

(2014) 12 KAR CK 0294

In the Karnataka High Court

Case No : Writ Petition Nos. 47667 to 47691 and 47303 to 47319 of 2012 (LA-RES)

A.N. Nithya and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Citation : (2015) 2 KarLJ 213

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : S.N. Prashanth Chandra, Advocates for the Appellant; Sriyuths M.I. Arun, Additional Government and D. Srinivas Murthy, Advocates for the Respondent

Judgement

Ram Mohan Reddy, J.—All petitioners claim to be permanent residents of Huliurdurga, Kunigal Taluk, Tumakuru District-572 123, while their common interest as landlord or tenants is over the immovable properties in their occupation along side the road known as "Huliurdurga Road" connecting Maddur to Tumkur. It is stated that State Highway No. 33 runs from Maddur to Huliurdurga and thereafter to Kunigal, in Tumkur District passing through Huliurdurga Town and the immovable properties along side the said State Highway on either side belongs to the petitioners.

2. The grievance of the petitioners as aired by their learned Counsel is that the 7th respondent-Grama Panchayat, high handedly resorted to demolition of the houses alongside the State Highway without either acquiring the property or following due process of law. On the said allegation, petitioners preferred W.P. Nos. 45015 to 45019 of 2011 and connected petitions, whence a learned Single Judge by order dated 22-6-2012 Annexure-F, disposed of the petitions with the following directions:

"(i) The respondents shall not dispossess the petitioners in these writ petitions without the due process of law having regard to the provisions of the Karnataka

Municipalities Act, 1964, Karnataka Town and Country Planning Act, 1961 as well as National Highways Act, 1956.

(ii) In respect of the encroachers, the respondents shall issue notice to them and call upon them to produce the necessary documents and on such documents being produced, it shall examine whether indeed they are encroachers or not.

(iii) If the respondents comes to a conclusion that they are required to proceed under the provisions of the Act and take possession on the ground that they are encroachers, the said order shall not be given effect to for a period of two weeks".

3. It is the further allegation of the petitioners that without complying with the aforesaid directions, the 7th respondent is said to have issued notices dated 10-9-2012 Annexure-G and 20-11-2012 Annexure-J and thereafter wards demolished portions of the building. Hence these petitions for the following relief"s:

Prayers in W.P. Nos. 47667 to 47691 of 2012:

(A) Issue a writ of certiorari or any other appropriate writ, direction or order quashing the final notice/order dated 20-11-2012 issued by the seventh respondent at Annexure-J as illegal and violative of the Constitution of India.

(B) Issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents not to resort to the proposed widening and the consequent demolition of the immovable properties/residential houses on the Huliurdurga Main Road between Sri Anjaneyaswamy Temple, Hosapete and Huliuramma Temple, Hale Pete, Huliurdurga Town, Kunigal Taluk, Tumkur District, except by due process know to law".

Prayers in W.P. Nos. 47303 to 47319 of 2012:

(A) Issue a writ of certiorari or any other appropriate writ, direction or order quashing the final notice/order dated 10-9-2012 issued by the seventh respondent at Annexure-J as illegal and violative of the Constitution of India.

(B) Issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents not to resort to the proposed widening and the consequent demolition of the immovable properties/residential houses on the Huliurdurga Main Road between Sri Anjaneyaswamy Temple, Hosapete and Huliuramma Temple, Hale Pete, Huliurdurga Town, Kunigal Taluk, Tumkur District, except by due process know to law.

4. Petitions are not opposed by filing statement of objections of the respondents. 7th respondent though represented by learned Counsel is conspicuously absent. Though enough time was extended on several dates of hearing in the past, nevertheless, 7th respondent did not file statement of objections.

5. Having heard Sri S.N. Prashanth Chandra, learned Counsel for the petitioners

and learned Additional Government Advocate for respondents 1 to 6, perused the notices Annexures-G and J of the 7th respondent, it is apparent that petitioners are residents in occupation of certain portions of the buildings adjoining the State Highway No. 33 also known as "Huliyurdurga Road" in Huliyurdurga Town and that since the width of the road is narrow, causing obstruction for the easy movement of motor vehicles, the 7th respondent decided to widen the road and sequentially took up action to demolish portions of the immovable properties being buildings occupied by the petitioners, without notice, while extending some of the petitioners opportunity to place records establishing their title to property.

6. If regard is had to the directions issued by the learned Single Judge noticed supra, there can be no more doubt that the notices Annexures-G and J are not compliant with the said directions. In that view of the matter, notices Annexures-G and J are illegal and unsustainable.

7. Although learned Counsel for the petitioners submits that the portions of the immovable properties belonging to the petitioners have been demolished, nevertheless, one of the prayer in the petitions is to direct the 7th respondent not to resort to demolition of the demolition of the immovable properties, hence, it will be too far-fetched for this Court to sit in judgment and record a finding as to whether or not the properties have been demolished.

8. There can also be no doubt that the respondent-State and its Department did not permit either acquisition of lands for widening the road or issued directions to demolish the structures, for the said purpose, as indicated in the communication dated 19-12-2011 of the Assistant Executive Engineer, PWD, Annexure-M to W.P. Nos. 47303 to 47319 of 2012 as also the endorsement dated 12-1-2012 Annexure-N of the 7th respondent-Village Panchayat, indicated that there are no notifications under the Land Acquisition Act, 1894, for acquisition of the said properties.

9. In the result, these petitions are allowed in part. Notices dated 20-11-2012 Annexure-J in W.P. Nos. 47667 to 47691 of 2012 and Annexure-J in W.P. Nos. 47303 to 47319 of 2012 are quashed. A writ of mandamus shall ensue to the respondents to comply with the directions issued by the learned Single Judge noticed supra and if the properties belonging to the petitioners have been demolished, petitioners are entitled to initiate such legal proceeding as are permissible in law for recovery of damages/compensation and the like by instituting suits before the Competent Civil Court.