(2016) 07 KAR CK 0045

In the Karnataka High Court

Case No : Writ Petition No. 53331 of 2014 (LB BMP)

Mahesh Kumar M.J. APPELLANT

Vs

Bruhath Bangalore Mahanagara Palike, Bangalore RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Bruhat Bangalore Mahanagara Palika Property Tax Rules, 2009 — Rule 11
Karnataka Municipal Corporation Act, 1976 — Section 503

Citation : (2016) 6 KantLJ 675

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : Sri V. Sreenidhi, Advocate, for the Respondents; Sri A.V. Ainarnathan, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J. - The writ petition is directed against the endorsement dated 26-12-2012 whereby the respondent-BBMP has refused to sanction the construction plan of the petitioner, as the site in question belonging to the petitioner was not entered in Form A of the Property Register (Khata) maintained under the provisions of the Bruhat Bangalore Mahanagara Palike Property Tax Rules, 2009.

2. The impugned Annexure-D, dated 26-12-2012 is quoted below for ready reference :

"Endorsement

dated 26-12-2012

Sub. : Approval of plan in respect of the property bearing No. 14, BBMP No. 45/1/14, Khata No. 1876, Assessment No. 45/1, Khaneshumari No. 1985/14, situated at Mallathahalli Village, within the limits of Bruhat Bangalore Mahanagara Palike, Yeshwanthapura Hobli, Bangalore North Taluk - Regarding.

Ref. : Your representation dated 14-12-2012.

With reference to the above cited subject you have sought for approval of plan referred above in respect of the ''B'' katha property bearing No. 14, BBMP No. 45/1/14, Khata No. 1876, Assessment No. 45/1, Khaneshumari No. 1985/14, but your katha has not been registered in the Corporation as ''A'' Khata and accordingly it cannot be considered for grant of plan. Hence the endorsement.

Sd/-

Assistant Director

(Urban Planning),

Raiarajeshwarinagar Division,

Bruhat Bangalore Mahanagara Palike,

Bangalore."

3. The Rule 11 of the BBMP Property Tax Rules, 2009 is also quoted below for ready reference :

"11. Property Register. - The property tax collected from the owner/occupier in respect of property assessed to tax shall be maintained in Property Tax register in Form A and in respect of un-assessed properties shall be maintained in a register in Form B."

4. Mr. V. Sreenidhi, learned Counsel representing the respondent-BBMP also pointed out that an identical matter has been disposed of by this Court in W.P. No. 54836 of 2013 on 6-3-2015, the relevant portion of which is quoted below for ready reference :

"Order

An endorsement dated 18-9-2013 as at Annexure-F has been questioned in this writ petition.

2. Petitioner purchased the property in question on 10-6-1992 vide Annexure-A. He had filed O.S. No. 6754 of 2007 against Sri Malla alias Mallaiah and eleven others in the City Civil Court, Bangalore. The suit having been dismissed on 10-12-2009, RFA No. 219 of 2010 was filed and the appeal was allowed by a judgment and decree dated 11-9-2012 vide Annexure-C. The petitioner having sought the issuance of ''A'' katha, has been issued with the impugned endorsement.

3. Having heard Sri D.S. Joshi, learned Advocate for the petitioner and Sri Jagadish Baliga, learned Advocate for respondents and perused the impugned endorsement, in my opinion, the petitioner cannot feel aggrieved by the decision taken vide Annexure-F. The respondents having informed the petitioner that the property being a revenue site and issuance of ''A'' khata in respect of such

properties being not permissible i.e., till Government issues appropriate order, was notified that as and when the Government order is received for issuance of ''A'' katha even in respect of revenue sites, appropriate action would be taken.

4. Sri D.S. Joshi, submitted that the Government has passed the order and the same would be produced in a week''s time. If the Government has passed any order enabling issuance of ''A'' katha by the respondents, even in respect of properties similar to that of the petitioner, the petitioner may produce the same before the respondents and seek passing of further order on the request made i.e., in respect of the impugned endorsement has been issued. Once the petitioner produces the Government order or the respondents receive the Government order, on the basis of which they can issue ''A'' katha, even in respect of revenue sites can be undertaken, the respondents will have the obligation to pass further order on the representation of the petitioner.

In the said view of the matter, writ petition is disposed of by reserving liberty to the petitioner to produce the Government order which would enable him to claim issuance of ''A'' katha in respect of the property in question. Expeditious action shall be taken by the respondents soon after the petitioner produces the Government order, as stated by Sri D.S. Joshi."

5. In view of the aforesaid, the prayer made in the present writ petition for sanction of the plan of the petitioner for the area in question was covered by extending the area of the BBMP with effect from 16-1-2007, cannot be granted, unless the land in question is converted from revenue site (agricultural) to urban site upon payment of due taxes and improvement charges and the said site in question is registered in Form A under Rule 11 of the Bruhat Bangalore Mahanagara Palike Property Tax Rules, 2009. Unless and until that process is completed, the petitioner cannot ask for a mandamus and direction to the BBMP to sanction his plan applying the erstwhile provision of Section 503 of the Karnataka Municipal Corporations Act, 1976 particularly, the proviso to sub-section (2) thereof.

6. Section 503(1) and 503(2) of the 1976 Act is quoted below for ready reference:

"503. Declaration of city municipal area as a larger urban area under this Act. - (1) Subject to the provisions of Section 3, the Governor may declare by notification that any municipal area for which a City Municipal Council is constituted under the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964) shall with effect from the date to be specified in such notification to be a larger urban area specified under Section 3 of this Act.

(2) The provisions of the Karnataka Municipalities Act, 1964 applicable to such city municipal area shall not apply to any local area declared as a larger urban area under sub-section (1) with effect from the date specified in the declaration :

Provided that any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made or issued or imposed under the said Act in respect of such city municipal area which were in force as applicable immediately before the date specified under sub-section (1) shall continue in force and be deemed to have been made issued or imposed under the provisions of this Act unless and until it is superseded by any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made or issued or imposed under this Act."

7. The proviso to sub-section (2) of Section 503 of the said Act of 1976 only provides for a saving clause for a temporary continuation of any appointment, notification, notice, lax, order, scheme, licence, permission, bye-law or form made or issued or imposed unless and until it is superseded by any such further appointment, notification, notice, tax, order, scheme, licence, permission, rule bye-law or form made or issued or imposed under the provisions of the Karnataka Municipal Corporations Act, 1976 which is extended to City Municipal areas. In view of this proviso, the contention of the learned Counsel for petitioner that the respondent-BBMP should consider the sanction plan of the petitioner, as if the area continued to exist within the domain and jurisdiction of the erstwhile City Municipal Council covered by the provisions of Karnataka Municipalities Act, 1964 does not have any force and the same deserves to be rejected.

8. Once the provisions of the Act of 1976 have been extended to the City Municipal area converting into larger urban area and Section 503 of the Act becomes applicable and the explanation provided in the proviso to sub-section (2) provides only a temporary validity to the orders and notifications already issued under the provisions of the Karnataka Municipalities Act, 1964 applicable to City Municipal Councils such a sanction under 1964 Act cannot be given.

9. In view of this, the writ petition is disposed of with liberty to the petitioner to get the process of his site being entered in Form A prescribed under Rule 11 of the Bruhat Bangalore Mahanagara Palike Property Tax Rules, 2009 completed and thereafter, approach the respondent-BBMP for sanction of his plan, in accordance with law.

10. With this observation, the writ petition is disposed of. No costs.