

(2002) 06 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 9151 of 2001

K. Doddahanumaiah

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 14-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) ILR (Kar) 3633 : (2002) 5 KarLJ 302 : (2002) 3 KCCR 2010

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Mylaraiah Associates, for the Appellant; N. Basavarajaiah, High Court Government Pleader for Respondents-1 to 3 and K.G. Sadashivaiah, for S and S Associates for Respondent-4, for the Respondent

Judgement

N.K. Patil, J.—With the consent of learned Counsels appearing for the petitioner and respondents, the matter is taken up for final disposal.

2. The petitioner is assailing the correctness of the impugned order dated 15-4-1999 issued by the Tahsildar, Magadi, 2nd respondent and also the final order dated 9-10-2000 passed by the Deputy Commissioner, Bangalore, 1st respondent herein. The case of the petitioner is that he is an agriculturist by profession. He inherited the ancestral property bearing Sy. No. 33 measuring 2 acres 28 guntas situated at Kudlur Village, Solur Hobli, Magadi Taluk. The said land was dry land. After investing huge sums of money to the tune of Rs. 3 lakhs for digging up borewell, installing submersible pumps, having electricity connection, converted the said land into the garden land and also constructed a farmhouse and residing in the farmhouse. He was doing better agriculture raising garden crops like paddy, ragi, banana, tomato and also eucalyptus trees. In the edge of the land, he has fenced the said land by stone pillars with barbed wiring. While doing so, for the benefit and utility of the general public, he has provided a road, towards eastern portion of the said land bearing Sy. No. 33 and he has also provided a road, out of his own land, measuring 25 ft. width and 200 ft. length

commencing from National Highway No. 48 linking the same to Lingenhalli main road. Further, the petitioner contended that there was a Nakashe road marked in the village map which was not used by anybody at any point of time though it is shown in the middle of the said land. He further stated that at the instigation of the persons who are inimically deposing on having revengeful attitude towards the petitioner, a route was proposed in-between National Highway No. 48 and Lingenhalli. On the said proposal, for the convenience of the general public, the petitioner voluntarily has left 25 ft. width and 200 ft. length portion of the property for formation of the road to the east of the land in question. When things stood thus, the 2nd respondent herein at the instance of some villagers inimically disposed towards the petitioner, without initiating any proceedings as provided under the Karnataka Land Revenue Act and Rules and even without giving an opportunity to the petitioner, to put forth his grievance and without making spot inspection properly, arbitrarily concluded himself and ordered to evict the petitioner from the alleged Nakashe road by order dated 15-4-1999. Assailing the said order, the petitioner has filed a revision before the Deputy Commissioner in R.P. No. 2/29/99-2000. The Deputy Commissioner without giving opportunity to the petitioner basing on the pleadings proceeded to pass the impugned order dated 9-10-2000 confirming the order passed by the 2nd respondent. Assailing the legality and validity of the impugned orders passed by the respondents 1 and 2, the petitioner has presented this petition.

3. The principal submission canvassed by the learned Counsel for the petitioner are two-fold. Firstly, the proceedings initiated by the Tahsildar against the petitioner at the instigation of some villagers inimically disposed towards him is one without jurisdiction and the alleged impugned order passed by the Tahsildar is also one without jurisdiction and contrary to the relevant provisions of the Act. Secondly, the impugned order passed by the Deputy Commissioner dismissing the revision filed by the petitioner and confirming the order passed by the Tahsildar is without taking into consideration the defence put forth by the petitioner and without following due procedure prescribed under the relevant provisions of the Act. Therefore, he prayed that both the orders are not sustainable in the eye of law and they are liable to be quashed.

4. Per contra, the learned Counsel for respondent 4 inter alia contended that the impugned orders passed by the respondents 1 and 2 are strictly in accordance with the relevant provisions of the Act. There is no illegality or irregularity committed by the Competent Authority in initiating the proceedings against the petitioner for evicting him from the encroached land. Further, it is pointed out as per the village map the road is passing through Sy. Nos. 33 and 34 and it links the National Highway and the said road was in existence since time immemorial. Further, he pointed out that the said road is called as Nakashe road and it is meant for the public purpose. He contended that when once the road has been treated as public road, the petitioner has no right in any manner to encroach on the said land and plead before this Court that he is entitled to develop the said land without obtaining prior permission from the Competent Authority. Therefore,

he has justified the impugned orders passed by the authorities and contended that the petitioner has not made out any case to interfere with the impugned orders.

5. Further, the learned Government Pleader appearing for respondents 1 to 3 inter alia contended that the impugned orders passed by the Tahsildar and the Deputy Commissioner are strictly in accordance with the relevant provisions of the Act. Further, he has taken me through the impugned order passed by the Deputy Commissioner and there is a specific finding given by the Deputy Commissioner after going through the entire records. It reveals from the impugned orders that at the time of conducting survey, the Surveyor has made spot inspection and submitted his report and the Tahsildar also has inspected the land in question personally on 16-11-1998. Notice of hearing was fixed on 25-11-1998. Further, notice was also issued on 12-2-1999 calling upon the petitioner, one Venkataramanaiah and Smt. Narasamma to vacate the Nakashe road existing in Sy. Nos. 33 and 34 and the notice was served on them. Accordingly, they have given a statement to the effect that they have left 21 ft. on Kudlur side to accommodate the villagers and the public. Looking into all these proceedings, it cannot be said that the petitioner was not given an opportunity to represent his case as contended by the learned Counsel for the petitioner. Further, a specific finding was given by the Deputy Commissioner that the petitioner has admitted in unequivocal terms that he has unauthorisedly occupied the Nakashe road which belongs to the Government which is meant for public use. When this is the position, the question of providing an extent of 25 ft. width and 200 ft. length towards the east of the land by the petitioner does not arise nor it is permissible on the material available on record. Therefore, the entire case of the petitioner has been considered thoroughly and after examining the case made out by the petitioner, the impugned order has been passed by the Deputy Commissioner confirming the order passed by the Tahsildar. Hence, it is contended that the petitioner has not made out a prima facie, case to interfere with the impugned orders. Further, he has pointed out that when once the land is reserved for public purpose, it cannot be diverted for the purpose for which it was not reserved without changing the purpose in accordance with law. Looking into the interest of the public in general, the adjacent two owners have given their consent to the villagers to pass through the road existing i.e., Nakashe road except the petitioner. In view of the facts and circumstances of the case, since both the authorities have passed a well-considered order, the learned Government Pleader prayed that the petition may be dismissed with exemplary costs.

6. In my considered view, as rightly pointed out by the learned Counsel for the respondents, the land in question is reserved for a public purpose and it is evident from the village map that the Nakashe road is passing through Sy. Nos. 33 and 34 connecting the National Highway No. 48. When that is the position on the ground reality of the present case, the petitioner ought not to have taken the risk and developed the same without prior permission from the concerned

authorities. It is not the case of the petitioner that before converting the said dry land into the garden land, he has taken any permission from the Competent Authority. Further, it is significant to note that as a matter of fact as pointed out by the learned Counsel for the petitioner there was no notice issued to the petitioner nor an opportunity was given to the petitioner nor any enquiry was conducted as required under law has got no basis. I have carefully gone through the impugned orders. It reveals from the impugned order passed by the Deputy Commissioner, that before initiating the proceedings the Tahsildar has directed the concerned Revenue Inspector to make spot inspection and submit the report, and he has also directed the Surveyor to survey the land and thereafter, the Tahsildar himself has made the spot inspection to find the ground reality of the land in question on 16-11-1998. After making spot inspection he has issued notice of hearing on 25-11-1998 to all the parties. Further, it reveals from the track of the record that the notice was issued on 12-2-1999 calling upon the petitioner and two adjacent owners to vacate the Nakashe road existing in Sy. Nos. 33 and 34 and accordingly, the two adjacent owners have vacated the land except the petitioner. Therefore, the conduct of the petitioner itself is suffice for this Court to pass adverse remarks against the petitioner. The petitioner knowing fully well that the land in question has been reserved for public purpose and as it is also evident from the relevant records made available on the file as per village map that Nakashe road is passing through Sy. Nos. 33 and 34 connecting National Highway No. 48, has encroached on the same. He has not produced any authenticated document to establish that the land in question is not Nakashe road and it is not passing through Sy. Nos. 33 and 34 of the said village. Therefore, taking into consideration the totality of the case and having regard to the factual and legal position of the case, in my considered view, the petitioner has not made out any prima facie case to interfere with the impugned orders passed by the Tahsildar and the Deputy Commissioner. Hence, the impugned orders passed by the respondents 1 and 2 do not call for interference.

7. Yet another reason to note here itself that the Apex Court and this Court have severely deprecated the judicial tendencies to grant unwarranted reliefs by merely being governed by misplaced sympathy, generosity and private benevolence. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. In the facts and circumstances of the present case as stated supra, the Nakashe road is in existence since from time immemorial and it is clear from the village map

produced by the petitioner along with the writ petition which indicates that there is a public road in existence passing through Sy. Nos. 33 and 34 of the said village for the benefit of the public in general and it connects the National Highway No. 48. That too the two adjacent landowners have voluntarily conceded to the ground reality of existence of public road passing through Sy. Nos. 33 and 34. When this is the position, the petitioner ought not to have taken the law in his own hands and taken the risk for developing the lands. Therefore, it is not the mistake of the villagers or the beneficiaries and it is the mistake of the petitioner himself who has become himself the victim and not by the public in general.

Keeping in view the well-established principles laid down by the Apex Court and the Division Bench of this Court in several judgments, I do not find any justification to entertain the writ petition filed by the petitioner nor the petitioner has made out any case to get the relief at the hands of this Court under Article 226 of the Constitution of India.

For all these reasons, writ petition is liable to be dismissed and it is dismissed.

Sri N. Basavarajaiah, learned Government Pleader is permitted to file memo of appearance within four weeks from today.