

(2024) 11 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No. 1245 Of 2024 (GM-RES-PIL)

G. Ravi & Others

APPELLANT

Vs

State Of Karnataka & Ors.

RESPONDENT

Date of Decision : 27-11-2024

Acts Referred:

Constitution Of India, 1949 — Article 226

Citation : (2024) 11 KAR CK 0060

Hon'ble Judges : N.V. Anjaria, CJ;K V Aravind, J

Bench : Division Bench

Advocate : Satram Venkateswara Prasad, Niloufer Akbar, T. Mohankumar, M.S. Devaraju

Final Decision : Dismissed

Judgement

N.V. Anjaria, CJ

1. Heard learned Advocate Mr. Satram Venkateshwara Prasad for the petitioners and learned Additional Government Advocate Mrs. Niloufer Akbar for respondent Nos.1 to 7, 9 and 10, learned Advocate Mr. M.S. Devaraju for respondent No.8, as also learned Advocate Mr. P. Mohan Kumar for respondent Nos.13, 14 and 15. As per order dated 29th May 2024, the Court dispensed with the service of notice to respondent Nos.11 and 12.

2. The petitioners, six in numbers, projecting themselves as public spirited persons have filed this petition, styling it as public interest petition. The subject matter of the petition is alleged non-development of a mud road of 12 feet width and 1.5 km. length between the villages Balakundahalli and Bikalahalli.

3. It is stated that the petitioners are residing in the nearby villages and they directly use the said road from their childhood. It is the say that their parents also resided in the same villages. The road, it is stated, is historical and ancient and the petitioners claimed to be in physical possession of the road. It is stated that in the year 2017, the NSS students of Manchanahalli College developed the

said road doing the work worth Rs.4,50,000/- providing the amount to the Panchayat and the road between the Balakundahalli and Bikalahalli villages was developed.

3.1 The petitioners pleaded to claim that the mud road in question is 100 years old and is an easementary public road. It is lifeline of 400 village people and there is no alternative for the said road, it was claimed. It was stated that plans for development of the road are pending, but are shelved by the authorities. It was submitted that the land owners had relinquished the road land for public utility purpose. It was contended that after passage of long ninety years, the said road is of public ownership.

3.2 It is the further allegation that respondent No.13-G.Suresh has grabbed elementary school and public borewell and thus encroached upon the said road. It is the allegation that the said G.Suresh has dugged two big four feet trenches in the middle part of the road, one trench is at Bikalahalli and the other is towards Balakundahalli. It is the case that the elementary school and the public borewell came to be illegally possessed by the said respondent.

3.3 It is further averred that the said respondent No.13 has filed in order to harass the general public, original suit No.369 of 2019 on 11th September 2019 before the trial court in which interim injunction application is also filed and an ex parte injunction is obtained. It is alleged that suit prayers are false and frivolous. The petitioner has annexed the copy of the plaint of the suit.

3.4 It is further stated that yet another original suit No.201 of 2022 is instituted on 1st June 2022 by same G.Suresh. The pleadings of the said suit are also made part of the record of the petition. It is alleged in the petition that 'the said G.Suresh- present 13th respondent in order to get wrongful order from the court, misled the court stating that there is another road for public, but petitioner's statement is absolutely false and blatant lie stated to encroach part of the old road.'

3.5 In other words, the entire grievance of the petitioner in this public interest petition is founded on the projected right to use the road in question with an allegation that the people of the villages have been using said road without any alternative route available to them for entry and exist to and from their villages. It is the allegation that part of the said road has been encroached by respondent No.13-as G.Suresh who has taken over the possession of the area and that has grabbed the elementary school and the borewell by encroaching upon the land of the road.

3.6 With reference to the pleadings as above, in relation to the said road, several prayers are advanced which are as under,

(i) To direct the State to develop the aforesaid road to make it motarable with lighting facilities;

(ii) To direct the respondent authorities to record the above old public road in all

government records including village public property register;

(iii) To direct to recover the Small Children Elementary School as well as public borewell from one G. Suresh-respondent No.13;

(iv) To take action and initiate departmental inquiry against those who neglected the public interest in the road development and creating trouble to the village people;

(v) To direct to call for records of original suit No.369 of 2019 and original suit No.201 of 2022 on the court of Principal Civil Judge, Gowribidanur, Chikkaballapura;

(vi) To set aside the orders passed whereby the road movement is blocked;

(vii) To set aside order dated 28th September 2022 passed by the above said Court in interim application No.6 in original suit No.369 of 2019;

(viii) To prohibit the civil court concerned from prosecuting original suite No.369 of 2019, in which public road related issues of two villages and the question of fundamental rights are involved as per the case of the petitioners;

(ix) To prohibit the civil court concerned from prosecuting original suite No.201 of 2022;

4. Learned advocate for the petitioners submitted that respondent No.13 has grabbed the portion of the road including the Small Children Elementary Public School and public borewell. It is stated that respondent No.13-Mr. Suresh has instituted civil suit No.369 of 2019 and civil suit No.201 of 2022. It is further submitted that after issuing notice of this court in the present petition, respondent No.13 took the law in his hand and altered the physical features of the said Small Elementary School and the area has been used as his residence.

5. Now, it is an admitted position averred and stated by the petitioner that in relation to the very subject matter which is survey No.95/12, original suit No.369 of 2019 has been instituted by respondent No.13 who is plaintiff No.2 in the said suit. The prayer made is for permanent injunction restraining the defendants. Petitioner No.1 herein G.Ravi is defendant No.6, petitioner No.3 Smt. Shanthamma is defendant No.4, whereas petitioner No.5 Sri. Subbarayappa is defendant No.10 in the said Original Suit No.369 of 2019.

5.1 The case of the plaintiffs inclusive of defendant No.13 in the aforesaid suit is that the plaintiffs are the absolute owners of the land in question and have been growing crops. It is the allegation that since last 3-4 days, defendants in collusion with the revenue officers, started to construct and form new road in the middle of the land. It is the case that the powerful defendants and the revenue officers have been forcibly interfering with the possession of the plaintiffs with regard to the suit property. The interim injunction proceedings are also conducted in the said suit by the court.

5.2 Another suit as referred to above, which is Original Suit No.201 of 2022 is filed by one Nagesh and G.Suresh-defendant No.13 herein who is plaintiff No.2 therein. The suit property is agricultural land Survey No.95/1. The suit relates to permanent injunction to restrain the defendants from interfering with the possession of the plaintiffs. Similar allegations are made in the averments in the plaint that the defendants have high-handedly interfering with the possession of the land in question.

5.3 When the description of the suit property is noticed and compared with the averments made in the public interest petition, from paragraph 3 of the petition, it could be seen that same Survey Nos.95/12 and 95/1 are mentioned to claim that the road extends to the said survey numbers to become part thereof coupled with the assertion that the petitioner and the villagers have been using the road. The case in this petition is virtually a cross-case.

5.4 The public interest jurisdiction is a special jurisdiction. The jurisdiction of this kind and nature cannot be exercised in all cases and in routine manner. There must be a genuine public interest subsisting in the controversy to be served by invoking court's powers in the public interest petition. Public interest jurisdiction as a facet of powers under Article 226 of the Constitution is a function in constitutional realm and could be exercised only in sparing occasions when the facts of the case deserve such invocation.

5.5 When the parties are already in litigation in respect of the subject matter of land/road by filing civil litigation, a related public interest petition would not be entertained by the Court. In this case, the petitioners are the defendants in the civil suit. The prayers are made to set aside the orders made in the said suit and further to question the competency of the proceedings of the said suits. In addition to the above aspect, the kind and nature of the prayer to set aside the orders passed by the civil court in the proceedings of the civil suit, could hardly be granted.

5.6 Viewing the facts and circumstances in totality and in its dimensions, the present public interest petition is far from bonafide. In any view, when the civil suits are pending, the dispute also travels in the area of private rights asserted by one party and denied by the other.

6. The present public interest petition is therefore not liable to be entertained. It does not book any relief for the petitioner.

7. The petition is dismissed.