(2013) 02 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 16054 of 2012 (LB-BMP)

Smt. Tahirunissa APPELLANT

Vs

The Joint Commissioner (South), Bruhat Bangalore Mahanagara Palike and Others RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:
Karnataka Municipal Corporations Act, 1976 — Section 114, 114-A

Citation : (2013) 2 AKR 600 : (2013) 2 KarLJ 567

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

Bench : Single Bench

Advocate : S. Shaker Shetty, for the Appellant; N. Devaraj for DMS Associates and Sri B.V. Muralidhar, for the Respondent

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 10-4-2012 which is impugned at Annexure-G to the petition. The petitioner claims right in respect of the property bearing No. 12, 13th ''A'' Main Road, N.S. Palya, Bangalore. According to the petitioner, the property originally belonged to Sri Gunashekhar, who had sold the same in favour of Shaik Shakeel Ahamad Basha under a sale deed dated 2-7-2005. The said purchaser had thereafter executed a general power of attorney in favour of the husband of the petitioner. Based on the said power of attorney, the husband of the petitioner Sri Javeed Pasha has executed a sale deed in favour of the petitioner on 10-3-2008. Based on the said sale deed, the petitioner had obtained the khatha entry in her name on 31-3-2008.

2. When this was the position, the third respondent is stated to have filed an application seeking change of khatha to her name based on a gift deed said to have been executed by Shaik Shakeel Ahmed Basha in her favour. It is in that circumstance the Joint Commissioner has initiated proceedings u/s 114-A of the Karnataka Municipal Corporations Act, 1976 and has ultimately by the order dated 10-4-2012 set aside the khatha entry which stood in the name of the

petitioner and has directed the Revenue Officer to reconsider the matter as contemplated u/s 114 of the said Act. Claiming to be aggrieved by the said order, the petitioner is before this Court.

3. First and foremost, what requires to be noticed is that the third respondent claims right in respect of the gift deed which is earlier to the date on which the sale deed was executed in favour of the petitioner on 10-3-2008. The undisputed fact is that in view of the said dispute relating to title, the third respondent has already instituted a suit in O.S. No. 26606 of 2009 seeking for declaration of her ownership over the said property. Considering that the suit was instituted in the year 2009, the proceedings u/s 114-A of the Act in any event could not have been concluded to decide the rights of the parties with regard to the maintenance of the khatha, since the said proceedings was disposed of on 10-4-2012, subsequent to the filing of the suit. In any event, the direction issued by the Joint Commissioner to the Assistant Revenue Officer to redo the process as provided u/s 114 of the Act cannot be undertaken by the said Officer at this juncture as the rights of the parties cannot be considered by the said authority since the title in any event would have to be decided by the Civil Court in the pending suit. However, it is to be noticed that the pendency of the suit had not been brought to the notice of the reviewing authority and therefore, it is stated that the said order has been passed. Having noticed the pendency of the suit at this juncture, the order dated 10-4-2012 cannot be sustained. The same is accordingly quashed. The parties would have the liberty of re-approaching the Revenue Authorities depending on the result of the suit wherein the title of the parties would be decided. Until such time, if any of the parties desire, it would be open to them to approach the revenue authority to indicate the pendency of the suit in the khatha register and if such request is made, the same shall be indicated and the number of the suit shall also be shown in the extract of the khatha so as to protect the interest of the parties in that regard.

In terms of the above, the petition stands disposed of. No costs.