

(1999) 09 KAR CK 0052
In the Karnataka High Court
Case No : Writ Petition No. 18805 of 1999

Gaffar Beig

APPELLANT

Vs

City Municipal Council, Krishnarajapuram and others

RESPONDENT

Date of Decision : 17-09-1999

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 2 (18), 265
Karnataka Municipalities Act, 1964 — Section 81

Citation : (2000) ILR (Kar) 4686 : (2001) 3 KarLJ 176

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : Sri M. Sudhakar Pai, for M/s. Shetty and Reddy, for the Appellant;
Sri Ashok, B.Hinchigeri, for the Respondent

Judgement

1. Petitioner herein applied to the 1st respondent to permit him to erect display board on the side of the public roads. He chose the following points in this behalf, namely,

"1. K.R. Puram Railway Station 2. Hoodi Circle 3. In front of Tata Elexi 4. Near Forest Office (Suri and Nayar) 5. Near Munne Kollalu Sethuve 6. A.E.C.S. Extension (Kundalahalli) 7. Near Hope Farm 8. Kadugodi Railway Station 9. White Held Main Road 10. Chellaghatta Main Road".

The application was submitted on 2-2-1999 and on receipt of the application it appears the 1st respondent addressed the letter to the 2nd respondent to secure their opinion. It is alleged that the Assistant Engineer of the 2nd respondent approved the erection of the hoarding. Thereafter Annexure-A permission was issued by the 1st respondent. Subsequently the petitioner erected the hoarding at various places indicated in Annexure-A order. The petitioner remitted the licence fee stipulated by the 1st respondent and invested, it is claimed, substantial amount for the erection of the hoarding. -While so, it is alleged by the petitioner that claiming that three of the sites permitted are located within the roads under the control of the 2nd respondent and therefore they called upon

the petitioner to remove the hoarding. That necessitated this writ petition.

2. The contesting 2nd respondent appeared and has filed a statement of objection. Their contention is that the roads described in Annexure-R have been put under their control by the State and that the 1st respondent cannot exercise any right over the same, that the 1st respondent cannot licence any person to place any hoarding on the side of the said road without the permission of the 2nd respondent, the alleged permission granted by the Assistant Engineer is not binding on them as he had no authority to grant the permission, that the right to erect hoarding can be farmed out only after due publicity, that there was no oblique motive in the action of the 3rd respondent in instructing the petitioner to remove the hoarding as alleged, that by virtue of the governmental grant the right to manage and control the road referred to in the government grant belongs to them and that the petitioner cannot maintain the writ petition.

3. The disputed roads are the following:

"1. Bangalore-Varthur road from ch: 10.82 to 3.88 KM 14.70 KM 2. K.W. Road to join B.V. Road via 5.00 KM Kundalahalli ch: 0.00 to 5.00 KM 3. K.R. Puram Whitefield road from ch: 0.00 to 2.80 KM". 2.80 KM The 2nd respondent is claiming a right analogous to that of the owner by virtue of Annexure-R. The basic order of the Government had not been produced by the 2nd respondent. Put on direction by this Court, Shri Hinchigeri, learned Counsel for the 2nd respondent has produced the same. It being the basic document I would extract the same for easy reference. The document reads thus:

From the above it is difficult to discern an absolute grant by the owner, a right which would clothe the power to regulate the user of the road and the road margins. I do not think that the Government would have farmed out any such right to the 2nd respondent as well.

4. The 1st respondent is a local authority coming within the definition of local authority defined at Section 2(18) of the Municipal Corporations Act. The definition is as under:

"(18) "Local authority" means a Municipal Corporation, a Municipal Council, Town Panchayat, Development Authority, City Improvement Board, Town Improvement Board, Zilla Panchayat, Taluk Panchayat and Grama Panchayat constituted under any law for the time being in force".

Under Section 265 of the Municipal Corporations Act all roads, bridges, road margins etc., shall vest with the local authority. The said section is as under:

"265. Vesting of public streets and their appurtenances in Corporation.--(1) All public streets in the Corporation reserved under the control of the Government, with the pavements, stones and other materials thereof and all work materials, implements and other things provided for such streets, all sewers, drains, drainage works, tunnels and culverts whether made at the cost of the Corporation fund or otherwise, in or alongside or under any street, whether

public or private, and all works, materials, implements and other things appertaining thereto and all trees not being private property growing on public streets or by the side thereof, shall vest in the Corporation.

(2) The Government may, after consulting the Corporation, by notification withdraw any such street, sewer, drain, drainable work, tunnel, culvert or tree from the control of the Corporation".

If that be so, the road margins of the above said roads also vest with the local authority.

Section 81 of the Karnataka Municipalities Act, 1964 is a similar provision. That section reads as under:

"81. Municipality property.--(1) Every Municipal Council may for the purpose of this Act, acquire and hold property both movable and immovable, whether within or without the limits of the municipal area.

(2) All property of the nature herein specified, and not being specially reserved by the Government, shall be vested in and belong to the Municipal Council and shall, together with all other property of whatsoever nature or kind not being specially reserved by the Government, which may become vested in the Municipal Council, be under its direction, management and control and shall be held and applied by it as trustee, subject to the provisions and for the purposes of this Act, that is to say-

(a) all public town walls, gates, markets, slaughterhouses, manure and night-soil depots,, and public buildings of every description;

(b) all public streams, tanks, reservoirs, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, pumps and other water works and all bridges, buildings, engines,"works, materials and things connected therewith, or appertaining thereto, and also any adjacent land not being private property appertaining to any public tank or well;

(c) all public sewers and drains, and all sewers, drains, tunnels, culverts, gutters and water courses in, alongside or under any street, and all works, materials and things appertaining thereto, as also all dust, dirt, dung, ashes, refuse, animal matter of filth or rubbish of any kind collected by the Municipal Council from the streets, houses, privies, sewers, cesspools or elsewhere;

(d) all public lamps, lampposts and apparatus connected therewith, or appertaining thereto;

(e) all lands and buildings transferred to it by the Government, by gift or otherwise, for local public purposes;

(f) all public streets and the pavement, stones and other materials thereof and also all trees, erections, materials, implements and things provided for such streets;

Provided that lands transferred to the Municipal Council by the Government under clause (e) shall not, unless otherwise expressly provided in the instrument of transfer, belong by right of ownership to the Municipal Council but shall vest in it subject to the terms and conditions of the transfer, and on the contravention of any of the said terms or conditions, the land with all things attached thereto, including all fixtures and structures, thereon, shall vest in the Government and it shall be lawful for the Government to resume possession thereof".

Section 210 of the Grama Panchayat Act, 1993 is also a similar section, though not identical. That section states thus:

"Vesting, of property in Grama Panchayat.--(1) It shall be competent for the Government, a Zilla Panchayat or Taluk Panchayat with the concurrence of the Grama Panchayat from time to time to direct that any property vesting in the Government, Zilla Panchayat or Taluk Panchayat, as the case may be, shall vest in the Grama Panchayat either conditionally or otherwise:

Provided that no lease, sale or other transfer of any such immovable property by the Grama Panchayat shall be valid without the previous sanction of the Government, the Zilla Panchayat or the Taluk Panchayat, as the case may be,

(2) Every work constructed by a Grama Panchayat out of the Grama Panchayat fund shall vest in such Grama Panchayat:

Provided that the Government may, if it deems fit, declare by order that such road, building or other works vested in the Grama Panchayat, shall stand transferred to and vest in, the Taluk Panchayat, Zilla Panchayat or the Government, as the case may be.

(3) All rubbish, sewage, filth and other matter collected by a Grama Panchayat under this Act shall belong to it".

The scope and ambit of the Government circular referred to by the 2nd respondent has to be understood keeping this in view. In such a statutory background, it is difficult to assume that the Government would have transferred the road itself to the 2nd respondent. The primary difficulty to do so, is that the road etc., having vested in the Local Authority, without a divesting of their title, it is not possible for the Government to transfer the ownership to the 2nd respondent. The order of the Government extracted above does not disclose any such vesting.

5. Now the statutory position is that the roads vest in the local authority. The right to maintain alone has been conferred on the 2nd respondent. Such limited right do not confer on the 2nd respondent any right to interfere with rights exercised by the local authority in whom the road and its margin have vested statutorily lawfully.

6. Now we may advert to one other position under the General Law. In Katiyar on Easements and Licences (II Edition), it is stated as under:

"A public road is a dedication to the public of the occupation of surface of land for purpose of passing and repassing. It is very different thing from ordinary easement where the occupation remains in the owner of the servient tenement subject to the easement. So, in" fact, a public right involves a transfer of an interest of the land to the public. But though occupation of the land is transferred to the public the ownership in the soil still remains with the owner and he can deal with it as he likes provided such dealings does not interfere with the right of the public. A dedication for the user as a public way does not altogether deprive the owner of his rights in the soil altogether. His rights are twofold, firstly, he has a right in common with the general public to use the dedicated land and as a highway. Secondly, he has an ownership right in the land which he may enjoy in anyway he likes but not inconsistent with the public right of passage over it. A public road or highway is dedication of that extent of ownership of occupancy to the public consistent with the freehold of the solemn of the land remaining in the original owner. A claim to public way cannot rest in prescription".

It means, the dedication thus made as a public road cannot be annulled or curtailed by the Government by means of an executive order. If the contention of the 2nd respondent is to be accepted it would be conceding such a right with the Government. Secondly, it would be creating a subsidiary estate with the 2nd respondent, This would also not fit in the context of the statutory provisions.

7. The argument that the right to erect hoarding etc., should be auctioned in public need not be seriously considered as the 2nd respondent is not a rival claimant for the right to erect the hoarding. The 1st respondent is free to manage its affairs in this behalf. As regards the invalidity of the instruction issued by the Assistant Engineer of the 2nd respondent is concerned, it would not be known to the petitioner as to the arrangement for the internal management of the affairs of the 2nd respondent. An outsider is not expected to know about the same.

8. In the result, Annexure-A permission granted by the 1st respondent to erect the hoarding is valid and the 2nd respondent has no power to interfere with the said right, secured by the petitioner under Annexure-A. Hence the petitioner is entitled to erect the hoarding by virtue of the permission granted by the 1st respondent and will be eligible to do so, as long as the permission is in operation. The writ petition stands disposed of as above.