

(1998) 03 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 34096 to 34150 of 1997

N. Sampurnamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Regularization of Unauthorised Constructions in Urban Areas Act, 1991 —
Section 3, 4 (8), 5

Citation : (1998) 6 KarLJ 332

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Vivek Reddy for Sri K.N. Subba Reddy, for the Appellant; Sri M.H. Ibrahim, Government Pleader, Sri N.K. Patil and Sri S.R. Ramprakash, for the Respondent

Judgement

1. Heard Sri Vivek Reddy holding brief for Sri K.N. Subba Reddy, learned Counsel for the petitioners in all these petitions and Sri N.K. Patil, learned Counsel for respondent 2 as well as Sri M.H. Ibrahim, learned Government Pleader representing respondents 1 and 4 and Sri S.R. Ramprakash, learned Counsel for the respondent 3.

2. The petitioners in these petitions under Article 226 of the Constitution of India have prayed for the following reliefs.

Issuance of writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to regularise the occupation of the petitioners in accordance with their respective holdings in lands bearing Sy. Nos. 69 and 58 and 56 as well as to declare that the respondent 3 is a stranger and has no right, title or interest over the properties in Sy. Nos. 56, 58 and 69 of Gavipuram village in the wake of the acquisition by the erstwhile City Improvement Trust Board and for grant of any such other reliefs as Court deems fit.

3. The case of the petitioners is that, the petitioners are the permanent residents of the area known as Gavipuram formed in Sy. Nos. 56, 58 and 69 of Gavipuram Village. Petitioners further case is that petitioners 1 to 32 and 43 and 44 are residents of Sy. No. 58 while petitioners 33 to 42 are residents of Sy. No. 69 and remaining petitioners 45 to 56 are residents of Sy. No. 56 with their houses built on those plots for several decades and they have been in peaceful possession and enjoyment of their respective holdings/building constructed by them on those plots. The land in Sy. Nos. 58 and 69 belonged to one Gosaimutt but the same was acquired and after acquisition of those Sy. Nos., it culminated in award being passed and compensation being paid to said Gosaimutt by the erstwhile City Improvement Trust Board presently known as Bangalore Development Authority. Petitioners have annexed Annexure-A which is the true copy of the certification of the award and vesting of possession in the Special Land Acquisition Officer, City Improvement Trust Board, Bangalore. Petitioners have further stated that Sy. No. 56 in which some of the petitioners are residing belongs to the Government. No proof has been furnished in support of the allegation that it belongs to the Government. Petitioners have submitted that petitioners have individually made representations to the Bangalore Development Authority seeking regularisation of their possession over the land in Sy. Nos. 56, 58 and 69 of Gavipuram village which according to the petitioners are subject-matter of consideration by the Bangalore Development Authority. Petitioners have" annexed Annexures-D1 to D2 as the copies of applications. Petitioners case is that petitioners have been residing without hindrance from any person or authority since several decades and the applications for regularizations are pending consideration before the 2nd respondent. Petitioners have further alleged that the respondents without any notice to the petitioners, all of a sudden, in active connivance with the police came to Gavipuram and Kempegowda Nagar with men and material to evict the petitioners from their respective holdings. Petitioners case is that it was only when the petitioners by concerted efforts did resist the authorities realised their futile efforts and left the place with a threat that they would dispossess them on 30th November, 1997. The Bangalore Development Authority itself is sitting pretty on the representations of the petitioners for regularisation and seems to have taken law into its own hands and is trying to compel the petitioners to submission. Petitioners have alleged that their action is illegal and is one without notice and without following the principles of natural justice. Petitioners case is that in the absence of any alternative remedy, petitioners have come to this Court by way of petition under Article 226 of the Constitution. In paragraph 11 of the writ petition, it has been stated that the respondent 2-authority has come to own these lands after the rights, liabilities and charges of the erstwhile City Improvement Trust Board came to be transferred to the Bangalore Development Authority. The City Improvement Trust Board in the 1960's had acquired these properties from the respondent 3-Gosai Mutt. The award and vesting of ownership in the hands of the City Improvement Trust Board had occurred in 1960 itself. Subsequent to the vesting, the petitioners had filed application

before the City Improvement Trust Board seeking regularisation of their occupation. They have also alleged that the said applications are pending before the 2nd respondent-authority and the authority after sleeping over the applications and without bothering to consider the same have connived with the 3rd respondent and are endeavouring to give back and entrust the entire property that was acquired in 1960 to the latter. Petitioners have claimed themselves to be poor persons leading an existence of extreme privation and miseries. Petitioners have further stated that similar regularisation of unauthorized construction has been made in favour of one Sri Kandappa Reddy in Sy. No. 69, one Sri Channaiah in Sy. No. 58 by the 2nd respondent. But the petitioners applications have not been considered yet. So the petitioners have filed these petitions for consideration of their applications.

4. No counter affidavit had been filed on behalf of the respondents.

5. On behalf of the petitioners, it has been contended that respondent 3 has nothing to do with these lands as lands have been acquired by the City Improvement Trust Board and its ownership has been vested in City Improvement Trust Board sometimes in 1960. So the lands have been vested in the City Improvement Trust Board and the Bangalore Development Authority has entered into the shoes of City Improvement Trust Board. Petitioners who have been living in the buildings raised on Sy. Nos. 58, 69 which were acquired by the City Improvement Trust Board in 1960, have been entitled to seek regularisation of their unauthorized construction and the authority have not considered their applications for regularisation which are yet pending. It has also been alleged by the petitioners that Sy. No. 56 is Government land and some of the petitioners are living in the building raised on that Sy. No. which belongs to the Government. Petitioners case is that the authorities should have considered and regularised the petitioners' unauthorized constructions. Learned Counsel for the petitioners further contended that u/s 3 of Act 29 of 1991 (Karnataka Regularisation of unauthorized Constructions in Urban Areas Act, 1991), power has been conferred and did vest in the authorities to regularise it and the authorities should have disposed of petitioners' applications for regularisation. Petitioners submitted that the construction is not one that can be said to come within the four corners of Section 4(8) as the construction had been made prior to the acquisition of the land by the Bangalore Development Authority. Petitioners submitted that Section 4(8) could have been applied to the construction constructed unauthorizedly on the said survey numbers after its acquisition and do not apply to the unauthorized constructions existing on the land acquired prior to its acquisition. Petitioners' counsel further submitted that so far as Sy. No. 56 is concerned, it belongs to the Government.

6. On behalf of the respondents it has been contended that it has nowhere been stated in the petition as to when constructions had been made. Learned Counsel contended that it may be three or two decades back from today. The allegations are vague. At this juncture when this contention was made, petitioners' counsel

submitted that in paragraph 7 it has been stated, more than five decades. Again the allegation is vague. Learned counsel for the respondents further contended that power to regularise did not exist prior to coming into force of Act No. 29 of 1991 namely Karnataka Regularisation of unauthorized Constructions in Urban Areas Act, 1991. Learned counsel submitted that the authorities did not have any such power till introduction of this Act. Learned counsel for the respondents further submitted that in the present case constructions did exist on the land belonging to the Bangalore Development Authority. Learned Counsel for the respondent-Bangalore Development Authority contended that the constructions existed on Sy. Nos. 58 and 69. It comes within the purview of Section 4(8). It is immaterial whether these constructions have been constructed unauthorizedly prior to acquisition or subsequent to acquisition. As regards Sy. No. 56 it has been strenuously contended by the learned Counsel for the Bangalore Development Authority as well as for respondent 3 that this plot does not belong to the Government and it has not been acquired by the Government. According to the respondents, Sy. Nos. 56, 58 and 69 did always belong to the respondent 3 and Sy. Nos. 58 and 69 had been acquired and vested in the local body. Respondents' counsel contended that this is a disputed question. Petitioners have not filed anything to prove that Sy. No. 56 belonged to the Government. It has further been contended on behalf of the respondents that apart from Sections 3 and 4, Section 5 also provides certain conditions to be fulfilled namely the application for regularisation of unauthorized construction would be considered if the person who has applied for regularisation or any member of his family does not own any other building or site within the urban area in which the unauthorized construction sought to be regularised is situated. It has also not been stated that the petitioners have got only unauthorized construction in dispute and no other building in their names or in the name of any member of their family. Only when these facts are established, petitioners can seek regularisation.

7. Thus, these petitions involve certain specific questions of fact to be decided also as to when the construction has been made and whether the Sy. No. 56 belong to the Government. It has also to be established whether the claimants-petitioners who have alleged that they have applied for regularisation did or did not own any other building or construction. These petitions involve many questions of fact to be determined. Respondents' counsel stated that they wanted to file counter affidavit to dispute the material allegations of fact in the petition.

8. I have applied my mind to the contentions raised by the learned Counsel for the parties. Before I further proceed with the matter, I think it proper to refer to Sections 3, 4 and 5.

"Section 3. Regularisation.-

Notwithstanding anything contained in any law, but subject to such rules as may be prescribed, any unauthorized construction made in any urban area, except

those specified in Section 4, made prior to the 31st day of March, 1990, by any person, on land.-

(i) belonging to the State Government; or

(ii) which is a revenue site owned by him; or

(iii) belonging to him which is proposed to be acquired in connection with any development scheme of an authority, in relation to which a notification under the Bangalore Development Authority Act, 1976, or u/s 17 of the Karnataka Urban Development Authorities Act, 1987, or u/s 15 of the Karnataka Improvement Boards Act, 1976, is published and which has not yet vested in favour of any authority for which the acquisition is proposed.

May, on the application of such person made within 60 days of the commencement of this Act, be regularised in accordance with the provisions of this Act.

4. unauthorized constructions which shall not be regularised.

The following unauthorized constructions shall not be regularised, namely:--

(i) unauthorized constructions coming in the way of existing or proposed roads and railway lines, communication and other civic facilities or public utilities;

(ii) unauthorized construction or any portion thereof falling within the required set off, if any, from roads, railway lines, communications and other civic facilities or public utilities, under the rules, bye-laws or regulations governing buildings;

(iii) unauthorized constructions made in forest land or on tank bed;

(iv) unauthorized constructions made in the area specified as green belt in the comprehensive development plan or outline development plan prepared under the Karnataka Town and Country Planning Act, 1961 (Karnataka Act 11 of 1963) or declared as green belt under sub-section (3-A) of Section 95 of the Karnataka Land Revenue Act, 1964 (Karnataka Act 12 of 1964);

(v) unauthorized constructions made by any person on the land belonging to another person over which former has no title;

(vi) unauthorized constructions having more than two floors including ground floor;

(vii) unauthorized constructions made in violation of Urban Land (Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976);

(viii) unauthorized constructions made on the land belonging to or vested in any Authority or a local authority;

(ix) unauthorized constructions on any land reserved for parks, playgrounds, open places or for providing any civic amenities.

5. Conditions for regularisation.--(1) No unauthorized construction shall be regularised if the person who has applied for regularisation or any member of his family owns any building or site within the urban area in which the unauthorized construction sought to be regularised is situated.

(2) No person shall be eligible to seek regularisation of more than one unauthorized construction either in his name or in the name of any member of his family".

9. If the application for regularisation has been made before the Bangalore Development Authority, it was the duty of the Bangalore Development Authority to have considered and disposed of those applications one way or the other. If the petitioners were not entitled for regularisation, it could have rejected their applications indicating the ground on which they are not entitled to seek regularisation. If they are entitled for regularisation, then necessary order of regularisation could be passed by the Bangalore Development Authority. It was within the power of the Bangalore Development Authority to pass order as well as to decide and consider the material question of fact which are in dispute. But the Bangalore Development Authority appears not to have done so and not communicated any order. Section 3 quoted above clearly provides that unauthorized constructions made in the urban areas except those specified in Section 4, made prior to 31st of March, 1990 by any person, may subject to the rules made in that behalf as well, if the land belongs to the State Government or it is a revenue site owned by the person concerned or the land belonging to the person concerned who had applied for regularisation, but the land has been proposed to be acquired in connection with any development scheme or in relation to which a notification under the Act has been published but the land has not been vested in favour of any authority for which the acquisition is made, the Competent Authority under the Act on an application being made on by such persons who have raised unauthorized constructions by or before 1-10-1994, regularise the unauthorized construction in accordance with the provisions of the Act. No doubt, one of the conditions is that the person who has applied for regularisation of his unauthorized construction or any member of his family does not own a building or a site within the urban area in which the unauthorized construction is sought to be regularised is situated and he has got only one unauthorized construction either in his name or in the name of any member of his family. Subject to these material considerations and provisions, if any, under the rules, the person making unauthorized construction may seek and get regularisation of unauthorized construction with exception to the unauthorized constructions which have been referred to in Section 4 of the Act. Section 4 clearly gives a mandate that the unauthorized construction referred to in Section 4 shall not be regularised and any unauthorized construction made on the land belonging to or on the land which is vested in any authority or local authority as referred to in Section 4(8) also cannot be regularised. Learned Counsel for the petitioners contended that it will cover only unauthorized constructions made after the date of vesting of the land in the authority. I am unable to accept this

contention. Section 4(viii) covers unauthorized constructions made on the land belonging to or vested in any authority or a local authority. The two expressions used clearly indicate the distinction, and negate the contention of the petitioner. unauthorized constructions made on the land belonging to any authority or local authority means constructions made or existing on the land belonging to or vested in the authority or local authority. Here expression means that unauthorized construction made earlier to its vesting in the authority but continued to exist on the land after its vesting in the authority or local authority. So a reading of this section per se reveals to me that it applies to the construction made before 31-3-1990 irrespective of the fact that construction had been made either after acquisition of the land or before acquisition. Once the land has been acquired and vested and subsequently construction is made, it will also come within the purview of expression "unauthorized constructions made on land belonging to or vested in authority or other local authority". In my opinion, this Section will cover both constructions made earlier to its vesting in the authority or other local authority or subsequent thereto. But, no doubt, in every case it covers those constructions which had been made earlier to 31-3-1990. If the construction did come within the purview of Section 4, the unauthorized construction cannot be regularised. Petitioners have very clearly averred that as regards Sy. Nos. 58 and 69 that the said lands have been acquired vide Annexure-A which reveals acquisition to have been made some times in 1960 and it has also been admitted in para 11 that award and vesting of ownership in the hands of the City Improvement Trust Board had occurred in 1960 itself. So in my opinion, so far as the constructions on Sy. Nos. 58 and 69 are concerned, petitioners may not be entitled to the reliefs. As regards Sy. No. 56 is concerned, there is a dispute. The question of fact has to be determined whether it belongs to Government or not or whether it belongs to respondents. In such circumstances, relief as claimed cannot be granted in favour of the petitioners. No doubt, petitioners' Counsel tried to differentiate between hutment and permanent construction. He said that hutment constructions are not permanent constructions and unauthorized construction has not been defined in the Act to include it as permanent construction. Whether the construction on this land is permanent construction or not is also a question of fact again to be decided on the basis of evidence. If the hutments have been constructed on permanent walls or on kaccha mud walls, they may also be considered in certain circumstances as permanent construction. As the material questions of fact and law, no doubt, are involved which have to be decided and which could have been decided by the authority concerned itself while disposing of applications which have been made before it. But they have not done so.

10. In this view of the matter, I think it proper to refuse the claimants' claim in relief clauses as claimed under Clauses "A" and "B" of relief clause and the claims for these "A" and "B" are rejected.

11. But it appears just and proper to direct the respondents 1, 2 and 4 to consider the petitioners' applications, if any, have been made for regularisation

in the light of law and observations made by this Court above. If the petitioners do not fulfil the requirement of law, it is clarified that it is always open to the opposite parties to reject their applications. But if their case appears to be covered by the requisites of law under Sections 3 and 5 of the Act and is not covered by Section 4, then it is open to the respondents to pass necessary orders for regularisation. It is also open to them to consider and decide whether the land bearing No. 56 belongs to the Government or to third party.

12. Thus considered the writ petition is allowed partly by issue of direction to the respondents 1, 2 and 4 to consider and dispose of petitioners' applications in accordance with law. Until they have decided and disposed of the various applications of the petitioners for regularisation according to law, petitioners shall not be dispossessed. It is open to the respondent 3 also to be heard and to raise all the pleas he wants to raise before the authority. Let a direction in the nature of mandamus be issued to respondent 2 to consider and decide the applications of the petitioners after due notice to the petitioners as well as to the respondent 3 and the Government also. Those applications may be disposed of within a period of nine months from the date of communication of this order. Pending disposal, petitioners' possession shall not be disturbed.