

(2012) 10 KAR CK 0108

In the Karnataka High Court

Case No : Writ Petition No. 10696 of 2012 (LB-BMP)

Sri H. Ramesh

APPELLANT

Vs

The State of Karnataka and The Bangalore Development
Authority

RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 10 KAR CK 0108

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Ravi B. Naik, for Sri L. Vijay Kumar, for the Appellant; Vijayakumar A. Patil, HCGP for R1, Sri I.G. Gachchinamath, for R2 and R3 and Sri V.Y. Kumar, for R4, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer

1. Though this matter is listed for orders, by consent of the learned Counsel for the parties, it is taken up for final hearing, heard and disposed of by this order. In this case, the petitioner has sought for quashing the endorsement at Annexure "J" dated 3.1.2012 whereby the third respondent has rejected his application for transfer of katha in respect of property bearing CTS No. 1167 situated at Sadashivanagar, Bangalore, forming a part of re-survey No. 2 of Rajamahall village, earlier ward No. 5 of BBMP (Kodandaramapura) presently ward No. 65 (Kadumalleshwaram), Vyalikaval, Gayathri Devi Park Road, totally measuring 9792 sq. ft., morefully described in the schedule to the petition and hereafter referred to as "petition schedule property" and for a mandamus directing the respondents to consider his representation at Annexure "H" dated 10.10.2011 for change of katha in his name and for certain other reliefs.

2. The petitioner contends that the petition schedule property was vested with His Highness Maharaja of Mysore as per the notification issued by the

Government at Annexure "A" dated 26.1.1950. The royal family of Maharaja had put up a pump house in the schedule property. Though large extent in Sy. No. 2 was acquired by the City Improvement Trust Board ("CITB" for short), the schedule property has not been acquired at any point of time. The CITB has issued an endorsement dated 19.5.1972 (Annexure "C") stating that the petition schedule land has not been acquired for the purpose of forming a layout and that it belongs to the Palace. The said property was in actual possession and enjoyment of His Highness Maharaja of Mysore till 28.7.2010. Though the said property was not in possession of the Bruhat Bangalore Mahanagara Palike (for short "BBMP"), it was found that the name of the Corporation Water Supply Pump House had been entered in the survey records without any notice or order or proceedings having been issued to the Maharaja of Mysore. The petitioner's vendor being aggrieved by the said entry, preferred a Revision Petition before the Joint Director of Land Records, South Range, Bangalore, in case No. CTS(B)/Revision. 1/2009-10 wherein after the enquiry, the revisional authority passed an order dated 7.12.2009 (Annexure "C1") allowing the revision petition by holding that the schedule property belongs to the family of His Highness Maharaja of Mysore and cancelled the entry "Corporation Water Supply Pump House" in respect of the schedule property and ordered to enter the name of Sri Srikantadatta Narasimharaja Wodeyar. Accordingly, the name of Sri Srikantadatta Narasimharaja Wodeyar has been entered in the records i.e. property card and enquiry register as per Annexures "D1" and "D2".

3. The BBMP vide its letter dated 27.4.2010 sought for information regarding acquisition of the schedule property under Annexure "D3". The BDA by its letter dated 10.6.2010 issued an endorsement to the Deputy Commissioner, BBMP, stating that CTS No. 1167 is not acquired by the BDA and that this property has not been included in the Gayatri Devi Park Layout or purchased by the CITB. The endorsement issued by the BDA is at Annexure "D4". Sri Srikantadatta Narasimharaja Wodeyar continued to be in actual possession and enjoyment of the petition schedule property. The correspondences between Sri Srikantadatta Narasimharaja Wodeyar, BDA and the BBMP as per Annexures "E" and "E1" show that there was no acquisition of the petition schedule property by BDA or BBMP for any purpose. Sri Srikantadatta Narasimharaja Wodeyar being the absolute owner in possession and enjoyment of the said property executed the registered Specific Power of Attorney dated 23.7.2010 in favour of Ramesh G. Patel and Ramesh G. Patel sold the property under a deed of sale dated 5.8.2011 (Annexure "G") in favour of the petitioner for valuable consideration. He was also put in possession of the schedule property. The petitioner being the absolute owner in possession and enjoyment of the said property filed a representation dated 10.10.2011 to change the katha in his name in respect of the said property on the basis of the said sale deed. The third respondent is not justified in issuing an endorsement as per Annexure "J" rejecting the said representation.

4. Respondent Nos. 2 and 3 have filed their statement of objections stating that Sy. No. 2 of Rajamahall village was notified by the Government for acquisition for

the formation of Rajamahal Vilas Layout. An extent of 9 guntas of land in the survey number in question, which comprises of a pump house, was left to the possession of the Corporation for the purpose of supplying drinking water to the surrounding neighbouring-areas. The said property was numbered as CTS No. 1167 in the records of the Land Records Department. The katha of the said property was recorded in the name of the Bangalore City Corporation. Sri Srikantadatta Narasimharaja Wodeyar filed a revision petition No. CTS(B)/ Revision. 1/2009 10 before the Joint Director of Land Records after a long gap of 50 years for change of katha in his name by deleting the name of the Corporation. In the said case, petitioner contended that BDA, who is the successor of the CITB, has issued a letter stating that 9 guntas of land in Sy. No. 2 of Rajamahal village was left out from acquisition and the said extent of land: was not acquired. On the basis of the said letter of the BDA, the revisional authority has set aside the entry standing in the name of the Corporation in respect of CTS No. 1167 and directed to enter the name of Sri Srikantadatta Narasimharaja Wodeyar by an order dated 7.12.2009. It is contended that the katha of the said property has been standing in the name of the Corporation for more than 50 years. 9 guntas of land in Sy. No. 2 was not acquired by the CITB and this property is left to the Corporation for the purpose of supplying water to the surrounding areas and hence, katha cannot be changed. It is contended that BBMP is contemplating to challenge the order of the revisional authority at Annexure "C1" dated 7.12.2009 after the joint survey of the lands.

5. Respondent No. 1 has filed its statement of objections raising similar contentions. Alternatively, it is contended that the petition involves disputed question of facts. Therefore, the petitioner has to approach the Civil Court for appropriate reliefs.

6. I have heard the learned Counsel for the parties.

7. Sri Ravi B. Naik, learned Senior Counsel appearing for the petitioner contends that His Highness Maharaja of Mysore was the owner of about 140 acres of land including Sankey Tank, two pump houses and three pump watchmen's sheds adjacent to the Sankey tank. He has pointed out an entry to that effect in the list of immovable properties at Annexure A" dated 26.1.1950. It is his further submission that large extent of lands in Sy. No. 2 have been acquired by the CITB. However, the petition schedule property has not been acquired. He has taken me through various documents produced along with the petition to substantiate that Maharaja of Mysore was the owner and in possession and enjoyment of the petition schedule property. The BBMP was not in possession of the petition schedule property. However, in its records, an entry came to be effected as "Corporation Water Supply Pump House". That is why Sri Srikantadatta Narasimharaja Wodeyar filed a revision petition before the Joint Director of Land Records, South Range, Bangalore, in revision No. 1/2009-10. After enquiry, the revisional authority has allowed the revision and has set aside the entry by holding that schedule property belongs to the family of His Highness

Maharaja of Mysore and cancelled the entry "Corporation: Water Supply Pump House" in respect of the schedule property. The said order has become final. It is further argued that BDA has clearly stated that petition schedule property has not been acquired by the then CITB at any point of time. Sri Srikantadatta Narasimharaja Wodeyar being the owner of the property has sold the said property under a deed of sale at Annexure "G" dated 5.8.2011 in favour of the petitioner. When the petitioner made an application to the Corporation for transfer of the katha, the BBMP has issued the impugned endorsement, which is unsustainable in law. It is argued that the Corporation ought to have transferred the katha in respect of the property in favour of the petitioner as he is the owner and in possession of the said property.

8. Learned Counsel for the respondent-Corporation submits that the property did not belong to Sri Srikantadatta Narasimharaja Wodeyar at any point of time. He had no saleable interest in the property. Therefore, the petitioner does not get any right, title or interest in respect of the said property under the sale deed at Annexure "G" dated 5.8.2011. It is argued that Annexure "A" is not a title deed. It is only the list of immovable prepared by the Government. An appeal has been filed against the order at Annexure "C1" by the Corporation in appeal No. 911/2012, which is pending before the Karnataka Appellate Tribunal at Bangalore. Various correspondences relating to katha of the said property produced by the petitioner do not confer title in favour of the predecessor in title of the petitioner. The entries in the revenue records would clearly disclose that the pump house situated in the petition schedule property is a Corporation Pump House. The vendor of the petitioner has challenged the said order after a long lapse of 50 years. He has taken me through the various documents especially the settlement register, which clearly indicate that the property is a kharab land. Therefore, the Corporation has rightly rejected the application seeking transfer of katha in respect of the said property in favour of the petitioner. It is further argued that the petition involves disputed questions of fact relating to title of the property, which cannot be gone into in this petition.

9. Learned HCGP has also made similar submissions. He submits that High Level Committee constituted pursuant to the order of this Court dated 30.7.2012 in this writ petition has clearly opined that the property did not belong to Sri Srikantadatta Narasimharaja Wodeyar. He has drawn my attention to various documents produced along with his statement of objections, which disclose that the property is a kharab land. The CITB had not acquired 9 guntas of land out of Sy. No. 2 of Rajamaharal village for the purpose of formation of the layout. In fact, the notification issued by the State Government for acquisition of the land in Sy. No. 2 indicates that the entire 313 acres and 33 guntas of land is a kharab land. The name of the predecessor in title of the petitioner is not shown in the column of kathedhar and anubhavadar in the said notification dated 14.10.1959. Petition schedule land contains a Corporation Pump House. That is why it was not included in the notification issued for acquisition of the land in the survey number in question. He submits that all these questions cannot be gone into in

this writ petition. 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 the petition schedule property having purchased the same under Annexure "G" sale deed dated 5.8.2011 from Sri Srikantadatta Narasimharaja Wodeyar. Therefore, the katha has to be transferred to his name. The contention of the BBMP as also the State is that the property belongs to the Corporation. Therefore, it is for the petitioner to establish that his vendor was the owner of the petition schedule property. In order to substantiate the contention that Sri Srikantadatta Narasimharaja Wodeyar was the owner of the property, he has produced list of immovable properties prepared by the State Government at Annexure "A" dated 26.1.1950. The said document cannot be treated as a title deed. It is no doubt true that in the order at Annexure "C1" dated 7.12.2009, the Joint Director of Land Records has passed an order for deletion of the entry "Corporation Water Supply Pump House" in the land records and to include the name of Sri Srikantadatta Narasimharaja Wodeyar. Revenue Department is not a party in the said case. The said order has been challenged by the Corporation by filing an appeal No. 911/2012 before the Karnataka Appellate Tribunal at Bangalore. Even otherwise, the order at Annexure "C1" does not confer title in respect of the petition schedule property in favour of the vendor of the petitioner.

12. It is not in dispute that pursuant to an oral direction of this Court, the Corporation has filed certain documents in respect of the property in question along with a memo dated 3.9.2012. The said memo reads as under:

MEMO

It is submitted that pursuant to the direction issued by the Principal Secretary Urban Development Department to constitute High Level Committee, the Corporation constituted committee to enquire and report with regard to the ownership rights of the disputed property CTS No. 1167. The committee submitted report collecting some documents which supports the case of the Corporation that the disputed property belongs to the Corporation. The constitution of committee and its report with documents are herewith produced. The Corporation also preferred revision against the order dated 23.12.2009 passed by the enquiry officer to change the katha in the name of the petitioner. The copy of the revision petition is also herewith produced. The 2nd respondent prays this Hon"ble Court to receive the same on record. Prayed accordingly.

13. Along with the said memo, the Corporation has also produced several documents. One of the documents is the report of the High Level Committee dated 4.8.2012. The High Level Committee constituted in terms of the order of this Court dated 30.7.2012, after verification of the various documents in respect of the petition schedule property has observed as under:

(emphasis supplied by me)

14. The settlement register dated 15.9.1966 shows that the property in question is a phot kharab land. There is an endorsement in the said document, which states that the entire village is a kharab land and that there are no holders. In the property card dated 11.9.1996 maintained by the Department of Survey Settlement and Land Records, the name of the holder is stated as "Corporation Water Supply Pump House, Bangalore". A notification was issued by the State Government dated 14.10.1959 for acquiring 313 acres 38 guntas of land. Even the said notification shows that the land in question is a kharab land. The endorsement issued by the BDA cannot be treated as conferring title of the property in question in favour of the petitioner. According to the State Government, 9 guntas of Government land meant for Corporation Pump House was not notified by the State Government for the benefit of the CITB and that it continued to be the land belonging to the Corporation. From the materials on record it is not possible to conclude that the vendor of the petitioner was the owner of the petition schedule property. The petitioner has to approach the Civil Court for appropriate reliefs in this regard.

15. The contentions of the petitioner that he is the owner of the petition schedule property cannot be established in a summary proceedings under Article 226 of the Constitution because it requires a detailed examination of the evidence as may be had in the suit. The object of Article 226 is the enforcement and not establishment of a right or title. The petition under Article 226 cannot be converted into a suit. It is well established that in case of highly disputed question of fact, civil suit would be the appropriate action. 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. The observations made in this order should not be understood as expressing any opinion on the merits relating to title of the property. All the contentions on merit are kept open. Needless to say that the Corporation is bound to transfer the katha of the property in question in terms of the decree, which may be passed by the Civil Court or of the appellate Court in case the decree of the Civil Court is challenged. In view of the dismissal of the writ petition as above, I.A. No. 2/2012 does not survive for consideration. It is accordingly dismissed. No costs.