Kumar K.C. and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Feb-11-2016

Judge : The Honourable Mr. S. Abdul Nazeer

Appeal No. : Writ Petition Nos. 422-425 of 2016 (LB-RES)

Appellant : Kumar K.C. and Others

Respondent : State of Karnataka and Others

Judgement :

S. Abdul Nazeer, J.

The petitioners are the tenants of different premises belonging to Town Municipal Council Channarayapatna, Taluk, Hassan District (TMC for short).The period of tenancy has come to an end long ago. Notices are issued to the petitioners calling upon them to vacate the premises in their possession within one month to enable the TMC to auction the leasehold rights of the said premises. The petitioners have called in question the legality and correctness of the said notices in these writ petitions.

2. Learned Counsel appearing for the petitioners contend that as per the Government Circular at Annexure D dated 26.10.2009, the petitioners are entitled for renewal of the lease period for a further period of 12 years. This circular has been issued in accordance with sub-section (1) of Section 72 of the Karnataka

Municipalities Act, 1964 (Act for short). It is submitted that as per the said circular, a recommendation was sent by the Deputy Commissioner, Hassan, to the State Government for extension of the lease period. However, the State Government has failed to take a decision on the said recommendation. On the contrary, the TMC has issued notices calling upon the petitioners to vacate the premises. The petitioners being the tenants of the premises cannot be thrown out of the premises without due process of low.

3.On the other hand, learned Counsel appearing for the respondents submit that in supersession of the circular dated 26.10.2009, the State Government has issued fresh circular dated 14.8.2015.TMC has taken steps to evict the petitioners to enable it to auction the leasehold rights. In this connection, they have relied on the decision of the Division Bench of this Court in Mohan P. Sonu Vs. State of Karnataka, ILR 1992 Kar 1219.

4. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

5. It is not dispute that the petitioners were inducted by the TMC as tenants in respect of different premises belonging to it. It is also not in dispute that the term of lease has expired long ago. The TMC has issued notices to the petitioners calling upon them to vacate the premises in question.

6. Section 72 of the Act authorizes municipal council to lease, sell and contract in relation to its properties. The relevant provisions are sub-sections (1) to (3) of Section 72, which are as under:

Sec.72: Competence of municipal council to lease, sell and contract.- (1) Subject to the conditions and restrictions contained in sub-sections (2) to (9) and restrictions and conditions as the Government may by general or special orders specify, every municipal council shall be competent to lease, sell or otherwise transfer any movable or immovable property which belongs to or for purpose of this Act has been acquired by it, and so far as is not inconsistent with the provisions and purposes of this Act, to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes.

(2) No free grant of immovable property whatever may be its value, no grant for an upset price and no lease for a term exceeding five years, and no sale or other transfer of immovable property exceeding twenty-five thousand rupees in value, shall be valid unless the previous sanction of the Government is obtained.

(3) In the case,-

(a) of a lease for a period exceeding one year or of a sale or other transfer, or contract for the purchase of any immovable property,

(b) of every contract which will involve expenditure not covered by a budget grant,

(c) of every contract the performance of which cannot be completed within the official year current at the date of the contract,

the sanction of the municipal council by a resolution passed at a general meeting is required.

7. Rule 39 of the Karnataka Municipalities (Improvement Board) Rules, 1966 (Rules for short) provides for the procedure for lease, sale or auction belonging to municipalities, which is as under:

39. Procedure in respect of lease, sale or auction: Save as otherwise provided in the Act or Rules, when the municipal council proposes to lease, sell or auction any moveable or immoveable property, it shall give notice of such lease, sale or auction by:-

(i) affixing copies thereof on the notice board of the offices of the municipal council;

(ii) exhibiting copies thereof in all municipal reading rooms and places considered by the municipal council to be conspicuous within the municipality;

(iii) publication in a daily newspaper having wide circulation within the municipality;

(iv) by beat of drum or circulation of notice in the locality.

8. It is clear from the aforesaid provisions that in case of lease of immovable property for a period exceeding one year or of a sale or other transfer, or contract for the purchase of any immovable property, the sanction of the municipal council by a resolution passed at a general meeting is required. It is also clear that no lease for a term exceeding five years shall be valid unless the previous sanction of the Government is obtained. The procedure prescribed in Rule 39 of the Rules has to be followed while leasing the property. The Division Bench of this Court in Mohan P. Sonu s case (supra) has held that the object of giving due publicity to the proposal to dispose of rights in respect of a property belonging to a local authority before it is so disposed of is to realise the highest possible income and to prevent persons incharge of Municipal Council from disposing of the rights in favour of persons in whom they are interested. Disobedience of the provisions of Rule 39 cannot be overlooked. The Court has held that it is a mandatory Rule intended to protect public revenue. Matters relating to public revenue cannot be dealt with arbitrarily and in the secrecy of an office. Whatever done in that regard should be done in accordance with law.

9. It is to be noticed here that the property in question is a public property belonging to an instrumentality of the State. It is one of the custodians of public properties. It is not as free as an individual in selecting the recipients for its largess. For allotment of the properties, a transparent and objective criteria/procedure has to be evolved based on reason, fair play and non-arbitrariness. In such action public interest has to be the prime guiding consideration. In the matter of grant of largesses such as lease, licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of land. That is why the Division Bench has emphasized the need to follow Rule 39 while auctioning the lease hold rights in respect of the properties belonging to the TMC.

10. It is true that under Section 72(1), the Government is authorized by general or special orders to specify that every municipal council shall be competent to lease, sell or otherwise transfer any movable or immovable property which belongs to it. However, it is subject to conditions and restrictions contained in sub-sections (2) to (9). Therefore, State Government cannot pass a general or special order under

Section 72(1) contrary to the conditions contained in Sections 72(2) and (3) and Rule 39. It is no doubt true that a circular was issued by the State Government dated 26.10.2009 providing for renewal of lease, which was contrary to Sections 72(2) and (3) and also Rule 39. That is why this circular has been withdrawn and a separate circular dated 14.8.2015 has been issued by the State Government. In the circumstances, petitioners cannot claim any right under the circular at Annexure D dated 26.10.2009 or the recommendations made under the said circular.

11. As stated above, the petitioners were inducted as tenants and the period of tenancy has come to an end long ago. However, they continued to be in possession of the premises. They cannot be thrown out from the premises without due process of law. It cannot be denied that they are unauthorised occupants of the premises as defined under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974. No steps have been taken by the TMC to evict them under this Act. Therefore, the respondent-TMC is restrained from illegally evicting the petitioners from the premises in question and that they shall be evicted only in accordance with law.

12. With these observations, writ petitions are dismissed. No costs.