

(2012) 11 KAR CK 0102

In the Karnataka High Court

Case No : Writ Petition No. 20121 of 2010 (LB-RES)

Smt. Doddanarasamma rep by Her Spa Holder S Krishna	APPELLANT
Vs	
Adyaksha Zilla Panchayath Mandya Mandya Dist. and Others	RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 237

Citation : (2012) 11 KAR CK 0102

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : H. Kantha Raja, for the Appellant; L. Raja, for C/R4, Sri B.J. Somayaji, for R1, R2 and R3-Served R5 and R6B-R6E are Served), for the Respondent

Judgement

A.S. Bopanna

1. The petitioner is before this Court assailing the order dated 29.03.2010 which is impugned at Annexure-A to the petitions Heard the learned counsel for the parties and perused the petition papers.

2. The petitioner herein claims to be the owner of the property measuring 39 feet x 80 feet out of 10 guntas comprised in Sy.No. 45 of Sathanur village, Kasaba Hobli. Mandya Taluk. The sequence is that in respect of the total extent of 1 acre 32 guntas in the said survey number, 9 guntas had been sold to one Sri Channegouda. Out of the remaining extent, 1 acre 13 guntas was acquired by the Government. The remaining 10 guntas in the said survey number is the subject matter of the present petition. The petitioner claims to be the owner of the said property and in that regard, had approached the Gram Panchayat seeking change of revenue entries in her name on the death of her husband. It was her case that the property stood in the name of her husband and the same is to be transferred to her name. The said request of the petitioner has been accepted by the Sathanur Gram Panchayath vide Resolution as at Annexure-D. While that is the position, respondents No. 4 to 6 claim that the property belongs

to Rama Mandir and therefore, the general public have interest in the said property. It is in that regard, the said respondents had assailed the resolution of the Gram Panchayat by filing an appeal before the Taluk Panchayat in No. 11/2003-04. The Taluk Panchayat did not entertain the appeal and did not interfere with the resolution passed by the Sathanur Gram Panchayat. It is in that context, the said respondent No. 3 before the Zilla Panchayat in the appeal bearing No. 6/2009-10 wherein the Zilla Panchayat has passed the impugned order has set aside the resolution of the Gram Panchayat and has held that the said extent of 10 guntas belongs to Rama Mandir. It is the said order which is assailed by the petitioner before this Court in this petition.

3. Firstly, the question for consideration is as to whether the Zilla Panchayat could have entertained the appeal in the present circumstances. With regard to the said legal position, the learned counsel appearing for the Gram Panchayat would rely on the decision of this Court in the case of Sri. K.S. Nagaraja Rao Vs. Chickmagalur Zilla Panchayat and Others, wherein the scope of Section 237 of the Karnataka Panchayat Raj Act, 1993, was considered and the circumstance under which an appeal would lie to the Zilla Panchayat was also explained. In that regard, it is held that as against the result of the Gram Panchayat, if the Taluk Panchayat does not interfere with the same, an appeal would not lie to the Zilla Panchayat and the same would not be entertained therein. Therefore, on this aspect itself, the Zilla Panchayat in the instant case could not have entertained the appeal. Even otherwise on merits, it is seen that the Zilla Panchayat has considered the rights as if the title of the property is being decided by the Zilla Panchayat, more particularly in a circumstance under which the petitioner herein has instituted a civil suit in O.S.No. 261/2003 in respect of the very same property claiming right to the same. Therefore, in the instant case, in any event, the Zilla Panchayat was not justified in setting aside the order by deciding the right of the properties when the matter in that regard has to be considered by a Civil Court in accordance with law. Hence, I am of the opinion that the impugned order passed by the Zilla Panchayat is not sustainable and the same is accordingly set aside. If at all respondents No. 4 to 6 have any grievance with regard to resolution of the Gram Panchayat, it is open to them to avail their remedies in accordance with law. Further, since the suit is pending and if respondents No. 4 to 6 herein succeed in the said suit and if there are any observations in their favour, it would be open to them to re-approach the Gram Panchayat in that regard and the Gram Panchayat will thereafter reconsider the matter in accordance with law.

In terms of the above, the petition is allowed in part. No costs.