(2013) 03 KAR CK 0005

In the Karnataka High Court

Case No : Writ Appeal No. 30905 of 2012 (ULC) connected with Writ Petition No. 61411 of 2012

The Competent Authority and Others — APPELLANT

Vs

Manjula and Others — RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(3), 8(4)

Citation : (2013) 4 KarLJ 47

Hon'ble Judges : H. Billappa, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : Mahesh Wodeyar, A.G.A. and Sri G.R. Andanimath, for the Appellant;

Final Decision : Dismissed

Judgement

H. Billappa, J.—The appellants have challenged the order dated 21-11-2011, passed by the learned Single Judge, in W.P. No. 30792 of 2008. By the impugned order, the learned Single Judge has disposed of the writ petition with an observation that the proposed action to take possession of surplus/excess land is abated.

2. Aggrieved by that, the appellants have filed this writ appeal.

3. Briefly stated, the facts are:

The respondents are the legal heirs of Vasant Killekar who was the owner of R.S. No. 1042/1B-PI measuring 1 acre 36 guntas, situated at Belgaum. The first appellant by order dated 26-6-1986 acting u/s 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 has held that retainable area is 4000 sq. mtrs. and excess area is 7,977.85 sq. mtrs. The appellant 1 published notification u/s 10(1) of the ULC Act calling upon objections if any. As objections were not filed final order u/s 10(3) was passed on 30-9-1991. Notices dated 15-5-1992 and 5-9-1992 u/s 10(5) were issued to surrender possession. Possession was not surrendered. It is stated, the appellants took possession on 22-9-1992.

4. Vasant Santu Killekar filed W.P. No. 28348 of 1992 challenging the notice u/s 10(5). On 25-11-1992, interim order was passed staying the notice u/s 10(5). Thereafter, final order was passed on 8-10-1996 allowing the writ petition and directing to consider the representation u/s 20 of the Act and till then not to take steps to take possession. So far the representation u/s 20 of the Act has not been considered.

5. Thereafter, the respondents have approached this Court in W.P. No. 30792 of 2008. The learned Single Judge by his order dated 21-11-2011 has disposed of the writ petition with an observation that the proposed action of the appellants herein to take possession of the surplus/excess land is abated. Therefore, this writ appeal.

6. In the meanwhile, the respondents have filed W.P. No. 61411 of 2012 challenging communication dated 13-2-2012 vide Annexure-G and for writ of mandamus directing the appellants herein not to dispossess the respondents from R.S. No. 1042/1B-PI, measuring 1 acre 36 guntas, situated at Belgaum. The writ petition is connected to the writ appeal.

7. The learned AGA contended that the impugned order cannot be sustained in law. He also submitted by order dated 26-6-1986 it was held that retainable area is 4,000 sq. mtrs. and excess area is 7977.85 sq. mtrs. Thereafter, opportunity was given to file objections and objections were not filed. Therefore, final order was passed on 30-9-1991 and notice was issued to surrender possession. Thereafter, possession has been taken on 22-9-1992 by the Revenue Inspector. The order dated 30-9-1991 and taking of possession on 22-9-1992 have not been challenged.

8. As against this, the learned Counsel for the respondents submitted that the impugned order does not call for interference. He also submitted that the representation dated 13-4-1987 was given u/s 20 of the ULC Act and it has not been considered. Unless the representation is considered, the authorities cannot take possession. Further, he submitted that possession was not taken by the Competent Authority as required u/s 10(6) of the ULC Act. The record indicates that possession has been taken by the Revenue Inspector and not by the Competent Authority. Further he submitted that in W.P. No. 28348 of 1992 notice u/s 10(5) was challenged. There was an interim order. Thereafter, the writ petition came to be disposed of on 8-10-1996 directing to consider the representation u/s 20 of the Act and not to dispossess till then. So far the representation has not been considered. He placed reliance on the unreported decision of this Court in W.A. No. 30661 of 2012 to contend that possession has not been taken as required under law.

9. Further he submitted that the respondents had requested Tahsildar to remove the name of the Government in the revenue records and the Tahsildar has issued an endorsement stating that possession has already been taken and therefore, the request of the respondents cannot be considered. The endorsement is illegal

and cannot be sustained in law. He therefore, submitted that the impugned order passed in W.P. No. 30792 of 2008 does not call for interference and the endorsement is liable to be quashed.

10. We have carefully considered the submissions made by the learned Counsel for the parties.

11. The point that arises for our consideration is:

Whether the impugned order in W.P. No. 30792 of 2008 and endorsement Annexure-G in W.P. No. 61411 of 2012 call for interference?

12. It is relevant to note, the respondents are the legal heirs of Vasant Killekar who was the owner of R.S. No. 1042/1B-PI, measuring 1 acre 36 guntas (5 guntas pot kharab) situated at Belgaum. By order dated 26-6-1986 passed u/s 8(4) of the ULC Act, it has been held, that retainable area is 4000 sq. mtrs. and excess area is 7997.85 sq. mtrs. The respondents have not filed objections pursuant to the notification u/s 10(1) of the Act. Thereafter, final order has been passed on 30-9-1991. Subsequently, the notices dated 15-5-1992 and 5-9-1992 have issued to surrender possession. The appellants contend that possession was not surrendered and therefore, the Revenue Inspector took possession on 22-9-1992. The learned Counsel for the respondents contended that the Revenue Inspector is not the Competent Authority to take possession. He placed reliance on the unreported decision of this Court in W.A. No. 30661 of 2012. It is observed as follows at para 7 of the judgment:

The learned Single Judge, in our opinion too, justifiably, followed the decision in Mangalore Urban Development Authority Vs. Leelavathi and Others, wherein it is observed that the Revenue Inspector is not an authorised person/Competent Authority u/s 10(6) of the Act to take possession of the land. The learned Single Judge further observed that the mahazar, Annexure-E was not drawn in the presence of five persons though it says there were five witnesses while taking possession of the excess vacant land and accordingly held that the mahazar was not in compliance with law. The conclusions arrived at by the learned Single Judge that "Kabja pavathi", Annexure-D and the mahazar, Annexure-E are null and void, and that the proceeding initiated u/s 10 of the Act stood abated by virtue of Urban Land (Ceiling and Regulation) Repeal Act, 1999, do not call for interference.

13. It is clear, the Revenue Inspector, is not the Competent Authority u/s 10(6) of the Act to take possession. In the present case, the records indicate that possession was taken by the Revenue Inspector and not by the Competent Authority or duly authorised person. There is no valid taking of possession as required under law. In the meanwhile, the ULC Act has been repealed by Repeal Act No. 15 of 1999. It is adopted by Karnataka on 8-7-1999. Section 3 of the Repeal Act provides that Repeal Act shall not affect vesting of any land possession of which has been taken by the Competent Authority. In the present case, the possession has not been taken by the Competent Authority. Therefore,

the learned Single Judge was justified in holding that the proposed action of the appellants herein to take possession of the surplus/excess of land is abated. It does not call for interference. The respondents have requested the Tahsildar to remove the name of the Government in the Revenue records. The Tahsildar has rejected the request on the ground that possession has been taken. It is now held that possession has not been taken as required under law. Therefore, the endorsement issued by the Tahsildar cannot be sustained in law.

Accordingly, W.P. No. 61411 of 2012 is allowed and the endorsement at Annexure-G is hereby quashed. The respondent 3 is directed to consider the request of the petitioner in the light of this judgment.

The writ appeal is dismissed.

