

(2014) 04 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No. 5875 of 2014 (KLR-RES)

M. Krishnamurthy

APPELLANT

Vs

The Enquiry Officer

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 140, 140(2), 46, 49

Citation : (2014) 5 KarLJ 184

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : M. Krishnappa, Advocate for the Appellant; Sriyuths R.B. Satyanarayana Singh, High Court Government Pleader, V.D. Raviraj and R. Ramachandran, Advocate for the Respondent

Judgement

Jawad Rahim, J.—The petitioner in this writ action has brought in question the order dated 24-9-2007 in No. VNM-3/M.V-10/2000-01 passed by the first respondent vide Annexure-A, which-according to the petitioner denudes his right to the property in question and allows the second respondent to interfere with, unjustifiably. On issuance of notice regarding rule, Sri V.D. Raviraj, learned Counsel appears for respondent 2 while, Dr. R. Ramachandran, learned Counsel appears for respondents 3 and 4 is duly served but unrepresented. The first respondent is represented by Sri R.B. Satyanarayana Singh, learned High Court Government Pleader.

2. Heard the learned Counsel for the petitioner, respondents and perused the records in supplementation thereto from which the following factual matrix manifests and needs reference.

3. The petitioner claims that land bearing City Survey No. 2516 and P.T. Sheet No. 659 measuring 2342.1 sq. mtrs. and land bearing City Survey No. 2593 and P.T. Sheet No. 660 measuring 61751.3 sq. mtrs. situate at Division No. LA 48, Chamarajpet, Bangalore (popularly known as T.R. Mill's property), was owned and possessed by the petitioner's father Sri D.R. Madhavakrishnaiah. The City

Survey Records were updated, showing his name in respect of those properties. Property Card was issued by the Department of Survey Settlement and Land Records on 6-10-1976 and 12-10-1976 vide Annexures-B and C respectively. The Property Card Nos. 659 and 660 were issued as early as in the year 1976 after due survey and enquiry by the Enquiry Officer No. XII, Bangalore of the Department of Survey of the Government of Karnataka.

4. D.R. Madhavakrishnaiah, petitioner's father died intestate on 27-12-1978 as evidenced from the Death Certificate Annexure-D. Upon his death, his estate devolved on to his legal heirs which includes the petitioner. In terms of the Will executed by him on 18-8-1975 vide Annexure-E, the petitioner has acquired the property under a bequeath.

5. The grievance of the petitioner is second respondent-S. Lepaksha filed a claim petition on 15-2-2003 vide Annexure-F before the first respondent for survey of land in question claiming he has purchased the property bearing Municipal Nos. 30/29, 30/30 and 30/31 situate in Devanathachar Street, adjoining to Kempambhudi Tank, Chamarajpet, Bangalore from Sri Mahamuni Trust under a deed of sale dated 5-11-1997. Based on such claim of second respondent, the first respondent proceeded to conduct the so-called survey and without notifying the petitioner or impleading him in the proceedings, proceeded to pass the impugned order whereby, the petitioner's right, title and interest in respect of P.T. Sheet Nos. 659 and 660 has been totally ignored by the first respondent.

6. The petitioner alleges that the second respondent in para 8 of Annexure-F had mentioned that he purchased the property which forms part of CTS No. 2505 extracted in P.T. Sheet No. 659 and therefore, it was necessary for notifying all concerned before carrying out any corrections.

7. It is further averred that CTS No. 2505 does not relate to the land in P.T. Sheet No. 659 and that the claim of second respondent to incorporate his name as the owner in P.T. Sheet No. 659 of the survey records, is untenable. The petitioner is the owner of property showed in P.T. Sheet No. 659 and it pertains to CTS No. 2516. CTS Nos. 2505 and 2516 are two separate distinct properties and are not adjacent to each other. They are situate far away from the property, which the second respondent claims he purchased, forming CTS No. 2505. The petitioner relies on the map of local area No. 48, Chamarajpet vide Annexure-G in support of his contention.

8. Assailing the impugned order, the petitioner alleges, first respondent, pursuant to the untenable claim of second respondent had issued notice on 31-10-2003 vide Annexure-H to the parties mentioned in the notice i.e., respondents 3 and 4 directing their appearance before him on 6-11-2003 from which it is clear that it pertains only to enquiry regarding land in P.T. Sheet No. 659. Though, the petitioner is the owner of the said property, as seen from P.T. Sheet No. 659, no notice was issued to the petitioner nor any intimation given about the proceedings. The petitioner being the legal heir of D.R. Madhavakrishnaiah and

having succeeded to the property under bequeath was entitled to be heard before any order could be passed and survey could be conducted by the first respondent. Therefore, the order impugned is described as vitiated, as being in contravention of the mandatory provisions of Rule 46-H(4) of the Karnataka Land Revenue Rules, 1966 (for short, "the Rules") and also the principles of natural justice.

9. Sri M. Krishnappa, learned Counsel for the petitioner would assertively describe the order impugned as the order in contravention of not only the mandatory provisions of the Karnataka Land Revenue Act, 1964 and Karnataka Land Revenue Rules but also the principles of natural justice and would submit he had played in the hands of second respondent who, apart from obtaining such an unsustainable order is now interfering with the petitioner's possession and enjoyment of land in question making his life miserable.

10. Learned Counsel would submit the petitioner is a senior citizen, aged about 83 years and at this age, he has to face the onslaught from the second respondent, who having obtained an order Annexure-A is attempting to dispossess him from the property and usurp his property. He would submit that even if there was any claim from the second respondent that he has purchased the property in question, the first respondent was required to have registered the petition of the second respondent and notified all concerned, following the procedure prescribed by Rule 46-H(4) of the Karnataka Land Revenue Rules, 1966 which envisages, licensed surveyor shall issue a notice well in advance in Form 11-C to the interested parties and to all adjacent landholders before commencing measurements. He submits, had the first respondent issued notice to the petitioner, the petitioner would have had an opportunity to dispel the claim of second respondent and identify his land within the boundaries as evidenced from the document of title in favour of his father and the subsequent Will executed in his favour. He submits non-following of the procedure prescribed by sub-rule (4) of Rule 46-H has resulted in arbitrary exercise of power by the first respondent resulting in passing of the impugned order, which is now being misused by the second respondent.

11. At the first motion of this writ petition, learned Counsel for the contesting second respondent has raised a question of maintainability of this petition on the ground that the order impugned is an order passed under the provisions of the Karnataka Land Revenue Act and as it is original, it is amenable to appeal u/s 49 of the Act. As an alternative efficacious remedy is provided under the Act, the petitioner should be non-suited in this writ action directing him to avail the benefit of appeal.

12. I had also requested the learned Counsel Sri M. Krishnappa to examine this issue and respond to the objections raised.

13. Sri M. Krishnappa, learned Counsel would submit that even though there may be remedy of appeal available, as provided under the provisions of the Act,

but the nature of order passed in this case is such that its legality has to be tested in this writ action since the order impugned is not only arbitrary but denying the opportunity to the petitioner, in complete violation of the principles of natural justice. This Court would justifiably entertain writ petition and hold that availability of alternative, efficacious remedy is not a bar for exercising writ jurisdiction on the grounds urged in the writ petition. Therefore, I desire to answer this question in the first instance before I advert to the grounds in which impugned order is questioned.

14. It is a settled position of law that writ jurisdiction is an extraordinary jurisdiction conferred on the High Court and in similar matter, the Supreme Court. We must not loose sight of the fact if in statute, there is an alternative remedy of appeal or revision provided for the litigant, first he has resort to such remedy. The jurisdictional Court to entertain the petition despite availability of remedy of appeal had come up for consideration before the Apex Court in several cases amongst which, learned Counsel Sri M. Krishnappa has cited the decision in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , wherein the Apex Court answering the questions raised about maintainability of writ petition when an alternative, efficacious remedy is available, has coined logically three circumstances, in which the availability of alternate or efficacious remedy is held no bar for entertaining writ action. They are:

- "(i) Where the writ petition seeks enforcement of any of the fundamental rights;
- (ii) Where there is violation of principle of natural justice; or
- (iii) Where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

15. Broadly speaking, violation of principles of natural justice are where the orders or proceedings are in utter disregard to mandatory statutory provisions or depriving the affected person's right to be heard.

16. In the instant case, the order impugned undoubtedly is an order falling within the mischief of Section 140 of the Act, which provision requires determination of boundaries of lands forming a survey number or a holding. From the language of Section 140, it is clear whether survey has already been completed or is to be completed the procedure prescribed under Chapter VIII of the Rules, forming part of Chapter VIII of the Karnataka Land Revenue Rules has to be followed.

17. For that purpose, Section 140(2) is relevant which envisages, if any dispute arises concerning the boundary of a holding which has not been surveyed, or if at any time after the completion of a survey, a dispute arises concerning the boundary of a survey number, a Sub-Division of a survey number, or a holding, the Tahsildar shall decide the dispute having due regard to the land records, if they afford satisfactory evidence of the boundary previously fixed, and if not, after such enquiry, as he considers necessary.

18. The Rules engrafted in Chapter VIII of the Rules make it further clear that several stages are prescribed by it must be followed in the work of surveying and updating the record of right. Stages like, first stage is to check and verification of records. In second stage, measurement and mapping is to be done, third stage, preparation of the final Record of Rights is contemplated and fourth stage, the subsequent maintenance of the Record. It compels the officer concerned to follow the procedure. The procedure followed could be found in Section 46 and in particular, Rule 46-H where it is specified that the Licensed Surveyor shall receive applications from the persons acquiring right in the prescribed Form 11-B and collect the measurement fee of Rs. 300/- and before taking up measurement, Licensed Surveyor shall obtain certified copies of necessary survey records from the respective survey offices by remitting a fee as noted below etc., and sub-rule (4) of Rule 46-H envisages Licensed Surveyor shall issue a notice well in advance in Form 11-C to the interested parties and to the all the adjacent landholders before commencing measurements.

19. This would clearly indicate that even before notifying the persons interested, the Surveyor has to collect necessary material information from the earlier surveyor reports, revenue records, compile it and based on it, call upon the persons who may be interested in the lands as envisaged in sub-rule (4) to take part in the enquiry.

20. In the instant case, the petitioner's father's name appears has been in the Record as early as from the year 1976 itself, as evidenced from Annexures-B and C. There is no reference to these records in the impugned order Annexure-A passed by the authority. From the very reading of the order and the caption, it could be seen the second respondent had applied to the first respondent for survey in which respondents 3 and 4 were the only parties. The petitioner's name is conspicuous by its absence in the proceedings. There is also no dispute that the petitioner was neither intimated nor notified of the survey undertaken by the first respondent. On this basis, it could be affirmatively held that the order impugned has been passed without following the procedure prescribed as referred to above and above all, without notifying the petitioner of the proceedings, let alone, giving him an opportunity of being heard.

21. In this fact situation, I am satisfied even though there is appeal provided u/s 49 of the Act, the order impugned being one which is passed without following the procedure prescribed and undoubtedly without giving opportunity to the petitioner of being heard and is in contravention of the principles of natural justice, the following citations could be relied upon this conclusion:

- (a) In the case of Whirlpool Corporation;
- (b) W.P. No. 38817 of 2010, disposed of on 17-12-2010;
- (c) W.P. No. 23549 of 2010, disposed of on 24-6-2011;
- (d) W.P. No. 26673 of 2010 and Misc. W. No. 10047 of 2010.

22. In the result, the impugned order, tested on these grounds, can hardly be sustained. In this view, the writ petition is maintainable and I have admitted it. Now coming to the claim of petitioner and respondents in this writ jurisdiction, there is no permissibility of recording any finding on the claim and counter claim of the parties. As each one claims to be the owner of the property, petitioner having acquired it through his father by inheritance or by testamentary succession while the second respondent claims he is the purchaser of the land in question such dispute is civil in nature.

As far as the first respondent is concerned, his jurisdiction is only to identify the property, its boundaries and incorporate it and identify it in a map to be prepared of the area after local inspection and preparation of mahazar as is prescribed by Rules. Therefore, without expressing any opinion about the claim and counter claim of the parties about CTS No. 2505, the issue has to be referred back to the first respondent to conduct survey for fixing the boundaries of property owned by the petitioner and respondents, if they produce relevant documents of title before him and with reference to document and after giving them full opportunity, conduct local inspection and fix the boundaries.

In view of this opinion, the impugned order Annexure-A requires to be quashed and accordingly, it is quashed. Since, he has already initiated proceedings in Mis. Cri. No. 1 of 2014-2015, the first respondent is directed to take the proceedings from the stage it was registered and after notifying the petitioner and all others who may be interested in any of the properties adjacent to the property in question conduct survey following the procedure prescribed under the Karnataka Land Revenue Rules, 1966 and conduct enquiry and pass appropriate orders in accordance with law. With these observations, the writ petition is disposed of.

It is also made clear till fresh order is passed by the first respondent in accordance with law, the parties shall not interfere with the possession of each other. They shall maintain status quo ante.

At the request of second respondent, I am inclined to direct the first respondent to begin and conclude the proceedings within four months from the date of receipt of a copy of this order.