(2010) 04 KAR CK 0250

In the Karnataka High Court

Case No : Writ Petition No. 14105 of 2008

Smt. Vijayalakshmi APPELLANT

Vs

The Additional Commissioner (South Range) Bruhat Bangalore Mahanagar Palike, The Assistant Revenue Officer Govindarajanagar Division and Dr. R. Sarojamma rtd. Professor RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 114 (a)

Citation : (2010) 04 KAR CK 0250

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

Bench : Single Bench

Advocate : H. Srinivas Rao, for the Appellant; H.N. Shashidhar, for Kesvy and Company for R-3, for the Respondent

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 29.02.2008 which is impugned at Annexure-B. The order in

question is one passed by the first respondent exercising the power u/s 114(a) of the Karnataka Municipal Corporation Act 1976 (herein referred

to as the Act).

2. Heard the learned Counsel for the parties and perused the writ papers.

3. The facts which are not in dispute arc that the petitioner herein is the daughter-in-law of the third respondent The third respondent has executed

a registered lease deed dated 21.12.1992 in respect of first floor portion in favour of her son namely Sri. S. Ravi. Pursuant to the said sale deed

the son of the third respondent has executed the gift deed dated 03.02-2005 gifting the lease hold rights in favour of the petitioner. The petitioner

thus, claiming right under gift deed, secured the mutation orders and katha in favour of the petitioner. The third respondent claiming to be aggrieved

by the same filed the review petition u/s 114(a). The first respondent after considering the rival contentions has held that the katha could not have

been transferred in the name of the petitioner and ordered restoration of the same in the name of third respondent, The petitioner is therefore

before this Court.

4. On these admitted facts the only question that is to be considered is as to whether the change of the katha was permitted by the third respondent

in favour of her son while executing the lease deed dated 21.12.1992. The only relevant clause in the said document is Clause No. 7 which reads

as under:

The lessor shall be liable to pay the property tax and other dues of this nature in respect of the portion of her property not forming the (subject

matter of this lease and further to kept the lessee effectually indemnified against any claims that may be made as a result of Lessor''s default. The

Lessee shall likewise pay the same for the schedule property and the improvements thereto made by him and shall further indemnify the Lessor

against his defaults.

Under the said clause the third respondent as the lessor has indicated that, the lessee would have to pay the tax in respect of the schedule property

described in the said document.

5. The question is therefore, whether such right would enable the son to have the katha in his flavour. If the answer is in negative then such right

cannot be granted under the gift deed executed in favour of the petitioner. To ascertain this fact a perusal of the material i.e., the lease deed would

indicate that the petitioner''s husband has to pay the tax which would mean that the third respondent would remain to be the owner of the property

as well as the katha holder. During the time of enjoyment the lessee alone the son of third respondent was to pay the tax. That being the position,

the petitioner in any event cannot claim for change of katha under gift deed executed by her husband in her favour. Though at this point the third

respondent has relied on a cancellation deed which is produced along with the objection statement which is at R1, in my view it is not relevant in

the present proceedings and as such it is not necessary to look into the said document in detail. Hence, in so far as the order impugned in thus petition, the first respondent has not committed any error.

6. The learned Counsel for the petitioner would however contend that the averments made in the objection statement and also in the cancellation

deed and the order dated 24-02-2010 recorded by this Court would indicate that the petitioner is in possession of the property and such

possession should not be disturbed. The learned Counsel for third respondent would contend that the said question cannot be considered in this

petition. I am of the considered view that, it is appropriate that this Court should not advert to that aspect of the matter. If infect the petitioner is in

possession of the property and. considering the relationship between the practice, it is for the petitioner to exercise her right in accordance with law

before the appropriate forum and in such the dismissal of this petition will not come in her way.

7 In that view of the matter, in so far the issue involved in this petition, the same is devoid of merit and the same is accordingly disposed of. No

order as to costs.

8. In view of the disposal of the main petition, Misc.W. No. 32/2010 stands disposed of as it is unnecessary.