

(1982) 02 KAPT CK 0012
In the Karnataka Appellate Tribunal
Case No : Rev. 109/81 (Rev. 3)

Muniswamappa and Others

APPELLANT

Vs

Venkatappa and Others

RESPONDENT

Date of Decision : 01-02-1982

Acts Referred:

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 53(4)
Karnataka Village Panchayats (Control of Erection of Buildings) Rules, 1960 — Rule 12

Citation : (1982) 1 KarLJ 35

Hon'ble Judges : K. V. Narayana Raju, Member; R. Shankarappa, J

Judgement

Per K.V. Narayanaraju, M.-This revision petition under S. 207 of the Karnataka Village Panchayats and Local Boards Act, 1959, is directed against the order dated 20-4-1981 passed by the learned Assistant Commissioner, Kolar Sub Division Kolar allowing the appeal No. VPC-A-3/80-81 and setting aside the Resolution dated 23-10-1978 passed by the Village Panchayat. of Doddavallabhi village granting permission to Nanjappa. the father of the present petitioners, to construct a house on Kaneshwari No. 36 Kalkere village, Narasapura Hobli, Kolar Taluk.

2. The respondent No. 1 Venkatappa preferred an appeal under S. 53(4) of the Village Panchayats and Local Boards Act contending that Kaneshwari No. 36, measuring 20 yards x 10 yards belonged to him, the same having been bought under registered sale deed dated 16-8-1978 from the previous owner, Dyavanna; that Nanjappa since deceased, father of present petitioners had fraudulently got his name entered in respect of Kaneshwari No. 36 recently and in collusion with the members of the Panchayat obtained permission without any notice; that the Resolution passed by the Panchayat was opposed to law, facts and probabilities; the Panchayat had not complied with the Rules; that the Panchayat having knowledge that there was ill-will and dispute between the respondent and the appellant, and the pendency of a criminal case, CC. 1545/78 on the file of Chief Judicial Magistrate, Kolar, had passed the Resolution only to harass the appellant, etc. It is also alleged that the objections statement filed before the Panchayat

was misplaced.

3. The learned Assistant Commissioner perused the Kaneshmari registers and found the name of Dyavanna, the vendor of respondent Venkatappa, as a holder of Kaneshmari No. 36 and that from the year 1977-78 the name of appellants entered against the same Kaneshmari No. 36 but with a different extent, 11x11 yards, The Kaneshmari extracts for the years 1975-76 and 1976-77 were not produced. The respondent also produced the registered sale deed executed by Dyavanna. The learned Assistant Commissioner came to the conclusion that the title of the father of the appellants to the land in question was not free from doubt and that in the circumstances the Panchayat was not right in passing the Resolution for the grant of permission. Consequently he set aside the Resolution passed by the Panchayat.

4. The petitioners have contended that the learned Assistant Commissioner erred in entertaining the appeal, that such appeal was not maintainable, since S. 53(4) of the Village Panchayat and Local Boards Act contemplates an appeal only from permission granted, and not a Resolution passed by the Panchayat; that the learned Assistant Commissioner has not applied his mind, and that there was no material at all to say that the case of the respondent appeared genuine; that there was no case for directing the petitioners to approach the Civil Court, etc. The Counsel for the parties and the learned Assistant State Representative were heard. The latter has also filed certain objections.

5. We find no merit in the contention that S. 53 contemplates an appeal only when permission is granted, and not when there is a mere Resolution passed by the Panchayat. S. 53(1) of the Village Panchayat and Local Boards Act states that no person shall erect any building or alter or add to any existing building or reconstruct any building without a written permission of the Panchayat; and that permission shall be presumed to have been granted if no refusal of such permission is communicated within two months of the receipt of application. S. 53(4) states that an appeal shall lie to the Assistant Commissioner from any order or direction or notice of the Panchayat under sub-sections (1), (2) or (3) and the decision of the Assistant Commissioner on such appeal shall be final. There can be no doubt that an appeal can lie when the permission is either granted or refused under S. 53(1). It is admitted there is no provision in the Village Panchayat and Local Boards Act or any of the Rules framed thereunder for the issue of a formal permission to construct. There can be no doubt that all decisions of the Panchayat are taken by passing Resolutions, unless either the Chairman or the Secretary of the Panchayat has power to take decisions even without there being a Resolution of the Panchayat. It is not even suggested that power of granting permission is delegated to the Chairman or the Secretary. That being so we should hold that the passing of a Resolution itself tantamounts to the granting or refusing the permission as the case may be.

6. The only question which arises for our consideration is whether on the facts and in the circumstances of the case the Panchayat ought to have refused the

grant of permission and directed the petitioners or their father to obtain a decision of a competent Court. Rule 12 of the Karnataka Village Panchayat (Control of Erection of Buildings) Rules 1960 states that the Panchayat, in granting or refusing to grant permission for the erection of a building, shall not go into complicated questions of title to the property; and in case such questions arise between the applicant and any other person objecting to the grant of permission, the Panchayat shall refuse to grant the permission unless a decision of a competent court is obtained regarding the title.

7. We have pointed out above, for several years till 1977-78 Kaneshmari No. 36 stood in the name of Dyavanna, the vendor of respondent. No doubt that Dyavanna sold the property in the year 1968 itself. It is common knowledge that often the mutations are not carried out in the property register as and when transfers take place. The Counsel for the appellants was not able to account for the sudden appearance of the name of Nanjappa in the Kaneshmari. He only tried to say that the respondent Venkatappa may have been the owner of a part of the site. That is not the case suggested by Kaneshmari registers themselves. There is a registered sale deed of the year 1968 for the transfer of Kaneshmari No. 36 which stood, at an undisputed point of time, in the name of respondent's vendor. That should be enough to say that the title of appellants to the land is not clear and that the Panchayat could not create evidence of title by granting permission in such doubtful cases.

8. The Counsel for the respondent Venkatappa stated that just before the permission was granted, the petitioners and their father trespassed on the site and on a complaint to the police a case was filed before the Chief Judicial Magistrate Kolar. That circumstance also suggests that the parties are claiming adversely to each other. It is not possible to think that the members of the Panchayat were not aware of the dispute which was taken to the Criminal Court.

9. For the foregoing reasons we find it unnecessary to interfere with the order passed by the Assistant Commissioner. We are satisfied nothing illegal or unjust has been done by the Assistant Commissioner, and that on the other hand the Panchayat has passed a Resolution without a proper enquiry into the question of title. It is also possible to say that the Panchayat has taken a partisan view.

10. In the result, the petition is dismissed.