

Deccan Enterprises Vs. Commissioner

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Court : Karnataka

Decided On : Oct-13-1993

Reported in : ILR1993KAR3280; 1994(1)KarLJ227

Judge : Shivaprakash, J.

Acts : [Karnataka Municipal Corporations Act, 1976](#) - Sections 303 and 304

Appeal No. : W.P. No. 6018 of 1992

Appellant : Deccan Enterprises

Respondent : Commissioner

Advocate for Def. : K.N. Putte Gowda, Adv.

Advocate for Pet/Ap. : S. Vijay Shankar, Sr. Adv. for ;G. Nagarajulu Naidu, Adv. and ;Sreevatsa Associates

Disposition : Writ petition allowed

Judgement :

ORDER

Shivaprakash, J.

1. The petitioner, which is a registered partnership firm, purchased premises bearing old Nos. 20-A, 20-B, 20-C, 21, 21-A, 21-B (New Nos. 52, 53, 54, 55, 56,

57, 58, 59, 60 and 60/1), M.G. Road, Bangalore, under a deed of sale dated 8-8-1985. After deriving title to the aforesaid properties, the petitioner sought transfer of Khatha in terms of Section 114 of the [Karnataka Municipal Corporations Act, 1976](#) (hereinafter referred to as 'the Act'). Accordingly, the respondent-Corporation transferred the Khata in the name of the petitioner. Subsequently, the petitioner-firm has applied for permission to construct a new building at the aforesaid premises.

2. The existing old buildings are in the occupation of certain tenants. It appears, J. Rajabalan, an Advocate of the Bangalore Bar, was in occupation of a portion of the first floor of premises No. 54. It seems he had objected to the issue of licence in favour of the petitioner for construction of a new building on the ground that he had instituted a civil suit-O.S. 2823/85 in the City Civil Court at Bangalore seeking permanent injunction restraining the petitioner, its workmen, agents or any one else from interfering with his peaceful possession of the premises in his occupation. The petitioner has produced a copy of the affidavit (Annexure-B) of J. Rajabalan filed in Execution Case No. 10395/82 on the file of the Small Causes Court, Civil Station, Bangalore. The vendor of the petitioner had instituted the said execution pursuant to the decree obtained by him in HRC 441 of 1976 (New No. 6251/1980).

3. From a reading of the affidavit, it seems that the said Rajabalan had agreed to vacate and deliver possession of the premises to the Decree holder. According to the petitioner, in the said execution proceedings, the vendor of the petitioner obtained possession of the portion which was in the occupation of the said Rajabalan. It is the case of the petitioner that after he vacated the premises, the petitioner purchased the properties under the aforesaid sale deed.

4. In this Petition, it is not necessary to go into the question whether Rajabalan as a matter of fact did vacate the premises or not. It is also not necessary to ascertain whether the other tenants in occupation of the premises have vacated the premises or agreed to vacate the premises.

5. The relevant provisions in the Act on the question of grant of licence are contained in Sections 299 to 303 of the Act. Section 299 provides for making of

application to construct or reconstruct building. Section 300 prohibits commencement of work without permission, Section 301(1) provides, inter alia, that the Commissioner shall within thirty days after receipt of any application made under Section 299, by written order 'either grant such permission or refuse on one or more of the grounds mentioned in Section 303 or Section 304 to grant it.' Section 301(2), which was inserted by Act No. 32 of 1986, provides that if the Commissioner does not within the period of thirty days pass any order, 'the applicant may address a letter to the Commissioner by name, requesting him to pass necessary order on his application, and the Commissioner shall, within a further period of 30 days from the date of receipt of such letter, by written order, either grant such permission or refuse, on one or more of the grounds mentioned in Section 303 or Section 304, to grant it.' Section 302 provides for reference to Standing Committee if the Commissioner delays grant of permission or refuses permission. Section 303 enumerates the grounds on which the approval of site for, or permission to construct building, may be refused.

6. In the instant case, the fact that the properties in question stand in the name of the petitioner firm is not in dispute. The application filed by the petitioner seeking permission to construct the building was made on 11-10-1989. In view of Sub-section (1) of Section 301, the Commissioner ought to have either granted such permission or refused to grant such permission on one or more of the grounds mentioned in Section 303 or Section 304. According to the petitioner, it has not received any communication from the Commissioner of the Corporation of the City of Bangalore. Therefore, the petitioner must necessarily address a letter in terms of Sub-section (2) of Section 301 to the Commissioner by name, requesting him to pass necessary orders on his application and the Commissioner shall within a further period of 30 days from the date of receipt of such letter, by written order either grant such permission or refuse, on one or more of the grounds mentioned in Section 303 or Section 304, to grant it.

7. Sri S. Vijay Shankar, learned Counsel for the petitioner, submitted that in the instant case in view of the fact that the Commissioner of the Corporation has neither granted nor refused permission, a Mandamus may be issued to him requiring him to grant licence sought by the petitioner.

8. Sri K.N. Putte Gowda, learned Counsel appearing for the respondent-Corporation, on the other hand, submitted that the permission sought by the petitioner has not been given by the first respondent in view of the objection raised by the said Rajabalan that he has instituted certain civil proceedings against the petitioner. According to the learned Counsel for the Corporation, the said Rajabalan has furnished certified copy of the interim order obtained by him in the original suit O.S. 2823/85 wherein the Civil Court has directed status quo to be maintained between the said Rajabalan and the petitioner.

9. The fact that Rajabalan has filed a suit against the petitioner by itself is no ground for rejecting the application of the petitioner seeking permission to construct a building. None of the grounds enumerated in Section 303 of the Act provides that institution of a suit by a third party against the petitioner is a ground by itself for refusing permission.

10. In the view I have taken, the petitioner may within 15 days hereof address a letter, as provided in Sub-section (2) of Section 301 of the Act, to the first respondent by name requesting him to pass necessary orders on the application, and the Commissioner shall within a further period of 30 days from the date of receipt of such letter by written order either grant such permission or refuse on one or more of the grounds mentioned in Section 303 or Section 304 to grant it.

11. The first respondent shall not take into consideration the litigations pending between third parties and the petitioner, while considering the application of the petitioner for grant of licence, unless there is any restraint order against the Corporation of the City of Bangalore issued by any Court requiring it not to grant such permission.

12. Writ petition allowed at the preliminary hearing stage before issue of Rule.