

(2015) 01 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 892/2007 [LB-RES]

S.V. Moorthy

APPELLANT

Vs

The Assistant Commissioner Revenue Department, Bellary
and Others

RESPONDENT

Date of Decision : 31-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0055

Hon'ble Judges : A.N. Venugopal Gowda, J.

Bench : Single Bench

Advocate : V.P. Kulkarni, Advocate, for the Appellant; K. Vidyavathi, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

A.N. Venugopal Gowda, J.—Plot No. 8 in Ward No. 25 of Bellary City was sold to the petitioner by the then City Municipal Council, Bellary, on 13.02.1979. A notification dated 9.1.1989 was issued by the then City Municipal Council, Bellary calling upon the owners who had purchased the property from it to file applications to take possession of the properties or to seek alternate site/s. Petitioner filed application 21.01.1989, pursuant to the said notification and sought possession of the site. The City Municipal Council, modified its earlier plan in respect of T.S. No. 299, Ward No. 22/25 of Bellary. Petitioner having applied for the certified copy of the revenue sketch of his property, the revenue department has issued a sketch bearing T.S. No. 299 Ward No. 22, Plot No. 8.

2. The Bellary City Corporation having issued paper publication on 10.3.2005 for the purpose of auctioning of the properties, Plot No. 8 was not shown therein (Annexure-J). However, the said plot was shown as sold vide annexure-K in favour of respondent-3 by declaring him as highest bidder on 24.3.2005. The auction sale having been confirmed, sale deed was executed. Bellary City Corporation having executed the sale deed on 18.10.2005, petitioner represented to Bellary City Corporation on 30.11.2005 to set right the anomaly

which has occurred in the matter of auctioning the property bearing Plot No. 8 in favour of respondent-3.

3. Respondent-3 having approached the respondent-1 and the change of Khata having been ordered on 10.3.2006 vide Annexure-V, this writ petition was filed on 16.1.2007 to quash annexure-V and grant consequential reliefs.

4. Sri. V.P. Kulkarni, learned advocate appearing for the petitioner raised several contentions as against the impugned actions of the respondents. However, it is unnecessary to consider the same, since annexure-V suffers from patent error of not granting an opportunity of hearing to the petitioner to participate in the proceedings which led to passing of the order by respondent-1.

5. Though Sri. T. Hanuma Reddy, learned advocate appearing for respondent-3 submitted that the property having been sold by respondent-3 to another person, the petitioner should implead the purchaser, I do not find justification, since the same is subsequent to the filing of this writ petition, has not come forward to implead himself as an additional respondent or seek substitution in place of respondent-3. Even otherwise, it would be open to the purchaser of the property from respondent-3 to participate in the proceedings before respondent-1 to whom case is required to be remanded for consideration and decision afresh.

6. Pursuant to the order passed on 14.01.2015, learned AGA secured the record of the case which led to the passing of the order as at annexure-V by respondent-1. The record contains a notice addressed to the petitioner, but no acknowledgment is forthcoming with regard to its service on the petitioner. The notice has been returned unserved with shara and the same reads as follows:

From the above, it is clear that respondent-3 without serving the notice of the proceeding has decided the case against the petitioner.

7. Order sheet of the case maintained by the respondent-1 vide annexure-U shows that the petitioner and another person by name Abdul were not present. Petitioner's non-appearance is on account of not having knowledge of the proceeding initiated by respondent-3 before respondent-1 and its enquiry by respondeent-1. That on account of respondent-1 failing to serve the notice of the case instituted by respondent-1, there being violation of principles of natural justice, impugned order being vitiated cannot be sustained.

In the result, writ petition is allowed and the order as at annexure-V passed by respondent-1, is quashed. Respondent-1 is directed to reconsider the case in accordance with law. It is open to the purchaser of the property from respondent-3 to appear before respondent-1 and putforth his case. All other contentions of both sides are left open.

In respect of the other reliefs sought by the petitioner, since, other forums can be approached for consideration and decision, it is unnecessary to consider the reliefs particularly with regard to quashing of Annexure-K. Reserving liberty to

the petitioner to approach the competent authority in that regard, this writ petition is disposed of as above. No costs.