
(2003) 02 KAR CK 0008

In the Karnataka High Court

Case No : Writ Appeal No's. 6104 of 1998 and 1229 to 1249 of 1999

The Town Municipal Council

APPELLANT

Vs

M. Nagaraju and Others

RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Citation : (2003) 4 KarLJ 199 : (2003) 3 KCCR 1594

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : Gopal Hegde, for the Appellant; Vagdevi Associates for Respondents-1 to 11 in W.A. Nos. 1229 to 1238 of 1999, M.V. Seshachala, for Respondents-1 to 11 in W.A. Nos. 1239 to 1249 of 1999 (in W.P. Nos. 19785 to 19795 of 1996), N.M. Srinivasamurthy and K.R. Kittappa for Respondents-3 and 8 in W.A. Nos. 1239 to 1249 of 1999 (in W.P. Nos. 19785 to 19795 of 1996), G. Nagarajulu Naidu, A.G.A. for Respondents-12 and 14 in W.A. Nos. 6104 of 1998 and 1229 to 1238 of 1999 (in W.P. Nos. 11535 to 11545 of 1996) and for Respondent-12 in W.A. Nos. 1239 to 1249 of 1999 (in W.P. Nos. 19785 to 19795 of 1996) and H.B. Narayan, for Respondent-13 in all writ appeals, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The Town Municipal Council (for short, the "Council"), Kunigal, feeling aggrieved by the order of learned Single Judge dated 24-8-1998 in W.P. Nos. 11535 to 11545 of 1996 connected with W.P. Nos. 19785 to 19795 of 1996 have preferred these writ appeals.

2. The writ petitions were filed by the contesting respondents herein calling in question the validity of order of the Government No. HUD 281 KHB 90, dated 29-3-1996. By the said order, the Government has held that 20 subject houses are owned by the appellant-Council. While holding so, the Government permitted the Karnataka Housing Board (for short, the "Board") to initiate appropriate action in terms of lease-cum-sale agreement dated 6-9-1971.

3. The background facts leading to the filing of the above writ petitions be noted briefly as under:

The Union of India had framed a scheme for construction of houses for industrial workers and persons belonging to weaker sections of the society during 1970's and in pursuance of the said scheme of the Government of India, the Board constructed 22 houses in Kunigal Town. It is stated that since the Board did not find eligible persons for allotment of those houses, it executed a lease-cum-sale agreement dated 17-6-1971 in favour of the appellant-Council, subject to certain terms and conditions; According to the appellant-Council, after execution of the lease-cum-sale agreement in its favour on 17-6-1971, it leased those houses in favour of its employees. When the matter stood thus, the Chief Officer of the appellant-Council in his letter dated 12-4-1989 addressed to the Commissioner, Karnataka Housing Board, Bangalore, stated that the Council had no objection for the sale of the houses in favour of the contesting respondents. On the basis of the said letter of the Chief Officer of the appellant-Council, the Government vide its order dated 21-2-1990 accorded its approval to the proposal sent up by the Chief Officer. After this event, when the elected body was installed in the appellant-Council, it appears, the elected body represented to the Government that the proposal sent up by the Chief Officer on 12-4-1989 and approval accorded by the Government was quite prejudicial to the interest of the Council and that action of Chief Officer was one without authority. On consideration of these representations by the elected body of the appellant-Council, the Government passed an order on 22-6-1990 withdrawing the approval accorded by it earlier on 21-2-1990.

4. The contesting respondents feeling aggrieved by the said action of the Government, filed W.P. Nos. 14523 to 14544 of 1990 in this, Court. Learned Single Judge of this Court by order dated 5-12-1990 quashed the Government Order, dated 22-6-1990. The appellant-Council being aggrieved by the said judgment and order of learned Single Judge, preferred Writ Appeal Nos. 1508 to 1529 of 1991 to the Division Bench of this Court. The Division Bench by its order dated 3-3-1993 allowed the writ appeals and upheld validity of the Government Order, dated 22-6-1990 and while doing so, the Division Bench directed the State Government to reconsider the matter afresh after affording reasonable opportunity to the parties interested. It appears that against above order of learned Single Judge, the State Government also filed Writ Appeal Nos. 1696 to 1717 of 1991 and those writ appeals were dismissed by the Division Bench of this Court by its order dated 26-7-1991. In pursuance of the directions issued by the Division Bench in W.A. Nos. 1508 to 1529 of 1991, the Government after giving opportunity to all the persons interested, including the appellant-Council, passed the order dated 29-3-1996 holding that ownership of 22 houses is vested in the appellant-Council.

5. Feeling aggrieved by the said Government Order, the contesting respondents, as already noticed above, preferred the present writ petitions. Learned Single

Judge having opined that admittedly, the Board is owner of the houses and since there is no evidence to show that title of the Board with regard to 22 houses was divested, the Government ought not to have gone into title question. While opining so, learned Single Judge, however, held that there was absolutely no evidence to show that lease-cum-sale agreement executed in favour of the appellant-Council was terminated by the Board in accordance with law. Despite these findings, learned Single Judge was pleased to allow writ petitions and quash the Government Order No. HUD 169 KHB 90, dated 22-6-1990 while observing that his order would not come in the way of appellant-Council to work out its rights before appropriate forum.

6. We have heard Sri K. Gopal Hegde, learned Counsel for appellant-Council, Sri M.V. Seshachala, learned Counsel for contesting respondents, Sri H.B. Narayan, learned Standing Counsel for Karnataka Housing Board and Sri Nagarajulu Naidu, learned Government Advocate for the State Government.

7. Sri Gopal Hegde, learned Counsel for appellant contended that there is absolutely no evidence on record to show that the right accrued in favour of the appellant-Council by executing lease-cum-sale agreement dated 17-6-1971 was subsequently terminated by the Board in accordance with law and therefore, it was impermissible in law for the Government or the Board to create a right in respect of the same property in favour of the contesting respondents and on that ground itself, there was no warrant for this Court to interfere with the order of the Government. Sri Gopal Hegde, however, would fairly submit that the Government ought not to have gone into title questions. Learned Standing Counsel for the Board and Sri Seshachala, learned Counsel for contesting respondents/allottees, on the other hand, would support the order of learned Single Judge and maintain that the Government in passing the impugned order dated 22-6-1990 has exceeded its jurisdiction and therefore, learned Single Judge was justified in quashing the Government Order.

8. We find considerable force in the contention of Sri Gopal Hegde. It is an admitted fact that the Board by executing lease-cum-sale agreement dated 17-6-1971 created a right in favour of the appellant-Council with regard to 22 houses. It is also an admitted position that the lease envisaged under the said document is for a period of 30 years, The Government passed the order dated 21-2-1990 permitting the sale of the houses in favour of the contesting respondents even before the expiry of 30 years of lease period. In the backdrop of these admitted facts, a short question that arises for decision in these writ proceedings is whether the Board acted legally in allotting 22 houses in favour of the contesting respondents. It is trite that when the Board allotted the houses in favour of the contesting respondents, the right granted in favour of the Council under lease-cum-sale agreement dated 17-6-1971 was in currency and therefore, the impugned action of the Board should be condemned as the one which is not only in breach of terms and conditions of lease-cum-sale agreement but also totally arbitrary. In that view of the matter, no exception can be taken to

the Government Order, dated 22-6-1990, by which it withdrew its approval to the proposal sent up by the Chief Officer of the appellant-Council. It is true, as rightly observed by learned Single Judge, that title questions could not have been gone into by the Government. But, only on that count, the action of the Government could not be nullified. In the instant case, even eschewing finding recorded by the Government that the ownership of the 22 houses is vested in the appellant-Council, the Government Order could be sustained for the reasons already stated by us.

9. In conclusion, with respect, we cannot sustain the order of learned Single Judge. Writ appeals are, therefore, allowed. The order of learned Single Judge is set aside and writ petitions are dismissed. We, however, make it very clear that this order shall not come in the way of any of the parties to these writ proceedings from establishing their title to the property concerned before competent Civil Court and if such a legal action is instituted before competent Civil Court, such Court shall decide such suit on its own merits and without being influenced by any of the findings/observations made by the Government in its order dated 22-6-1990 or any of the observations made in this order.

10. In the facts and circumstances of the case, the parties are directed to bear their own costs.