(2013) 09 KAR CK 0380

In the Karnataka High Court

Case No : Writ Petition No. 31263 of 2009 (KLR - RES/SUR)

Sri Surendra Kumar Sethia APPELLANT

Vs

The Special Deputy Commissioner and Others RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 136(3)

Citation : (2013) 09 KAR CK 0380

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : A.C. Balaraj, for the Appellant; Ramachandra R. Naik, HCGP for R1 and R4 and Sri Paras Jain, for R5, for the Respondent

Final Decision : Allowed

Judgement

B. Manohar, J.—The petitioner in this writ petition is challenging the order dated 29.12.2006 passed by the 1st respondent u/s 136(3) of the Karnataka Land Revenue Act vide Annexure-E and order dated 30.4.2008 by the 4th respondent vide Annexure-F. The case of the petitioner is that land bearing Sy. No. 3/1 measuring 5 acres 1 gunta of land situated at Bhaganahalli village, Bangalore South Taluk was purchased by Munikrishnaiah in the court auction by execution of judgment and decree made in OS No. 424/1914-15. In the family partition, the aforesaid land was allotted to respondents No. 5 and 6 alongwith their father. Respondents No. 5 and 6 and their father formed a layout and sold the sites to various persons. Site bearing No. 24 was purchased by K.P. Usuf and K.P. Moydeen from M.A. Srinivas, who is the grand-son of Munikrishnaiah. The said property was purchased by V. Velayudhan Nair and M. Krishnan. They in turn sold the said property in favour of Mani Nair, who sold the said site in favour of Badam Bai. The said Badam Bai gifted the property in favour of the petitioner as per gift deed dated 7.5.2005. On the basis of the gift deed, the petitioner became the absolute owner of the property. The property comes within the Corporation limit. The Bruhut Bangalore Mahanagara Palike entered the name of the petitioner in the revenue records. When the matter stood thus, one Shankaralingaiah S/o. J. Lingaiah filed a petition before the 2nd respondent stating that the land bearing Sy. No. 3/1 measuring 5 acres 1 gunta is a government karab land. However the name of Anantharamaiah s/o. Munikrishnaiah has been shown as owner and the land is being used for construction of a building. On the basis of the said records, the 2nd respondent submitted the records before the Special Deputy Commissioner. The Spl. Deputy Commissioner without properly scrutinizing the records initiated the proceedings u/s 136(3) of the Karnataka Land Revenue Act and without issuing notice to the petitioner, directed to delete the name of the petitioner in the revenue records and resume the land to State Government. The 4th respondent also passed a similar order based on the order passed by the 1st respondent. Being aggrieved by the said order, the petitioner has filed this writ petition.

2. I have carefully considered the arguments addressed by the learned counsel for the parties. The records clearly disclose that the 1st respondent has not issued notice to the petitioner, who is the owner of Site No. 24 in the proceeding initiated u/s 136(3) of the Act or to other aggrieved persons. The notice said to have been issued to the 5th respondent, who refused to accept the same. Since the notice held to be served, the order was passed. The records further disclose that the grand-mother of the petitioner purchased the property on 9.1.1975 and she gifted the same in favour of the petitioner on 7.5.2005. On the basis of the registered gift deed, mutation has been effected. The 1st respondent has passed the order without issuing notice to the petitioner or the original owner. Hence, the same is in violation of principles of natural justice. Admittedly, the land bearing Sy. No. 3/1 comes within the Corporation limit. Hence, the order passed by the 1st respondent cannot sustain. Accordingly, I pass the following:

ORDER

The writ petition is allowed. The order dated 29.12.2006 passed by the 1st respondent u/s 136(3) of the Karnataka Land Revenue Act vide Annexure-E and order dated 30.4.2008 by the 4th respondent vide Annexure-F are quashed. The matter is remitted to the 1st respondent to reconsider the same afresh after issuing notice to the petitioner and pass appropriate orders in accordance with law, as expeditiously as possible.