
(2001) 09 KAR CK 0002

In the Karnataka High Court

Case No : Writ Appeal No's. 3631 and 3632 of 2001

K. Vasudeva

APPELLANT

Vs

D.R. Neelappa Reddy

RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:

Transfer of Property Act, 1882 — Section 105

Citation : (2002) 4 KarLJ 183

Hon'ble Judges : G.C. Bharuka, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : K.S. Gaurishankar, for the Appellant; Ashok Haranahalli, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—In these intra-Court appeals, writ petitioners are the appellants before us. They had filed the writ petitions with the prayer to restrain the respondent-Commissioner of the Bangalore City Corporation and its other officers from entering on the part of the conservancy lane on which they are alleged to have put up certain constructions and demolish the same. The learned Single Judge after referring to the relevant statutory provisions; had negatived the prayer K. Vasudeva and Ors. v. The Corporation of the City of Bangalore and Ors. .

2. The appellants are exerting their right to remain on the conservancy lane in question on the basis of a registered lease deed dated 16th February, 1954 which was entered into between their father and the Corporation (Annexure-B to the writ petition) whereunder the lessee had undertaken to plant or grow trees in the above lane with a very clear stipulation that they will not put up any construction of any nature. The Corporation had reserved its rights to enter upon the land for purpose of periodical clearing of the underground sewerage and other installations on the land. The period of the said lease has already expired on 15-2-1957.

3. It is a matter of record that in violation of the terms of the lease which permitted the lessee only to plant trees, he or his successors had put up constructions, as well. Certainly this act has not been done by the appellants or their father pursuant to any right flowing from the above lease deed. It cannot be disputed that the conservancy lane is a public street within the meaning of Clause (31) of Section 2 of the Karnataka Municipal Corporations Act, 1976 (for short, the "Act") which reads as under:

" "Public street" means any street, road, square, court, alley, passage or riding path over which the public have a right of way whether a thoroughfare or not and includes.- (a) the roadway over any public bridge or causeway,

(b) the footway attached to any such street, public bridge, or causeway, and

(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement verandah or other structure which lies on either side of the roadway upto the boundaries of the adjacent property, whether that property is private property or property belonging to the Government or the Corporation".

4. The above being the position, Sections 288-A and 288-D immediately come into operation. These sections read as under:

"288-A. Prohibition of structures or fixtures which cause obstruction in public streets.--No person shall except with the written permission of the Commissioner u/s 288 erect or set up any wall, fence, rail, post, step, booth or other structures or fixtures in or upon any public street or upon or over any open channel, well or tank in any street, so as to form an obstruction to, or an encroachment upon or a projection over, or to occupy any portion of such street, channel, drain, well or tank.

XXX XXX XXX 288-D. Commissioner may without notice remove encroachment--Notwithstanding anything contained in this Act, the Commissioner may, without notice, cause to be removed--

(a) any wall, fence, rail, step, booth or other structure or fixture which is erected or set up in contravention of the provisions of Section 288-A;

(b) any stall, chair, bench, box, ladder, bale or any other thing whatsoever, placed or deposited in contravention of Section 288-B;

(c) any article, whatsoever, hawked or exposed for sale in any public or in any public street in contravention of Section 288-C and any vehicle, package, box, board, shelf or any other thing in or on which such article is placed, or kept for the purpose of sale".

5. The above two sections which have been incorporated in the Act to effectively deal with the mischief of obstructing public streets and other places and amenities of public utility, were inserted by the State Amendment Act 32 of 1986 which came into force with effect from 17-6-1986. Therefore, if the

Commissioner finds that after coming into force of the above provisions, any construction, affixtures are still existing on the public streets, then it is certainly permissible on his part to direct removal of those constructions and affixtures even without issuing any notice.

6. In the present case, it is not in dispute that the appellants have put up construction on the conservancy lane and therefore, the Commissioner clearly had been empowered by the legislature to remove all such encroachments. On our direction, Sri Ashok Haranahalli, learned Counsel appearing for the Corporation has produced the relevant file to show that the action of removal of encroachments has been initiated under the orders of the Commissioner.

7. Sri K.S. Gaurishankar, learned Counsel for the appellants, has relied on the two decisions of the Supreme Court in the case of Badrilal Vs. Municipal Corporation of Indore, and Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, . Those are the cases in which it had been held that a tenant even if he remains in the premises leased to him after the expiry of the period of lease or determination of lease, he can be evicted from the land only by recourse to the law in that regard. These decisions have no relevance so far as the facts of the present case are concerned.

8. Firstly, a bare reading of the agreement at Annexure-B, which was entered into between the father of the appellants and the respondent-Corporation, makes it clear that the appellants or their heirs cannot be said to have acquired any right of an occupier to term them as tenants of the conservancy lane since the only privilege granted to the appellants' predecessor-in-interest was to plant or grow the trees in the land. In this connection, we usefully refer to the judgment of the Supreme Court in the case of B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others, . In para 4 of the report, it has been held that:

"The distinction between a lease and a licence is well-known. Section 105 of the Transfer of Property Act defines a lease. Section 52 of the Indian Easements Act defines a licence. A lease is the transfer of a right to enjoy the premises; whereas a licence is a privilege to do something on the premises which otherwise would be unlawful. If the agreement is in writing it is a question of construction of the agreement having regard to its terms and where its language is ambiguous, having regard to its object, and the circumstances under which it was executed whether the rights of the occupier are those of a lessee or a licensee. The transaction is a lease if it grants an interest in the land; it is a licence if it grants an interest in the land; it is a licence if it gives a personal privilege with no interest in the land. The question is not of words but of substance and the label which the parties choose to put upon the transaction, though relevant is not decisive. The test of exclusive possession is not conclusive, see *Errington v. Errington and Woods* (1952) 1 KB 290; *Associated Hotels of India Ltd. Vs. R.N. Kapoor*, , though it is a very important indication in favour of tenancy".

9. In the said view of the matter, in our considered opinion, this Court cannot under writ jurisdiction, come to their rescue so as to allow them to maintain their illegal acts. Even otherwise, under the provisions contained in the Act as noticed above, the Commissioner has been given an express statutory authority to remove all such encroachments. We hope and trust that the Commissioner will go ahead in his endeavour to see that all the public streets and lanes are cleared from all sorts of encroachments so as to facilitate the thoroughfare or convenient right of way to the extent conceded to the citizens in the Corporation area.

10. For the said reasons, we express our entire agreement with the ultimate conclusion drawn by the learned Single Judge. Appeals are accordingly dismissed.