

(2000) 12 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 490 of 1996

A.C. Shivaraju

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 79 (A), 79 (B)
Karnataka Land Revenue Act, 1964 — Section 71, 91

Citation : (2001) 2 KCCR 699

Hon'ble Judges : Ashok Bhan, J; A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : M. Veerabhadraiah, for the Appellant; K.B. Shivakumar, for Respondent 12, S.B. Pavin, for Respondent 8 and N.K. Ramesh, A.G.A. for Respondents 1 to 7, 9 and 10, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Srinivasa Reddy, J.—The Petitioner, in this public interest writ petition claims that the Respondents 11 and 12 are doing illegal quarry operations in Achalu Village, Sathnur Hobli, Kanakapura Taluk in violation of the terms under the grant. The further grievance of the Petitioner is that though the lands have already been forfeited to the Government because of violation of provisions under the Karnataka Land Reforms Act, the authorities have recognised the rights of such persons in the Revenue records without any basis for extraneous consideration and due to political influence and despite the representations stated to have been given by the Petitioner, there is no letup in the breach of law and the violations are being continued without check. Since the efforts of the Petitioner with the Executive Authorities having become futile, the Petitioner has filed the present writ petition for appropriate orders/directions to the Respondents 1 to 10 who are the authorities to take action against Respondents 11 and 12.

2. In that regard the Petitioner is seeking a writ of mandamus to Respondents 3

and 4 not to issue any authorisation or permits in favour of Respondents 11 and 12 to exploit the minerals in the land bearing Sy. No. 503 of Achalu-village in an extent of 4 acres; for a further writ of mandamus directing Respondents 5 to 7 to initiate necessary proceedings for cancellation of grant in respect of Sy. No. 504 and other Survey Numbers of Achalu Village since the transactions are in contravention of the terms of grant as well as rules; a mandamus directing the 7th Respondent to make necessary entries in the revenue records pursuant to the order passed by the Assistant Commissioner as per Annexure "B"; a direction to the Respondent No. 8 to hold an enquiry relating to the environmental pollution in the area due to blasting through heavy explosives. However, no writ or order has been sought for against Respondents 9 and 10.

3. The main grievance of the Petitioner is that the Respondents 11 and 12 claiming to be the pattadars of the lands bearing Sy. Nos. 503 and 504 on the basis of wrong entries in the revenue records are attempting to exploit the minerals without recourse to KMMC Rules. The Respondent No. 11 is stated to have purchased the land bearing Sy. Nos. 503 and 504 from one Huchcha and Sidda of Achalu - Village who are the grantees of the said lands each measuring 4 acres during the year 1973-74. Subsequently, the 11th Respondent has sold land bearing Sy. No. 503 to one Narayana Swamy on 12.8.1987. The said Narayana Swamy later sold the same in favour of the 12th Respondent. It is stated that the said purchase was in-contravention of Section 79(A) and 79(B) of Karnataka Land Reforms Act. Based on the information furnished by the 7th Respondent, the 6th Respondent held an enquiry and found that the purchase was in-contravention of the provisions of Karnataka Land Reforms Act and accordingly it was ordered forfeiture of the land bearing Sy. No. 503. In spite of the same, the authorities have not taken any action against the Respondents 11 and 12 under the Provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. Even though the said violations have been brought to the notice of the authorities by the Petitioner the same has not yielded any fruits. Therefore, the Petitioner has filed the present writ petition for the relief stated above.

4. All the contesting Respondents have filed their statement of objections denying the allegations made by the Petitioner in the writ petition.

5. Heard the Learned Counsel for both parties.

6. We have examined the averments made by the Petitioner in the writ petition and the documents filed in support of the case of the Petitioner as well as the statement of objections and the supporting documents and records filed by the parties.

7. At the outset, the learned Counsel for the Respondents have brought to our notice that some other villagers of Achalu Village had earlier filed a public interest writ petition in Writ Petition No. 34909 of 1997 against the very same Respondents 11 and 12 as well as the authorities. In the said writ petition also

the Petitioners therein had sought for an enquiry by the authorities including the Central Bureau of Investigation into the transactions of Respondents 11 and 12 and other Respondents therein and to take a follow-up action on the basis of the enquiry report to be submitted. The said writ petition was dismissed by a Division Bench of this Court of which one of us (Ashok Bhan, J.) was a Member as without merit. The learned Counsel for the Respondents have vehemently contended that the issues that have been raised in the present writ petition have already been considered by this Court on merits in the earlier petition that was dismissed. Therefore, the present writ petition is barred by the principles of res-judicata.

8. Under the circumstances the point which falls for our consideration is whether the decision rendered in the previous litigation filed as public interest litigation would operate as res-judicata and a binding precedent in the subsequent litigation also filed in public interest claiming the same or similar relief which had been claimed in the earlier writ petition.

9. It is well settled principle of law that the underlying idea on the question of principle of res-judicata and constructive res-judicata is that the parties are not made to defend the same cause of action twice-over which had been concluded on merits between the parties by a Court of competent jurisdiction. Repeated suits or writ petitions on the same cause of action filed in a Court of law on the same pleas with little variation of facts or arguments cannot be entertained as it would lead to wasting of time of the Court as well as unnecessary expense for the litigant public. It would be a sheer waste of public time and money but also abuse of the process of the Court.

10. It is also well settled principle of law that parties to the lis have to raise all available pleas in the proceedings when the action is initiated. The pleas which were not raised in the earlier proceedings which could have been raised would be deemed to have been waived. Earlier litigation which had been filed for same or similar reliefs challenging the in-action of the authorities by public spirited persons has already been concluded against them. In the present case the Petitioner wants to substitute himself in their place to project the same or similar pleas that have already been urged and concluded.

11. We find from the pleadings of the parties in the present case that the earlier decision rendered by this Court in the Writ Petition referred to supra would operate as res-judicata in subsequent proceedings and a binding precedent. The argument of the learned Counsel for the Petitioner that certain other pleas have been raised in this petition which had not been raised in the earlier writ petition and therefore the Petitioner is entitled to challenge the action of the Respondents-authorities on the new pleas raised, cannot be accepted or entertained. It was the duty of the Petitioners to have raised all available pleas in the earlier petition itself. The pleas which might and ought to have been raised but not raised would be deemed to have been waived and the earlier decision would operate as constructive res-judicata between the parties. This view of ours finds support

from the Division Bench decision of this Court in *Manipur Vasant Kini v. Union of India* wherein this Court observed:

Earlier litigation which had been filed for same relief challenging the administrative action of the authorities to grant deemed University Status to Respondent No. 4 by public spirited persons has already been concluded against the Petitioners. The same would be a binding precedent and operate as *res judicata* in subsequent proceedings challenging the same administrative action of the authorities. The arguments of the learned Counsel for the Petitioner that certain pleas which have been raised in this petition had not been raised in the earlier writ petition and therefore the Petitioner be permitted to challenge the action of the Respondent on the new pleas raised cannot be accepted, entertained. It was the duty of the Petitioners to raise all available pleas which might and ought to have been raised by them. The pleas which might and ought to have been raised but not raised would be deemed to have been waived. The earlier decision would operate as constructive *res judicata* between the parties.

12. As already stated *supra*, in Writ Petition No. 34909 of 1997, a Division Bench of this Court by its order dated 16.12.1998 has held in so far as the Respondents 11 and 12 who were Respondents 3 and 5 in the said writ petition as follows:

So far as the Respondents 3 and 5 are concerned, they are purchasers of land originally granted to Huchha and Sidda. The allegations against Respondents 3 and 5 are that though there is no granite on the lands 503 and 504, permits are issued, which enables exploitation of mineral wealth, in the neighbouring survey No. 53 of Achalu Village. The State has taken a stand that the lands Survey No. 503 and 504 are disputed lands and no permits are granted to Respondent No. 3 whose application is pending.

As already noticed the State in its objection has denied the case of the Petitioners. According to the State, in addition to 32 acres of land that has been granted earlier, there has been another 72 acres of land granted for agriculture. Mining leases are also granted in Survey No. 53 of Achalu Village. Respondent No. 3 is found to have purchased survey Nos. 503 and 504. In respect of the sale in favour of the third Respondent, there is a dispute and the application for grant of a mining lease is thus not yet disposed of....

The contention on behalf of Petitioners is that the land in question is a Gomal land and there are thousands of heads of cattle which need sufficient land for grazing, in apparently a peaceful atmosphere. The Petitioners have not produced any material to show what is the strength of cattle in and around the Achalu Village and what is the area that is required for grazing cattle. There is no material to show the area reserved u/s 91 of the Karnataka Land Revenue Act, 1964. The objection statement filed on behalf of the State would show that it has already disposed of another 72 acres of land for agricultural purposes and has given the other land quarrying granite. Section 71 of the Karnataka Land Revenue Act pertains to reservation of land for specific purposes while Section 70

therein stipulates that all mineral wealth belongs to the State Government. Apparently no prohibition against grant of mining leases of Gomal land has been pointed out on behalf of Petitioners to invalidate either the grant of land for agricultural purposes or grant of mining lease by the State. In the circumstances, it is indeed difficult to support the contention of the Petitioners that Gomal land in Survey No. 53 was required to be preserved in its fullest extent of 281 acres. The statement of objections of Respondents 1 and 2 would show that more than 104 acres of land has been given away for agricultural purposes right, if any, that accrues to him in the light of the agency that he holds would be limited to the terms of the contract of Agency that he holds with the principal company. His right as an agent of the principal would not extend to questioning or challenging any competition that may emerge in the area of his operation from any other company. It would be purely the prerogative of the principal concerned to challenge the introduction of a competitor in an area that was set apart to it. The Petitioner would not get any right to hold the brief for his Principal merely because he is an agent. The company has a separate legal existence and any infringement of the company's right has to be challenged by the company alone.

13. This Court has had no benefit to look into the resitement order, if any, passed by the concerned Respondent. However, as no resitement order is produced by the Petitioner, as of now, this order need not be construed as having decided the issue of resitement despite the opinion expressed by us in this regard. Whatever we may have stated, in the course of this order by way of discussion of the legal (sic).

14. Accordingly, the writ petition is dismissed directing the parties to bear their own costs.