(2016) 10 KAR CK 0097

In the Karnataka High Court

Case No : Writ Petition No. 10976 of 2015(LB-BMP)

Mr. Jai M. Patil — APPELLANT

Vs

The Commissioner Bangalore Mahanagara Palike N.R. Square — RESPONDENT

Date of Decision : 26-10-2016

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 108A
Property Tax Rules, 2009 — Rule 11

Citation : (2017) 2 AirKarR 99 : (2017) ILRKarnataka 679 : (2017) 3 KantLJ 447

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

Bench : Single Bench

Advocate : Ms. Sreedevi K.B. Advocate, for the Petitioner; Mr. K.V. Mohan Kumar, Advocate, for the Respondent Nos. 1 and 2

Final Decision : Allowed

Judgement

1. The writ petitioner, Mr. Jai M. Patil, owner of Flat No.S-3 of 2000 -Sq.ft. situated at Second Floor of Apartment known as ''Pratham Enclave'' in Site Nos. 11 and 27, has filed this writ petition with the following prayers:

"1. To issue a Writ of Mandamus directing the respondents to restore the Khatha of schedule properly in katha No. 11, (PID No. 100-591-11/A) MLA Layout, Lottegollahalli, Ward No. 100/Sanjaynagar to enable the petitioner to pay tax for the years 2014-15.

2. To award costs and grand such other reliefs or pass such other order (s) as this Hon''ble Court deems fit and expedient in the circumstances 01 the case in the interest of justice and equity."

2. The learned counsel for the petitioner has urged before the Court that after the purchase of the said Flat by the petitioner, the petitioner has been regular m paying the Annual Property Tax under Section 108-A of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as the ''Act'' for short), and was issued ''A'' Khata Certificate vide Annexure C on 10/03/2010 by the Assistant

Revenue Officer of the Bruhat Bengaluru Mahanagara Palike (''BBMP'' for short) and after such Certificate was issued to him on 10/03/2010, the petitioner continued to pay Annual Property Tax of Rs.4,890/- and Cess thereon vide Receipts produced at Annexure D series with the writ petition.

3. The cause of action arose to the petitioner when the respondent BBMP refused to accept the annual payment of Property Tax by the petitioner for the year 2014-15 on the purported ground that since the property in question was constructed with certain deviations from the sanctioned plan therefore, the petitioner''s ''Khata'' entry was liable to be registered in Form B and be treated as un-assessed property to be assessed afresh for Property Tax.

4. Learned counsel for the petitioner drawing the attention of the Court towards Section 108-A of the Act, has urged that the deviations, if any, in the entire building raised by the Developer is his responsibility to explain and the status of payment of Property Tax by the petitioner, the owner of one of the Flats does not depend upon that, and the ''A'' Khata Certificate issued in his favour is not liable to be revoked or changed by the respondent BBMP. She has also drawn the attention of the Court towards Rule 11 of the BBMP Property Tax Rules, 2009, 2009 (hereinafter referred to as the Property Tax Rules, 2009'' for brevity) and submitted that the difference between Form A in Khata Register and Form B in Khata Register is only this, that if the Property Tax is collected from the owner of the property occupied in respect of the property assessed to Tax, such names of owners will be entered in Form ''A'' Khata and in respect of un-assessed properties was to be maintained in Form ''B'' Register. The learned counsel for the petitioner, therefore, submitted that when such Property Tax was already assessed m the hands of the petitioner assessee and he is continuing to pay Property Tax annually and was also issued ''A'' Khata Certificate vide Annexure C on 10/03/2010, there is no justification on the part of the respondent BBMP not to treat the petitioner assessee as possessing Khata ''A: Certificate and to treat him as possessing only ''B'' Khata assessee.

5. Learned counsel for petitioner has expressed the apprehension that if ''A'' Khata Certificate is treated as revoked, the valuation of the property may come down and the petitioner may even not be eligible to obtain Bank Loan on the basis of Security of the said property owned and purchased by him along with ''A'' Khata Certificate. Hence, it is a valuable legal right of the petitioner and the respondent BBMP cannot be allowed to treat the said ''A'' Khata as nonest or wrongly issued by the BBMP authorities.

6. On the other hand, the learned counsel for the respondent BBMP has submitted that Annexure C dated 10/03/2010, Khata Certificate was issued to the petitioner conditionally and if there are deviations in the construction of the property in question, then, the Khata Certificate may be issued only in Form B and Certificate Annexure C dated 10/03/2010 was inadvertently or wrongly issued in favour of the petitioner by a computer mistake and referring to the Affidavit filed by one Mr. N. Nagabhushan, Assistant Revenue Officer, Hubli Sub-

Division, BBMP, Bengaluru, he submitted that the name of the present petitioner owner continues to be in Form B Register and therefore, the petitioner has no cause of action to approach this Court.

He also drew the attention of the Court towards Section 108-A(3) of the Act and urged that if the building in question has been constructed in violation of the bye-laws, then the Property Tax collected from such building owner shall be maintained in a ''Separate Register''. He therefore submitted that the word ''Separate Register'' indicates the Form ''B'' Register only under Rule 11 of the Property Tax Rules, 2009, and therefore the petitioner cannot be treated as ''A'' Khata Certificate holder.

7. Having heard the learned counsel for the parties, this Court is of the opinion that the contentions raised by the respondent BBMP is misconceived and not borne out from the statutory provisions contained in the Act and the Property Tax Rules, 2009.

Section 108-A(3) to the extent relevant and relied upon by the learned counsel for the BBMP as well as Rule 11 of the Property Tax Rules, 2009, are quoted below for ready reference.

Section 108-A(3) of the Karnataka Municipal Corporations Act, 1976:

Section 108A xxx xxx xxx

(3) The Bruhath Bangalore Mahanagara Palike may levy and collect the property tax from every building, vacant land or both including a building constructed in violation of the provisions of building byelaw or in an unauthorized layout or in a revenue land or from a building occupied without issuance of occupancy or completion certificate except the building constructed illegally in Government land, land belonging to any local body, any statutory body or an organization owned or controlled by the Government. The property tax collected from such building shall be maintained in a separate register.

Rule 11 of the Property Tax Rules, 2009:

Property Register: The property tax collected from tire owner/occupier in respect of property assessed to tax shall be maintained in Property Tax register in Form A and in respect of unassessed properties shall be maintained in a register in Form B.

8. A perusal of these provisions would clearly indicate that while the collection of revenue and Property Tax is saved and allowed by Section 108-A(3) of the Act irrespective of the deviations and violations of the building bye-laws, while permitting BBMP to undertake action for the removal of such violations and encroachments even later on, irrespective of the assessment and collection of the Property Tax under Section 108-A of the Act, the distinction in Form A and Form B Registers maintained under the Property Tax Rules, 2009 is only to the extent of the properties assessed to tax to be enlisted in Form A and properties

not yet assessed, to be enlisted in Form -B.

9. In view of the fact that the petitioner''s property in question already stood assessed and the petitioner has paid the Property Tax annually for last five to six years and ''A'' Khata Certificate was also issued to him vide Annexure C dated 10/03/2010, there appears to be no justification on the part of the respondent BBMP to contend that the petitioner''s property namely one of the Flats of the said building, is to be included in Form B under Rule 11 of the Property Tax Rules, 2009. It is not the property not yet assessed to Property Tax by the concerned authority despite issuing ''A'' Khata Certificate and there appears to be no valid reason as contended in the Affidavit filed by the Assistant Revenue Officer that the property in question continued to be registered in Form B.

10. Equally devoid of merit is the contention of the learned counsel for the respondent BBMP that Section 108-A (3) of the Act stipulates that the properties constructed in deviation or violation of the sanctioned plans or bye laws, such properties have to be enlisted only in Form B. The word, ''Separate Register'' in sub-Section (3) of Section 108-A of the Act does not specify it to mean Form B Register with reference to Rule 11 of the Property Tax Rules, 2009. The word ''Separate Register'' is not mentioned in Rule 11 of the Property Tax Rules, 2009. It could refer to any other ''Separate Register''. Therefore, there is no statutory background support for the contention raised by the learned counsel for BBMP that properties constructed in violation of the building bye-laws even though assessed to pay Property Tax, wall be enlisted only in From B Register maintained under Rule 11 of the Property Tax Rules, 2009.

11. As already indicated above, the distinction between Form A and Form B under Rule 11 only depends upon the factum of assessment of property tax already made and yet un-assessed properties. There is no denial of fact in the present case that the property of petitioner, namely Flat N0.A6 was already assessed to Property Tax and not only ''A'' Khata Certificate was issued to him vide Annexure C on 10/03/2019, but even, the Property Tax for the period from 2008-09 to 2013-14 was collected from him on that basis, as would appear from the details given in the want petition. Therefore, the inclusion of the petitioner''s name and the property in Form B under Rule 11 of the Property Tax Rules, 2009 is not only controverted by the evidence placed on record, but has not been disputed and cannot be disputed by the respondent BBMP. The inclusion of the said property under Form B on the basis of alleged deviations and violation of the building bye-laws has nothing to do with Rule 11 of the Property Tax Rules, 2009. Neither the entry of the petitioner''s property in Form A under Property Tax Rules, 2009 nor Section 108-A(3) of the Act precludes the respondent BBMP from taking action against the Builder or Developer for the violation of building bye-laws and the construction raised beyond the sanctioned plan. The assessment and collection of Property Tax is irrespective of such deviations or violations as clearly stipulated in Section 108-A(3) of the Act, quoted above.

12. In view of the aforesaid, the writ petition of the petitioner deserves to

succeed and the same is accordingly allowed. The respondent BBMP is directed to accept the payment of Annual Property Tax from the petitioner on the basis of ''A'' Khata Certificate issued in his favour vide Annexure C dated 10/03/2010. The authorities of the respondent BBMP will undertake requisite steps for accepting such payment of tax from the petitioner. The Respondent BBMP will record the property of the petitioner namely Flat No.A6 in Form ''A'' under Rule 11 of the Property Tax Rules, 2009 and shall remove it from the Form ''B'' Register. No order as to costs.