

(2023) 02 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No. 21320 Of 2022 (GM-RES)

Nagamma

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 16-02-2023

Acts Referred:

Rehabilitation Act, 2013 — Section 13, 18, 32
Prohibition Of Employment As Manual Scavengers And Their Rehabilitation Act, 2013
— Section 13
Constitution Of India, 1949 — Article 46

Citation : (2023) 02 KAR CK 0036

Hon'ble Judges : M. Nagaprasanna, J

Bench : Single Bench

Advocate : Shilpa Prasad, B.V. Krishna, M.S. Devaraj

Final Decision : Allowed

Judgement

M. Nagaprasanna, J

1. The petitioner is before this Court seeking a direction by issuance of a writ in the nature of mandamus directing the respondents to consider the representation submitted by her and allot a site or house in Doddabelavangala Village, Doddaballapur Taluk, Bengaluru Rural District and also further sought a direction to take immediate steps to ensure provision of rehabilitation to the petitioner and her family members in time bound manner in accordance with law.

2. Heard Clifton D'Rozario, Smt. Maitreyi Krishnan along with Smt. Shilpa Prasad, learned counsel appearing for the petitioner, Sri B.V.Krishna, learned Additional Government Advocate for respondents 1, 2, 4 and 5 and Sri M.S. Devaraj, learned counsel appearing for respondent No.6.

3. Brief facts that leads the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner is the wife of one late Narasimhaiah. Narasimhaiah was forced to

perform manual scavenging and he was directed to go inside the manhole in Yehahanka, Bangalore at which time he died due to asphyxiation because of negligence which was directly attributable to the 3rd respondent, Bangalore Water Supply and Sewerage Board. The petitioner and her husband belonged to Scheduled Caste. The petitioner, widow of the manual scavenger who was put to death due to the act of the 3rd respondent gave representations to rehabilitate her and her family members since they were all dependent on the income derived from the scavenging activity of her husband. Rehabilitation was not acceded to immediately after the death of the husband, which drove the petitioner to knock at the doors of this Court in Writ Petition No.21320 of 2011.

4. This Court disposed of the petition on 14-09-2011 directing immediate action to be taken for rehabilitation of the petitioner. The petitioner again submitted a representation after the order was passed by this Court and long thereafter, in the year 2012, a site was allotted to the petitioner and the entries concerning the site were changed in favour of the petitioner. Even after passage of time, the petitioner could not construct the house due to lack of funds. In the year 2022, the 6th respondent/Panchayat Development Officer, Doddabelavangala Panchayat noticing the fact that the petitioner had not constructed any house despite passage of nine years, after allotment of the site, took over the site and marked it for the purpose of construction of Nada Kacheri. This was not made known to the petitioner. Later, when the petitioner enquired, she was assured that she would be given an alternate site. The petitioner gave plethora of representations seeking re-allotment of site in her favour and the 6th respondent/Panchayat Development Officer indicated to the Tahsildar regarding such re-allotment. Even then no allotment was made. It is then the petitioner has again knocked at the doors of this Court, ironically with the same writ petition number after 11 years.

5. The learned counsel appearing for the petitioner would contend that rehabilitation of family of the manual scavenger by prohibiting manual scavenging activity is the mandate of the statute. Any deviation from the same would become a penal offence. The learned counsel would further emphasize that the petitioner could not construct the house in a site that was allotted due to financial constraints and, therefore, she kept the site vacant. If the site was needed for public purpose, it was the bounden duty of the State to provide alternate site and minimum finance for construction of the house, as the petitioner herself belong to lower strata of the society, doing menial jobs for her survival and therefore, would submit that suitable direction be given as sought for. He would submit that the act of the respondents in dispossessing a scheduled caste lady would amount to an offence under the atrocities Act.

6. On the other hand, the learned Additional Government Advocate representing the State and the learned counsel representing the Panchayat would vehemently refute the submissions to contend that the petitioner did not construct the house and, therefore, it was taken away from her. No fault can be found for such an action and would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. Before embarking upon consideration of the case on its merits, I deem it appropriate to notice the Act i.e., the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ('the Act' for short) and the Rules framed thereunder. Manual scavenging has been a scourge ever since construction of drains took place. The Government in the year 1993 promulgated an Act to provide for the prohibition of employment as manual scavengers as well as construction or continuance of dry latrines. The Act was promulgated to eliminate dehumanizing practice of employment of manual scavengers and their rehabilitation as well. Though the rehabilitation was not emphasized to a greater degree, a new enactment came about in the year 2013 i.e., the Act. The purpose behind the Act was found in its preamble and it reads as follows:

"An Act to provide for the prohibition of employment as manual scavengers, rehabilitation of manual scavengers and their families, and for matters connected therewith or incidental thereto.

WHEREAS promoting among the citizens fraternity assuring the dignity of the individual is enshrined as one of the goals in the Preamble to the Constitution;

AND WHEREAS the right to live with dignity is also implicit in the Fundamental Rights guaranteed in Part III of the Constitution;

AND WHEREAS article 46 of the Constitution, inter alia, provides that the State shall protect the weaker sections, and, particularly, the Scheduled Castes and the Scheduled Tribes from social injustice and all forms of exploitation;

AND WHEREAS the dehumanising practice of manual scavenging, arising from the continuing existence of insanitary latrines and a highly iniquitous caste system, still persists in various parts of the country, and the existing laws have not proved adequate in eliminating the twin evils of insanitary latrines and manual scavenging;

AND WHEREAS it is necessary to correct the historical injustice and indignity suffered by the manual scavengers, and to rehabilitate them to a life of dignity."

The preamble records that Article 46 of the Constitution inter alia provided that the State shall protect weaker sections and particularly, the Scheduled Castes and Scheduled Tribes from social injustice and all forms of exploitation. Quoting Article 46 of the Constitution of India, the Rehabilitation Act, 2013 is promulgated. Section 13 of the Act which is germane for the issue reads as follows:

"13. Rehabilitation of persons identified as manual scavengers by a Municipality.—
(1) Any person included in the final list of manual scavengers published in pursuance of sub-section (6) of Section 11 or added thereto in pursuance of sub-section (3) of Section 12, shall be rehabilitated in the following manner, namely—

(a) he shall be given, within one month,—

(i) a photo identity card, containing, inter alia, details of all members of his family dependent on him, and

(ii) such initial, one time, cash assistance, as may be prescribed;

(b) his children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;

(c) he shall be allotted a residential plot and financial assistance for house construction, or a ready-built house, with financial assistance, subject to eligibility and willingness of the manual scavenger, and the provisions of the relevant scheme of the Central Government or the State Government or the concerned local authority;

(d) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, training in a livelihood skill, and shall be paid a monthly stipend of not less than three thousand rupees, during the period of such training;

(e) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on a sustainable basis, in such manner as may be stipulated in the relevant scheme of the Central Government or the State Government or the concerned local authority;

(f) he shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.

(2) The District Magistrate of the district concerned shall be responsible for rehabilitation of each manual scavenger in accordance with the provisions of sub-section (1) and the State Government or the District Magistrate concerned may, in addition, assign responsibilities in his behalf to officers subordinate to the District Magistrate and to officers of the concerned Municipality."

(Emphasis supplied)

The implementing authorities are enumerated under Section 18.

Section 18 of the Act reads as follows:

"18. Authorities who may be specified for implementing provisions of this Act.— The appropriate Government may confer such powers and impose such duties on local authority and District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out, and a local authority and the District Magistrate may, specify the subordinate officers, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed, and the local limits within which such powers or duties shall be carried out by the officer or officers so specified."

Section 32 directs that the State Government by notification designate a State Commission for Safai Karamacharis or a State Commission for the Scheduled Castes or such other statutory or other authority within the State. Section 13 which forms fulcrum of the issue in the lis directs that any person included in the final list of manual scavengers shall be prohibited from doing such work and rehabilitated by allotment of a plot, financial assistance for house construction or a ready built house subject to eligibility and willingness of such manual scavenger. It is to be implemented by the Central Government, State Government or the concerned local authority and there are other slews of rehabilitation directions that form a mandate of Section 13. It is on the basis of the aforesaid provisions of law, the case would merit consideration.

9. The petitioner is a woman belonging to Scheduled Caste. The husband of the petitioner was doing the job of manual scavenging. In the year 2008 the Bangalore Water Supply and Sewerage Board ('BWSSB' for short) forces the husband of the petitioner to go in to the manhole at Yelahanka and on account of negligence directly attributable to the BWSSB the husband of the petitioner dies due to asphyxiation. After the death, the petitioner/widow gave plethora of representations for rehabilitation. This was not considered. The petitioner had knocked at the doors of this Court in W.P.No.21320 of 2011. A co-ordinate Bench of this Court disposed of the petition in terms of its order dated 14-09-2011 by passing the following:

"....

5. Insofar as the allotment of a house is concerned, the learned Government Pleader on instructions from the 1st respondent, particularly, the Assistant Commissioner, Doddaballapur Division. Doddaballapur submits that a decision is taken to allot a site measuring 30ft.X40ft. comprised in Sy.No.154 of Doddahajji in Doddaballapur Taluk in favour of the petitioner herein who is the widow of the deceased. Therefore, the grievance made by the petitioner in this regard also does not survive for consideration.

6. Insofar as the request made for appointment to a job in the state government, this Court has already held in the connected writ petition No.1520/2011 disposed of on 08.06.2011 and also W.P.No.6225/2011 disposed of on 28.07.2011 regarding the two other claims made by the similarly placed dependants of the deceased that such appointment on compassionate ground cannot be granted. In fact the request for compassionate appointment itself is held to be baseless.

7. However, an observation is made by the Court stating that in the light of the facts and circumstances which disclosed that the deceased had worked under the contractor who had undertaken the work for the 2nd respondent – BWSSB, as and when the 2nd respondent notified posts for regular appointment, petitioner or any of the dependent children of the petitioner, if they possess the requisite qualification could apply in response to the notification for regular recruitment and in the said process of recruitment, if all other things are similar, the family

member of the petitioner shall be provided weightage by the 2nd respondent while making the appointment.

8.

9. Accordingly, it is made clear that the petitioner or her dependent children will be entitled for similar benefits/weightage as observed in the aforementioned two writ petitions. Since an apprehension is expressed by the petitioner that allotment of house site might be delayed, I find it just and appropriate to direct the 1st respondent to put the petitioner in possession of the house site as expeditiously as possible, at any rate, within a period of six weeks from the date of receipt of a copy of this order. The writ petition is accordingly disposed of."

(Emphasis supplied)

This Court clearly observed that the Government was ready and willing to give a plot/site to the petitioner and all other benefits under the Act or under the scheme prevailing then. The petitioner then represented to the 1st respondent on 04-10-2011 seeking allotment of a house in her favour. After struggling to get a house, she was allotted a plot instead of a vacant site on 19-10-2012 by the Doddabelavangala Gram Panchayat, Doddaballapura Taluk. The name of the petitioner was also mentioned in the demand register in respect of Plot No.2 within the precincts of the Panchayat. After about 9 years, the petitioner gets to know that her plot has been taken away from her and represents to the 6th respondent/Panchayat. The representation reads as follows:

(Emphasis added)

The Panchayat communicates to the Tahsildar that a site or a house be granted in favour of the petitioner on 24-02-2022. The Communication reads as follows:

Nothing comes about. The petitioner then represents through someone's assistance to the Tahsildar and the Panchayat Development Officer/6th respondent. The representation reads as follows:

"Dear Madam/Sir,

Sub: Non-compliance with the High Court of Karnataka's order in W.P.No.21320 of 2011 (GM RES).

I, Nagamma, w/o late Narasimhaiah, aged about 47 years, residing at Doddabelavangala Hobli, Doddaballapur Taluk, Bengaluru Rural, Karnataka 561 204, am writing to bring to your notice the failure of the State authorities to comply with the direction of the Hon'ble High Court of Karnataka in the order dated 14-09-2011 in W.P.No.21320 of 2011 (GM RES). The said Writ Petition is filed by me on account of my husband's death due to asphyxiation while performing the work of manual scavenging on 14-11-2008, praying for a direction to the respondent-State authorities to comply with its promises made regarding enhanced monetary compensation, house, and a government job to each of the family members of my husband.

The Hon'ble High Court, through the order dated 14-09-2022, was pleased dispose of the petition recording the submission of the Government of Karnataka at para-5 on instructions from the Assistant Commissioner, Doddaballapur division, that a decision had been taken to allot a site measuring 30 ft. x 40 ft. comprised in Sy.No.154 of Doddahajjaji in Doddaballapur Taluk in favour of me. I was directed that the State of Karnataka must put me in possession of the house site as expeditiously as possible, at any rate, within a period of 6 weeks from the date of receipt of the copy of the order.

Accordingly, I submitted a letter to the Chief Secretary, Government of Karnataka dated 4-10-2011 with a copy of the Deputy Commissioner, Doddaballapur, and the Panchayat Development Officer – Doddabelavangala Grama Panchayat, along with a copy of the order dated 14-09-2011 in W.P.No.21320 of 2011. Thus, per the directions of the Hon'ble High Court, I was to be put in possession of the house site within a period of 6 weeks from the date of receipt of the order.

Pursuant to the order, I was given a site bearing site No.42 in Doddabelavangala, for which I duly paid property tax, the receipts of which reflect my name. However, the State authorities have unlawfully taken the allotted site away from me and have informed me that I would be given an alternative site instead. It is pertinent to note that the site allotted to me was taken away without any prior notice, without giving me an opportunity to object to the same, and without my knowledge. These actions are in gross contravention of the order of the Hon'ble High Court and are in direct violation of the same.

After the death of my husband, we have been undergoing great suffering as he was the sole earning member of my family. I have a daughter named Yashoda whose young children who are in the 5th and 7th standard are dependent on me and are residing with me. I stay in a rented house, the rent for which is extremely heavy and is placing me in great financial distress. I am currently living in penury, with no means of sustenance or employment. A copy of my BPL card is enclosed with this letter. I do not have any stable income and, especially on account of the pandemic and subsequent lockdowns, have been greatly prejudiced by the unlawful actions of the State authorities. I have repeatedly approached the Tahsildar and Gram Panchayat requesting that the site allotted to me not be taken away unlawfully, and that the order of the Hon'ble high Court be complied with but to no avail. I have currently been removed from the possession of the site unlawfully.

I have also not been provided rehabilitation as required under Section 13 of the Prohibition of Employment as Manual Scavengers and their rehabilitation Act, 2013, including financial assistance, scholarship to the children, allotment of residential plot along with financial assistance for house construction or a ready made house, training in a livelihood skill, concessional loans to take up an alternative profession and legal and pragmatic assistance.

I request you to kindly ensure that the site allotted to me per the Order of the

Hon'ble High Court of Karnataka in Doddabelavangala is given back to me and I am put in possession of the same, that I am provided financial assistance for construction of a house and all other measures of rehabilitation required under the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 and Rules."

(Emphasis added)

This resulted again in a communication from the Panchayat to the Tahsildar, nothing happens. It is then the petitioner reaches the doors of this Court for the second time. The Tahsildar/5th respondent files his affidavit contending that he is not responsible for the loss of plot of the petitioner; it is only the Panchayat Development Officer of the Doddabelavangala Gram Panchayat who should answer the issue. The affidavit of the Tahsildar insofar as it is germane for the lis reads as follows:

"5. The site granted by the Gram Panchayath favouring the petitioner has not been taken away by the Revenue Department nor by any order passed by me, the site which is reserved now for construction of Nada Kacheri has not been allotted to anyone under the Ashraya Scheme. It is therefore, for the Grama Panchayath, Doddabelavangala to clarify as to the location of the Site No.164/42 granted favouring the petitioner. In that connection, the Government has already issued an Endorsement dated 8-12-2022 to the petitioner and the Panchayath Development Officer (PDO) Doddabelavangala Gram Panchayath. Copy of the same is produced herewith."

(Emphasis added)

Therefore, the Panchayat Development Officer was directed to file his objections. The Panchayat Development Officer files his objections to the effect that the petitioner has no right for a plot as she has violated the conditions. The relevant paragraph of the objections of the Panchayat Development Officer reads as follows:

"3. It is submitted that the petitioner was allotted with site in 2011-12 only and the petitioner did not put up construction till June 2022. Therefore, she cannot claim that the orders have not been complied with. In fact, the site was in her possession since 2011-12 to June 2022.

4. It is submitted that as per the brief facts of the petition, this respondent has already forwarded the request of the petitioner earlier and further he has earmarked the site/place in Doddabelavangala Village for grant of site to the petitioner. Therefore, the petitioner cannot maintain the writ petition against this respondent."

(Emphasis added)

The reason rendered for snatching away the plot of the petitioner is that the petitioner though was allotted a site in 2011-12 she did not put up any

construction till June 2022. Therefore, she cannot claim that the earlier orders have not been complied with. It is indicated that the site was in her possession from 2011-12 to June 2022. Therefore, possession of the petitioner is accepted by both the State and the Authorities. Taking away of the site is also accepted as the objections would depict that possession was with the petitioner up to June 2022. It is then the petitioner had submitted plethora of representations.

10. This Court while entertaining the petition has passed several orders directing concerned authorities to show cause as to why a site that was granted on the death of the husband of the petitioner was taken away contrary to law. After seeking several adjournments, the 5th respondent has identified a plot and restored possession to the petitioner within 4 days as the last of the adjournments was granted on 02-02-2023 and the matter was directed to be listed on 07-02-2023. Time was taken up to 09-02-2023 to set the wrong, right. In one week's time the wrong was set right, petitioner was restored possession of a property which contains a house. This could have been done without the petitioner knocking at the doors of this Court. If it could be done within one week on this Court questioning the action, the action could have been taken without such questioning by this Court. Therefore, it is the lack of will and display of apathy towards poor citizens by the powers that be.

11. Though the petitioner has been restored possession, the issue does not stop at that, the petitioner would be entitled to financial assistance and also costs of the litigation, as the State has driven a Scheduled Caste lady to knock at the doors of this Court for the second time on their sheer attitude of demonstrating power over the under powered. It is because the petitioner knocked at the doors of this Court she was restored with possession of plot despite vehement objections put up by the 6th respondent as quoted supra that the petition should be dismissed contending that she has no right.

12. It is not enough under the Act, if a plot is allotted in furtherance of a rehabilitation in terms of 13(1)(c) of the Act to a manual scavenger. Grant of financial assistance is imperative and there are several other benefits that any manual scavenger who is prohibited from that work gets in terms of the Act. The situation in the case at hand is worse. The husband of the petitioner who was a manual scavenger dies due to manual scavenging, an act which was clearly prohibited on the date on which the husband of the petitioner died. Therefore, it was the responsibility of the respondents not only to have allotted the plot, but to have granted financial assistance. Section 13 supra mandates such financial assistance to persons who have been rehabilitated on prohibiting manual scavenging and to the family of such manual scavenger who dies during such dehumanizing job.

13. Therefore, for the act of the 6th respondent in snatching away the plot of the petitioner, a poor widow of a manual scavenger and driving her to unnecessary litigation, notwithstanding the fact that she has now been restored possession of a plot which has a house as well, I deem it appropriate to grant the petitioner

costs which is assessed at Rs. 50,000/- to be paid jointly and severally by respondents 2, 4 and 6 and litigation expenses for such illegal action at Rs. 50,000/- to be paid exclusively by the 6th respondent/Panchayat, as it is the act of the said Panchayat that took away the right of the petitioner over the property that had been granted to her by the State, pursuant to the order passed by this Court (supra).

14. The petitioner shall also be granted all such financial assistance and benefits that would flow from Section 13 of the Act. The respondents/State, particularly 2nd and 4th respondents, shall oversee that all the benefits under the Act qua Section 13 are conferred upon the petitioner and not drive her to another round of litigation. Ergo, it is high time that "the haves stop despoiling the rights of have-nots; the haves, I mean, those who have power."

15. For the aforesaid reasons, I pass the following:

ORDER

(i) Writ Petition is allowed with cost of Rs. 50,000/- to be paid to the petitioner by respondents 2, 4 and 6 jointly and severally.

(ii) The possession of the petitioner that is granted during the pendency of the petition shall not be disturbed.

(iii) Financial assistance as is available under Section 13 of the Act shall be conferred upon the petitioner by respondents 2, 4 and 6 except the ones that have been negated in Writ Petition No.21320 of 2010.

(iv) The petitioner shall also be entitled to cost of the litigation assessed at Rs.50,000/- to be paid exclusively by the 6th respondent/Panchayath.

(v) The respondents shall comply with the directions in clause Nos.(i) and (iv) with regard to payment of costs and litigation expenses within two weeks from the date of receipt of the copy of this order.

(vi) The respondents shall file a compliance report qua direction in clause Nos.(i) and (iv) within the next four weeks.