 R3a to 3c -Served, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bopanna, J.—The Petitioners are residents of Channapatna Town. They claim to espouse public interest through this petition in order to protect the property, which according to them, belongs to "Kanchi Mantapa". In that context, it is their case that the subject property being Government property has been usurped by the respondent Nos. 4 to 6 to the detriment of the general public.

2. Heard Sri S.R. Hegde Hudlamane, Learned Counsel for the petitioner, Sri R. Devdas, learned Addl. Govt. Advocate for respondent No. 1 and Sri A.V. Gangadharappa & Sri T. Seshagiri Rao, Learned Counsel for the respondent Nos. 2 to 6 respectively and perused the petition papers.

3. The contention of the petitioners is that the "Kanchi Mantapa" is a very old property belonging to the temple and it was the custom of the persons belonging to Hindu faith to keep the pooja articles there before entering into the Varadarajaswamy temple to perform the rituals. It is their case that the property bearing No. 840, 840/A measuring 90 ft by 40 ft exclusively belongs to "Kanchi Mantapa" and situate at "A" division. J.C. Road, Channapatna town. The said

property is contended to be shown as the property of "Kanchi Mantapa" in the assessment register for the year 1934-35, Being the property of the temple, it is contended that the general public of Channapatna town are using the said property. It is further contended that the first respondent in collusion with one deceased Basavaiah, who was a municipal member entered his name by rounding up the name of "Kanchi Mantapa" and assigned new number 1004/E to the extent of 57 ft X 100 ft as contained in the assessment extract for the period 1975-76. The extent is thereafter altered as 60 ft X 100 ft and indicated so in the assessment extract for the year 1980-83 to 1986-87. It is the further case of the petitioners that the respondent Nos. 4 to 6 have subsequently colluded with the municipal officials and secured the change of the said property by bifurcating the number as 1004/E, 1004/E1 and 1004/E2 each measuring 20 ft X 100 ft. It is in that context contended that the property belonging to the Government is being wrongly utilized by the respondent. Nos. 4 to 6. The petitioners therefore filed revision petition No. MUN (RP) 1/2007-2008 challenging the assessment made in the above stated manner. The Deputy Commissioner subsequently vacated the interim order and the case of the petitioners has not been accepted. The petitioners have also alleged that the procedure followed was not appropriate and have presently sought the intervention of this Court.

4. The official respondents do not subscribe to the contention of the petitioners that the subject property belongs to the Government. It is contended that the very fact that the petitioners have described the property as belonging to the "Kanchi Mantapa" would indicate that at best, it could be certain temple property and it is for the temple management if any, to protect its property and it is not for the official respondents. But from the records, it is found to be private property and as such no action is required from the official respondents.

5. The respondent Nos. 4 to 6 have filed a detailed objection statement enclosing several documents and elaborately contending about their right to own the subject property. The allegations made by the petitioners have been denied. It is contended that the petitioners have not approached this Court with clean hands and the petition is motivated. Reference is also made to a civil suit wherein the daughter of the respondent's vendor had litigated but had failed since it was held that respondent Nos. 4 to 6 herein had validly purchased the subject land.

6. In the light of the rival contentions, a perusal of the writ papers would indicate that the petitioners except for contending that the subject property belonged to "Kanchi Mantapa" and therefore it is Government property have not established the said contention. No doubt, the extract produced at Annexure-A is shown to be for the period from 1934-35 and certain entries are shown in the name of "Kanchi Mantapa", but that in itself cannot carry the case of the petitioners any further. Firstly, no basis has been indicated for the existence of such entries. Secondly, the status of "Kanchi Mantapa" itself is to be established if the petitioners have to contend that the property belonging to "Kanchi Mantapa" is Government property so as to maintain a public interest petition. On the other

hand, the very basis emerging from the pleading is that it is a part of the temple. If that be so, it is for the management of the temple to protect its property, if in fact there is any attempt by any person to encroach such property. The petitioners have therefore miserably failed to establish that the petition subject land belongs to the Government and that the same is not being protected by the Government. Hence, the question of this Court intervening in the matter does not arise.

7. On the contrary, the respondent Nos. 4 to 6 by the documents produced along with the objection statement have traced the preceding title of the property until it was conveyed to them under the registered documents.

8. In this regard, reference is made to the sale deed dated 18.02.1950(Annexure-R2) and the sale deed dated 21.12.1963 (Annexure-R3) to establish the vendor's title as also the purchase made by the vendor. Reference is also made to the sale deed dated 15.04.1981 relating to another portion of the property which was the subject matter of that transaction, wherein the northern boundary of the property transacted in the said sale deed is indicated as the property belonging to the vendor of the respondent Nos. 4 to 6 herein. In this background, it is pointed out that the said P. Basavaiah who had become the owner of the property had sold the same to the respondent Nos. 4 to 6 herein under three different sale deeds dated 16.07.1992, 20.07.1992 and 31.07.1992 (Annexures-R11 to 13). The revenue entries made subsequent to the said registered sale deeds as also the tax paid receipts in respect of the property are relied on by the respondent Nos. 4 to 6. Certain other transactions with regard to the respondents having obtained loan from the bank and also the approval for construction are referred to point out with regard to the manner of possession and enjoyment of the property subsequent to purchase of the same.

9. One other aspect which is brought to the notice of this Court is that the daughter of P. Basavaiah had instituted a civil suit in O.S. No. 11/1993 seeking for declaration, permanent injunction and possession of the said property. The plaintiff therein had disputed the validity of the sale deeds executed in favor of the respondent Nos. 4 to 6 since she had claimed right under a WILL said to have been executed by the deceased P. Basavaiah. The said suit came to be dismissed. While doing so, the validity of the sale deeds had been affirmed in favor of the respondent Nos. 4 to 6 herein. It is no doubt true that the said suit was an inter se suit between the respondent Nos. 4 to 6 herein and the daughter of the vendor, but, the petitioners herein are contending with regard to the status of the property much prior to the acquisition of the same by the vendor of the respondents. Despite such contention of the petitioners, line cumulative effect of the documents relied on by the respondent Nos. 4 to 6 herein, which are referred to hereinabove would indicate that the issue contended in the instant petition would raise several disputed questions of fact, more particularly with regard to the title to an immovable property which cannot be decided in a writ petition. Therefore, having prima facie noticed that the respondent Nos. 4 to 6

are justifying their right to the property in question based on the registered documents, the claim made by the petitioners is liable to be rejected.

10. In view of our conclusion that this petition does not project any cause in public interest inasmuch as the status of "Kanchi Mantapa" and the property being Government land has not been established and also considering the fact that there are several disputed questions with regard to title, it is unnecessary for us to go into the question with regard to the validity of the resolutions which were passed and also the nature of power exercised u/s 306 or relating to Revision u/s 322 of the Karnataka Municipalities Act, 1964. Therefore, we see no need to refer to the decisions cited with regard to the exercise of power u/s 306 of the Act.

For all the above stated reasons, we see no merit in the petition and the same is accordingly dismissed.