

(2015) 10 KAR CK 0237

In the Karnataka High Court

Case No : Writ Petition No. 30032/2015 (LB-BMP)

Shivappa S.G.

APPELLANT

Vs

The Commissioner, Bruhath Bangalore Mahanagara Palike
and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 321(1)(2), 321(3), 443, 66, 67

Citation : (2016) 1 KarLJ 177

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : A.V. Gangadharappa and G.M. Ananda, for the Appellant

Final Decision : Dismissed

Judgement

R.S. Chauhan, J—Aggrieved by the order dated 30th of December 2014 passed by the Karnataka Appellate Tribunal, whereby the learned Tribunal has dismissed the appeal filed by the petitioner under Section 443 of the Karnataka Municipal Corporation Act, 1976 ("the Act" for short), the petitioner has approached this Court.

2. The brief facts of the case are that the petitioner is the absolute owner and in possession of the property bearing New No. 4 (old No. 3), 7th Cross, Parimala Nagar, Nandini Layout, Bangalore-76. According to the petitioner, he acquired the right over the said property under a registered Sale Deed dated 8.11.2012. Subsequently, even katha of the property was entered in the petitioner's name. Subsequently, the petitioner's plan for construction of the house was approved on 10.5.2012. In accordance with the approved plan, the petitioner had constructed the ground and first floors. However, according to the petitioner, a false complaint was lodged against him alleging that he had violated the provisions of the Act. Therefore, on 26.8.2013, the Assistant Executive Engineer - respondent No. 2, issued a notice to the petitioner. By this provisional order, the petitioner was directed to produce the relevant documents pertaining to the

property. Subsequently, on 27.8.2013, the petitioner produced the relevant documents. However, without considering his documents, on 4.9.2013, the respondent No. 2 passed the provisional order under Section 321(1)(2) of the Act. Subsequently, on 11.9.2013, the confirmation order under Section 321(3) of the Act was passed. Aggrieved by both the notice and the confirmation order, the petitioner approached the learned Tribunal by filing an appeal. However, by order dated 30th December 2014, the learned Tribunal has dismissed the appeal. Hence, this petition before this Court.

3. The learned counsel for the petitioner has raised the following contentions before this Court:-

Firstly according to the provisional notice dated 4.9.2013, seven days were given to the petitioner. But, without waiting for a reply from the petitioner, on 11.9.2013, the confirmation order was passed.

Secondly the order dated 11.9.2013 has been passed by the Assistant Executive Engineer. However, he does not have the authority to pass the said order as the power lies within the Commissioner, BBMP. The said power has not been delegated. Therefore, the provisional notice dated 4.9.2013 and the confirmation order dated 11.9.2013 were ultra virus his jurisdiction. But, the learned Tribunal has not even considered the said contention.

Thirdly, the petitioner has merely raised a stilt on the ground floor, first floor and the second floor. Therefore, there is no third floor that has been raised by him. Hence, the observation made by the learned Tribunal that he has raised the second and the third floors without the permission of the BBMP is an incorrect judicial finding.

Lastly, under Section 321-A of the Act, the petitioner can approach the BBMP for regularisation of the illegal construction allegedly raised by him. Therefore, the impugned order passed by the learned Tribunal deserves to be set aside.

4. Heard the learned counsel for the petitioner, perused the impugned order, and also considered the other documents submitted along with the writ petition.

5. The petitioner has produced the sanctioned plan dated 10.5.2012 as per Annexure-A along with the writ petition. According to the sanctioned plan, the petitioner was granted the permission to raise a ground floor and the first floor along with the terrace on the first floor. The said plan also contains an elevation plan of the building, which clearly indicates that the building is to be built as a ground floor and the first floor and then the roof. This is clearly indicated as the parapet wall and only a single room is on the terrace.

6. Initially when the writ petition was filed, by order dated 24.7.2015, this Court had clearly noted that the learned Tribunal had observed that "the petitioner had raised second and third floor although second and third floors were never sanctioned." On 24.7.2015, the learned counsel for the petitioner made a categorical statement at the Bar that despite the observation of the learned

Tribunal, in fact "no second and third floors have been raised by the petitioner." Therefore, this Court directed the learned counsel for the petitioner to produce photographs of the building in question in order to clarify whether the second and third floor do exist or do not. This was essential in order to assess the veracity of the observation made by the learned Tribunal.

7. Consequently, along with a memo dated 13.8.2015, the petitioner produced a few photographs of a building. In the order-sheet dated 20.8.2015 passed by this Court, this Court had clearly observed that the photographs produced by the petitioner did not indicate the plot number of the property in question. Therefore, it is unclear whether the photographs in fact have been produced of the property in question or not. For, in the photograph submitted by the petitioner, there was no indication that the property is new No. 4 (Old No. 7), situated at 7th Cross, Parimala Nagar, Nandini Layout, Bangalore-76, or not. Moreover, this Court noticed the fact that the remaining photograph, namely, photograph No. 3 has been taken so cleverly as not to reveal the existence of second and third floors. Therefore, this Court had no other option, but to appoint a Court Commissioner by the order dated 20.8.2015.

8. The Court Commissioner has submitted his report on 1.10.2015, which has been taken on record. According to the report of the Court Commissioner, the petitioner was present when the property was inspected on 12.9.2015 at 11.30 a.m. Further according to the said report, "while the ground level portion is used as a godown and parking, the other three floors are used for residential purposes." It was also noticed that the minimum requirement of passage was left on southern and northern side. The Court Commissioner has also produced four photographs of the said building. The photographs clearly reveal that besides the ground floor and the first floor, there are two other floors, namely, the second and the third floor. Therefore, the observation made by the learned Tribunal that despite the fact that the sanctioned plan was only for ground and first floor, the second and third floors have been constructed in violation of the sanctioned plan is borne out by the report of the Court Commissioner.

9. In order to save his skin, the petitioner had filed an application for recalling the order dated 20.8.2015 by which this Court had appointed the learned Court Commissioner for submitting his report. In the application, the petitioner has admitted the fact that the photographs submitted by him along with the petition are not of the property in dispute. His mere excuse for producing a wrong set of photographs relating to some unknown property is that "he was in a crashing hurry to go to Puttaparti. Therefore, he instructed his learned counsel that the photographs will be produced by the photographer and it is his counsel who has produced the photographs." To say the least, this is merely a flimsy excuse by the petitioner to escape any adverse order passed by this Court.

10. But, by order dated 10.9.2015, this Court had categorically dismissed the said application clearly pointing out that this Court is not happy with the flimsy excuse being offered by the petitioner. Therefore, this Court had declined to

recall the order dated 20.8.2015.

11. The issue before the learned Tribunal and also before this Court is with regard to the alleged illegal construction raised by the petitioner: whether the petitioner has raised an illegal construction contrary to the sanctioned plan or nor?

12. While this Court examines the legality of the impugned order passed by the learned Tribunal. The contention raised by the learned counsel needs to be examined only in context of the issue which was before the learned Tribunal and is equally before this Court,

13. As stated above, the sanctioned plan only permitted the petitioner to raise a ground floor and the first floor. However, the petitioner has not only raised the ground floor and the first floor, but most importantly, has raised the second and the third floors which is apparent from the report of the Court Commissioner.

In catena of cases, the Hon"ble Supreme Court has clearly observed that those who break the law cannot be permitted to escape from the liability, merely on hyper-technical grounds or on a technical interpretation of law. Those who in fact violate the law deserve to be saddled with liability as imposed by the law.

14. The first contention raised by the learned counsel is that provisional notice was issued on 4.9.2013 and seven days were given. Since 4.9.2013 would have to be excluded, the seven days would end on 11.9.2013 and yet without giving him sufficient time, the confirmation order was passed on 11.9.2013. However, this contention does not deserve to be accepted by this Court firstly even to the notice dated 4.9.2013, no reply was submitted by the petitioner. Having waited for the petitioner to submit his reply, the BBMP was certainly justified in passing its confirmation order dated 11.9.2013. Secondly, it is a hyper-technical contention.

15. The issue with regard to whether the Commissioner has power to delegate his powers need not engage our attention, for, Sections 66 and 67 of the Act bestow ample powers upon the Commissioner to delegate his powers to any officer of the Corporation subordinate to him. In catena of cases, this Court has clearly held that the Commissioner can delegate his power to the Assistant Commissioner and such delegation is legally valid. Therefore, even if this issue were raised by the petitioner before the learned Tribunal, but has not been answered by the learned Tribunal, the silence of the learned Tribunal would not vitiate the impugned order dated 30.12.2014. Since it is a settled position of law as pronounced by this Court, the mere silence of the learned Tribunal on the said issue is irrelevant.

16. Naturally the learned Tribunal was required to go through the records submitted by both the parties and to focus on the issue whether the portion raised by the petitioner was legal or illegal? A bare perusal of the impugned order clearly reveals that the learned Tribunal had gone through the record and

has validly concluded that since there was no permission given to the petitioner for raising the second and third floor, since the second and third floors were raised by the petitioner, the said construction is illegal one. Therefore, the learned Tribunal was certainly justified in upholding the provisional notice dated 4.9.2013 and the confirmation order dated 11.9.2013.

17. The third contention raised by the learned counsel only needs to be uttered, to be dismissed. According to him, the building consists of stilt floor on the ground, and the first floor. But, there is no second and third floor. Such a contention is belied by the report of the Court Commissioner mentioned above. According to the photographs submitted by the learned Court Commissioner, the building consists of four floors namely, the ground floor, the first floor, the second floor and the third floor. As mentioned above, the sanctioned plan was only for the ground floor and the first floor. Therefore, obviously the second and the third floors are illegal constructions.

18. The learned counsel's contention that he has a right under Section 321-A of the Act to apply for regularisation of the illegal construction is also misplaced. The said contention is merely a desperate attempt by the petitioner to escape the liability of facing demolition of the illegal construction raised by him. If petitioner had a bona fide intention to seek regularisation of the illegal construction, then he could have filed an application for regularisation when the provisional notice dated 4.9.2013 and the confirmation order dated 11.9.2013 were served upon him. From 2013 till October 2015, the petitioner has not taken any steps for filing the application under Section 321-A of the Act.

19. Moreover, according to the impugned order dated 30th December 2014 passed by the learned Tribunal, the deviation noticed by the BBMP are as under:

"60% towards Northern side, 60% towards Southern side, 100% towards Eastern side and 100% towards Western side."

Furthermore, as mentioned above, second and third floors have been constructed unauthorisedly. Even Section 321-A of the Act and the Building By-Laws merely permit an unauthorised construction to be regularised to a limited extent. But the law does not permit regularisation of the illegal construction to the extent of 100%. Furthermore, the Building By-Laws would not permit the BBMP to regularise the illegal constructions raised on the second and the third floors. Thus, even if the petitioner were to file an application under Section 321-A of the Act, it will be an exercise in futility. Lastly, even if such a provision does give a right to the petitioner to file an application, the acceptance of the application would not make the order passed by the learned Tribunal an illegal one. Since it is the validity and legality of the order which is in question before this Court, this Court is merely asked to look into the said aspect of the impugned order.

20. However, if the petitioner were to file an application under Section 321-A of the Act before the BBMP, any observations made by this Court herein above shall not adversely affect the decision to be taken by the BBMP with regard to

regularisation of the illegal construction raised by the petitioner.

21. As mentioned above, the petitioner has intentionally and willfully misled this Court by producing the photographs of a building which were not the photographs of the building in dispute. A litigant who approaches this Court with an unclean hand should pay for his sins. For a litigant cannot be permitted to pollute the pristine river of Justice. Since the petitioner has intentionally and willfully taken this Court out for a ride, has compelled this Court to appoint a Court Commissioner in order to discover the truth, this Court is of the opinion that an exemplary cost should be imposed upon the petitioner. Therefore, this Court imposes a cost of Rs. 20,000/- upon the petitioner. The said cost shall be paid to the Bengaluru Advocates Welfare Association Fund, within a period of one month, failing which, this Court shall take suo motto cognizance of contempt of this order. The petitioner is directed to submit the receipt before the Registrar (Judicial).

For the reasons stated above, this Court does not find any merit in the Writ Petition. It is, hereby, dismissed with cost.