

(2015) 11 KAR CK 0139

In the Karnataka High Court

Case No : Writ Petition Nos. 9700-9705 of 2015 and 9936-9938 of 2015 (LA-RES)

Bharathi Prakash and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0139

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Sunil S. Rao, Adv. for T. Seshagiri Rao, Advocate, for the Appellant; H. Venkatesh Dodderi, AGA, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Petitioner No. 1 claims to be the owner in possession of the immovable property bearing Municipal katha No. 377/522, assessment No. 377/522, ward No. 26/1 measuring East to West 12 feet and North to South 24 feet, Sir M.V. Road (Bajar Road), Chikkaballapura; properties bearing Municipal Katha No. 176/169, Ward No. 19/1 measuring 17 feet x 42 feet; 8 feet x 17 feet and 32 feet x 12 feet, Sir M.V. Road (Bajar Road), Chikkaballapura; on the basis of the Will dated 26.11.2004 of one Smt. M.C. Huchamma, the beneficiary of which is one B.G. Nanjunda Prakash, petitioner's husband reportedly died on 29.04.2013, while Huchamma died on a date not known. It is the assertion that properties of which certificates Annexures-A2 and B2 are issued by the respondent Municipality, more appropriately katha Nos. 377/522 and 176/169 measuring 11 x 26 1/2 feet, 15 x 63 feet, 17 x 42 feet, 8 x 17 feet and 32 x 12 feet respectively, stand in the name of deceased B.G. Nanjunda Prakash.

2. In the absence of relevant material constituting substantial legal evidence of a fact that petitioner No. 1 is the widow of B.G. Nanjunda Prakash, is disentitled to the reliefs in the nature of writ of mandamus directing respondents to issue her a notice before undertaking road widening activity in Chikkaballapur and only after

acquiring the land, in addition to considering her oral representation.

3. Petitioner No. 2 claims to be the owner of property bearing municipal katha No. 81/81, assessment No. 81/81, Ward No. 16, measuring East West 32 feet and North South 64 feet, having acquired title under a registered sale deed dated 20.03.1972, Annexure-C1; petitioner No. 3 claims to be the owner of property bearing katha No. 578/523, ward No. 26, measuring East to West 10 1/2 x 26 1/2 and North to South 10 1/2 x 26 1/2 having acquired the same as a beneficiary under the Will dated 13.10.1997 of one B. Basavaraj, S/o. Setty Basettappa, the title of which is accepted by the Municipality which issued tax paid receipt. Petitioner No. 4 claims to be the owner of property bearing katha No. 39/37 measuring East to West 72 ft. and North to South 27 feet acquired under a registered sale deed dated 07.11.1985 and in respect of which taxes have been paid to municipality; and property bearing municipal katha No. 614/558 measuring 9 1/4 x 25 feet having acquired the same under the sale deed dated 27.02.1985, as also property bearing municipal katha No. 2/2 measuring 10 feet x 29 feet acquired under the sale deed dated 29.01.1986; petitioner No. 5 claims to be the owner in possession of the property bearing municipal katha No. 612/557 measuring East to West 17 1/2 feet and North to South 26 1/2 acquired under the sale deed dated 16.02.1987 while petitioner No. 6 claims to be the owner of property bearing municipal katha No. 26/24 measuring East to West 105 feet and North to South 26 1/2 feet having acquired under a gift deed dated 14.06.2004.

4. It is common grievance of the petitioners that certain officers of respondent Nos. 2 to 4 made some markings on their properties to be demolished and a public notice issued claiming that Government had passed an order at the instance of the Deputy Commissioner that all land owners should voluntarily demolish their structures by 20 metres, failing which, they would demolish the properties by 3rd week of March 2015, for widening the road. Alleging that respondent Nos. 2 and 4 were indulging in demolition drive illegally and without following due process, have jointly presented these petitions.

5. The apprehension of the petitioners of likelihood of some officers of respondent Nos. 2 and 3 coming to the spot and demolishing the building is misconceived. There is not a title of evidence to establish prima-facie that markings on the properties belonging to petitioners were made by certain officers of respondent Nos. 2 and 3. Although learned counsel for petitioners submits that in the statement of objections, Government admits the same, the submission is noticed only to be rejected, since no such statement of objection is forthcoming.

6. The names of the officers who allegedly came to the spot and affixed the markings are not forthcoming. Government order allegedly passed for widening the road by demolishing properties belonging to petitioners is yet another relevant material which is not forthcoming from the records. Some paper clippings stating that some action is to be taken is not evidence for the purpose

of Evidence Act in the matter of demolition drive by the respondent authorities.

7. The case made out by the petitioners is based on self serving statements upon which no writ lies.

8. All the reliefs being injunctory in nature, with disputed questions of fact, cannot be conveniently adjudicated in a writ proceeding by calling upon the parties to file affidavits. The question as to whether petitioners are the owners in possession of the immovable properties, their dimensions and buildings constructed well within the boundaries, are pure questions of fact which are to be decided after a full-fledged enquiry. The further question as to whether the widening of road would affect the immovable properties of petitioners requires an adjudication after a trial.

9. It is needless to say that the State would have to acquire the properties of the petitioners if necessary for widening the road and therefore a writ of mandamus is uncalled for. A writ of mandamus to respondents to consider the oral representation is unavailable. Writ of mandamus is not a writ of right for the mere asking of every person who comes to Court. It is elsewhere said, "any person who applies for a writ or order in the nature of mandamus should, in compliance with the well known rule of practice ordinarily first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carryout that duty within reasonable time before applying to that Court for such an order even where alleged action is established."

10. Petitions are hopelessly meritless and are accordingly rejected.

11. Since by order dated 10.03.2015 respondents were restrained from taking precipitative action including demolition of construction on the schedule properties whereafterwards on 30.04.2015 was continued until further orders, will enure to the benefit of the petitioners until 30.11.2015.