

(2016) 01 KAR CK 0190

In the Karnataka High Court

Case No : Writ Petition Nos. 113616-113641/2015 (GM-RES)

Bangarayya and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

Citation : (2016) 01 KAR CK 0190

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : V.M. Sheelvant, Advocate, for the Appellant; K. Vidyavathi, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—1. This is the 4th round litigation by the petitioners, seeking for a mandamus directing the respondent No. 5 not to demolish the houses of the petitioners bearing house Nos. 162, 28, 83, 93, 76, 66, 36, 88, 81, 92, 58, 10, 73, 08, 79, 66, 51, 23, 22, 30, 101, 13, 38, 70, 67 and 34 respectively, situated in Virupapura Gadde village of Gangavati Taluka, Koppal District.

2. It is the case of the petitioners that they are poor agricultural coolies and most of them belong to the Scheduled Caste and weaker section of the Society. The State Government has allotted Janata houses to the petitioners and all the petitioners were in possession of their respective houses. The petitioners are residing in the houses along with their families, without any objection from anybody and they are paying taxes regularly. It is the further case of the petitioners that, all of a sudden, without any intimation or notice, the Forest Officials along with the Tahasildar came to the Virupapura Gadde village on 26.02.2013, in the morning hours and started demolishing the constructions and huts of the resident of Virupapura Gadde, pretending that they are widening the road and for the said purpose additional area is required. Some of the residents have even requested to take out their belongings from the shops and houses before demolition, but the respondent authorities did not allow them. Later on

the petitioners came to know that the area, in which they are residing, is a forest land and hence the authorities were demolishing their houses. By that time, it was evening and as such, the authorities threatened the petitioners to vacate the houses otherwise they would demolish the houses of the petitioners. Therefore, the petitioners approached this Court in writ petition No. 76572/2013 and connected matter. This Court after hearing both the parties, by its order dated 01.04.2013, disposed of the matters, holding that the petitioners are residing in the reserved forest area and they have not made Gram Panchayat as party and held that, if at all the claim of the petitioners are correct, the Gram Panchayat has to allot them alternative sites to construct houses etc. Therefore, the petitioners are before this Court for the relief sought for.

3. The State Government filed statement of objections on 01.12.2015, contending that the area in which the petitioners are residing is a reserved forest area and the petitioners have been illegally running resorts, hotels, shops and other commercial activities, catering to the large number of tourist population, especially the foreigners. The details of the commercial activities of the petitioners are produced at Annexures R1 and R2. The Forest Authorities have also passed orders after following the procedure under the provisions of Section 64(A) of the Karnataka Forest Act, 1963 ("Forest Act", for short). The relief sought for by the petitioners would run counter to the provisions of the Forest Act and the provisions of the Forest Conservation Act, 1980, and contrary to the dictum of the Hon'ble Supreme Court in Godhavarman's case. The statement of objections also reflects that the respondent authorities are facing departmental enquiry by the Lokayukta, for taking delayed action against the encroachment by the petitioners and charges are also issued as per Annexure-R4. Therefore, the State requested to dismiss the writ petitions with cost.

4. I have heard the learned Counsel for the parties to the lis and perused the material on record.

5. Sri V.M. Sheelvant, learned Counsel for the petitioners, has contended that the respondent Nos. 4 and 5 are bound by the circular dated 13.03.2015 produced at Annexure-B and without making any alternative arrangement, they ought not have issued notices at Annexures D1 to D25. If the petitioners were allotted sites by the Gram Panchayat, then the respondents cannot evict the petitioners, unless the alternative houses are provided. Therefore, the act of the respondents is illegal, arbitrary and cannot be sustained. He also contended that the 5th respondent has decided to provide alternative houses to the petitioners. Till then, respondents 4 and 5 ought not to have taken coercive steps to demolish the houses of the petitioners. Therefore, he sought to allow the writ petitions.

6. Per contra, Smt. K. Vidyavathi, learned Addl. Government Advocate, strenuously contended that the petitioners are encroachers of forest land. No mercy could be shown to the persons who encroached the forest land and doing commercial business in the forest land, as reflected in Annexures-R1 and R2, produced along with the writ petitions. Therefore, she sought to dismiss the writ

petitions.

7. Sri Sanjay S. Katagen, learned Counsel for the respondent No. 6 -- Gram Panchayat stated that, the land encroached by the petitioners is the forest land and the Gram Panchayat might have allotted the houses to the petitioners without knowing that it was a forest land. Now, if it is the forest land, the Gram Panchayat has no power to allot any of the houses. Therefore, he requested the Court to pass appropriate orders in accordance with law.

8. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties to the lis and perused the entire material on record carefully.

9. It is not in dispute that all the petitioners, who have encroached the forest land, are situated in survey No. 49 measuring 244 acres 36 guntas of Virupapura Gadde, Gangavathi Taluk, Koppal District. The State Government issued notification as long back on 28.09.1967, declaring the said land as reserved forest and admittedly the said notification declaring the said area as forest land is not challenged and is not the subject matter of any of the writ petitions of the petitioners. Subsequently, by another notification dated 22.10.1988, issued by the State Government under the provisions of Karnataka Ancient and Historical Monuments and Archeological Sites and Remains Act, 1961 ("the Historical Monuments Act", for short), the area in question is declared as "protected area". As per Section 20 of the Historical Monuments Act provides that, no person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining, quarrying, excavating, blasting or any operation of a like nature on protected area. The said notification issued by the State Government is final and conclusive. It is also not in dispute that the Forest Authorities exercising their powers under the provisions of Section 64A of the Forest Act, have passed orders of eviction. The said orders passed by the authorities are also final and conclusive. The petitioners have not challenged the said orders. It is also not in dispute that the very petitioners filed W.P. No. 76572/2013 and connected matters before this Court for the very relief sought for in the present writ petitions. This Court, after hearing both the parties, by its order dated 01.04.2013, dismissed the writ petitions holding that the property, on which the petitioners were claiming right, is a forest area and the petitioners cannot claim any right without challenging the earlier notifications declaring the said land as reserved forest and protected area. The said order passed by this Court reached finality. It is also relevant to mention here that the very petitioners filed another writ petition before this Court in W.P. Nos. 102721-746/2015 for the similar relief, and the said writ petition came to be dismissed as withdrawn at the instance of the petitioners, in view of the Government Order dated 13.03.2015.

10. The State Government, by filing statement of objections in the present writ petitions, specifically has taken a defence that the petitioners having been notified against violation of provisions of Section 24(g) and (gg) of the Forest Act

and after granting sufficient opportunity, the concerned authorities have passed final orders under Section 64-A of the Forest Act between 31.12.2004 and 17.02.2009. The said orders have attained finality and the said orders being implemented, the writ petitions filed by the petitioners for the similar relief were rejected by this Court on 01.04.2013. The petitioners being the violators of law, encroaching the forest land, they are not entitled to any relief before this Court. It is also contended that the petitioners have been illegally running resorts, hotels, shops and other commercial activities catering to the large number of tourist population especially foreigners, and produced the details as per Annexures-R1 and R2, which is denied by the petitioners.

11. Section 2 of the Forest Conservation Act, 1980, restricts on the dereservation of forests or use of forest land for non-forest purpose, which reads as under:

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.--Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,--

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

1 (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.] 2 [Explanation.-- For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for--

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

12. It is relevant to state at this stage, that the Hon"ble Supreme Court in the case of T.N. Godavarman Thirumulkpad Vs. Union of India reported in , (1997) 2 SCC 267, specifically held that any reserved forest area cannot be used for dereservation of reserved forest or use of forest land for any non-forest purpose is

impermissible, except prior approval of the Central Government. The relevant paragraphs are extracted hereinbelow:

"1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet evergreen forest of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

3. The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or waterways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest."

13. Admittedly, in the present case, the material on record clearly depicts that the property in question is a reserved forest land and it was a protected area. By issuing notifications between 1967 and 1988 and subsequently, the concerned Forest Authorities exercising their power passed the eviction order against the petitioners, the said orders are final and conclusive. It is also not in dispute that, earlier the petitioners, on two occasions, approached this Court for the similar relief and this Court, on both the occasions, has dismissed the writ petitions and recorded a specific finding that the area in which the petitioners were residing

i.e., survey No. 49 of Virupapura Gadde village is a reserved forest area and it is also a protected area declared under the provisions of Historical Monuments Act.

14. In view of the aforesaid reasons, the writ petitions filed by the petitioners are liable to be dismissed.

Accordingly, the writ petitions are dismissed.

However, the petitioners are permitted to reside in their respective houses existing as on today, till the end of April, 2016 on humanitarian grounds and thereafter, the petitioners shall voluntarily vacate their houses without inviting the respondents to demolish the same. If they failed to vacate the houses, it is always open to the respondents to take action immediately, in view of the orders passed earlier by this Court and the present order.

It is also open for the petitioners to approach the 5th respondent or any other concerned Gram Panchayat for the appropriate reliefs, in accordance with law.

Sri Sanjay S. Katagen, learned Counsel and the Smt. K. Vidyavathi, learned AGA is permitted to file memo of appearance within two weeks.