

(2015) 01 KAR CK 0368

In the Karnataka High Court

Case No : Writ Petition No. 15058/2014 (LB-RES)

Veeramma and Others

APPELLANT

Vs

The Panchayath Development Officer, Narikombu Grama
Panchayath and Others

RESPONDENT

Date of Decision : 02-01-2015

Acts Referred:

Constitution of India, 1950 — Article 21
Karnataka Land Reforms Act, 1961 — Section 77A, 95
Karnataka Panchayat Raj Act, 1993 — Section 298, 317, 318, 64

Citation : (2015) 01 KAR CK 0368

Hon'ble Judges : B.V. Nagarathna, J.

Bench : Single Bench

Advocate : M. Sudhakar Pai, for the Appellant; L.S. Chikkanagoudar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

B.V. Nagarathna, J.—Petitioners have sought a direction to respondent Nos. 1 and 2 to initiate action against Respondent Nos. 3(a) to (d) under Section 64 and Section 298 as well as other relevant provisions of the Karnataka Panchayat Raj Act, 1993 [hereinafter, referred to as "the Act" for short].

2. According to the petitioners, various survey numbers in Narikombu village, are the family properties of the petitioners. In fact, details of the survey numbers and extents are mentioned as under:-

3. Deceased Smt. Girija - respondent No. 3, had filed Form No. 7-A under Section 77A of the Karnataka Land Reforms Act, 1961, seeking grant of occupancy rights of the aforesaid lands, stating that one Padmanabha was the owner. Assistant Commissioner, who considered that application allowed her claim by order dated 30/01/2003. As against that order, petitioners have filed an appeal before the Karnataka Appellate Tribunal [hereinafter, referred to as "the Tribunal"], in Appeal No. 178/2005. That appeal is pending adjudication.

4. When the matter stood thus, respondent Nos. 3(a) to (d), have attempted to construct a building on Sy. No. 241/1. Being aggrieved by this action, petitioners gave a representation to first respondent on 16/11/2013. Thereafter, petitioners got issued a legal notice to respondent Nos. 1 and 2, requesting them to initiate action against respondent Nos. 3(a) to (d). Grievance of the petitioners is that no action has been initiated by respondent Nos. 1 and 2 as against respondent Nos. 3(a) to (d). Hence, they have sought the aforesaid directions.

5. I have heard learned counsel for petitioners and learned counsel for respondents and perused the material on record.

6. The matter has been listed for considering I.A. 1/2014, for initiating proceeding against respondent Nos. 1 and 2. However, during the course of considering that application, I have heard learned counsel for parties at length.

7. Contention of the learned counsel for petitioners is that land in question i.e., Sy. No. 241/1 belongs to the petitioners and that respondent Nos. 3(a) to (d), have no right, title and interest in that land. It is stated that the appeal filed by the petitioners is pending before the Tribunal. When that matter is pending adjudication, respondent Nos. 3(a) to (d), without obtaining any sanction, permission or licence from the second respondent - authority, have proceeded to put up construction on the said land. This is in violation of Section 64 of the Act and therefore, action under Section 298 of the Act had to be initiated, is the submission.

8. Petitioners counsel further contended that during the pendency of this writ petition, first respondent granted licence to respondent Nos. 3(a) to (d), on 31/05/2014. Such issuance of licence is contrary to notice dated 05/02/2014, issued by second respondent.

9. Learned counsel for petitioners stated that when second respondent has categorically admitted that there was illegal construction put up by respondent Nos. 3(a) to (d) with regard to the land in question and therefore, notice was issued in that regard, subsequently, during the pendency of the writ petition on 31/05/2014, second respondent could not have issued licence to respondent Nos. 3(a) to (d). He also brought to my notice that in the statement of objections filed on 07/06/2014, respondent Nos. 1 and 2 had initially stated that illegal construction put up by respondent Nos. 3(a) to (d), had been stopped and that there was no merit in the writ petition and that writ petition may be dismissed. But subsequently on the filing of the licence issued by second respondent to respondent Nos. 3(a) to (d), additional statement filed by respondent Nos. 1 and 2 do not justify as to in what circumstances, the said licence was issued. He contended that there is a contradiction between the date of issuance of the licence and the statement made in the statement of objections, which have been filed. He therefore contended that action may be initiated against respondent Nos. 1 and 2.

10. Per contra, learned counsel for respondents contended that issuance of

licence on 31/05/2014 is pursuant to the order of this Court dated 09/04/2014, that respondent Nos. 3(a) to (d) had filed an application dated 19/02/2014 for issuance of licence to put up construction and that application was considered and the licence was issued on 31/05/2014. They would contend that issuance of licence on 31/05/2014 was not in the actual knowledge of respondent Nos. 1 and 2 as they had no instruction with regard to the date of issuance of licence and they were not aware of the fact that licence was issued on 31/05/2014 and hence, in the statement of objections filed on 07/06/2014, it has not been stated that licence was issued on 31/05/2014. It is also contended that construction which has been put up by respondent Nos. 3(a) to (d), is pursuant to the licence issued by respondent Nos. 1 and 2 and that there is no merit in the writ petition.

11. Having heard learned counsel for parties and on perusal of the material on record, it is noted that respondent Nos. 1 and 2 had issued notice dated 05/02/2014 to respondent Nos. 3 (a) to (d), stating that they were putting up unauthorized construction on the land in question and that action in accordance with law, would be initiated against them. As no action was initiated by respondent Nos. 1 and 2, petitioners approached this Court on 25/03/2014, seeking initiation of action under Section 64 r/w Section 298 of the Act. On perusal of Annexure "R-1", it becomes clear that respondent Nos. 1 and 2 were clear about the fact that the construction was being put up by respondent Nos. 3 (a) to (d) was without obtaining licence and permission from respondent No. 2 - authority. Thereafter, on filing of writ petition on 25/03/2014, several orders have been passed by this Court. Relevant portions of the interim orders are extracted as under:-

"ANVGJ:

09/04/2014

Respondents 3(a) to (d) are directed to maintain status-quo of the property in question till next hearing date.

Re-list on 16/04/2014."

"ANVGJ:

16/04/2014

Interim order passed on 09/04/2014, to maintain status-quo is with respect to respondent Nos. 3(a) to (d) and the application filed by them for sanction of plan pending before respondent Nos. 1 and 2, shall be considered, in accordance with law. The said interim order shall operate as against respondent Nos. 3(a) to (d), till next hearing date."

"BSPJ:

25/04/2014

Interim order granted on 16/4/2014 is extended till the next date of hearing"

"LNSJ:

10/06/2014

Interim order granted on 16/04/2014 is extended till next date of hearing."

"LNSJ:

01/08/2014

Next week at the request of the petitioner. Statuesque to continue till then."

"RMRJ:

09/10/2014

Regard being had to the fact that despite notice dated 20/12/2013 Annexure-C issued by the petitioners" Counsel alleging that respondents 3[a] to 3[d] were erecting construction of a compound on agricultural land commenced on 16/11/2013 without prior sanction or permission under the Karnataka Panchayat Raj Act, 1993 and the fact that such a building could not be erected on agricultural land, the Authorities of the Village Panchayat, Respondents 1 and 2 are directed to show cause as to why IA No. 1/2014 should not be allowed."

"RMRJ:

15/10/2014

Learned Counsel for applicant is correct in his submission that there is not a titre of evidence to substantiate compliance with The Karnataka Panchayat Raj (Grama Panchayats Control Over Erection of Buildings) Rules, 1994, in the matter of an application for permission for erection of a building for construction of building submitted by respondent Nos. 3(a) to 3(d) and the Panchayat having granted permission dated 31/05/2004 in violation of the said Rules. The statement of objections to the I.A. is bereft of relevant material particulars.

Learned Counsel for respondent Nos. 1 and 2 submits that he has no instructions but would take instructions."

"RMRJ:

11/11/2014

"Office objections are not complied with. Therefore, statement of objections of respondent Nos. 3(a) to 3(d) rejected.

Learned Counsel for the panchayat furnishes for scrutiny of court an outward register maintained from 16.12.2013, indicating that on 26.02.2014, notice, Annexure-R17 was despatched calling upon public to file objections, as required by the Karnataka Panchayath Raj (Grama Panchayaths Control over Erection of Buildings) Rules, 1994. The question before Court is over issue of licence and permission to the contesting respondent for erection of a building. It is no doubt

true that under Section 64 of the Karnataka Panchayath Raj Act, the Grama Panchayat has the power to issue such permission, subject to rules framed thereunder, while the only rule governing such permission is the Rules referred to supra. Rule 5 provides for grant of permission and requires the Grama Panchayat to be satisfied that the proposed erection of the building is in accordance with the provisions of the Rules and bye-laws made under the Act, whereafter only permission can be granted.

It is fairly admitted by the learned Counsel for Gram Panchayat that no bye-laws are framed in relation to buildings. The submission is that de hors bye-laws and based only on rules, permission can be granted. In order to elicit particulars, the learned Counsel when directed to place before Court the rules relating to the nature of building, size of the building and other material particulars necessary for construction of a building for which permission is to be granted, if available, fairly concedes, such rules are not available. In the absence of such rules, it is not possible for the Court to come to a conclusion that Grama Panchayat could exercise a power to extend permission under Rule 5 of the Rules.

Learned Counsel would extensively read Sections 317 and 318 of the Act to advance a plea that until such time the bye-laws are framed, the Rules relating to construction as were existing under the repealed laws are applicable. This submission is meritless and not worthy of consideration. Section 318 relating to repeal and savings which saves such of the actions that had been done under the statutory provisions, since repealed, were in force. Admittedly, action of extending permission under Rule 5 of the Rules was not during the pendency of the repealed Act and Rules and hence the submission that saving clause would apply to the facts of this case is without merit.

Learned Counsel for the contesting respondent who has put up part construction, submits that Section 95 of the Karnataka Land Revenue Act provides for construction of a farm house without seeking permission for diversion of the land from agriculture to non agricultural residential purpose and therefore, the application filed to the Village Panchayat be reckoned as permission to erect a farm house, although the lands in question are permitted to be diverted to be used for residential purpose.

There is no definition of "farm house" either in Karnataka Land Revenue Act, 1964 or Karnataka Panchayat Raj Act or Karnataka Land Reforms Act, 1961. Therefore, must rely upon the dictionary meaning of the term "farm house". Law Lexicon, Second Edition 2001 states, to be farm house it must be judged in accordance with the ordinary ideas of what is appropriate in size, content and layout taken in conjunction with farm buildings, and the particular area of farm land being farmed and not part of a rich man's considerable residence.

Applying the dictionary meaning to the said word, it is needless to state the dwelling house of a rich man in a farm land is not a farm house. In the absence of relevant material constituting substantial legal evidence as to what exactly is

the activity carried out by the contesting respondent on non agricultural diverted land, question of erecting a farm house does not arise and therefore, it is impermissible to treat the application for construction of a dwelling house as one for a farm house.

Learned Counsel hastens to add that under Article 21 of the Constitution of India, right to a dwelling house is a fundamental right. It is needless to state that right to a dwelling house is a Human right as envisaged by the International Human Rights in one of its conventions in Geneva. Therefore, there is no need to ascertain as to whether it is a fundamental right under the Constitution of India. Question is not over the right to construct a building, but is regulation of construction of building. Therefore, that submission too must necessarily fail.

Regard being had to the fact that neither the State Government represented by its Panchayat Raj Ministry nor the Village Panchayat in the State of Karnataka have evinced interest in framing bye-laws in regulations construction of building in panchayat areas as required by Acts and Rules, there is a need to direct the State Government represented by Panchayat Raj Ministry to forthwith initiate action for preparation and promulgation of draft notification relating to building bye-laws applicable to panchayats.

Until such time, the State Government or the Grama Panchayat enacts bye-laws, the contesting respondent is directed not to put up further construction on the land in question.

Let a copy of this order be forwarded to the Principal Secretary, Panchayat Raj-Department of State of Karnataka, forthwith for necessary compliance.

Relist on 02.12.2014."

"RMRJ:

02/12/2014

A week's time to enable the State to prepare the draft of the building bye-laws and place it before Court under the Karnataka Panchayath Raj Act and Rules.

A week's time for compliance of the order dated 11/11/2014."

"RMRJ:

10/12/2014

Sri. M.I. Arun, learned Government Advocate submits that a draft of the model building bye-laws for Panchayaths is on the anvil and would be notified immediately after the legislative session. If that is so, then the Panchayathraj Department is directed to forthwith issue necessary circular to all Panchayaths not to sanction building plans until the bye-laws are put in place.

List in the first week of January 2015."

12. As already stated, matter is listed today, to consider I.A.I/14. Having heard learned counsel for parties and on perusal of the aforesaid interim orders, the only direction that can be issued to respondent Nos. 1 and 2, is to consider the case of the petitioners for initiating action under Section 64 r/w 298 of the Act. In fact, while doing so, respondent Nos. 1 and 2 will have to bear in mind the fact that on 05/02/2014 it had issued notice to respondent Nos. 3 (a) to (d). That would clearly establish the fact that as on that date, there was no permission, sanction or licence obtained by private respondents from respondent No. 2 - authority for the purpose of putting up construction on the land in question. In fact, as per Annexure "R-9" dated 24/04/2014, once again respondent Nos. 3 (a) to (d) have been directed to maintain status-quo. It is thereafter, during the pendency of this writ petition, on 31/05/2014 that a licence has been granted by respondent No. 2 - authority. That licence would have only a prospective effect and not a retrospective effect particularly, w.e.f. 05/02/2014 and as on that date, second respondent had categorically issued notice to respondent Nos. 3 (a) to (d), with regard to the illegal construction put up by those respondents. As already noted, grant of licence on 31/05/2014 is not a subject matter of this writ petition, as it is pending consideration before the appellate authority. Therefore, de hors granting of licence to respondent Nos. 3 (a) to (d) by the second respondent -authority, the first and second respondent - authorities are directed to consider initiation of action under Section 64 r/w Section 298 of the Act, as against respondent Nos. 3 (a) to (d) having regard to the aforesaid facts. In case, the first and second respondents initiate action under Section 64 r/w Section 298 of the Act, then, both petitioners as well as respondent Nos. 3(a) to (d) shall be heard in the said proceeding and thereafter, a speaking order shall be made in accordance with law.

13. With the aforesaid observations and directions, writ petition stands disposed.

14. In view of the disposal of writ petition, I.A. 1/2014, would not survive for consideration and is ordered to be filed.