(2013) 02 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 12992 of 2011 (LB-BMP)

Smt. S. Sumithi Naidu and S. Yugesh — APPELLANT

Vs

The Joint Commissioner Bruhat Bangalore Maha Nagara Palike, Mahadevapura Circle, Bangalore and Others — RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:
Constitution of India, 1950 — Article 226
Karnataka Municipal Corporations Act, 1976 — Section 114-A

Citation : (2013) 02 KAR CK 0079

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

Bench : Single Bench

Advocate : D. Ravikumar Gokakakar, for the Appellant; V.S. Hegde, for R4 and Sri B.V. Muralidhar, for R1-3, for the Respondent

Judgement

A.S. Bopanna, J.—The petitioners are before this Court assailing the, order dated 14.01.2011 which is impugned at Annexure-G to the petition. By the said order, respondent No. 1 has reviewed the khatha entry No. 94/2009-10 which subsisted in the name of the petitioners herein and has ordered that the same be registered in the name of respondent No. 4 herein. It is in that context, the petitioners are assailing the said order. The brief facts are that the petitioners claim to have purchased the property bearing khatha No. 26 situate at Doddanekundi, 2nd Phase, Industrial Area, Hoodi village, K.R. Puram Hobli, Bangalore, under a sale deed dated 13.07.2009. The petitioners contend that the property has been purchased from the General Power of Attorney of respondent No. 4- herein who was the owner of the property In that circumstance, relying upon the sale deed, the petitioners have sought for change of khatha to their names and accordingly, respondent No. 3 is stated, to have considered the same and the khatha has been entered. The Uttara Patra in that regard is relied upon as at Annexure-B and pursuant thereto, the property was assessed to tax and the petitioners have also paid the tax.

2. When this was the position, respondent No. 4 herein filed a review petition

before respondent No. 1 as contemplated u/s 114-A of the Municipal Corporations Act, 1976 (for short the ''Act'') assailing the khatha made in favour of the petitioners. To the said proceedings, the revenue officers were also impleaded as the respondents. By the said petition, respondent No. 4 had disputed the very sale transaction by which the petitioners contend to have purchased the property Respondent No. 1 while considering the rival contentions has taken note of the fact that first and foremost, the name had not been changed in the khatha register to the name of respondent no. 4 itself and therefore, the khatha could not have been transferred to the name of the petitioners. Furthermore, the contentions put forth by respondent No. 4 relating to the right claimed by the petitioners has also been accepted and thereafter the order has been passed.

3. Learned counsel for the petitioners while assailing the order would contend that respondent No. 4 has neither questioned the sale deed nor revoked the General Power of Attorney under which the petitioners claim right to the property in an appropriate forum and therefore, at this juncture, no contention in that regard could have been put forth before respondent No. 1 and respondent No. 1 could not have in any event adjudicated that aspect of the matter.

4. In such circumstance, it is contended that when there is a registered sale deed in favour of the petitioners, they should be considered as the owners of the property until respondent No. 4 or such other person claiming right assails the same in an appropriate proceedings in the manner known to law. Hence, it is contended that in such circumstance, respondent No. 1 was not justified in accepting the contention of respondent No. 4 and arriving at such conclusion. It is also contended by the learned counsel that apart from that aspect of the matter, respondent No. 1 in any event could not have directed that the khatha be entered in the name of respondent No. 4 when the first part of the conclusion is that the khatha had not been changed to the name of respondent No. 4.

5. Learned counsel for the respondents-statutory authorities as well as the private respondent No. 4 would however seek to sustain the order passed by respondent No. 1. It is contended that when respondent No. 1 had noticed that the khatha entry No. 94/2009-10 was not made in favour of the petitioners by following due procedure, the authorities were justified in that regard. It is pointed out that in any event, the authority has not determined or adjudicated the title of the parties, but has only taken note of the contentions which had been put forth before respondent No. 1 and when the owner of the property under whom the petitioners claim title herself had disputed the documents, respondent No. 1 was of the view that the khatha changed to the names of the petitioners is not sustainable and as a consequence has directed that the khatha be retained in the name of respondent No. 4 who even according to the petitioners was the owner of the property but had sold the property. As such, it is contended that the order is justified.

6. Learned counsel for respondent No. 4, more particularly with reference to the

objection statement filed herein would further contend that the General Power of Attorney as well as the sale deed is disputed and in such circumstance, the petitioners cannot rely upon the same and to the said extent, the authority was justified. In that regard, the learned counsel would contend that in any event the title cannot be decided either in such proceedings or in a writ proceedings before this Court.

7. In the light of the rival contentions, the only question for consideration herein is with regard to the manner in which the khatha entries are to be retained, more particularly in a situation when the same was changed to the name of the petitioners vide khatha No. 94/2009-10 and was subsequently ordered to be indicated in the name of respondent No. 4 by the impugned order dated 14.01.2011. In that regard, a perusal of the documents relied on by the petitioners would no doubt indicate that the petitioners claim right in respect of the property under a registered sale deed dated 13.07.2009. On the face of it, it is seen that the sale deed executed was by a General Power of Attorney holder and not by Respondent No. 4 herself who was admittedly the owner. The petitioners contend that the General Power of Attorney has been executed by respondent No. 4 while respondent No. 4 disputes the same. In such circumstance, the question with regard to the validity of the sale deed would still remain as an issue to be considered in an appropriate forum.

8. Be that as it may, based on the said sale deed, the petitioners had sought for khatha entries. The document at Annexure-B is the extract of Uttara Patra which had been granted in favour of the petitioners and the property has been assessed to tax. In view of the contention put forth by the respondents that the khatha had not been changed to the name of respondent No. 4 herself, the petitioners have relied on the extract of the assessment register at Annexure-L produced along with the additional documents. From the said document, it is pointed out by the learned counsel for the petitioners that the said extracts would reveal that the name of respondent No. 4 is indicated and on rounding of the same, the name of the petitioners have been mentioned. The said document is sought to be explained by the learned counsel for the statutory respondents by referring to the order impugned herein to point out that the said extract does not depict the factual position inasmuch as the said extract has been issued without reference to the actual proceedings in that regard. Hence, it is pointed out that the authority while considering this aspect of the matter has made detailed reference in the impugned order to the application which had been made by respondent No. 4 seeking change of revenue entries to her name and the endorsements which were issued calling upon to produce the necessary documents to consider her application.

9. In that regard, from the records it is noticed by the respondent No. 1 that the matter had rested at that stage with the last proceedings on 07.09.2009 and thereafter there was no further proceedings and as such, the application filed by respondent No. 4 herself seeking change of khatha entries has not attained

finality. This aspect of the matter having been observed in detail by respondent No. 1, respondent No. 1 has also taken note of the fact that the subsequent extract which has been issued was admitted to be an error committed by respondent No. 6 before the authority i.e., Assistant Revenue Officer. In such circumstance, in the absence of any valid order for change of khatha, I am of the opinion that the said observation of the authority would have to be accepted and it would also have to be accepted that the khatha had not been changed to the name of respondent No. 4.

10. Having stated so, the next question is as to whether merely based on the sale deed on which the petitioners are placing reliance, the khatha could have been changed to the names of the petitioners. As already noticed above and the same being the well established position of law that the title being in dispute it would have to be decided in a properly constituted suit and not in any proceedings before the revenue authorities or in a writ petition under Article 226 of the Constitution of India, the validity of the same in any event cannot be gone into. However, what requires to be noticed is that after the khatha was changed to the names of the petitioners, respondent No. 4 has within the time prescribed u/s 114-A of the Act filed a review petition disputing the right claimed by the petitioners for change of khatha to their names. In such circumstance, when the very person under whom the petitioners claim right to the property has disputed the sale transaction, the respondent No. 1 who is the reviewing authority in any event could not have decided the title of the parties one way or the other in the said proceedings. Therefore, certainly, respondent No. 1 would be justified in coming to the conclusion that the khatha entry No. 94/2009-10 cannot be sustained and to set-aside the same. However, the question is as to whether respondent No. 1 could have directed that the khatha entry be made in the name of respondent No. 4. From the very order of the authority as noticed earlier it is seen that the khatha had not been changed to the name of respondent no. 4 since her application was still pending before the authority Therefore, in such circumstance, when there was dispute with regard to the property respondent No. 1 while considering a review could not have proceeded further to direct that the khatha be retained in the name of respondent No. 4. The natural consequence would be that the khatha would have to be restored to the position as it stood prior to the khatha order No. 94/2009-10. Thereafter depending on the rival claims of the parties herein that may be decided in a civil proceedings, the revenue authorities would consider the request of the parties. Until such time, the khatha would be restored to the name of the person in whose names it stood prior to the entry was made in khatha No. 94/2009-10. Hence respondent No. 3 is directed that such khatha entry be made in the records and he shall also enter the number of the suits and the nature of dispute if any brought to the notice of respondent No. 3 after either of the parties approach the Civil Court. The said entry shall be retained in that regard in the khatha register so as to protect the interest of parties and the entries would be removed only after the necessary declarations are granted by the Civil Court.

In terms of the above, the order dated 14.01.2011 is set aside in part insofar as the direction to enter the name of respondent No. 4 is concerned in view of the above observations. The petition is accordingly disposed of in the above terms. No costs.