(2014) 12 KAR CK 0297

In the Karnataka High Court

Case No : Writ Petition No. 54650 of 2014 (LB-BMP)

Muneer M.K.H. APPELLANT

Vs

Bruhat Bangalore Mahanagara Palike (BBMP) and Others RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 114, 114-A

Citation : (2015) 1 KarLJ 177 : (2015) 3 KCCR 2595

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Suraj Patil, Advocates for the Appellant; Sandeep Patil, Advocates for the Respondent

Judgement

Ram Mohan Reddy, J.—Sri Sandeep Patil, learned Counsel takes notice for respondents 1 and 2. Petitioner, owner of land measuring 1 acre 1 gunta bearing old Sy. No. 53, new Sy. No. 111 of Hennur (HBR Division 24), having purchased the same for a valuable consideration under a sale deed dated 8-3-2006 from its erstwhile owners, instituted O.S. No. 7433 of 1998 arraigning Officers of the Bangalore Development Authority (for short, ''BDA''), as defendants, who, during the year 1998 tried to interfere with the petitioner''s peaceful possession and enjoyment of the property by demolishing the structure thereon. Issues when framed, Issue 3 related to whether defendant 3 i.e., the ''BDA'' proves that the suit schedule properties were acquired validly and stood vested with it? In that suit, it is stated that plaintiff introduced in evidence Exs. P. 1 to P. 55, while the defendant-BDA examined two witnesses from the land acquisition section and marked eleven documents and D.W. 1 in cross-examination admitted Ex. D. 8-Notification did not refer to acquisition of land in Sy. No. 53 of Hennur Village. The XVI Additional City Civil and Sessions judge, Bangalore City, by judgment and decree dated 20-3-2014 allowed the suit, recording a finding that the BDA failed to prove that the suit schedule properties were acquired validly and stood vested in it.

2. According to the petitioner, BDA is said to have taken a decision not to institute an appeal against the judgment and decree as disclosed in the opinion of the Law Officer Annexure-A. Consequent upon the judgment and decree, petitioner''s request for recording his name in the Assessment Register of the respondent, when considered, and on being directed, paid Rs. 10,37,500/- towards betterment charges and Rs. 25,023/- towards khata transfer fee on 30-10-2014 as evident from the receipts Annexures-B and C, following which the respondents issued a certificate dated 30-10-2014 Annexure-D, stating that the petitioner''s name was recorded in the Revenue Register in respect of the aforesaid immovable property assigned property No. 749/111 (old Sy. No. 53) of HBR Division-24.

3. It is the allegation of the petitioner that the 2nd respondent issued a notice dated 12-11-2014 Annexure-E directing the petitioner to obtain a ''No objection letter'' from the BDA within fifteen days, without authority of law or jurisdiction. Hence this petition.

4. Petition is not opposed by filing statement of objections.

5. Learned Counsel for the petitioner reiterates the averments in the memorandum of writ petition, while per contra, learned Counsel for the respondents 1 and 2-Bruhat Bangalore Mahanagara Palike (for short ''BBMP''), in all fairness, submits that the Karnataka Municipal Corporations Act, 1976 (for short ''Act'') and Rules framed thereunder, did not invest jurisdiction in the 2nd respondent to issue the notice Annexure-E. According to learned Counsel, the notice may have emanated from the 2nd respondent to ascertain as to whether or not there was any misrepresentation while recording the name of the petitioner in the Assessment Register of the BBMP.

6. Submission of learned Counsel for the respondents is without merit. In the first place, the Certificate dated 30-10-2014 Annexure-D issued by the 1st respondent is a clear indication that the respondents accepted and recorded the name of the petitioner as the person primarily liable to pay tax over the immovable property in question. It is not the case of the ''BBMP'' that it had a claim to right, title, ownership or possession of the said property. The judgment and decree of the XVI Additional City Civil and Sessions Judge, Bangalore, in OS No. 7433 of 1998, as recorded in the note put up by the Law Officer and approved by the Commissioner of the ''BDA'' Annexure-A, discloses that the ''BDA'' when arraigned as defendant in the suit, instituted by the petitioner, though advanced a plea that the property in question was acquired, and an issue framed thereon, suffered the judgment and decree returning a finding that the property in question was not acquired by BDA. That note further states that since there were no grounds to challenge the judgment and decree, the Commissioner had approved not to file an appeal.

7. Regard being had to the aforesaid indisputable facts, ''BBMP'' except for collection of taxes had no jurisdiction to suspect the petitioner of having given

any false statement or made misrepresentation, in the matter of having his name recorded in the assessment register in respect of the property in question under Section 114 of the Act. Moreover, in the absence of material to establish that the judgment and decree of the Civil Court suffers from legal infirmity, and as the 2nd respondent-Revenue Inspector cannot sit in judgment over the said judgment and decree of the Civil Court, overreached his powers under the ''Act'' by issuing notice Annexure-E. The Act does not vest a jurisdiction in the 2nd respondent to direct the petitioner to obtain and furnish a No Objection Certificate from BDA, more so in the light of the judgment and decree in O.S. No. 7433 of 1998.

8. Yet another reason to arrive at the aforesaid conclusion is that under Section 114-A of the ''Act'', it is for the Commissioner, either suo motu or otherwise after holding an enquiry is satisfied that the khata was obtained by false statement or misrepresentation, could review the said khata. The 2nd respondent not being the Commissioner a delegatee of the Commissioner did not have the jurisdiction to issue the notice Annexure-E. Supposing it was to elicit information as to whether the khata Annexure-D was issued on the basis of misrepresentation made by the petitioner, would amount to fishing for evidence which is impermissible. If the 2nd respondent did have any material to substantiate the allegation of misrepresentation or fraud played by the petitioner, then ought to have laid it before the Commissioner for orders under Section 114-A of the ''Act''. Therefore, the notice Annexure-E, in my opinion, is one without authority of law. In the circumstances, it appears that there is more than what meets the eye.

9. The notice Annexure-E does not bear the name of the person who subscribed his signature nor have the respondents furnished the said name. That person exceeded his jurisdiction in issuing the notice Annexure-E hence accountable, since, statutory duties under the ''Act'' do not invest a jurisdiction in the 2nd respondent to issue such a notice and therefore is liable for exemplary costs from out of his salary, in addition to becoming liable disciplinary proceeding in accordance with law.

10. In the result, this petition is allowed. The notice dated 12-11-2014 Annexure-E is quashed. Costs quantified at Rs. 30,000/- payable by the 1st respondent to the petitioner, to be recovered from out of the salary of the 2nd respondent.

