(2014) 12 KAR CK 0270

In the Karnataka High Court

Case No : Writ Petition Nos. 44556 to 44558 of 2014 (LB-BMP)

Pushpa Shetty APPELLANT

Vs

The Assistant Revenue Officer, Bruhat Bangalore Mahanagara Palike and Others RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:
Karnataka Municipal Corporations Act, 1976 — Section 114-A, 143

Citation : (2015) 1 KarLJ 629 : (2015) 3 KCCR 2714

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Sampat Anand Shetty, Advocates for the Appellant; I.G. Gachchinmath, M.I. Arun, Additional Government Advocate, P.B. Raju and Rajagopala Naidu, Advocates for the Respondent

Judgement

Ram Mohan Reddy, J.—Petitioner claims to have purchased Site No. 3 measuring 40 feet x [37 + 38]/2 feet being one among several sites carved out of converted Sy. No. 73/1 of Kaggadasapura Village, under a registered sale deed, whence it fell within the territorial jurisdiction of the HAL Sanitary Board and was assigned katha number, following which petitioner paid taxes to the said Board. The said area having fallen within the territorial jurisdiction of Bruhat Bengaluru Mahanagara Palike (for short, ''BBMP''), constituted under the Karnataka Municipal Corporations Act, 1976 (for short, ''Act''), it is asserted that the said property was assigned property No. 146/1-A and issued endorsements dated ''Nil'' Annexure-J1 and dated 2-8-2012 Annexure-J2. It is the allegation of the petitioner that in the property bearing No. 7 in Sy. No. 73/1 of Kaggadasapura Village, an Apartment Building in the name and style of ''Map Enclave'' is under construction and on verification noticed that the BBMP collected taxes under the self-assessment scheme and issued ''B'' katha as also a special notice dated 3-2-2010 under Section 143 of the Act, from the year 2009-2010, describing the property as measuring 18.06 guntas. It is the further allegation of the petitioner that for the property in Sy. No. 73/1, BBMP issued two kathas Annexures-J1 and

J2 in favour of the petitioner in assigning property No. 146/1-A and Annexures-A2 and B2 assigning Property No. 7, favour of respondents 8 and 11 respectively. According to the petitioner, the two kathas in respect of the very same property belonging to the petitioner is illegal. Hence this petition.

2. Petition is opposed by filing statement of objections, inter alia, contending that the identity of the property belonging to the petitioner and that of contesting respondents are distinct and separate and that petitioner instituted OS No. 5106 of 2012 pending on the file of the 27th Additional City Civil Judge, Bengaluru (CCH-9), for the very reliefs as sought in this petition, hence cannot maintain parallel proceedings.

3. BBMP too has filed statement of objections on the very same lines as noticed supra and in addition, when called upon to have its say on Annexures-J1 and J2, the Commissioner of BBMP filed an affidavit dated 16-12-2014, inter alia, stating that in terms of Document No. 1, being a colour Xerox of the register relating to assessment list of buildings and lands liable to taxation, maintained by the HAL Sanitary Board in respect of property No. 146/1-A measuring 37 feet x 38 feet and a true copy of a circular marked as Document No. 2 in relation to imposition of property tax and not to collect betterment charges since the property was subjected to revenue at the hands of the HAL Sanitary Board, the katha Annexures-J1 and J2 were issued.

4. At paragraph 4 in the affidavit, it is stated thus:

"4. That, I submit it is in this fashion the endorsement at Annexures-J1 and J2 have been issued and the Annexures-J1 and J2 are nothing but the imitated version and outcome of Katha Register maintained by the erstwhile HAL Sanitary Board. Hence this affidavit".

5. Learned Counsel for the petitioner reiterates the averments set out in the memorandum of writ petition and submits that regard being had to the fact that there are two katha certificates issued in favour of the petitioner as well as that of respondents 8 and 11, in respect of the very same immovable property, the failure on the part of BBMP to invoke Section 114-A of the Act, petitioner''s right is impinged upon. In addition, it is submitted that respondents 8 and 11 instituted a suit for permanent injunction, since dismissed is final in respect of the very same immovable property in question, while petitioner instituted O.S. No. 5106 of 2012 which is pending before the Civil Court for the very same reliefs as sought in this petition.

6. Per contra, Sri Udaya Holla, learned Senior Counsel for contesting respondents, submits that in the light of disputed questions of fact over the identity of the immovable property in question, coupled with the fact that petitioner has instituted a suit for declaratory and injunctory reliefs, parties must stand relegated to the Civil Court for redressal of their respective grievances.

7. There is force in the submission of the learned Senior Counsel. In the

adjudication before the Civil Court of competent jurisdiction, it will come to light as to whether or not respondent-BBMP has, in fact, issued two katha certificates for the very same property and whether the BBMP in fact had jurisdiction to issue the katha in favour of respondents 8 and 11. It will also come to light over the application of Section 114-A of the Act over the said dispute.

8. Without going into the relative merit or demerit of the case of either parties, suffice it to notice that Katha Department of the respondent-BBMP has a penchant to regularly put citizens into a quandary by issuing katha certificates without identifying the exact location of the property leading to disputes as noticed in this petition. That ''Katha'' Department appears to be a honest nest, not doing any good to the citizens, but for creating confusion. It is better that the State Government winds up the Katha Department of the BBMP since in any event recording name of the persons in the register is not "katha" and does not create title to immovable properties. In the circumstances, reserving liberty to the parties to put forth their respective pleas before the Civil Court of competent jurisdiction in O.S. No. 5106 of 2012 and directing the respondent-BBMP to ensure recording the name of the person in its assessment register in respect of the immovable property, as directed in judgment and decree of the Civil Court, if any, these petitions are disposed of accordingly.

