

D-709

BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6th Floor, Mahalakshmi Chambers, M.G Road, Bangalore – 560 001

**Present: B.N.Krishnaiah
Electricity Ombudsman**

Case No.OMB/B/G-259/2016

Dated : 14.06.2016

Sri Jayappa Reddy C.R
s/o late Ramaiah Reddy,
R/a No.1, Cholanayakanahalli,
R.T.Nagar Post,
Bengaluru – 560 032

... Appellant

(By Sri H.Shanthi Bhushan, Advocate)

V/S

1. The Assistant Executive Engineer (O & M),
BESCOM, C-8 Sub-Division,
1583, 12th Main Road,
Sahakarnagar, `D' Block,
Benaluru – 560 092.

... Respondent 1

(R-1 by Sri K.Vinayaka, Law Officer, BESCOM)

2. The Chairperson
CGRF, Bangalore Urban District,
BESCOM, West circle,05,3rd stage
Bhimajyothi HBCS Layout,Bangalore
Next to Chord Hospital, Basaveshwara
Nagar, Bangalore-560079

... Respondent 2

3. Sri M.Ashwathnarayana,
Aged about 52 years,
S/o Marappa,

R/a No.9,
Mathru Nilaya, 2nd Cross,
Sadarahalli Byanna Layout,
Hebbal – Guddadahalli Road,
Bengaluru – 560 024

(Party in Person)

... Caveator/Respondent No.3

1. This is an appeal filed by one Jayappa Reddy under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by CGRF, BESCO, Bangalore Urban District, Bangalore, dated 31.03.2016. In the instant case one Aswathanarayana has filed a caveat petition on 11.04.2016 requesting to hear him before any order is passed. The case was taken up for enquiry on 02.05.2016. The appellant was present along with his Advocate. The Caveator Sri Aswathnarayana represented by Advocate was also present and filed an application to consider his application. His application was allowed.

2. Letter dated 25.04.2016 was issued to the Assistant Executive Engineer calling for comments. No comments were received.

3. The case of the appellant is :-

(a) One B.G.Lakshmikantaraja Setty had purchased 1 acre 4 guntas of land in survey number 102/2 of at Amruthahalli, Yelahanka Hobli, Bangalore North Taluk, on 05.07.1991 from one Marappa – husband of Smt.Cheannamma who had acquired the property by a grant order of the Deputy Commissioner for Inam Abolition, Bangalore, in case No.148 /83 in 1958.

(b) The revenue entries were mutated in the name of B.G. Lakshmikantaraja Setty vide MR 6/91-92 in 1995-96.

(c) The proceedings under Land Reforms Act were initiated by the Assistant Commissioner, Bangalore North sub-division, and by an order dated 11.07.1997 the land was forfeited to the Government for violation of Section 79-A and 80 of the Karnataka Land Reforms Act.

(b) B.G. Lakshmikantaraja Setty filed an appeal before the Hon'ble Karnataka Appellate Tribunal in Appeal No.726 of 2006 challenging the order passed in LRF 83/196/1995-96, which came to be dismissed by its order dated 12.08.2013. Against this order, B.G. Lakshmikantaraja Setty preferred a writ petition in W.P.45335 of 2013 on the file of the Hon'ble High Court of Karnataka. The Hon'ble High Court quashed the order of the Assistant Commissioner, Bangalore North sub-division passed in LRF 83/196/195-96 dated 11.07.1997 and remanded the matter to the Assistant Commissioner. Thereafter, the Assistant Commissioner issued notice and the proceedings initiated for violation of Section 79-A and 80 of the Karnataka Land Reforms Act, were dropped, by order dated 27.06.2014 of the Assistant Commissioner, Bangalore North sub-division. However, the Tahsildar, Bangalore North (Additional) Taluk, through an Official Memorandum dated 16.12.2014 ordered to continue the name of the Government in the RTC.

(c) Similarly, the Caveator has also filed an appeal challenging the order passed in LRF 83/196/1995-96 before the Hon'ble Karnataka Appellate Tribunal which came to be dismissed by an order dated 09.07.2004 by the Hon'ble Karnataka Appellate Tribunal.

(d) B.G. Lakshmikantaraja Setty formed sites and sold them in favour of 21 individuals. One Ashwatathnarayana (caveator/respondent No.3) and five

others have filed a suit before the Hon'ble City Civil Court in O.S.6150/1995 for declaration and injunction against Marappa s/o Sonnappa, B.G.Lakshmikanaraja Setty and others which came to be dismissed on 12.08.2014.

(e) The vendors of the appellant with respect to site numbers 8 and 25 approached the BESCO for supply of power which was rejected by BESCO on the ground that the revenue entries in the RTC were in the name of the Government.

(f) The appellant approached the CGRF against the orders of the BESCO. The CGRF by its order dated 31.03.2016 also rejected the complaint of the appellant. Hence he has approached this Authority.

4. The Caveator/3rd respondent has filed the documents and has contended as follows :

(a) Survey number 102/2 of Amruthalli village is their ancestral property.

(b) He had filed the suit in O.S.No.6150 of 1995 on the file of the City Civil Court, Bangalore, for permanent injunction to restrain the defendants (Marappa, Lakshmikantaraja Setty and others) from obstructing the plaintiff's (Caveator Aswathnarayana and others) peaceful possession and enjoyment of the survey number 102/2 situated at Amruthalli, Yelahanka Hobli, Bangalore North Taluk measuring 1 acre 4 guntas which was dismissed.

(c) Survey number 102/2 situated at Amruthalli is an ancestral kayam gutta land belonging to the family of the caveator. Sonnappa was the father of Byanna. Byanna had two sons Marappa and Krishnappa. This

Marappa s/o Byanna had three sons namely Aswathnarayana, Sonnappa and Srinivas.

(d) It is averred that Marappa s/o Sonnappa was not getting well with his father and brother Byanna and therefore he executed registered release deed dated 04.06.1940 and was separated from the family and residing separately and independently from the joint family by severing his ties with the family of plaintiffs.

(e) One Marappa s/o Byanna was cultivating the lands and his name has been shown in the pahani for the years 1965-66 to 1967-68. Marappa s/o Sonnappa has no right, title and interest over the schedule property. In the year 1991 the said Marappa s/o Sonnappa entered with sale agreement with Lakshmikantaraja Setty wrongly claiming as owner of the land. All the suits and case fled by Lakshmikantaraja Setty are dismissed in the Civil Courts. One of these cases is challenged before the Hon'ble High Court by Aswathnarayana and others.

5. The learned Counsel for the appellant reiterated the averments made in the appeal memo. Further argued that the appellant has purchased the sites from his vendors. The AEE is not justified in not giving the power supply and the CGRF also committed an error in dismissing the complaint. He further argued that in the writ petition filed by the appellant in W.P.45335 of 2013 in the Hon'ble High Court; the case was remanded to the Assistant Commissioner, Bangalore North sub-division. The Assistant Commissioner, Bangalore North sub-division, took up the case and passed an order concluding that there was no violation of Section 79-A and B of Karnataka Land Reforms Act in the sale of land by Marappa (husband of Channamma) in

favour of B.G.Lakshmikantaraja Setty, who has formed layout in survey number 102/2 and in selling the sites to various persons from whom the appellant Jayappa Reddy has purchased the sites. At the time of hearing, the learned Advocate also submitted copies of Khata transfer orders, and other documents issued by the BBMP in favour of the appellant. He contended that all these documents support the claim of the appellant.

6. Sri K.Vinayaka, Law Officer, BESCO, argued that the applications were filed by one Nagaraj and Pinto – vendors of the appellant, and the electricity connection was given to Nagaraj and Pinto after taking indemnity bond. However, later the power supply was stopped after considering the fact that in the RTC the name of Government is shown. Further, the Law officer argued that the appellant herein though claims to be the owner of the sites, had not approached the AEE for power connection, whereas his vendors Nagaraj and Pinto had approached the AEE for power connection. He further submitted that in case the appellant produces valid documents the BESCO authorities will consider and try to give relief as per law.

7. The learned Counsel for the appellant submitted that though the sale deeds were executed by the appellant's vendors, the sale deeds were impounded for under valuation. Hence, the vendors of the appellant Nagaraj and Pinto had approached the AEE for power connection and later the sale deeds were released and consequently the titles were updated in the name of the appellant.

8. From the facts of the case and the documents produced, this Authority finds that the suit filed by the Aswathnarayana and others in O.S. 6150 of 1995 for permanent injunction and injunction against Marappa & others has been

dismissed by the learned 22nd Additional City Civil & Sessions Judge, Bengaluru, on 12.08.2014. Against this Judgement & Decree, it is said Aswathnarayana and others have filed the appeal in R.F.A. 1665 of 2014 which is pending before the Hon'ble High Court of Karnataka for Orders. But no documents produced in this regard.

9. The CGRF while dismissing the complaint has considered the contentions raised by the appellant that survey number 102/2 is stated to have been granted to Channamma – husband of Marappa, and after the death of Channamma Marappa has sold the property to B.G.Lakshmikantaraja Setty, B.G.Lakshmikantaraja Setty has formed sites and sold to 21 individuals from whom the appellant has purchased the sites. The CGRF has also considered the fact that the proceedings were initiated against B.G.Lakshmikantaraja Setty for violation of Section 79-A and B of the Karnataka Land Reforms Act and the land was forfeited to the Government for violation of Section 79-A and B of the Karnataka Land Reforms Act. After disposal of the writ petition No.45335 of 2013, the Assistant Commissioner, Bengaluru, took up the matter and by his order dated 24.06.2014 has dropped the proceedings under Section 79-A and B of the Karnataka Land Reforms Act.

10. It is seen that though the Assistant Commissioner has passed the order on 24.06.2014. However, the Tahsildar, Bangalore North (Additional) has issued an Official Memorandum dated on 16.12.2014 ordering that the name of the Government to continue in the RTC. The Assistant Commissioner, Bangalore, has initiated the proceedings as ordered by the Hon'ble High Court of Karnataka. Any appeal on such order of the Assistant Commissioner has to be filed before the competent Authority. However, the appellant has averred that the said order issued by the Tahsildar is challenged.

11. On perusal of the documents and the oral submissions made by both the parties including the Cavator, it is found that proper and clear verification of documents is not made by AEE or the CGRF in passing the order. Hence, the following Order.

ORDER

The appeal is allowed. The Order of the CGRF dated 31.03.2016 is set aside. The case is remanded back to AEE with a direction to hear the case afresh after issuing notice to the concerned and take action as per law at the earliest.

Sd/-
(B.N. Krishnaiah)
Electricity Ombudsman

To :

1. Sri H.Shanthi Bhushan, Advocate, 105, 1st Floor, 3rd Cross, Adjacent to Jain Bhavan, Gandhinagar, Bengaluru – 560 009.
2. The Assistant Executive Engineer (O & M), BESCOM, C-8 Sub-Division, 1583, 12th Main Road, Sahakarnagar, `D' Block, Benaluru – 560 092.
3. Sri K.Vinayaka, Law Officer, BESCOM, Corporate office, K.R.Circle, Bangalore – 560 001
4. The Chairperson, CGRF, Bangalore Urban District, BESCOM, West circle, 05, 3rd stage, Bhimajyothi HBCS Layout, Bangalore, next to Chord Hospital, Basaveshwara Nagar, Bangalore-560079.
5. Sri M.Ashwathnarayana, S/o Marappa, R/a No.9, Mathru Nilaya, 2nd Cross, Sadarahalli Byanna Layout, Hebbal – Guddadahalli Road, Bengaluru – 560 024
6. Managing Directors of ESCOMs.
7. PS to Hon. Chairman, KERC
8. PS to Hon. Member (A), KERC
9. PS to Hon. Member (M), KERC
10. PS to Secretary, KERC
