

(2009) 04 SC CK 0032

In the Supreme Court Of India

Case No : Civil Appeal No. 2554 of 2009 (Arising out of SLP (C) No. 13824 of 2006)

Mandal Panchayath Hunsagi

APPELLANT

Vs

North Eastern K.R.T.C.

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 274

Citation : (2010) 5 ALT 17 : (2009) 8 JT 272 : (2009) 6 SCALE 153 : (2009) 7 SCC 450 : (2009) 6 SCR 353 : (2009) 5 UJ 2332

Hon'ble Judges : S. B. Sinha, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : Sic. ak Kumar Jena, for the Appellant; Sic. S. Hegde and P.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Leave granted.

2. Appellant before us is a Mandal Panchayat. Respondent is a Corporation constituted and registered under the Road Transport Act, 1951. It filed a suit for grant of a decree for mandatory injunction to demolish the shops constructed by the appellant herein as also for a decree for grant of perpetual injunction restraining them from proceeding with the illegal construction of shops over the disputed space alleging that just behind the same, it runs a bus stand and in the middle portion whereof, a PWD owned road is used for egress and ingress of the passengers. It has two gates through which the buses enter into and exit for their destination. For safety of the passengers, there exists a wicket gate. The said open space is said to be belonging to and maintained by the PWD authorities.

It was contended that the land over which the shops were being constructed by the appellant did not belong to it and, thus, the same was totally illegal.

Appellants, in their written statement, accepted the topography but urged that the purported wicket gate is not in use. It was stated that there existed a 30 ft. space belonging to Mandal Panchayat in between the compound wall and the bus stand.

3. The learned Trial Judge decreed the said suit holding that the Secretary of the appellant-Panchayat having admitted in the cross- examination that they did not have any document of title in respect of the land in suit and furthermore having regard to the fact that the breadth of the major district road has to be 30 meters and, thus, appellant did not have any right, title or interest in or over the suit land. It was furthermore held:

If at all the defendants wants to construct shopping complex, it should be beyond the 50' from the centre of the road. It can be seen from the sketch map Ex.D.7 that the shops are being constructed by the defendants at a distance of 9 meters from the centre of the road and the breadth of the shops upto the compound wall of the bus stand is 5.60 meter. In other words the total area between the centre of road upto the compound wall is 14.60 meters which is less than 15 meters from the centre of the road and so it can be said that whatever area is available from the centre of road upto the compound wall of the bus stand is the area belongs to the main road shall be 30 meters. Besides it can be said that 1 meter 3.3' and 14.60 meters 48.18' approximately and this area (48') is less than 50' and under Ex.P.25 the defendants were permitted to raise the construction of shopping complex beyond 50' from centre of the road, but now the construction undertaken is 48-49' which is not permissible. In sum & substance, it can be said tht there are cogent and convincing materials on records to hold that the disputed area of 15' where upon the shopping complex is being raised by the defendants between the compound wall of the bus stand and the main road is the property belongs to PWD department rather than the defence of the defendants that it is Gouthana property, and the plaintiff was successful to discharge the duty imposed upon it in this regard. Having regard to all these facts and circumstances of the case the present issued on had is liable to be answered in affirmative and it is answered accordingly.

An appeal preferred thereagainst by the appellant was allowed by a judgment and decree dated 16th June, 2004 passed by the Civil Judge (Senior Division) Yadgir in R.A. No. 55 of 1993. The Appellate Court in its judgment, inter alia, took into consideration the contention raised on behalf of the appellant that the shops were being constructed for the welfare of the public under the Jawahar Rozgar Yojna, as also the fact that the Chief Secretary of the Zilla Parishad by an order dated 9.8.1989 granted approval for the work directing the appellant to open a gate where the `wicket gate' was situated.

It was furthermore opined that as the PWD itself never claimed the ownership of the road, the plaintiffs-respondents could not be permitted to do so. It was, however, noticed that although sanction was obtained by the appellants for construction of four shops, but, in fact, it started construction of six shops

wherefor no authorization was obtained by them from the PWD. It was opined that it was for the plaintiff-respondent to prove that the right and interest of the public at large would be affected by construction of the shops wherefor the suit was required to be filed in terms of Section 92 of the Code of Civil Procedure. It was furthermore held:

As regards using of passage gate by the passengers and cause of action to file this suit, I am of the view that in view of the conclusions arrived at by this Court, those facts are not material facts. The plaintiff has no cause of action with detailed reasons, the plaintiff cannot file this suit to get the grievances redressed by the limited scope of the prayer as prayed in the relief column of the plaintiff. At one stretch, it is contended that the public have got easementary rights and at another stretch, it is contended that the passengers, who are going to the bus-stand, would put to inconvenience due to the construction before the wicket gate. The nature of the rights, which are going to be claimed by the plaintiff in this suit, are of different nature.

4. An appeal was preferred thereagainst by the respondent which by reason of the impugned judgment has been allowed by the High Court.

The High Court, inter alia, formulated the following substantial questions of law for its consideration:

1. Whether the lower appellate court was justified in reversing the well considered and reasoned judgment and decree of the trial court which appears to have been passed in public interest on the pleadings of the appellant which is a part of the State Road Transport Corporation?

2. Whether the lower appellate Court was correct in rejecting the claim made by the plaintiff contending that the right to the path way for the public is an easementary right for the public to pass to the road from the bus stand?

3. Whether the lower appellate Court was correct in holding that the plaintiff has no locus-standi to maintain the suit?

5. It was held that the plaintiff-respondent had a locus standi to maintain the suit as by reason of the constructions raised by the defendant-appellant, their right of easement of necessity had been affected. Noticing that the distance between boundary wall of the bus stand and the centre of the road is less than 50 feet and the wicket gate unless opened for facilitating the passengers to enter into the bus stand, the entry meant for egress and ingress of the buses, would be blocked and, thus, the Appellate Court committed a serious error in passing its judgment.

6. Mr. Dipak Kumar Jena, learned Counsel appearing on behalf of the appellant, would submit:

(i) The High Court committed a serious error in interfering with the judgment of the First Appellate Court insofar as it failed to take into consideration the fact

that the land in suit being admittedly not belonging to the plaintiff-respondent, it was not entitled to any relief.

(ii) The validity of the order passed by the Chief Secretary of the Zilla Parishad dated 2.9.1992 u/s 274 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (hereinafter referred to as 'the 1983 Act') having not been questioned by any of the parties, the same was binding on the plaintiff.

7. Mr. Hegde, learned Counsel appearing on behalf of the respondent, on the other hand, would support the impugned judgment.

8. Appellant does not claim any right, title and interest over the suit land. Indisputably, the suit land in a part of the main road belongs to PWD. It has not been disputed before any of the courts below that no construction could have been raised within 30 meters from the centre of the road. A finding of fact had been arrived at to that effect by the learned trial Judge. The said finding of fact has not been reversed by the learned First Appellate Court.

9. It is in that view of the matter, the High Court, in our opinion, rightly held that the wicket gate constructed within 50 ft. of the centre of road for facilitating the egress and ingress of the passengers to enter the bus stand could not have been blocked.

10. Section 274 of the 1983 Act reads as under:

274. Revision.--(1) The Zilla Parishad may call for and examine the record of any proceedings under this Act of any subordinate officer of the Zilla Parishad or the Mandal Panchayat and after such inquiry as is deemed fit if the Zilla Parishad is satisfied that the order of such subordinate officer is contrary to law and has resulted in miscarriage of justice, pass such orders thereon as the Zilla Parishad deems just.

(2) No order under Sub-section (1) shall be made to the prejudice of any party unless he has had an opportunity of being heard.

11. The Chief Secretary of the Zilla Parishad in his order dated 2.12.1992 has not and could not have entered into the disputed question of title in respect of the suit land.

12. Only because the Zilla Parishad has granted approval for the constructions, the same by itself would not come in the way of the respondent's right to maintain a suit. It was not necessary for it to file a suit in terms of Section 92 of the Code of Civil Procedure. The very fact that the Chief Secretary, Zilla Parishad, Gulbarga himself had directed for opening a passage to the wicket gate which order has not been questioned by the appellants is a clear pointer to show that even the revisional authority did not arrive at a finding that they have a lawful title over the land so as to enable them to raise construction over the suit land in their own right. The constructions raised by the appellant, thus, being illegal, the

same should have been directed to be demolished. The Court of first appeal, in our opinion, committed a serious illegality insofar as it, for all intent and purport, dismissed the respondent's suit on the question of locus standi.

13. If the provisions of Section 92 of the CPC were not attracted; the suit by the Corporation which is also a statutory corporation, in our opinion was maintainable.

14. For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.