

(2014) 02 KAR CK 0075

In the Karnataka High Court

Case No : Writ Petition Nos. 2727 and 53710 to 53712 of 2013 (KLR-RES)

M.C. Sundara Murthy

APPELLANT

Vs

Government of Karnataka

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2015) 1 AKR 159 : (2014) 5 KarLJ 347

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : S. Subhash Kumar, Advocate for the Appellant; D. Ashwathappa, Additional Government Advocate, Advocate for the Respondent

Judgement

Jawad Rahim, J.—In this writ action, the petitioners have sought writ in the nature of certiorari to quash notice issued on 8-1-2013 vide Annexure-G by the third respondent proposing to hold an enquiry. Learned Additional Government Advocate Sri D. Ashwathappa has taken notice for respondents 1 to 3.

2. Heard learned Counsel Sri S. Subhash Kumar for the petitioners and Sri D. Ashwathappa, learned AGA for respondents 1 to 3. Perused the records in supplementation thereto which reveals:

One Chinnaswamy Mudaliar father of the petitioners purchased property in Survey No. 1 of Jodi Ranganatha Village, Kasaba Hobli, Bangalore North Taluk measuring East to West 450 feet and North to South 320 feet on the eastern side and 140 feet on the western side and a portion in Survey No. 4 of same village measuring 20 guntas as referred to in the schedule from Smt. Kannamma and her sons Shanmughan and Kadiri Velu vide deed of sale dated 24-6-1959.

Chinnaswamy Mudaliar intended to form residential layout in the said land and approached CITB who directed him to deposit Rs. 56,680/- as layout charges. He deposited Rs. 10,000/- out of it as initial charges on 27-4-1961. But thereafter Bangalore City Corporation laid claim in respect of the said land resulting in Chinnaswamy Mudaliar filing a suit in O.S. No. 1367 of 1961 renumbered as O.S.

No. 247 of 1983 seeking declaratory decree in favour of his title. The suit was decreed in favour of Chinnaswamy Mudaliar which Corporation assailed in R.F.A. No. 464 of 1984 but it was a failure vide judgment dated 20-8-1986. The Corporation assailed both the judgments before Supreme Court in SLP. No. 14864 of 1986. But the Supreme Court declined to interfere with the orders of the High Court as also the Trial Court. After rejection of SLP on 9-7-1990, Chinnaswamy Mudaliar proceeded further but died on 12-11-1982 leaving behind petitioners as his legal representatives to succeed to his estate.

Petitioners thus claim to have inherited the suit schedule property and applied to respondent 3 for survey of the land and mutation of entries. Respondent 3 received their petition and embarked on an enquiry in which certain other persons laid claim in respect of land in Survey Nos. 1 and 4, consequent to which an enquiry was conducted by him, resulting in an order declaring that petitioners being legal representatives of Chinnaswamy Mudaliar were entitled to Survey Nos. 1 and 4 and that opponents have no right, title and interest. The said order was assailed by some of the claimants before respondent 2 who declined to revise the order of the third respondent and reaffirmed the right, title and interest of the petitioners in respect of said land and he also directed the third respondent to demarcate the area to which the petitioners as legal representatives of Chinnaswamy Mudaliar were entitled to in terms of the decree passed in O.S. No. 247 of 1983 which order is at Annexure-A. The second respondent's order was questioned by the other claimants before the Karnataka Appellate Tribunal ("KAT" for brevity) in Revision Petition No. 230 of 2005 which again was failure. They questioned it in W.P. No. 14411 of 2005 and that was also dismissed on merits disentitling them to any claim. They questioned it in W.A. No. 29 of 2006. That writ appeal also failed.

3. In the manner aforesaid, the order passed by KAT reached finality vide judgment dated 18-9-2007 in Writ Appeal No. 29 of 2006 vide Annexure-B and order dated 23-5-2011 in Revision Petition No. 230 of 2005 vide Annexure-C respectively. In view of termination of proceedings against the claimants and in favour of the petitioners, they approached the third respondent through their application dated 12-3-2011 requesting him to comply with the orders of the second respondent which was based on the judgment and decree of the Civil Court in their favour. Third respondent vide his order 12-7-2011 vide Annexure-D directed the third respondent to implement the order dated 28-3-2005. But it appears the survey work was not undertaken by the third respondent in terms of their application dated 21-3-2012 vide Annexure-E.

4. However they received a notice on 5-9-2012 from the third respondent proposing to conduct spot inspection on 21-9-2002 at 10.30 a.m. but in the said notice third respondent has indicated that respondents 4 and 20 what claim was rejected shall also be heard. The petitioners immediately sent a letter on 13-9-2012 informing the third respondent that respondents 4 and 20 have no subsisting right, title and interest in the suit schedule property as their claim was

rejected in judicial proceedings. However, the third respondent did not find favour in such representation and it is contended that now he is proposing to hold enquiry calling upon respondents 4 to 20 to participate during spot inspection. As the petitioners' representation to the respondent is in vain, they have approached this Court for a direction to quash the direction recently issued vide Annexure-G on 8-1-2013 proposing to conduct inspection and survey in the presence of respondents 4 and 20.

5. Sri Subhas learned Counsel referring to the above factual matrix submits that despite adjudication by revenue authorities, KAT and this Court, the third respondent seems to again reopen the issue by directing respondents 4 to 20 to participate which would virtually annul the orders already passed in writ appeal confirming the order in favour of petitioners. He submits as the act of the third respondent is mischievous and appears to be with mala fide intention, it is unsustainable.

6. Sri D. Ashwathappa submits that no doubt orders have been passed in favour of the petitioners but to give finality there is nothing wrong in the 3rd respondents summoning respondents 4 to 20 to participate. He submits, even if respondents 4 to 20 are summoned it does not mean that it would reopen the claim. Therefore, he supports the act of respondent 3.

7. Be that as it may, as the claim of respondents 4 to 20 has been negated, they will not be necessary or proper parties to the proceedings before the 3rd respondent. Therefore, no fruitful purpose would be served by summoning them and as apprehended by the petitioners, it is likely that some more litigations may sprout. I am satisfied that the petitioners must succeed in this petition.

8. Accordingly, the petitions are allowed. The third respondent is directed to conduct survey of the suit schedule property keeping in mind determination of rights of the petitioners in terms of judgment and decree in O.S. No. 247 of 1983, dated 13-1-1984, and appeal judgment as also the order dated 18-9-2007 passed by KAT affirmed in W.A. No. 29 of 2006 and order dated 23-5-2011 in Rev. P. No. 230 of 2005, without requiring presence of any other person other than petitioners during an enquiry. Sri D. Ashwathappa, learned AGA is permitted to file memo of appearance within 3 weeks from today.

Rule made absolute.

Writ petition is allowed in terms of this order.