(1992) 03 KAR CK 0008

In the Karnataka High Court

Case No : W.A. No. 1003 of 1990

Mohan P. Sonu APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 18-03-1992

Acts Referred:

Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provisions) Rules, 1966 — Rule 39
Karnataka Municipalities Act, 1964 — Section 72, 72 (2)

Citation : (1992) ILR (Kar) 1219 : (1992) 2 KarLJ 245

Hon'ble Judges : S.P. Bharuacha, C.J;Shivashankar Bhat, J

Bench : Division Bench

Advocate : S. Vijayashankar and M.R. Rajagopal, for the Appellant; N.K. Gupta, Government Advocate for R-1 and B. Veerabhadrappa, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Bharucha, J.—The appellant had purchased property measuring 14'' x 50'' at the junction of Middle School road and the then Telephone Exchange road in Shikaripur town. There was, adjacent to the property so purchased, vacant land (now called the ''said land'') and measuring 5'' x 50''. The said land belonged to the Town Municipal Council, Shikaripur. On 9th March 1983 the appellant applied to the Town Municipal Council for allotment to him of the said land. Upon the application, a resolution was passed on 17th May 1983. It was resolved that the said land lacked public demand since it was not an independent site but was useful only to the property belonging to the appellant. Hence, to enable the Municipal Council to obtain income therefor, it was recommended that the said land be granted to the appellant. The recommendation was forwarded to the State Government. The State Government, on 15th March 1984, accorded sanction u/s 72(2) of the Karnataka Municipalities Act, 1964 to the allotment of the said land to the appellant "at the market price of Rs. 1425/-".

2. The Writ Petition was filed by a resident of the town to call in question the correctness of the Government Order dated 15th March 1984. It was contended that the sale was at an under-valuation. The learned single Judge allowed the Writ Petition. He held that the alienation of the said land could not validly have been effected without compliance with the procedure prescribed by Rule 39 of the Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provisions) Rules, 1966. The sale in favour of the appellant was, therefore, set aside. Liberty, however, was reserved to the Municipal Council to alienate the said land in accordance with law. The appellant was bound to demolish the building which he had erected on the said land in accordance with the undertaking that he had given to Court. He was, however, given six months'' time to persuade the Municipal Council to grant him the said land in accordance with the rules and the law which was applicable and till then he was permitted to retain the building as then erected.

3. It was contended on behalf of the appellant that the said Rule 39 had no application when the said Section 72 applied and that, therefore, the grant of the said land to the appellant following the procedure prescribed by Section 72 was valid.

4. Section 72 (1) and (2) at the relevant time, read thus:

"72. Competency of Municipal Council to lease, sell and contract.-(1) Subject to the conditions and restrictions contained in Sub-sections (2) to (9), and such other restrictions and conditions as the Government may by general or special orders specify, every Municipal Council shall be competent to lease, sell or otherwise transfer any movable or immovable property which belongs to, or for the purpose of this Act has been acquired by it, and so far as is not inconsistent with the provisions and purposes of this Act to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes.

(2) No free grant of immovable property whatever may be its value, no grant for an upset price and no lease for a term exceeding five years, and no sale or other transfer of immovable property exceeding five thousand rupees in value, shall be valid unless the previous sanction of the Government is obtained."

Rule 39 of the said Rules, reads thus:

"39. Procedure in respect of lease, sale or auction, - Save as otherwise provided in the Act or rules, when the Municipal Council proposes to lease, sell or auction any moveable or Immovable property, it shall give notice of such lease, sale or auction by -

(i) affixing copies thereof on the notice board of the offices of the Municipal Council;

(ii) exhibiting copies thereof in all municipal reading rooms and places considered by the Municipal Council to be conspicuous within the municipality

(iii) publication in a daily newspaper having wide circulation within the municipality;

(iv) by beat of drum or circulation of notice in the locality."

We find it very difficult to uphold this submission. The object of Rule 39 has been stated in the Judgment of the learned single Judge of this Court in JAICHAND v. TOWN MUNICIPALITY, ROBERTSONPET and Ors. 1976(1) KLJ 30 We are in agreement with the view there expressed. The object of giving due publicity to the proposal to dispose of rights in respect of a property belonging to a local authority before it is so disposed of is quite obvious. The publication is necessary in order to realise the highest possible income and to prevent persons in-charge of the Municipal Council from disposing of the rights in favour of persons in whom they are interested. Disobedience of the provisions of Rule 39 can not be overlooked. It is a mandatory rule intended to protect public revenue. Matters relating to public revenue cannot be dealt with arbitrarily and in the secrecy of an office. Whatever done in that regard should be done in accordance with law, which, in the instant case, requires due publicity to be given to dispose of the property in the prescribed manner.

5. Section 72 is a further safeguard. Publicity given to the proposal of a Municipal Council to dispose of property rights under Rule 39 would attract offers from persons interested in acquiring such rights and these offers would enable the State Government to decide whether the sanction of the State Government that is contemplated by Section 72 should or should not be given. Rule 39 is, therefore, complementary to Section 72 and both operate together.

6. In this view of the matter, we must hold that the learned single Judge was right in coming to the conclusion that the alienation of the said land in favour of the appellant without following the proper procedure set out by Rule 39 was bad in law.

7. Mr. S. Vijayashankar, learned Council for the appellant, also fairly pointed out that even if his arguments were accepted, namely, that Rule 39 applies only when Section 72 does not, it would put him out of court because, at the relevant time, Section 72 applied when the transfer of the property was for a consideration that exceeded Rs. 5,000/-. In other words, even if his arguments were to be accepted, Rule 39 would apply to the transaction in appeal and the transaction would have to be set aside for non-compliance with the said Rule 39.

8. In the result, the Appeal is dismissed. The second respondent (the Municipal Council) may alienate the said land following the procedure set out in the said Rule 39 and the said Section 72. The appellant shall be entitled to retain the building that he has constructed upon the said land for a period of six months from today. In the event that the 2nd respondent decides to alienate the said land as aforesaid and the alienation is made in favour of the appellant, the appellant shall not be bound by the undertaking to demolish the said building. In the event, however, of the appellant not securing a grant in his favour of the said

land within a period of six months from today, the appellant shall be bound, in accordance with the undertaking given by him to Court and accepted by it, to demolish the said building.

Order on the Appeal accordingly. No order as to costs.

