

(2010) 03 KAR CK 0082
In the Karnataka High Court
Case No : Writ Petition No. 7770 of 2010

Moosa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 306

Citation : (2010) 3 KarLJ 171

Hon'ble Judges : V. Gopala Gowda, J;B.V. Pinto, J

Bench : Division Bench

Advocate : O. Shivarama Bhat, for the Appellant; Basavaraj Karreddy, Government Advocate and B.N. Devdas, for the Respondent

Judgement

V. Gopala Gowda, J.—The prayers sought for in the writ petition are as under:

(a) Issue a writ of Certiorari to quash the resolution dated 29-10-2009 passed by the respondent 2 insofar as Subject No. 8(3) is concerned vide Annexure-A;

(b) Issue a writ of mandamus directing the respondent 3-Deputy Commissioner to consider the representation vide Annexure-B and pass an order by exercising his power u/s 306 of the Karnataka Municipalities Act, 1964;

(c) Issue any other writ, order or direction and grant such other and further reliefs as this Hon'ble Court deems fit and proper under the circumstances of this case, in the interest of justice and equity.

2. The 2nd respondent has filed the statement of objections. The apprehension of the petitioners is dislodged in view of the categorical statement made by the 2nd respondent in paragraph 9 of the statement of objections, which reads as under:

9. The contention of the petitioner that the respondents are contemplating to demolish buildings and structures is untenable. The resolution only contemplates the widening of the roads and for that purpose removing unauthorised structures, temporary or permanent so as to maintain the road width is only

undertaken. The Municipality does not demolish any approved building or structures, which are outside the road margins. The petitioners cannot abuse the process of this Hon"ble Court to defend the encroachers of the public roads and perpetuate the illegal occupations causing public nuisance, which is detrimental to public interest.

3. Learned Counsel for the petitioners Mr. Shivarama Bhat inviting our attention to the resolution of the 2nd respondent vide Annexure-A, dated 29-10-2009 submits that the same is contrary to the undertaking given by the 2nd respondent at paragraph 9 extracted supra. Therefore he submits that the petitioners are entitled for the relief sought for. He further submits that the petitioners are not encroachers and they are the permanent residents of the area in question where the 2nd respondent is seeking to widen the road. Learned Senior Counsel for respondent 2 placing reliance upon Annexures-R1, R2 and R3, the Transport and Communication policy laid down by the Urban Development Authority submits that the 2nd respondent has undertaken widening of the road in question i.e., Mahadevapet road from Indira Gandhi Chowk upto AVS school of 25 feet. Learned Senior Counsel on behalf of the 2nd respondent submits that the existing buildings in the private properties will not be touched and if they are going to take those properties for widening the road, the 2nd respondent will take necessary steps as provided under the provisions of the Land Acquisition Act, 1894 and further submits that at the same time if there are any encroachers of the Government property, at the time of widening the road necessary steps will be taken to evict such encroachers. The submission is placed on record. In view of the undertaking given by the 2nd respondent and the said statement having been verified in the affidavit sworn to by one K. Srikanth Rao S/o. N.R. Bhat, Municipal Commissioner, the apprehension of the petitioners that the private properties will be demolished is without any basis. Further the submission made by the learned Senior Counsel on behalf of the 2nd respondent that such demolition will be made only in accordance with law is placed on record. In view of the same, the petitioner"s apprehension is misconceived. The petition is disposed of by recording the undertaking given by the 2nd respondent.

4. The 3rd respondent-Deputy Commissioner is directed to consider the representation at Annexure-B u/s 306 of the Karnataka Municipalities Act, 1964.