

(2015) 06 KAR CK 0181

In the Karnataka High Court

Case No : Writ Petition No. 19550 of 2014 [KLR-RES]

Lakshmivan Polymers Pvt. Ltd.

APPELLANT

Vs

The Deputy Commissioner, Bangalore Urban District and
Others

RESPONDENT

Date of Decision : 04-06-2015

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 36

Citation : (2015) 4 AKR 431 : (2015) ILR Kar 3105 : (2015) 5 KarLJ 321

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : D.R. Ravishankar, for the Appellant; A.G. Shivanna, Additional Advocate General and B.P. Radha, HCGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ashok B. Hinchigeri, J.—The petitioner's case in brief is that 4 acres of land out of the vast extent of Government land at Sy. No. 10 of Pattanagere Village, Kengen Hobli, Bangalore South Taluk were granted to one Patel Nanjundappa. The saguvali chit was issued to him on 19.1.1948. He sold it to Hanumaiah by a registered sale deed, dated 16.10.1959. Manchaiah purchased it by a registered sale deed, dated 16.5.1966. He got the said land converted for non-agricultural purpose and formed the layout. The petitioner purchased site Nos. 19, 20, 21 and 22 from Manchaiah by four registered sale deeds, all dated, 18.4.2013. The Bruhath Bengaluru Mahanagara Palike (B.B.M.P.) issued the amalgamation khatha on 3.6.2013 treating the four sites as one single property.

2. At the other end of the spectrum, the third respondent claims to have purchased 10 guntas of land from the legal representatives of the original grantee, namely, Chowdappa and submitted a representation on 20.2.2009 for durasthi of his land. As the revenue authorities were showing inaction in the matter, he filed W.P. No. 23014/2011 (LR). This Court, by its order, dated 31.10.2011 disposed of the said petition with a direction to the Tahsildar to

consider the third respondent's said representation within six months and after issuing the notice to the concerned persons. Pursuant thereto, the survey sketch was prepared demarcating 10 guntas of land of the respondent No. 3. As the entire exercise was done without notice to the petitioner and as the petitioner has the grievance that its property is shown as the property of the third respondent, it filed Revision Petition No. 10/13-14 before the first respondent. The first respondent granted interim stay on 13.8.2013. He dismissed the Revision Petition by his order, dated 15.4.2014.

3. The petitioner has challenged the Tahsildar's order, dated 30.8.2012 (annexure-D), the Assistant Commissioner's official memorandum, dated 15.12.2012 (Annexure-F) and the Deputy Commissioner's order, dated 15.4.2014 (Annexure-S).

4. The petitioner is complaining of not only grave irregularities in the revision proceedings before the Deputy Commissioner, but also making serious allegations of mala fides against the Deputy Commissioner, who is made party by designation as the respondent No. 1 and by name as the respondent No. 5. The petitioner is also seeking the mandamus for dealing with the present proceedings against the Deputy Commissioner by a high ranking officer of the Police Department under the guidance of this Court.

5. Sri D.R. Ravishankar, the learned counsel for the petitioner submits that the Deputy Commissioner has passed the impugned order for extraneous reason. He submits that the representatives of the petitioner had been consistently following up the matter with the Office of the Deputy Commissioner. On 23.4.2014, the file pertaining to revision petition No. 10/13-14 was on the table of the concerned case-worker. The petitioner's representatives were shocked to see two sets of orders in the file. One was for remanding the revision petition and the other order was for dismissing the revision petition. On the petitioner's representatives questioning the case worker over the preparation of two sets of orders, the file was snatched by the case-worker. Before that the petitioner's representatives had taken the photographs of the two orders. The Deputy Commissioner finally chose one of the two orders and dismissed the revision petition. The petitioner's side suspects, that the preparation of the orders itself was outsourced.

6. He submits that the Deputy Commissioner is hand in glove with the land-grabbers and unscrupulous elements and has been sabotaging the civil rights of the parties. He submits that there is the requirement of streamlining such proceedings, enquired or investigated by the competent authorities so that the public administration could have the confidence of the public at large. He prays for a direction for an enquiry by COD under the guidance of this Court.

7. He submits that the Deputy Commissioner ought to have set aside the survey report and phodi, as they were done without notice to the petitioner. This Court, in its order, dated 31.10.2011 (Annexure-C) passed in W.P. No. 23014/2011 has made it clear that the Tahsildar shall issue notice to the interested persons

before considering the third respondent's request for doing the durasthi work.

8. The learned counsel takes serious exception to the Deputy Commissioner touching upon the question of title by holding that the property purchased by the petitioner is either non-existent or that the said properties could not have been sold by the said Manchaiah. On the other hand, the schedule of the properties as shown in the sale deed, dated 27.4.2006 (Annexure-R8 with the statement of objections of respondent Nos. 3 and 4) itself is lacking in clarity.

9. The Deputy Commissioner has acted in a post haste manner. None of the objections raised by the petitioner is considered by the Deputy Commissioner. In the first instance, the Deputy Commissioner did not give the hearing opportunity; on the filing of the written submissions, the orders are pronounced after quite some time.

10. The learned counsel submits that, as the averments of the writ petition are not specifically denied by the replying parties, the writ petition averments are deemed to have been admitted by them (replying parties). In support of his submissions, he relies on the Apex Court's judgment in the case of Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, AIR 2012 SC 3396 : (2012) 6 JT 283 : (2012) 6 SCALE 287 : (2012) 7 SCC 389 : (2012) AIRSCW 4073 : (2012) 4 Supreme 511 . Paragraph No. 17 of the said decision read by the learned counsel is as follows:-

"17. It is a settled principle of the law of pleadings that an averment made by the appellant is expected to be specifically denied by the replying party. If there is no specific denial, then such averment is deemed to have been admitted by the respondent. In the present case, it is evident that the abovenoted averments in the writ petition were relevant and material to the case. In fact, the entire case of the appellant hinged on these three paragraphs of the writ petition. It was thus expected of the respondents to reply to these averments specifically, in fact to make a proper reference to the records relevant to these paragraphs. In view of the omission on the part of the respondents to refer to any relevant records and failure to specifically deny the averments made by the appellant, we are of the considered view that the appellant has been able to make out a case for interference."

11. He has also relied on the Apex Court's judgment in the case of GHULAM QADIR v. SPECIAL TRIBUNAL and ORS. in Appeal (civil) No. 6963-64/2001, disposed off on 3.10.2001, for advancing the submission that orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea-change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dis-lodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right, which is shown to be having source in some statutory provision, the petition filed by such a person has

to be considered on merits.

12. Sri P.S. Rajagopal, the learned Senior Counsel appearing for Sri P. Prasanna Kumar for the caveator-respondent Nos. 3 and 4 submits that the petitioner claims to have purchased the four sites from Manchaiah.

13. The learned Senior Counsel submits that the sale of lands in favour of Manchaiah by Chowdappa itself was in violation of the non-alienation clause of the grant order. As Manchaiah himself has not derived any title, there is no question of his transferring it to anybody, including the petitioner. He submits that the sale deeds executed by Chowdappa were invalidated under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ["P.T.C.L. Act" for short] by the Assistant Commissioner. He further submits that the order of the Assistant Commissioner was confirmed by the Deputy Commissioner, the learned Single Judge and the Division Bench of this Court.

14. He submits that the petitioner was fully aware of the flaw in the sale transaction in its favour. This is evident from the complaint, dated 25.6.2014 (Annexure-R28) filed by the petitioner with the police.

15. He submits that it is subsequent to the nullification of the sale deed executed in favour of the petitioner's vendor, namely, Manchaiah, by the original grantee, Chowdappa, that his legal representatives obtained the sanction to alienate the land on 26.2.2005 and 13.3.2006. He submits that the legal representatives of Chowdappa sold 2 acres 30 guntas and 10 guntas to the respondent Nos. 4 and 3 on 27.4.2006 and 8.5.2006 respectively. The names of the respondent Nos. 3 and 4 were also entered in the relevant revenue records in respect of the extents of the lands purchased by them. The Tahsildar has completed the phodi work and durasthi on 26.12.2012. The respondent No. 4 has obtained the permission for converting the land from non-agricultural to agricultural purpose and the B.B.M.P. has also issued the khatha in her favour.

16. He submits that the petitioner's vendor, Manchaiah had no title and no right to deal with 3 acres of land granted to Chowdappa from whom Manchaiah had illegally purchased and which sale transaction came to be invalidated in the proceedings under the PTCL Act. He submits that independently of the said 3 acres of land, Manchaiah had purchased 4 acres of land at Sy. No. 10 of Pattanagere Village. Out of the 4 acres of land, the said Manchaiah could have only sold at the most 52 sites. On the other hand, he carved out 104 plots. The excess site formation is in respect of the land not belonging to himself (Manchaiah). The petitioner is one amongst the purchasers of the non-existent sites.

17. The learned Senior Counsel emphatically asserts that when the petitioner purchased four sites on 18.4.2013, there is no question of the petitioner being issued with the notice for doing the durasthi work in 2012. He submits that the petitioner has not produced the sale deeds in any of the proceedings.

18. The learned Senior Counsel submits that the Deputy Commissioner had indeed granted an interim order in favour of the petitioner. If the Deputy Commissioner were not to be favourably disposed towards the petitioner, he would not have granted the interim order. He submits that the petitioner's side went on dodging the matter after obtaining the interim order. On receiving the written submissions from the petitioner's side the matter was posted for the pronouncement of orders by the Deputy Commissioner.

19. The learned Senior Counsel denies, on instructions, that two separate draft orders were found in the file. He submits that the petitioner has not even disclosed the name of the concerned case-worker on whose table the petitioner's representatives found the file. He submits that the petitioner has not even disclosed the names of its representatives, who had gone to the office of the Deputy Commissioner.

20. He submits that the prayer (b) deserves to be rejected on the short ground of vagueness in the petition averments. He submits that assuming without admitting that if the petitioner has any complaint of mischief against the Deputy Commissioner in the passing of the impugned orders, it has to only press into motion the criminal law. He submits that prayer (b) cannot be considered, as the State Government is not made a party to this petition. The petitioner is content hurling wild accusations against the respondent No. 5. He submits that the pleadings in the writ petition are reckless and are not supported by any material particulars. In the memorandum of the writ petition, there is no allegation about outsourcing, although such an allegation is made by the petitioner's learned advocate in the course of his argumentation.

21. He relies on the Hon''ble Supreme Court's decision in the case of Ratnagiri Gas and Power Pvt. Ltd. Vs. RDS Projects Ltd. and Others, AIR 2013 SC 200 : (2013) 115 CLT 562 : (2012) 10 JT 629 : (2012) 10 SCALE 410 : (2013) 1 SCC 524 wherein it is held that the vague and general allegations unsupported by the requisite particulars do not form a sound basis for the court to hold an enquiry into the veracity of the allegations of mala fides against the decision maker.

22. He relies on the Apex Court's judgment in the case The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, (2013) 3 AD 73 : AIR 2013 SC 1241 : (2013) 3 JT 417 : (2013) 3 JT 409 : (2013) 2 SCALE 452 : (2013) 5 SCC 470 : (2013) AIRSCW 1244 to advance the submission that the writ does not lie to create or establish a legal right, but to enforce the one that is already established. While dealing with a writ petition, the court must exercise the discretion, taking into consideration the wide variety of circumstances, inter alia, the facts of the case, exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. He also relies on Division Bench's judgment in the case of K.V. Amarnath Vs. The Director, Central Bureau of Investigation, New Delhi and Others, (1999) CriLJ 1558 : (1999) 4 KarLJ 247

23. The learned Senior Counsel subnets that writ jurisdiction is extraordinary, equitable and discretionary. If the applicant makes a false statement or suppresses mala fides or attempts to mislead the court, the court may dismiss the application on that ground alone and may refuse to enter into the merits of the case. In support of this submissions, he relies on the following authorities:--

i. All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others, (1997) 75 FLR 288 : (1996) 8 JT 550 : (1997) 1 LLJ 419 : (1996) 6 SCALE 634 : (1997) 9 SCC 151 : (1997) SCC(L&S) 1004 : (1996) 6 SCR 255 Supp

ii. K.D. Sharma Vs. Steel Authority of India Ltd. and Others, (2008) 4 BC 557 : (2008) 8 JT 57 : (2008) 10 SCALE 227 : (2008) 12 SCC 481

iii. Prestige Lights Ltd. Vs. State Bank of India, (2007) 4 BC 240 : (2007) 139 CompCas 169 : (2007) 3 CompLJ 547 : (2007) 4 CTC 727 : (2007) 10 JT 218 : (2007) 10 SCALE 131 : (2007) 8 SCC 449 : (2007) 78 SCL 467 : (2007) 9 SCR 112

iv. Vijay Syal and Another Vs. State of Punjab and Others, AIR 2003 SC 4023 : (2003) 5 JT 241 : (2003) 5 SCALE 27 : (2003) 9 SCC 401 : (2003) SCC(L&S) 1112 : (2003) 1 SCR 242 Supp : (2003) 1 SLJ 13 : (2003) AIRSCW 2954 : (2003) 4 Supreme 299

24. Sri M. Naga Prasanna, the learned counsel appearing for the respondent No. 5 emphatically denies that two separate draft orders were kept in the file, as falsely alleged by the petitioner. The only order prepared and passed by the respondent No. 5 is what is impugned in the writ petition.

25. Sri A.G. Shivanna, the learned Additional Advocate General appearing for the respondent Nos. 1, 2, 6 and 7 submits that the lis between the petitioner and the respondent Nos. 3 and 4 can be resolved only by a competent civil court in a duly constituted civil suit. He submits that the granting of the land to Chowdappa is not in dispute. He submits that the petitioner's vendor, Manchaiah had no title to the properties in question and that therefore the sale deeds executed by him in favour of the petitioner convey no title to it. He submits that the phodung operations have taken place in accordance with law.

26. Sri Shivanna submits that the enquiry in the quasi judicial proceedings before the revenue authorities takes place as per the procedure prescribed by Section 36 of the Karnataka Land Revenue Act, 1964. On being asked as to how to ensure further transparency in the quasi judicial proceedings before the revenue authorities, he took time to discuss the issue with the concerned functionaries of the Government. In a true proactive spirit, he has placed on record the circular issued by the Government on 29.4.2015. It reads as follows:-

27. The submissions of the learned counsel have received my thoughtful consideration. The following questions fall for my consideration:

(1) Whether the Deputy Commissioner's order, dated 15.04.2014 (Annexure-S) upholding the durasthi and phodmg work done by his subordinates is justifiable?

(2) Whether this case warrants the ordering of enquiry by C.O.D. or by a top ranking police officer into the alleged mala fides against the Deputy Commissioner, under the supervision of this Court?

In re.question No. 1:

28. The petitioner's contention is that the Deputy Commissioner ought to have set aside the orders passed by his subordinates on the short ground of not issuing the notice to the petitioner before conducting the durasthi and phoding operations. Admittedly, the petitioner purchased four sites on 18.4.2013, whereas durasthi proceedings took place in 2012. As on the date of commencement of the durasthi and phoding operations, the petitioner had not acquired any legally recognizable interest in the lands in question. If the petitioner's vendor, Manchaiah was entitled to the service of notice, he ought to have been arraigned either as co-petitioner or as one of the respondents.

29. As the transactions executed by the original grantee in favour of the purchasers are all invalidated by the Assistant Commissioner in the proceedings under the PTCL Act, which invalidation has been upheld by the Deputy Commissioner, learned Single Judge and Division Bench of this Court, it is difficult to hold that the petitioner's vendor had valid title to the properties in question. It is trite that the petitioner's rights cannot be higher or better than those of its vendor.

30. It is not the case of the petitioner that the four sites purchased by the petitioner are carved out of the land which was not granted to Chowdappa. As the four sale deeds are not produced by the petitioner's side, this Court is not having the benefit of ascertaining as to how the title of the petitioner's vendor is traced in the sale deeds.

31. While considering the various materials placed on his record and the submissions made before him, the Deputy Commissioner may have made some passing observations or assigned the reasons for dismissing the revision petition of the petitioners. But the same is too slender a ground to undo his order. That the Deputy Commissioner's order could have been better is no ground for quashing it.

32. Thus, if the facts and circumstances of the case and the materials placed on record are taken into consideration, the 1 Deputy Commissioner's order upholding the durasthi and phoding operations cannot be quashed.

33. But it is also the Court's anxiety that even when the first question is liable to be answered in the affirmative, the petitioner should not be rendered remediless. The ends of justice would be met by my reserving the liberty to the petitioner to file a duly constituted civil suit in a competent civil court. If the petitioner is in a position to establish, by placing cogent evidence, that the sites sold to it are not

formed out of the granted land or that his vendor had perfected his title by way of adverse possession or by any oilier tenable plea, the petitioner should not be denied of the opportunity. Needless to observe that should the petitioner file one such suit, it shall also be open to the respondents to resist it by taking such defences, as are permissible in law. Further, the Trial Court is also directed to adjudicate the anticipated suit, if filed, independently of and uninfluenced by the reasons assigned hereinabove. They are for disposing of this petition.

34. It is also made clear that the finality cannot be marked about the durasthi and phoding works done by the revenue officers. They are always subject to the outcome of the suit proceedings. The orders, survey report, sketches, etc. of the officers are to be brought in conformity with the judgment and decree of the civil court.

In re.question No. 2:

35. The petitioner is complaining of there being two separate draft orders in the concerned file of the Deputy Commissioner - one for allowing and the other for dismissing the revision petition. This is too serious an allegation. If such dualities of draft orders are there, it calls for some damage control exercise and some correctional therapy. The question is whether an enquiry has to be ordered to look into the veracity of such allegations under the supervision of this Court.

36. In the memorandum of the writ petition, the material particulars are not forthcoming. The petitioner has not disclosed the names of its representative, who found the file on the table of the case-worker. It has not disclosed the name of the case-worker. Besides, the enquiry by C.O.D. cannot be ordered without hearing the State Government, which however is not made a party.

37. Besides, there are specialized statutory authorities which are equipped with the skills and competence to hold the investigation. This Court's institutional equipment and the skill may not be adequate for undertaking the sought exercises. Judicial management of the executive and legislative functions is not in consonance with the spirit of the Constitution. Delicate balance of power has to be maintained. Judicial review has to be exercised within the settled parameters. Great self-restraint is the hallmark of judicial discipline.

38. For the two aforesaid reasons, I decline to accede to the prayer of the petitioner for ordering the enquiry under this Court's supervision. I expressly reserve the liberty to the petitioner to file a complaint with the Lokayukta by furnishing the necessary material particulars. It is for the Lokayukta to examine the matter on receiving the proper complaint. It is made clear that no opinion whatsoever is expressed on the veracity of the allegations of mala fides against the Deputy Commissioner.

39. The initiative for ensuing fair play and transparency in the quasi judicial proceedings before the revenue authorities has to come from the Government only. This Court scrupulously restrains itself from substituting its wisdom for the

wisdom of the Government in administrative matters. The governance cannot be done by mandamus. Expressing these views, this Court called upon the Additional Advocate General, Sri A.G. Shivanna to discuss the ways and means of ensuring the openness and overcoming the trust deficit in the quasi judicial proceedings. In a pro-active spirit, he has discussed the issues with the concerned functionaries of the Government and got back to this Court to place on record the circular, dated 29.04.2015, the contents of which are already extracted hereinabove while referring to the submissions of Sri Shivanna. He also undertakes to have it circulated amongst the quasi judicial authorities. He submits that the insistence would be made for their adherence to the said circular whenever they examine the cases in their quasi judicial jurisdiction. His submissions are placed on record.

40. This petition is accordingly disposed of. No order as to costs.