

(2013) 12 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No's. 55515-55517 of 2013 (GM-RES)

Kaleemulla K., K. Narasimappa and Thippeshi H.

APPELLANT

Vs

The State of Karnataka, The Executive Engineer, Public Works
Department, The Secretary, Gram Panchayat and The Asst.
Executive Engineer, PWD-Sub-Division

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0055

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : N. Manohar, for the Appellant; H.V. Manjunatha, AGA for R1-R4, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioners are before this Court seeking for issue of mandamus to restrain the respondents from taking any steps to demolish the schedule properties or any portion thereof without acquiring the same by following due process of law. The petitioners claim to be the owners of the properties which are described in the petitions. The petitioners who are in possession and enjoyment of the said properties are before this Court on the apprehension that the respondents in the guise of widening the road is likely to demolish a portion of the property belonging to the petitioners and dispossess the petitioners from the said property. Based on such apprehension due to certain marking made on the properties of all the petitioners, the petitioners are before this Court.

2. The definite stand of the respondents is not on record. However, the perusal of the photographs produced along with the petitions would indicate that there are certain activities with regard to the road and certain markings are also indicated on the properties belonging to the petitioners.

3. Be that as it may, the petitioners have also relied on the order passed by the Division Bench of this Court in WP No. 142/1998 and connected petitions disposed of on 25.08.2004. In the said proceedings an affidavit filed on behalf of the Government of Karnataka has been extracted in detail. Since the State itself had given an undertaking by filing an affidavit that no demolitions or encroachments on the private properties would be made without due process of law, the Division Bench has recorded the same and disposed of the writ petition. The order passed therein has also been relied by this Court in several other petitions whereby, appropriate direction has been issued to the respondents to act only in accordance with law. In that regard in W.P. No. 48298/2012 which was disposed of by me, the following observations were made:

In that view of the matter, in this case also the respondents are directed that if they are of the opinion that any portion of the property in the possession of the petitioner is required for any purpose, at the outset there shall be a factual determination to arrive at a conclusion as to whether the petitioner is the owner of the property or whether there is encroachment. Such factual determination shall be made on providing opportunity to the petitioner. Thereafter, if it is found that it is an encroachment, appropriate action could be taken in accordance with law. However, if it is found that the petitioner is the owner of the property and if any portion is required for any public purpose, the same shall only be taken in accordance with law after providing opportunity to the petitioner. Needless to mention that until such factual determination is made and appropriate action in accordance with law is taken, the respondents shall not interfere with the possession and enjoyment of the property by the petitioner nor demolish the same.

From the above, it would be clear that if at all the respondents require the property for widening of the road, the same can only be acquired in accordance with law. Even assuming for a moment, that the respondents have a contention that the petitioners have encroached any of the properties, even then the spot verification is required. Though the learned counsel for the petitioners contend that there is no encroachment, the factual determination in any event would have to be made by providing opportunity to the petitioners. Therefore, observations as extracted above would be relevant in the instant case as well. Hence, until the due process of law is adopted, the respondents are directed not to interfere with the rights of the petitioners to enjoy their properties in accordance with law.

With the said directions, these petitions stand disposed of.