

(2005) 10 KAR CK 0051
In the Karnataka High Court
Case No : Writ Petition No. 27433 of 2004

A. Regina Victor and Others	Vs	APPELLANT
State of Karnataka and Others		RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 34, 94

Citation : (2005) 6 KarLJ 525 : (2005) 4 KCCR 2806

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Chowdareddy, for A. Shivarama and Associates, for the Appellant; Bharamagouda B. Goudar, High Court Government Pleader for Respondents-1 and 2 and K. Varadarajan, for Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition is by persons who claim to have put up some structures in an area on a land, which was part of Sheelavantana Kere in Sy. No. 41 of White field Village.

2. The State Government having noticed that many lakes in and around Bangalore City were being illegally encroached upon by the unscrupulous land-grabbers and such encroachments having led to the lakes being choked over a period of time, their identity being lost and the lakes totally drying up and contributing not only to depletion of groundwater levels but also the pollution of the environment, had set up a committee under the leadership of Lakshmana Rao to identify the remaining lakes to recommend steps to ensure that at least such of the lakes that have survived are preserved and maintained for the benefit of the community and posterity etc., and the committee having given a report had identified the Sheelavantana Kere as one such lake which was facing the danger of being gobbled by the land-grabbers and requires to be protected. In this connection there was a public interest litigation in W.P. No. 31343 of 1995 filed before this Court and in the course of proceedings, it had come to the notice

of the Government that Sheelavantana Kere was one such lake which had been identified and which was required to be protected if need be by removing the encroachers.

3. It is thereafter the Tahsildar, Krishnarajapuram, Bangalore East Tahuk had taken steps by issuing notice under the provisions of Section 34 of the Karnataka Land Revenue Act, 1964, to the petitioners calling upon them to vacate portions in their unauthorised occupation and had indicated that if they do not by themselves vacate, action in accordance with law will be pursued in terms of notice dated 26-6-2004, copies at Annexure-L to L6.

4. Petitioners being aggrieved by the receipt of such notices contending that they have put up construction, dwelling houses and have been residing in the said houses for the past more than 20 years and pursuant to the resolution passed by the Whitefield Village Panchayat, which had by passing the resolution sold the sites to the petitioners and such development having taken place and after all such development the respondents are now taking steps to evict them under the impugned notices; that as lot of development work has taken place, it is too late in the day to ask them to vacate the places irrespective of the fact whether it formed a part of the lake or otherwise and in this connection petitioners, seeking protection have approached this Court. Though the respondents had been put on notice, so far the petitioners have been taking time and in the meanwhile it appears the State Government volunteered to evict the petitioners by providing alternative accommodation to the petitioners etc.

5. Submission of Sri Chowdareddy, learned Counsel for the petitioners is that when the respondents themselves had assured the petitioners to provide alternative accommodation and when the petitioners have represented to the Government and the representations are under active consideration of the Government, they should not be thrown out in the interregnum and therefore, petitioners should be protected. Though there is no interim order in this writ petition, Government having withheld further action by the respondents at least that position should be continued etc.

6. Sri Bharamagouda B. Goudar, learned High Court Government Pleader for the respondents 1 and 2 on whose behalf statement of objections has been filed has opposed the adjournment of the case as sought for by the learned Counsel for the petitioners Sri -Ghowdareddy, and submits that the matter has been going on like this for more than a year or so; that implementation of the recommendation of the Laxmana Rao Committee in respect of the lake has been held up due to the pendency of the writ petition and that unless action is taken against the petitioners in accordance with law, such instances will act as an incentive for other encroachers also and therefore, there is no question of retaining such petitions.

7. The petitioners did not have any right at all in the first instance and the action proposed against the petitioners being as contemplated and as permitted by law

and in accordance with law and being only to give an opportunity to the petitioners by issue of show-cause notice under the endorsement is not a fit matter for interference in writ jurisdiction in these petitions, as the proposed action is one that is required to be taken by the respondents so long as the action is within the statutory limits.

8. Writ jurisdiction is not one for determining the propounded rights of the petitioners. It is not known whether the petitioners have any rights at all and have acquired the same in a manner known to law. Assuming that to be so such rights can be got tested before the Civil Court and not before the Writ Court in a writ petition. Petitioners cannot complain against the impugned notice as the notice is only for taking action in accordance with law particularly as contemplated u/s 94 of the Karnataka Land Revenue Act, 1964, which enjoins on the revenue authorities to take such action etc. In a matter of this nature, there is no occasion for this Court to quash the impugned notice as sought for by the writ petitioners. Any action in accordance with law is not one in respect of which certiorari jurisdiction can be exercised for the purpose of quashing the same. Certiorari is available only against illegal, irregular, arbitrary action on the part of the authorities and not against any action which is in consonance with the statutory provisions. There is no occasion for issuing writs as prayed for by the writ petitioners and therefore the writ petition deserves to be dismissed.

9. However, it is observed that it is open to the petitioners to make good their rights etc., if any in accordance with law either before the Civil Court or they can even pursue the matter before the authorities if they have represented. Dismissal of, the writ petition cannot and does not come in the way of the petitioners pursuing their efforts, otherwise the writ petition is dismissed.