

(1983) 06 KAR CK 0017
In the Karnataka High Court
Case No : WP 10082/80

Rangamma

APPELLANT

Vs

Sugure Group Panchayat and Others

RESPONDENT

Date of Decision : 06-06-1983

Acts Referred:

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 23(4)

Citation : (1983) 2 KarLJ 416

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. The petitioner is aggrieved by the order of the Asst. Commissioner 2nd respondent herein, dt. 31.3.1980 by which he allowed the appeal filed by the 4th respondent herein under S. 53 (4) of the Karnataka-Village Panchayats and Local Boards Act (hereinafter referred to as "the Act") and directed that the construction measuring 27 feet East-West and 9 feet North South with Mangalore tiled roofing portion in front of the house and stone slabs erected in front 7 feet North South and 9 1/2 feet East-West should be demolished, being a new construction erected by the petitioner contrary to the undertaking given by her in the proceedings pending before him in appeal filed by the 4th respondent. The petitioner, on the passing of the above order, filed a revision petition before the Divisional Commissioner. The Divisional Commissioner though unlike the Assistant Commissioner has passed a lengthy order, has nevertheless sustained the order of the Assistant Commissioner, concurring with the findings recorded by him and dismissing the revision petition. Aggreived by the same, the petitioner has preferred this WP under Art. 226 of the Constitution inter-alia contending that the orders of the Assistant Commissioner and the Divisional Commissioner are erroneous in law and made without jurisdiction and vindictive in nature unsupported by the facts available on record.

2. The 1st respondent is Sugure Group Panchayat represented by its Secretary which originally granted the licence to the petitioner to construct on the property she had purchased.

3. It is necessary to set out the facts leading to this Writ Petition in greater detail.

Petitioner applied to the 1st respondent Panchayat for licence to construct a building under S. 53 (1) of the Act in the land she had purchased from the previous owner and obtained the same. Soon thereafter, when she began to construct or was about to start the construction, respondent-4 presented an appeal before the 2nd respondent Asst. Commissioner, under sub-sec. (4) of S. 53 of the Act. The 4th respondent is no more than a resident in the area comprised in the Village Panchayat. His main ground of attack against the grant of licence to the petitioner was that the licence had been granted for construction on land which did not belong to the petitioner. On no ice the petitioner filed her objections. Her objections stated that she had purchased the land on which a house already, stood, part of which she had demolished and obtained licence from the Panchayat for re-construction in place of the demolished construction and in the remaining vacant space. She also stated that the 4th respondent appellant could not be stated to be aggrieved by the grant of licence to her, She further stated that some of the villagers led by one Patel Siddegowda had obstructed her in the construction and in that behalf she had filed a suitfor injunction restraining the defendants in the suit from interfering with her peaceful possession and enjoyment of her property, namely, the remaining old building and the vacant, space on which she wanted a new construction, in the Court of the Munsiff, Chitradurga. That suit was numbered as OS. No. 1/79 and was actually pending when the Assistant Commissioner came to pass the impugned order and is stated to be pending now also. In that suit temporary injunction restraining the defendants there-in appears to have been given in favour of the petitioner and that has become final though the final judgment in that suit has not yet been passed. It was in that circumstance, that petitioner through her Counsel filed a memo before the Assisstant Commissioner stating that she will rot construct the house on the vacant kite but will reconstruct 20 feet North-South and 24 feet East-West. It also indicated that such construction would come to ten ankanas from North to South from the northern side of the existing building. She also undertook to demolish the building if it was proved that the construction was on the land encroached upon, belonging to the Village Panchayat and exceeded the measurement indicated by her in the memo. That memo was recorded by the Assistant Commissioner (2nd respondent) and he permitted her to proceed with the construction as per the memo. After such construction was effected, the 4th respondent filed a complaint before the Assistant Commissioner on 13.8.1979 stating that the petitioner had violated the conditions of the undertaking given by her to the second respondent (Assistant Commissioner) and therefore, the building should be demolished. It was on that complaint, on 24.8.1979, the Assistant Commissioner made a spot inspection, the record of which is to be found in the records produced by the learned Government Pleader. It is also part of the impugned order of the 2nd respondent. It is useful to state here that the petitioner was not notified to be present at the spot inspection as evidenced by the mahazar of the spot inspection found in the

records. She was not a party to the mahazar. Nor is there anything else in the records which shows that the 2nd respondent (Assistant Commissioner) had notified to the petitioner his intention to visit the spot. It is thereafter that the impugned order was passed after issuing a show cause notice to the petitioner. The petitioner has shown cause stating that she has not violated any of the conditions of the undertaking given by her. That explanation is to be found in the records. Despite her explanation, the 2nd respondent Assistant Commissioner proceeded to pass the impugned order. A perusal of the order clearly indicates that he was moved more by anger by what he considered a breach of the undertaking given to him than the merit of the appeal, if there was any merit at all. While in the preamble he has indicated that there has been construction put up with a plinth area of 27 feet x 19 feet and enclosure by stone slabs of the area comprised in 7 feet North-South by 91/2 feet East-West, there is no discussion of the grounds urged by the 4th respondent in support of his appeal. Nor is there a finding recorded that whatever the construction that has been put up by the petitioner is on the land that belonged to the Village Panchayat or the Government. The operative portion of the order is as follows:

"The only conclusion that can be arrived at is, that the second respondent has blatantly, wilfully and deliberately violated the conditions laid down by this Court while vacating the stay order. She has misinterpreted and misused the order of this Court to attain selfish ends.

ORDER

Under the circumstances, the appeal is allowed. The licence for the construction is cancelled.

Under Section 101 of the Karnataka, Land Revenue Act, the Tahsildar is directed to get the following portions of the new construction demolished.

- i. 27 ft.E.W. x 9 ft.N.S. with Mangalore tiles roofing portion in front of the house.
- ii. Stone slabs erected in the front 7 ft.N.S. x 91/2 feet E.W.

He shall also book T.T. fine for un-authorised construction to the extent of 27ft.E.W. x 10 ft.N.S. (Kadapa stone roofing).

Pronounced in open Court on 31.3.1980."

4. From the above, it is clear that the appeal came to be allowed not on the merits of the case but on the ground that the petitioner respondent there in violated the conditions laid down by the Assistant Commissioner while he vacated the stay order staying the grant of licence earlier.

5. This to my mind appears to be not only illegal and arbitrary but also very high-handed. Undoubtedly, the language of sub-sec. (4) of S. 53 of the Act confers wide jurisdiction on the appellate authority, namely, the Assistant Commissioner. Sub-sec. (4) of S. 53 of the Act is as follows:

"(4) An appeal shall lie to the Assistant Commissioner from any order or direction or notice of the Panchayat under sub-section (1), (2) or (3) and the decision of the Assistant Commissioner on such appeal shall be final."

6. An order made under sub-sec. (4) of S. 53 of the Act, by the Assistant Commissioner is fined. Therefore, as judicially understood, the appellate power exercised by him is wide enough to consider the cases of granting of licences and cancelling them if necessary or in case of refusal, grant them if he is satisfied that refusal was not warranted in law. But nothing in sub-sec. (4) of S. 53 of the Act is indicative that he can allow an appeal filed by a stranger merely because the respondent there-in had disobeyed the conditions imposed by him while vacating the stay order. The nature of power exercised under sub-sec. (4) of S. 53 of the Act by the Assistant Commissioner is quasi-judicial and must, therefore be on the proper application of mind to the merits of the appeal and not because of the action of the respondent in her conduct before him. One can well understand if the petitioner was the appellant and she had violated the conditions, if any, put by him and because of those conditions being violated he declined to entertain the appeal and dismissed it. When, even that is open to doubt, then certainly it cannot be said that sub-sec. (4) of S. 53 of the Act provides for appeal being allowed because of the alleged conduct of the respondent before going into the merits of the appeal. Therefore, the order, as already stated, apart from being patently illegal appears to be without proper application of mind and in improper exercise of jurisdiction conferred on the Assistant Commissioner. That would be sufficient ground to quash the impugned order.

7. Even otherwise, when the Assistant Commissioner was appraised of the fact that the title to the land in question was the subject matter of a litigation in Civil Court which alone is competent to decide title, prudence demanded, the Assistant Commissioner should have awaited the decision of the Civil Court before he proceeded to dispose of the appeal in the manner he has done. In fact, there is a reference in the course of his order (preamble) that the petitioner had produced only the plaint copy and had not proved her title to the land. I do not think he was justified in asking the petitioner to prove her title before him when that was already a subject-matter of dispute in Civil Court. I also find from the records and his own report that there is breach of the conditions of the undertaking given by the petitioner only to the extent of construction being excess by three feet North-South. Seven feet on the land North-South is not constructed upon but only fenced by stone slabs. Merely because there is a few feet excess construction more than the undertaking given, I do not think, the Assistant Commissioner was right in converting the 4th respondent's appeal into a punitive order against the petitioner.

8. I must next come to the order of the Divisional Commissioner (3rd respondent here-in) which no doubt sets out in detail the history of the case. Under S. 207 of the Act the Divisional Commissioner as well as the Government have suo-moto

revisional powers in order to satisfy themselves that the act or proceedings of any subordinate officer is in accordance with the provisions of the Act. A perusal of the order of the Divisional Commr. indicates that the 3rd respondent-Divisional Commissioner was also impressed by the alleged breach of condition by the petitioner and did not examine whether the Assistant Commissioner had properly exercised his jurisdiction under sub-sec. (4) of S. 53 of the Act to which I have already referred to earlier in the course of this order. This failure of total mis-direction renders the revisional order illegal and is also liable to be set-aside.

9. Learned Government Pleader appearing for the respondents 2 and 3 and Mr. Suvarna appearing for Respondents tried to point out that the petitioner did not have title; to the land. That is a matter which should be decided by the Civil Court having jurisdiction. The Village Panchayat has not come forward to claim the land in question as theirs. Nor has the Government claimed any part of the land on which the. construction and enclosure has taken place. No doubt, the title acquired by the petitioner to the land is by description of boundaries and not by measurement as is seen from the records in which a gift deed in favour of the vendor of the petitioner concerning the property in question is to be found. It is now well settled principle of law regarding immovable properties that where measurements are absent and where they are inaccurate, property described by its boundaries will prevail over the property in terms of measurements mentioned or not mentioned. If boundaries must prevail, then the Civil Court having jurisdiction will decide that question on the evidence adduced before it and this Court need not in this proceeding declare the title nor deny the title to the petitioner.

10. In the result, for the reasons given by me, the impugned orders of the 2nd respondents-Assistant Commissioner and the 3rd respondent-Divisional Commissioner are hereby set-aside with a direction that the Assistant Commissioner shall dispose of the appeal of the 4th respondent on its merits bearing in mind the observations made by this Court in the course of this order.

11. Petitioner is entitled to costs Advocate's fee is fixed at Rs. 100/-.

12. Rule issued earlier is made absolute.