
(1979) 07 KAR CK 0038
In the Karnataka High Court
Case No : W.P. 6514/74

Manchegowda and Others

APPELLANT

Vs

Divisional Commr., Mysore and Others

RESPONDENT

Date of Decision : 31-07-1979

Acts Referred:

Karnataka Panchayats (Acquisition, Transfer of Moveable and Immoveable Property) Rules, 1960 — Rule 6

Citation : (1980) 1 KarLJ 271

Hon'ble Judges : Swami, J

Judgement

1. In this petition under Article 226 of the Constitution, the petitioners who are the residents of Anasasalu village, which forms part of the Village Panchayat, Chikkaballi, have challenged the validity of the order passed by the Divisional Commissioner, Mysore Division, Mysore, dated 6-11-1974. The petitioners have also prayed for a writ in the nature of mandamus directing the 2nd respondent-Village Panchayat Committee, to forbear from giving effect to the resolution, dated 1-7-1973, 2.12.1973 and 20-9-1974 and also the order of the Divisional Commissioner, dated 6-11-1974. The petitioners have also sought for a writ of mandamus directing the 2nd respondent to form a lay out in the land in question acquired for that purpose in consultation with the Town Planning Department and then to allot the sites.

2. Sri Mohandas N. Hegde, the learned Counsel appearing for the petitioners, put forth the following contentions:

(i) Sanction contemplated under Rule 6 of the Rules by the Deputy Commissioner or the Divisional Commissioner as the case may be, is the previous sanction and not an ex post facto sanction.

Therefore, the sanction accorded by the Divisional Commissioner to the allotments in question was not a valid sanction.

(ii) That once the resolution was passed by the Village Panchayat Committee

allotting sites and the money was collected in pursuance of the said resolution, it was not at all open for the Village Panchayat Committee to cancel the same by passing another resolution.

3. The necessary facts for deciding the contentions raised by Sri Mohandas N. Hegde, the learned Counsel for the petitioners, are as follows: At the instance of the 2nd respondent-Village Panchayat Committee, the land measuring 5 acres 20 guntas situated in the village of Anasasalu came to be acquired by the State Government for the purpose of formation of sites and allotting the same to the residents of the village. For the purpose of acquiring the said land, the Panchayat Committee collected funds from several persons, who were in need of the sites. It is not in dispute that from the funds so collected, the cost of the acquisition has been met. After the possession of the land was given to the Village Panchayat Committee it formed a lay out of 76 sites and thereafter, it passed a resolution dated 1-7-1973 allotting 41 sites to different persons. Subsequently, the said resolution came to be cancelled by passing another resolution dated 2-12-1973 allotting sites to 69 persons, out of 76 sites which were formed. This resolution came to be challenged before the concerned Assistant Commissioner on the ground that the Panchayat Committee was not competent to pass the resolution dated 2-12-1973 cancelling the earlier resolution before the expiry of the period of six months as per S. 38 of the Karnataka Village Panchayats and Local Boards Act, 1959. The Assistant Commissioner, though went into the merits of the matter and found that there was nothing wrong in the allotment made by the subsequent resolution dated 2-12-1973 set aside the resolution dated 1-7-1973 on the ground that it was not permissible in law for the Panchayat Committee to modify its earlier resolution dated 1-7-1973 before the expiry of the period of six months. After this, the Panchayat Committee took up the matter once again and passed a resolution dated 23-9-1974 annulling the previous resolution dated 1-7-1973 and allotting sites to certain other persons who had applied for the sites and who were in need of the same. This resolution was sent to the Divisional Commissioner for approval under Rule 6 of the Mysore Panchayats (Acquisition and Transfer of Moveable and Immoveable Property) Rules, 1960 (hereinafter referred to as "the Rules"). The Divisional Commissioner, as already stated, passed an order dated 6-11-1974 approving the allotment. Thereafter, it is not in dispute that the Panchayat committee passed another resolution dated 23-9-1974 deciding to transfer the sites to the allottees as approved by the Divisional Commissioner and to execute the title deeds.

4. The contention of the learned Counsel for the petitioners is that the Divisional Commissioner has accorded an ex post facto sanction, whereas under Rule 6 of the Rules, the previous sanction was required to be obtained by the Panchayat Committee and as such, the sanction accorded by the Divisional Commissioner is invalid, cannot be accepted. Rule 6 of the Rules reads as follows:

"Transfer otherwise than by lease of immoveable property belonging to a Panchayat.-A Panchayat shall not without the previous sanction of the Deputy

Commissioner make or cause any transfer to be made except by way of lease, or any immoveable property belonging to it, or create or cause any charge to be created upon any such property. If the value of the property so transferred or the amount for which the charge is so created exceeds Rs. 10,000, the previous sanction of the Commissioner shall also be obtained for the transaction.

(2) The deed, of transfer shall be in the appropriate form in Schedule II appended to these rules, with such variations as circumstances may require"

The foresaid Rule provides that the Panchayat Committee shall not without the previous sanction of the Deputy Commissioner make or cause any transfer to be made except by way of lease of any immoveable property belonging to it, or create or cause any charge to be created upon any such property, the value of which does not exceed Rs. 10,000, and in case the value exceeds Rs. 10,000, then the previous sanction of the Commissioner shall have to be obtained for the transaction. It was contended by Sri Hegde, the learned Counsel for the petitioners, that the sanction contemplated under Rule 6 of the Rules is the one which should be obtained even prior to the allotment of sites to various persons and after obtaining such sanction only, the Panchayat Committee will be competent to proceed with the allotment. In this connection, the learned Counsel relied upon two decisions of this Court reported in *M. Krishna v. Mangalore Municipality*, (1964) 2 Mys. L.J. 230 and *Gurumurthappa v. Bangalore Corporation*, AIR 1962 Mys. 92.

5. In *M. Krishna v. Mangalore Municipality*, (1964) 2 Mys. L.J. 230, this Court was called upon to consider the provisions contained in Rule 12(1)(f) of the Rules relating to receipts and expenditure of Municipal Councils (under the Madras District Municipalities Act), which is as follows:

"12(1) All * * *

(f) leases of building and of lands belonging to the Municipal Council and lents of which are expected to exceed Rs. 200 per annum shall be effected by public auction which shall be conducted by the executive authority or by a person duly authorised by him who shall give full publicity thereto in such manner as he considers suitable . . . The municipal council or the committee, as the, case may be, shall determine which of the bids at the auction shall be accepted. Where the bid accepted is not the highest bid, the reasons for rejecting a bid or bids higher than the one accepted shall be recorded in writing;

Provided also that in exceptional cases, where it is advantageous to renew the leases of lands and buildings referred to in clause (f) in favour of persons to whom the leases were originally granted, the Municipal Council may, with the previous sanction of the Inspector of Municipal Councils and Local Boards, dispense with public auction."

From the aforesaid Rule, it is clear that leases of buildings and lands belonging to a Municipal Council and rents of which are expected to exceeds Rs. 200 p. a.

shall have to be effected by public auction conducted by the executive authority or by a person duly authorised by the executive authority. But, in exceptional cases, with the previous sanction or the Inspector of Municipal Councils and Local Boards, it was open for the municipal council to dispense with the public auction and to renew the leases of lands and buildings falling within clause (f) of sub-rule (1) of Rule 12 of the aforesaid Rules framed under the Madras District Municipalities Act, in favour of the persons to whom the leases were originally granted. Thus, under the said Rule even the renewal of the lease was required to be done by public auction and to renew the lease in favour of the person to whom the lease was originally granted the previous sanction of the Inspector of the Municipal Councils and the Local Boards was required to be taken. Having regard to the wordings contained in the said Rule, this Court, in the aforesaid decision, field as follows:

"The Municipal Council being a creature of statute, is certainly subject to the conditions set out in the Act and the Rules made thereunder. It can exercise only those powers which have been actually conferred on it; further, the exercise of that power should be in the manner and subject to such conditions as are set out in the statute. The requirement of previous sanction is a measure of control vested in the State Government. Any interpretation tending to whittle down that control, cannot be accepted. A previous sanction cannot be equated to an ex post facto sanction."

6. In *Gurumurthappa v. Bangalore Corporation*, AIR 1962 Mys. 92, this court was called upon to consider the scope of S. 73 of the City of Bangalore Municipal Corporation Act, which is as follows:

"(1) Subject to the Provisions of section 79, the commissioner may dispose by sale or exchange of any corporation moveable property the value of which does not exceed five hundred rupees, in each instance, or grant for any term not exceeding twelve months a lease of any corporation immoveable property or a lease or concession of any right of fishing or grazing or or gathering and taking fruit and the like:

Provided that every such disposal lease or concession made or granted by the commissioner shall be reported to the standing committee within fifteen days;

(2) With the sanction of the standing committee, the commissioner may dispose by sale or exchange of any corporation moveable property the value of which does not exceed five thousand rupees in each instance, or grant for any term not exceeding three years a lease of any corporation immovable property or a lease or concession of any such right as aforesaid.

(3) With the sanction of the Corporation the commissioner may lease, sell or otherwise dispose of any corporation property, moveable or immoveable.

(4) The sanction of the standing committee under sub-sec. (2) or that of the corporation under sub-sec. (3) may be given either generally or for any class of

cases or specially for any particular case.

(5) The Commissioner may lend or let out a hire any corporation moveable property on such conditions and for such conditions and for such periods as may be specified in regulations made by the standing committee in that behalf.

(6) Notwithstanding anything contained in the foregoing provisions of this Section, no property whether movable or immovable exceeding two thousand rupees in value shall be sold otherwise than by public auction and no property movable or immovable of whatever value shall be granted free of cost except with the previous sanction of the Government.

After quoting S. 73 of the City of Bangalore Municipal Corporation Act, this Court held as follows:

"Under sub-section (1) of Section 73 the Commissioner can lease or dispose of the property concerned without anybody's sanction. All that he need do is to report to the Standing Committee within 15 days about the action taken by him; Sub-section (2) of Section 73 provides that the right of the Commissioner to dispose of the properties mentioned therein by sale or exchange or grant on lease is subject to the sanction of the standing committee; under sub-section (3) before leasing or selling or otherwise disposing of any property included therein, the Commissioner must obtain the sanction of the Corporation; under sub-section (3) no property of the Corporation whether movable or immovable exceeding two thousand rupees in value can be disposed of by the Commissioner except by public auction. The cumulative effect of these provisions is to make the Commissioner alone responsible for all transactions entered into on behalf of the Corporation. The other bodies mentioned in the "Act" only act as checks on him; they can merely limit his power and not take it away."

But, the aforesaid two decisions are of no assistance to the petitioners in the instant case in view of the wordings contained in Rule 6 of the Rules with which we are concerned in this Writ Petition. It is to be noticed that the expression used in Rule 6 of the Rules, is "transfer". The Panchayat Committee is not entitled to transfer the immoveable property belonging to it without the previous sanction of the Deputy Commissioner or the Divisional Commissioner, as the case may be, depending upon the value of the immoveable property proposed to be transferred. A mere resolution passed by the Panchayat Committee proposing to allot or allotting a site to a particular person will not give any valid title to that person unless and until the deed of transfer is executed in his favour. Sub-rule (2) of Rule 6 further provides that the deed of transfer shall be in the appropriate form as per Schedule II appended to the Rules, with such modification as circumstances may require. Therefore, it is clear that the proceedings of the panchayat committee allotting or proposing to allot sites do not assume any higher character than that of a proposal to allot. Even if the panchayat committee may state in its resolution that the site or sites has or have been allotted finally, it will not have the effect of transferring the title to the allottee or

allottees unless the deed of transfer is executed in pursuance of the allotment. Before executing the deed of transfer, the sanction of the Divisional Commissioner or the Deputy Commissioner as the case may be, depending upon the value of the immoveable property to be transferred, will have to be obtained as per Rule 6 of the aforesaid Rules. Therefore the expression "Transfer" used in Rule 6 assumes more importance in this connection and as such, the sanction that is to be sought under Rule 6 must be the sanction prior to the transfer of the immoveable property. In the instant case, the Divisional Commissioner, by his order dated 6-11-1974 (Exhibit-D), has approved the resolution of the panchayat committee dated 23.9.1974 allotting sites to various persons with certain conditions. Thereafter, the panchayat committee has passed another resolution dated 23.11.1974 in accordance with the order of the Divisional Commissioner dated 6.11.74 (Ext. D), resolving to execute the transfer deeds in favour of the allottees. It was not shown before me that the resolution of the panchayat committee dated 23-11-1974 was in any way contrary to the order of the Divisional Commissioner dated 6-11-1974 (Ext. D) giving prior sanction for transfer of the sites to the allottees. Thus, it is clear that in the instant case, the requirements of Rule 6 of the aforesaid Rules, have been complied with and the order of the Divisional Commissioner (Ext.D) is not the one giving post facto sanction but the one of giving a prior sanction for the transfer of the immoveable property belonging to the panchayat committee. As such, the said order of the Divisional Commissioner cannot be said to be invalid nor can it be said that it suffers from any illegality.

7. Shri Hegde, the learned counsel for the petitioners, also relied upon a decision of this Court rendered in Writ Petition H.S. Linge Gowda v. The State of Mysore, WP 1107/63 dt. 26-8-65. The question that was involved in the said writ petition was that the order passed by the State Government refusing to accord sanction to the sale of 20 sites by the Town Municipal Council not having been passed within the period prescribed by S. 33(2) of the Mysore Municipalities Act, 1951, whether it must be presumed that the sanction prayed for had been accorded by the State Government having regard to the provisions contained in Sec. 38(2) of the Mysore Municipalities Act, 1951. Considering the various developments in the case, this Court came to the conclusion that the order passed by the State Government refusing to accord sanction to the sale of sites was within the prescribed time. That being so, the said decision cannot be of any assistance to the petitioners in this case.

8. The learned Counsel for the petitioners relied upon yet another decision of this Court rendered in Mayamma v. Town Municipal Council Mandya, WP 679 & 680/75 dt. 17-3-66. That was a case in which the sites were granted to the petitioners therein in pursuance of the resolution passed by the Municipal Council on 20th March 1960 for an up-set price. The petitioners therein also were put in possession after they had paid the up-set price and they had even paid the assessment for a couple of years subsequent to their possession. The petitioners therein, challenged the resolution dated 27.2.1965 authorising the president of

the municipal council to take steps for cancellation of the grant of sites made in favour of the petitioners on the ground that the then President had mis-used his power. The petitioners therein also challenged the public notice dated 22.3.1965 issued by the Municipal Council to the effect that all the 19 sites granted had been resumed to the Municipal Council. Though this Court came to the conclusion that it was open for the Municipality under S. 27(14) of the Mysore Town Municipalities Act, 1951 to cancel or modify its resolution after the lapse of three months from the date of the former resolution, but on the question as to whether the action taken by the Municipality cancelling the grant of sites and resuming the same to the Municipality, was justified in law, this Court having regard to the particular facts of that case held that the action of the Municipality was not justified in law. The relevant portion of the decision is as follows:

"The sole question which requires determination by us in these writ petitions is whether the action taken by the respondent in passing the resolution and issuing the notification already mentioned is illegal. Whatever the ultimate decision on the title of the petitioners to the property might be, it is undisputed that they have been in possession of sites after payment of the upset price and the assessment for at least a couple of years after they were put in possession. The respondent is a Corporate Body and the change of personalities in the constitution of Municipal Council for the time being would not change the corporate character of the respondent. In substance what the respondent wants to do is to revoke the grant made by him on the ground that the grant had been made by the former President for ulterior purposes by practising fraud on the Municipality. We are not aware of any provision in the Act nor has the learned Counsel for the respondent been able to show which empowers the Municipal Council to decide disputes of this type and come to a decision as to the nature of the interest which passed to the grantees under the grants made by the former president. The Municipality is a creature of the Statute and its constitutional powers and functions are those which are laid down by the Statute creating it. If there is no express power conferred on a Municipal Council to decide a dispute of this type, we are unable to see how by passing a resolution the respondent would be able to set aside the grant and resume it."

Thus it is clear that the question involved in the aforesaid case, was quite different from the one with which we are concerned. Therefore, this decision also is of no assistance to the petitioners in the present case.

9. Lastly, the learned Counsel for the petitioners, relied upon another decision of this Court rendered in *Sidde Gowda v. Huliwana Group Village Panchayat*, WP 2369/68 dt. 11-11-71. That was a case in which the Chairman of the Village Panchayat Committee filed a counter-affidavit supporting the case of the petitioner therein that the proceedings of the Village Panchayat Committee wherein the sites were allotted were highly arbitrary and were intended to help the relatives of the then members of the Village Panchayat Committee. None of the respondents therein opposed the grant of relief to the petitioner. It was under

those circumstances, this Court made the following observations:

"It cannot be disputed that the Village Panchayat is not immune from its action being challenged on the ground of denial of equality of treatment guaranteed by Article 14 of the Constitution. It is highly desirable that the State Government should frame Rules for allotments of sites in Village Extensions. The action of the first respondent is wholly arbitrary and in our opinion amounts to clear abuse of power, besides being violative of the constitutional guarantee of Art. 14. Hence, we allow this writ petition and quash the impugned resolution of the first respondent dated 29.12.1960."

Now, in the present case, it is to be seen as to whether the Panchayat Committee while making allotment of sites has acted arbitrarily and with a view to help the relatives of the members of the Village Panchayat Committee. It is not in dispute that the Panchayat Committee did not have sufficient funds for the acquisition of the land in question. But, nevertheless, some of the inhabitants of Anasasalu Village wanted sites, therefore, the Village Panchayat Committee was persuaded to take steps for providing sites to the inhabitants of Anasasalu village. In the statement of objections filed on behalf of the Village Panchayat Committee, it has been specifically stated that some of the inhabitants of the village wanted sites and so in the year 1963, 51 members paid advances for sites and a sum of Rs. 5,100 was collected. After formation of the layout, sites were allotted initially to 41 inhabitants who had deposited the full value of the sites under the resolution dated 1.7.1973 and thereafter, there was a mass representation made for re-allotment of the sites, therefore, a resolution dated 2.12.1973 came to be passed by the Village Panchayat Committee. By this resolution, apart from allotting sites to those 41 persons who were allotted the sites by the resolution dated 1.7.1973 and also 28 others were allotted the sites. As already pointed out, the Assistant Commissioner set aside the resolution dated 2.12.1973. Therefore, the Village Panchayat Committee took up the matter once again and passed the resolution dated 23.9.1974 annulling the resolution dated 1.7.1973 and it also made allotments. With regard to the manner of allotment of sites in para-3 of the statement of objections it has been specifically stated that preference was first given to those who had deposited the value of the sites as long back as in the year 1963 and next to those who had paid the balance of the value of the sites in 1973 and next to those who had made application for allotment of sites and were in need of sites. It has also been further stated that there are only ten applications pending and all these ten applicants have houses of their own.

10. Para 9 of the statement of objections is material and deserves to be noticed at this stage. The said para is as follows.

"The 1st petitioner has been allotted No. 32 and his brother also has been allotted site No. 6. The 2nd petitioner is the son of the 6th petitioner and they are undivided father and the son. A site has been allotted to the 6th petitioner and so, no site was allotted to the 2nd petitioner. The 3rd petitioner has been allotted site No. 3. The 4th petitioner has not deposited any money. He and his

brother Kariyappa bin Mari Gowda are undivided and a site has been allotted to the said Kariyappa who had deposited the value of the site. The 5th petitioner is undivided with his father and site No. 4 has been allotted to the 5th petitioner's father who had applied for a site. The fifth petitioner's brother Shivalingaiah has also been allotted a site. The 5th petitioner had neither deposited money nor applied for any site. The 7th petitioner has neither deposited and money nor applied for any site. There is no person of that name in Anasasalu Village. A printed copy of the Voters' list of the Panchayat is submitted herewith and marked as Exhibit-V. The said list shows that there is no person by name Kullamma and who are all living in joint family. It is thus seen that the petitioners can make no grievance of the allotment of sites made by the resolution dated 23rd September 1974."

Thus, it is clear that there has not been any arbitrary allotment of the sites. As to why some of the petitioners have not been allotted sites is also explained in the statement of objections. As far as petitioner No. 7 is concerned, she is not a resident of Anasasalu village.

11. In this regard, another circumstance to be noticed is that this Court, by the order dated 21.7.1976, appointed the Assistant Commissioner as the Commissioner to submit a report to this Court regarding the occupation of the sites by the allottees and the construction put up by them. In pursuance of the order of this Court, the Assistant Commissioner conducted spot inspection and has submitted a report dated 22.8.1976. From the said report, it is clear that many of the allottees have put up construction and have been residing therein.

12. Taking into consideration of the fact that the allotments that have been made by the Village Panchayat Committee are on the basis as stated in the statement of objections and also in view of the fact that most of the allottees have put up construction and are living therein, I do not think even if there are any minor irregularities or illegalities in the manner of allotment of sites this is a case in which the jurisdiction of this Court under Art. 226 of the Constitution should be exercised.

13. It was submitted by Sri Hegde, the learned Counsel for the petitioners, that the statement contained in the statement of objections explaining the resolution should not be taken into account inasmuch as the village panchayat committee being a corporate body speaks through the resolution only and as such, the statement contained in the statement of objections explaining the allotments should not be relied upon in order to justify the resolution. When the action taken by the Village Panchayat Committee is challenged before the Court, it is always open for the Village Panchayat Committee to place the facts and produce the material before the Court to sustain its action. It is also open for this Court to take into consideration those facts and materials in order to find out whether there is a justification for exercising the jurisdiction under Article 226 of the Constitution. In other words, this Court before exercising the jurisdiction it will have to be satisfied in terms of Art. 226(1)(b) and (c) of the Constitution, that

there is a substantial failure of justice. The Village panchayat committee has formed a lay out and this has taken place five years ago and as per the report of the Commissioner, most of the allottees have put up their construction and are residing therein. Under these circumstances, if this Court has to interfere with the action taken by the Village Panchayat Committee after the lapse of more than five years, for that purpose, it is open for this Court to rely upon the statement made in the statement of objections in order to find out whether there is a substantial failure of justice so as to compel this Court to interfere with the proceedings of the Village Panchayat Committee.

14. The last contention of Sri. Hegde is that once the resolution is passed allotting the sites and money is collected, it is not open for the Village Panchayat Committee to pass another resolution modifying the earlier resolution, cannot also be accepted. In the instant case, in pursuance of the resolution dated 1.7.1973 there was no sanction accorded by the Divisional Commissioner nor there was any resolution passed by the Panchayat Committee resolving to effect the transfer in accordance with the allotment made under the resolution dated 1.7.1973. As such the resolution dated 1.7.1973 only remained as a proposal and it did not create any enforceable right in the petitioners and others named in the said resolution. Sec. 38 of the Karnataka Village Panchayats and Local Boards Act, 1959, empowers the village panchayat committee to modify or cancel its resolution after the expiry of the period of 6 months from the date of passing of the earlier resolution, Thus the resolution in question, dated 23.9.74, by which the earlier resolution dated 1.7.73 was annulled is the one passed long after the expiry of six months from the date of its earlier resolution dated 1.7.1973, As such, the last contention of the petitioners must also fail.

15. For the reasons stated above, the writ petition fails and the same is dismissed.