

(2008) 07 KAR CK 0082
In the Karnataka High Court
Case No : Writ Petition No. 37720 of 2002

Shah Ismail Khadri Petitioner

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Citation : (2011) 1 KCCR 456

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Kaleemulla Shariff, for the Appellant; S.S. Kumman, Additional Govt. Advocate, for the Respondent

Judgement

N.K. Patil, J.—The Petitioner being aggrieved by the impugned resolution of the fourth Respondent-Administrator at Annexure-M dated 10th January, 2002 and also the impugned letter of the Municipality at Annexure-N dated 16th January, 2002 in Nos. 5003 to 5005 based on Annexure-M, addressed to the third Respondent - Deputy Commissioner as illegal and one without jurisdiction by issuing a writ of certiorari.

2. The grievance of Petitioner in the instant writ petition is that, Petitioner being the absolute owner of land bearing Sy. No. 47 measuring 08 acres 25 guntas situate at Gullarhaveil, Bidar District, had sought for conversion of the said land from agricultural to non-agricultural purpose and the same was granted as per the order dated 18th December, 1980 another extent of 04 acres 20 guntas was also converted into non agricultural purpose by an order dated 8th April, 1982 by the jurisdictional Competent Authority. Accordingly, Petitioner has filed the application for sanction of the layout plan before the Town Planning Authority. The Town Planning Authority, in turn, has sanctioned the layout plan in two phases subject to condition that, an extent of 01 acre of land is to be reserved for park and civic amenities, in which half an acre of land is to be spared for CMC on reasonable local price and the remaining half acre is to be provided on free of cost for maintaining town park. The said conditions were imposed at the time of

sanctioning the layout plan and accordingly, Petitioner has executed necessary agreement between with the CMC on 27th July, 1982 and the extract of the proceedings before the Planning Authority dated 2nd February 1981 in pursuance of the agreement executed are produced as Annexures-B to E. Thereafter, Petitioner has handed over the roads and open spaces as per the approved layout plan to the extents shown therein to the Assistant Executive Engineer, CMC, Bidar on 5th August, 1982 and a copy of the same is produced as Annexure-F. It is the case of Petitioner that, the City Municipal Council, Bidar neither maintained the park nor paid the half price of the remaining extent of land as has been agreed. The said land was given on reasonable price for providing other basic amenities including the open space to the layout. When things stood thus, to the shock and surprise of the Petitioner, the Administrator of the fourth Respondent, without issuing any notice and without affording any opportunity to the Petitioner, has proceeded and passed the impugned resolution dated 10th January 2002 vide Annexure-M and issued the direction to the third Respondent to take possession of the land for allowing the said land to the District Information and Publicity Office, Bidar. The said resolution passed is subsequent to the communication issued by Respondents 2 and 3 and hence, the same is one without jurisdiction and illegal. Therefore, Petitioner herein felt necessitated to present the instant writ petition seeking appropriate reliefs, as stated above.

3. After careful evaluation of the entire material available on record, including the principal ground urged in the instant writ petition, and after hearing the learned Additional Government Advocate appearing for Respondents, and after going through the objections filed on behalf of Respondent No. 5, what emerges is that, it is not in dispute that, Petitioner being the land owner and after conversion of the land, has filed the application for sanction of the layout plan. The request of the Petitioner has been considered and layout plan has been sanctioned, with certain conditions including to provide certain space for providing basic amenities such as open space, civic amenities such as park, etc., and Petitioner has agreed to the same and has handed over an extent of 01 acre out of which, half an acre of land is kept for park and the remaining portion to be handed over to the possession of the third Respondent-City Municipal Council, Bidar. However, the third Respondent instead of utilizing the said land for the purpose for which it has been earmarked in the lay out plan, has exceeding its jurisdiction and the Administrator of the third Respondent -City Municipal Council has passed the resolution proposing that, half portion of the land be handed over to the District Information and Publicity Office, Bidar. Consequently, the Municipal Commissioner issued a communication dated 16th January, 2002 requesting the Deputy Commissioner, Bidar, to direct the Tahsildar, Bidar to take over the possession of the land immediately. The impugned resolution passed by the fourth Respondent - the Administrator and the communication issued by the Municipal Commissioner are passed without any jurisdiction and the same are highly unsustainable and hence, liable to be set aside at the threshold itself.

4. Without going into further merits and demerits of this case, it would suffice for this Court to set aside the impugned resolution and the consequential communication since the same cannot be sustained by any stretch of imagination.

5. Having regard to the facts and circumstances of the case, as stated above, the writ petition filed by Petitioner is disposed of as follows:

i) The writ petition filed by Petitioner is allowed in part;

ii) The impugned resolution dated 10th January 2002 passed by third Respondent-Administrator, City Municipal Council, Bidar, bearing No. DMC/Const/Layout/B/40-81-82 and the consequential communication dated 16th January, 2002 bearing Nos. 5003 to 5005 issued by the Municipal Commissioner, City Municipal Council, Bidar, vide Annexures-M and N respectively, are hereby set aside;

iii) Matter stands remitted back to the Respondents to reconsider the matter afresh and to take appropriate decision in accordance with law and the relevant provisions of the Karnataka Land Reforms Act and Rules, after affording reasonable opportunity to Petitioner and dispose of the same, as expeditiously as possible.