

(2011) 02 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No"s. 34067-72 of 2010

Sathyanarayana and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 39, 67, 94, 94 (3)

Citation : (2011) 3 KCCR 348 SN : (2011) 3 KCCR 347

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.V. Prakash, for the Appellant; R. Omkumar, AGA for R1-R4, Shruthi, for K. Raghavendra Rao, for R5, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Writ Petitioners seven in number claim that they have interest in properties which have been assigned Municipal Katha Nos. 483 (Old No. 620), 473 (Old No. 680/621), 2373 (Old No. 622), 631 (623/686), 688/324, Old Katha No. 59 Old AR Nos. 625 & 689, respectively, located within the limits of Hassan City, Hassan Municipal Council, Devigere Circle.

2. It is the version of the Petitioners that they acquired right, title and interest in these properties after having participated in an auction sale conducted by the then Hassan City Municipality in the year 1965-1966 and having been successful bidders and having paid the commensurate amount and claim that such transaction is evidenced by sale certificates issued by the 5th Respondent - The Commissioner, City Municipal Council, Hassan Taluk, Hassan District, copy of one such certificate is produced as Annexure L issued in favour of the 1st Petitioner.

3. It is also the assertion of the Petitioners that thereafter they have put up structures there, which is in the nature of commercial complex; that they are all having their shops on the subject sites and the shops also are all licensed by the City Municipal Council and have been carrying on their business in different

trades.

4. Cause of action for approaching this Court for the following relief:

1. Issue a writ of certiorari to quash the notices issued by the 4th Respondent dated 20.10.2010 in No. N.C.R.1/10-11 PRODUCED AS Annexures X, XI, X2, X3, X4, X5, X6 to the writ petition.

2. Issue a writ of prohibition to prohibit the Respondents from taking action to evict the Petitioners from the schedule A to F properties in any manner whatsoever.

is that they have been shocked and surprised by receipt of what is termed as show-cause notices issued by the 4th Respondent - Tahsildar of Hassan Taluk, Hassan District, copies produced as Annexures X, XI, X2, X3, X4, X5, X6 in No. N.C.R.1/10-11 all dated 20.10.2010 calling upon them to show-cause as to why action should not be taken against them for the reason that they are encroachers of the land in Sy. No. 27 which is known as Devigere Kere in Hassan Village and on the premise that each of the Petitioners have encroached an extent 28 guntas of land in Sy. No. 27 which otherwise is part of Devigere Kere. The so called notices purporting to be one issued under Sections 39, 67 r/w Section 94 of the Karnataka Land Revenue Act, 1964, putting the Petitioners on notice that if they have anything to say in the matter, they can produce supporting documents in support of their claim and also participate in a personal hearing fixed on 30.10.2010 at 11.00 a.m. at his office etc.

5. It is aggrieved by receipt of this type of notice, the present writ by the Petitioners contending inter alia that the proposed show-cause notices virtually threatening to demolish their buildings which is located on the northern side of Devigere Kere is nothing short of an arbitrary high hand action; that the Petitioners have right, title and interest in the subject properties, which are in their possession and occupation; that they are bona fide purchasers of the subject land from Hassan Town Municipal during the year 1966 have constructed buildings on the same and thereafter and in the wake of these developments particularly, Municipal Council having even auctioned the land, the recent development either for demolition or eviction of the Petitioners is blatantly arbitrary, illegal etc. It is also urged that the Tahsildar does not have either the power or jurisdiction to issue notices as is quoted and said to have been issued under Sections 39, 67 r/w 94 of the Karnataka Land Revenue Act, 1964. On many other grounds also the impugned notices are termed as illegal and Petitioners have sought for quashing of the same.

6. This Court admitted the writ petitions on 28.10.2010 and granted stay of further proceedings pursuant thereto in No. N.C.R.1/10-11 produced as Annexures X, XI, X2, X3, X4, X5 and X6 dated 20.10.2010.

7. The matter has come up before the Court thereafter time and again and interim order was extended until further orders on 6.1.2011 and the

Respondents were directed to secure and place the records before the Court. Tahsildar's appearance or non-appearance protracted the matter further and on the submission made by Sri.R. Omkumar, learned AGA appearing for Respondents 1 to 4, who had placed the statement of objections on behalf of these Respondents, the following order came to be passed on 31.1.2011, which reads as under:

DVSKJ:

31/1/2011

Sri R Omkumar, learned AGA, files statement of objections on behalf of the Respondents 1 to 4.

Learned AGA submits that the tahsildar being guided by the Deputy Commissioner, who in turn has been directed by the Karnataka Public Land Corporation Ltd., to take action for clearing all encroachments of government lands in terms of its circularNo KPLC/LND/120/2009-10 dated 10-2-2010, has caused issue of notices: that it is only show cause notices and therefore no need for further examination of the writ petition.

Sri Jay Kumar S Paul, learned senior advocate appearing for the Petitioners, on the other hand, submits that neither the notice nor the circular in itself can be one which can enable the tahsildar to take a drastic action straightaway, on the premise that the Petitioners are encroachers of government land and this stage cannot be reached unless there is a proper adjudication by competent authority; that in fact the Petitioners are encroachers of government land and action in terms of Section 94 is warranted.

Submits that the Respondents having not placed before this Court any supporting order for issue of show cause notice by the tahsildar, the notice does not stand in the eye of law.

Any power can be exercised in accordance with statutory provisions by any statutory authority. While it is not known what role the tahsildar has to issue the impugned notice, as the notice having been issued under Sections 39, 67 and 94 of the Karnataka Land Revenue Act, 1964, the notice has to be issued only in accordance with the statutory provisions and cannot be one purporting to be based on an outside circular such as the one is placed before the court today.

Be that as it may, it is open to the learned AGA to place relevant material including a copy of the circular and also the role envisaged to the Karnataka Public Lands Corporation Ltd., what power that the corporation exercised and what procedure or rule guides the corporation functions may also be placed before the court with a supplementary statement by the next date of hearing.

List on 7-2-2011 for such purpose and for further orders /hearing. All compliance by then.

8. Thereafter the matter is getting adjourned at the request of Mr. R. Omkumar,

learned AGA and time was sought for placing before the Court additional information, which the Respondents were required to place before the Court on 22.2.2011. Submission was made before the Court that learned Advocate General would appear and therefore time was sought yet again and the matter was adjourned to 23.2.2011. The matter was not taken up on 23.2.2011 and it is listed today before the Court.

9. At this stage, Sri R Omkumar, learned AGA requests for a pass over of the matter to enable the learned Additional Advocate General to appear on behalf of the state and to make submissions in the matter. Though the matter was kept by and is being taken up at 5.00 pm, neither the Advocate General nor the Addl Adv. General appears, but the request of the learned AGA only appears to be a ruse for avoiding the matter before this Court and such a request made without any rhyme or reason and only to avoid the matter being examined by the court, is an obnoxious practice of a recent development in the Bar and the government advocates also appear to be no exception to this unhealthy practice that has developed, which only requires to be strongly deprecated. It is, therefore, the matter is taken up and I have heard the learned Counsel for Petitioners as well as the learned AGA.

10. In the statement of objections filed on behalf of the Respondents, it is, inter alia, indicated that even as per the public auction notice that had been issued by the office of the TMC, Hassan, proposing auction of as many 8 sites and as per the condition No 12, it was the responsibility of the land owners to ensure that the outflow of rain water or other water from the building should not flow towards the Devi kere, but arrangements should be made to ensure the flow of water towards road and auction purchasers should also ensure that the lake was not polluted in any manner and in this background, notices had been issued to the Petitioners for the encroachment of 28 guntas of land comprised in Sy No 22 which is classified as government tank and therefore there is no merit in these petitions and they should be dismissed.

11. It is also asserted that 28 guntas of land which is Devi kere. is a property of the government in terms of Section 67(3) of the Act and therefore it was always open to the Petitioners to approach the Deputy Commissioner for holding an enquiry by him and as the Petitioners have not approached the Deputy Commissioner and instead have approached this Court by filing the present petitions, nor have filed any civil suit to establish their disputed rights etc., the petitions are not maintainable and they are to be dismissed.

12. It is also asserted that the subject land is a government land belonging to Muzarai department and as the Petitioners have not produced any document to prove their right, title and interest, as to on what basis the municipality had acquired title to the property, and therefore the contentions in the writ petition cannot be accepted.

13. It is further asserted that the Petitioners being in illegal possession of the

government land, are liable for eviction u/s 94 of the Act. It is also urged that in terms of the provisions of Sections 39, 67 and 94 of the Act, the tahsildar, who has been empowered to take such actions by the enabling notifications of the state government in terms of notification dated 7-9-2010, is competent to issue the notices.

14. It is also urged that the structures put up by the Petitioners are unauthorized constructions. It is also asserted that some of the buildings constructed by the Petitioners are by encroaching on the land in Sy No 27 and therefore action as proposed in the notice is warranted.

15. Respondents have also asserted that the municipality has not followed due procedure and laws, while handing over subject property to the Petitioners and not obtaining necessary sanction from the government prior to such handing over etc., on such premise, writ petitions are sought to be dismissed.

16. Sri S v. Prakash, learned Counsel for the Petitioners, on the other hand, asserts and submits that the impugned notices are no notice in the eye of law; that it is a confused, nebulous notice; that there is absolutely no cause for issue of notice by the tahsildar, it is more in the nature of a threatening notice without any basis or justification; that though it is sought to be submitted on behalf of Respondents that it is only a show cause notice and can be suitably responded by the Petitioners, experience of similarly situated persons is that the authorities bulldoze over the recipients of notices making a farce of a hearing and even without giving opportunity to seek further remedies, have been in the habit of razing to the ground, the existing structures and if the writ petitions are disposed of on the basis of the submission made by the learned AGA, it will only result in a situation where the Petitioners will be left high and dry without any protection and it is in such circumstance, the Petitioners have approached this Court for relief.

17. On a perusal of the petition pleadings, statement of objections and the annexures attached to the statement of objections and the statutory provisions, I find that Annexure-X series notices are nothing short of a gross misuse and abuse of powers. A compendium of notices invoking the powers under Sections 39, 67 and 94 of the Act and one issued by the tahsildar is a notice which does not have any rhyme or reason nor the support of any statutory provision.

18. A mere recital of statutory provision in the notice is not an end in itself.

19. It is to be noticed that these statutory provisions are one required to be exercised in different situations and for different purposes. Even assuming that the state government has delegated the powers exercisable by the Deputy Commissioner u/s 94 of the Act in favour of tahsildars, in exercise of its power under Secession 195 of the Act, that will not prevent the notice from being rendering invalid due to usurpation of jurisdiction by the tahsildar, of the powers exercisable by the Deputy Commissioner under Sections 39 and 67 of the Act.

20. But, more importantly, even power u/s 94 of the Act is to be exercised in a situation where it is for the purpose of penalizing unauthorised occupants of land and also to take follow up action for evicting them by resorting to summary eviction proceedings. But, even this power can be exercised only after the competent authority had determined that the persons sought to be evicted under Sub-section (3) of Section 94 of the Act, is in fact in unauthorized occupation of the government land and not even before that. The provision of Sub-section (3) of Section 94 of the Act reading as under:

94. Penalties for unauthorised occupation of land.-

XXX

(3) Notwithstanding anything contained in the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1961 (Karnataka Act 3 of 1962), the person unauthorisedly occupying any such land shall also be summarily evicted by the Deputy Commissioner and any crop including trees raised in the land shall be liable to forfeiture and any building or other construction erected thereon shall also, if not removed by him after such written notice as the Deputy Commissioner may deem reasonable, be liable to forfeiture or to summary removal.

is in the nature of an execution proceedings, following judgment and decree and it is sine qua non that the proceedings under Sub-section (3) of Section 94 of the Act that it should be preceded or supported by a process determining the nature of occupation of the person in government land and after recording a positive finding that the person is in unauthorized occupation of the government land.

21. It is for this reason, submission of learned AGA that such determination will be done in the enquiry to be conducted either by the tahsildar or at the instance of the Petitioners by the Deputy Commissioner, is not tenable. The submission is nothing short of begging the question and is not an acceptable one.

22. Be that as it may, it is definitely not for the tahsildar to arrogate such power to himself by issue of notices as under Annexure-X series. The counter filed on behalf of the Respondents, is conspicuously silent as to whether it is a fact or otherwise that the CMC Hassan had in fact auctioned the subject land way back in the year 1964-65. In this regard, learned Counsel for the Petitioners, placing reliance on the judgment of the Supreme Court in the case of Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, , which is very apt and lays down the law that even if the government seeks to dispute the title of any other person to a land, if the government asserts ownership in any private property, it is for the government to approach the civil court and seek for declaration and abuse of statutory powers by the revenue authorities cannot be a substitute for this course of action.

23. The manner in which the notices are issued is nothing short of a gross misuse and abuse of the statutory provisions and without any basis or

justification for issue of notice.

24. It is very obvious in the present case that the revenue authorities have not even bothered to get the facts verified from the office of the CMC and the present notices apart from suffering from illegalities as noticed above, is nothing short of a gross misuse and abuse of statutory powers, virtually one for victimizing private individuals!

25. It is for this reason, submission of learned AGA that the tashildar has jurisdiction to pass orders under Sub-section (3) of Section 94 of the Act and backed by the decision of this Court in the case of M.P. Byrappa v. MRAT 1974 (1) KAR LJ 298 is of no avail to sustain the legality of the present proceedings. Having jurisdiction is one thing, but abusing jurisdiction and exercising it in a mala fide manner is a totally another thing and mere existence of jurisdiction cannot save arbitrary and mala fide orders.

26. In the present case, notices are nothing short of a coercion and threatening the Petitioners and are nothing short of acts in terrorem indulged in by public authorities. Such arbitrary exercise of power cannot be permitted by this Court and this coupled with an erratic manner of utilizing the power completes the mala fide action to the detriment of the citizens and if results in irreversible situations such as demolition of buildings which are in existence for over 50 years, such acts will be nothing short of gross arbitrary vindictive acts, requires to be not only prevented by this Court, and the Respondents' conduct only deserves to be deprecated in the strong words and the Respondents are mulcted with commensurate costs for having indulged in gross misuse and abuse of their powers.

27. It is however made clear that all these observations and the order are no defence to the Petitioners' efforts in a properly instituted enquiry for determining as to whether they have in fact encroached on any government land by putting up structures, a land which they have otherwise claimed to have acquired from the CMC and such liberty is reserved to the Respondents to take such action as is warranted in law by following the proper procedure in law.

28. Writ petitions are allowed, impugned notices at Annexure-X series are quashed. Rule made absolute. Petitions are allowed levying exemplary costs of Rs. 60,000/- (Rupees sixty thousand only) on the Respondents, to be apportioned amongst the Petitioners in equal measure. Cost to be deposited before this Court by the state government within four weeks from today, failing which, the registry is directed to issue a certificate in favour of the Petitioners for recovery of the cost, as though it is a decree passed by a civil court. State government is at liberty to recover the costs personally from the errant tahsildar, who has caused the impugned notices.