
(2014) 06 KAR CK 0215

In the Karnataka High Court

Case No : Writ Petition No. 38048 of 2013 (LA-RES)

M.N. Lingaraju

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 27-06-2014

Acts Referred:

Citation : (2014) 4 KarLJ 676

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

Bench : Single Bench

Advocate : M. Sivappa, Senior Counsel for P. Mahesha, Advocate for the Appellant; H. Venkatesh Dodderi, Additional Government Advocate, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.S. Bopanna, J.—The petitioner is before this Court seeking for issue of mandamus directing the respondents-authority not to demolish the existing structure on the petitioner's property for the purpose of formation or widening of Road SH-57 without following the acquisition proceedings. The case of the petitioner is that he is the owner of the property bearing Assessment No. 120 of Hullahalli Village, Nanjangud Taluk. The property is claimed to be the ancestral property of the petitioner which was purchased by the grandfather under a registered sale deed dated 24-1-1919. The further case of the petitioner is that the petitioner is in enjoyment of the property which was purchased by his grandfather. The respondents without authority have sought to demolish a portion of the house in which the petitioner is in occupation. In that view, the petitioner was before this Court in W.P. No. 45662 of 2012 which was disposed of by the order dated 1-2-2013 (Annexure-D) to the petition.

2. This Court, on taking note of the contention put forth therein had observed that the rule of law entitles the petitioner to notice, if his property is put to use for widening the road. In that view, the petitioner contends that he is entitled to the due legal procedure before the property belonging to the petitioner is

demolished for the purpose of widening the road. Since, no action was taken after the disposal of the petition, the petitioner is also stated to have got issued notice to the respondents and despite the same, without any procedure being followed there was an attempt once over again to demolish the property of the petitioner as certain markings were done and demolitions were made in the adjacent property which has prompted the petitioner to file this petition.

3. During the pendency of this petition, this Court by the order dated 5-9-2013 had directed that a survey be conducted and the property be measured. In obedience to the said order, the parties have remained present and the process of measuring the property has been conducted.

4. The learned Government Advocate has filed a memo along with the sketch and the mahazar relating to such survey that was conducted. In that view, the sketch is referred to and it is contended that as per the measurement, it is noticed that the petitioner has encroached the road as indicated in "Orange" colour to the said sketch which at one end indicates 8 ft. 6 inches and at the other end it is 4 ft. It is therefore contended that when the petitioner has encroached the public property, the question of acquiring the property does not arise and the encroachment should yield to the public interest when the road is sought to be widened.

5. The petitioner has filed a detailed objection statement to the said report. It is contended in the objection statement that the allegation of encroachment is not correct. It is the case of the petitioner that the property had been purchased as far back in the year 1919 and the construction has been in existence ever since. It is therefore contended that the case of the respondents that there is encroachment cannot be accepted and it is his case that apart from the measurements indicated in the sale deed, the open area has not been taken into consideration. In that view, it is contended that the measurement cannot be accepted to be correct. Reliance is also placed on order passed in W.P. No. 58967 of 2013, dated 9-4-2014 relating to a similar widening of the road for the same purpose that is widening of SH-57.

6. In the light of the rival contentions, what is necessary to be noticed at this juncture is that the petitioner contends that the property belonging to him is being demolished without following the due process of law and in that regard, even if the widening of SH-57 is required, appropriate proceedings is to be followed and the property be acquired and the petitioner be compensated. On the other hand, the respondents are contending that the extent to which the widening of SH-57 is being done is in the land which belongs to the Government and has been encroached by the petitioner. It is no doubt true that measurements were made pursuant to a direction issued by this Court. However, the nature of the observations made in the Commissioner's report is disputed by filing objection statement.

7. In a circumstance where normally there is encroachment and immediate

action is taken by the authorities, certainly this Court would not interfere. However, in the instant case, what is necessary to be noticed is that even the sale deed based on which the measurements were made is of the year 1919. In such circumstance, even if the case of the respondents that there is encroachment is to be accepted, the point at which such encroachment had taken place would also be relevant to decide the rights of the parties. In this regard, it is necessary to take note of the observations made in W.P. No. 58967 of 2013, wherein this Court has also taken note of the right relating to settled possession of the property and the manner in which a person could be dispossessed. If these aspects are kept in view, when the report submitted by the Commissioner is seriously disputed by filing an objection statement the right with regard to the property even if there is encroachment and the point at which the encroachment has taken and the rights of the parties who has thereafter been in settled possession cannot be decided in the instant writ petition.

8. Therefore, even if the report submitted to this Court is taken into consideration, the procedure to be followed by the respondents should be to appropriately notify the petitioner about the encroachment and the manner in which it has been done. Thereafter, the petitioner would be entitled to put forth his defence in that regard and in such proceedings, if the petitioner is entitled to establish the right over the property, due to the long possession, even if there is encroachment and the point of encroachment being decided, appropriate proceedings thereafter in accordance with law would have to be followed. Therefore, though at this juncture no definite conclusion could be reached as to whether the acquisition proceedings is to be held, certainly the respondents cannot arm-twist the petitioner without due process of law. Hence, reserving liberty to the respondents to take appropriate action in accordance with law after issuing notice to the petitioner and in such proceedings, the leave to decide the right of the parties, the instant petition would have to be disposed of. Until such lawful course is adopted by the respondents, certainly the demolition cannot take place at this juncture. Hence, to the said extent, the respondents are restrained from demolishing the house of the petitioner until the due process of law is followed in either case.

In terms of the above, the writ petition stands disposed of.