

(2014) 11 KAR CK 0260

In the Karnataka High Court

Case No : Writ Petition No. 3746 of 2013 (LB-RES)

Shantha Shetty

APPELLANT

Vs

Sucharitha Shetty

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95, 96
Karnataka Panchayat Raj Act, 1993 — Section 64

Citation : (2014) 11 KAR CK 0260

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K. Prasad Hegde, Advocate for the Appellant; K. Chandranath Ariga, K. Prasanna Shetty and K. Prabhakar Rao, Advocate for the Respondent

Judgement

Ram Mohan Reddy, J.—Petitioner claims to belong to an undivided Aliya santhana family in which her mother was allotted immovable properties in terms of the final decree in RIA 1555/1953 in O.S.321/50 on the file of the Subordinate Judge, Mangalore, Annexure-A. Respondent's father, it is stated is a member of the said family entitled to 1/26th undivided share. It is the allegation of the petitioner that 1st respondent is a local politician against whom several cases are filed in the local police stations and his family consists of mother, brothers and sisters, entitled to 1/26th share in the property left behind by his father and are enjoying the yield from agricultural, without sharing the income with the members of the Petitioner's family for over several years in the past. According to the petitioner, the immovable property in question is agricultural land not diverted for use to non-agricultural purposes, nevertheless during the first week of April petitioner and her family members came to know that 1st respondent was making preparations to construct another house on a portion of the agricultural land. Therefore, petitioner instituted O.S. 65/2012 before the Sr. Civil Judge and ACJM, Karkala, arraigning the members of the family including the 1st respondent, as defendants, for declaration that the said properties belong to undivided Aliya Santhana family and to deliver 1/18th share to the petitioner. In

that suit, it is said, petitioner obtained interim injunction by order dated 16.10.2012 Annexure-F. It is the allegation of the petitioner that 1st respondent without authority of law, while respondents 2 and 3 colluded with the 1st respondent and permitted the construction of the building on agricultural land. Hence the petition for the following reliefs:

- i. Issue writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent to demolish the RCC building constructed in the agricultural land without proper ownership.
- ii. Issue writ in the nature of mandamus or any other appropriate writ, order or direction declaring the action of respondent to take steps to ensure the nature of the land is not misused by any person or persons under the respondent No. 1.
- iii. Grant such other orders/s or relief/s as this Hon''ble Court deems fit in the circumstances of the case and in the interest of justice and equity.

2. Petition is opposed by filing statement of objections of the 1st respondent inter alia denying the right, title and interest of the petitioner over the immovable property in question, while admitting the fact of pendency of O.S.65/2012 as well as the interim order. In addition, it is stated that Section 64 of the Karnataka Panchayat Raj Act, 1993 provides for grant of licence to put up construction of the building and after obtaining the licence dated 1.3.2012 Annexure-R1 and the payment of tax as per the receipt Annexure-R2 has put up the construction. Lastly it is stated that 1st respondent and other respondents have jointly filed a written statement in O.S. 65/2012 Annexure-R4 which suit is pending.

3. Respondent No. 2-Panchayat Development Officer has opposed the petition by filing statement of objections stating that one of the conditions in the licence issued to the 1st respondent was to obtain an order to divert the use of agricultural land, before erecting the building. According to the 2nd respondent, the letter dated 26.7.2012 was issued, stating, that since petitioner had approached the Civil Court in O.S.65/2012 and therefore the licence is subject to the outcome of the Judgment in the suit, a copy of which was forwarded to the Executive Officer, Zilla Panchayat, Udupi. As regards the right of the petitioner, 2nd respondent states that it has no knowledge over such civil rights. In addition, it is stated that by 10.11.2012 the 1st respondent completed the construction of the building, before the petitioner addressed a letter to the 2nd respondent informing about the injunction order dated 16.10.2012.

4. Having heard the learned counsel for the parties, perused the pleadings, there is no more dispute on facts that the 1st respondent did not obtain an order under Section 95 of the Karnataka Land Revenue Act, 1964 for diversion of the agricultural land to non-agricultural, residential purpose which is the sine qua non (condition precedent) to erect the building, in compliance with clause (3) of the licence, Annexure-R1, to the statement of objections of the 1st respondent and as indicated in the statement of objections of the 2nd respondent. If that is

so, 2nd respondent is answerable as to why action in accordance with law was not initiated for preventing the construction of the building by the 1st respondent without complying with the condition in clause (3) of Annexure R-1.

5. Section 96 of the Karnataka Land Revenue Act, 1964 provides for penalty for using agricultural land for other purposes without permission, investing a jurisdiction in the Deputy Commissioner to summarily evict the occupant and the person responsible for the diversion from the land so diverted and any building or construction erected thereon if not removed after written notice by the Deputy Commissioner will be liable for forfeiture and summary removal, while, liable to pay penalty not exceeding Rs. 1,000/- as the Deputy Commissioner may subject to the Rules made by the State Government may direct. Therefore, there is a statutory compulsion on the part of the Deputy Commissioner to take action in accordance with law over such illegal construction and impose penalty as well as remove the construction in addition to evicting the occupants from such building. It is not forthcoming as to why the Deputy Commissioner did not initiate action, in accordance with law.

6. Least said the better of the Panchayat Development Officer-2nd respondent, as well the Taluka Panchayat-3rd respondent. Although Section 64 of the Karnataka Panchayat Raj, 1993 empowers the issue of licence for construction of the building as prescribed in the Rules, nevertheless, Rules (3) of the Karnataka Panchayat Raj (Grama Panchayats Control Over Erection of Buildings) Rules, 1994 provides for making an application to erect a building, while Rule 5 provides for grant of permission if the Grama Panchayat is satisfied that proposed erection of the building is in accordance with law, provisions of the Rules and the Byelaws under the Act subject to payment of requisite fee. The requirement therefore is grant of permission for construction of building should be in accordance with not only the Rules but also the byelaws. The word "and" therefore makes it mandatory for byelaw to be complied with in the matter of erection of building.

(emphasis supplied)

7. Admittedly, the 2nd respondent-Grama Panchayat represented by the Panchayat Development Officer is fully aware of the fact that Building Byelaws are not framed and therefore no permission could be granted under Rule 3 and there was inherent lack of jurisdiction to exercise power under Section 64 of the Act. If that is so, then the licence and permission, Annexure-R1 to the statement of objections of the 1st respondent is in violation of rule of law.

8. The Panchayat Development Officer has suppressed the information that no Byelaws are framed as required by the aforesaid Rules in the matter of erection of buildings. In that view of the matter, action necessarily requires to be taken against the 2nd respondent for: (a) not preventing the construction of the unauthorized building by the 1st respondent since having not obtained the permission under Section 95 of the Karnataka Land Revenue Act; and (b) issue

of permission under Rule 3 for construction of the building in the absence of Building Byelaws.

9. Needless to state that it is for the Deputy Commissioner, Dakshina Kannada to initiate action as required by Section 96 of the Karnataka Land Revenue Act, 1964 against the 1st respondent. The Chief Executive Officer of the Zilla Panchayat is directed to take action against the 2nd respondent for not discharging statutory duties, supra.

10. Petitioner having instituted O.S.65/2012 and obtained interim injunction, is reserved liberty to file necessary application for breach of the interim injunction before the Civil Court. In the circumstances, a mandamus is issued to the Deputy Commissioner to take appropriate action against the 1st respondent and a mandamus to the Chief Executive Officer of the Zilla Panchayat to take action against the 2nd respondent. 1st respondent is directed not to divert the use of the petition schedule land from agriculture to any other purposes till the disposal of the Suit. The trial Court, is directed to conclude the trial in O.S. 65/2012 at the earliest and proceed to Judgment by the end of February 2015.

The petition is ordered accordingly.