
(2013) 08 KAR CK 0091

In the Karnataka High Court

Case No : Writ Petitions 32882-32903 of 2013 (KLR)

Smt. Jayanthi and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 89
Karnataka Land Revenue Act, 1964 — Section 192(A)

Citation : (2013) 4 AKR 857 : (2013) ILR (Kar) 5370 : (2014) 1 KarLJ 291

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Ravishankar D.R., Lex Nexus, for the Appellant; M.C. Nagashree, GP, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—Petitioners who are in all, 22 have been granted land/sites by the Tahsildar in Sy. No. 64 under Ashraya Scheme in the year 1991-92. The gomal land was utilised for distribution of house sites under the said Scheme as per GO HD 535 KHB 91. The Ashraya Committee invited applications for grant of house sites to eligible persons and hakku patras were issued in the year 1992. Pursuant to that, petitioners have put up construction and have also been provided with sanitary, electricity and water connection by the concerned authorities way back in the year 1995. By a preliminary notification gazetted on 27.11.1991, an extent of 13.30 acres is notified as slum area under S. 3 of the Slum Clearance Act, 1973. Sketch was also drawn and survey was conducted to declare the area as slum area. An extent of 6.06 acres was shown as tank and an extent of 13.30 acres was shown as proposed slum area. By a notification dated 18.3.2005, an extent of 13.30 acres is declared as slum area. On 29.09.2011, the Tahsildar concerned issued a notice to initiate proceedings under S. 94(3) and before instituting proceedings under S. 192(A) of the Karnataka Land Revenue Act, notice was issued treating the occupation of land by the petitioners as unauthorised to which the petitioners gave a reply with all relevant documents for having been granted benefit under the Ashraya Scheme, for having put up

construction and extension of civic amenities to the residents who have put up construction. Despite the reply furnished, further action was sought to be taken through the Task Force. In that circumstance, some persons approached this Court in WP 4246-78/2013 and this Court has passed an interim order of stay initially. Meanwhile, on the report of the Tahsildar, during February 2013 Deputy Commissioner has passed an order, notwithstanding the fact that the question whether petitioners are in occupation of the government land as unauthorised occupants or they are in occupation pursuant to allotment under Ashraya Scheme having not been decided by the authority competent to decide the matter. According to the petitioners' counsel, the maps which are produced along with the writ petition clearly depict that 13.30 acres was declared as slum area and sites were allotted under Ashraya Scheme but subsequently the respondent Deputy Commissioner, even without securing the report from the Tahsildar, proceeded to initiate action against the petitioners despite the fact that they are not in unauthorised occupation and the area has been declared as slum area on the area being notified for acquisition to an extent of 13.30 acres for distribution/allotment of sites to the beneficiaries under the Ashraya Scheme showing the remaining extent of 6.06 acres as tank/pond.

2. The main contention of the petitioners is, the sketch drawn by the survey authority is not in respect of the area concerned and is also not in consonance with the google imagery at annexure K. According to him, abutting survey nos. 116 & 117, houses are put up under the Ashraya Scheme. It is his contention, to protect some vested interests, the entire sketch has been prepared which is contrary to the picture shown in the google imagery. The tank area consists only 6.06 acres even as per the original records and there is no encroachment. However, the opinion of the Deputy Commissioner depending upon the tampered sketch that there is stagnation of water in the area, adjacent to that there is construction and this construction is unauthorised, is without properly verifying the records.

3. According to the government pleader, the land in question is gomal land and also a tank is situate there. As such, the Deputy Commissioner has taken a decision to declare that petitioners are in unauthorised occupation of this tank area and there is no illegality in the order passed.

4. Having heard the counsel for the respective parties it is noticed that way back in the year 1991-92, under S. 3 of the Slum Clearance Act, area to an extent of 13.30 acres has been notified and sites have been allowed to various beneficiaries under the Ashraya Scheme. As per the stand of the petitioners, one Yadalan Subbaiah Shetty's family has been granted 40 acres of land around the tank area out of which in Sy. No. 24, the said family has been given 22 acres. Further according to the petitioners' counsel, without verifying the records and without taking into consideration the reply given by the petitioners even before securing the report either from the subordinate revenue authority like the Tahsildar, impugned order has been passed at annexure Q. In the earlier writ

petitions filed, the respondent authorities were asked to secure the reply to the notice issued and thereafter, to take a decision. If at all the respondent authority intends to take action to protect tank area which according to them, has been encroached upon, let them have recourse to proper survey and taking into consideration the earlier allotment made way back in the year 1991-92 by the Slum Clearance Board declaring the area as slum as per S. 3 of the Act. Thereafter, if there is encroachment than the area which is acquired to the extent of 13.30 acres, to that extent after issuing due notice to persons who are in occupation either legally or unauthorisedly, earmarking the boundaries and after hearing the grievance of such aggrieved persons, pass necessary orders to take action according to law. If there are unauthorised occupants on the government land/tank area, they may be evicted in accordance with law.

5. It is disheartening to note that around City Corporations, Municipal Corporations and Town Municipalities, revenue land are being unauthorisedly occupied by persons who came in search of avocation for their livelihood which ultimately will be developed into slums. The tragedy is such encouragement for development of slums ultimately leads to multifarious problems, not only the pathetic condition of slum dwellers from the point of their health, rather it reflects our culture and casualness on the part of administration, both bureaucratic and political. The sensitivity involved is, safety of the people and citizens who live in townships. Because of uncertainty in the matter of security on account of slums developed in the midst of city, there is possibility of radical crimes like theft, robbery and even attack on female folk, molestation and attempt to commit rape from unidentified persons whose whereabouts will not be known. In the 21st century, the growth of slums in and around cities reflect the poor standard of living apart from this being highlighted at international level, which is more a concern of human right and violation of international human rights in UN Chapter. Even Art. 21 of the Constitution guarantees fundamental right to every citizen to lead life with dignity with proper/well developed accommodation, otherwise it will be in clear violation of Art. 14 of the Constitution by the State either due to inaction or abuse and also the Directive Principles of State Policy to provide proper environment for such people, as a matter of maintenance of law and order on the part of bureaucrats not to encourage unhealthy growth in the surroundings of cities and towns by curbing growth of slums and evacuating the unauthorised occupants on revenue lands (government lands). Unless Political Will is there in the matter, it is difficult to proceed without initiating stern action in maintenance of law and order by bureaucrats in the field. The unhealthy growth surrounding cities will have a bearing on the safety of city dwellers apart from spreading of contagious diseases due to unhygienic living conditions. As goes the saying prevention is better than cure, it is the primary concern of bureaucrats and the government in power to react to the situation to lead towards healthy development of cities and towards progress in stead of casual approach. In this regard seriousness on the part of the Executive (administration) is very much required not only to

implement things in letter but in spirit. Otherwise, unauthorised occupation of government lands by way of slums will become a problem in course of time, it will become incorrigible unless proper steps are taken.

6. It is also pertinent to note, unless political heads strengthen the hands of Executive bureaucrats in matter of maintenance of law and order, in the matter of clearance of slums and provide safety from the point of health and security, any attempt in this regard by an officer in the field with responsibility would not be effective.

7. The power of judicial review and independence of judiciary is the basic structure of our Constitution. In exercise of power of judicial review often it is necessitated to take judicial note of inaction on the part of the Executive from the point of administration and issue necessary directions for proper implementation and execution. The State being a major litigant, if basic problems are solved radically, litigation will be reduced at the threshold.

8. Innovation of new methods for resolving disputes at the threshold by introducing S. 89, CPC like arbitration, conciliation, mediation, judicial settlements and lok adalats is to speed up the process of resolving the disputes. In camera proceedings are held in Chambers in family disputes to resolve the matter as a matter of maintaining privacy. Judges are participating and presiding over lok adalats and other forums of settlement to simplify the procedure of legal system and to resolve the disputes at an early date.

9. If an issue/problem of removal of encroachment of government land and clearance of slum so as to provide suitable environment for healthy living to the poor and needy is not a serious issue, I am afraid which is the other matter more serious than this one. However, it is made clear the problem of unauthorised occupation and unhealthy growth over government land/tank area and development of slums in and around the towns and cities not only in Bangalore City but in other Cities in the State, is a serious problem and its removal and to rehabilitate the slum dwellers has to be taken care of by the government on a war footing basis in view of the various contingencies noted above and to strengthen the hands of the officers in the field in the process of execution.

10. The impugned order at annexure Q is quashed. It is for the respondent authorities to reconsider the issue after securing reply from the petitioners and others aggrieved and also taking into consideration the observation made above. Copy of this order be made available to the Lokayukta/Upa Lokayukta for information and necessary action. Petitions are disposed of accordingly.