

(2014) 09 KAR CK 0223
In the Karnataka High Court
Case No : WP No. 28390/2012(LB-BMP-PIL)

A.V. Srinivasa Murthy

APPELLANT

Vs

The Commissioner B.B.M.P.

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Citation : (2014) 09 KAR CK 0223

Hon'ble Judges : D.H. Waghela, C.J.;Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : Vivek Reddy, Sr. Counsel and Ismail, Advocate for the Appellant; H. Devendrappa and Manmohan P.N, Advocate for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, C.J.—After pendency of the petition for nearly two years and filing of statements of objections of respondent Nos. 1 to 4 and hearing of the matter from time to time, the petition has not been admitted and no interim relief is granted. Even after an extensive hearing today, the petitioner could not satisfy the Court about his own locus standi or bona fides to take up the issues which are raised in the petition.

2. The petition in the nature of public interest litigation, in effect, questions construction on a piece of land apparently in the ownership of a private party who is joined herein as respondent No. 4. The prayers in the petition are couched in the following terms;

"a) To issue mandamus directing the Respondents to restore the encroachment on 6th cross road, (adjacent to 24th Main Road J.P. Nagara) Marenhalli village, 2nd Phase, J.P. Nagara Bangalore as per the opinion furnished by the Law officer B.B.M.P.

b) Directed to initiate disciplinary proceedings against the officer who is neglected to restore the encroachment on 6th cross road, (adjacent to 24th Main Road J.P. Nagara) Marenhalli village, 2nd Phase, J.P. Nagara Bangalore as per the

opinion furnished by the Law Officer B.B.M.P.

c) Pass any suitable order/direction which is deemed fit in the interest of justice."

Even after amendment, prayer (a) is improved to state as under;

"a) To issue mandamus directing the Respondents to clear the encroachment and to restore the road (adjacent to 24th main road, J.P. Nagar) Marenhalli village, 2nd phase, J.P. Nagar Bangalore as per the opinion furnished by the Law Officer BBMP."

3. It is clear from the above part that the petitioner claims that the premises in question is a public road which is required to be protected from encroachment by respondent No. 4; and the basis of such claim is an opinion furnished by the Law Officer of Bruhat Bangalore Mahanagara Palike (BBMP).

4. Respondent No. 4, the main contesting party, has raised several preliminary objections to the maintainability of the petition and inter alia averred that the petition is nothing but abuse of the process of this Court, even as the petitioner himself wanted to encroach the property of respondent No. 4 on the basis of the concocted possession certificate. It is further stated that there are several litigations in respect of the sites formed in the layout and there has been litigation by him in the form of OS No. 7725/2011 against one Sri. Abbas Ali Bhora in respect of site No. 9, seeking permanent injunction. As against that, Sri. Abbas has filed his counter claim seeking permanent injunction against respondent No. 4 herein with a prayer for restoration of the road by removing the alleged unauthorised construction. It is categorically alleged that Sri. Abbas along with certain others has got the present PIL filed through the petitioner. According to respondent No. 4, the Bangalore Development Authority (BDA) has, by communication dated 16.12.2013, already confirmed that site Nos. 8 and 9 are as per layout plan approved by the BDA. Thereafter, respondent No. 4 is stated to have obtained sanctioned plan dated 30.11.2013 from the BBMP for putting up construction on site No. 8 and the contention of the petitioner that respondent No. 4 has encroached upon 6th cross is stated to be absolutely false. It is also stated that pursuant to a complaint filed by the petitioner, the police personnel of Bangalore Metropolitan Task Force (BMTF) have examined the matter and filed "B" report, suggesting that no case was made out. An objection is also raised to submit that while BDA was the proper and necessary party, the petitioner has not joined them as respondent.

5. It is clear from the contentions of the petitioner and objections of respondent No. 4 that not only that there are pending civil litigations in respect of the same premises, but the necessary party who could give a final opinion on the subject matter is not even joined as a party. The petitioner does not claim any personal interest in the matter nor is he stated to have any record of any social service and admittedly, questions of disputed facts are involved in the matter.

6. Therefore, it was suggested at the bar that if the petitioner were to have any

locus standi in the matter and a good prima facie case to prove on facts, he has to take the remedy of filing a civil suit with appropriate prayers. Learned counsel for respondent No. 4 conceded that this Court is not required to express any opinion on the subject matter of the litigation in view of the pending and prospective litigation in respect of same piece of land. He also fairly stated that if any development on the land in question has taken place or being undertaken, it would naturally be subject to any judicial order that may be made in appropriate proceeding, again subject to right of appeal of respondent No. 4.

7. Lastly, learned counsel for the petitioner requested for an order against respondent No. 4 to maintain status quo at least for a period of 15 days while the petitioner or any other interested person may approach the civil court. In view of the concession made and recorded earlier, the request is rejected. However, the rejection is requested to be deleted. Accordingly, it is deleted.

8. In the above facts and circumstances, the petition is dismissed, with no order as to costs.