

(2015) 01 KAR CK 0415

In the Karnataka High Court

Case No : Writ Petition Nos. 17699-17700 of 2014 (KLR-RES)

G. Puttanna and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Revenue Act, 1964 — Section 136(2), 49

Citation : (2015) 01 KAR CK 0415

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : N. Vasudevan, for the Appellant; A.G. Shivanna, A.A.G. and H. Venkatesha Dodderi, A.G.A., Advocates for the Respondent

Judgement

Ashok B. Hinchigeri, J.—The petitioners have called into question, the fourth respondent Tahasildar's order, dated 19.12.2013 (Annexure-A) directing the petitioners to vacate the tank-bed area measuring 10 acres 20 guntas at Sy. No. 83 of Horamavu Grama, K.R. Puram Hobli, Bangalore East Taluk, alleged to have been encroached by them and the endorsement, dated 20.12.2014 (Annexure-A1) turning down the petitioners' request for re-entering their names in the revenue records in respect of 7 acres 20 guntas of the land at Sy. No. 73 (new No. 83).

2. Sri N. Vasudevan, learned counsel for the petitioners submits that the petitioners are the absolute owners of the lands in question. They are in settled possession of the said properties. They trace their title to the sale deed executed in 1891. He submits that they have been paying the land revenue. He submits that following amongst other directions were issued by the Division Bench in PIL - W.P. No. 8535/2008 in its order, dated 15.07.2008:

"(iv) If it is found that the aforesaid lake have been encroached upon by any person without having any authority of law, then appropriate action to get them evicted shall be taken by the respondents without any delay." 3. The petitioners

filed R.P. No. 297/2008, which came to be disposed of with the following directions:

"4. After having heard the learned counsel for the parties after perusing the records, we are of the considered opinion that this direction No. 4 requires only to be clarified further. We accordingly do so. What we really meant was that the authorities would take action against the alleged encroacher in accordance with law. That is to say that the case of each individual will be examined separately and independently. If anyone has made construction without the authority of law or without any proper and legal sanction, then after serving notice and after giving opportunity of hearing, the matter shall be taken up by them to remove such illegal and unauthorized encroachments. The intention was not to issue a blanket permission or free hand to the respondents to issue oral threats of demolition without due process of law.

5. We hope and trust that the aforesaid clarifications would now be adhered to by the respondents. Needless to say that in case anyone feels aggrieved by the final order that may be passed by the authorities, then the said aggrieved party would be at liberty to exhaust the remedy as may be permissible to him or her in accordance with law.

With the aforesaid directions, this review petition stands finally disposed of."

4. Thereafter the petitioners filed W.P., No. 16697/2009, which was disposed of by this Court, by its order, dated 09.10.2009 (Annexure-AA) with a direction to the Lake Development Authority to consider the petitioner's representation in the light of the observations made by the Division Bench in the PIL as well as in the review petition. Sri Vasudevan submits that pursuant thereto the petitioners have submitted a detailed representation on 09.09.2010 (Annexure-AB). As the respondent authorities were showing inaction in the matter, the petitioners filed one more writ petition - W.P. Nos. 29886-887/2010 which came to be disposed of by this Court by its order, dated 27.09.2010 with a direction to the respondents to consider the petitioners' said representation in accordance with law and within an outer limit of one month from 27.09.2010.

5. Sri Vasudevan submits that without taking into consideration the various orders passed in the various proceedings, the Tahasildar has proceeded to pass the impugned order directing the petitioners to vacate the properties in question, virtually treating them as encroachers or unauthorized occupants.

6. He submits that despite the granting of the stay order on 30.04.2014, the respondents have demolished the buildings erected on the lands in question. He submits that the authorities are acting prejudicially. He submits that from the land, which is claimed to be the tank bed area, no one is being evicted except the petitioners. He submits that the respondents are liable to restore the property to the petitioners and also liable to pay the damages for the illegal demolition of the buildings raised on the lands in question.

7. Sri A.G. Shivanna, learned Additional Advocate General for the respondents submits that the entire land at Sy. No. 83 is a tank-bed area. In support of his submissions, he refers to the village map (Annexure-R1) which shows that the said survey number land as tank-bed area. He also refers to the register of survey settlements (Annexure-R2) which also shows that the land in question is a tank-bed area. In column No. 9 in the records of rights (Annexure-R3) the entire land at Sy. No. 83 is shown as Government tank bed area.

8. Sri Shivanna submits that the petitioners have not produced any documents whatsoever to show that it was owned by a private party. Without prejudice to these submissions, he has also raised the threshold objections to the maintainability of these petitions. He submits that the impugned order at Annexures-A and A1 are appealable before the Assistant Commissioner invoking Sections 49 and 136(2) respectively of the Karnataka Land Revenue Act, 1964.

9. The submissions of the learned counsel have received my thoughtful consideration.

10. I am disinclined to entertain these petitions on the short ground of the availability of alternative remedy. Keeping all the contentions open and reserving the liberty to the petitioners to avail of the statutory remedy of challenging the impugned orders (Annexures-A and A1) before the Assistant Commissioner, invoking Sections 49 and 136(2) of the said Act respectively, I dispose of these petitions. Whether the respondents are liable to pay the damages to the petitioners and if so, what amounts and in what form, are all the matters involving the determination of factual controversies. The disputed questions of facts can not be resolved in the proceedings under Article 226 of the Constitution of India. A party desirous of seeking the relief of damages may have to file a duly constituted suit in a competent civil court.

11. Further, it is also the Court's anxiety that the petitioners' interests are to be safeguarded during the period of interregnum, that is between the date of the disposal of these petitions and the date of the disposal of the LA. for stay, etc. in the anticipated appeal proceedings. I therefore deem it necessary and just to direct both the parties to maintain the status-quo for a period of two weeks or the disposal of the LA. for stay, etc. in the anticipated appeal proceedings, whichever is earlier.

12. No order as to costs.