
(2005) 07 KAR CK 0059

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3669 of 2002

B.V.S. Anand and Others

APPELLANT

Vs

V. Vajravelu and Others

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 98 (3)

Citation : AIR 2005 Kar 399 : (2005) 6 KarLJ 88 : (2005) 4 KCCR 2901

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : G. Lingappa, for the Appellant; N. Dinesh Rao for Rao Associates for Respondents-1 to 3 and 5 to 14 and G.M. Umapathi, for Respondents-15 to 18, 21, 25, 26, 28, 32, 33, 35, 40, 43, 46, 47, 49, 50, 51, 54 and 56, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—This appeal is by some of the defendants arrayed in the suit. The dispute has a considerable history and the facts of the case are briefly stated here for the purpose of considering this appeal.

2. The suit is directed against defendants 1 and 2, namely, the Commissioner, Bangalore Mahanagara Palike (hereinafter referred to as "the Corporation" for brevity) and the Inspector General of Police, Task Force, Bangalore Mahanagara Palike, Bangalore (hereinafter referred to as "the IGP" for short). The plaintiffs are residents of Rajajinagar area and the other defendants are also said to be residents of that area. The plaintiffs, who are respondents herein, contend that there is a temple called "Sri Shanidevara" situated at No. 591/A, 5th Main, 4th Block, Rajajinagar, Bangalore, in a site measuring about 41" x 80" and the plaintiffs claim that they are residents of the area and have been offering prayers at the temple for several years. They contend that the temple is headed by a Trust by the name of "Sri Shanidevara Seva Mandali". The said Trust is alleged to have laid claim to the property where the temple is situated and have

approached the concerned authorities in this regard to perfect their occupation and title and the matter is pending before the said authorities. That the temple has been established several years ago and that prayers are being offered continuously, is an established fact according to the plaintiffs. It is alleged that on 14-11-2000, the officials of the Corporation arrived at the temple which is the suit schedule property and intended to demolish and dismantle the temple including the idol of Sri Shanidevara in the temple. It is alleged that the plaintiffs were successful in preventing the officials of the Corporation from demolishing the temple. Yet again, on 14-2-2001, the Corporation officials are said to have made another attempt to demolish the temple and once again the plaintiffs were successful in preventing such action. According to the plaintiffs, there is no indication that the Corporation officials are proceeding in accordance with law in taking recourse to the drastic action of demolishing the temple and it is in this background that the suit is filed. The plaintiffs have also filed an application for temporary injunction seeking an order restraining the Corporation officials from demolishing the suit properties. According to the written statement filed by the defendant-Corporation and the written statement filed on behalf of other defendants, the suit schedule property is a civic amenity site reserved for the purpose of park and playground. That in the year 1968, the area came within the jurisdiction of the Corporation. It was noticed that one Seshadri was making attempts to construct sheds on the schedule property and the Corporation had issued notice dated 9-5-1975 calling upon him to remove the unauthorised constructions. It appears, the said Seshadri had filed a suit in O.S. No. 1457 of 1975 restraining the Corporation from taking any action. The suit having been dismissed on 15-2-1977, the said Seshadri is said to have filed a writ petition challenging the eviction notice in W.P. No. 4007 of 1977. The said writ petition having been dismissed on 4-1-1982, a writ appeal in W.A. No. 247 of 1982 was filed. The said writ appeal also having been dismissed, Seshadri and his wife appear to have registered a society which is now known as "Shanidevara Seva Mandal" and a suit has been instituted in O.S. No. 2468 of 1992 seeking an order of restraint against the Bangalore Development Authority and Corporation against demolition of the said temple. This suit was ultimately dismissed on 23-3-1995. In the meantime, Seshadri and his wife are said to have died. One Savithri, who claimed as granddaughter of Seshadri, is said to have married one Mahadeva and had occupied the sheds in the suit property and constructed a compound wall around the suit property and installed gates as well. At this point of time, the Corporation Council, at the behest of the Trust now run by Savithri and others, passed a resolution proposing to grant the land in favour of the Trust at an upset price of Rs. 500/-. The defendants who were opposed to the existence of the temple in a civic amenity site, had filed a writ petition in W.P. No. 17750 of 1999 challenging the resolution to sell the property. In the said writ petition, the State Government which was a party, declared before the Court that it intended to preserve the park and, therefore, the resolution would be cancelled and withdrawn. Accordingly, the writ petition was disposed of on the basis of this statement by the State Government on 3-7-2000. The State Government

thereafter issued a Government Order dated 23-9-2000 u/s 98(3) of the Karnataka Municipal Corporations Act, 1976, cancelling the resolution dated 9-6-1998 and thereafter the Council of the Corporation passed a further resolution dated 26-9-2000 directing the Commissioner of the Corporation to demolish the temple on the suit property. The Trust had filed a writ petition in W.P. No. 39438 of 2000 before this Court in its writ jurisdiction against the Corporation and others not to demolish the temple. The writ petition came to be dismissed by an order dated 29-6-2001 holding that it was a clear abuse of process of Court and costs were imposed on the petitioner. Immediately thereafter, yet another suit in O.S. No. 5329 of 2001 was filed with a prayer to restrain the Corporation from demolishing the temple in the suit property. Temporary injunction was not granted. The appellants herein have impleaded themselves in that suit, which is said to be pending. It is in this background that the present suit O.S. No. 5360 of 2001 was filed by the respondents herein, since no order of temporary injunction was granted in O.S. No. 5329 of 2001 in respect of the very property against the very defendants. The Trial Court having granted an order of temporary injunction, the present appeal is filed.

3. Incidentally a contempt petition was filed by these appellants before this Court in CCC (Criminal) No. 41 of 2001 and two interim orders dated 13-3-2002 whereby this Court had directed the impleadment of a private party in the contempt petition and by the order dated 20-3-2002 this Court had directed the demolition of the temple in the suit property. This was carried on the Supreme Court by way of a SLP and leave was granted. The appeal was numbered as Cri. A. Nos. 459 and 460 of 2003 and the Supreme Court was pleased to allow the appeals holding that this Court could not have directed the demolition of the unauthorised construction without deciding the question whether any contempt was committed by the contemnors and directed this Court to take a decision in the pending contempt petition in accordance with law. In the meantime, the Trial Court having granted an order of injunction, the appellants have filed the present appeal.

4. The reasons assigned by the Court below are, firstly, that the suit is filed in a representative capacity and going by the numbers, plaintiffs are 79 in number and defendants are 13 and therefore, the Trial Court has concluded the majority of the public have joined as party plaintiffs and the Trial Court has proceeded to accept that the plaintiffs are regularly performing poojas and the defendants 1 and 2, namely the Corporation and other officials are taking steps to demolish the temple. The Court has prima facie found that the suit schedule property is meant for commercial purposes and is not a civic amenity site and further that the Trustees of the temple have moved the Competent Authorities for allotment of the suit property in favour of the Trust. The Court takes note of the said proceedings that are referred to hereinabove resting with the other pending suit in O.S. No. 5329 of 2001 brought by the alleged Trustees Mahadeva and Savithri of the aforesaid Trust and finally concluded that defendants 1 and 2 are seeking to forcibly demolish the temple and that even if the contention of the Corporation

that demolition is being carried out in terms of a resolution passed on 26-9-2000, the Court has held that the belated action is not satisfactorily explained and therefore holds that a prima facie case for injunction is made out and has hence directed that status quo be maintained till the disposal of the suit.

5. It is submitted on behalf of the appellant that the finding of the Trial Court that the suit property is not a civic amenity site, is a conclusion that is arrived at without any basis and in the face of no such finding being given in the several proceedings referred to hereinabove and therefore, would not form the basis for the grant of an order of temporary injunction. The appellants would urge that there being multiple proceedings right from the year 1975 instituted by persons who are in illegal occupation of the suit property and having failed to sustain their claim in all those proceedings and having failed to obtain any order of temporary injunction in the pending proceedings, have set up the present plaintiffs, respondents herein, to file the suit, which is again without any basis, since the plaintiffs, claiming to protect their right of worship, could not seek any relief in respect of immovable property which is admittedly in the occupation of a registered Trust and in the face of such registered Trust not having been able to obtain an order of injunction against the very defendants before a co-ordinate Court having jurisdiction, the order of the Trial Court with the knowledge of this circumstance, has resulted in gross violation of judicial discipline as well as advancing a blatant abuse of process of Court. The Counsel for appellants was at great pains to demonstrate that the plaintiffs lack bona fides and are obviously set up by the so-called trustees who are squatting on the suit property. It is further urged that the Corporation, in proceeding to take any action is in terms of the statutory provisions and the bye-laws governing it and the reasoning of the Court, that the Corporation, even if it were doing so, has not explained its belated actions satisfactorily and therefore requires to be restrained by an order of injunction, is a reasoning which is without the jurisdiction of the Court since the Civil Court is not sitting in appeal over the orders passed by the Municipal Corporation under statutory provisions. The impugned order dated 23-3-2002 runs counter to the order of a Division Bench of the High Court dated 20-3-2002 passed in CCC No. 41 of 200.1 directing demolition of the suit property Even though the order of the High Court has been reversed by the Supreme Court, the fact remains that as on the date of the impugned order, there was an order of a Division Bench of this Court as aforesaid, in force. It is further urged that the Trial Court has glossed over the series of proceedings that were referred to, to indicate the mala fides and abuse of process resorted to by the occupants of the suit property and by virtue of the grant of injunction, has resulted in aiding the illegal occupants to entrench themselves further.

6. The appellants' Counsel would rely upon the following judgments in support of his contention.--

In the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, , in support of his contention that an area reserved for park in the discretion of the

municipal authority should not be diverted for any other use. In *Sri Shanidevara Seva Mandali Vs. Commissioner, Bangalore City Corporation*, , in respect of very schedule property wherein this Court has held that the subordinate Courts ought not to pass orders mechanically and when the party approaches the Court against a public authority in respect of a piece of land or a structure, it is necessary to demonstrate that the person has a clear title in respect of the property and the Court would have to be prima facie satisfied on the basis of such material that the relief prayed for is warranted. And, in the case of *Alagi Alamelu Achi v. Ponniah Mudaliar*, AIR 1962 Mad. 149, in support of the proposition that a person in wrongful possession, cannot claim injunction against the lawful owner. And, in the case of *Down Mangor Valley, Mr. Cruz Dias and Mr. Carmelino Machado, Joint Secretary, Down Mangor Valley Residents Welfare Association, Mangor Hill, Vasco da Gama, Goa Vs. Mormugao Municipal Council, State of Goa, Shri Babu Laxman Rao, Shri Vithal R. Deshmukh, Shri Hirappa Kahndapnur, Shri Makanu Kattimani, Shri Amunsab Kattimani, Shri Makdum Kattimani, Ms. Renuka Rathod, Mrs. Kassimbi Dastagir Shaikh, Shri Babu Makandar, Mrs. Timarva Patrod alias Mrs. Tima Paturtit, Shri Abdul Razak Shaikh and Mrs. Mumtaina Shaikh alias Magdumsab Shaikh*, , for the proposition that when an open space is set aside as open space by a Municipal Corporation and if there is encroachment on the same, any members of the public who are affected would have a right to file a petition. And in the case of *Mirza Mohammed Yousuf Baig Vs. Deccan Enterprises*, , for the proposition that where similar applications were filed in the subsequent suit in respect of the same subject-matter and when there is non-disclosure of material facts and about institution of other proceedings, mere possession would not entitle such a party to claim the relief of injunction. This was rendered following several judgments of the Supreme Court, And, in the case of *State of U.P. Vs. Nawab Hussain*, , to urge constructive res judicata. The appellants' Counsel therefore prays that in the facts and circumstances of the case and having regard to the settled legal position on the principles of grant or otherwise of order of temporary injunction, the order of the Trial Court shall be set aside and the appeal allowed.

7. Sri Dinesh Rao appearing for respondents 1 to 3 and 5 to 14, who was absent on two occasions when the matter was heard and when the same was reserved for judgment, had moved the Court seeking an opportunity for further hearing and accordingly the matter was relisted for hearing and he was heard at length. Sri Rao submits that the respondents represent a large section of the public who have been worshipping at the temple situate on suit property for several decades now and are seeking to protect their right to continue such worship at the temple. The Corporation, has admitted that persons claiming under the Trust referred to hereinabove, have been in undisturbed possession continuously for several decades now and therefore, are in settled possession, which cannot be disturbed otherwise than under due process of law as held by the Apex Court as well as this Court in a line of cases. And therefore, without regard to any other aspect, the order of the Trial Court would have to be confirmed and the appeal

dismissed.

7-A. In any event, the appellants cannot claim to be aggrieved by the impugned order as the injunction is not sought against the appellants, but against the authorities who were proceeding to act in a high-handed manner without complying with the rule of law. Sri Rao has also filed an application seeking to produce additional documents to demonstrate one other aspect namely that the appellants are set up by appellant 7 who has an agenda of his own in having the temple on the suit property demolished and dismantled. He would submit that appellant 7 is a neighbouring site owner who has constructed his residential premises thereon. The suit property which abuts the said appellant's house is being eyed by him for several years and he had approached the authorities for grant of the said land which is not earmarked as a house site to be treated as a marginal land and to be allotted to him and therefore he is making all efforts to ensure that the temple in the suit property is demolished and the occupants are evicted. In this regard, he has taken me in detail through the several documents that are filed to stress the- hidden motives of the appellants in pursuing these proceedings to such lengths and he would rely on the following judgments in support of his contention.--

In the case of Smt. P. Prabhavathi and Anr. v. Divisional Controller, KSRTC, Gulbarga Division and Ors. ILR 2000 Kar. 436, which was rendered following the case of Puran Singh and Others Vs. The State of Punjab, and the case of Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, , to contend that a person, even if he is a trespasser, but who is in settled possession, cannot be thrown out without recourse to the due process of law and such a person is entitled to protect his possession even as against the true owner. And, insofar as the words "settled possession" is concerned, the Court has relied on the expression as defined by the Supreme Court in Puran Singh's case, wherein these words are held to have been used to mean such clear and effective possession of a person even if he is a trespasser, who gets a right under the criminal law to defend his property against attack even by the true owner. And, further, in the case of Basavaraj Shivaramagouda Patil Vs. Mahesh, for the proposition that the Appellate Court should not lightly interfere with the discretion exercised by the Trial Court in granting an injunction and also on the case of Sathyam alias Ramaiah and Ors. v. Karnataka Milk Federation Co-operative Limited ILR 1999 Kar. 301, for the proposition that a person in settled possession can protect that possession even against a true owner.

8. Sri G. Lingappa, appearing for the appellants would, in his reply contend, that the occupants of the suit property cannot be said to be in settled possession for three decades. It is by recourse to proceedings initiated in Courts of law on false pleas and baseless claims, that possession has been retained. It is not by virtue of any legal right that possession has been established on the suit property. The occupants, who are different people at different times, claiming under the other, cannot be said to have been in continuous possession. There can be no tacking

of illegal possession and the respondents, citing their numbers, would not establish a right where there is none, insofar as the suit property is concerned. In the face of the large number of proceedings where the occupants have failed to establish their right over the suit property having been ignored by the Trial Court, is a circumstance which requires this Court to interfere with the order of the Trial Court, for, it has exceeded its jurisdiction, even violating and passing an order running counter to an order of a Division Bench of the High Court as stated hereinabove. The judgment in the case of Sri Shanidevara Seva Mandali, has sealed the fate insofar as any occupant laying claim to the suit property without legal basis and when that is so, the respondents' prayer for injunction on the basis of protection of their right to worship could not be enforced as a fundamental right in a civil suit. Hence, the appeal deserves to be allowed or else it would result in perpetuating an abuse of process of the Court.

9. On these rival contentions, the appeal is considered. It is straightaway to be noticed that insofar as protection of immovable property is concerned, the Trust which claims to be managing the affairs of the temple, has already approached the Trial Court in O.S. No. 5329 of 2001 seeking identical relief against the very same defendants and the co-ordinate Court having refused to grant an injunction in favour of people who are claiming to be in settled possession, the respondents, who are making a claim on the basis that they worship at the temple and therefore their right to worship should not be taken away by the demolition of the temple, is once removed from the claim of persons who claim to be in actual possession and therefore, was even a less case for consideration of grant of temporary injunction if the co-ordinate Court was of the opinion that no prima facie case has been made out. The refusal of temporary injunction by the co-ordinate Court is also not difficult to understand in view of the checkered history which the suit carries.

10. It is also to be noted that the Trial Court has glossed over the long drawn out and series of proceedings with respect to the suit property in proceeding to grant the relief at the behest of respondents, who do not even claim to be in possession of the suit property.

11. The reasoning of the Trial Court that the Corporation authorities are not acting in accordance with law, is a prima facie finding and is rendered in a manner as if the Trial Court is setting in appeal over the orders that may have been passed under the statutory provisions, pursuant to which the Corporation authorities may have been exercising their powers and such a finding is arrived at in the face of caveat rendered by virtue of the judgment rendered in Sri Shanidevara Seva Mandali's case in this regard. The further judgment in Mirza Mohammed Yousuf Baig's case, has also been overlooked, wherein it is spelt out that a party who resorts to successful applications for the relief of temporary injunction in a series of proceedings, deliberately suppressing material facts and the fact of refusal of injunction order in respect of the very relief sought in other, proceedings, would disentitle a party to a relief of equity.

12. More seriously, the order of a Division Bench of this Court in CCC No. 41 of 2002 directing the demolition of the suit property, which was in force as on the date of the order, ought to have placed caution on the Court to proceed with circumspection. This was a requirement expected of a subordinate Court notwithstanding the fact that the order of the High Court has been subsequently modified by the Apex Court. Hence, the following judgment.--

The appeal is allowed. The order of the Trial Court is set aside. It is apparent that though the Trial Court has expressed that the main suit would be decided within three months from the date of the impugned order, it is kept pending even after three years. Hence, the Trial Court is directed to expedite the disposal of the suit within three months from the date of receipt of a copy of this order.