
(1980) 09 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 5737 of 1975

B. Narasimhachari

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1981 Kar 177

Hon'ble Judges : B.S. Puttaswamy, J

Bench : Single Bench

Advocate : B.M. Krishna Bhat, for the Appellant; Padmanabha Bhat, P.R. Ramesh, R.G. Deodhar, Govt. Pleader, S. Gundappa and H.L. Dattu, for the Respondent

Judgement

1. In this petition under Art. 226 of the Constitution, the petitioner has challenged the order of the Government dated 21-10-1975 in No. HMA TDI 75 (Ext.-B); Order dated 30-8-1975 in No. MUN II 820/ 72-73 of the Divisional Commissioner, Mysore Division, Mysore (hereinafter referred to as the Commissioner) (Exhibit-A) various resolutions of the City Municipal Council, Mandya (hereinafter referred to as the Municipality) and the orders made thereto by the Commissioner, granting shop sites to respondents 4 and 5.

2. Some time in 1960, the Municipality acquired a land bearing Sy. No. 184 of Mandya City owned by a deity called "Sree Lakshmi Janardhana Swamy of Mandya" and other adjoining lands, formed about 70 building and shop sites on the said lands for distribution to the residents of the City. Out of the said 70 sites, we are concerned with three shop sites measuring 15" X 30", 20" x 30" and 25" x 30". Even though the aforesaid shop sites were acquired and vested free from all encumbrances in the Municipality, the petitioner has continued to be in possession of those sites. According to Sri B. M. Krishna Bhat, learned counsel for the petitioner, the petitioner is stated to be in Possession of the sites for well over 50 years.

3. In the years 1971 and 1972 the Municipality has distributed all the 70 sites including the three sites one measuring 15" x 30" to the petitioner and the other two measuring 15" X 30" and 25" x 30" to respondents 4 and 5. On different dates the Commissioner has accorded his sanction to the grants granted to respondents 4 and 5. Respondent No. 4 has alienated the site granted to him to respondent No. 6 sometime in 1973.

4. Before the Commissioner and Government the petitioner challenged the action of the Municipality granting sites to respondents 4 and 5 and those authorities have refused to interfere with the same.

5. The petitioner has alleged that the sites granted to respondents 4 and 5 are in contravention of Rule 39 of the Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provisions) Rules, 1966 (hereinafter referred to as the Rules) framed under the Karnataka Municipalities Act of 1964. On that ground he has sought cancellation of those grants and for a direction to consider his application for the grant in accordance with law.

6. Respondent No. 3 in its return does not dispute the contravention of Rule 39 to the grants made to the petitioner and respondents 4 and 5. Along with the memo, it has produced the authenticated copies of the resolution granting a site measuring an extent of 15" X 30" to the petitioner. Respondent No. 5 has filed a separate return justifying the grant made to him.

7. At the hearing Sri S. Gundappa, learned counsel for respondent No. 5 on the instructions of his client, stated that one of the brothers of the petitioner by name Kalahari has also been granted a shop site measuring 15" x 30" in 1971-72 out of the 70 sites by the Municipality in the very same way. Sri Krishna Bhat did not dispute that Kalahari is the brother of the petitioner and has been granted a site out of the 70 sites. But, he stated that Kalahari is divided and is living separately.

8. Sri Krishna Bhat contends that the grant of sites to respondents 4 and 5 by the Municipality is in contravention of Rule 39 of the Rules and, therefore, requires to be cancelled. In support of his contention, Sri Krishna Bhat strongly relied upon the ruling of Venkataramaiah, J. (as he then was) in *J. Jaichand etc. Vs. The Town Municipality, Robertson pet, K.G.F. and Others*, Division Bench ruling of this Court in *R. Ramajois, v. State of Karnataka* (ILR (1978) Kar 992) and the ruling of the Supreme Court in

K. Ramdas Shenoy v. The Chief Officers, Town Municipal Council, Udipi (AIR W4 SC 2177).

9. Sriyuths R. G. Devadhar, P. R. Ramesh, H. L. Dattu, S. Gundappa and Padmanabha Mahale, learned counsel appearing for respondents 1, 2, 3, 4, 5 and 6 respectively did not dispute the violation of Rule 39 of the Rules. But they contended that the petitioner was not genuinely espousing a public cause and his conduct disentitles him to any relief under Art. 226 of the Constitution. Learned

counsel for the respondents relied on various circum. stances and grounds that win be noticed and dealt by me in due course.

10. In answer to the contention of the learned Counsel for the respondents, Sri Krishna Bhat, urged that the grant made to the petitioner for which the upset price had not so far been paid by him, has not be, come final and the illegality committed by the Municipality being clear and not in dispute, this Court was bound to quash the grants on the principles enunciated in J. Jaichand etc. Vs. The Town Municipality, Robertson pet, K.G.F. and Others, and Rama Jois's (ILR (1978) Kar 982) cases.

11. Before the Government - Commissioner as also in the writ petition, originally filed, the petitioner had not complained of the violation of Rule 39 of the Rules, the contravention of which is however now not in dispute at all. If the petitioner had approached this Court espousing a genuine public cause as happened in Rama Jois' case or his case had not been treated with that of respondents 4 and 5 as happened in Jayachand's case this Court could not have refused to quash the grants made to respondents 4 and 5 and direct the Municipality to dispose of the sites in accordance with law.

12. Let me now examine the alternative contention urged for the respondents.

13. Admittedly, the petitioner is in wrongful possession of the sites without any semblance of right thereto. Whatever be the rights of the petitioner prior to acquisition in 1960, on the acquisition, all his rights stood extinguished. As a trespasser of a valuable public property, the petitioner can hardly complain of the violation of R. 39 of the Rules. The infraction is pleaded only to be in wrongful possession and grab the same, to the exclusion of all others. No Court can assist such a person.

14. Evidently, on an application made by the petitioner, the Municipality has granted an extent of 15" X 30" to the petitioner. In his order, the Commissioner has drawn pointed reference to this fact and has refused to interfere with the grants made to respondents 4 and 5. He does not dispute that the grant made to him suffers from the same violation as the one found in others. After all, the petitioner is in the same boat in which respondents 4 and 5 are sailing. When that is so, this Court would not be justified in annulling the grants made to respondents 4 and 5.

15. As noticed earlier the petitioner does not dispute the grant of it site to one of his brothers who is stated to be divided and is living separately. He has not challenged the grant made to his brother and the other 66 persons, who have also been granted in contravention of Rule 39 of the Rules. Some of the sites granted have changed hands and most of them have built houses or shops as the case may be. Any order annulling the grants made to respondents 4 and 5, besides being unjust, would possibly throw doubt on other grants also.

16. The conduct of the petitioner, who is motivated by greed disentitles him for

the equitable relief, whatever be the illegality in the action of the authorities.

17. For the above reasons this is a fit case in which this Court should decline to exercise the extraordinary jurisdiction in favour of the petitioner.

18. Before parting with this case, it is necessary to point out that when this case was argued on an earlier occasion, learned counsel for the parties sought for time to examine the desirability of an amicable settlement and report the same. On more than one occasion, I adjourned the case for that purpose. As no settlement was reported, I heard the case in full to-day. Notwithstanding the infirmities in his own case, the petitioner persisted to challenge the grant made to respondents 4 and 5. In this view, I see no justification to deny costs to the respondents.

19. In the light of my above discussion, I hold that this is not a fit case for my interference under Article 226 of the Constitution and rule issued is liable to be discharged. Rule issued is, therefore, discharged with costs of respondents in five different sets. Advocate's fee Rs. 100/- in each set.

20. Petition dismissed.