

(2015) 06 KAR CK 0045

In the Karnataka High Court

Case No : C.C.C. Nos. 1709 and 1723 of 2014 (Civil)

Amina Mohammadi and Others

APPELLANT

Vs

The Deputy Commissioner, Davanagere District and Others

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Citation : (2015) 06 KAR CK 0045

Hon'ble Judges : N. Kumar and B. Sreenivas Gowda, JJ.

Bench : Division Bench

Advocate : B.M. Siddappa, Advocate, for the Appellant; Niloufer Akbar, AGA, for the Respondent

Judgement

N. Kumar, J.—These contempt petitions are filed complaining of dis-obedience of the order dated 25.6.2009 in WP No. 5230/08 where, notice dated 12.3.2008 issued by the authorities calling upon the complainants to vacate the premises within seven days was quashed and a direction was issued to respondents Nos. 1 to 5 not to demolish the building without extending an opportunity of hearing to the petitioners and holding an enquiry strictly in accordance with law.

2. The material placed on record discloses, land bearing Sy. No. 539/B measures 186 acres 6 guntas which belongs to the Government tank subsequently assigned for community use. On the complaint filed before the Deputy Commissioner, Davanagere District, the Deputy Commissioner directed the Tahsildar to look into the complainant alleging that some private persons have encroached the tank situated in the aforesaid land surrounding Kote Anjaneyaswamy, Kote Kamma and Jain Basadi temples, he directed the authorities to remove those illegal encroachments.

3. On verification, it was found that land was transferred as Temple Paramboku" and "Kere Paramboku" and was illegally encroached by the complainants and others. Therefore, a notice came to be issued calling upon them to vacate the encroachment. That notice was challenged by filing the writ petition.

4. In the writ petition, the Deputy Commissioner, Davanagere District, Asst. Commissioner, Harapanahalli Sub-Division, Tahsildar of Harapanahalli Taluk were made parties. Similarly, Chief Officer, Harapanahalli Town Municipal Council and Registrar, Karnataka Lokayukta were also made parties. The Government Advocate represented respondent Nos. 1 to 3, Sri V.T. Rayareddi, Advocate represented R-4 and Sri Gowthamdevi C. Ullal, Advocate represented R-5.

5. Para. 3 of the order passed by this Court reads as under:

"Petition is not opposed by filing statement of objections. There is no representation for the 4th and 5th respondents. Learned Government Advocate submits that the 4th respondent ought to have extended an opportunity of hearing to the petitioner before taking the decision to direct him to vacate the premises."

6. This factual position is not disputed by the learned counsel appearing for the accused. What transpires there from is, that the authorities have initiated the proceedings against the encroachers of a public land, which action was challenged before this Court by way of writ petition. Though the Government Advocate entered appearance, the Government failed to file statement of objection and to protect the interest of the public. There was no representation on behalf of the 4th and 5th respondents. When the counsel for the 4th respondent was absent and no statement was filed, the learned Government Advocate had no authority to submit on behalf of 4th respondent that the 4th respondent ought to have extended an opportunity. Even if the said submission has been made, in our considered view, the Court should not have acted upon such submission as the same is without authority of law.

7. This is not the way the public property, wherein the temples, tanks and public places are located, is to be protected by the authorities. It is the duty of the public officers to protect them. Not only there is dereliction of duty, there is total inaction and collusion on their part. The concerned officers by their inaction have virtually colluded with the encroachers. Therefore, proceedings have to be initiated against these persons for such collusion, inaction and for not filing objections.

8. Therefore, we direct the High Court Registry to send a copy of this order along with all papers which are filed in this case to the Lokayukta for investigation. Similarly, a copy be sent to the State for initiating appropriate disciplinary proceedings against all the concerned for dereliction of duty. That is the only way the Court can protect public interest and infuse confidence of the public in the administration of justice. This is not an isolated case. Day in and day out, the Government officials who are appointed to protect the public property are making mockery in exercise of their powers. They pass irresponsible orders so that encroachers challenge the same in the Court and when it is challenged in the Court, they do not contest the matter, they mislead the Court and orders are passed preventing the removal of encroachment and in the end, everyone point

out a finger at the Court for coming in the way of taking action against these encroachers.

9. It is in this background, we have to see what is the contempt which is committed which is accused of. In the entire order, there is no reference to the property number to which the petitioner is entitled to. There is no reference to the sanction plan, khatha endorsement or construction put-up by the complainant. The complainants do not produce even in these proceedings the documents of title, khatha endorsement and tax paid receipts. All that they have relied on is, photographs showing some demolition.

10. The pleadings in this case disclose, after the order is passed, authorities initiated proceedings and an attempt was made to serve the notice upon the complainant at the address given by him in the Writ Petition which according to the respondents was refused by the complainant. Thereafter, they proceeded to pass an order. Then again copy of the order was sought to be served which also they have refused. The photographs are produced in proof of refusal. Therefore, they contend that there is no dis-obedience.

11. Per contra, it is submitted that these orders are all stage-managed. The application under the RTI Act was filed and the reply given therein shows, these orders had not come into existence on the day the order is shown to have passed.

12. Now, the material on record shows that in pursuance of the order passed in the Writ Petition, the accused have taken action and passed orders. Whether the said order passed is in accordance with law, whether it is stage managed as contended, is a matter to be enquired into, not in the contempt proceedings but in a proceedings where the said order is challenged. In the facts and circumstances, we find there is no contempt. Hence, the proceedings are dropped reserving liberty to challenge the orders if they are advised to do so. It is made clear that, if and when the order is challenged, the complainants shall adjudicate their rights in any competent forum and such forum shall decide the rights of the complainants on merits and in accordance with law without in any way being influenced by any of the observations made by this Court in this order.

13. At the same time, this case should be an eye-opener to the Government Advocates. Send a copy of this order to the learned Advocate General to take appropriate steps to see that such mistakes do not happen in future from his Office. Send a copy of this order to the Lokayukta and Principal Secretary, Revenue Department, Karnataka Government for needful action.