

(2011) 12 KAR CK 0377

In the Karnataka High Court

Case No : Writ Petition No. 34530 of 2010 A/W Misc W. No. 11504 of 2010 (LB-BMP)

Sri B.K. Keshav Kiran

APPELLANT

Vs

Bruhat Bengaluru Mahanagara Palike and Others

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipal Corporations Act, 1976 — Section 447

Citation : (2011) 12 KAR CK 0377

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : V.V. Gunjal, for the Appellant; G.M. Chandrashekar, for R1 to R3, Sri M. Keshava Reddy, AGA for R5, M/s Hegde A/S for R7 to R10 and M/s Southern Law A/S for R4, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer

1. In this case, the petitioner has sought for quashing the endorsement at Annexure "A" dated 20.10.2010 whereby the third respondent has directed the petitioner not to put up further construction on the plot bearing No.20 (Old No. 10/119; and 20-A carved out of Sy.No.119, Kathriguppe, now amalgamated and assigned new No.20 (old No. 10) new katha No. 119, PID No.54/440-20, Srinivasanagar. Corporation Ward No.40, Banashankari 3rd Stage. Bangalore, and for a mandamus directing the respondents not to interfere with the petitioner's putting up construction on the said plot.

2. The petitioner contends that he is the absolute owner of plot No.20. (old No.10/119), and 20/A carved out of Sy.No.119, Kathriguppe. now known as Srinivasanagara, Corporation Ward No.40, measuring east to west 60 ft. north to south 40 ft. having purchased the same from S.G.Girish and Shivananda vide registered sale deed dated 19.1.2006. It is further contended that the vendors of

the petitioner had paid development charges levied by the Bruhat Bangalore Mahanagara Palike ("BBMP" for short) in respect of plot Nos.20 and 20A on 17.6.2005. The petitioner applied for clubbing of the katha of both the sides, both being adjacent and thereupon the BBMP passed an order on 6.3.2006 (Annexure "E"). Thereafter, the BBMP has also issued katha certificate in the name of the petitioner as per Annexures "F1" and "F2" respectively. It is contended that the documents produced by the petitioner would clearly demonstrate that a residential plot has been existing, which is fortified by PID No.54-440-20 assigned by the BBMP and composite plots; are bounded on the east by Uma Shivaswamy's property, west by Nataraj's property, north by road and south by Gayathri Shankar's property.

3. It is further contended that the petitioner made an application to the BBMP with an intention to put up construction of a house thereon. The BBMP after inspection and examining the title deeds, has sanctioned a plan vide LP No.2582/09-10 dated 13.11.2008. The petitioner has paid requisite fee for sanctioning of the plan. It is further contended that certain persons threatened and prevented the petitioner from putting up any construction and began harassing him and his father. When the petitioner commenced the work, there were threats from anti-social elements. Hence, he approached the jurisdictional Police seeking protection of Police as per complaint dated 2.4.2008 (Annexure "H"). However, no action was taken as requested by him in the complaint. It is further contended that one Ramachandra and certain other persons, who have no right, title or interest whatsoever over the land in question, began obstructing him from putting up construction. The Police sent a reply to the petitioner as per Annexure "M" dated 23.9.2008 stating that there a suit is pending in respect of the property in question and that they are bound by the decree. It is the case of the petitioner that the said suit has nothing to do with the land in question. In the meantime, Gurappa filed a suit in O.S.No. 5024/2008 against the petitioner and petitioner has filed written statement in due course of time. It is contended that the 4th respondent herein, a Member of Legislative Assembly was supporting certain real estate agents, Civil Contractors, who were all threatening him not to put up construction. It is the case of the petitioner that the said MLA has a vested interest in calling the Police, the Municipal Officer to see that the petitioner should not undertake the construction even though his title is clear. The petitioner has levelled the land and has already commenced the construction work. In the meantime, some unknown person came to the site and threatened him saying that in the event any attempt to put up construction over the said plots, they will bodily harm him.

4. It is the case of the petitioner that Sy.No.10 of Katriguppe village which measured approximately 4 acres was granted to one Smt. Chowdamma w/o Anniyappa, out of which Chowdamma sold 3 acres 39 guntas to one Smt. Venkatamma w/o Ramegowda, who inturn had sold an extent of 1 acre 13 guntas to one Smt. Ameena Khaloon. under a registered sale deed dated 12.6.1963. Thus, Chowdamma had no subsisting interest in the property. The

said Ameena Khatoon sold 27 guntas of land in favour of S.G.Girish and Shivananda from whom petitioner has purchased the above plots. The remaining 27 guntas was sold to Rajshekar and Shivananda. which became the subject matter of dispute in O.S.No. 1923/2001 filed by Shivananda against one Gurappa and Chowdamma. Gurappa tried to interfere with this piece of land. The Civil suit has been decreed. 27 guntas of land carved out of Sy.No.10 of Channammanekere Achhukattu. Banashankari III Stage, Bangalore, was never the subject matter of a suit. S.G.Girish and Shivananda had purchased the said property from Smt. Ameena Khatoon and had formed about 14 sites and sold them to various persons. Thus, the petitioner is the absolute owner and in possession of the property.

5. Respondent Nos.7 to 10 have filed an application-Misc.W.No.11504/2011 seeking vacation of the interim order wherein they have stated that they are the owners and in possession of the property bearing Sy.No.119 to an extent of 26 guntas in Katriguppe village. Uttarahalli Hobli, Bangalore South Taluk. The said property is their ancestral property. Originally Smt.Venkatamma had purchased the property bearing erstwhile Sy.No.10 to an extent of 3 acres 39 guntas in Katriguppe village, Uttarahalli Hobli, Bangalore South Taluk, from one Smt. Chowdamma w/o Annayappa as per Annexure "R1". Subsequent to the purchase of the said property, the katha was effected and the said property was allotted re-survey No. 119 in Katriguppe village, Uttarahalli Hobli, Bangalore South Taluk. The said property bearing re-survey No. 119 (old No. 10) to an extent of 3 acres 39 guntas was converted from agricultural to non-agricultural (residential and industrial) purpose by an order passed by the Deputy Commissioner on 10.5.1967 (Annexure "R3"). Subsequently, a conversion sanctioned certificate dated 19.7.1968 was issued by the Tahsildar, Bangalore South Taluk, to Smt.Venkatamma as per Annexure "R4" In the meanwhile, the property was notified for acquisition for the purpose of formation of layout called "Banashankari III Stage" by the then CITB. The acquisition of the land in Sy.No.119 (old No.10) was denotified at the instance of Smt.Venkatamma as per the notification at Annexure "R5". However, by that time, Smt.Venkatamma died intestate leaving behind her only son H.R. Gurappa to succeed to her estate, who then inherited the said property. Subsequently, the Sarakki Area Notified Committee issued katha in respect of the land to an extent of 3 acres 39 guntas in re-survey No. 119 (old No. 10) of Katriguppe village, Uttarahalli Hobli, Bangalore South Taluk, in favour of Sri H.R.Gurappa as it was converted land and was also denotified. The BDA conducted a spot inspection and issued an endorsement dated 23.9.2002 along with a sketch to the effect that the land denotified to an extent of 4 acres in old Sy.No.10. new Sy.No. 119, Katriguppe village, Uttarahalli Hobli, Bangalore South Taluk is demarcated as per the sketch. If there is any encroachment to the said property, action may be taken against such encroachment by Sri H.R.Gurappa. In the meanwhile, the petitioner filed a suit in O.S.No.4386/2006 on the file of the City Civil Judge, Bangalore, claiming to be the owner in possession of site Nos.20 and 20A of katha No. 119 (old No.

10) carved out of Sy.No.10 (new Sy.No.119), Katriguppe village, Uttarahalli Hobli, Bangalore South Taluk. The petitioner had also sought for an ad-interim order of temporary injunction against Sri H.R.Gurappa in the said suit. Sri H.R.Gurappa had entered appearance in the said suit and filed his written statement and objections to the interim application. The trial Court passed an order directing the parties to maintain status quo in respect of the said property. Against the said order, the petitioner preferred an appeal in MFA No. 13017/2006 before this Court and this Court passed an order on 15.6.2007 in the said appeal and other connected matters directing the parties to maintain status quo.

6. This Court passed an order restraining both the parties including the petitioner from putting up any construction in the property. H.R.Gurappa died intestate on 25.5.2007 leaving behind respondent Nos.7 to 10 to succeed to his estate. Thus, they have inherited the property and have become the absolute owners of Sy.No.119 (old No.10), Katriguppe village, Uttarahalli Hobli, Bangalore South Taluk and they have not alienated the property to the petitioner in any manner. After the disposal of the appeal as above, the petitioner has withdrawn the suit having suffered the order directing the parties to maintain status quo at the hands of this Court. They pray for dismissal of the writ petition.

7. Sri Padmanobha Mahals, learned Senior Counsel for the petitioner would contend that the impugned endorsement at Annexure "A" dated 20.10.2010 issued by the third respondent is totally without jurisdiction. He has no power or authority to direct the petitioner "o produce the title deeds u/s 447 of the Karnataka Municipal Corporation Act, 1976. The endorsement has been issued at the instance of a telephonic call. It is contended that no purpose will be served if the documents as sought for in Annexure "A" is produced before the third respondent, as he has no jurisdiction to decide the title dispute in respect of immovable properties.

8. Sri Gunjal, learned Counsel appearing for the petitioner has taken me through the various documents produced along with the writ petition and submits that petitioner is the owner and in possession of the property in question. The plan has been sanctioned by the competent authority to put up construction thereon. At the behest of certain influential persons, the third respondent has directed the petitioner to produce the documents. Having sanctioned a plan to put up construction thereon, it is not permissible for the third respondent to direct the petitioner to produce title deeds and other documents relating to the property in question as he has no competence to decide the title dispute.

9. On the other hand, learned Counsel appearing for respondent Nos.7 to 10 submits that petitioner is not the owner of the property. He has taken me through the documents produced by respondent Nos.7 to 10 along with their application-Misc.W.No. 11504/201) for vacation of stay and submits that the property belongs to their predecessors in title. Therefore, the Corporation should not have granted a sanctioned plan in favour of the petitioner to put up construction thereon, it is argued that in the civil suit filed by the petitioner

referred to above, the Civil Court has granted an order of status quo. This Court has confirmed the said order. Thereafter, they have withdrawn the suit with a view to nullify the order passed by this Court in lbs appeal. He prays for dismissal of the writ petition.

10. I have carefully considered the arguments made by the learned Counsel at the Bar and perused the materials placed on record.

11. The contention of the petitioner is that he is the owner of plot No.20(old No.10/119)and 20A carved out of old Sy.No.119, Katriguppe, now known as Srinivasanagara. ward No.40, Bangalore, measuring east to west 60 ft. north to south 40 ft. having purchased the same from S.G.Girish and Shivananda under a deed of sale dated 19.1.2006. S.G.Girish and Shivananda have purchased the said property from one Ameena Khatoon under a deed of sale dated 14.8.2001. A perusal of the said sale deed of S.G.Girish and Shivananda dated 14.8.2011 would clearly indicate that they have purchased the property bearing Sy.No.10 measuring 27 guntas out of 1 acre 13 guntas in Sy.No. 10 of Katriguppe village, Uttarahalli Hobli, Bangalore South Taluk. The sale deed executed by S.G.Girish and Shivananda in favour of the petitioner dated 19.1.2006 would disclose that petitioner has purchased two sites measuring 30 x 40 ft. each, bearing old No. 10, new No. 119 of Katriguppe village, Uttarahalli Hobli. Bangalore. South Taluk, BBMP Ward No.40. It is also relevant to mention herein that in the suit filed against H.R.Gurappa. husband of 7th respondent and father of respondent Nos.8 to 10, the court below had granted an order of status quo. The petitioner had filed an appeal challenging the said order in MFA No. 13017/2006 before this Court. This Court while disposing of the appeal on 15.6.2007 has observed as under:

It cannot be said that the opinion formed by the learned trial Judge that it is desirable to maintain status quo is in any way perverse, vexatious or frivolous. If either party is permitted to put up any construction, then the situation may become irreversible at a later stage and this is not a fit case wherein the order under appeal can be varied.

12. After the death of Gurappa, petitioner has withdrawn the said suit by filing a memo before the trial Court.

13. I; is clear from the rival contentions of the parties that there is a serious dispute relating to the title of the land in question. Where a case involves disputed questions of fact, the aggrieved party has to approach the Civil Court for appropriate reliefs because the right claimed by the petitioner is not capable of being established in a summary proceedings under Article 226 of the Constitution of India as it requires a detailed examination of the evidence. The object of Article 226 is the enforcement and not the establishment of a right or title. The extraordinary jurisdiction of this Court is not a panacea for all the maladies, which a litigant may suffer from. No purpose will be served if the petitioner produces the documents as per the endorsement at Annexure "A"

because the third respondent is not competent to decide the title dispute between the parties. It is not necessary for the petitioner to produce the documents before the 3rd respondent. I am of the view that he has to await the decision of the Civil Court relating to title and act in accordance with the decree which may be passed by the Civil Court. Therefore, I decline to entertain this writ petition. It is accordingly dismissed reserving liberty to the petitioner to approach the Civil Court for appropriate reliefs. If the petitioner files a civil suit as above, the Civil Court is directed to dispose of the same in accordance with law without being influenced by the observations made in this order.

14. In view of the dismissal of the writ petition as above, Misc.W.No. 11504/2011 does not survive for consideration. It is accordingly dismissed. No costs.