

(2011) 01 KAR CK 0141
In the Karnataka High Court

Case No : Writ Petition No's. 35480-35494 and 35891-35893 of 2010

Smt. Shashi Karthikeyan and Others

APPELLANT

Vs

The Tahsildar

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Reforms Act, 1961 — Section 79 B
Karnataka Land Revenue Act, 1964 — Section 192 (a)

Citation : (2011) 4 KarLJ 365 : (2011) 2 KCCR 1428 : (2011) 6 RCR(Civil) 2093

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M.S. Bhagwat and D. Pavanesh, for the Appellant; R. Om Kumar, AGA, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ Petitioners as many as fifteen in number, claiming to be purchasers of some sites, very popularly described as "revenue sites", but which is essentially a revenue land in bits and pieces, from perhaps a common vendor by name Nanjappa and two others with sale transactions as averred in the petitions being during the period from 22.3.1996 upto 5.5.2004, having become very apprehensive of any irreversible adverse action that may be taken against them in the wake of notice bearing No. LNDCR/684/09-10 dated 23.9.2010. issued by the Tahsildar, Bangalore East Taluk, Krishnarajapura, have approached this Court seeking the following reliefs:

[a] Call for records from the Respondents pertaining to impugned Notice dated 23/9/2010.

[b] Issue a writ or order quashing the impugned Notice dated 23/9/2010 bearing No. LNDCR/684/09-10 issued by the Respondent [Annexure-A to the writ petition].

[c] Pass any other order including the cost of this writ petition in the interest of justice and equity.

2. This Court, had on 23.11.2010, passed an interim order while issuing notice to the Respondent as under:

Learned Addl. Govt. Advocate is directed to take notice for the Respondent and secure necessary records by the next date of hearing.

Issue interim stay as prayed for.

Re list on 02.12.2010

3. The matter having been listed thereafter and not reaching hitherto, is taken up today in "B" Group category of cases.

4. The sole Respondent is the Tahsildar, Bangalore East Taluk. Time and again, this Court has taken the view that a writ petition impleading a Tahsildar is not a writ petition worthy of its name and to be dismissed, only for the reason of non-joinder of necessary parties as a writ is issued only against an authority which is either the State or akin to the State and not that each and every low ranking revenue official like a Tahsildar being treated on par with the State.

5. There are good number of higher revenue officers such as Assistant Commissioner, Deputy Commissioner, Regional Commissioner, Secretary of the Revenue Department and the State Government itself, above the Tahsildar and filing a writ petition impleading a Tahsildar before the High Court invoking writ jurisdiction under Articles 226 and 227 of the Constitution of India is nothing short of misuse and abuse of the process of this Court.

6. Be that as it may, Petitioners' grievance is due to the notice issued to one Nanjappa, son of late Chowdappa. It is not even a notice issued to any one of the Petitioners 1 to 15 but in terms of the pleadings, Petitioners claim to be persons who have acquired some right, title and interest under not only the said Nanjappa, who in turn appears to have sold some part of the land in Sy. No. 69/3 of Dasarahalli Village, K.R. Puram Hobli, Bangalore East Taluk, in favour of one M.R. Narasaraju, son of Ramaraju as per sale transaction dated 21.7.1995 and said Nanjappa, son of Chowdappa, Muninarayana, son of K. Sonnappa and M. Nagaraju, son of Munivenkatappa, having formed a residential layout in the remaining extent of 2 acres 5 guntas in Sy. No. 69/3 and like development having taken place by the efforts of M.R. Narasaraju, son of Ramaraju, who also formed a residential layout, consisting of an extent of one acre in Sy. No. 69/3 and that Petitioners are purchasers of sites from such developers, namely, Nanjappa, Muninarayana, Nagaraju and Narasaraju and the notice being one issued to amongst them i.e., apprising him that in terms of the proceedings of the Assistant Commissioner, Bangalore North Sub-Division, Bangalore in RA No. 75/2003-04, the order dated 20.10.2004 has been passed in respect of an extent of 2 acres of land, noticing that it is a "B" Kharab land and as the said Nanjappa has been active in forming sites in said extent of 2 acres of "B" Kharab land, the

revenue authorities having noticed this illegal occupation of Government land, had called upon the said Nanjappa, to remove the encroachments within seven days from the date of receipt of the notice and to handover possession of the subject land after removing the unauthorized construction and if the said person should fail to do so within a period of seven days from the date of receipt of the notice, action in accordance with Section 192[a] of the Karnataka Land Revenue Act, 1964 [for short "the Act"], will be initiated against such person.

7. A notice of this nature issued to said Nanjappa can never be claimed to give rise to any cause of action to the Petitioners to approach this Court seeking for quashing of this notice in writ jurisdiction.

8. However, Sri Pavanesh, learned Counsel for the Petitioners submits that, in the first instance, the Tahsildar has no jurisdiction to issue a notice of this nature and secondly notice is not a true follow up action taken by the Tahsildar in terms of the order dated 20.10.2004 passed by the Assistant Commissioner and therefore the notice should be quashed; that the Tahsildar armed with some bulldozers and other demonic destructive equipments had menacingly arrived on the land on 8.11.2010 and that is when the Petitioners became very apprehensive and have approached this Court by filing the present writ petition seeking for the reliefs as noticed above.

9. Mr. Pavanesh, learned Counsel for the Petitioners submits that "A" Kharab land is not Government land and the very understanding of the Tahsildar in terms of the notice is bad in law etc.

10. As notice had been issued to the sole Respondent-Tahsildar, the Tahsildar is represented by Sri Om Kumar, learned Additional Government Advocate, I have heard the learned Additional Government Advocate also.

11. Submission of the learned Additional Government Advocate is that the Tahsildar is only acting in terms of the order passed by the Assistant Commissioner who is his superior authority and he is duty bound to give effect to that order and no exception can be taken to the notice issued.

12. Though Sri Pavanesh, learned Counsel for the Petitioners seeks to join issue on this aspect to submit that the Tahsildar is not necessarily active in accordance with the order passed by the Assistant Commissioner and if so while it is open to the Petitioners or said Nanjappa to go and apprise the Assistant Commissioner with a request to Assistant Commissioner to reign in the Tahsildar under his jurisdiction, it is not necessary for this Court to examine these writ petitions and spend time on such petitions every time some allegations are made against a low ranking official like the Tahsildar.

13. However, Sri Pavanesh, learned Counsel for the Petitioners seeks to submit that as indicated in paragraph -2.8 of the petition, the subject land measuring an extent of 3 acres 25 guntas in the said survey number had been notified for acquisition for the purpose of forming a layout by name "Arkavathy Layout" in

terms of the scheme formulated by the Bangalore Development Authority and such notification under Section 19[1] of the Bangalore Development Authority Act, 1976, had been issued on 23.2.2004, but the Authorities were content to acquire only 2 acres 30 guntas and the balance 35 guntas out of the notified land had been kept out of the purview of acquisition, this extent of land only because it was factually noticed that the Petitioners and other persons had actually constructed houses in this portion of the land notified for acquisition and therefore seeks to submit that the facts mentioned in the notice is not correct or proper etc.

14. It is not necessary for this Court to go into the questions of disputed facts nor is it prudent on the part of the High Court to embark upon such an examination of disputed facts, in writ jurisdiction unless really warranted.

15. As to what extent of land the vendors of the Petitioners even in the first instance had owned and what extent of land was notified for acquisition and what extent of land was actually acquired and further extent of land was kept out of the purview of acquisition and for what reason are all not matters germane to the present petitions under Articles 226 and 227 of the Constitution of India nor can it be gone into even otherwise, in writ jurisdiction.

16. It is submitted that the Petitioners have already replied to the Tahsildar.

17. While the Petitioners may pursue their efforts for relief before the Tahsildar or before any other forum if they are aggrieved by inaction of any authority and if they have any rights which can be defended, I do not find any cause of action in favour of the Petitioners to seek for quashing of notice at Annexure-A as it is issued only to said Nanjappa and moreover it only recites that action in accordance with the statutory provisions will be taken against the said Nanjappa.

18. If the Petitioners are persons claiming under Nanjappa or anyone else, it is for their vendors to ensure that such protection is also provided to the buyers.

19. There is no dearth of fly by night shady operators who to seek to sell revenue sites, house sites and what not and there is no dearth of gullible persons who are ready to speculate buyers who buy such lands and put forth their defence and seek to project as though they have derived all rights under sale deeds executed by private person who may or may not have any right or title in the subject property.

20. It is the look out of the purchasers of the property to ascertain as to what he/she is buying from whom, whether he/she gets good title or otherwise, whether he can get possession or otherwise and all such aspects are matters which should be borne in mind before purchasing the land by any prudent buyer. If the imprudent, ignorant, even speculators buy lands and sites everywhere and if they get into trouble, it is not the function of the High Court to keep rescuing every such person just because they come and plead that some notice issued to some other person is likely to affect their interest!

21. There is enough provisions available in law to seek protection of rights of citizens and individuals and it is not as though every apprehensive person should jump into the High Court and seek relief whether such person has any cause of action or otherwise, whether writ jurisdiction can be exercised for such purpose or otherwise.

22. Though Sri Pavanesh, learned Counsel for the Petitioners submits that the subject lands had been categorized as "A" Kharab land in the revenue records since the year 1950 onwards which is also not relevant for this Court while examining these writ petitions, as basically Petitioners are asserting some property rights under sale transactions which have come into existence after acquisition proceedings have taken place and some may be before, but such rights can be recognized only by the civil court and not by this Court in writ jurisdiction, particularly, as to whether they have acquired some good title to the property or otherwise as there is considerable restrictive legislative provisions for transfer of agricultural lands as found in the Karnataka Land Reforms Act, 1961, in favour of non agriculturists. An agricultural land if is sold in favour of non-agriculturists, the transaction gets voided and the subject land automatically vests in the State Government in terms of the provisions of Section 79B of the Karnataka Land Reforms Act, 1961. When such legal position can emerge even on the basis of the pleadings even in the writ petitions, the question of this Court examining such petitions for grant of relief in writ jurisdiction does not arise at all.

23. Writ jurisdiction is meant for protecting rights of bona fide and law abiding citizens and when their recognized undisputed rights statutorily or otherwise, is trampled upon by public authorities, through their high handed, illegal, vindictive or mala fide action.

24. It is not as though any and every person can jump into the High Court and seek for issue of a writ of mandamus or writ of certiorari. When even law abiding citizens are not provided commensurate protection and in fact, even law abiding citizens are required to avail the statutory remedies as are available, violators of law cannot definitely command a premium to seek protection and relief before the High Court, in writ jurisdiction.

25. Viewed from any angle, I do not find any need or justification to exercise discretionary writ jurisdiction in favour of the Petitioners for granting any relief in writ jurisdiction. In fact, I do not find a cause of action worthy of examination in favour of the Petitioners for further entertainment of these petitions.

26. It is therefore, these writ petitions are rejected without issue of rule, but it is open to the Petitioners to pursue their remedies if they have any property rights in respect of lands as asserted by them, before any other forum, in accordance with law.

27. Subject to this observation, these writ petitions are dismissed.