

(2010) 10 KAR CK 0100
In the Karnataka High Court
Case No : Writ Petition No. 16057 of 2010

D. Bhakthavatsala Naidu

APPELLANT

Vs

Bangalore Bruhath Mahanagara Palike and Others

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Citation : (2011) 4 KarLJ 315 : (2011) 1 KCCR 59

Hon'ble Judges : V.G. Sabhahit, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : A.V.G. Assts, for the Appellant; G.M. Umapathi, for R6 to R8 and T.P. Srinivas, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This petition is filed as a public interest litigation averring that the Petitioner is the owner in possession and enjoyment of the house bearing No. 146/A situated in 5th main road, 4th Block, Rajajinagar, Bangalore. The Petitioner and his family members are residing in the said house. To the north of house No. 146/A, there is a public park and playground measuring 42" x 75" belonging to the first Respondent namely, Bangalore Bruhath Mahanagara Palike (hereinafter called "BBMP") bearing No. 591/A, new No. 148. Public park and playground is meant for the use and enjoyment of the general public more particularly, the residents of the area and BBMP has no authority or jurisdiction to use or permit use of the said park and playground for any purpose other than the purpose for which it has been reserved.

2. In spite of the same, a person by name Seshadri unauthorisedly occupied the said park and playground bearing Corporation No. 591/A, new No. 148 and started residing along with his family. In addition to unauthorisedly occupying the park and the playground, he was also committing nuisance and he was a nuisance by himself. On the complaint made by the residents of the locality, the Bangalore City Corporation issued a notice asking him to vacate the park and the playground and it was stated that if it was not done, action would be taken for

his eviction. Challenging the said notice, Seshadri filed W.P. No. 4007/1977 which came to be dismissed by order dated 4-1-1982. W.A. No. 247/1982 filed against the said order also came to be dismissed by order dated 27-5-1982. Not being satisfied with the outcome in the writ petition and the writ appeal, Seshadri and his wife filed O.S. No. 2468/1982 against the Bangalore City Corporation for a direction not to demolish the construction made on the property, by representing and claiming to be the Secretary to Sri Shanidevara Seva Mandali. It was submitted that there is no such Shanidevara Seva Mandali and the same has been created for the mala fide intention of knocking off the valuable property. The said suit came to be dismissed by the Civil Court by judgment and decree dated 23-3-1995. Being aggrieved by the same, RFA No. 307/1995 was filed and the said appeal was also dismissed on 5-7-1995.

3. Thereafter, the Corporation of the City of Bangalore passed a resolution in Subject No. 4(359) dated 9-6-1998 to grant the said property to Sri Shanidevara Temple. The said resolution was challenged by the public before this Court in W.P. No. 17750/1999. In the said writ petition, the Government filed an affidavit stating that resolution passed by the Corporation would be cancelled. Therefore, the said writ petition was disposed of by order dated 3-7-2000 and thereafter the Government passed an order dated 23-8-2000 cancelling the resolution passed by the Corporation.

4. Not being satisfied with the decisions of the Civil Court and this Court, Respondents-6 & 7 filed W.P. No. 39438/2000 representing non existing Sri Shanidevara Seva Mandali. This Court, by order dated 25-6-2001 vacated the interim order and by order dated 29-6-2001 dismissed the writ petition. It is further averred that certain persons claiming to be the devotees of Sri Shanidevara Temple, at the instance of Respondents-6 to 8, filed a suit in O.S. No. 5360/2001. The Petitioner and others were Defendants in the said suit. The order of temporary injunction was granted by the Civil Court by order dated 23-3-2002. The Petitioner and others filed M.F.A. No. 3669/2002 before this Court and this Court, by order dated 28-7-2005 allowed the said appeal and set aside the order of injunction granted by the Civil Court. Despite passing several orders by this Court and the Civil Court, BBMP and its officers, in collusion with Respondents-6 to 8 did not take any action for the eviction of unauthorised occupants. Thus, the Petitioner and others filed W.P. No. 12499/2008. This Court, by order dated 24-10-2008 directed the Respondents-1 to 3 to take appropriate action in accordance with law. Since Respondents-1 to 3 did not take any action, CCC No. 778/2009 was filed. Notice was issued in the said contempt case and the Commissioner of BBMP has filed an affidavit on 27-11-2009 stating that the jurisdictional officers of BBMP have removed the encroachment and have taken possession of 1771 sq.ft. land on 24-11-2009 and produced the report of the jurisdictional Engineer along with the sketch. It is averred that averments made by the Commissioner of the first Respondent was factually incorrect and false. Since the averments made in the affidavit of the Commissioner of the first Respondent was seriously disputed, an Advocate was appointed as a Court

Commissioner to visit the spot and to submit a report to this Court. The Advocate Commissioner submitted his report and thereafter an affidavit was filed by Dr. K H Govindaraj, the Special Commissioner and Commissioner incharge of BBMP (first Respondent) on 17-2-2010 stating that a local committee constituted by the public has appointed a new Archak by name G.S. Chandrashekar @ Chandrasekhara Shastry and as per the statement of the members of the newly constituted committee, he is not related to Respondents-6 to 8. In the said contempt proceedings, Sri Bharathlal Meena, Commissioner of the first Respondent filed a false affidavit stating that existing temple was handed over to the Corporation and further stated that the BBMP has removed the encroachment and taken possession of 1771 sq.ft. of land. It is averred that the statements made by Sri Bharathlal Meena and Dr. K H Govindaraj are totally false and misleading and such statements are made to get over the contempt proceedings and to help the persons who have grabbed the valuable property. It is further averred that there was and is no temple. They are all newly put up by using wooden poles and asbestos sheets leaning towards the walls of the adjoining buildings with temporary structures where certain idols have been placed to make it appear as temple.

5. The Respondents-6 to 8 have filed an affidavit dated 30-1-2010 in CCC No. 778/2009 falsely stating that they have no proprietary interest over the property in question. It is averred that basing on these affidavits, the Division Bench of this Court by order dated 22-2-2010 rejected the contempt petition holding that except the temple, the remaining extent of encroachment is removed and Corporation has taken possession. It was further held that the local committee has appointed an Archak and that the Corporation has retained the compound wall and has provided access to the temple to the public. It is further averred that even as on the date of filing of the petition, no member of the public have entered into the property and performed pooja. The entire area is covered and is still in the possession and enjoyment of Respondents-6 to 8 and their supporters. Now taking undue advantage of the rejection of the contempt petition, Respondents-6 to 8 and their supporters have once again put up construction for their residence and have issued a pamphlet in the name of Sri Shanidevara Seva Samithi, a new non-existing body, stating that they are going to hold a religious function commencing from 20-5-2010 to 23-5-2010. It is further averred that thus, it has become very difficult for the Petitioner and the neighbouring residents and the members of their family to have peaceful and undisturbed life. The Respondents-6 to 8 with the help of anti social elements have been harassing the Petitioner and his family members. The Petitioner made a representation to the Respondents-1 to 5 requesting them to take suitable action to prevent Respondents-6 to 8 from committing nuisance. Instead of taking action, the Inspector of Police, Rajajinagar Police Station has issued an endorsement on 8-5-2010 stating that the matter is of civil dispute and to redress the same before the Civil Court. Thereafter the Petitioner made one more representation to first Respondent on 10-5-2010 to take immediate action to

stop the religious function commencing from 20-5-2010 to 23-5-2010 and first Respondent has not taken any action to stop the illegal activities of Respondents-6 to 8. In view of the inaction on the part of Respondents-1 to 5, this writ petition is filed seeking for the following reliefs:

(1)) A writ in the nature of mandamus or any other appropriate writ or order directing Respondents-1 to 3 to evict Respondents-6 to 8 and their supporters from property bearing No. 591/A (new No. 148) situated in 5th main, 4th block, Rajajinagar and keep the space open for use and enjoyment of general public and the residents of the locality without in any manner obstructing and hindered by any person;

(2) Direct Respondents-1 to 3 to constitute a local committee consisting of actual residents of the locality for the purpose of management and administration of the temples situated in property No. 591/A (new No. 148) in 5th main, 4th Block, Rajajinagar, Bangalore;

(3) Grant such other relief as this Hon"ble Court deems fit in the facts and circumstances of the case including an order as to costs.

6. We have heard the learned Counsel for the Petitioner, learned Additional Govt. Advocate appearing for the State and learned Counsel appearing for Respondents-6 to 8.

7. By order dated 27-5-2010 papers pertaining to CCC (Civil) No. 778/2009 disposed of on 22-2-2010 was ordered to be put up and the said papers have been put up along with the said order.

8. The learned Counsel appearing for the Petitioner submitted that despite the earlier order passed by this Court in the writ petition and finding in the contempt petition CCC (Civil) 778/2009 that Respondents-6 to 8 have been evicted, the said finding is based upon the affidavit which is false and the Respondents-6 to 8 are trying to put up additional construction and pamphlet has been issued to conduct a religious function commencing from 20-5-2010 to 23-5-2010 which would cause nuisance to the Petitioner and his neighbours. The learned Counsel took us through the previous proceedings and the documents produced by him along with the writ petition and submitted that since Respondents-1 to 5 have failed to take any action on the representation given by the Petitioner and in view of the in action on the part of first Respondent in taking action against Respondents-6 to 8, this writ petition is filed as a public interest litigation and necessary direction may be issued as sought for in the representation.

9. The learned Counsel for Respondents-6 to 8 submitted that they are not trying to put up any construction in the disputed property and possession of the property has been taken over by the BBMP and the entire property has been in possession with BBMP and Respondents-6 to 8 have filed an affidavit in CCC (Civil) No. 778/2009 claiming no right over the said property and a local committee has been appointed and the said committee has appointed a new

Archak who is not related to Respondents-6 to 8 and this writ petition is filed in the garb of public interest litigation to take vengeance against Respondents-6 to 8. It is also contended that despite earlier proceedings wherein there is specific finding that Respondents-6 to 8 have been evicted from the schedule property and the property is now in the possession of BBMP, a frivolous petition is filed making false allegations of filing false affidavits against the Commissioner of the Corporation.

10. The learned Addl. Govt. Advocate appearing for Respondents-3, 4 & 5 argued in support of the order and submitted that the petition is devoid of merit as the disputed property is in possession of BBMP and no construction is being put up by Respondents-6 to 8 and temple is maintained by BBMP and an Archak has been appointed by the local Committee and this frivolous petition is filed to take personal vengeance against Respondents-6 to 8.

11. We have given careful consideration to the contention of learned Counsel for the parties and scrutinised the material on record including the order passed by this Court in CCC (Civil) 778/2009 disposed of on 22-2-2010.

12. It is clear from the material on record that admittedly several earlier proceedings had taken place at the instance of one Seshadri who has unauthorisedly occupied the property belonging to BBMP situated at No. 591/A, new No. 148 and failed in the writ petition, writ appeal and in O.S. No. 2468/2982 and despite the same, since no action was taken for evicting the unauthorised occupant, the Petitioner herein and others filed W.P. No. 12499/2008 wherein this Court passed the following order:

3. In view of the stand taken by the Respondent-Corporation, suffice it to direct them that if the impugned site is reserved for civic amenity as per the approved layout plan and the Respondents-3 to 5 have encroached into the same without authority of law, the Corporation shall take appropriate action in the matter in accordance with law, after giving necessary notice to Respondents 3 to 5, of being heard in compliance of the principles of natural justice, as expeditiously as possible.

Thereafter, since the Respondents did not take action in accordance with law as per the directions issued by this Court in W.P. No. 12499/2008, CCC (Civil) 778/2009 was filed alleging wilful disobedience of the direction issued by this Court.

13. In the contempt petition, in view of the disputed questions of facts as to whether action had been taken in accordance with the direction issued by this Court and encroachers have been removed, an Advocate Commissioner was appointed to visit the spot in the presence of learned Counsel appearing for the parties and submit to the Court. In the said contempt petition, the Commissioner of Corporation filed an affidavit stating that BBMP has removed the encroachment and taken possession of 1771 sq.ft of land on 24-11-2009. A copy of the report and photographs were produced in the contempt petition along with

the sketch which show that except Shanimahatma, Anjaneya and Navagraha temples, remaining area is taken possession by the Corporation. It also shows that there is a board mentioning that the property belongs to BBMP in Kannada as well as in English. Thereafter, the Advocate Commissioner filed his report which was considered as per the order passed by this Court in CCC (Civil) 778/2009, which reads as follows:

Therefore, a Advocate Commissioner was appointed by this Court to visit the place and submit a report. Accordingly, the Commissioner has submitted his report. The said report shows that complainant No. 1 was present at the spot alongwith his counsel and Assistant Executive Engineer was present on behalf of the Commissioner of Corporation. A spot mahar was drawn. The signatures of the parties to the said spot sketch and photographs were also taken. A memo of instructions was handed over to the Commissioner at the spot. The Commissioner commenced his work at 10.30 a.m. and completed the same at 12.30 p.m. on 29.11.2009.

4. The Commissioner has observed that the total property as per actual measurement taken is 3835.18 sq. ft. It measures on the eastern side 91".3", western side 78", northern side 9" and southern side 22".6", the built up areas (with AC Roof) comprising Sri Shaneshwara and Sri Anjaneya Temples situate on the southern portion of the property and it measures 479 sq.ft. inclusive of passage. The second built area (with AC Roof) of Navagraha temple measures 198.16 sq. ft. Apart from the said construction, the remaining site is vacant. He noticed that broken AC sheets and iron/steel small table and other debris dumped on the vacant land. Similarly on the eastern side of the compound wall the removed bricks are stacked in three rows. The built up area has got one main gate on eastern side and the vacant area surrounded by compound wall on all three sides has a gate on the eastern side in the middle of the property. There is a board describing as to this property belongs to BBMP inscribed both in English and Kannada in the vacant portion of the property. The complainant No. 1's property bearing new No. 145/A is situate on the southern side of the schedule property. It is also observed that the Board put on the schedule property with new No. 148/A, 5th Main, 4th Block, Rajajinagar, Bangalore. The Advocate Commissioner has opined that there is no structure either permanent or temporary in the area shown in the sketch produced by the BBMP dated 27.11.2009. The temples of Sri Shinimahathma, Sri Anjaneya and Navagraha are still in existence on the southern portion of the vacant property alongwith a vacant space, small Sri Ganapathi idol, ant hill and a tree abutting the property of the 1st complainant.

5. Answering the memo of instructions of the 1st complainant, the Advocate Commissioner has stated that the outer measurement is taken of the entire property bearing No. 591/A. There are no construction materials lying in the vacant portion situated to the northern portion of the built up property except small debris and two water tanks and a kiln. He cannot say whether the

Respondent No. 1 has demolished the structures, but when he visited the spot, there are no constructions on the vacant portion of the schedule property. The Board displayed that the property belongs to BBMP, which indicates that they have taken possession of the vacant portion of the schedule property. There are no constructions either permanent/temporary on the vacant portion of the property. IN conclusion, he has stated that there are no construction either permanent/temporary over the vacant portion of the schedule property. Only constructions exists on the southern portion of the vacant property with three temples and the roof are covered with AC sheets.

14. It is clear from the perusal of the order passed by this Court in the contempt petition dated 22-2-2010 that the complainants have filed objections to the said report of the Advocate Commissioner stating that there was no temples in the disputed property and no built up areas and by keeping the idol of Shaneshwara and Anjaneya in two separate places, Respondents-3 to 5 have temporarily covered the area by using asbestos sheet by leaning on the northern side wall of the first complainant as contended in this writ petition. The said contention has been considered and negatived by the Division Bench of this Court in the said contempt petition by order dated 22-2-2010 while passing the final order. It was also observed in the said order in the contempt petition that additional affidavit was filed by the Commissioner of BBMP dated 4-2-2010 stating that the Corporation has removed the encroachment and taken possession of 1771 sq.ft. of land on 24-11-2009. The Chief Engineer (West) and other officials of BBMP alongwith police force have tried to demolish the temple and due to heavy protest and interference by the local public, the temple could not be demolished. Hence, a local Committee was constituted by the public to maintain the temple and a new Archaka was appointed by the new Committee to perform the pooja. A copy of the undertaking given by the local public, the proceedings of the meeting of local Committee, photographs produced by the local public for previous years functions and photographs taken on 29.1.2010 showing heavy protest by public were produced as Annexures-R4 to R7. It was also observed that from 1.2.2010 the entire civic amenity is in possession of BBMP and the local residents have no right over the civic amenity site except performing pooja in the temple. It was also observed in the order dated 22-2-2010 in the contempt petition that the Archak who has been appointed by the local committee is not related to Respondents-3 to 5 therein. It was also observed that there is no merit in the objections filed by the Petitioner herein to the affidavit of Commissioner and the report of the Advocate Commissioner and the additional affidavit filed by the Special Commissioner. This Court also observed that having regard to the facts of the case and the material produced on record, the entire property is in possession of BMMP, a committee has been formed and the said committee has appointed a new Archak who is not related to Respondents-6 to 8 and large extent of public are participating in the religious function on special occasions and in the temple there were huge gatherings on those occasions and temple has been used for general public for quite some time.

15. This writ petition is filed alleging that the affidavit filed by the Commissioner of the Corporation in the said contempt petition is false. However, the persons who were deponents in the said affidavits have not been made parties in the writ petition and therefore, the question of considering the said contention would not arise at all. Even otherwise, it is clear that the said averment made in the writ petition is baseless having regard to the finding given in the contempt proceedings in CCC (Civil) No. 778/2009.

16. The material on record would clearly show that Petitioner has been fighting the litigation against Respondents-6 to 8 on various occasions and finding has also been given by this Court while disposing of the contempt petition on 22-2-2010 that the temple is being used by the public for quite some time and the entire property is in possession of BBMP and self serving statement made in the writ petition that Respondents-6 to 8 are constructing the structures in the schedule property is not at all substantiated apart from the copy of the representations which are self serving and the endorsement has been rightly issued by the police stating that it is the civil dispute as the several litigations were pending between Petitioner and Respondents-6 to 8. Therefore, we hold that the Petitioner is not entitled to any relief in this writ petition. It is also clear from the prayer made that the Petitioner is not entitled to the prayer sought for in the writ petition in view of the order passed by this Court in CCC (Civil) 778/2009 dated 22-2-2010 as the committee of local residents has already been constituted, the temple is being used by the public for quite some time and there is no material whatever to show that Respondents-6 to 8 are putting up construction in the said property as the property is in exclusive possession of the BBMP and the Archak who has been appointed by the Committee is not related to Respondents-6 to 89. Therefore, it is clear from the perusal of the material on record that this writ petition is devoid of merit and the Petitioner is not entitled to any reliefs sought for in the writ petition and the writ petition is liable to be dismissed.

17. Accordingly, we pass the following:

This writ petition is dismissed.