

(2015) 08 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No. 17873 of 2015 (LB-BMP)

Marappa

APPELLANT

Vs

Bangalore Mahanagara Palike and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 321(1), 321(3)

Citation : (2015) 6 KarLJ 627 : (2016) 1 KCCR 294

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : H.V. Devaraju, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The petitioner-Mr. Marappa, has challenged the legality of the order dated 31-3-2015 passed by the Karnataka Appellate Tribunal, Bangalore, whereby the learned Tribunal has confirmed the notice issued by the Bruhat Bengaluru Mahanagara Palike (for short, "the B.B.M.P.") under Section 321(3) of the Karnataka Municipal Corporations Act, 1976 (for short, "the Act"). Briefly the facts of the case are that by order dated 1-12-1978, the Special Deputy Commissioner of Bangalore District granted a parcel of land, to the extent of 2 acres, in Survey No. (Old No. 87) New No. 145 situated at Hosakerehalli Village, Veerabhadranagar East, Bangalore South Taluk, in favour of the petitioner, and in favour of other grantees. Subsequently, the possession of the land was confirmed by issuance of Saguvali Chit. Ever since then, the petitioner is in peaceful possession and enjoyment of the property. Thereafter, the petitioner also carried out certain construction on the said land. On 5-5-2005, the petitioner was issued a notice under Section 321(1) of the Act. The petitioner replied to the same. After considering the reply, a final notice was issued under Section 321(3) of the Act confirming the provisional order dated 5-5-2005. In the final order, the petitioner was directed to remove the alleged unauthorized construction. Since the petitioner was aggrieved by the said notice, the petitioner filed an appeal

before the Karnataka Appellate Tribunal. However, by order dated 31-3-2015, the appeal has been dismissed by the learned Tribunal. Hence, this petition before this Court.

2. Mr. H.V. Devaraju, the learned Counsel for the petitioner, has vehemently contended that the petitioner's property is situated in Hosakerehalli Village, Veerabhadranagar East, Bangalore South Taluk; more specifically, it is situated in Survey No. (Old No. 87) New No. 145. However, the said Village has never formed as part of the B.B.M.P. Therefore, the respondent-B.B.M.P. was unjustified in issuing a notice under Section 321(1) and 321(3) of the Act. In order to buttress his plea, the learned Counsel has brought the letter written by the Deputy Commissioner, Bangalore District, to the Commissioner, B.B.M.P., dated 26-2-2003, wherein the Deputy Commissioner has pointed out that due to the pendency of the litigation, Survey No. 87 situated in Hosakerehalli Village cannot be conveyed to the B.B.M.P. He has also brought endorsement dated 30-6-2006 issued by the Under Secretary to the Government, Urban Development Department, which clearly indicates that Veerabhadranagara Dakhle Area, under which the petitioner's property falls, the question whether the said area should belong to the B.B.M.P. or to the Rajarajeshwari Municipality is under consideration of the Government. Thus, according to the learned Counsel, the area in dispute, in fact, was never conveyed to the B.B.M.P.

3. Heard the learned Counsel, and perused the impugned order.

4. A bare perusal of the impugned order clearly reveals that the learned Tribunal in paragraph 9 of the impugned order has observed as under:

"9. Upon verifying the file obtained from the respondent, it is found that Hosakerehalli comes under Bangalore Mahanagara Palike Jurisdiction. On going through brief facts of the appeal, it show that several cases/transactions held between the appellant and the Revenue Department. The appellant has not produced any document to show that the said land is granted by any authority so far. The building constructed by the appellant in the said land is an unauthorized one. After passing temporary order, the GPA holder of the appellant-Sri Prabhudeva Swamy has filed objections. Since the said explanation is not acceptable to the respondent, the respondent passed confirmation order. To the statement that the appellant has obtained approved plan from the concerned authority, neither the appellant nor his GPA holder has produced any document. The appellant has himself admitted in his appeal that the GPA holder has constructed a building in the said land and the same is an unauthorized one. The main argument of the appellant is that the said land is not coming within BBMP jurisdiction. In contra, the respondent has produced a copy of the Karnataka State Gazette Notification published on 28-10-2003, wherein it has been ordered to bring the same under Veerabhadranagara Dakhle Pattanagere Municipality jurisdiction. On perusing the objection filed by the respondent, he has stated that Hosakerehalli comes under BBMP jurisdiction. For all the reasons stated supra, the confirmation order made by the 2nd respondent is just and proper in

accordance with law. The appellant has not produced any record to show that the said land was granted in favour of the appellant or he has obtained approved plan from the concerned authority to construct a building in the said land. Therefore, this appeal is not maintainable. The appellant has not established that he has reasonable cause for maintainability of this appeal. For all the reasons stated supra, we have answered Issues 1 and 2 negatively."

5. A bare perusal of the impugned order clearly reveals that according to Karnataka State Gazette Notification published on 28-10-2013, Veerabhadranagara Dakhle was declared to be part of Pattanagere Municipality. The said notification is produced by the petitioner as Annexure-L before this Court. Subsequently, the said Municipality became part of the B.B.M.P. Therefore, the learned Tribunal has noticed the fact that the Village Hosakerehalli comes under the B.B.M.P. jurisdiction. Thus, the contention raised by the learned Counsel that the land in dispute does not fall in an area, which was conveyed to the B.B.M.P., is without any substance. The learned Tribunal has also noticed the fact that the petitioner did not produce any document to establish the fact that the building plan was approved by the concerned Authority. In the absence of a approved sanctioned plan, obviously, the respondent 2 was justified in issuing notice under Section 321(1) and 321(3) of the Act.

Since the learned Tribunal has assigned legally valid reasons, this Court does not find any perversity in the impugned order dated 31-3-2015. Hence, this petition, being devoid of any merit, is hereby dismissed.