

G.B. Uday and Another Vs. K. Mohan Kumar and Others

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Court : Karnataka

Decided On : Apr-10-2017

Judge : Raghvendra S. Chauhan

Appeal No. : Writ Petition Nos. 12427 of 2017 & 13387-13389 of 2017 (LB-BMP)

Appellant : G.B. Uday and Another

Respondent : K. Mohan Kumar and Others

Judgement :

(Prayer: These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India praying to quash the order of the Respondent No.3 Dated 7.11.2016 allowing the review in P.R.10/2013-14 at Annexure-S and etc.)

1. The petitioners have challenged the legality of the order, dated 07.11.2016, passed by the Joint Commissioner (South), Bruhat Bengaluru Mahanagara Palike ("BBMP", for short), whereby the learned Joint Commissioner has allowed the review petition filed by the respondent No.1, Mr. K. Mohan Kumar, against the amalgamation of the Katha, which allegedly belonged to the petitioners, and has directed that fresh enquiries should be held, and the parties should be heard, and a fresh order with regard to amalgamation of Katha should be passed.

2. Briefly the facts of the case are that according to the petitioners, their father, Mr. G. Basavaraj, was the owner of an agricultural land bearing Sy.No.33/2A, 33/3, 34/6, 34/8 in Doddabylakhana, Doddamavalli village, Bangalore. Presently the

property bears No.24/2, Dispensary Cross, J.C.Road, Ward No.118, Bangalore. Further, according to the petitioners, the said property fell in their father's share after the family property was partitioned by a Partition Deed dated 30.12.1954. The said partition deed was registered with the Sub-Registrar, Bangalore City. The fact of the partition and the transfer of the properties in the name of petitioner's father was noticed by the then Tahsildar, Bangalore North Taluk in his Demand Notice dated 02.11.1960. Moreover, according to the petitioners, subsequently, the petitioners' father got a private road laid through the property in question. Thereafter, petitioners' father was informed by the Corporation about the laying of sewerage line in the property in question, belonging to him. By letter dated 07.07.1967, petitioners' father consented to the laying of sewerage line through his property.

3. According to the Encumbrance Certificate dated 28.10.2007, the property in question was re-numbered as 24/2, 24/3, 24/4, 24/5, and 24/6.

4. On 16.11.1977, a preliminary Notification under Section 4 of the Karnataka Land Acquisition Act was published, wherein, it was shown that the property belonging to the petitioners' father would be acquired for the public purpose of formation of road from J.C.Road to Lalbagh Fort Road. However, according to the petitioners, subsequently, the acquisition proceedings were dropped and the property continued to be in possession of their father.

5. On 25.02.2013, Mr. G. Basavaraj expired leaving behind a Will, dated 14.05.2009, wherein Mr. Basavaraj has bequeathed the property in question to his son and daughter (petitioner Nos.1 and 2 before this Court). Subsequent to their father's death, the petitioners requested the BBMP to amalgamate the Katha of the property bearing No.24/2, 24/3, 24/4, and 24/6. By order dated 07.06.2013, the kathas were amalgamated. According to the petitioners, ever since then, they have paid the taxes for the property, and they are in physical possession of the same.

6. However, when the petitioners tried to fix a gate in front of the property in question, Mr. Mohan Kumar, respondent No.1, tried to prevent the petitioners from doing so, inter alia on the ground that petitioners were encroaching upon the BBMP

road. Since he was aggrieved by the petitioners' action, he filed a petition before the Bangalore Metropolitan Task Force (BMTF", for short) intealia on the ground that the petitioners have encroached upon a public road. According to the petitioners, BMTF subsequently allowed the matter to rest.

7. Therefore, Mr. Mohan Kumar invoked the review jurisdiction of the Commissioner under Section 114-A of the Karnataka Municipal Corporations Act, 1976 ("the Act", for short). By order dated 07.11.2016, the Joint Commissioner has allowed the review petition in the aforementioned terms. Hence, the present petition before this Court.

8. Mr. K.P. Asokumar, the learned counsel for petitioner has vehemently contended that the reasons given by the Joint Commissioner for allowing the review petition are beyond the scope and ambit of Section 114-A of the Act. According to Section 114-A of the Act, the Commissioner has the power "to review either suo-moto or otherwise, wherein after enquiry the Commissioner is satisfied that transfer entitled under Section 114 of the Act was recorded by fraud, misrepresentation, or suppression of facts, or by furnishing false, incorrect, or incomplete material". However, none of the conditions enumerated under Section 114 of the Act, exists in the present case. Therefore, the learned Joint Commissioner has gone beyond the jurisdiction vested in him under Section 114-A of the Act. In order to buttress his plea, the learned counsel has relied on the case of Sri. Muneer M.K.H. v. B.B.M.P. and Another [(2015) 1 Kant LJ 177].

9. On the other hand, Dr. R. Ramachandran, the learned counsel for BBMP, and Mr. Nataraj. R, the learned counsel for respondent No.1, have pleaded that the learned Joint Commissioner has clearly noticed the fact that "the Assistant Revenue Officer has not initiated the procedure for amalgamating the Katha in a legal and valid manner". Before the Katha could be consolidated, it was imperative that a spot inspection should have been done. It was essential to see whether any road, or public passage way, or major channel, or cart-path went through the property, or not ? But, instead of following the correct procedure for amalgamation, the Kathas have been amalgamated. Therefore, since "an incorrect, and incomplete material" was available, on the basis of which the Kathas were

amalgamated, the Joint Commissioner was justified in setting aside the amalgamation of the Katha, and in remanding the case for fresh enquiry. The learned counsel has also pleaded that the impugned order is innocuous one as the petitioners have been given ample opportunities of being heard before a fresh order is passed upon their application for amalgamation of the Kathas. Thus, no injury is caused to the petitioners.

10. Heard the learned counsel and perused the impugned order.

11. Section 114-A of the Act, is as under:-

114A. Review by the Commissioner - Where the Commissioner, either suo-moto or otherwise, after such enquiry as he considers necessary is satisfied that any transfer of title under Section 114 was got recorded in the Corporation register by fraud, misrepresentation or suppression of facts or by furnishing false, incorrect or incomplete material, he may within a period of three years from the date of such recording of transfer of title reopen the case and pass such order with respect thereto as he thinks fit.

Provided that no such order shall be made except after giving the person likely to be affected thereby a reasonable opportunity of being heard.

The said Section provides number of grounds on the basis of which the transfer of title under Section 114 can be set aside. Two of the grounds are that if "incorrect, and incomplete materials" have been furnished.

12. According to the impugned order, it was essential that a spot inspection be done, and the fact whether the properties in question were adjacent to each other or not had to be confirmed. Moreover, through the spot inspection, whether a public passage way, public road, major channel, or cart path existed or not, needed to be examined. However, the Assistant Revenue Officer did not carry out the spot inspection. Therefore, the complete information with regard to the reality at the ground level was not even available when the order for amalgamation of Katha was passed. Thus, clearly the case falls under one of the circumstances mentioned in Section 114-A of the Act. Therefore, the learned counsel for

petitioners is unjustified in claiming that the present case is not covered by Section 114-A of the Act.

13. The case of Muneer M.K.H (supra) is distinguished from the present case. For, in the said case, the Assistant Revenue Officer, BBMP, had directed Mr. Muneer to seek NOC from the Bangalore Development Authority. Therefore, the question that arose before this Court was whether the Assistant Revenue Officer has the power to issue the said notice, or not? It is in this context that the Court has held that the Assistant Revenue Officer does not have the power to issue such notice.

14. However, the question before this Court is not with regard to the powers vested in the Assistant Revenue Officer, BBMP. The issue before this Court is: whether the Joint Commissioner could have exercised the power under Section 114-A of the Act, or not?

15. According to the said provision, the Joint Commissioner can exercise the power either suo-moto, or otherwise. The word "otherwise" denotes that the power can be exercised at the behest of a party before the Commissioner. Thus, the Joint Commissioner does have the power to review the decision either suo-moto, or at the instance of a party. In the present case, the respondent No.1, Mr. K. Mohan Kumar, had filed an application before the Joint Commissioner seeking review of the order of amalgamation of the Kathas. Therefore, the present case is certainly distinguished from the case of Mr. Muneer (supra).

16. Moreover, since the Joint Commissioner is merely remanding the case back and has granted an opportunity of hearing to both the parties, this Court is of the firm opinion that the interest of petitioners is not adversely affected by the impugned order. Since denovo enquiry needs to be initiated, both the parties would be free to submit any evidence, and to raise pleas which would be in their favour. Since the enquiry has been pending for sometime, the concerned authority is directed to decide the case within a period of three months from the date of receipt of certified copy of this order.

17. But, for the reasons stated above, this Court does not find any illegality or perversity in the impugned order. This petition, being devoid of merits, is hereby

dismissed.

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