

(1996) 07 KAR CK 0071

In the Karnataka High Court

Case No : Writ Petition No's. 28065-066 of 1992

Sri Bellam Thimmappa and others

APPELLANT

Vs

Karnataka Slum Clearance Board and others

RESPONDENT

Date of Decision : 24-07-1996

Acts Referred:

Karnataka Slum Areas (Improvement and Clearance) Act, 1973 — Section 11, 17, 3 (1), 6

Citation : AIR 1997 Kar 256 : (1997) ILR (Kar) 59 : (1997) 1 KarLJ 282

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri K. Raghavendra Rao, for the Appellant; Sri. B. Ramaswamy Iyengar and Sri K. R. Balakrishnan and Sri N.K. Ramesh, HCGP, for the Respondent

Judgement

1. This writ petition calls in question an order dated 5th of Sept 1992 passed by the third-Respondent, declaring an area measuring 2 Acres and 53 cents underlying T.S. No. 8, as a Slum u/s 3(1) of the Karnataka Slum Areas Improvement and Clearance Act, 1973, hereinafter referred to as the Act.

2. The petitioners are owners of land underlying Sy. No. 363C/3a, 363C/3b and Town Sy. No. 8 measuring in all nearly 8 Acres situate within the Town Municipal limits of Bellary. By a Notification dated 31-8-1989 issued by the Deputy Commissioner, Bellary, the aforesaid areas were proposed to be declared as slum areas u/s 3 of the Act. Objections to the proposal appear to have been filed by the petitioners, after consideration whereof, the Deputy Commissioner, by his order dated 26th of July, 1991, declared the area underlying Sy. No. 363 C/3b measuring 5 Acres only as a Slum. In so far as the remaining area is concerned, the Deputy Commissioner, observed that even though the same was also being unauthorisedly used as a slum yet the only course left to deal with the same was for the slum Board to acquire the said area and then approach the Deputy Commissioner, for further action as regards its being declared as a slum. It is at this stage, fruitful to extract the operative portion of the order passed by the

Deputy Commissioner.

"The land bearing Sy. No. 363 C/3b measuring 5 Acres which is a Government Land is hereby declared as a "Slum."

As regards Sy. No. 363 C/3a measuring 7-20 Acres and the remaining land bearing T.S. No. 8 which are patta lands, it is observed that those lands have also been unauthorizedly used as a "Slum". This being the case, the only course left is to acquire those two pieces of land by the Slum Board, if necessary, and then approach this Office for further action as regards declaring this a "Slum".

3. Based on the above order a Notification dated 3rd of Aug. 1991 was published in the Government Gazette on 22-8-1991 declaring the area underlying Sy. No. 363C/3b as a Slum area. Some time later, the residents of the slum underlying Town Sy. No. 8 as also the Secretary, Karnataka Slum Clearance Board appear to have approached the Deputy Commissioner, and other authorities for a declaration to the effect that the area underlying the said Sy. No. is also a slum. Proceedings were consequently initiated on the basis of the said Representations which the Deputy Commissioner treated to be a Review Petition. The said proceeding eventually culminated in an order dated 5th Sept. 1992 whereunder the Deputy Commissioner, declared the area underlying T.S. No. 8 also as a slum u/s 3(1) of the Act aforesaid. Aggrieved by the said order and declaration the petitioners have come up with the present writ petition as already indicated earlier.

4. Learned Counsel for the petitioners argued that the Deputy Commissioner had purported to exercise his powers of review in regard to the earlier order passed by him. He strenuously urged that the power to review an order made by a Statutory Authority can be invoked only in case the same is available under the Act. No such power, contended the learned Counsel, was inherent in the Authority so as to be invoked at the will of the Authority to correct errors that it may find had crept in the earlier order passed by it. Heavy reliance in support was placed upon the judgment of the Supreme Court in Superintendent, Central Excise, Bangalore Vs. Bahubali, , and of this Court in Sampu Gowda Hanume Gowda v. State of Mysore AIR 1953 Mys 156.

5. On behalf of the respondents however it was urged that the description of the order being one by way of review of the earlier order passed by the Deputy Commissioner, was erroneous and inappropriate. It was urged that since the power to declare an area as a slum area was available to the Deputy Commissioner, any such power could be invoked and a declaration made no matter an earlier consideration of the same question had not fructified in any such declaration. It was also argued that the Deputy Commissioner had in his earlier order dated 26th July 1991, been clearly misled in that it was pointed out to him that the respondents, had taken appropriate action for the eviction of the hutment dwellers squatting on the land underlying Sy. No. 8. No such action had actually been taken, according to the respondents. The Deputy Commissioner it

was urged was also in error in having suggested acquisition of land underlying Sy. No. 363 C/3A and T.S. No. 8 before action by way of declaring the area as a slum could be taken. The aforesaid two errors it was urged had induced the Deputy Commissioner, to exclude Sy. No. 8 from the purview of his declaration made earlier, which could be corrected by him in exercise of his powers u/s 3 and a declaration made no matter earlier a declaration had not been made to that effect.

6. That a power to review is available only if it is conferred specifically by the Statute under which an Authority discharged its functions, is not disputed. The proposition is indeed much too well settled to require any support from the judicial pronouncements. Reliance upon the judgment of the Supreme Court and the Full Bench judgment of this Court for the said proposition is therefore well placed. The question however is whether the order impugned in these proceedings can really be said to be an order by way of Review of the. earlier order passed by the Deputy Commissioner. It is true that the Deputy Commissioner has in the order impugned termed the proceedings before him to be by way of "Review", but that does not appear to be conclusive of the matter. It is open to the respondents to show that even if the description of the source of power under which the order is made, was erroneous, the order can be sustained on some other legally tenable basis. The very fact that the Deputy Commissioner, termed the proceedings as proceedings by way of Review would not therefore necessarily close the issue.

7. The power to declare an area as a "Slum" is conferred upon the Government u/s 3 of the Act. By reason of the provisions of Section 69 of the Act. the said power appears to have been delegated to the Deputy Commissioner concerned. Any such power is exercisable by the Authority concerned, provided it is satisfied that the conditions stipulated in Section 3 are satisfied. The fact that the Authority had upon consideration of the conditions prevalent in an area at some stage come to the conclusion that it was not a "Slum" would not prevent it from coming to a different conclusion upon a reconsideration of the relevant factors. It follows that merely because an earlier consideration by the Authority concerned, did not result in a declaration, does not mean that such a declaration cannot be made at any subsequent stage. In other words, the power to make a declaration is not exhausted by reason only of the fact that at one point of time when the occasion to declare an area to be a "Slum Area" had arisen, the declaration was not actually issued. Such a power can in my opinion be exercised and is available to the authority concerned at different stages depending upon the satisfaction of the conditions prescribed by Section 3.

8. In the instant case it is not as though the Deputy Commissioner had upon consideration of the conditions prevalent in the area in disputes, come to the conclusion that the same was not a "Slum". On the contrary, the Deputy Commissioner had in specific terms held that the area underlying Sy. No. T. S. 8 was also being unauthorisedly used as a "Slum". The finding that the area is a

"Slum" was thus clearly recorded by the Deputy Commissioner even in his previous order dated 26th July, 1991. What had dissuaded the Deputy Commissioner from issuing a Notification declaring it to be a "Slum" was the alleged steps said to have been taken against the "Slum Dwellers" by the owners. No such steps were actually taken with the result that when the true facts were brought to the notice of the Deputy Commissioner he was justified in issuing a declaration. The other reasons which had dissuaded the Deputy Commissioner from issuing a declaration, was that the land may have to be acquired before the declaration in question could be made. Here the Deputy Commissioner was in error for the declaration of an area as a "Slum" was not dependent upon the acquisition of the "Slum" area by the "Slum Board". Suffice it so say that having returned a finding that the area was a "Slum" the Deputy Commissioner's failure to issue a declaration could not be deemed to be a determination of any right or obligation of the parties so as to prevent the Deputy Commissioner from issuing a declaration by a separate and subsequent order. This is precisely what has happened in the instant case. The substratum of the impugned Notification is that the area underlying T.S. No. 8, is a "Slum". That foundation is no different from the one laid in the Deputy Commissioner's order dated 26th July, 1991 where also the area in question was recognised as a "Slum". In that view therefore the impugned order declaring the area to be a "Slum" cannot be said to be hit by the principles laid down by the S.C. in the judgment relied upon by the learned Counsel for the petitioners.

9. There is yet another aspect to which I must advert to at this stage. The petitioners do not dispute that the area underlying Sy. No. 8 is actually a "Slum". There is no challenge to the finding returned by the Deputy Commissioner to that effect. In the circumstances, even assuming that the Deputy Commissioner could not have issued a second Notification closely on the heels of the first declaration made by him or assuming that such a declaration could be made only after a certain time lag between the two Notifications based on certain change in the circumstances, yet there is no reason why the said notification should be interfered with particularly when the Deputy Commissioner would be justified in issuing a fresh Notification on the basis of the admitted position. It is well settled that Courts do not issue futile writs. If the area underlying Sy. No. 8, being a "Slum" is not in dispute, the issue of a writ quashing the declaration made by the Deputy Commissioner would amount to a futile exercise, for the Deputy Commissioner, on the very second day issued a fresh Notification once again declaring the area to be a "Slum". Interference with the impugned order would be purposeful only in case there was any dispute about the area being a "Slum" or not. In the absence of any such dispute, the question of setting aside the declaration only to pave way for a second Notification on the same basis does not arise.

10. That brings me to the second limb of the petitioner's case. It was urged that the Deputy Commissioner could not have arrived at his satisfaction u/s 3 at the instance of people who were rank trespassers over the land in question. It was

urged that recognising a trespasser's right to invoke the statutory powers vested in the Government for declaring an area as a "Slum", is opposed to the spirit of the Act and would amount to placing a premium upon the illegality which such trespassers have committed. I find no substance even in this submission of the learned Counsel. The Slum Areas Improvement and Clearance Act, has been enacted with a view to check increasing number of slums coming up through out the State thereby endangering public health and sanitation and to eliminate congestion. The Act is also aimed at providing basic needs such as streets, water supply and drainage and to clear Slums which are unfit for human inhabitation. Section 32 which empowers the Government to declare an area as a slum does not in terms make any distinction between "Slums" created with the permission of the owner of the land on which they come up and those which are created by acts of trespass by unauthorised occupants and squatters. What is important is whether an area sought to be declared as a "Slum" satisfies the conditions prescribed by Section 3. If the answer is in the affirmative such an area can be declared as a "Slums" no matter the same is the result of an act of trespass or has come into existence on account of the neglect or the licence of the owner. The provisions of the Act also do not forbid the "Slum" dwellers from approaching the Government or the competent authority to make a declaration in terms of Section 3 or other provisions for that matter. Merely because the "Slum Dwellers" had in the instant case themselves invoked the powers vested in the Government u/s 3 would not therefore invalidate a declaration made under the said provision. This is particularly so because any such determination or declaration has to be made after providing an opportunity of "being heard" to the owners concerned who have a right of appeal against the final order that may be passed by the competent authority. The validity of any such order has therefore to be tested on its merits and not by a reference to the person at whose instance the same is passed. I therefore have no hesitation in rejecting the challenge mounted by the petitioner on that score also.

11. That leaves me with the third and the last submission urged on behalf of the petitioners. It was submitted that the Deputy Commissioner has in the impugned Notification directed the "Slum" Clearance Board" to take immediate steps for improvement of the area after fulfilling the provisions of Section 17 of the Act. It was urged that Section 17 of the Act could not be invoked without first exhausting the provisions contained in Sections 6 and 11 thereof. Now it is true that the impugned order after declaring the area as a "Slum" directs the Board to take up improvement of the area after fulfilling the provisions of Section 17, but it is not disputed that no proceedings u/s 17 have actually been initiated so far. In terms of proviso to Section 17 in any proceedings that may be initiated by the Government, (he owners or any other persons interested in the land shall have to be given a reasonable opportunity of being heard before passing any final orders. In the circumstances, as and when any proceedings are initiated u/s 17 it shall be open for the petitioners to raise all such contentions as may otherwise be available to them including the objection that Section 17 can be

invoked only after the provisions of Sections 6 and II have been complied with. Suffice it to say that the direction in the impugned order issued by the Deputy Commissioner shall not prevent the petitioners from raising any such objection in any such proceedings.

12. In the result and subject to what is stated above, these petitions fail and are accordingly dismissed but in the circumstances without any orders as to costs.

13. Petitions dismissed.