

(2013) 09 KAR CK 0324

In the Karnataka High Court

Case No : Writ Petition No. 3799 of 2013

J. Aralappa and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 09 KAR CK 0324

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : N.P. Amruthesh, for the Appellant; R. Devdas, AGA for R1, Smt. Ujwala Walwadikar, for R3, Sri K.O. Vijay Kumar, for R. 6 and Sri. Vijaya Kumar, for R5, 7, 12, 22, 23, 26, 28, 30, 31, 34, 37, 39, 41 to 43, 47 and 49, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, C.J.—The petitioner, joining five other petitioners as co-petitioners, moved the present petition under Articles 226 and 227 of the Constitution, praying for quashing the impugned order dated 08.01.2004, passed in Appeal No. 3/2003-04 on the file of the Chief Executive Officer, Bangalore Zilla Panchayath Urban, as also to direct the Secretary, Kasaghattapura Grama Panchayath not to issue Katha certificates in favour of respondent Nos. 6 to 57 in respect of Katha No. 171/71 of Selvipura village of Kasaghattapura Gram Panchayath, with the consequential relief of directing the Executive Officer of the Taluk Panchayath concerned to take action against the Secretary of the Grama Panchayath for issuing Form No. 10 during the year 1991 without any valid order from the Government. Admittedly, the petition is styled as a public interest litigation, while petitioner No. 1 himself has already in his individual capacity filed a petition being WP No. 5839/2004 with the same prayers and that petition is dismissed by order dated 28.06.2006. The Writ Appeal No. 1697/2006 preferred from that order by petitioner No. 1 has also been dismissed on 13.02.2012 and admittedly the petitioner is not a party to the proceeding in Administrative

Appeal No. 3/2003-04 on the file of the Chief Executive officer of Bangalore Zilla Panchayath. Thus, in short, the petitioner No 1 claiming to be a member of the same Kasaghattapura Grama Panchayath having exhausted his personal litigations for the same subject matter, approached this Court by way of public interest litigation in the present matter by joining five other persons, out of whom three are ladies.

2. By filing statement of objections on behalf of several respondents with affidavit of respondent No. 5, the important averments made in the petition are not only denied, but stated to be false and specific allegations are made against petitioner No. 1 to the effect that he was taking undue advantage of the fact that he was the erstwhile member of the Grama Panchayath and had demanded from the respondents and other allottees Rs. 20,000/- each, so that he would effect Kathas in their favour. On the legal aspect of the matter, the procedure by which the allottees were allotted sites and original documents in that regard were issued have been related in the affidavit. The legal proceeding conducted in respect of the allotment of sites to respondent Nos. 6 to 57 have been concluded by upholding the order dated 21.10.2000 of respondent No. 3, by the order dated 08.01.2004.

3. Thus, the petition suffers from various vices including suppression of material facts, oblique motive and reagitation of same issues before the same Court in a different form as public interest litigation. As earlier recorded by the Division Bench in its order dated 13.02.2012, the petition of petitioner No. 1 also had been dismissed mainly on the ground of delay and laches, in view of the fact that the issues sought to be raised even in the first petition of petitioner No. 1 related to an action taken during the year 1989-90. During all these years, the respondents are supposed to have occupied and constructed upon the sites allotted to them and the hurdle of delay and laches, even assuming that the petitioner ever had a valid legal challenge to make, could not be cured by filing a petition in the form of public interest litigation.

4. In the above circumstances, the petition is not found to be a bonafide attempt at serving any public interest and clearly appears to be an abuse of process of Court, and therefore, it is liable to be dismissed with an appropriate amount of cost to compensate the respondents who have been unnecessarily dragged to the High Court. Accordingly, the petition is /dismissed with costs quantified at Rs. 1,000/- to be paid to each of the respondent Nos. 5 to 57 by petitioner No. 1, within a period of one month.