
(2001) 01 KAR CK 0104
In the Karnataka High Court
Case No : Writ Petition No. 4954 of 1997

Thippanna and Another

APPELLANT

Vs

The Hubli-Dharwad Municipal Corporation and Another

RESPONDENT

Date of Decision : 02-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipal Corporations Act, 1976 — Section 306

Citation : (2001) 2 KCCR 868

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Rajashekar, for Subhash B. Adi, for the Appellant; Nalini Venkatesh, for Kesvy and Company, for the Respondent

Judgement

Hari Nath Tilhari, J.—Heard Sri Rajashekar for Sri Subhash B. Adi, learned Counsel for the Petitioner and Smt. Nalini Venkatesh for M/s. Kesvy and Company, learned Counsel for Respondents 1 and 2.

2. By this petition, the Petitioners have sought quashing of Annexure-C dated 5.2.1997 issued by the Respondents. They have further sought the mandamus directing the Respondents not to obstruct them from putting up the construction in accordance with the sanctioned plan.

3. The facts of the case in nut shell are that the Petitioners are the owners of CTS Nos. 2583 and 2584/D situated at Hirepet, old Hubli, Hubli. According to their case, they made an application for grant of licence and also sanction of plan for the purpose of putting up a construction. The plan was sanctioned and the licence to put up construction was granted vide order dated 31.12.1994, the copies of which have been annexed as Annexures-"A" and "B". The Petitioners' case is that in pursuance of the sanctioned plan, they started putting up construction. Immediately some persons by name Sunil and Anil Koragoankar filed suit in Original Suit No. 581 of 1995 claiming easementary right over the portion of the land and claimed decree for permanent injunction restraining the

Petitioners from putting up any construction and the trial Court granted the temporary injunction. According to the Petitioners, they filed an application for vacation of that order. In paragraph No. 5 of the petition it has been stated that, on account of the interim injunction granted by the Munsiff Court, Hubli, Petitioners could not proceed with the construction. Thereafter Annexure-"C" communication was received by the Petitioner from Respondent-Corporation which is dated 5.2.1997 whereby the Corporation refused to extend the permission on the ground that the road abutting the proposed building is narrow and further there is a likelihood of widening the road and as such the permission granted to the Petitioners was withdrawn without extending the period. The Petitioners have challenged this order and have come up before this Court by way of petition under Article 226 of the Constitution of India.

4. On notice being issued, counter affidavit had been filed on behalf of the Respondent No. 1 i.e., the Hubli-Dharwad Municipal Corporation, by its Commissioner. The Respondent admits that on 31.12.1994, permission to construct the building and sanctioning of plan was issued in favour of the Petitioners to construct a residential building on CB No. 2583 and 2584/D of Ward No. v. at Hirpath, Old Hubli. The licence was granted on 31.12.1994 and it was valid, according to the Respondent's case, for two years i.e., from 31.12.1994 to 31.12.1996. The Respondent alleged that it was essential that construction work should have commenced within the said period, but as in the present case, the Petitioners did not commence the construction work within the above mentioned period of two years. Hence the licence or permission granted lapsed and now after 31.12.1996, when construction permission lapsed, the Petitioners could not start putting up the construction and any construction made would be unauthorised. The Respondent also alleged that the present road is very narrow and small and creates problem for smooth and easy movements of vehicles and pedestrians and so the Corporation has got plans of taking up road widening work. The Respondent's case primarily is that the Petitioners' permission having lapsed on 31.12.1996 automatically, the Petitioners could not start any construction without making a fresh application for fresh permission with renewed plan and seeking fresh permission. The Respondent alleged that the Petitioners have not made any application for fresh permission being granted and therefore, the petition has got to be rejected.

5. As mentioned earlier, I have heard the learned Counsels for the parties.

6. The Petitioners' Counsel submitted that the permission could not be refused on the ground on which it had been refused that the Respondent wants to widen the road which according to it was not convenient to the vehicles and pedestrians. The learned Counsel contended that extension having not being granted on an illegal ground and the communication to that effect that extension cannot be granted on the ground and basis that the road has to be widened, the order impugned is the result of illegal refusal to exercise of power of extending the permission and that requires to be set aside. The learned Counsel for the

Petitioner further contended that work had been commenced within the prescribed period and so once the work had been commenced, the permission cannot be said to have lapsed even under the provisions of Section 306 of the Karnataka Municipal Corporations Act, 1976.

6. On behalf of the Respondents, Smt. Nalini Venkatesh submitted that the Corporation has got an obligation towards the public to provide better streets for transportation as well as for pedestrians to pass on and in order to discharge its obligation it is intending to widen the road and so according to it, extension of permission would have been of no use and so it was not extended. Therefore, the learned Counsel contended that, the Respondents rightly refused to extend the period. The learned Counsel further contended that prima facie section does not give any power to extend the permission which has lapsed by expiry of the period. But the main emphasis of the Counsel was on the public obligation. The learned Counsel contended that the Petitioner had not made any fresh application even for extension, whether on modified terms or on same terms. Therefore as Petitioner has not made any fresh application for extension and the old permission having lapsed, the Petitioner cannot be allowed to put construction in unauthorised manner. The learned Counsel for the Respondent contended, as such, the writ petition deserves to be dismissed.

7. I have applied my mind to the contentions made by the learned Counsels for the parties.

No doubt, it is well settled that in order to seek the mandamus, the Petitioner has to establish his right which is going to be flouted or going to be affected by inaction or non-action of the authorities and which authorities have failed to perform inspite of being asked. The question whether the mandamus should be granted or not may be considered at a later stage. But so far as the provisions of law stand, I do not find any provision in the Act. Section 306 of the Karnataka Municipal Corporations Act provides and reads as under:

Section 306.-Lapse of permission if not acted upon within two years.-If the construction or re-construction of a building is not commenced within two years after the date on which permission was given to execute the work, the work shall not be commenced until a fresh application has been made and a fresh permission granted under this chapter.

The language of Section 306 is very clear and is free from ambiguity and vagueness. It does not suffer from any vagueness, and it is a well settled principle of law of interpretation of statute that if the language used in the provision is clear, unambiguous, then it must be given effect to and the language being clear it comes out that when permission for construction is granted, the law requires that work of construction has to be commenced within the period of two years from the date of grant of permission and sanction of plan. But if a party fails to commence even the construction work, then this section very clearly creates a bar and provides that work cannot be commenced until a fresh

application is made and a fresh permission is granted. The bar may not be applicable in cases where construction work had been commenced or started within the period of two years from the date of grant. Howsoever little work might have been commenced before the expiry of two years period, but once the work had been commenced, there is no question of permission having lapsed after expiry of two years" period from the date of grant of permission. But if no work had been commenced with the period so prescribed then definitely the earlier permission is to lapse and he will have to apply for fresh sanction being granted, might be in terms of old permission or in verified terms. But fresh permission has to be sought.

8. So far as present case is concerned, in paragraph No. 5 of the petition it has been stated,

On account of the interim injunction granted by the Munsiff Court, Hubli, Petitioners could not proceed with the construction.

The expression is "that the Petitioner could not proceed with the construction" which means that he did not commence the construction work and this allegation of paragraph No. 5 supports what has been stated and shows the correctness of allegations made in paragraph Nos. 2 and 3 of the counter affidavit where it has been stated that the Petitioner has not commenced the construction work.

9. In this view of the matter when two years" period expired, licence or permission definitely lapsed. No doubt in such a situation, there should have been a provision in the law to protect the public from harassment. In such a situation where somebody files a suit, claims and gets the temporary injunction and the suit keeps on pending for long and temporary injunction continues, then even the law abiding person who had applied for permission and permission had been granted, but because of the order of temporary injunction if he could not commence the construction work and mandatory period of two years lapses, the person has to suffer. In such cases, where injunction order is granted by the Court, the running of the period of two years should be provided to be deemed to stand suspended. But this Court while interpreting the law cannot enter in the field of legislation. It may only suggest the Legislature to make a provision to meet such contingencies to avoid harassment to the public. As no construction work had been commenced, the permission ordinarily lapsed and there being no specific provision empowering the Corporation to extend the period on this ground, the Corporation could not extend the period of the old permission. The only remedy for the Petitioner is to apply afresh for the permission being granted for construction of the building, might be in the light of the old map or modified map, that is for such persons to apply and the authorities should consider how permission should be granted. But section specifically provides that work shall not be commenced until a fresh application is made and a fresh permission is granted. Thus it puts a complete bar except where a fresh permission is granted.

10. In the present case, the Petitioner had not made any application for fresh

permission. Had the Petitioner made a fresh application for permission, it could only be rejected on the grounds specified by the provisions of law as mentioned in Section 303 of the Act and the reasons for refusal have to be stated. Section 303 and Section 304 reads as under:

Section 303. Grounds on which approval of site for, or permission to construct building, may be refused.-(1) The only grounds on which approval of a site for the construction or re-construction of a building or permission to construct or re-construct a building may be refused, are the following, namely:

(a) that the work or the use of the site for the work or any of the particulars comprised in the site plan, ground plan, elevations, sections or specification would contravene some specified provision of any law or some specified order, rule, declaration or bye-law made under any law;

(b) that the application for such permission does not contain the particulars or is not prepared in the manner required under rules or bye-law;

(c) that any of the documents referred to in Section 299 have not been signed as required under rules or bye-laws;

(d) that any information or documents required by the Commissioner under the rules or bye-laws has or have not been duly furnished;

(e) that streets or roads have not been made as required by Section 280;

(f) that the proposed building would be an encroachment upon Government or Corporation land;

(g) that the site of such building does not abut on a street or a projected street and there is no access to such building from any such street by a passage or pathway appertaining to such site and not less than five meters side at any part;

(2) Whenever the Commissioner or the standing committee refuses to approve a site for a building or to grant permission to construct or re-construct a building the reasons for such refusal shall be specifically stated in the order.

Neither Section 303 nor Section 304 contain any such ground for refusal of permission or for cancellation of permission as has been stated in the order Annexure-"C". Merely because there is a proposal or thinking in the minds of the authorities that road has to be widened and the land may have to be acquired could not be the ground to refuse permission. It is only in cases where land had already been acquired by the Government, that may be a case where permission may be refused as the land had already been acquired and does not belong to the owner after acquisition. But before acquisition, it cannot be rejected on the ground that they propose to acquire or the like unless any other law so specifically provides. When I so observe, I find support for my view from the decision of this Court in the case of Mohammed Hassan Fazal Vs. The Deputy Commissioner, Bangalore District, Bangalore and Others, as well as in the case of K.K. Radhakrishna Nair v. State of Mysore in Writ Petition No. 1300 of

(sic),decided on 30.6.1969.

11. In the present case, the permission granted had lapsed and no fresh application for permission had been made nor any fresh permission had been sought or granted. The Petitioner as such is not entitled to put any construction on the basis of permission that had already lapsed. The mandate of the law is that no such construction shall be put under the old permission which had lapsed unless fresh application had been made and permission had been granted. There being no case that fresh permission had been granted after December, 1996, the Petitioner has not made out a case for grant of mandamus even if annexure-"C" be quashed. In such cases it is not necessary to pass any order quashing Annexure-"C", but Annexure-"C" is no doubt made on a ground not available in law, so it is null and void and inoperative.

The final result is that the petition is disposed of with a direction that if the Petitioner makes any fresh application for permission, the authorities will consider it according to law and if permission is granted and map is sanctioned, then Petitioner will have full liberty to raise the construction.

Subject to the above observations and directions, the writ petition is allowed in part as above modifying the relief. The Respondent is directed to consider the application if any is made and dispose of the same in accordance with law and spirit of justice. Till any permission is granted, the Petitioner will not raise any construction as law ordains it is hoped.