(1978) 06 KAR CK 0004

In the Karnataka High Court

Case No : WP.119 of 1976

Thimmarayappa and Others APPELLANT

Vs

Commr, Corpn of B''lore and Others RESPONDENT

Date of Decision : 24-06-1978

Acts Referred:

Bangalore Municipal Corporation Act, 1949 — Section 16

Citation : (1979) 1 KarLJ 81

Hon'ble Judges : Venkatachaliah, J;Jagannatha Shetty, J

Judgement

Jagannatha Shetty, J.-This petition concerns with the power of the Commissioner of the Corporation of the City of Bangalore to review the order made by the Revenue Officer or the Asst Revenue Officer, in matters pertaining to the change of ''Khata''.

2. The matter arises in this way: Certain properties at Bangalore, which originally belonged to ''Solur Thimmarayappa'', were registered as Trust Properties. After the death of Solur Thimmarayappa, the ''Khata'' of the properties was changed in the names of his two sons-Muni Venkatappa and Kenchappa. Upon their death, the heirs of Muni Venkatappa tried to meddle with the properties on the ground that the properties were divided between their predecessors-in-title under a registered partition deed d/ 14-12-1925. But, the heirs of Kenchappa disputed the alleged partition. So, the heirs of Muni Venkatappa approached the Commissioner for a change of ''Khata'' in their names in accordance with the alleged partition. The Asst Revenue Officer, to whom the power to change the ''Khata'' has been delegated, made an order d/ 3-3-72 proposing to change the ''Khata'' as prayed for and invited objections from the other parties. Against the Paid proposal, one S.G. Shivaram (respondent-6 herein) filed a detailed objection before the Commr. The Commr forwarded the objection to the Revenue Officer who, in turn, transmitted the same to the Asst Revenue, Officer. The Asst Revenue Officer, without hearing the parties, made an order d/ 24-10-72 directing the bifurcation of the properties in the names of S.M. Thimmarayappa and S.T. Thimmaiah on the strength of the decision of the Dist Judge, Bangalore,

in OS.59 of 1960, and asking the parties, if aggrieved, to approach the competent Court to establish their rights.

3. Respondent-6. evidently, without the knowledge of the order made by the Asst Revenue Officer, repeatedly made representations to the Commissioner to dispose of his objection. Finally, the Commr acceded to his request and heard all the contending parties and made an order dated 20-3-1975 cancelling the order of the Asst Revenue Officer and sanctioning the ''Khata'' only in the name of the ''Dharma Chatra'', namely, ''Solur Thimmarayappa Dharma Chatra''. The Commr also reserved liberty to the parties to have a final adjudication on the matter by a properly constituted suit. Calling into question the validity of the order of the Commr, the petitioners have approached this Court for relief under Art. 226.

4. At the outset, we may state that it is not in dispute before us that the Commr has delegated his power to the Asst Revenue, Officer and it was in exercise of that delegated power that the Asst Revenue Officer made the order d/ 3-3-72 followed by the order d/ 24-10-72. At one stage, however, it was contended for the respondents that there was no order made by the Asst Revenue Officer on 24-10-72 and the order of the Commissioner was the only order made on the objection filed by the Respt.

5. We have perused the concerned file in the case and we find, it difficult to accept the contention urged for the respondents that the Asst Revenue Officer did not pass the order d/ 24-10-72. That order is on the file and the Commissioner, in fact, has reviewed the same order.

6. The question, therefore, is whether the Commr could have reviewed the order made by the Asst Revenue Officer. The decision on, the question turns on the scope of Secs. 16, 17, 104 and 106 of the City of Bangalore Municipal Corporation Act, 1949, (shortly called ''the Act'').

7. We may now briefly refer to these Sections. Sec. 16 authorises the Commr to delegated any of his ordinary powers,, duties or functions, except those restricted by the Act, to any of the Municipal Officers. Sec. 17 confers overall supervisory power on the Commr notwithstanding the powers, duties or functions delegated to any of the Municipal Officers. Sec. 104 provides power to the Commr to assess property-tax. Sec. 106 sets out the duties of persons primarily liable to payment of property-tax when any property is transferred or otherwise inherited. It states that such person must give notice of such transfer to the Commr. It further states that in the event of death of the person primarily liable for payment of property-tax, his heirs shall give notice within one year from the date of death. Sec. 106, however, does not provide procedure for making an order upon the receipt of a notice from a transferee or any heirs, but, that power appears to be incidental to the scheme of Secs. 99 to 110 which deal with the levy of a rate by the Corporation. There are also Rules called ''Taxation Rules'' in Schedule-III of the Act providing detailed procedure for alteration of the property-tax in the assessment books.

8. The Act and the Taxation Rules in Schedule-III of the Act thus confer power on the, Commr alone; but, as earlier stated, that power has been delegated to the Asst Revenue) Officer. The power of the Commr with which we are concerned in this case relates a to rating and that power is admittedly a quasi-judicial power and that has been delegated to the Asst Revenue Officer. The question is, after the Asst Revenue Officer made the order, is the Commr competent to review that order.

9. The question raised requires a little bit of investigation, on the meaning and scope of ''Delegation''. Some times, it has been stated that''delegation'' implies a denudation of authority. But, this cannot be accepted as a accurate general proposition and, on the contrary, the general rule is that an authority which delegates its powers does not divert itself of them. ''Delegation'' has, usually, been treated by Legal Writers as forming part of the law of agency. The leading case on this question is Hutch v. Clarke, (1890) 25 QBD 391, 395. That decision has been followed, without hesitation or difficulty, in all the subsequent decisions. Willis, J, observed in that case at page 395 as follows:

"Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself......It is never used by legal writers, so far as I am aware, as implying that the delegating person parts with his power in such a manner as to denude himself of his rights."

10. Prof. S.A. De Smith observes in Judicial Review of Administrative Action, 3rd Edn, Page 267,-

"......if it purports to abdicate it may be imposing a legally ineffective fetter on its own discretion."

11. But, that does not mean that the delegator and delegate both could make orders in the same case. One could make, if the other has not made; because, the order made in the exercise of the delegated power would be the order of the delegator for all practical purpose. (See RoopChand v. State of Punjab (AIR 1963 SC 1503) and followed by this Court in M.P. Byrappa. v. Mysore Revenue Appellate Tribunal (1974 (1) Kar LJ 298 at Page 299) and Yamuna. v. State of Mysore (1974 (1) KarLJ 371 at page 372). It follows from these principles that the order made by the Asst Revenue Officer, in the exercise of his delegated power for all practical purposes is the order of the Commr under the Act. The Commr could not have made a further order after the Asst Revenue Officer made the order.

12. It was, however, urged that the Commr could review the order of the Asst Revenue Officer in the exercise of the power vested in him under Sec. 17 of the Act. We cannot accept this contention as sound. The power to control and revise, vested in the Commr, cannot extend to vary the judicial decision of the Asst. Revenue Officer. Such power to control and revise conferred by Sec. 17, could, in

our opinion, extend only to the administrative matters and cannot cover the essential power to decide in a particular case. Similar view was expressed by the Supreme Court in Bombay Municipal Corpn v. Dondu Narayana Chowdhary, AIR. 1965 SC. 1486, while considering the analogous provisions in the Bombay Municipal Corporation. Act of 1888.

13. It need hardly to be stated that the power to review is not an inherent power which the Commr could conveniently invoke as he pleases. Such power must be conferred by law either specifically or by necessary implication. (See Patel Narshi Thakershi v. Pradhyumansinghji Arjunsinghji, AIR. 1970 SC. 1273. 1275. We do not find from the Act any such review power conferred on the, Commr. Therefore, the conclusion is inescapable that the order of the Commr was wholly without authority and must be set aside.

14. That, however, is not the end of the matter. We have got still to consider the other contention urged by Mr. Subramanyam for the respondent. He urged that the order made by the Asst Revenue Officer on 24-10-72 was illegal and void since it was made without an opportunity of being heard to the person who has filed the objection. This question fortunately presents us no difficulty, since Mr.S.K. Venkataranga Iyengar, learned Senior Advocate, very fairly conceded before us that the order of the Asst Revenue Officer cannot be sustained in view of the infirmity inherent in it. There could, therefore, be no difficulty to quash that order also. The result is that the matter shall be considered again since there has been no proper adjudication after affording opportunities to the parties.

15. In the result, the rule is made absolute. The order of the Commissioner d/ 20-3-75 and the order of the Asst Revenue Officer d/ 24-10-72 are hereby quashed. The Commissioner shall decide the matter within two months from the date of receipt of this order after affording opportunities of being heard to the parties.

In the circumstances of. the case, we make no order as to costs.

