

Fathimabi Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-16-1993

Reported in : ILR1993KAR2712; 1993(3)KarLJ387

Judge : Shivashankar Bhat, J.

Acts : Karnataka Regulation of Unauthorised Construction In Urban Areas Act, 1991 - Sections 3 and 4

Appeal No. : W.P. No. 23082 of 1992

Appellant : Fathimabi

Respondent : State of Karnataka

Advocate for Def. : Pradeep Roy, HCGP for R-1 and ;H. Thipperudrappa, Adv. for R-2

Advocate for Pet/Ap. : S. Channaraya Reddy, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Shivashankar Bhat, J.

1. According to the petitioners they are the residents of Bangalore and they own the sites in question. They further assert that they have put up buildings on the sites and they have been residing therein. The buildings were constructed prior to 31st March, 1990 is their contention.

2. The petitioners also assert that the B.D.A. had not acquired the property at the time when the buildings were put up and that under Section 3 of the Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991 ('the Act' for short) they are entitled for regularisation. The petitioners also assert that they have made appropriate application under the Act.

3. The respondents seems to contend that the properties in question belong to the B.D.A. and the constructions were entirely unauthorised and that the constructions were not put up in such a way so as to attract the provisions of Section 3 of the regularisation of the constructions.

4. There should be some competent authority to decide this disputed question of fact. Under Section S of the Act a Screening Committee shall have to be constituted for the purpose of regularisation of unauthorised constructions. The Screening Committee shall scrutinise the application received under Section 3. After holding an enquiry as stated in Section 6(4), necessarily the Screening Committee shall have to decide whether the property in question belong to the State Government as per Section 3(i) or whether it is a revenue site owned by the applicant as per Sub-section (ii) or whether the property is the one falling within Sub-section (iii) of Section 3.

5. The applicant shall have to establish that the property claimed by the applicant falls within any one of the categories stated under three sub-sections of Section 3. The applicant also shall have to prove that the unauthorised construction was made in the urban area prior to 31st March, 1990. The applicant shall have to further establish that the construction was the one contemplated by the said Section 3. If all these conditions are satisfied and it is shown that the construction is the one which does not fall within the provisions of Section 4 then the Screening Committee shall have to allow the application provided the application was filed within the period prescribed by Section 3. Section 4 is an exception to the

provisions for regularisation under Section 3. Under Section 3 certain specific facts shall have to be established and when those facts are established by an applicant who filed the application within the prescribed period, regularisation can be denied if Section 4 gets attracted to the case. On a consideration of these provisions and the material placed before the Screening Committee it shall have to give a finding under Section 6. Until such a finding is given and the claim of the applicant is rejected it will not be permissible for the authorities to take any action either for demolition or for removal of the applicant from the property in question.

6. In an appropriate case the Screening Committee may at the threshold examine whether the application was filed for regularisation within the prescribed time and whether for any other reason the application is liable to be rejected. The decision of the Screening Committee is to be based on an examination of certain facts and circumstances. On proof of these facts/circumstances, an applicant gets a right for regularisation. Therefore the decision of the Screening Committee shall have to be by a speaking order, giving proper reasons for rejecting the claim of an applicant. The order of the Screening Committee affects the statutory rights of an applicant. In the circumstances, an order merely rejecting the application of an applicant without disclosing the reasons will be invalid.

7. The Act has specifically created a forum called the Screening Committee to go into the relevant factors. It is for the Screening Committee to consider the various factors which would entitle or which would disentitle an applicant for the regularisation as stated in Sections 3 and 4 of the Act. The jurisdictional fact and the ground to grant the relief are interwoven under the Act. It is difficult to separate the jurisdiction fact from the facts which would entitle the petitioner to seek the relief from the Screening Committee except where it is shown that application was filed beyond the prescribed time or the applicant lost his right for any other reason. Till these or any of the basic questions are decided under a speaking order the authorities of the respondents shall not interfere with the possession of the applicants in case the applicants are found to be in possession.

8. Consequently these Writ Petitions are allowed. The respondents are restrained from interfering with the respective possession of the petitioners if they are in

possession till an appropriate decision is taken by the Screening Committee according to law as observed above. The petitioners are also restrained from putting up any further constructions in the property.

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