

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF MARCH 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE S. VISHWAJITH SHETTY

W.A. No.468 OF 2021 (KLR-RES)

BETWEEN:

SUNIL CHAJED,
S/O LATE H DEVICHAND,
AGED ABOUT 45 YEARS,
R/AT NO.85/1, D.V.G.ROAD,
BASAVANAGUDI,
BENGALURU - 560 004.

REPRESENTED BY HIS GPA HOLDER,
SRI NABHIRAJA HERA,
S/O LATE B.T.JAIN,
NO.29, KHB COLONY,
NEAR GANESHA TEMPLE,
6TH BLOCK, KORAMANGALA,
BENGALURU - 560 095.

... APPELLANT

(BY MR.UDAYA HOLLA, SR.COUNSEL FOR
MR.K.VIJAYA KUMAR, ADV.,)

AND:

1. STATE OF KARNATAKA,
D.C.OFFICE, BENGALURU DIVISION,
K.G.ROAD, NEAR DISTRICT REGISTRAR OFFICE,
AMBEDKAR VEEDHI, SAMPANGI RAMA NAGARA,
BENGALURU - 560 009.
(REPRESENTED BY DEPUTY COMMISSIONER,
URBAN DIST.).

2. TAHSILDAR,
BENGALURU EAST TALUK,
TALUK OFFICE, DIESEL SHED ROAD,
KRISHNARAJAPURAM,
BENGALURU - 560 036.

3. HEWLETT PACKARD (INDIA) SOFTWARE
OPERATION PRIVATE LIMITED
HAVING REGISTERED OFFICE AT NO.192,
WHITEFIELD ROAD, MAHADEVAPURA,
BENGALURU - 560 048,
REPRESENTED BY ITS DIRECTOR. ... RESPONDENTS

(BY MR.S.RAJASHEKAR AGA FOR R1 AND R2,
MR.K.ARUN KUMAR, SR. COUNSEL FOR
MR.M.V.SUNDARARAMAN, ADVOCATE FOR R3)

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THIS W.A. IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED ORDER DTD 01.10.2020 IN W.P.209/2020 (KLR) ORDER OF THE LEARNED SINGLE JUDGE OF THIS HON'BLE HIGH COURT AND TO DISMISS THE WRIT PETITION.

THIS W.A. COMING ON FOR PRELIMINARY HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The appellant has assailed the validity of the order dated 01.10.2020 passed by learned single Judge by which the writ petition preferred by respondent No.3 has been allowed and the order dated 13.11.2019 passed by the Tahsildar under the Section 140(2) of Karnataka Land

Revenue Act, 1964 (hereinafter referred to as 'the Act' for short) has been quashed.

2. Facts giving rise to filing of this appeal briefly stated are that appellant claims to be the owner of land measuring 1 acre and 4.08 guntas of land bearing Sy.No.91/1A (hereinafter referred to as 'the land in question' for short). The authorities under the Urban Land Ceiling Regulation Act, 1976 took possession of the land in question. The appellant challenged the order passed by the authorities under the Act before the Karnataka Appellate Tribunal, which by an order dated 07.03.1998 directed restoration of land to the appellant. In compliance of the order passed by the tribunal, the name of the appellant was restored in the revenue records. The appellant filed the suit viz., O.S.No.26187/2014 seeking the relief of permanent injunction restraining the respondent No.3 from interfering with the peaceful possession in respect of land in question.

3. It is the case of the appellant that even though the land was restored in favour of the appellant, it was not possible to identify the boundary of the land in question and

therefore, the appellant made an application to the Deputy Commissioner to fix the boundaries, which was forwarded to the Tahsildar. The Tahsildar thereupon initiated proceeding and issued notice to respondent No.3 and others and thereafter passed an order on 22.02.2019 directing the Assistant Director of Land Records, Bangalore East Taluk to take steps to fix the boundaries of the land in question. The respondent No.3 challenged the aforesaid order in a writ petition. The learned Single Judge by an order dated 14.08.2019 allowed the writ petition and remitted the matter to the Tahsildar to examine the issue with regard to jurisdiction and thereafter to proceed to adjudicate the claim on merits.

4. The Tahsildar by an order dated 13.11.2019 held that he has jurisdiction to fix the boundaries of the land in question in view of Section 61(1)(h) and Section 140 of the Act. The aforesaid order was subject matter of challenge in a writ petition preferred by respondent No.3. The learned single Judge by an order dated 01.10.2020 allowed the writ petition and has inter alia held that Tahsildar has no

jurisdiction to fix the boundaries. The order passed by the Tahsildar has been quashed. In the aforesaid factual background this appeal has been filed.

5. Learned Senior counsel for the appellant submitted that learned Single Judge erred in holding that revenue authorities have no jurisdiction to fix the boundaries in respect of land in question on the ground that the same is situated within the limit of Municipal Corporation. It is also urged that Section 61(2)(h) of the Act read with Section 140(2) of the Act empowers the Tahsildar to decide the issue with regard to fixation of boundary. It is further submitted that Tahsildar has jurisdiction to pass the impugned order for fixing the boundary in respect of land in question. In support of aforesaid submissions, reliance has been placed on decision of this Court in ***THE STATE OF KARNATAKA AND OTHERS VS. SMT. H.J.SHANKUNTHALAMMA', ILR 2007 KAR 5106.***

6. On the other hand, learned Additional Government Advocate submitted that the revenue authority has jurisdiction to conduct the survey and to fix the

boundaries in respect of the land situated within the limits of Municipal Corporation also. Learned Senior counsel for respondent No.3 submitted that the lands in question are converted and are situated within the limits of BBMP and therefore, the provisions of the Act are not applicable to the land in question as the same is not revenue Land. In support of aforesaid submissions, reliance has been placed on division bench decision of this court in **'J.M.NARAYANA AND OTHERS VS. CORPORATION OF THE CITY OF BANGALORE, BY ITS COMMISSIONER OFFICE, BANGALORE AND OTHERS'**, ILR 2005 KAR 60 and decisions of learned Single Judges of this court in **'BASHEERKHAN vs. THE TAHSILDAR, W.P.No..76164/2013, 'KIRLOSKAR ELECTRICAL CO. PVT. LTD. VS. STATE OF KARNATAKA AND ANOTHER', W.P.NO.105734/2016** and a full bench decision of this court in **'SMT.JAYAMMA AND OTHERS VS. THE STATE OF KARNATAKA, REP. BY ITS SECRETARY, DEPARTMENT OF REVENUE AND OTHERS'**, ILR 2020 KAR 1449.

7. We have considered the submissions made on both sides and have perused the record. The Act is an Act to consolidate and amend the laws relating to land and land revenue administration in the State of Karnataka. Section 2(12) of the Act, defines the expression 'holding', whereas, Section 2(32) defines the expression 'survey number'. Chapter VI of the Act deals with revenue jurisdiction. Section 60(a) which defines the expression 'land'. Section 2(12), Section 2(32), Section 61(2)(h) and Section 140 of the Act read as under:

(12) "holding" means a portion of land held by a holder

(32) "survey number" means a portion of land of which the area and assessment are separately entered under an indicative number in the land 1964: KAR. ACT 12] Land Revenue 463 records; and "sub-division of a survey number" means a portion of a survey number of which the area and assessment are separately entered in the land records under an indicative number subordinate to that of the survey number of which it is a portion;

60. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) 'land' includes the sites of villages, towns and cities, trees, growing crops and grass, fruit upon, and juice in, trees, rights of way, ferries and fisheries;

(61) Exclusive Jurisdiction of Revenue Courts and bar of jurisdiction of Civil Courts

1. xxxxx

2. Subject to the exceptions hereinafter specified, no Civil Court shall exercise jurisdiction as to any of the following matters, namely:—

(a)xxxx

(b) xxxx

© xxxxx

(d) xxxxx

(e) xxxxx

(f) xxxxx

(g)xxxxx

(h) claims regarding boundaries fixed under this Act or under any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary marks or survey marks:

140. Determination of boundaries of lands forming a survey number or a holding.—

(1) At the time of a survey, the boundary of a survey number, a sub-division of a survey number or a holding,—

(a) if undisputed, shall be recorded and marked as pointed out by the holder or person in occupation, and

(b) if disputed, or if the holder or person in occupation be not present, shall be fixed by the Survey Officer, in accordance with the land records relating to the land and after making such inquiry as he considers necessary.

(2) If any dispute arises concerning the boundary of a holding which has not been surveyed, or if at any time after the completion of a survey, a dispute arises concerning the boundary of a survey number, a sub-division of a survey number or a holding, the Tahsildar shall decide the dispute having due regard to the land records, if they afford satisfactory evidence of the boundary previously fixed, and if not, after such inquiry as he considers necessary.

8. Section 2(12) of the Act defines the expression 'holding' to mean a portion of land held by a holder. Section 2(32) of the Act defines the 'survey number' to mean a portion of land of which area and assessment are separately

entered in a indicative number in the land records. The aforesaid expressions viz., 'holding' and 'survey number' have to be read with Section 140 of the Act, which provides for determination of boundaries of land forming a survey number or a holding. Thus, if at the time of survey, boundary of any survey number or sub division of a survey number or a holding is disputed, shall be fixed by survey officer in accordance with the land records relating to the land and after making such enquiry as he considers necessary. Section 140(2) of the Act provides that if any dispute arises concerning the boundary of survey number or a sub division of a survey number or a holding, the Tahsildar shall decide the dispute having due regard to the land records. Thus, it is evident that Tahsildar Under Section 140(2) of the Act has power to determine the boundary of a survey number or a holding. The aforesaid power can be exercised in respect of a survey number or a holding irrespective of the fact whether same is situated within the Municipal limits or outside the municipal limits. Therefore, the order passed by the Tahsildar dated 13.11.2019 inter alia holding that it has jurisdiction to

decide the matter pertaining to fixing the boundary of lands forming survey number does not suffer from any infirmity.

9. The learned Single Judge has taken into account Section 112-D of the Karnataka Municipal Corporation Act, which deals with power of Commissioner to survey lands and buildings. The aforesaid Section reads as under:

112D. Survey of lands and buildings and preparation of property register. - (1) The Commissioner shall, subject to the general or special orders of the Government, direct a survey of buildings or lands or both within the city with a view to the assessment of property tax and may obtain the services of any qualified person or agency for conducting such survey and preparation of property register.

(2) A property register shall be maintained in such manner and containing such particulars in respect of buildings or lands or both as specified in Schedule III.

(3) For the purpose of preparation of property register or assessment of property tax in respect of any buildings or lands or both, the Commissioner or any person authorised by him in this behalf may enter, inspect, survey or measure any land or building after giving notice

to the owner or occupier before such inspection and the owner or occupier shall be bound to furnish necessary information required for the purpose:

Provided that such entry into and upon any building or land shall be made between sunrise and sunset:

Provided further that in the case of buildings used as human dwelling due regard shall be paid to the social and religious customs of the occupiers and no apartment in the actual occupancy of a woman shall be entered until she has been informed that she is at liberty to withdraw and every reasonable facility has been afforded to her for withdrawing]

10. From perusal of the aforesaid provision, it is evident that the power has been conferred on the Commissioner to direct survey of buildings or lands within the city with a view to assessment of property tax. The aforesaid provision has no bearing so far as the issue involved in this case is concerned viz., whether Tahsildar has jurisdiction to decide the matter pertaining to fixing the boundary of lands forming survey number. The provisions of the Act as well as Karnataka Municipal Corporation Act

operate in different fields and in any case, the scope and ambit of the power under Section 140(2) of the Act cannot be determined with reference to Section 112D of the Karnataka Municipal Corporation Act, which even otherwise has no bearing on the issue.

11. It is settled in law that judgments have not to be read as Euclid's theorems and their *ration descideni* has to be determined with reference to the factual matrix in which the case is decided. The reliance placed by the respondent No.3 on the decision of division bench of this court in ***J.M.NARAYANA AND OTHERS VS. CORPORATION OF CITY OF BANGALORE*** supra is concerned, it is pertinent to note that the division bench in the aforesaid case was dealing with the issue of non payment of court fee on the memo of appeal. In the aforesaid context, the division bench of this court while dealing with the issue of valuation in paragraph 5 held that if certain lands are included in the Corporation limits are registered or used for cultivation purposes would not imply that the land continues to pay land revenue under the Land Revenue Act. It was further held that

Land Revenue Act would cease to be applicable no sooner the land is brought within the limits of Corporation. The aforesaid finding recorded by the division bench has to be understood in the context in which it has been made namely for the purpose of valuation of the land in context of payment of court fee. It is noteworthy that the aforesaid decision does not deal with the powers of Tahsildar under Section 140(2) of the Act. Therefore, in our considered opinion, the aforesaid decision is not an authority for the proposition that the provisions of the Act do not apply to the land in question if it is included in Municipal Limits. The aforesaid decision is therefore, of no assistance to respondent No.3 in the facts of the case. Similarly, the decision rendered by learned Single Judges in case of **KIRLOSKAR ELECTRICALS CO. PVT. LTD and BASHEERKHAN** supra are of no assistance to the respondent No.3. The decision of the full bench in **SMT JAYMMA AND OTHERS SUPRA** is an authority for the proposition that under Section 136(2) and (3) of Karnataka Land Revenue Act, the revenue officials cannot decide the question involving the title and possession. The aforesaid

decision has also no bearing on the issue involved in this appeal.

In view of preceding analysis, the order passed by learned Single Judge is hereby set aside and the writ petition filed by respondent No.3 is dismissed.

In the result, the appeal is allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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