
(1994) 09 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 15797 of 1991

Smt. Salma Begum

APPELLANT

Vs

Commissioner, Bangalore Development Authority and
Another

RESPONDENT

Date of Decision : 14-09-1994

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 301(1)

Citation : (1995) 1 KarLJ 431

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. By this petition, the petitioner has sought for the issuance of a writ of certiorari quashing the order impugned of 4-2-1991, under Annexure-K to this writ petition issued by respondent No. 1.

The petitioner has further prayed for issuance of a writ of mandamus directing the respondent No. 1 to sanction the plan submitted by the petitioner for putting up construction on the site in question if it is not already deemed to have been sanctioned under the deeming provisions of the Act and the petitioner has further prayed for granting such other reliefs as think fit.

2. The facts of the case in nutshell is that the petitioner claims to be the owner of site No. 68-F, measuring 47 feet East to West and 30 feet North to South, situated at Sy. No. 66/3 of Nagasettyhalli, Bangalore North Taluk, as described in paragraph 1 of this writ petition. According to petitioner, the said layout was formed by NGEF Employees Housing Building Co-operative Society. The petitioner claims that the said layout was approved by 1st respondent. Further, the petitioner was successful bidder, so, the 2nd respondent had executed a registered sale deed dated 23-4-1984, in favour of the petitioner, a copy of which is annexed as Annexure-A to this writ petition. As such, the 2nd respondent had put the petitioner in actual physical possession and enjoyment of the aforesaid site, thereby, issued possession certificate on September 22, 1984, thereafter, the petitioner had paid taxes with respect to the site to the Bangalore

Development Authority at Bangalore on 13-10-1984. But, it is averred by the petitioner that the petitioner applied for the transfer of khata in her favour and the same was allowed vide khata certificate dated 19-10-1984. Thereafter, the petitioner forwarded plan for sanction to respondent No. 1, but, no acknowledgement was given and no action was taken any way. A Writ Petition No. 6637 of 1939, was filed and vide order dated 29-1-1990 - Annexure-E to this writ petition.

The learned single Judge of this Court dismissed Writ Petition No. 6639 of 89, subject to the observations made therein that petitioner may send an application for sanctioning of the plan to construct a residential house on the site in question together with taxes by registered post A.D., so that there would be some evidence for having forwarded plan and in the event there being refusal to receive the documents sent by registered post, the endorsement to that effect will give a cause of action to the petitioner to approach this Court afresh for proper relief and then, she can demand the plan to be sanctioned by grant of mandamus to the B.D.A. According to the petitioner's case thereafter, the petitioner moved another application for sanction of the plan by registered post and the same was received by respondent No. 1 on 28th February, 1990. But, again the petitioner waited, no action having been taken, the petitioner filed another petition bearing No. Writ Petition 7679 of 1990 which was allowed by this Court vide order dated 24-7-1990, with direction to the respondent B.D.A. to consider the petitioner's request for sanctioning the plan within one month from the date of the production of the copy of the order before the respondent No. 1. Accordingly, the petitioner did approach the 1st respondent on certain dates and thereafter the contempt proceedings had also been launched. After service of the notice of the contempt proceedings; the 1st respondent rejected the plan through Annexure-K which is mentioned above.

3. According to the petitioner's case, the said order of refusal was made on erroneous basis and was unsustainable, as it was without application of mind to many facts and circumstances and particularly, to the grounds mentioned in this writ petition.

On notice having been issued, the statement of objections along with the affidavit had been filed on behalf of respondent No. 1. To the counter, the petitioner filed an additional statement which may be said to be a rejoinder statement.

4. In the counter affidavit, the opposite party No. 1 has denied the petitioner's claim including the allegations that the 2nd respondent had executed the sale deed in favour of the petitioner as well as the allegations as to the delivery of possession and change of khata. Thereby, it was alleged that according to layout plan, Site No. 8 was a civic amenity site. It has been asserted in the counter affidavit that conversion of civic amenity site into a residential site can be permitted only by the Town Planning Authority. It was further alleged that 2nd respondent had been placing reliance on an authorised conversion of civic

amenity site and the opposite party No. 1 has stated in the statement that there was no transfer to any modified layout plan by the Town Planning Authority. As such, the petitioner does not have any lawful right of obtaining the building licence for her, if obtained it was an invalid exercise. The rejoinder statement, has been filed in which denying the contents of the counter affidavit and asserted by saying that modified plan had already been sanctioned, but the 1st respondent without noticing that fact rejected the petitioner's application for grant of permission of reconstruction.

5. I have heard the petitioner's counsel Smt. T.N. Manjula Devi and Sri C.B. Srinivasan, counsel for respondent No. 1 at length. On behalf of the petitioner, Smt. Manjula Devi, submitted that the order - Annexure-K, is without jurisdiction as once the application for grant of sanction had been moved on 28th February, 1990 and the same has not been disposed of within the period prescribed under the law and had been dismissed after the expiry of a period of about one year. Therefore, in such circumstances, the permission should be deemed to have been granted under the law and therefore, the opposite party No. 1 had no jurisdiction to dismiss or reject the petitioner's application for grant of map for building construction.

This contention of the learned counsel strongly opposed by the learned counsel for the Commissioner - B.D.A., Sri C.B. Srinivasan, he submitted that necessary ingredients forming condition present for application of doctrine of deemed grant of permission have not been made out in the present case, so the same will not apply.

6. Sri Srinivasan, invited my attention to Sections 315 and 316 of the Karnataka Municipal Corporations Act, 1976 and submitted that in case within the period mentioned in Section 315, if application is not disposed of, then, the duty of the applicant is to approach the authority concerned, but, when the authority has not been approached under Section 316, there does not arise any question as to that authority's not having granted or refused permission within the prescribed period of 30 days from the date of receipt of written request. Unless this is completed, the deeming clause will not be operated. I find much substance in the contention of Sri Srinivasan, counsel for respondent No. 1 in this regard. Section 315 of the Act reads as under:

"Section 315.-Within fourteen days after the receipt of any application made under Section 313 for permission to construct or reconstruct a hut, or of any information or plan or further information or fresh plan required under rules or bye-laws, the Commissioner shall, by written order, either grant such permission or refuse on one or more of the grounds mentioned in Section 317 to grant it."

Section 316 of the Act reads as under:

"316(1).-If within the period laid down in Section 315, the Commissioner has neither granted nor refused to grant permission to construct or reconstruct a hut, the Standing Committee shall be bound on the written request of the applicant to

determine by written order whether such permission should be granted or not."

"316(2).-If the Standing Committee does not, within thirty days from the receipt of such written request determine whether such permission should be granted or not, such permission shall be deemed to have been granted; and the applicant may proceed to execute the work but not so as to contravene any of the provisions of the Act or any rules or bye-laws made under this Act."

A perusal of Section 315 clearly shows and provide that the Commissioner has to dispose of the application moved under Section 313 for grant of permission within a period of 14 days. In case of failure of the Commissioner to dispose of that application within 15 days either by granting or refusing the permission, the applicant is required to make a written request to the authority, that is, Bangalore Development Authority, constituted under Section 3 of the Bangalore Development Authority Act and the Bangalore Development Authority is required to dispose of the matter within 30 days from the date of receipt of written request. In case, the Bangalore Development Authority fails to dispose of the written request within 30 days, the law provides that such a permission shall be deemed to have been granted.

7. My attention has been invited by the learned counsel for the petitioner to the letters dated 8-9-1990 and 15-10-1990 respectively at Annexures-G and H - addressed to the Commissioner of Bangalore Development Authority. The learned counsel tried to submit that the petitioner approached only Commissioner, B.D.A., but, Commissioner is no doubt, one of the members of Standing Committee of the B.D.A., but, he is not the Standing Committee. A perusal of Section 29 of the B.D.A. Act per se provides that on a notification being issued, the Government may declare that the specified powers and functions of Corporation or Standing Committee thereof under Karnataka Municipal Corporations Act shall be exercised by the authority, and powers and functions of the B.D.A. shall be exercised and discharged by the Commissioner.

Sub-section (2) of Section 29 provides that on a declaration being made under sub-section (1) - notwithstanding anything contained in any other law for the time being in force, the Corporation or any Standing Committee thereof or the Commissioner shall not be competent to exercise and discharge the powers and functions conferred. That being the position, when the representation had to be made to the authority, it had got to be made to the B.D.A. and the power had to be exercised by the B.D.A. itself and the Commissioner is only a part thereof. The petitioner instead of approaching the B.D.A. with the written request within 30 days had only approached the Commissioner of B.D.A. by Annexures-G and H. That being the position as a result of the fact and the law, in my opinion, the petitioner cannot claim the benefit of the deeming clause as the proper authority had not been approached and it had no opportunity to consider that matter. Whereas, the rejection or grant of that application is a civil consequence. Therefore, in my opinion, when these orders which are got to be passed on the application under Section 313, for permission have got civil consequence on the

rights of the persons owning the property. It is trite principle of law that such orders should be passed in accordance with the principles of natural justice. The authority before passing an order of rejection of such application on certain deficiency and some ground, the authority should bring that ground, or deficiency and some ground, the authority should bring that ground or deficiency to the notice of the applicant. Such orders of rejection have been made appealable under Section 444 of the Act, thereof, clause (b) of sub-section (1). When such order of refusal to grant permission has been made appealable, then it is expected and required that it should contain reasons, and be a reasoned order. That Section 303(1) of Karnataka Municipal Corporations Act specifies the grounds for refusal to grant permission or approval.

The material portion of Sections 303 and 317(1) of Karnataka Municipal Corporations Act is being quoted herewith.

"Section 301(1).-The only grounds on which approval of a site for the construction of a building or permission to construct or reconstruct a building may be refused, are the following:"

Section 317(1) of the Act reads:

"The only grounds on which permission to construct or reconstruct a hut be refused are the following-"

8. From the above sections, that is, Sections 303(1) and 317(1), it is clear that exclusive of these grounds, no other ground will be permissible to the authorities to refuse the grant of permission for construction or reconstruction of building. Such orders are required to be passed after giving opportunity of hearing to the applicant, who has moved the application for grant of permission. But, in the present case, the evidence shows that the order impugned in this case appears to have been passed without giving opportunity of hearing to the applicant before rejecting the order. Apart from that it is stated in the objection vide paragraph 3 thereof based on information as per material portion thereof reads as under:

"It was only after examination of this circumstance that this respondent was advised to issue an endorsement to the petitioner as per Annexure-K."

Annexure-K is the order refusing to grant the permission to construct, that is, rejecting the application moved by the petitioner for sanction of the map or plan. Persons authorised to exercise judicial or quasi-judicial powers are expected to exercise powers after application of their own mind and they shall not act by the advise of some other person.

9. The affidavit per se shows that the order made in this case has been passed on advise from some other person undisclosed. Such an order can definitely be said to be in violation of the principles of natural justice and fair play.

As laid down by Their Lordships in the case of State of Uttar Pradesh v Singhara

Singh and Others, AIR 1964 SC 358, as well as in the case of Krishna Gopal v Shri Prakashchandra, AIR 1974 SC 209, and similar other cases that when a statute confers the power on certain officers be judicial officers or quasi-judicial officers or administrative officers, then that power can obviously be exercised only by those officers alone. The material observations of Their Lordships of the Supreme Court may be quoted as laying down with reference to Section 164 at page 363:

"It is true that the Judicial Committee did not have to deal with a case like the present one where a Magistrate of the Second Class not specially empowered to record a confession under Section 164. The principle applied in that decision would however equally prevent such a Magistrate from giving oral evidence of the confession. When a statute confers a power on certain judicial officers, that power can obviously be exercised only by those officers. No other officer can exercise that power, for that has not been given to him."

(emphasis supplied) When this is the position of law, then it means that when power is to be exercised by specific authority, the law requires that it is that authority alone, who will exercise that power with application of his own mind, but, if an authority shows that, as he is acting on the advise of some other person only and without application of his own mind, then in that case, the act cannot be deemed to have been done by that authority. In that view of the matter, it appears from the affidavit itself and from the circumstances of the case that the order contained in Annexure-K, dated 4-2-1991, is not an act of the Commissioner himself, but, he acted on the instigation or on the basis of advise from some person undisclosed without applying its own mind and as such, the order Annexure-K appears to be illegal and without jurisdiction. Such an order per se appears to have been passed in a short circuit manner without complying with the rules of natural justice.

10. In view of the above, this writ petition deserves to be allowed and as such is allowed. The order Annexure-K, dated 4-2-1991, is hereby quashed and it is declared to be illegal, void and inoperative. Let a writ of mandamus be issued to respondent No. 1, to consider the petitioner's application for sanction of the map for construction afresh in the light of the observations made by me above as well as in the light of the law applicable and it is expected that he should dispose of the application after giving the petitioner opportunity of placing his case.

It is expected that the application be disposed of within four months from the date of service of the copy of this order.