(2014) 12 KAR CK 0146

In the Karnataka High Court

Case No : Writ Petition Nos. 6734-6751/2013 (LB-BMP)

Shanta M. Gad APPELLANT

Vs

Assistant Revenue Officer RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 114

Citation : (2015) ILR 441 : (2015) 1 KarLJ 369 : (2015) 3 KCCR 2656

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M.S. Bhagwat, Advocate for the Appellant; B.V. Shankara Narayana Rao, Advocate for the Respondent

Judgement

Ram Mohan Reddy, J.—Petitioners aggrieved by the order dated 18.8.2011 Annexure-A of the 1st respondent insofar as it relates to extracts of Form B Register, Annexure ''B'' Series, have presented these petitions for a writ of mandamus, to direct the respondent/Bruhath Bengaluru Mahanagara Palike, for short ''BBMP'', to transfer katha of the properties belonging to the petitioners by assigning property identification number [PID] and katha number, in the register in accordance with section 114 of the Karnataka Municipal Corporations Act, 1976, for short ''Act''. In addition, petitioners seek quashing of the circular dated 25.8.2009 Annexure-C.

2. According to the petitioners, they having purchased undivided right, title and interest in the immovable property and the residential apartments in the Multi Storied Residential Apartment Complex, applied for property tax assessment of the apartments, whence the 1st respondent by order dated 18.8.2011 Annexure-A recorded findings that the building was not compliant with The Bruhath Bengaluru Mahanagara Palike Building Bye-Laws 2003, for short ''Bye laws'' as also the ''Act'', while assessing the said properties to tax under the ''Act'', following which issued extracts of Form-B property register, Annexure-B series. In addition, it is contended that the circular dated 25.8.2009 Annexure-C

providing for assessment of certain buildings and issue of ''B'' Katha, is illegal since not supported by either the ''Act'' or the Rules.

3. Petitions are opposed by filing statement of objections, inter alia contending that petitions are not maintainable as petitioners have not assailed the validity of the circular dated 25.8.2009 based upon which the notice dated 18.8.2011 Annexure-A is issued and further that the ''B'' Katha was introduced during the year 2009 and made mandatory in respect of properties which are not compliant with Bye-laws and have no valid legal sanctions as well as disputed title, while properties which are legal are eligible for being entered in ''A'' register. It is further stated that such of those properties which do not have approval and sanctions under the various enactments are entered in the ''B'' register since basic civic amenities, water, electricity etc., are provided and therefore the need to levy property tax on such properties. In addition, it is stated that petitioners cannot claim as a matter of right for issuance of regular katha numbers by assigning property identification numbers.

4. Heard learned Counsel for the parties who reiterate the contentions advanced in their respective pleadings.

5. In order to appreciate the submissions, it is useful to refer to section 108-A of the ''Act'', providing for levy and calculation of property tax. Suffice it to extract sub-section [3] of section 108-A, which reads thus:

"[3] The Bruhath Bangalore Mahanagara Palike may levy and collect the property tax from every building, vacant land or both including a building constructed in violation of the provisions of building bye-law or in an unauthorized layout or in a revenue land or from a building occupied without issuance of occupancy or completion certificate except the building constructed illegally in Government land, land belonging to any local body, any statutory body or an organization owned or controlled by the Government. The property tax collected from such building shall be maintained in a separate register:

Provided that levy and collection of property tax under this sub-section from such building does not confer any right to regularize violation made, or title, ownership or legal status to such building. Such buildings shall always be liable for any action for violation of law in accordance with the provisions of this Act or any other law."

6. Section 108-A was inserted by Act No. 2/2009 with effect from 13.1.2009 and on which day ''BBMP'' Property Tax Rules, 2009, for short ''Rules'', was also brought into force. Rule 11 of the ''Rules'' reads thus:

"11. Property Register:- The property tax collected from the owner/occupier in respect of property assessed to tax shall be maintained in Property Tax register in Form A and in respect of un-assessed properties hall be maintained in a register in Form B."

7. Form A under Rule 11 has the following nomenclature "Register maintained for

the property having PID Number during the block period", while that of Form-B reads thus "Register maintained for properties without katha/PID Number during the block period."

8. On a bare reading of the aforesaid provisions, what is apparent is that when on filing an application under section 114 of the ''Act'', notifying ''BBMP'' over acquisition of right to immovable property, falling within its territorial jurisdiction, an obligation is cast upon the respondent ''BBMP'' to record the name of the applicant in the property tax assessment register, on the levy and collection of property tax and its calculation in compliance with section 108-A of the ''Act''.

9. Indeed, Sub-section [3] provides for levy and collection of property tax in respect of vacant land and building constructed in violation of the provisions of ''Bye-Laws'' or in an unauthorized layout or in revenue land or in building occupied without occupancy or completion certificate with the exception of properties on Government lands and that such collection from buildings shall be maintained in a separate register.

10. The proviso thereto makes it clear that the levy and collection of property tax under the said subsection does not confer any right to regularize violation made or title, ownership or legal status to such building and that those buildings would be always liable for action for violation of law in accordance with the provisions of the ''Act''.

11. Therefore, properties which have no legal title and buildings erected in violation of the ''Act'' and the ''Bye-laws'' are susceptible to assessment to property tax under sub-section [3] of section 108-A of the ''Act''. The said section does neither either speak of katha nor property identification number, except to record the assessment to property tax in a separate register.

12. Though Rule 11 of the ''Rules'' provides for two registers one in Form A in respect of properties assessed to tax and another in Form B in respect of unassessed properties, nevertheless, Form A has the nomenclature in relation to properties having property identification numbers while Form B in respect of properties without katha/property identification numbers.

13. The introduction of the words ''property identification numbers'' is neither forthcoming from the ''Act'' nor the ''Rules''. Since there is no definition of the said form under the ''Act'' or Rules'', to a question of this Court, learned Counsel for the respondent ''BBMP'' submits that every property falling within the territorial jurisdiction of ''BBMP'' requires to be identified, hence every property is assigned a particular number. If that is so, then, there is no logic in the submission of learned Counsel for the respondent ''BBMP'' that under section 108-A[3]of the ''Act'', the properties assessed to tax cannot be assigned a ''property identification number'' since though properties do not have a number, valid title or sanctions under relevant statutes or that the building is not in compliance with the ''Bye-laws'', the said section does not admit of discrimination for purpose of assigning ''property identification numbers''. It is common sense that the use of

the word ''property identification number'' is to identify the property and not whether it is susceptible to levy of property tax.

14. Yet again, if entries of all properties assessed to tax are to be recorded in Form ''A'' property tax register, while unassessed properties in a register in Form ''B'', under Rule 11 of the ''Rules'', then, there is no reason to exclude from recording in Form ''A'' the levy and collection of property tax under section 108-A[3] of the Act'' in respect of petitioners'' properties. The contention of the respondent ''BBMP'' that properties falling under section 108-A[3] of the ''Act'', require to be maintained in a register in Form B is not only illogical but contrary to Rule 11 of the ''Rules'' since Rule 11 permits recording in Form B register of all properties unassessed to tax.

15. There can be no more doubt that the words ''unassessed properties'' in Rule 11 of the ''Rules'' is inconsistent with section 108-A of the ''Act'' relating to levy and collection of property tax on all properties falling within the territorial jurisdiction of ''BBMP''.

16. Annexure-C circular dated 25.8.2009 issued by the Commissioner, ''BBMP'' contains guidelines relating to recording names in register in Form B in respect of levy and collection of property tax over vacant land and buildings which do not comply with sanctions and approvals under the various applicable enactments. In the absence of statutory compulsions either under section 108-A of the Act'' or the Rules, and in the light of the inconsistency, supra, the circular ex facie is without authority of law. It is elsewhere said that a circular has no force of law unless it has the backing of a statute.

17. Paragraph-5 of the Statement of Objections of the ''BBMP'' states that Annexure-A order insofar as issue of extract of Form B is based upon the circular dated 25.8.2009 Annexure ''C'', hence the order insofar as it relates to Form B has no legs to stand.

18. In the circumstances, it is for the respondent/''BBMP'',

"[i] to ensure necessary amendments to the Rule if it so desires, so as to include in Form B register assessment to tax of properties which do not have approvals and sanctions under various applicable enactments, falling within the purview of section 108-A[3] of the ''Act'', rather than include them in Form A register;

[ii] to ensure assignment of ''property identification numbers'' to all properties falling within its jurisdiction, irrespective of being assessed or not assessed to levy of property tax."

19. Until such exercise is done, there is no justification for respondent/''BBMP'' to include petitioners'' properties in Form B Register and issue extracts, Annexure-B series. Therefore, the extracts Annexure-B series must necessarily be held to be illegal.

20. Though learned Counsel for the respondent/''BBMP'', suggests that

petitioners be reserved liberty to file objections to the notice Annexure-A, and the appropriate authority would consider the same, nevertheless, in the light of observations supra, would be futile.

21. It is further made clear in event the respondent/''BBMP'' intends to record the assessment of property tax in respect of properties falling under section 108-A[3] of the ''Act'', in a separate register, shall make available to the petitioners all relevant material particulars to enable petitioners to file their objections and thereafter pass orders in accordance with law.

22. In the result, the notice Annexure A'' insofar as it relates to the finding that the properties of the petitioners are not compliant with statutory provisions and the building ''Bye-laws'' and recording the assessment in Register Form ''B'', as well as the extracts of Form ''B'' register, Annexure ''B'' series are quashed. The notice Annexure A'' insofar as it relates to assessment of property tax remains unaltered.

