

Shantha Kumar Vs. Commissioner

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Court : Karnataka

Decided On : Dec-03-1988

Reported in : ILR1989KAR2518

Judge : Balakrishna, J.

Acts : [Karnataka Municipalities Act, 1964](#) - Sections 72 and 309; Consitution of India - Article 226

Appeal No. : W.P. No. 19043 of 1987

Appellant : Shantha Kumar

Respondent : Commissioner

Advocate for Def. : C. Shivappa, Adv. for R-1

Advocate for Pet/Ap. : K. Shivaji Rao, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Balakrishna, J.

1. A victim of motor accident, who lost both his legs, is the petitioner in this case. He is a resident of Kolar and he is a merchant. The petitioner was in need of

parking space for his car and, therefore, approached the City Municipal Council, Kolar, for the lease of a vacant land measuring 15' x 211/2' located near the Octroi Office. Spot inspection was conducted and, ultimately, the Municipal Council found that there was no objection from any quarters for leasing out the area to the petitioner. Thereafter, a registered lease deed came to be executed in favour of the Municipal Council, Kolar, by the petitioner on 25-5-1980 on a ground rent of Rs. 35/- per month in respect of the leased area of 15' x 211/2'. As mentioned in the agreement, the petitioner deposited one year's rent in advance. Subsequently, the petitioner made an application for grant of licence and also for a sanctioned plan from the City Municipal Council for the purpose of constructing a garage in the said area and the plan was sanctioned on 28-5-1980 to the petitioner. The petitioner spent considerable amount of money and constructed a garage which he has been using even to this day.

2. The monthly rental was being paid with unerring regularity to the lessor and nothing wrongful was ever committed by the petitioner in the area leased out to him.

3. To the surprise of the petitioner, a notice of demand was made on him calling upon him to pay an enhanced rent of Rs. 200/- per month instead of Rs. 35/-per month by virtue of a resolution of the City Municipal Council, Kolar, passed on 30-8-1986. The grievance of the petitioner is two fold. Firstly, that without a hearing, unilaterally the rent was enhanced by respondent-1 and, secondly, the enhancement grossly arbitrary was to the tune of 600%. For redressal of his grievance, the petitioner preferred a revision petition under Section 309 of the Karnataka Municipalities Act challenging the resolution dated 30-8-1986 passed by the City Municipal Council, Kolar, before the Director, Directorate of Municipal Administration, Bangalore. The Revision Petition was dismissed and the operative portion of the order dated 30-6-1987 reads thus:-

'The agreement between the Petitioner and Respondent is declared invalid and the City Municipal Council, Kolar should follow the procedure in allocating Municipal lands for sale, lease or grant of lands as per the provisions of the Act. The Revision Petition is dismissed.'

At the same time, while passing the said order, the Director aforementioned sent the file to the Government for confirmation of his order under Section 309 read with Section 306 of the [Karnataka Municipalities Act, 1964](#). Thereafter, nothing is heard from the Government or from the Director.

4. In this Writ Petition, the petitioner pleads for the quashing of resolution dated 30-8-1986 passed by the City Municipal Council, Kolar, in so far as the order relates to the enhancement of the ground rent from Rs. 35/- to Rs. 200/- per month in respect of the area leased to him and also for quashing the order passed by respondent-2 dated 30-6-1987.

5. The short point for consideration is whether the impugned enhancement as well as the order dated 30-6-1987 passed by respondent-2 are arbitrary and without jurisdiction and further whether they offend principles of natural Justice.

6. I have heard the arguments. No statement of objections is forthcoming either on behalf of respondent-1 or on behalf of respondent-2.

7. Arbitrariness and unreasonableness are Writ large on the face of the record. There is neither rhyme nor reason for respondent-1 to enhance the agreed rent by a margin of 600% without prior negotiation with the petitioner. Respondent-1 has brushed aside a solemn agreement entered into with the petitioner and, by a unilateral decision, enhanced rent arbitrarily thereby violating the legal right of the petitioner created under the registered lease deed dated 25-5-1980. The right accruing in favour of the petitioner under the said instrument cannot be either abridged or altered without the consent of the petitioner. The recognised principles of natural Justice which are nothing but fair play in action demand that the petitioner should have been heard before enhancement of the lease amount was resolved by the City Municipal Council, Kolar. The enhancement made enhance the Income of the City Municipal Council, Kolar, but, at the same time, it does not fulfil the requirements of law and, on the contrary, It has resulted in violence to not only natural justice, but also the established right of the petitioner to continue his occupation of the land under the lease by monthly rental of Rs. 35/- only.

8. The manner in which the Revision Petition preferred by the petitioner before respondent-2 has been dealt with and disposed of makes strange reading not only for the substance of the order, but also for the logic of it. What the petitioner urged before respondent-2 was that the lease and the rent arrived at under the agreement dated 25-5-1980 was for an unlimited period of time and that the notice of enhancement communicated to the petitioner dated 14-8-1986 was illegal and the argument of the representative of the City Municipal Council, Kolar, per contra, was that the enhanced rent was reasonable since shops measuring 10' x 20' were fetching a rent between Rs. 475/- and Rs. 950/- per month. However, the said representative also made an allegation against the petitioner that the leased area was being used for the purpose of storing steel and not for car parking. However, this allegation does not find any place in the notice issued to the petitioner on 14-8-1986 nor is it a subject matter of any correspondence between the City Municipal Council, Kolar, and the Petitioner at any time.

9. On the ground that a lease cannot exceed a period of 5 years and, if it exceeds, it shall be invalid unless previous sanction is obtained from the Government, respondent-2 proceeded to declare that the lease entered into on 25-5-1980 is invalid and directed the City Municipal Council, Kolar, to follow the procedure in allocating municipal lands for sale, lease or grant of lands as per the provisions of the Karnataka Municipalities Act.

10. What started as a grievance against capricious enhancement of rent, ended entirely on a different note with a declaration that the agreement itself is invalid though that was not the case of even the representative of the City Municipal Council, Kolar, and, least of all, the case of the petitioner. In short, the limited question presented before respondent-2 in the Revision Petition was that the enhancement did not answer the test of fairness and reasonableness and nothing beyond. However, with the unusual angle and approach of respondent-2 to the facts of the case, a totally undesirable and unlikely result followed without pleadings to that effect either on behalf of the petitioner or on behalf of respondent-1. It is a clear case of misdirection on the part of respondent-2 and where there is misdirection, this Court would not hesitate to interfere under Article 226 of the Constitution.

11. I am of the opinion that, in the circumstances and, on the facts of the case, the resolution passed by the City Municipal Council, Kolar, dated 30-8-1986 is arbitrary and illegal and the impugned order of respondent-2 dated 30-6-1987 is without jurisdiction. If at all any action could be taken for the remiss on the part of the City Municipal Council in leasing out the land belonging to It for an unrestricted period, that can only be done in accordance with law after observing meticulously the requirements of natural justice, by issue of a notice and an opportunity of hearing before respondent-1.

12. In the result, for the reasons stated above, Rule is issued and made absolute. The Writ Petition is allowed. The resolution dated 30-8-1986 of respondent-1 under Annexure-F enhancing the rent from Rs. 35/-to Rs. 200/- per month as well as the impugned order of respondent-2 dated 30-6-1987 under Annexure-E, are quashed.

13. In the circumstances of the case, there will be no order as to costs.

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