

(1997) 09 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 8796 and 8861 of 1996

N. Prabhat Pai

APPELLANT

Vs

Uppinangadi Grama Panchayathi and Others

RESPONDENT

Date of Decision : 18-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) ILR (Kar) 1277

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : A. Keshava Bhat, for the Appellant; B.M. Krishna Bhat, for R-3 and G. Balakrishna Shastry, for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Chandrashekaraiah, J.

1. Uppinangadi Grama Panchayath (hereinafter referred to as the Panchayat) is the owner of the Stall No. 3 (New No. 4) situated in the New Bus Stand Uppinangadi, Puttur Taluk.

2. The Panchayath issued a notification proposing to auction the right to carry on the business in the above stall. Accordingly, the auction was held. In the said auction the bid of the petitioner was accepted as it was the highest bid. Thereafter the petitioner was permitted to carry on business in the said stall for the period between 1.4.1995 to 31.3.1996. Before the expiry of the said period, the grama panchayath issued a notification dated 2.3.1996 proposing to sell the right to carry on business for the period from 1.4.1996 to 31.3.1997 in the said stall. This notification has been challenged by the petitioner in this Writ Petition.

3. Sri Keshava Bhat learned Counsel for the petitioner contended that once the petitioner is put in possession of the stall as a licensee, he is entitled to carry on business even after the expiry of the licence until and unless he has been evicted with due process of law. In reply to the said submission, the Learned Counsel for

the panchayath submitted that the petitioner is only a licensee, therefore immediately after the expiry of the licence, he has no right to continue to carry on the business in the stall No. 3 and it is further submitted that the petitioner has no right so as to enforce as against the panchayath in a Writ" Petition under Article 226 of the Constitution of India. It is further submitted that the right to carry on business for a particular period cannot be treated as a right to be in possession, so as to resist the same as against the Panchayath.

4. In view of these rival contentions, what is required to be considered in this Writ Petition is whether the petitioner has got any legal right so as to resist possession as against the Panchayath?

5. It is not in dispute that in a public auction, the petitioner has purchased the right to carry on business in the stall belonging to the panchayath. Mere right to carry on business in the said stall cannot be treated as a right to be in possession so as to resist the same as against the true owner. No doubt by virtue of purchasing the right to carry on business in the stall, the petitioner is allowed to do his business in the stall belonging to the owner. But the nature of possession cannot be treated as possession and at best it can be said that the stall is in custody of the petitioner for the purpose of carrying on business. Therefore the petitioner has no legal right to be in possession so as to resist the claim of the owner of the property.

6. Even assuming that he has got some right in respect of the stall, that right is required to be treated as a right derived under the licence. After the expiry of licence either by flux of time or by revocation of licence by the licensor, the licensee has no legal right to resist possession as against the licensor.

This Court in the case of SIDDAMMA MADIAH AND ORS. v. GEETHA DWARKANATH^{1983 (2) Kar.L.J. 331} has held as follows :

"A license may be revoked either expressly or impliedly and the licence gets terminated ipso facto on the expiry of the agreement.

The licensee after the expiry of the licence would be a trespasser. In such a case the licensor has a prima facie case to restrain the licensees by way of temporary injunction."

In view of the law laid down by this Court in the case referred to above, the petitioner being a licensee in respect of the stall has no right to resist possession as against the true owner since the period of licence has expired by flux of time on 30.3.1996.

7. The learned Counsel for the petitioner cited the decisions rendered in the case of S. Manohar Vs. E.K. Govindaraja Setty, , Patil Exhibitors (Pvt.) Ltd. Vs. The Corporation of the City of Bangalore, , Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, , in support of his contention that he being in possession under a licence has to be evicted with due process of law. In my opinion, the said decisions have no application to the facts of this case.

8. Sri Shastry, learned Counsel for the Panchayath submitted that the petitioner is trying to enforce his right if any, under a contract, and therefore Writ Petition under Article 226 of the Constitution of India is not maintainable. In reply, to the said submission, Sri Keshava Bhat, learned Counsel for the petitioner submitted that the petitioner is not enforcing any contractual right. According to him, the right he is enforcing in his Writ Petition is a right which he has acquired after the expiry of the period of contract entered into between him and the Panchayath.

9. In order to invoke the jurisdiction of the Court for a relief, one should show that his right either legal or contractual has been infringed. In the case on hand, even according to the learned Counsel for the petitioner, the petitioner is not enforcing any right under a contract. If the petitioner has no contractual right he must show what is his legal right that he has acquired after the expiry of licence. The petitioner is not able to show that he has acquired a legal right to be in possession after the expiry of the period of licence, under any law. Therefore no relief can be granted in favour of the petitioner in this Writ Petition.

10. The petitioner has sought for an order restraining the respondents 1 and 2 from forcibly evicting the petitioner from the stall referred to above. It is brought to my notice that during the pendency of this Writ Petition, the respondent-Panchayath has taken possession/custody of the stall from the petitioner immediately after the vacation of the interim order granted by this Court on 19.4.1996. This shows that as on today, the petitioner is not in custody/possession of the premises. When such being the case, no relief can be granted in this Writ Petition.

11. In the notification, that is impugned in this Writ Petition, the right to carry on the business for a period between 1.4.1996 to 31.3.1997 was proposed for auction. Since the said period has expired, as on today, in all probability the Panchayath has auctioned the right to carry on business subsequent to 31.3.1997. Therefore even on this ground also no relief can be granted to the petitioner.

12. It is brought to my notice that one Smt. Prathima S. Bhat, had filed W.P.No. 24321/1995 as against the Uppinangadi Grama Panchayath who is the respondent in this Writ Petition for the relief similar to relief sought for in this Writ Petition. This Court by its order dated 14.7.1995 dismissed the said Writ Petition, wherein it is held as follows :

"6. Coming to the facts of the present case, I have already held that the status of the petitioner was that of a licensee simpliciter. By virtue of her own agreement, she was required to surrender the premises to the respondents on 30.6.1995. Undoubtedly, she could have continued thereafter if they had permitted her or if her licence was either renewed or extended. The facts of the case indicate that this was not the position. The grounds on which the petitioner seeks right to continue are hopelessly untenable in so far as she has pleaded tenancy rights for which I do not see even the slightest justification. On the other hand, what needs

to be examined is as to whether the respondents have acted in conformity with the requirements of law."

This order was affirmed by the Division Bench of this Court in Writ Appeal No. 2400/1995 DD 27.7.1995. In all fairness, Sri Keshava Bhat, the learned Counsel for the petitioner, having appeared for the petitioner in the above referred case, could have brought the said decision to the notice of this Court. But for the reasons best known to him, has argued the matter for hours together without bringing the said decision to notice of this Court, at the cost of public time. The learned Counsel for the respondent has cited this decision in support of his case stating that on a similar and identical sets of facts this Court declined to grant any relief to the petitioner. Therefore, I am of the view that it is a fit case where cost has to be imposed. Accordingly, I pass the following order :

Writ Petition is dismissed with cost. The petitioner has to pay a sum of Rs. 2000/- as cost to the first respondent - Grama Panchayath.